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## Contributions of the Jesuits to Human Rights in Mexico: A Case Study of Center Miguel Agustin Pro Juarez

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**LOYOLA MARYMOUNT UNIVERSITY**

Contributions of the Jesuits to Human Rights in Mexico:  
A Case Study of Center Miguel Agustin Pro Juarez

by

Luis Arriaga Valenzuela

A dissertation presented to the Faculty of the School of Education,  
Loyola Marymount University,  
In partial satisfaction of the requirements for the degree  
Doctor of Education

2016

Contributions of the Jesuits to Human Rights in Mexico:

A Case Study of Center Miguel Agustin Pro Juarez

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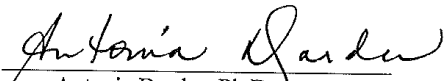
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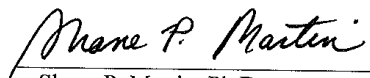
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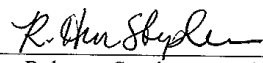
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## **DEDICATION**

This dissertation is dedicated to the woman who helped make me the man I am: my mother, Hilda. The lessons of life you taught me, my dear mother, I carry deep in my Heart.

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## **ABSTRACT**

Contributions of the Jesuits to Human Rights in Mexico:

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In Mexico, as in other parts of the world, human rights violations have deep historical roots. In the forty years before this study, these violations had been increasing, especially with respect to excluded populations and vulnerable groups, such as women, indigenous peoples, migrants, and victims of repression (Center Prodh, 2013). To reverse or at least decrease these conditions, disenfranchised people needed to become aware of their rights within civil society. Toward that end, diverse non-governmental organizations (NGOs) had taken on the task of providing education and strategic practices to disenfranchised people and communities. The Society of Jesus (the Jesuits) had contributed to this work. The defense of human rights was a fundamental task in any country that sought democracy. Recognized by international law, academics, and civil society, the growing field of human rights combined the ideas of liberal democracy with other traditions.

This case study utilized a critical analysis to examine the outcome of the work of one NGO dedicated to the defense and promotion of human rights in Mexico: the Center of Human Rights Miguel Agustin Prodh Juarez (Center Prodh). Center Prodh was founded by the Society of Jesus in 1988 and has maintained a political presence within the field of human rights organizations in the region. The study utilized the characteristics of the social apostolate of the Society of Jesus and provided a critical conceptual framework for cultural democracy formulated

by Darder (2003) to investigate the importance of a Jesuit social institution in theory and practice within the field of human rights. Apart from this critical process of analysis, an important objective of the study was to develop greater understanding of the Jesuit orientation to social action work in Mexico. A key aspect of this study was to examine the successes and limitations of the human rights approach utilized by Center Prodh in assisting individuals and communities to consolidate their collective agency toward a more just and participatory political process of social change.

## **CHAPTER ONE**

### **INTRODUCTION AND METHOD**

#### **Background of Study**

In 1995, having recently completed law school, I began working at a non-governmental organization (NGO) in Mexico. I came to realize that my professional work as a lawyer had to focus on the education and defense of human rights if I were to fulfill my commitment to the empowerment of oppressed populations. Shortly after joining the organization, I decided to become a Jesuit priest. Since then, I have directed similar institutions dedicated to the advancement of human rights in communities utilizing diverse approaches.

In 2006, I was appointed Director of the Center of Human Rights Miguel Agustin Prodh Juarez by my Provincial. My work consisted of coordinating the efforts of a team of 30 staff members dedicated to defending and promoting human rights in Mexico. In the history of Center Prodh, great effort had been made to maintain its political presence in the region. Over the years, I have often asked myself how this type of human rights organization could have a greater impact on the development of democratic life in the country. This study was the result of such inquiry and provides answers to this question.

#### **Statement of the Problem**

At the time of this study, in Mexico there had been a crisis regarding human rights. According to an article published by the *New York Times* on February 20, 2013, nearly 150 people and possibly hundreds more had disappeared at the hands of the Mexican police and military during the recent drug wars. At the time of this study, little to no investigation of these cases had been undertaken, given that human rights in Mexico was not considered a government

priority (Center Prodh, 2013). As a result, the most vulnerable populations were always at risk of being adversely affected by a number of exclusionary human rights violations. These violations had a variety of root causes related to economic policy, citizen security agenda, impunity, and the lack of a solid national culture of defense and protection of human rights. Thus, the cycle of violations and corruption had historically been repeated within disenfranchised communities. Similarly, within political, economic, social, and cultural contexts across Mexico, ongoing and dangerous risks persisted that attacked the integrity of human rights, particularly for the most excluded sectors.

Existing inequality was documented by Lopez (2005) who described it as “economic and social inequality [is seen] in the southern region of Mexico’s marginalized indigenous groups and economically disadvantaged people” (p. 78). The former was owed, in part, to the deepening of the neoliberal economy both nationally and globally, and to the spread of Free Trade Agreements with the United States that not only violated the economic, social, and cultural rights of Mexican working people, but the rights of indigenous communities as well. In addition, the increasing inequality that neoliberal policies created functioned to dismantle the integrity of human rights. As an example of this phenomenon, the National Council of Social Development Public Policy confirmed that poverty was on an upward trend. In 2013, *El Economista* (The Economist) indicated that from 2008 to 2010, the number of people living in poverty had grown from 48.8 to 52 million (Franco, 2012). The data also revealed that 1,003 of 2,400 Mexican counties (75% of the population) lived in poverty.

To reverse, prevent, and denounce human rights violations, NGOs, and in particular the Jesuits, have utilized diverse strategies. Some have been adequate and, in some instances,



successful. Nonetheless, other measures may have been counterproductive or complicated, given that realistic expectations were not proposed. Moreover, despite the extent of poverty and political powerlessness that existed at the time of this study, there were no in-depth studies of Jesuit NGOs in Mexico and their influence on democracy. This was particularly the case regarding the work of protecting and educating individuals about human rights as performed by NGOs established by the social apostolate of the Society of Jesus. Hence, there was a need to better understand the work of such NGOs and their impact on the communities they serve.

Center Prodh was a different type of NGO in that it was a Jesuit institution that participated in political matters by providing educational and legal services in disenfranchised communities. Until the time of this study, there had been no research conducted that examined the impact of this organization with respect to its human rights work. Thus, it was important to explore both its practices and its actual impact on the people it served. A substantive analysis of Center Prodh would allow us, as Jesuits, to make more prudent decisions. The study was not simply about describing the Center's activities, but also about analyzing the impact that the Center's practices had had and might have in the long run.

Has Center Prodh contributed to fortifying democracy? If so, in what ways? What were the possibilities and the limitations it faced with respect to protecting and supporting the practice of human rights? In my study, I analyzed the effectiveness of the strategies employed by Center Prodh, while also critically examining the question of human rights and how it did or did not impact their practice.

## **The Question of Human Rights**

According to Stammers (2009), the study of human rights has been an unusual field of study. It has not been a discipline in its own right nor could it be confined within one academic discipline. Stammers pointed out that just a few disciplines have historically dominated the scholarship on human rights. By far, “the most important are philosophy and law” (p.12).

According to Spring (2004), the notion of human rights comprised an ideology or set of ideas about the organization of society. The term “human rights” has been defined as a value upon which all contemporary nation states have been united (Menon, 2010). The Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948, recognized that human rights were basic rules for peaceful coexistence, justice and solidarity between people. Through democracy, governing bodies could better organize society and secure these rules. As Henkin (1990) pointed out, “they are those benefits deemed essential for individual well-being, dignity, and fulfillment and that reflect a common sense of justice, fairness, and decency” (p. 2).

The international agreements cited above offered “a common standard for which all peoples and nations should try to achieve and to do this properly, teaching and education are needed” (Henkin, 1990, p. 2) as stated in the Universal Declaration of Human Rights. Human rights texts and values could be interpreted and reinterpreted to forward the demands of new subjects of rights, as well as a consideration of how social agents widened the scope of rights in both courts and politics (Estévez, 2008). Schmelkes (1998) argued that human rights must then be considered as the basis for a universal ethic, so it must be acknowledged and respected by all.

## **Human Rights Education**

The Universal Declaration of Human Rights also affirmed that the objective of education was to fully develop the human person and to strengthen human rights. In this way, respecting human rights has been a precondition to the development of a person. The building of knowledge, skills, and values that enabled individuals to advance peacefully was tied to the realization of human rights for all people. At the time of this study, human rights were understood as those rights to which people were entitled by virtue of the fact that they were human beings (Menon, 2010).

The Universal Declaration's concept of human rights education has been deepened by numerous international and regional documents; conferences from experts on the subject; and experiences from political and educational leaders. It has also been supported by civil society organizations throughout the world. Rorty (2010) argued that human rights were part of a cultural ethos and people needed to be educated about the need for such a cultural fabric, making the existence of human rights possible (as cited by Menon, 2010).

However, it has been noteworthy that human rights discourse in Mexico did not develop as an exclusively liberal discourse but emerged as a hybrid of liberal democracy and liberation philosophy—inspired human rights approaches that led to the inclusion of economic, social, and cultural rights as well as civil and political rights (Estévez, 2008). Ellacuria (1999) provided an important example of this hybrid model. His emphasis on the historization of human rights focused on the socioeconomic context. Furthermore, in Mexico, liberation theology played an important role as well. These ideas influenced the human rights understanding of Jesuit and Dominican Priests who founded the first human rights NGOs in Mexico. At the same time,

human rights education has been concerned with the collective construction of knowledge about human rights doctrines and the development of critical attitudes *with* communities that would protect, enforce, and expand human rights doctrines in the larger society (Spring, 2004).

### **Research Questions**

Three research questions guided this study:

- (1) What was the main approach utilized by the Jesuits in their human rights practice at Center Prodh?
- (2) In what ways did Center Prodh's litigation practices linked to human rights enhance the Jesuit Mission within disenfranchised communities in Mexico?
- (3) What were the strengths and challenges of Center Prodh, with respect to its human rights practices in communities?

### **Purpose of the Study**

The overarching purpose of this study was to investigate Center Prodh's influence in defending and promoting human rights and enhancing democratic life in Mexico. This study highlighted several significant cases that have contributed to the creation of a culture of respect for human rights in Mexico. More specifically, the study sought to accomplish three main goals:

- (1) To explore the Jesuit concept and approach to human rights of Center Prodh;
- (2) To determine what influence the Center Prodh human rights approach had had on democratic life, as evidenced through their education programs and defense of strategic cases; and
- (3) To analyze the strengths and challenges that Center Prodh had with reference to its past practices in Mexico.

## **Significance**

A diverse body of literature on human rights theory and practice existed at the time of this study. A variety of authors (Donnelly, 2013; Griffin, 2008; Ignatieff, 2001; Neir, 2012; Stammers, 2009) had studied the subject of human rights and the links to human rights and practices. However, few case studies had been conducted that offered knowledge and understanding about the impact of Jesuit NGOs on human rights and the democratic life of communities in Mexico. This study sought to fill this gap in the literature, so that its findings, conclusions, and recommendations could be used as a guide for other organizations that worked to defend and promote human rights, especially those linked to the Society of Jesus.

This study could also help clarify the mission of the social apostolate of the Society of Jesus by strengthening these organizations with the possibility of supporting better decision-making skills in their future service to disenfranchised communities. Moreover, this study was based on the strategic plan of the Center Prodh, which included an assessment of the educational program, as well as the integral defense process of certain legal cases. The aim here was to use the knowledge gained from this study to offer technical and ideological guidelines for a sociological analysis, which could be replicated in other social efforts by the Jesuits, as well as by other Mexican human rights NGOs.

There were also a variety of examples in the literature of human rights approaches and challenges faced by NGOs (Aguilar, 2012; Heins, 2010; Human Rights Watch, 2011). Among these approaches had been encouraging the participation of the citizenry, identifying new forms of dialogue with the government, constructing new alliances of collaboration with various agencies, developing strategic approaches for protecting and defending human rights,

participating in public politics; and contending with a variety of other challenges. However at the time of this study, there was no literature that examined this issue within the context of the Jesuit approach to human rights organizations in Mexico.

In order to develop more just practices and clarify the Jesuits' social apostolic mission, this study helped answer five questions:

- (1) What was the approach to human rights of Center Prodh?
- (2) What were the debates in understanding human rights?
- (3) What were the new challenges for this particular NGO as a Jesuit Institution?
- (4) How could the Center improve its practices to accomplish its goals?
- (5) What was relevant to this approach of critically evaluating the results of Center Prodh within the field of human rights organizations?

Through this study, I critically evaluated the impact of Center Prodh in conjunction with other human rights organizations. This study highlighted the practices of Center Prodh and explored the organization's strengths and weaknesses as part of the work of the Society of Jesus. Two well-respected scholarly works served as an effective starting point for considering the role of human rights organizations. The first study by Kim (2010) examined the roles of NGOs and their impact on the human rights of North Korean refugees. The second study by Cakmak (2004) examined the role of NGOs in the norm-creation process in the field of human rights. Both authors agreed that the work of NGOs in the human rights arena played a crucial role in the political life of the nation-state. However, Cakmak (2004) pointed out that "the increasing role of NGOs made it necessary to evaluate their nature, types and procedures in detail" (p.104). It

was precisely for this reason that in this study I evaluated the foundational characteristics of an NGO in Mexico, established by the Society of Jesus.

### **Link with Social Justice**

The research was conducted from a social justice perspective, given the institutional documents, doctrines, and ethics found at the heart of Jesuit practice in communities. The preferred option or focus of the work of Center Prodh was to serve marginalized and excluded populations. Serving women, indigenous people, poor migrants, and victims of social repression had been the priority of their practice. Center Prodh served these vulnerable populations as an expressed commitment of the Society of Jesus. The selection of locations and priorities of service applied were those that were set forth in the Society of Jesus in the United States, General Congregation Assembly Number 34 of the Society of Jesus in the United States (1995):

The criteria of the major need determines the place and the critical situations of injustice: the major criteria which will bring about the major results, the services that are more likely to create a community of solidarity; the criteria of the right which is the most universal, to the action that contributes to a capability of structural change of a society based in corresponding responsibility. (n.p.)

Historically, the idea of social justice has been enacted and developed through the collective effort of men and women. Neil (2012) noted that in different parts of the world and during various periods in time, the recognition of human dignity as an essential ethical concern had gradually been achieved. These efforts had been associated with specific historical conditions and circumstances. Examples included the fight against slavery, racism, and labor

exploitation, as well as for women's equality, the rights of indigenous people, and other hard-fought political struggles.

Social justice has been defined in different ways. Principally, it has been closely associated to human rights. As such, social justice has been linked to the demands and rights formulated by people and communities for a better life, on both an individual and collective level. Social justice and human rights have been both proposals that should achieve social consensus and whose recognition and fulfillment would be required by the state. Darder (2009) proposed that as a consequence, either proposal should be understood as an unfinished idea and a dialectical process. In fact, Griffin (2008) pointed out that human rights were an incomplete idea and that "we need not adumbration of this idea but its completion" (p.18). The latter should resolve contradictions and offer yet unachieved explanations. It would only grow and become richer and more fully complementary as conceptualizations of human rights and social justice were revised from different viewpoints and conditions. This implied that no person or community should ever have to renounce its way of being in order to fully enjoy the dignity of human rights.

However, it must be clear that the aim of social justice struggles has been generally tied to those rights being recognized and lived by all people and communities in a comprehensive manner. Accordingly, social justice has been linked with human rights as the expression of those civil liberties that are the birthright of all people, without exception. This unquestionably included the rights of the most impoverished or vulnerable populations in society, including indigenous, religious, or sexual minorities. In this sense, the Society of Jesus had attempted to integrate and practice a commitment to social justice among its institutions.



## **Theoretical Framework**

Several critical bodies of work influenced the conceptual framework employed for the analysis of the literature and data gathered for this study. These included the writings of the Social Apostolate of the Society of Jesus and the critical education principles of cultural democracy posited by Antonia Darder (2012). Darder drew on the work of Freire (2000), Giroux (1981), and McLaren (1995) to provide an analytical framework. That framework addressed questions of culture and power regarding the subordination of cultural communities.

### **Social Apostolate of the Society of Jesus**

Within the variety of work carried out by the Society of Jesus, the founding of human rights organizations has historically been an important focus. It was important then to address this topic through a critical analysis that could provide suggestions as to how to improve the social apostolate of the Jesuits to achieve this objective. Thus, I intended to discuss certain fundamental documents of the religious order, such as the constitutions, the General Congregations, and other key documents such as guidelines about the social apostolate. With this in mind, the internal documents of the Center Prodh were critically analyzed, in order to unveil the specific workings of the organization and its outcome with respect to its vision of human rights.

In accordance with the tradition of the Society of Jesus (Social Apostolate Secretariat of the Society of Jesus, 1998), there existed three criteria to classify the responses that attempted to defend human dignity:

- (1) Where there exists the most need, to crystallize the most need, there should be analysis of places where there exists major injustices;

- (2) To obtain the best results possible where Jesuits can make better use of their time;
- (3) To facilitate the most universal good that brings about the creation of structural changes that favor dignified life of the majority.

The Social Apostolate of the Society of Jesus has attempted to defend the excluded. This apostolate consisted of social work that was intended to bring about a service to persons marginalized by society. It has attempted to accomplish this mission that, at the time of this study, was understood as service of the faith and the promotion of justice. (Society of Jesus in the United States. General Congregation No. 32, Decree 4). The service had as its foundation the work among the poor; and its intention was to respond to difficult problems of social injustice in conformity with the tradition of the Jesuits. In this manner, the social work of the Society of Jesus attempted to address these criteria of its mission. The dignity of the person was the point of merger and of convergence among the Jesuits and those collaborating with their work. For that matter, it was not religion but ethics that brought about dialogue and aspired to make history of the promotion of justice (Communal Reflection on Jesuit Mission in Higher Education, a Way of Proceeding, 2002).

In 2003, *Promotio Iustitiae* published an issue dedicated to the social apostolate of the Society of Jesus. The articles outlined the general situation of social work and its challenges. Franco (2012), in charge of the Secretariat for Social Justice, pointed out the necessity of focusing the sentiment of justice for order. He cited Peter-Hans Kolvenbach, at that time, superior of the Jesuits, who emphasized human rights and the right to sustenance. For Kolvenbach, human rights were a shield that protected the poor. For that reason, he argued that the fights for justice and for sustainable development were founded not only on the necessities of

the poor or in our compassion for them, but also in the right of each human being to live a life with dignity. For Franco (2012), it was important that the fight for justice in the Society be in conjunction with the civic groups and town organizations already engaged in the fight for their dignity.

The above implied a dialogue with society participants committed to establishing a national and international order, based on laws capable of widening and augmenting everyone's access to a protection guaranteed of these minimal rights. We could deduce that for the Society, independent of the academic debates, the basic ethics of human rights have been founded in the dignity of the person as being a social being. For the Society, the dignity of being human and, especially, the dignity of the poor should be protected, assured, and accessible.

Society of Jesus in the United States, General Congregation 35, convened in 2008, established the commitment of the Society of Jesus to help build just relationships. It invited members "to see the world from a perspective of the poor and marginalized, learning from them, acting with them and in their favor. . . with a prophetic calling". The document referred to and included the calling of the Pope to renew our mission "among the poor and with the poor." (Society of Jesus in the United States, General Congregation 35, Decree 3, n. 27, 2008).

The social apostolate of the Society of Jesus has been defined as the

Conjoining of apostolic activities which, rooted in the commitment of the Church and of the Society of working in favor of the poor, completes the common dimension of all our apostolates from working with them and in some cases, living with them. (Society of Jesus in the United States, General Congregation 35, Decree 3, n. 19)

This definition took into consideration that, on one hand, the Church, by virtue of its evangelical commitment, felt called to be close to these multitudes of poor. It was committed to discern justice on their complaints and to help make them a reality without losing sight of the groups working for the common good (Board of the Jesuit Conference, 2002). On the other hand, it referred to that expressed in the orderly assemblies: “We have recognized our conscience in critical situations that affect hundreds of millions of people and that, because of that, demand a special interest on the part of the Society” (Society of Jesus in the United States, General Congregation 34, Decree 3, n. 11).

In accord with the characteristics of the social apostolate of the Society, there existed certain service specifications that seek to obtain structural transformations toward a more just and fraternal society. According to the norms of the Society of Jesus, the criteria for accomplishing the social apostolate were the following:

- (1) Is rooted in its preferential love for the poor (universal dimension);
- (2) Concretize this common dimension of all our apostolates by being with the poor, and, in some cases, living like them;
- (3) Seeks, from the perspective of the poor and marginalized, to achieve structural transformation towards a more just and humane society;
- (4) It is granted that the poor are always the subjects of change and never
- (5) objects of our work;
- (6) Is carried out locally with an increasingly global articulation structured from the bottom upwards;
- (7) Presupposes a rigorous socio-cultural analysis;

(8) Is implemented by a team with an inclusive sensibility aimed at eliciting the cooperation of other Jesuits, religious women and men together with lay persons.

(Promotio Iustitiae 80, 2003, p. 20)

### **Critical Educational Principles**

The critical analytical framework used for this study was based on a critical analysis that acknowledged the relationship between culture and power in both societies and their organizations. Foucault (1977) argued that power should be understood as the multiplicity of power relations inherent in the sphere in which they operated and through which ceaseless struggle and confrontation transformed, strengthened, or reversed them. The underlying assertion was that “power is everywhere,” not because it embraced everything, but because it extended from everywhere. With this in mind, I utilized critical educational principles for cultural democracy articulated by Darder (2012) in *Culture and Power in the Classroom*; but, in this instance, I applied them to the field of human rights organizations and more specifically the analysis of the literature and case study data gathered. For this study, I specifically drew on those principles identified by Darder explicitly grounded in neo-Marxist theories and the foundational critical articulations of the Frankfurt School, as they linked to the philosophies and practices of Center Prodh. These included seven elements:

- (1) Cultural Politics: Empowerment of the powerless and transformation of existing social inequities and injustices.
- (2) Economics: There existed a relationship between economic inequality and violations of human rights and their underlying causes. I argued that, given historical conditions

- of economic inequalities, current neoliberal policies and practices in Mexico generated human rights violations.
- (3) **Historicity:** Social practices and the knowledge constructed were derived and analyzed within a particular period of history of Center Prodh, which was understood in relationship to the larger historical question of the time.
- (4) **Dialectical View:** My intention was to critically examine the underlying political, social, and economic conditions that shape the life of the organizations, utilizing a dialectical perspective to critically highlight tensions, oppositions, and contradictions that might also be in play.
- (5) **Ideology:** The study concentrated on the debate of different approaches to human rights based upon distinct ideologies that influence these concepts. Overall, the traditional liberal approach of human rights were interrogated and critiqued. Ideology here was understood as the production and representation of ideas, values and beliefs and the manner in which they were expressed and lived out by both individuals and groups (Darder, 2012).
- (6) **Praxis (alliance of theory and practice):** In order to determine the manner in which the center supported an emancipatory practice, I intended to critically analyze and evaluate the specific practice of the organization. Such a critical approach required that one engage with the dialectical relationship that exists between theory and practice.

(7) Dialogue: The interview of center directors will incorporate a critical dialogical approach. Conceptually, this permitted a critical analysis of Center Prodh cases and educational processes and practices that were grounded in an emancipatory logic. These critical principles were those that were most relevant providing the conceptual lens from which to evaluate critically the results of Center Prodh and its contribution to the field of human rights organizations.

### **Methodology**

The objectives of this research were to systematically document and systematize the practice of Center Prodh, and then evaluate its contributions to the improvement of democratic life in the country. According to Benedek (2012), civil society organizations helped to amplify the voice of the economically and politically disempowered. Principally, through Center Prodh's joint educational projects with base groups and organizations, legal defense, and affirmative action, these groups and organizations elicited the respect of human rights in their communities. This qualitative case study aimed to understand the influence and impact of Center Prodh in Mexico.

I was aware that measuring impact was not always easy to do, especially without substantial amounts of time and money to perform repeated evaluations. To counterbalance, I utilized different approaches to qualitative study. These included:

- (1) Ethnographic: Attending a number of events (including day-to-day activities at the Center) and taking field notes on how people talk about work within the educational mission;

- (2) Archival: Reviewing materials and internal documents such as plans and assessments will be analyzed under a critical lens. Some of these materials included Triennials Strategic Planning, databases from Defense and Education Areas, and annual evaluation documents. I analyzed three legal cases litigated by Center Prodh.
- (3) Historiography: Interviewing long-time participants in the organization and reviewing documents specific to the Center as well as general historical documents (for context) to construct a critical history of the educational work. This historical approach is also utilized to review and analyze the Center's documents.
- (4) Interviews: Conducting interviews with former directors and some NGO leaders. All of the interviewees were members of the Society of Jesus. One was a former member, but all understood the Global mission of the Society of Jesus.

#### **Site Description: Center Prodh**

The Miguel Agustin Pro Juarez Human Rights Center (Center Prodh) was founded in 1988 as a reaction to the Mexican state's repressive regime against social activists, church and political leaders, and communities and organizations calling for a response to these actors' social demands. It is an institution overseen by the Society of Jesus in Mexico. Since its creation, Center Prodh had focused its commitment on the defense and promotion of civil and political rights, relative to the respect for life, integrity and personal security. In 2002, Center Prodh added the promotion and defense of economic, social, cultural and environmental rights to its activities through the defense of paradigmatic cases. Center Prodh's mission in 2015 was "to promote and defend the human rights of excluded, vulnerable or marginalized people or groups



in order to contribute to the construction of a fairer, more equitable and democratic society which fully respects human dignity” (Center Prodh, 2010, n.p.).

Center Prodh worked with its own methodology, devised as a result of 27 years of experience in education and legal defense. The defense of cases itself was called “integral defense.” Such methodology involved the joint work of different areas of Center Prodh. Thus, the defense area designed and set up legal strategies; the communications and analysis area disseminated the case and carried out awareness raising campaigns; and the international area reported the case to international institutions and made connections with relevant organizations overseas. For its part, the educational area researched the state of the issue that was brought to light from the case. This helped develop the public approach to the issue, in order to carry out educational workshops on the subject.

As a result of the above strategies, Center Prodh had contributed to monitoring the human rights situation in Mexico. Most noteworthy, the issues and cases taken on by Center Prodh had gained the support of national and international public opinion. The former had been demonstrated through the establishment and implementation of alliances, networks, and resolutions.

### **Limitations**

Issues of the theoretical framework and neutrality of the researcher posed limitations to this study. These limitations could impact the generalizability of the study findings.

### **Theoretical Framework**

Any theoretical or methodological framework used to explain a social phenomenon could constitute a limitation. Many approaches have been used to provide explanations regarding that

which has been reflected in reality. Perhaps that was how the father of critical social science, Karl Marx, began to discover the complexity of analyzing reality from the perspective of the proletariat. However, it appeared to me that a better method of analyzing the work and impact of Center Prodh was through the theoretical framework provided by the Social Apostolate of the Society of Jesus, in conjunction with principles of critical educational theory (Darder, 2012). Social theory has constantly changed. At a minimum, the results of this part of my dissertation must be recognized as grounded within a specific historical moment.

### **Neutrality**

One could argue that, because I previously served as the Director of the Center, I could not be objective in this research. However, one could also argue that one who had never been the director of the Center or affiliated with the Center could not be objective because he did not have the formative information that I obtained while serving as director. Bourdieu and Loic (1995) argued that it was likely that all scholarship was neither neutral nor unbiased. There was no neutral data and there was no neutral question. In this sense, the researcher could manipulate the response to the question by the type of question that was asked such as by posing a leading question. One could also manipulate the information according to the researcher's own interests. Given my understanding of the scholarship and data collected, I attempted to provide a sound critical perspective. This was accomplished by following the above methodological framework. I recognized that, as was congruent with a critical approach to the research, I came to this work with a set of values that was anchored in a commitment to the most vulnerable.

## **Organization of the Study**

The dissertation begins by introducing the reader to the field of human rights NGOs. The concepts of human rights and its different meanings and characteristics are developed through the review of the literature. In Chapter Three, a qualitative methodology is set forth based on the technical approaches of a case study applied to the field of human rights. In Chapter Four, I address the history of Center Prodh and explore some of the relevant approaches in the area of litigation. To support the analysis, this study included a careful review of Center Prodh's internal documents including, letters, and decisions of the teams meetings, projects and reports. Likewise, in Chapter Five, I analyze some emblematic cases that have highlighted crucial topics having significant impact on human rights in the country. Wishing to provide a response in Chapter Six, I perform an analysis of the data and of a conceptual framework of human rights according to the critical principles articulated by Darder (2009). Finally in Chapter Seven, I provide a conclusion that speaks to the implications of this study and sets forth recommendations for a critical human rights approach, as well as considers areas for future research.

## CHAPTER TWO

### REVIEW OF LITERATURE ON HUMAN RIGHTS

At the time of this study, there existed a vast amount of literature that engaged different approaches and perspectives on human rights. For the purposes of this study, I used the definitions and theoretical approaches adopted by Center Prodh as the basis for its work. Those definitions were compared, contrasted, and reevaluated with respect to an interdisciplinary body of literature discussed in this chapter that examined the contributions of sociologists, jurists, philosophers, and theologians to our understanding of this concept. In regard to the confrontation between the state and society, it had been necessary to try and develop new strategies of political discourse that could replace the established or hegemonic logic of the state. One such way had been to recognize the social demands, and those who made those demands, from a critical perspective that focused on the human rights of the most vulnerable. This critical discourse must then have included scholars and advocates of human rights, rather than merely the politicians and bureaucrats who generally dominated these discussions.

Moreover, it was also important to include perspectives on human rights that reflected a Latin American point of view. The inclusion of other relevant perspectives was required to complement the traditional discourse in the field, especially when addressing issues relevant to Latin America. Without including this perspective, we would have been left with an incomplete analysis, given the generally limited expertise of most scholars related to the global region in question. A new approach to understanding human rights then should not only have taken into account the concept of “universality” but also should have created space to problematize this

notion. Though international law expressed and consolidated universality, there still remained contradictions that should be scrutinized in the international arena.

As previously stated, universality referred to the idea that human rights were “guaranteed to all individuals, regardless of nationality” (Benedek, 2012). This implied that each human being was entitled to human rights, but the question still remained as to the definition of human rights and the limits of its universality. Generally, the modern concept of basic human rights has been defined according to a Western, liberal perspective—the perspectives of Western Europe and the United States. Thus, it became apparent that traditional universality arguments, wittingly or unwittingly, imposed Western ideologies upon individuals and nations who may have had a differing worldview or perspective on human rights, such as Asia, the Middle East, and Latin America. To critically engage these potential conflicts, it was necessary to consider alternative perspectives of human rights, especially those that stem from non-Western points of view.

With this in mind, this chapter begins with an exploration of the literature by defining human rights and the violation of human rights from an integral perspective, in accordance with leading scholars. In the second section, I define the principal responsibilities attached to the state with respect to human rights. As an aside, I contextualize the struggles for human rights in Latin America; and, in so doing, I establish the relationship between human rights and the Mexican Constitution. Next, I establish links that currently exist between human rights and the commitment of the Roman Catholic Church, by pointing out similarities between human rights and the doctrine of Catholic Social Teaching; focusing on the *Declaration of Human Rights* (1948) and the encyclical *Pacem in Terris* (1963). I then discuss critiques to the Western human rights perspective and offer an indigenous understanding of human rights, according to

international scholarship on indigenous human rights. Finally, I conclude with a preliminary critical approach to human rights, grounded in the critical principles for cultural democracy posited by Darder (2009).

### **A Brief History of Human Rights**

Historically, governments did not unilaterally concede human rights to their peoples. Instead, human rights existed as a result of the long struggle of the oppressed carried out over centuries. The expression of demands and social revolutions of the oppressed have manifested themselves in a protracted history of battles fought over centuries. Since the mid-twentieth century, in particular, there have been several formidable events that influenced the way in which human rights were viewed and employed within the context of public and private institutions. Several key events that have shaped our understanding of human rights as a social phenomenon—the Holocaust, The Universal Declaration of Human Rights, the Cold War, and human rights in Latin America.

#### **The Holocaust**

The killing of 50 million people and the hundreds of thousands maimed and injured during World War II instilled an impetus for the human rights movement (Weissbrodt, Fitzpatrick, & Newman, 2001). However, it must be noted that it was ultimately the combined brutality by Nazi Germany, Italy, and Japan that united the allies. The worst example of brutality during World War II was the Holocaust, a state-sponsored genocide of approximately six million European Jews executed by Nazi Germany, prior to and during World War II (Weissbrodt et al., 2001).

The origin of the Nazi movement started in the late 1920s. Both the German elite and the general electorate contributed to bringing Nazism to power (Hartmann, 2002). The elite supported Nazism because they believed the party could advance their quest for power. Anti-Semitism was, for the most part, a personal and cultural outlook. Post 1929, notably, the support of the Nazi party was more of a potential political tool than a vehicle to use against Jews.

Hartman (2002) reported that German folklore and popular literature contained spiteful images of Jews. Vile jokes were made about Jews and they were banned from participating in certain fraternities and in the military. Many people harbored anti-Semitic views, wanting Jews gone from their world, but they were engaged actively in making this a reality. Accordingly, news of deportations and rumors of mass killings, therefore, received little public emotional reaction. Hartmann (2002) also pointed out that

Anti-Semitism not only allowed for extreme forms of scapegoating, but also it was linked to what may well be the most enticing feature of Nazism: the delusion of German Aryan superiority. . . .Ruthless grandiosity made it possible for Nazi Germany to execute licensed violence without remorse. (p. 639)

Before such massacre, the Catholic Church faced a dilemma (Laqueur, 1964). Some German theologians argued that Catholics were obliged to support Hitler's new regime not only for his moral authority, but because it represented Germany itself (Laqueur, 1964). Other liberal Catholics argued that Catholicism and Nazism could never be reconciled.

As a result of the systematic killing, approximately two-thirds of the Jews who resided in Europe prior to the war were exterminated (Dawidowicz, 1979). The devastating results of the Holocaust created greater international awareness about the importance of human rights and the

need to implement international measures to ensure that culturally and economically oppressed population would be sufficiently protected in the future.

### **The Universal Declaration of Human Rights**

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights, largely in response to the atrocities committed during World War II. It set forth the importance of rights that were threatened and violated during the early to mid-1940's (Weissbrodt, et al., 2001). The Declaration was considered to be the first global expression of rights inherently possessed by all human beings (Morsink, 1999), such as the right to life, the prohibition of slavery, freedom of thought, and freedom of association. It also included protections for economic, social, and cultural rights. However, its force was limited by very broad exclusions and the omission of monitoring and enforcement provisions (Morsink, 1999). By January of 1976, thirty-five nations had ratified the Universal Declaration of Human Rights and it subsequently entered into force as international law. By September of 1995, 132 individual nations had ratified the it (Williams, 1999).

### **The Cold War**

From approximately 1947 to approximately 1991, there existed a military tension between the United States and the former Soviet Union known as the Cold War. The end of the Cold War left a world divided over many areas of conflict

Accordingly, the Cold War offered a ripe arena for the expression of human rights concerns for political dissidents in the Soviet Union, Cuba and other Eastern European nations.



## **Human Rights Issues in Latin America**

Since the mid-twentieth century, several significant periods of social and political turmoil have occurred in Latin America, which ultimately affected the perception of human rights in the region. These events shaped both the climate for and attitudes of human rights across Latin America, giving rise to numerous international denunciations against human rights violations and calls for intervention by the international community. The most significant events during this time frame occurred in Argentina, Chile, and El Salvador, as briefly described below.

**Argentina.** From 1976 through 1983, the Argentine military government engaged in state-sponsored violence against its citizenry in a period known as the “Dirty War” (Robben, 2006). During this period, the Argentine government, led by Jorge Rafael Videla, utilized a system of violence against political dissidents and anyone believed to be associated with Socialism. According to Robben (2006), an estimated 15,000 to 30,000 individuals became victims of the oppressive regime, including approximately 10,000 individuals who went missing and were never found. These missing individuals are often referred to as “los desaparecidos,” or “those who disappeared.” The victims of this oppressive Argentine regime included, but were not limited to, students, journalists, political dissidents, and trade unionists.

**Chile.** Under the authoritarian rule of Augusto Pinochet from 1973 to 1990, Chilean government agents and officials committed with impunity brutalities against various segments of the population. The Pinochet regime implemented a systemic suppression of all political dissidents, thereby destroying the prior established political system (Stern, 2009). Stern wrote that government agents tortured approximately 35,000 individuals and executed an estimated

2,279, and that 200,000 individuals were believed to have suffered exile because of the repressive actions conducted by the Pinochet regime.

**El Salvador.** From 1980 through 1992, El Salvador experienced a Civil War between the military-led government of El Salvador and the Farabundo Marti National Liberation Front, a coalition of left-wing guerilla groups (Wood, 2003). Wood (2003) noted that during this nearly thirteen-year armed conflict, both sides utilized violent tactics that targeted large segments of the civilian population, including executions by death squads, the recruitment of child soldiers, the use of torture, and false imprisonment. Furthermore, the United States exacerbated the conflict by providing military aid to the Salvadorian government during the Carter and Reagan administrations (Wood, 2003). The United Nations (1993) estimated that over 75,000 individuals were killed during this armed conflict.

### **The Concept of Human Rights**

The term “human rights” has been conceptualized in many ways such as fundamental liberties, prerogatives, guarantees, and demands. However, the most important thing to consider, with respect to this study, was that the concept of human rights arose from human needs and aspirations to improve the living conditions for individuals and communities (Donnelly & Howard, 1987). Often, human rights have been associated with basic needs, such as the right to sustenance, freedom of movement, and those opportunities that allowed individuals to form their own ethical view of the world, such as the right to political participation and the freedom of expression (Pogge, 2002). According to Pogge, these rights have been limited to a certain qualitative and quantitative amount, usually referred to as the “minimally adequate share.”

The Vienna Conference of 1993, often referred to as the United Nations World Conference on Human Rights, established that human rights were inherent to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, color, religion, language, or other status. All were equally entitled to human rights, without discrimination, and these rights were interrelated, independent, and indivisible (United Nations Office of the High Commissioner on Human Rights, 1993). On 25 June 1993, representatives of 171 states adopted by consensus the Vienna Declaration and Programme of Action of the World Conference on Human Rights, which incorporated this definition of human rights.

Other well-established definitions of human rights relied upon human dignity as the origin and essence of human rights (Mac-Gregor Poisot, Caballero Ochoa, & Steiner, 2013). Under this reasoning, human rights were characterized as everything which a person or group of people needed in order to live with dignity and to lead fully developed lives. Center Prodh adopted this dignity-based definition, utilizing an “integral defense” approach to defending human rights. This approach was comprehensive in that it utilized legal, psychological, political, and educational resources to defend human rights.

According to Hollenbach (1979), “The United Nation’s Charter makes promotion of respect for human rights throughout the world one of the fundamental tasks of the community of nations” (p.27). As such, most states recognized the concept of inherent human rights. Governments included them in their constitutions, though not every human right was recognized on the level of the state or laws, regulations, and international treaties. Agarwal (2003) however, argued that human rights were not the same as constitutional rights. For example, Agarwal writes: When courts enforce the right to dignity, they are saying something important not only

about what dignity means; they are also saying something about what it means to be an individual in the particular contemporary society in which the court sits (p. 286).

### **Characteristics of Human Rights**

Taking into consideration the universal nature of human rights, a series of characteristics inherent in each right was highlighted or stood out in the literature. The information that follows is a general description of the inherent principles, according to the literature, that comprise human rights.

**Interdependence.** Human rights were described as interdependent, which was to say that no one right was more important than the other (Waldron, 2013). This implied that a violation of one right resulted in the violation of others, and likewise, the fulfillment of one right lead to the fulfillment of others. Further illustrating this idea, Waldron (2013) described human rights within the notion of interdependence, so that if any one individual had them, then all other individuals had them. However, this notion of interdependence did not suggest that each right held equal significance to all individuals. Instead, each right was considered to be dependent upon the existence of the other; for example, the existence of the right to life was dependent upon the existence of the right to free speech.

**Historical and Cultural Phenomenon.** Human rights must also be understood as a historical and cultural phenomenon. They were seen as a product of social battles fought for the recognition and satisfaction of the demands and necessities of people and their communities. Therefore, they were described as profoundly connected to political, cultural, economic, and social realities. Furthermore, they have developed over the years through the interpretation of national and international texts (Clapham, 2007). As stated by Motilal (2010), the concept of

human rights was a philosophical idea that united all modern nation states and although all modern states seemed to agree that all individuals were entitled to human rights, there was disagreement as to which individual rights all humans were entitled to claim. Because the concept of human rights developed from a historical and cultural perspective over time and different cultural perspectives about what precisely constituted human rights, the concept was often explained by way of the notion of “cultural relativism,” an idea that is explained in greater detail later in this chapter.

**Inalienable.** Donnelly (1989) also described human rights as inalienable, which meant that they could not be taken away or transferred to another individual (Donnelly, 1989). As such, they were considered fundamental rights, which were guaranteed to each individual. They were also considered to be perpetual. They were permanent in character, as they could not disappear, could not be lost, or could not cease to be recognized over the course of time. According to Donnelly (1989),

Human rights are a special class of rights, the rights that one has simply because one is a human being. They are thus moral rights of the highest order. Usually, however, they are closely related to parallel [lower] rights, or the struggle to establish such rights. (p. 12)

**Universal.** Human rights were described as universal. They belonged to all individuals and groups of people in the world, without distinction. As such, they were considered fundamental rights, guaranteed to all individuals regardless of their nationality (de Mello & Benedek, 2012). According to Chwaszcza (2010), the notion of “universality” encompassed two concepts:

(1) That human rights are possessed, regardless of the sociopolitical views of the individual, and

(2) That a transnational obligation is created that addresses humankind.

Motilal (2010) expressed that this idea of “universality” could be somewhat exaggerated, though, as the differing cultural views on morality and existence could lead to differing epistemologies on what would be accepted as essential human rights.

**Dynamic.** Human rights were characterized as dynamic, which implied that they were in constant process of evolution and could adapt over time. They were also progressive. They were inclined to advance and evolve, and by no means could they be cancelled or regressed. Human rights corresponded to the satisfaction of necessities and were, thus, protected content, just as the efficiency of the process for their fulfillment was also considered protected.

**Judicially Enforced.** They could be judicially enforced. Depending on the country, there existed a system of procedural protections in place to protect an individual from abuse against human rights or human dignity (Donnelly, 1989). As such, human rights were included in different legal ordinances and states were obligated to deliver judicial mechanisms to ensure they were fulfilled. For example, Article 1 of the Constitution of the Mexican United States, amended in 2011, expressed that all individuals were guaranteed the rights recognized by the constitution and by international treaties, to which Mexico was a party (Colli Ek, 2012). Many states might lack the ability to enforce human rights due to political or economic instability. In this instance, Merino (2011) argued that, “international agencies should step in to provide assistance through collaborative casework, a model in which international human rights lawyers and law

enforcement professionals work with local authorities to protect the rights of the people in the community.” (p. 33)

**Impetus for Social Action.** The discourse of human rights also gave rise to discourses for social action, as they often fueled the mission of organized social movements, which fought for the satisfaction of particular human rights demands. Benedek (2012) described this characteristic of human rights as “a means which people can use as a tool for social transformation on the national, regional or universal level” (p. 40). Examples of this were the movements by environmentalists and workers that have contributed to the fulfillment of their demands.

**Standard of dignity.** In short, we could say that human rights were standards, in that people and groups needed to live with dignity (Donnelly & Howard, 1987). Donnelly (2009) described human dignity as a respect or worthiness attributed to individuals, simply by the fact that they were human beings and, as such, discourses on human rights provided a powerful mechanism for the realization of characteristics associated with human dignity. Ultimately, human rights have been judicially enforceable in courts of law, and it has been the state that has had the responsibility to guarantee the dignity and human rights of each individual within its borders.

### **Violation of Human Rights**

Formally speaking, a violation of human rights has occurred when officials, civil servants, or authorities have violated, denied, restricted or made conditional the human rights of people or groups. Cryer, Friman, Robinson and Wilmshurst (2011) noted that the obligation to ensure that human rights remained respected had been primarily imposed on states, and

frequently state agents had been the transgressors. Expanding on this concept, particular agents had violated or infringed human rights because of personal economic interests that could be gained or because of complicity with authorities that sought to implement these practices. A basic example of this type of violation was the case of international or transnational companies that contaminated the environment, with the permission and/or silence of governmental authorities, without any fear of inspections or sanctions. In this example, these actions violated the human rights of the individuals harmed by the effects of contamination to their lives as individuals or populations.

The state has been seen as responsible for the performance of its officials and, therefore, it has been the responsibility of the state to take action to enforce the human rights violations made by their agents (Cryer, Friman, Robinson, & Wilmshurst, 2011). They stated that the state should thoroughly investigate and sanction those who were found to have abused their power, wittingly or unwittingly, resulting in human rights violations. Further, they argued that the state not only had an obligation to remedy any harm to the human rights of a person or people caused by any of its authorities, but it also had an obligation to focus on preventing any future cases of human rights violations. An appropriate method to achieve this was by refusing to grant immunity, or an exemption to punishment, to those who had violated the human rights of others.

In the literature, there were differences noted between human rights violations committed by a nation-state and a simple failure of administration by the state. One such difference was that violations of human rights did not depend on a solitary mechanism to direct sanctions. Sanctions could be imposed by officials of the state where the violations occurred, or by a foreign nation responding to the violation. However, this option often made it difficult to ensure



that sanctions were exercised expeditiously, completely, and uniformly by all parties involved. As described in the literature, there also existed a wide range of human rights violations that might be considered criminal offenses. As long as the violation threatened the dignity and physical integrity of a person or groups of people, that violation might be considered a crime. A clear example of this were the cases related to the forced disappearance of people, where their liberty was affected just as significantly as their physical integrity, presumed innocence, legal protections, and due process.

In general, violations of human rights have occurred when officials, public servants, public employees, or authorities abused their power to violate the rights of groups or persons. Violations could also occur when these individuals allowed particular entities, such as companies, to violate human rights through the use of intimidation, thereby refusing to respect human rights. Cryer, Friman, Robinson and Wilmshurst (2011) explained this concept by stating, “Human rights obligations are imposed primarily on states, and it is frequently state agents who are the transgressors; where states do not comply their human rights obligations, the principles of international criminal law are a useful and necessary alternative to state responsibility.” (p. 13)

### **The State and Its Obligations**

Given the role of the state in understanding the question of human rights, it is useful to briefly define a state and its obligations. The United Nations defined a state as “one where the great majority are conscious of a common identity and share the same culture” (United Nations Educational, Scientific and Cultural Organization, n.d.). When one refers to the responsibilities of Mexico, one refers to the obligations that the Mexican Government has expressed in its

national legal framework such as its constitution, secondary laws, and regulations; and in its international obligations on human rights such as conventions, declarations, and pacts.

Dundes (1988) posited that the obligations of a state to enforce human rights could generally be divided into at least two significant types: positive obligations and negative obligations. Positive obligations required a state to have an active presence or to take action in activities that protect or fulfill an established right. These included, but were not limited to, the creation of programs that prevented others from violating human rights, strengthening mechanisms to remedy violations, investment in social programs, and the expansion of the protections of rights. According to Dundes (1988), a specific example of positive obligations was welfare obligations to individuals, and the extensive governmental actions that were required to ensure them. Given that the state is not a single person and is generally organized in a specific manner, it was necessary to clarify that these obligations applied to the different levels of public power (institutions, officials, and public servants). This was essential since each level had certain functions and competencies that dealt with the promotion, protection, defense, and restitution of human rights. Furthermore, it was important to understand that positive obligations did not only refer to the distribution of economic resources, but also referred to the formation of government policies so that officials could execute and fulfill these obligations.

According to Dundes (1988) negative obligations implied that the state, in its different levels of public power, should also refrain from taking certain actions so that human rights remained in effect. According to Dundes (1988), an example of a negative obligation was that where a person had a right to freedom of speech, the state had an obligation not to interfere with that right. Other examples of negative obligations were a state's duty to abstain from opening

another's mail in order to comply with the right to privacy; to abstain from impeding on the free transmission of ideas; to abstain from detaining individuals arbitrarily; and to abstain from preventing individuals from joining a union.

There did not exist positive or negative obligations that were exclusive to any one type of human right. As such, government bore the obligation, both positive and negative, to ensure human rights were guaranteed. According to the United Nations Office of the High Commissioner for Human Rights (n.d.),

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that states must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires states to protect individuals and groups against human rights abuses. (n.p.)

For example, to guarantee the right to vote, the state must have invested in elections—a positive obligation. This could be accomplished by ensuring judicial protection, guaranteeing the right of association, and establishing requirements for the registration of candidates. In regards to economic, cultural, and social rights, there were also negative obligations. For example, in order to ensure the right to proper nutrition in indigenous communities, the state should not intervene in indigenous territories and should allow indigenous towns to achieve proper nutrition through their own means.

An important caveat to note here was that the classification of obligations did not mean that obligations, in and of themselves, were characteristics of human rights, such as universality and interdependence were considered to be. When the government failed in some of their

obligations, the other obligations were generally affected as well. It was generally accepted, however, that the state had obligations in insuring the fulfillment of human rights. According to the Treaty of Maasstrich (1992) and the Inter-American Court of Human Rights (2003), the state should commit itself to the performance of all human rights, on several levels:

- (1) Respect: The treaty noted that state should not interfere in the enjoyment of human rights, nor should it impede access to the enjoyment of the good that constitutes the object of the right. Furthermore, in *Yatama v. Nicaragua* (2005), the court noted that a state's responsibility to respect an individual's human rights was an essential element of every legitimate, representative democracy. As such, it was generally accepted that the state should look to satisfy individual or group human rights by taking into consideration their identity (cultural, social, sexual, in general etc.), as well as their necessities and desires. Some basic examples of a state failure to respect human rights were when a state enacted laws that were contrary to its international human rights obligations or when the state encouraged others to interfere with the enjoyment of human rights.
- (2) Protection: Courts have supported the concept that the state should prevent the rights of its population from being violated by the acts of third parties such as businesses, transnationals, and supervisors. Plainly speaking, the state must prevent others from impeding and obstructing the enjoyment of a right, and if the rights were violated, the state must offer the judicial recourse necessary to resolve the violation (*Cinco Pensionistas v. Peru*, 2003). , “to protect human rights is to ensure that people receive some degree of decent, humane treatment” (n.p.). That people should receive

- reasonable decent, humane treatment must be ensured. For example, if there was an attempt to invest in a particularly abusive industry, laws or regulations should have protected the human rights of workers.
- (3) Assuring a Minimum Standard of Employment: The treaty supported the concept that the state should ensure the satisfaction of essential levels of each individual right, even during periods of severely limited resources. This obligation included, but was not limited to, an obligation to provide the recourses necessary for the satisfaction of a right, if a person could not realize the right on his own. As such, the Government failed to carry out this obligation when it failed to provide measures for individuals to achieve a right, where these individuals lacked the ability to achieve this right on their own accord. Also, it failed in its responsibility when the structural measures that it put into place failed to allow access to rights for all sectors of the population.
- (4) Promotion: As expressed in the case *Fluery y Otros v. Haiti* (2011), the state must enact and elaborate on a political action plan for the short, medium, and long term, which will guarantee the respect, protection, and security for the enjoyment of human rights. The state was described as having an explicit duty to defend and promote individual human rights. Accordingly, it should promote conditions for the owners of rights, in order to ensure they were guaranteed. A basic example of a failure of this obligation has been when a states failed to establish measures such as programs and laws to ensure that individual human rights remained in force.
- (5) Establish and Accomplish Objectives that Demonstrate Progress: To accomplish this, the treaty noted that the state must demonstrate that it does not solely guarantee

the minimum, but also that it is working toward more ambitious goals in regards to human rights. The meaning of this was like an affirmative in favor of the community. In that respect, it could be interpreted that the state had a duty to demonstrate it was working to further progress in the availability and development of human rights. An example of this concept was the state's treatment of accused criminals. Not only should the state refrain from arbitrarily imprisoning individuals, but it should also ensure that the individual was given a fair and speedy trial, as well as the right to representation.

- (6) Adoption of Immediate Measures: According to the Court in *Valle Jaramillo v. Colombia* (2008), the state must, within a "reasonable period of time" from ratifying a treaty, have adopted measures that were consistent, deliberate, necessary, and certain to completely satisfy a totality of the human rights. This concept, though, was contingent on what was considered a reasonable period of time to the parties involved in the matter. A government failed in this obligation when it did not, within a reasonable period of time, implement measures, or clearly demonstrate intent to create conditions for the progressive fulfillment of human rights.
- (7) Satisfaction: According to the treaty, the state should expressly guarantee the fulfillment and enjoyment of human rights. Accordingly, the state should adopt, by any means necessary, measures to guarantee the opportunity to adequately satisfy the recognized necessities in the instruments of human rights. This principle was expressed in *Valle Jaramillo v. Colombia* (2008), where the Court stated that the state must not only be prepared to expressly guarantee a means to correct past violations

but also to attempt to deter similar violations from occurring in the future. These measures were necessary so that individuals could enjoy rights, even though an individual may not have had the ability to personally fulfill the right. Furthermore, these measures applied to every individual under the jurisdiction of the state, regardless of citizenship. A state failed in regards to this obligation when the state did not expressly guarantee human rights, or, when it failed to provide a mechanism for which to correct a past violation.

(8) Sanction for Crimes Committed by Public Servants or Persons: According to the court in *Barrios Altos v. Peru* (2001), the state should guarantee that crimes committed by public servants, or individuals operating under the consent of the state, were duly investigated, tried, and sanctioned according to the right violated. Furthermore, sanctions should also aim to repair any harm done and seek to deter future similar action. An example of this concept could be seen in the case of Mexico, where there existed numerous stories about the changes caused by the military presence in indigenous areas such as a change in community dynamics, a weakening of community ties, harassment and other abuses against the most vulnerable in society, including violence against women. Among the cases of sexual abuses committed by military elements against women were those of Valentina Rosendo Cantú and Inés Fernández Ortega in the state of Guerrero. Here, the Inter-American Court on Human Rights issued a ruling recommending the Mexican state transfer the investigations from the military to the civil jurisdiction. This was done to guarantee impartiality and independence as well as to insure reparations for the damage caused. In all the

mentioned cases there has not been a ruling against the perpetrators nor has there been reparations awarded. (*Fernández Ortega and others vs. México*, 2010; Inter-American Commission on Human Rights. Report No. 53/01, 2000; *Rosendo Cantú and other vs. México*, 2010). In those cases, the state failed in this obligation when, in its military jurisdiction, it permitted members of the military to act as judges in cases where a violation of human rights had been committed by members of the military. This government procedure violated concepts of legality, impartiality, and independence (*Atala Riffo y Ninas v. Chile*, 2012).

- (9) Non-discrimination: According to *Atala Riffo y Ninas v. Chile* (2012), the principles of equality and non-discrimination were obligations of the state owed to each individual within its borders. To achieve this principle, the state could adopt special measures, including political and legislative measures, to safeguard women and other historically vulnerable groups. This obligation required the state to avoid politics, laws, programs, or actions that specifically sought to discriminate against any person or group. The state failed in this obligation when it excluded certain sectors of the population from social programs or when it promoted policies or laws that were clearly discriminatory.

### **Legal Framework on Human Rights**

When speaking of human rights from legal standpoint, literature and case law referred to a body of laws, regulations, and procedures that were created to organize social, political, economic, labor, and family life as the legal framework. This body of laws established a framework of rights and obligations, in conjunction with those that regulated and maintained the



relationship with the power of the public. Their aim was to ensure human rights remained valid, respected and definite; and to ensure that restitution, or reparation of damage, was available when those rights were violated or injured. Human rights were defined to include a combination of legal norms such as constitutions, laws, treaties, declarations, and jurisprudence; petitions and mechanisms such as judicial power, public commissions on human rights, Inter-American Court/Commission on Human Rights; as well as available appeals and procedures such as prison appeals, complaints against public organizations, precautionary measures, refuge, elaboration and broadcasting of reports of human rights violations, and demands.

Important to the legal framework of human rights was the question of rule of law.

Peerenboom (2005) suggested that

At its most basic, the rule of law refers to a system in which law is able to impose meaningful restraints on the state and individual members of the ruling elite, as captured in the rhetorically powerful, if overly simplistic, notions of a government of laws, the supremacy of the law and equality of all before the law. (p. 19).

Within the context of human rights, the defense of human dignity has been the perspective taken by many states. Thus, this perspective recognized the rule of law as a situation where different groups, which consensually compose society, establish an understanding whereby equitable, just, and democratic relations were recognized among different groups and authorities. This understanding supported the establishment of a state where the necessities and aspirations of everyone in society was recognized and restraints on government power are in place.

From this perspective, the rule of law must not only deal with the absolute application of a normative body of rights, but also with the possibility that it is an instrument for the aspirations

of wellbeing, justice, equality, solidarity, and democracy in society. According to Peerenboom (2005), the rule of law was an essential concept in order to achieve democracy and good governance. Furthermore, it was a concept essential to facilitating geopolitical stability and global peace; which, in turn, tended to prevent military conflicts and some of the worst atrocities associated with military conflicts (Peerenboom, 2005). In regard to the idea that constructing a rule of law required a medium and long-term strategy, it was also necessary to promote a practice different from the legal instruments that already were in place.

The principle of judicial norms of the nation, explicitly outlined through a ratified constitution, serves as an important legal framework for execution of the rule of law. As such, it represented a significant concern in the literature with respect to the question of human rights and issues of compliance or violation. Since the question of human rights in Mexico was the specific focus of this study, the following examines the Mexican political constitution.

### **The Political Constitution of the United Mexican States**

Every nation-state today has a ratified constitution that expresses the rights and obligations of its citizens, as well as the limitations placed on state authorities. Because of this, it has been generally accepted that the Constitution was the most important legal norm that a country could possess. In 2011, Mexico underwent an important constitutional reform that focused specifically on the protection of human rights in the country (Colli Ek, 2012).

Under that constitutional amendment, the basis for the application of human rights was explicitly stated, thereby making this legal framework fundamental law. According to Villanueva (2011), the constitutional reform had six distinct aims:

- (1) The recognition of human rights in the constitution;

- (2) A commitment to human rights education;
- (3) The creation of a new institutional design for public entities that protect human rights;
- (4) The authorization of public human rights agencies to handle labor issues;
- (5) The establishment of a program for accountability before the Senate; and
- (6) The promotion of a greater impact of international human rights instruments.

In its actual application, the constitutional reform made several significant changes to the legal system in Mexico. Specifically, reform efforts centered on respect for human dignity and a means to defend dignity through the guarantee of human rights. Villanueva (2011) expressed that this idea was achieved by strengthening the “*pro personae* principle, according to which interpretation of norms must favor human beings as much as possible” (p. 7). Additionally, the reform also strengthened the Constitution’s system for protecting human rights by prohibiting Mexico’s legislative inclination to constrain human rights in favor of achieving greater public security (Villanueva, 2011). Specific rights were identified and defined, such as rights of public agencies to deal with labor issues and the right of individuals to be educated about their rights (Villanueva, 2011).

In addition to defining the rights of individuals and members of social groups that formed communities, the Constitution also organized the authority of the government and established the power of the sovereign within the territory (Villanueva, 2011). This organization worked to define the relationship between the public and the different branches of the government. It also established the power of the sovereign in dealing with other countries. Some theorists described the Constitution as an expression of sovereignty and, therefore, believed it should be considered the supreme law of the land, because its source of power was the sovereignty of the people. In

Article 123 of the Constitution of the United Mexican States (2011), it was established that the Constitution, along with the international treaties ratified by the Senate, were the Supreme Law of the Land. This concept implied that international treaties on human rights, upon being signed by the President and ratified by the Senate, became part of national law, valid and applicable throughout the Republic of Mexico. Although there existed one common denominator in the declarations, pacts and conventions, because of the multiplicity of different problems in different regions of the world, the result encompassed four regional consolidated systems: the inter-American, the African, the Asian and the European approaches.

Still, it has been impossible for a constitution to mention and develop each particular aspect regarding family life, commerce, education, health, property, and the organization of public powers and interests. These specific aspects have been addressed more thoroughly in other sources of laws, mainly secondary or derivative, which were founded in the basic principles contained in the constitution.

### **The Mexican Economy and Human Rights Conflicts**

Though constitutional reforms in Mexico sought to address several fundamental shortcomings of the government, the global financial crisis demonstrated several key vulnerabilities of the economic system in Mexico, and of capitalism in general. It has been generally accepted that Mexico's position in the global economy was as a peripheral or less developed nation. This concept implied that the Mexican economy was generally dependent on the extraction and exhaustion of its natural resources in order to satisfy the needs and demands of more economically developed nations, such as the United States. Mexico's employment of this economic strategy promoted the short-term, hegemonic, corporate interests of such actions,

rather than a long-term strategy for development and growth. Since this strategy failed to promote the protection and sustainability of important natural resources, it raised several key issues that must be addressed.

One significant consequence of Mexico's economic strategy has been the implications and impact it has had on the human rights of a large segment of the population. Because of the government's failure to address the sustainability and protection of its natural resources, the lifestyles and standard of living of several groups, in particular that of culturally indigenous and poor populations, became threatened. These groups were especially dependent on the land to make a living and to keep alive their important cultural practices. Since the rural lands that these groups lived on became subject to overuse in order to satisfy short-term national interests, the poor and culturally indigenous communities faced the choice of being displaced off the land or finding a new means of support. Furthermore, this economic strategy affected other segments of the population who have been exposed to environmental contamination caused by natural resource extraction. They also have been affected by overconsumption of resources, and by the migration of large segments of the population within the country. Ultimately, these consequences of Mexico's economic strategy resulted in a steady deterioration of the social fabric of the nation.

As could be expected, the economic policies of the Mexican government caused an increasing portion of its population to become economically oppressed. Among the causes were poverty, unemployment, foreign influence of national industries, and arrogance of its politicians. In response to a growing fear of continued hardships, social groups within the country mobilized

themselves in an attempt to secure and expand their rights. The Mexican government, however, responded to these movements with a strategy that involved three distinct actions:

- (1) Invincibility,
- (2) Escalation of conflict, and
- (3) The closure of communication channels.

At the time of this study, the Mexican government responded initially to social movements with an attitude of invincibility. This meant that the state did not look to, nor listen to groups that had legitimate grievances against it. There was no clear and productive discourse established between the Mexican government and the concerned public, nor was there any clarity on who should lead the negotiations between the sides. Because many of these groups were unable to express their legitimate grievances, the invincibility of the government was further reinforced.

Since the social groups were unable to express their legitimate demands or often suffered abuse when they attempt to do so, they generally resorted to more radical actions, such as violent protests and vandalism, to ensure their grievances became public. This type of action resulted in an escalation of conflict that, in turn, brought publicity to their cause. It has often been characterized in a negative light due to the radical nature of the action that has been taken to break through the government's invincibility. Ultimately, the escalation of conflict has tended to complicate the legitimate demands of the public and has created new problems in its relationship and dealings with the state.

Finally, due to the strained relationship that resulted between the state and the social group, the state felt justified in limiting discourse with the protestors. Furthermore, the state felt

its actions were legitimate when it either used physical force to repress the public, or it introduced legislation to further limit the rights of the public. As such, state violence against vulnerable populations was quickly rationalized and presented to the public as a justified response, ignoring the human rights violations or the legitimate demands that initiated the conflict in the first place.

As illustrated, the implementation of the current economic strategy adopted by the Mexican government has threatened the human rights of a significant portion of its population. By examining the economic policies of the government, one cannot only see the harm that results to the human rights of many individuals, but also can witness how the Government's political response to social movements further amplifies the harm, and legitimizes the Government's actions.

### **Development of Human Rights in Mexico**

The issue of human rights has been a significant objective of the Mexican government since independence was officially declared in 1821. As such, it has been generally accepted that human rights in Mexico have evolved gradually over decades. In 1857, the Congress of Mexico drafted and ratified what was considered a liberal constitution under the presidency of Ignacio Comonfort (Knapp, 1953). The Constitution of 1857 not only established individual rights such as freedom of speech, freedom of assembly, and freedom of association, but it also included the "Writ of Amparo" (Knapp, 1953). Under the Writ of Amparo, human rights were declared to be the foundation and objective of the state and, thereby, became a judicial instrument that guaranteed their effectiveness. According to Knapp (1953), the Constitution of 1857 was

considered by many to be one of the most influential constitutional expressions of the nineteenth century.

In the early twentieth century, Mexico experienced a significant social uprising due to perceived social injustice and inequalities. This ultimately led to the Mexican Revolution of 1910. Under the leadership of the autocrat, Porfirio Diaz, the Mexican government promoted the accumulation of wealth and the growth and expansion of industry, often at the expense of the working class population (Johnson, 1968). Johnson noted that, in order to facilitate the growth of industry, the working class was frequently oppressed or exploited, so that roads, factories, and other infrastructure could be built, and manpower in the factories would be provided. Ultimately, this oppression of the Mexican working class resulted in a series of uprisings led by individuals such as Pancho Villa and Emiliano Zapata, forcing the Mexican government to enact social and political reforms.

One of the main products of the revolution was the adoption of the Political Constitution of the United Mexican States (Niemeyer, 1974). Among the significant achievements of the Constitution of the United Mexican States were two specific issues: workers' rights and property rights. The Mexican Constitution sought to protect the rights of workers through the implementation of principles that assured a minimum standard of decent life (Niemeyer, 1974). For example, Article 123 of the Mexican Constitution established the eight-hour workday, a minimum wage, required a one-day rest period per week, and prohibited child labor. Furthermore, working conditions were also addressed through the provision of secure working environments, workers' pregnancy issues, and employer liability in case of accidents while at work (Constitution of the United Mexican States, Art. 123, 1917).



The Mexican Constitution also sought to protect an individual's right to own and enjoy property. This goal was largely the result of the "hacienda" system, which led to the appropriation of large parcels of land by a limited number of powerful, wealthy landowners.. For example, Article 27 of the Mexican Constitution (1917) allowed eminent domain over all of the land within the national territory and empowered small communities to possess lands by splitting up large existing properties and estates. These expropriations of land ultimately led to the redistribution of land to the peasantry in order to assure them a source of income and a means of survival.

### **Catholic and Jesuit Approach to Human Rights**

Just as human rights in Mexico developed over time, the social teachings of the Roman Catholic Church have developed at a similarly slow pace. Progressively, human and Christian values have been discovered as being contained in declarations on human rights that were developed by non-church agents (Gonzalez, 2005). The first sign of the Church's acceptance of these concepts was found in 1937, when Pope Pius XI affirmed in his encyclical against Nazism that man as a person had rights received from God and that those rights were to be defended against whatever attempts were made by communism to negate, abolish or impede.

During the 19th century the defenders of human rights regarded authentic values as those considered inherent in humanity. They believed it was the belligerent acts confronting the Church that were impeding their development. At the time of this study, historical circumstances had had a notable influence in the ecclesiastical changes. On the one hand, a majority of the countries had abandoned their antireligious policies. On the other hand, it was evident that the persecution suffered by the Church occurred in those countries where human rights were not

respected. There has been controversy regarding the role of the Church with respect to Nazism. *The Guardian* (2011) published an article that showed how the Vatican, as well as the Red Cross helped thousands of Nazi war criminals and collaborators to escape after World War II. It was notable then that both encyclicals of Pius XI were initiated toward the end of the cold war and were expressly addressed against German Nazism and Soviet communism. The Church had observed the evolution of western democracies and had noted that the defense of freedom was not necessarily synonymous with atheism or with anticlericalism. Above all, the Church developed its own intolerance toward totalitarian ideologies such as Nazism and Stalinism.

Confronting totalitarianism, it could not oppose the proposition that human persons were entitled to dignity. In 1942, Pope Pius XII commented on what could be called a declaration of human rights. Consequently, the Pope could have publicly accepted the Universal Declaration of Human Rights when it was developed six years after his original comments were made on this matter. However, he was silent on the issue. Contrary to the actions or failures to act by Pope Pius XII, Pope John XXIII publicly accepted the Declaration, albeit with some unspecified reservations.

The foundation of the Catholic Church's modern involvement in human rights could be traced to its origins in Pope Leo XIII's defense of workers against exploitation (Witte, 1996). According to Witte, the focus of Leo XIII's writings in this area was economic rights. Subsequently, Pius XII added political-civil rights and ideas of democracy. These ideas gained increasing importance because of the growing prevalence of totalitarian states in the period between World War I and World War II and with these contributions Pius XII set the stage for John XIII (Witte, 1996).

Drawing on the work of Leo XIII and Pius XII, John XXIII further developed the importance of human rights in the Church. The theological legitimization of Catholic involvement in the struggle for human rights came in 1965, with the publication of *Gaudium et Spes* (Paul VI, 1965; Witte, 1996). Significantly, global political events and realities of the 1970s and 1980s provided a context in which to apply these new developments of Catholic teaching.

In Latin America, the Church was driven to pursue the defense of human rights because of the prevalence of massive human suffering and injustice in the region (Hennelly, 1982). Hennelly noted that the Latin American Bishop's Conferences in 1968 and 1979 served as an official endorsement and further development of the Church's role in human rights. The Bishops committed to the poor and condemned widespread extreme poverty. A theological movement focused on the poor that arose in the Latin American Catholic Church was "liberation theology". Liberation theology highlighted the rights of the poor and interpreted the teachings of the Church in relation to liberation from unjust economic, social, and political conditions (Engler, 2000). Hollenbach (1979) described how this movement influenced the Catholic perspective on human rights. Hollenbach noted that Liberationist insight prioritized the needs of the poor. Additionally, the freedom of the dominated and participation of marginalized groups took priority over the liberty of the powerful. Furthermore, society was required to create structures that could provide these rights to the poor and dominated. In concert, liberation theology's key tenet was precisely this preferential option for the poor. Boaventura de Sousa Santos (2009) argued that this theology was counter-hegemonic given that it was oriented at constructing a social order more equitable and just for the poor. In Chapter Six, I elaborate on this concept of human rights.

Until the 1980s, theologians in the movement avoided the term “rights,” opting instead for “solidarity.” (Brackley & Schubeck, 2002). In terms of Latin American theology, rights included social and economic human rights like those in the United Nations Declaration. One example was the right to an adequate standard of living. This idea of rights conformed to the idea of rights that Liberation Theologians highlighted, such as the right to work and to participate in the political and economic systems (Engler, 2000). Liberals, on the other hand, adopted a meaning of rights more individualistic, such as the rights to private property and free speech (Brackley & Schubeck, 2002). Because some of these liberals ignored or persecuted those who defined rights broadly, the word “solidarity” became the preferred terminology.

Today, the use of the term “rights” is readily observable. Solidarity evolved from a counter to neoliberal individualism to the center of an ethic that integrates human rights, with other values such as love, justice, freedom and forgiveness. Solidarity came to reflect what Hollenbach (1979) emphasized—that social justice requires active participation by all persons in society’s sociopolitical and economic activity. Liberation theology and the Latin American Catholic Church’s perspective similarly recognized that respect for human dignity required both civil-political and socio-economic rights.

Liberation theology suitably applied to the economic, social and political realities of Latin America. Poverty and structural inequality were identified as Latin America’s gravest moral problems (Brackley & Schubeck, 2002). In terms of political realities, Witte (1996) argued that totalitarian rule inevitably suppressed independent sources of power such as the press, legislature, unions and universities. This, consequently, left the Church as the only institution capable of confronting unrestrained political power.

The resulting classical church-state confrontation meant that a fight for justice would come at a price. Sobrino (2000) mentioned Monsignor Romero's surprising comment that the prosecution of the Church for its activities in promoting human rights served as a positive indication of its commitment to this cause. A Church that suffered oppression and prosecution similar to that of those it served symbolized a Church involved in the problems of marginalized populations.

According to Engler (2000), while the concept of the human rights of the poor was firmly established, some critics remained skeptical. Some questioned whether economic or social ideas could also be accepted as rights. Could this human rights movement be a force for progressive change or would it serve only as a rationalization? Liberation theologians believed that an intellectual analysis addressing these questions should include an active engagement with the poor. This would require a commitment to challenge the oppressive systems that existed. This practical approach actually mirrored the praxis element of the critical pedagogical model, which is discussed later in this chapter.

Sobrino (2000) described the Jesuit's role in promoting human rights as building a kingdom of God, a world where rights, justice and peace would reign. Sobrino believed that faith demanded such a fight for justice and likened this struggle to Jesus' role defending the poor and denouncing oppressors. Sobrino further noted that while injustice divided society, a fight for justice provided unity.

To determine which issues caused reservation, one could compare the text of the Declaration of 1948 with the encyclical of *Pacem in Terris* promulgated in 1963 (Appendix B).

The above similarities were particularly relevant in the Latin American context. The Church began to address human rights as a result of the issues raised during the Vatican II Council, and the conferences of the Latin-American Assembly of Medellin, of Puebla, and of Santo Domingo. The Church was also motivated by recent writings such as the document of the *Church in America* (Cortez, 2002). It expressed the belief that man's vision of human kind was of conscience, of sensitivity, and of its superiority over things, facts, and universal responsibilities. There was recognition of the person, and of the rights and obligations that flowed from the responsibilities of the person. It urged that fundamental equality must be acknowledged because "men are endowed with rational souls and are created in the image of God" (p.44). It also recognized the significance of the violation of human rights, not only as an attack on human dignity but also as an attack of the image of God, which was imbued in us by being human.

In Latin America, the Church also has spoken for and assumed the work of taking on the voice of those who had no voice or the voiceless within the impoverished and marginalized population. It has defended those who did not have the capacity on their own to raise their voices and exercise their right to object. In time, this has been modified because the Church has taken the position that in addition to being "the voice of those without a voice," it had the great responsibility of assisting these social sectors to become a subject of its own rights, a subject of its own demands, and a subject of its own destiny. The Jesuits, as part of the Church in Latin America, have taken those theories into practice.

The entire period of repression was against social movements and political dissidents of the times. Applied retroactively, it spoke of hundreds of people who disappeared during that

turbulent time. Facing that reality, the Church seriously questioned those authoritative regimens as well as their sustaining ideology. Therein lay the concept of national security under which was the torture and disappearance of men and women, including genocide, addressed. There was an explicit description of a more serious compromise of human rights in the document from Puebla, which was the Third General Conference of the Latin American Bishops held in 1978.

In 1992, the Conference of the Latin-American Bishops was held in Santo Domingo. It reiterated that human rights were violated among conditions of extreme poverty and unjust social structures. These factors were permanently maintained in great inequality in our societies of Latin America. This was particularly of significance regarding the conditions that impacted indigenous populations in Mexico.

### **Indigenous Perspectives of Human Rights**

Some indigenous perspectives of human rights also offered counter-hegemonic approaches to human rights (Santos, 2012). An important milestone in the recognition of an indigenous perspective of human rights came in 1972 with the Inter-American Commission's recognition that states had a responsibility to protect indigenous peoples (Madariaga, 2004). The structure and culture of indigenous communities, such as an emphasis on the community and communal land rights, shaped this perspective of human rights. The Inter-American Commission's subsequent rulings developed case law to help define the indigenous perspective. The human rights approach was pluralistic and progressive and brought with it what Boaventura de Sousa Santos (2009) defined as a font of radical energy for the counterhegemonic battles over human rights. I develop this approach in the analysis and discussion chapter.

An important component of human rights from an indigenous perspective was the idea of collective rights. The Inter-American Commission's decision in *Case of the Plan de Sánchez Massacre v. Guatemala* (2004) incorporated this concept when addressing the applicable remedies. In addition to awarding reparations to individual surviving victims of massacres, the Commission also petitioned for collective reparations to the affected communities as a whole.

The Commission's decision acknowledged the importance of preserving the Mayan-Achi's culture, communal structure, and self-governance methods. The Commission understood the death in the massacres of the oral transmitters of Mayan-Achi culture, the women and elders, created the potential for a cultural vacuum. Reparations to the community as a whole attempted to address this threat to the indigenous culture. The Commission's later actions continued to recognize the importance of protecting the physical integrity of these traditionally discriminated groups (Picado, 2004).

Community land rights were another significant component of the indigenous perspective of human rights. The communal lands of indigenous communities served not only as an economic unit but also an important basis for cultural and social life and development (Madariaga, 2004). The Inter-American Court of Human Rights first recognized community land rights in the *Awas Tingi* case (Picado, 2004). In this decision, the Court decided that the state had to adopt domestic laws needed to create mechanisms to delineate, legally recognize, and provide title to communal lands of indigenous communities. The Court has also held that indigenous peoples must be able to enjoy their communal lands in order to preserve their culture (Madariaga, 2004). Through these actions, the Court recognized the importance of communal lands to indigenous communities and set an important precedent for protecting indigenous rights.



At the time of this study, the indigenous perspective of human rights was relatively new and was continuing to develop and evolve. The participation of representatives from indigenous communities in this process was an innovative step in the structure of the Organization of American States (OAS) (Madariaga, 2004). This participation is meant to help facilitate a consensus between OAS member states and indigenous communities.

Latin America has been composed of a multi-cultural population in which indigenous people played a crucial role (Pasquialluci, 2006). Mexico has been no exception. According to estimates in the United Nations' *Indigenous Peoples' Rights in Mexico*, (2011), 15% of its population was composed of various indigenous groups dispersed throughout its national territory. The indigenous scene in Mexico presented great economic gaps in comparison to other sectors. On the one hand, we had the case of subsistence and on-farm consumption agriculture. Here, terrains progressively cease to produce a sufficient amount of food to feed a family. On the other hand, small rural lands continued to preserve traditions and a strong cultural identity. Indigenous communities had only recently seen their rights recognized. The human rights situation of indigenous peoples, despite advances achieved in the legal realm, shows delays and shortcomings to which, unfortunately, sufficient political willpower has not been applied.

Mexico's multi-cultural character has had very few practical and legislative repercussions at the local and state levels. The prevailing economic and political structures in Mexico have led to an ambiguous justice system. Along with the possibility of serving as an instrument for defending the legitimate interests of individuals and communities, it has also been employed in the legitimization of arbitrary interests. Propped up by those who impose a particular vision of

human rights, this second use has served to cover up processes of domination, exploitation, and manipulation.

It is indisputable that the idea of human rights was derived from notions of liberalism. Nonetheless, the field of human rights has been encountering new content, meanings, and tensions. Often indigenous struggles, moreover, must confront notions steeped in a western universal vision of human rights (Higgins, 1996; Mutua, 1996). There also have been tensions between liberal perspectives and indigenous approaches to human rights. Under the dominant rubric, human rights work has placed an emphasis on the value of individuality (Darder, 2010), whereas an indigenous view placed the emphasis on community rights and communal relationships. Thaddeus (2011) argued that the

Communitarian conception of dignity is more attractive than the life-based one because it more naturally entails and plausibly explains many uncontroversial judgments about what we have as human rights. (p. 20)

Under the Center Prodh's perspective, the aim of the human rights struggle has been that these rights should be recognized and lived by all people and communities in a comprehensive manner. Human rights belong to all people without exception. This clearly included indigenous, religious, or sexual minorities. Acknowledging different viewpoints and realities, such as those of indigenous peoples, would serve to grow and enrich our human rights practice. This implied that no person or community should have to renounce its lawful ways in order to fully enjoy human rights.

Among the diversity of peoples in Mexico with their own way of life were indigenous communities. Important issues to indigenous communities included "autonomous self-

government, cultural self-determination, and land rights” (Magallanes, 2010, p.180).

Demographic realities required that human rights, from a Latin American perspective, included these issues. An important foundation for this approach came from *Yatama v. Nicaragua* (2005). There, the Court considered local realities and indigenous rights in the context of electoral laws. The *Yamata* case reflected a willingness to accommodate indigenous issues into the analysis. A similar approach, cognizant of cultural differences could be applied to human rights through an indigenous approach that required respect communal relationships and demanded our willingness to enter into relationships beyond those that solely privileged individual rights. Instead, it affirmed the combination of sharing a way with others and of caring about their and our shared quality of life (Thaddeus , 2011).

### **Towards a Critical Human Rights Conceptual Lens**

Lastly, it was important to conclude this chapter with the critical principles that informed my conceptual lens for a critical human rights approach, which were key to the analysis of the data gathered and in arriving at conclusions and recommendations that might serve to inform a culturally democratic human rights practice. Toward this end, a critical pedagogical framework provided a useful lens by which to analyze the concept of human rights under a Jesuit perspective in that it appears most consistent with Center Prodh’s view on human rights in Mexico.

Darder (2009) posited a framework of critical pedagogy that emerged from a desire to give some coherence to the articulation of critical principles, beliefs, and practices in the field. These have been foundational elements that educators could use to evaluate critically the impact of capitalism and asymmetrical relations of power among students from historically racialized

and economically disenfranchised populations. An important intellectual foundation of critical pedagogy has been found in the work of Brazilian educator Paulo Freire. Freire (1970) raised political questions of power, culture, and oppression within the context of hegemonic schooling. In addition, Gramsci (1971) and Foucault (1977) explored notions of power and its impact on the construction of knowledge (Dunoff, Ratner, & Wippman, 2010). Critical educational thought also has drawn on “theories of society from the Frankfurt School” (Darder et al., 2008, p.7). The Frankfurt School intended their findings to serve as a material force against domination of all forms but especially the advancement of capitalism (Darder, 2012).

From these foundations emerged critical principles that later characterized the philosophical roots and heterogeneous ideas that became known as critical pedagogy (Darder et al., 2008). This heterogeneous character of the field distinguished critical pedagogy, in that it provided a fluid and dynamic framework. It allowed for consolidation of principles that were anchored in an underlying explicit intent and “commitment to the empowerment of marginalized populations (p.9). The critical educational principles for cultural democracy, as articulated by Darder (2012) are briefly described below, with respect to their particular relevance to this study.

### **Cultural Politics**

Center Prodh has worked to defend, promote, and increase respect for human rights in Mexico. Members of the center have applied a holistic perspective toward that defense. Accordingly, Darder’s perspective mirrored the Center’s notion of human rights. This was illustrated as Darder presented a culturally democratic approach towards human rights as “fundamentally committed to the development and enactment of a culture of schooling that

supports the empowerment of culturally marginalized and economically disenfranchised [people]” (2009, p. 9).

In order to achieve this empowerment, Darder’s ideas pointed to that need of NGOs to break away from traditional teachings that have “historically embraced theories and practices that serve to unite knowledge and power in ways that sustain asymmetrical relations of power” (2009, p.10). Such theories and practices have hindered the development and universal application of human rights. Violations of human rights placed marginalized groups of people and, in particular indigenous populations, within certain power relations that perpetuated existing cultural values and privileges of dominant classes.

### **Political Economy**

This principle acknowledged the significant privilege that has existed in the hands of those controlling the political economy in developing countries. Such control over the education of marginalized groups allowed a history of normalized inequalities to persist. Darder (2009) challenged this phenomenon and presented a method of teaching, echoing Freire, which required marginalized groups to “understand themselves as subjects of history and to recognize that conditions of injustice, although historically produced by human beings, can also be transformed by human beings” (p.11).

When applying this concept of social agency to the fruition of human rights, the centrality of human agency and the possibilities for change became apparent. This vision of change was the starting point for the implementation of human rights. As the starting point, it positioned marginalized groups to break away from the “asymmetrical power relations that replicate the existing cultural values and privileges of the dominant class” (Darder, 2009, p.10).

Once those existing values and privileges are broken down, there will be room to develop a society where the implementation and enforcement of human rights are the norm.

### **Historicity of Knowledge**

A critical analysis of human rights supported the notion that all knowledge was created in history, which in turn created all knowledge within its context. Throughout history, people have had to fight for human rights. Controlling classes never merely granted such rights to marginalized groups without tough advocacy efforts and a difficult process of political persuasion. This history provided a foundation for the enforcement of human rights. By learning this history, marginalized groups learned to “recognize that conditions of injustice, although historically produced by human beings, can also be transformed by human beings” (Darder, 2009, p.11).

This key concept supported the empowerment of marginalized groups, in that they were inspired to analyze their situations and to work to transform the unjust conditions that impacted their individual lives and communities. This critical understanding of human rights served to empower marginalized groups because it linked their situation today with their past histories of struggle. Current unjust conditions then required them to fight for their basic human rights, as history had required oppressed people to do so in the past. Being able to relate the current situation to the unfinished struggles of the past has inspired hope in the possibilities for change. This sense of critical hope for change has been essential to the process of societal transformation.

### **Ideology**

Additionally, Darder’s (2009) work pointed to the notion of human rights as an ideology. She described ideology as “a societal lens or framework of thought, used in society to create

order and give meaning to the social and political world.” (p. 11). This lens developed over time and, through the inner histories and experiences of individuals, was constructed by their needs, motivations, and desires, along with societal and economic changes around them. A critical examination of an educator’s ideology provided insight to examine their own views about their surrounding cultural circumstances. This insight led educators and community workers to ask questions that would help them determine how the culture of the dominant class infiltrated their curriculum in ways that diminished the knowledge and wisdom of indigenous groups.

In the area of human rights, community educators have worked with marginalized groups as teacher/students to name the unjust conditions and break their normalized marginalization. The chains of marginalization began to loosen and eventually broke once educators could analyze the roots of their own hegemonic ideas. This critical analysis could lead to personal realizations of the invasion of discriminatory societal norms in their own practices and could allow educators to steer away from oppressive ideologies that perpetuated deficit notions and discrimination. Once educators critiqued their own ideologies, they were able to support students in developing more insight into their own unjust circumstances and break free from the chains of their discriminatory society.

### **Dialectical Theory**

In sync with Freire’s notion, Darder continued by stressing the importance of dialogue. This concept became particularly important when examining the universality of human rights and varying definitions of human rights throughout the world, which often absolutized and negated the legitimacy of epistemological views outside its purview (Darder, 2015). Darder et al. (2008) described dialogue as “an emancipatory educational process that is, above all,

committed to the empowerment of students through challenging the dominant educational discourse and illuminating the right and freedom of marginalized groups to become subjects of their world.” (p.13).

This theory applied human rights as a tool of social transformation that promoted social change. It did so because the current lack of basic human rights in developing countries facilitated the ongoing marginalization of indigenous people, which, in turn, perpetuated a lack of human rights. Communicating societal problems with a critical human rights approach motivated communities to change their circumstances and eventually yield wider societal change. This societal change will encompass a vision where everyone is entitled to the same rights.

### **Hegemony**

Hegemony has hindered the growth and development of marginalized groups. Darder (2008) encouraged the incorporation of hegemony into teaching “in order to demystify the asymmetrical power relations and social arrangements that sustain the interests of the ruling class.” (p. 12). When critically examining the process of social control that the dominant social class held over marginalized groups, the root of the problem became apparent. Here, the problem was the absence of basic human rights for certain groups of people as well as the lack of advocacy on their behalf.

At the time of this study, leaders of the political economy and intellectuals of developing countries administered a society where oppressed populations from lower social class standing and those from certain cultural backgrounds were marginalized to the outskirts of society. Being able to pinpoint the heart that pumped this hegemonic culture of perpetual marginalization for



subordinate groups provided educators an opportunity to better critique the political apparatus of inequality and to work to transform the status quo. Transforming the status quo with regard to education has aimed to empower marginalized people and ultimately has sought an implementation and enforcement of basic human rights.

### **Resistance and Counter Hegemony**

Darder (2008) continued her analysis by incorporating the idea of resistance to explain why many marginalized groups consistently fail within society. This idea began with the notion that all human beings had the capacity to resist oppression. However, their options on the manner in which they could resist were limited by the societal and material conditions in which they live. The principle of resistance worked to explain the degree to which the oppositional behavior of marginalized groups was related to their need “to struggle against elements of dehumanization or are simply tied to the perpetuation of their own oppression” (p.12).

The idea of counter-hegemony has been used here to describe certain societal spaces where power relationships were constructed to empower the voices of those who have been historically marginalized and silenced. This empowerment has been achieved whenever a new social context came to life out of instances of resistance. Here, as Darder (2008) argued, “Given the powerful and overarching hegemonic political apparatus of advanced capitalist society, there is often great pressure placed upon individuals and groups who, rather than simply conforms to the status quo, seek to enact counter-hegemonic alternatives of teaching and learning” (p.13). The catalyst of counter-hegemonic principles when enacted by the oppressed has served as a significant political force toward societal transformation, promoting social change.

### **Praxis: The Alliance of Theory and Practice**

A critical analysis of human rights should encompass a view of knowledge where “theory and practice are inextricably linked to our understanding of the world and the actions we take in our daily lives” (Darder, 2008, p.13). Herein, Darder pointed to the importance of active participation in the world, linked to our theories of social justice and human rights, if we were to yield genuine societal change. This principle echoed Freire’s concern with educators or community activists collapsing either solely into verbalism (or theorizing), on one hand; or solely into activism devoid of theory and reflection, on the other (Darder, 2015; Freire, 1970). Moreover, this principle supports the importance of reflection, dialogue, and critique in enacting struggles for human rights. Emancipatory praxis then must be anchored upon an evolving consciousness among the oppressed, where theory and practice are seen as constantly regenerating one another, in forging liberatory possibilities of community life.

### **Dialogue and Conscientization**

Marginalized groups, such as women and indigenous communities, have been both the teachers and students. This approach instilled in marginalized groups the tools and freedom to engage in a critical dialogical process that deepened their consciousness of their surroundings, as they embraced responsibility for their own empowerment and for transforming their own communities. Fulfillment of basic needs such as food and shelter, for example, then led to a greater opportunity for communal growth and the exercise of self-determination, community solidarity, and political creativity. The growth of students or community members in this case then led to fundamental societal changes.

In concert with Freire's (1970) writings, all change must begin with dialogue, where students or cultural workers were "actively incorporated as part of the exploration of existing conditions and knowledge in order to understand how these came to be and to consider how they might be different" (Darder et al, 2008, p.14). Developing such knowledge through the process of social struggle, marginalized communities could yield positive change through embodying a holistic or integral perspective in their struggle for human rights. Through the sustain process of such dialogical labor, communities could undergo a process of conscientization that would enhance their collective capacity to work for social justice in their lives.

### **Conclusion**

Darder's (2012/1991) critical pedagogical approach to cultural democratic practice provided a framework from which to analyze the approach of Center Prodh to human rights within a Latin America context. Critical pedagogy's fluid and dynamic nature allowed the several principles outlined above to work coherently towards the goal of empowering oppressed populations. Rooted in this perspective was an understanding that the status quo in education and societies served to perpetuate the domination of disenfranchised populations. Application of the principles of critical pedagogy could effectively guide a conceptual analysis of human rights—one that recognized entrenched barriers and worked to empower disenfranchised populations to become active participants in bringing about social change for themselves. Hence, it provided a viable conceptual lens for this study from which to analyze research data and formulate conclusions about the impact and contribution of Center Prodh to the arena of human rights in Mexico.

## **CHAPTER THREE**

### **RESEARCH DESIGN AND METHOD**

This purpose of this study was to document and analyze critically the legal and educational practices of Mexico's most important human rights organization, Miguel Agustín Prodh Juárez Human Rights Center (Center Prodh). Through a variety of research methods, including interviews, examination of archival document, and an analysis of key litigated cases, the study sought to demonstrate how the organization's human rights work has contributed to the improvement of democratic life in Mexico, in accordance with the Jesuit mission. The result is a critical history of the Center and its work, based on a set of guiding research questions that informed the focus of this study.

#### **Research Questions**

The research questions addressed by the study included:

- (1) What was the main approach utilized by the Jesuits in their human rights practice?
- (2) In what ways did Center Prodh's litigation practices linked to human rights enhance the Jesuit Mission within disenfranchised communities in Mexico?
- (3) What were particular examples of Center Prodh's influence on law and public policy?
- (4) What were the strengths and challenges of Center Prodh with respect to its human rights practices in communities?

#### **Research Design**

This research entailed a qualitative case study of Center Prodh and its contributions to human rights in Mexico. According to Hatch (2002), qualitative methods were vehicles by which social contexts could be systematically examined as a whole, so as not to break them

down into isolated, incomplete and differing parts. Qualitative reports usually have been complex, detailed narratives that included the voices of the participants being studied (Tellis, 1997). They have built the case of the researcher's interpretations by including enough detail and actual data to bring the reader inside the social situation under examination (Biklen & Bodgan, 1992; Hatch 2002, p. 30-31 ). A case study is a useful framework for a multidisciplinary study in an in-depth approach with specific boundaries (Hatch, 2002, ).

In a research study that focused on the quality of the contributions made by an organization in a defined area, the qualitative research method was the most effective. According to Gay, Mills, & Airasian (2011) the benefit of a qualitative study was that it assisted in describing current conditions and possible relationships in a cause-effect phenomenon. Additionally, a qualitative study seeks to describe the meaning of the results from the perspective of the participants (Hatch, 2002). Specifically, my study focused on the nature of the work performed by Center Prodh, and how that work related to the mission of the Society of Jesus. As such, this study sought to understand the findings as they related to sectors of the Mexican population whose rights were in question, and to the individuals who worked for Center Prodh.

### **Case Study**

This study addressed the research questions through the application of a case study method. A case study is a type of qualitative research that focuses on the product of case study research (Airasian, Gay, Mills, 2011). Yin (2003) proposed that a case study was an empirical inquiry that investigated a contemporary phenomenon in depth and within a real life context, especially when the boundaries between phenomenon and context were not clearly evident. The case study attempted to relate a unique story, especially interesting and relevant. Neagle (2006)

pointed out that “case studies are appropriate when there is a unique or interesting story to be told” (p. 4).

In accordance with the literature, there were different ways of understanding the case study. Pursuant to Yin (2003), the case study design must have five components:

- (1) The research question(s);
- (2) Its proposition,
- (3) Its unit(s) of analysis;
- (4) A determination of how data are linked to the propositions; and
- (5) The criteria under which the findings will be interpreted.

The study of the case must give an account of a phenomenon or an organization. The researcher should perform a work of exploration, description and interpretation, and must explain principal findings (Manano, 1993). Center Prodh had acquired a wealth of experience during more than 27 years of existence. I examined the specific works and contributions of Center Prodh that had been previously documented in various publications, as well as directly expressed by its various reports and legal cases. However, due to the volume of the data, not all aspects of the organization could be addressed here. Instead, I addressed those aspects of its practices directly relevant to this study on human rights.

### **Site Selection**

Center Prodh was the first human rights center founded by the Jesuit Order in Mexico and is located in Mexico City. It was founded in 1988 in reaction to the Mexican Government’s repressive regime against social activists, church and adversarial political leaders, and communities and organizations that disapproved of their method of governing. After its creation,

Center Prodh focused its commitment on the defense and promotion of civil and political rights, in particular those that related to respect for life, integrity, and personal security.

In 2002, Center Prodh added the promotion and defense of economic, social, environmental, and cultural rights to its services. The strategy adopted was the integral defense of paradigmatic cases approach. Center Prodh's mission was to, "promote and defend the human rights of victims, especially those in situations of vulnerability and poverty, and to build a more just, equitable, and democratic society that fully respects human dignity" (Center Prodh, Internal Plan, 2008).

At various times, the Center has employed from 25 to 30 people. The majority of the persons working at the Center have been attorneys, social educators, political scientists, and psychologists. All services provided by the Center have been free of charge, including the educational materials and litigation costs. To defray these expenses, the Center received funding from international foundations. Such foundations are the MacArthur Foundation, the Open Society Foundation, the Global Fund of Human Rights from the United States, and the *Misereor and Brot fur die Welt* (Bread for the World) Foundation from Germany, among others.

In 2010, with at most thirty people, the Center handled nearly 1500 cases and a considerable number of human rights workshops. The Center played an important role in the community because it addressed the needs of the poor and underrepresented. Both have been groups whose rights were in jeopardy. Those who seek services from the Center usually resided in rural areas such as Oaxaca, populated by a majority of peasant and indigenous peoples.

The Center devised its own methodology as a result of twenty-six years of experience in educational projects and legal representation. The defense of cases has been called "integral

defense,” and has involved the joint work of several the Center’s departments. The Integral Defense department designed and executed legal strategies. The Communications and Communication department disseminated information about the cases and carried out awareness-raising campaigns. The Educational department researched the current state of the issues brought to light from the cases. This helped develop the public interest in the issue in order to carry out educational workshops on the subject. The International department reported the cases to international institutions and made connections with organizations overseas with similar missions.

As the result of the above strategies, Center Prodh contributed to the monitoring of human rights in Mexico. The issues and cases taken on by Center Prodh gained the support of national and international public opinion. This qualitative case study sought to understand the influence and impact of Center Prodh on the issue of human rights in Mexico, particularly among indigenous populations.

### **Data Collection**

The data for this study were derived from interviews and document review.

### **Interviews**

Qualitative researchers have utilized special interview strategies that were different in nature from interviews conducted in quantitative studies.

Qualitative interviewers create a special kind of speech event during which they ask open-ended questions, encourage informants to explain their unique perspectives on the issues at hand, and listen intently for special language and other clues that reveal meaning



structures informants use to understand their worlds (Hatch, 2002, p. 23; Mishler, 1986; Seidman, 1998).

Hatch (2002) noted that there were several types of interviews: informal, formal (sometimes called structured or semi-structured) and standardized. As described by Hatch, in formal interviews, the researcher is in charge and sets a specific time limit for the interview. The participants know they are being interviewed to generate data. The researcher poses open-ended questions—those that can be answered with a yes or a no. The researcher is open to digressions and amenable to moving the interview in the direction that the participant takes. The researcher listens carefully to the participant's answers and from these formulates follow up questions (See Appendix A). Standardized interviews use only predetermined questions that are asked in the same order, using the same words that are posed to all participants alike. In this manner, the answers can be systematically compared.

### **Process**

I used both formal and structured interviews because of the two-hour time limit for each interview. The questions, for the most part, were open ended.

Although Hatch (2002) included a factor that the researcher may be open to digressions and was amenable to moving the interview in the direction that the participant takes, my study used structured interviews to maintain the focus in the direction of participant responses, unless the digression was relevant to issues in this study.

Before the interview, I informed the persons I planned to interview that I would be there to generate data. Prior to the interviews, I provided the participants with the specific initial questions (see Appendix B) I would ask during the interview. I advised them I planned to pose

follow-up questions based on their responses. My interviews could be characterized as partially standardized because they began with predetermined questions that were asked of all participants in the same order, using the same words. The interviews could also be characterized as partially standardized because I gathered information from all the participants that could be compared systematically.

During the summer and fall of 2014, pursuant to Institutional Review Board's procedures, I interviewed the current Director of the Center, six previous directors, and the current coordinators of the departments. To prepare for their interviews, I previously engaged in several conversations with the directors to familiarize myself with their current work and the work of the Center under their direction.

The interviews were audio recorded and transcribed in Spanish. The translation into English was not simply a literal translation, but took into account the context and the culture of the interviewee. The translation was abridged to retain only the relevant information consistent with the dissertation research questions. The translation narrative was followed by a synthesis of each interview according to the topic discussed.

### **Participants**

Six former directors of the Center, most of whom served at least two years in the position of Director, were interviewed. Four others interviewed included the current coordinators of the Integral Defense, Communication, International, and Education departments. In addition, two laypersons associated with the center were also interviewed.

Table 1

*Study Participants*

Name	Position	Years at Center Prodh
Jose de Jesús Maldonado Garcia	Director	1988-1994
David Fernández Dávalos	Director	1994-1998
Edgar Cortéz Morales	Director	1998-2004
David Velasco Yáñez	Director	2004-2005
Luis Arriaga Valenzuela	Director	2006-2011
Jose Rosario Marroquin Farrera	Director	2011-present
Victor Hugo Carlos Banda	Coordinator of Education Services	2008-present
Stephanie Brewer	Coordinator of International Services	2007-present
Andres Diaz	Coordinator for Integral Defense	2008-2015
Quetzalcoalt Gonzalez	Communications Coordinator	2012-present

**Profiles of Directors.** I interviewed ten people who had been directors of Center Prodh between 1988 and the time of the study. In preparation for the interviews, I gathered biographical data for each interviewee:

*Jose de Jesús Maldonado Garcia (Maldonado).* Moldonado was the first Director of Centro Prodh, serving from 1988 to 1994. He was born in León, Guanajuato, in 1940. He received his Bachelor's Degree in Sociology from the Iberoamerican University in Mexico City. He was the pastor of the Resurrection Catholic Church and former President of the Intercultural University Ayyuk, a Jesuit institution in Jaltepec, Oaxaca, Mexico. Prior to joining Center Prodh, Maldonado worked on several Jesuit social projects in Mexico, including "Accion Popular." Accion Popular was a group of about 120 Jesuits from all parts of Mexico, who gathered to discuss current issues in their communities. A common issue that many Accion Popular participants identified in their communities was repression and human rights violations. Addressing the prevalence of these issues would later serve as the mission of Center Prodh.

In 1990, Maldonado became a publicly recognized human rights leader due to a magazine article focused on his work, which reported the Jesuits had accused the Salinas Government of being anti-democratic and violating human rights in the name of safeguarding an economic project (Rodriguez Castañeda, 1990). His role in the early years of Center Prodh will be discussed in further detail in the “History of the Center” section below.

*David Fernández Dávalos (Fernandez).* Fernandez was born in Guadalajara, Mexico in 1957 and served as Center Prodh’s second director from 1994 to 1998. He obtained his Bachelor’s degree in Philosophy from the Institute of Philosophy in Guadalajara. He obtained a Bachelor’s degree in Theological Studies from the College of Theological Studies in Mexico City. Fernandez then went on to obtain a Master’s Degree in Sociology from the Iberoamerican University in Mexico City. In 1996, he received the Human Rights Watch Award for his work in human rights. He has been President of two Jesuit universities: Iteeso University of Guadalajara and the Iberoamerican University of Puebla. At the time of the interview, Fernandez was President of Iberoamerican University in Mexico City.

*Edgar Cortéz Morales (Cortéz).* Cortéz was born in Tlaxcala, Mexico in 1960. He served as the third director of Centro Prodh from 1998 to 2004. He obtained his Bachelor’s degree in Philosophy and Social Sciences from the Institute of Philosophy in Guadalajara, and his Bachelor’s degree in Theology from the College of Theological Studies in Mexico City. He obtained his license to practice law from the Autonomous University in Tlaxcala, Mexico. He was Secretary General of the Network of Civil Organizations of All Rights for Everyone (Secretario General de la Red de Organismos Civiles Todos los Derechos Para Todos y Todas).

At the time of the interview, Cortéz served as a researcher at the Mexican Institute of Human Rights and Democracy (Instituto Mexicano de Derechos Humanos y Democracia).

*David Velasco Yáñez (Velasco).* Velasco was born in Zacatecas, Mexico in 1952 and was the Director of Centro Prodh from 2004 to 2005. He obtained his Bachelor's Degree in Philosophy and Social Sciences from the Institute of Philosophy of Guadalajara and his Bachelor's degree in Theology from the College of Theological Studies in Mexico City. Velasco had a doctorate degree in education from the Academy of Christian Humanism University in Chile in coordination with the Interdisciplinary Program of Educational Research. At the time of the interview, Velasco served as an academic researcher in the Department of Socio-political and Judicial Studies of the Technological Institute and of Advanced Studies of the West.

*Luis Antonio Macias (Macias).* After Velasco, Macias served as director for only six months. An interview could not be conducted with Macias due to his unavailability.

*Luis Arriaga Valenzuela (Arriaga).* Arriaga, the author of this study, was born in Tijuana, Baja California in 1970. He served as Director of Centro Prodh from 2006 to 2011. He became licensed to practice law as an attorney through his studies at the Iberoamerican University in Tijuana, Mexico. He received his Master's Degree in Social Philosophy from the Technological Institute of Advanced Studies of the West. He holds a Master's Degree in International Law from Fordham University Law School. Arriaga has taught human rights and legal ethics at the Iberoamerican University in Mexico City as an Adjunct Professor and was a member of the Technical Council of the Master's program in Human Rights of the same University. During his tenure as director, Center Prodh litigated the cases of Rodolfo Montiel, San Salvador Atenco and Jacinta Marcial, which will be discussed in detail in the next chapter.

*Jose Rosario Marroquin Farrera (Marroquin).* Marroquin followed Arriaga in 2011 as Center Prodh's seventh and current director. He was born in Berriozábal, Chiapas in 1970. He received his Bachelor's Degree in Philosophy and Social Sciences from the Institute of Philosophy in Guadalajara. He obtained his Bachelor's Degree in Theology from the Iberoamerican University, Mexico City. Marroquin had vast experience in coordinating grassroots organizations, preparing communication campaigns, and designing social communication strategies.

**Profiles of Key Personnel.** There are several other key persons who have had major roles in the operation of the Center and who have been interviewed for this study. These participants include:

*Victor Hugo Carlos Banda (Banda).* At the time of the interview, Banda was the coordinator of the education services at Center Prodh. He was a lawyer with a master's degree in education. He had experience in human rights promotion through popular education. Prior to working at Center Prodh, he worked as the coordinator of the education services for the Ciudad Juarez Diocese's.

*Stephanie Brewer (Brewer).* At the time of the interview, Brewer was the coordinator of the international services at Center Prodh. She was also a lecturer at the Harvard Law School seminar for human rights practice in Latin America, as well for the course "Doctrine and Practice of the Inter-American Human Rights System." She held degrees in law and psychology from Harvard University. Brewer previously worked in human rights organizations in Thailand, the Philippines, and London. She has published several academic papers on human rights issues.

*Andres Diaz (Diaz).* At the time of the interview, Diaz was the coordinator for the integral defense area of Center Prodh. He was an attorney with a master's degree in anthropology and held a diploma in international human rights from American University. Diaz has had solid experience with human rights litigation.

*Quetzalcoatl Gonzalez (Gonzalez).* At the time of the interview, Gonzalez had served as the communications coordinator since June of 2012. He was involved with different areas of Center Prodh. He monitored and provided analysis of the human rights issues in Mexico and also interacted with the education and training programs.

All seven directors had extensive experience with the work and goals of the Center, as well as the human rights violations which have occurred in Mexico. All directors were Jesuits at the time of their service as directors. All were male and all Mexican citizens. The department coordinators were laypersons, some male and some female, and all Mexican citizens. The other two persons who were interviewed are laymen, not connected to the Center, but who were greatly knowledgeable about the human rights work of the Center.

### **Document Analysis**

As indicated earlier, the Center devised its own methodology and integral defense as a result of twenty-six years of experience in educational projects and legal representation. Center Prodh's integral defense has approached violations of human rights with the use of all of the resources the Center has available. Stated another way, the Center has utilized its judicial litigation resources, its educational processes, communications and international public relations. The Center has not approached each case for purposes of addressing a particular violation, but from the standpoint of the violation as it has affected the general population

Research on human rights has different potential problems. As addressed in the previous chapter, it has not been easy to find one concise definition of human rights. This study sought to provide an empirical and qualitative approach in an effort to address the concern expressed by Coomans, Grunfeld and Kamminga (2009) that there was a lack of methodological rigor in human rights scholarship. In this sense, the findings and the validity of a research project could have certain failures of credibility depending on the audience. This study also raised problems of comparing the quality of the research, given that there existed different disciplines from which one could engage the study of human rights. For that reason, the chosen methodology became a crucial issue, which had a significant impact the research. As pointed out by Coomans et al. (2009), “The method chosen for a research project should follow logically from the project’s research question” (p.15). A specific method to be utilized in the field of human rights, however, has not been established in the academics. Thus, for the purpose of this dissertation, in addition to the literature presented, I used the following plan for analysis of the legal cases and other data.

The most significant documents reviewed and analyzed during the preparation of this dissertation included

- (1) Plans and internal evaluations of the work of Center Prodh from the year 2000 to 2011;
- (2) Documents related to the Center’s integral defense methodologies;
- (3) Projects developed for foundations and international agencies that provided support for the Center;
- (4) Agreements of cooperation with diverse universities and institutions of the Society of Jesus.



- (5) Minutes of the meetings of the Center's staff from 2004 to 2010;
- (6) Personal notes regarding the general progress of the Center from 2006 to 2011;
- (7) Informational documents and reports regarding human rights archived by the Center's staff. The review had a special emphasis on the following documents:
- Documents prepared for human rights workshops such as curricula and academic aids;
  - Personal arguments and outlines to be utilized in academic presentations and debates;
  - Diverse judicial documents regarding the cases analyzed in the instant dissertation, which included outlines, legal strategies, research memoranda, and legal briefs used to prepare for and in the litigation before the courts;
  - Center Prodh projects and educational plans to be used in diverse states of the country, especially in Oaxaca, Chiapas, Veracruz and in Ciudad Juarez;
  - Position papers and documents supporting the international activities of the Center;
  - Press releases regarding the cases and diverse position papers of the Center with respect to problematic Mexican human rights issues.

### **Analysis of Legal Cases**

Center Prodh has provided judicial, educational, communicational and analytical tools as well as social support to human rights violation victims and/or their families in their search for justice. Certain specific cases were highlighted to demonstrate the deleterious effect on society, the environment and on the personal lives of individuals. Finally, the documentation of

paradigmatic cases was used to consider the Mexican government's accountability for its obligations and responsibilities as outlined in the international law on human rights.

By taking on paradigmatic cases of human rights violations, Center Prodh has attempted to show the inherent deficiencies that have led to setbacks and obstacles in complying with international human rights standards in Mexico. In utilizing its integral defense strategy in these cases, Center Prodh has sought to contribute to improving the human rights situation in Mexico. To these ends, this study emphasized specific activities that were directed to the construction, documentation, and defense of paradigmatic cases. More specifically, the term "paradigmatic cases" referred to those legal cases that represented a specific result from the Center in the demand for justice from the state

Three paradigmatic cases litigated by Center Prodh were analyzed as part of this study. The analysis of judicial litigation was conducted in four distinct steps. These included:

- (1) Identification of the context and legal problem: Here the individual problem was addressed, which was representative of the manner in which the government had violated the human rights of an individual or a group of people.
- (2) Description of the case: This section set forth the facts of the specific case and how these facts were repeated on the many.
- (3) The actions taken by Center Prodh: The manner in which the integral defense was applied to the specific problem before Center Prodh was set forth.
- (4) Description of the Results: In this context, not only was the direct effect that the litigated case brought for the victim was addressed, but also the indirect effect which means the structural impact on crucial issues related to human rights.

The approach to the analysis, moreover, emphasized the special method that the Society of Jesus has in its orientation regarding the social apostolic and the search for structural change.

### **Analysis Plan**

I designed systems for data preparation and manipulation that reflected the study questions. The methods I used ensured sufficient data so that validity could be determined through triangulation.

### **Data Preparation**

I performed all the preparation and conducted all of interviews, observations, field notes and reflections gathered or developed during the research. I allocated them according to the categories that were previously described. The interviews took place during the summer and the fall of 2014. I organized the interviews in electronic file according to the interviewees and prepared separate folders for each of the categories. These were maintained in a password protected computer.

### **Data Manipulation**

I analyzed the data to determine whether the Center was complying with the characteristics of the social apostolate of the Society of Jesus. In order to better understand that information, I created summaries according to the topics of the research questions within the following categories

- (1) The approach to the concept of human rights by the Jesuits at Center Prodh,
- (2) Contributions in human rights through litigation practices,
- (3) Strengths and challenges of the Center's practice of integral defense.

In the summaries, I highlighted examples of the Center's work drawn from the documents and interviews.

### **Validity**

As a result of my research, I determined the best method to insure the validity of this study was through triangulation. Triangulation is verification or extension of information from other sources (Hatch, 2002). Triangulation, the use of multiple sources of data to confirm findings, was a primary source of internal validity (Merriam, 1998). If the different sources of information, whether oral, documentary, archival, legal cases, correspondence, or planning summaries, are triangulated, the dissertation was more likely to be internally sound. All interviewees were requested to review the summary of their interview. In that way interviewees would be able to verify the validity of comments attributed to them (Merriam, 1998).

### **Study Limitations**

It could be stated this dissertation did not present an objective or unbiased view of the impact of the work of Center Prodh merely because I had served as a Director of the Center. On the other hand, it could be observed that someone who has never been the Director or in some way been affiliated with the Center would be deprived of experiential insight into the inner workings. The energy, the spirit, the daily anecdotal examples of progress made and lives changed could only partially be discovered through documented reports. The pulse of a place could be usually best determined by those who could actually palpate the agency's flow. In addition, someone who had not been affiliated with the Center, who had no interest in human rights might possibly have an unspoken agenda to influence the perception of the Society of Jesus as failure. It could also be argued that it is most likely no scholarship is neither neutral nor

unbiased. Bourdieu and Loic (1995) argued that there was no neutral data and there is no neutral question. The researcher could manipulate the data obtained by the type of question asked and by posing only questions that elicited answers that supported a bias. By following the above referenced methodological framework, with academic rigor, I worked tirelessly to provide a critically sound analysis and conclusions for this study.

## **CHAPTER FOUR**

### **HISTORY AND CONTEXT OF CENTER PRODH**

Center Prodh was to the Society of Jesus. Its services have included legal representation, analysis of human rights issues in Mexico, litigation and advocacy in international tribunals, educational programs for the community, and media and public relations. Using a process of integral defense, Center Prodh has applied all of these services in its efforts to promote human rights. This chapter is devoted to the presentation of interview data gathered from the current and former directors of Center Prodh and other key personnel, in order to gain insight into the Center from their leadership and knowledge. A large part of the study's overall findings were grounded in the analysis derived from the interviews. The previous chapter included brief profiles of the participants interviewed. The description of the interview material gathered is presented in this chapter in four major topics. These topics include the history of Center Prodh, Center Prodh's conception of human rights, the contributions and influence of Center Prodh, and Center Prodh's strengths and challenges. The articulation of each topic was based on compilations and composites of facts, anecdotes, and insights provided by participant interviews.

#### **History of Center Prodh**

The vision behind Center Prodh arose from the efforts of "Accion Popular." Accion Popular was a group of Jesuits from all parts of Mexico, who gathered to discuss current issues in their communities. During his interview, Maldonado, Center Prodh's first director from 1988-1994 and a member of Accion Popular provided insight into the Center's history and described the association as "a large group, of approximately 120 to 130 Jesuits from all over the country who would periodically meet to do an analysis of the social issues in the country." The group

also discussed religious and political matters, the role of Jesuits in other parts of Latin America, and various other topics linked to their practice in communities.

In the 2014 interview Maldonado further described the development of the concept of the center. Because Accion Popular members came from throughout Mexico, each shared the challenging social issues they had experienced in their own communities. In 1987, during discussions among members of Accion Popular, the Jesuits noticed one common issue: prevalent in all parts of the country were instances of repression and unaddressed abuses by authorities. During this time, Salinas de Gortari was the presidential candidate of the long ruling PRI party. Accion Popular members became concerned with the increase in violence. Although the presidential campaign was still in the early stages, there were already reports of deaths in rural areas. Those killed tended to be leaders of social movements, labor movements, and others who were opposed to Salinas de Gortari or to his party's ideology. In addition to the murders of these leaders, there were many reports of political leaders being harassed. What was apparent from discussion held by Accion Popular was that this phenomenon had been occurring throughout Mexico.

As the conversation turned to abuses and repression, the members of Accion Popular observed that throughout Latin America, Jesuits had been involved in issues related to human rights violations. For example, in Argentina, Brazil, and Central America, places that witnessed horrific abuses, Jesuit organizations had been contending with human rights concerns. In Mexico, however, there were no actions by Jesuits. The experiences and observations led the members of Accion Popular to conclude that there was a need for a Jesuit presence in this area of practice. Fr. Maldonado observed that Jesuits involved in Accion Popular realized that "we need

to get involved in this given what we are seeing; and we were seeing that things were getting more complicated.”

Following the group’s discussions and the decision to get involved, two groups were formed. One of these groups worked very closely with the Roman Catholic Cardinal in Mexico City who was involved with reconstruction work after the devastating 1985 earthquake. The second group was working with “Fomento Cultural y Educativo,” a Jesuit social center formed in the 1970s and dedicated to educational and social issues relevant to the needs of disenfranchised groups such as indigenous communities and the poor. Maldonado was in this second group. One of the members of this second group spoke with the Cardinal about forming a human rights center. The Cardinal bluntly retorted, “We don’t want any problems with the state” (Maldonado, 2014). The second group then turned to Bishop Alamilla, also from Mexico City, who was well connected to other Bishops in the country. Bishop Alamilla was more responsive and asked for a few months to meet and discuss with other Bishops and arranged for a follow-up meeting.

One of the issues Bishop Alamilla’s group encountered was with the name of the center. The other Bishops opposed using the name “Miguel Agustin Pro” because they felt it politicized an important religious figure. Miguel Agustin Pro was a Mexican Jesuit priest in the early twentieth century. Pro Juarez worked and studied in Mexico, the United States, Spain, Nicaragua, and Belgium. Miguel Agustin Pro returned to Mexico during the government’s repression of the Catholic Church. The 1917 Mexican Constitution drafted after the Mexican Revolution called for a secular state. As a result the government began persecuting the Church by confiscating property, deporting bishops, and capturing and killing clergy and supporters of



the Church in what became known as the Cristero War. Miguel Agustin Pro died a martyr after being captured and executed without due process.

The need to use Miguel Agustin Pro as the center's name came from earlier negotiations with Fr. Carlos Vigil, the Provincial. Fr. Vigil originally opposed any new projects from the Society of Jesus because there were already several and the number of members was diminishing. Fr. Vigil changed his mind when the idea for a human rights center had the support of 120 Jesuits, Fomento Cultural y Educativo, and other important organizations. Fr. Vigil imposed the condition that the Center be named after Miguel Agustin Pro because the martyr was denied due process and he understood that Miguel Agustin Pro was going to be beatified soon. However, as noted above, Bishop Alamilla and the other Bishops remained concerned that naming the center "Miguel Agustin Pro" would politicize an important religious figure and opposed the proposal. Their position was clear, they did not want any problems with the state and they did not want to politicize the image of Miguel Agustin Pro.

Despite this disagreement with the Bishops, the group went ahead with the support of Fr. Vigil. The human rights group was closely connected to Fomento Cultural y Educativo. It shared members with Fomento Cultural y Educativo and was, in fact, first located in Fomento Cultural y Educativo's library. Maldonado described the early meetings, "We were just three or four people meeting there [library] in the beginning that is really all it was." From the beginning, one of the other Jesuit members, Fr. Francisco Ramos, believed that a separation of the center was required. He believed the Center should be physically, legally, and economically autonomous. This independence would prevent the Center from implicating Fomento Cultural y Educativo in any disputes or disagreements that the Center might have with the state as a result

of its work. Financially however, the Center was dependent on Fomento Cultural y Educativo and a German Lutheran non-profit Brot für die Welt or Food for the World. Over time, the Center moved towards an independent direction.

The early member of Center Prodh had little experience with human rights and running a center. Maldonado described, “We thought four people working part time would be more than enough.” Slowly a few more Jesuits joined, working diligently at the Center. There was also a need to educate the staff on human rights. All members had little to no experience in human rights work and a general view on human rights. The Center’s staff began meeting with people from other human rights centers and developed their own human rights analysis to guide their practice. This all took place at a time when most people were unaware of what exactly comprised human rights issues and the role they played in society. People spoke of human rights issues, in other places such as Central America. Mexican society did not view human rights as an issue in Mexico. It was not until Rafael Rodriguez Castañeda’s 1990 article in *Proceso* that human rights came to light in mainstream discourses in Mexico.

Castañeda’s article, whose title translated to *Anti-Democracy and Human Rights Violations in the Name of Saving an Economic Project* (1992), was an in-depth look at a study by Center Prodh about the human rights violations that had been occurring throughout Mexico. These abuses were largely carried out to protect and advance the ruling party, its allies, and their economic agenda. The article’s impact was significant in that this was one of the first times in modern Mexican history that abuses by the government were actually communicated to the masses by a reputable and widely read publication.

*Proceso*, the magazine in which the article was published, was similar to *Time* or *Newsweek* in the United States. The article summarized and highlighted the findings of Center Prodh's human rights study. It began by describing how increases in violence against political opposition resulted in electoral gains for candidates of the ruling PRI party (Castañeda, 1992). The violations included everything from irregularities at the polls and threats of violence to beatings and murders. The article also described how thugs would infiltrate protest by opponents of the ruling agenda, inciting violence so their authorities could respond with force. Rodriguez Castañeda described how Center Prodh's study went beyond general accusations and actually contained very specific, detailed descriptions of human rights violations throughout the country. The article provided examples of how the study described events in detail, including information such as specific times, places, and persons involved. The combination of Center Prodh's detailed and comprehensive study on the gravity of the human rights situation in Mexico, along with the catalyst of Castañeda's article in the mainstream press, widely communicated human rights concerns into Mexican society.

The rest of the early stages of the Center consisted of fundraising, finding people who would be interested in the work, and learning more about human rights, in general. At first, hardly anyone knew of the Center and it received little attention and few visitors. This changed when Pablo Gonzalez Casanova, the dean of the Universidad Nacional Autonoma de Mexico, a prominent sociologist asked if the Center would write an article about human rights. The article was eventually incorporated into a book Gonzalez was writing. Fr. Maldonado and his colleagues saw this as an opportunity to gain publicity for the new Center. In preparing the

material for the article, Center Prodh staff's research explored how the religious perspective added to the field of human rights.

Human Rights, as it was understood by other organizations such as the CNDH, an autonomous agency funded by the federal government charged with investigating human rights abuses and promoting human rights in Mexico, was focused primarily on civil liberties and political rights. The Jesuit perspective added the question of social struggle to the human rights discussion. This perspective was directly reflected in the title of the article: "Human Rights: A new area of social struggle in Mexico."

After various discussion, the Center's staff was aware of the violence, murders, and other reports of other human rights issues in Mexico. As was the case with Accion Popular, the members of Center Prodh learned of abuses and repression occurring in all parts of Mexico. The staff visited some sites and this gave them a better understanding and context for the problem. When the Center was founded, it did not have its own attorneys. When there was a need for legal services, the Center relied on Corporativo Juridico, a public interest law center headed by a Jesuit. Given the size and makeup of the Center at that time, the work mainly involved improving the understanding of human rights among staff, analysis of current events, and dissemination of information regarding abuses and repression. In addition, the Center began cooperating with other non-governmental organizations from the beginning. Early partners included World Organization Against Torture (2008), American Watch, Human Rights Watch (2010), and Washington Office on Latin America. Although there was collaboration with these partners, Center Prodh remained in many ways unique.

Other human rights organizations that were working in Mexico at the time held a foreign perspective. One non-governmental human rights organization in Mexico, Fray Francisco de Victoria worked primarily on human rights issues in Central America. There was concern among the human rights community about the need to directly address human rights issues in Mexico. Maldonado recalled how the director of Fray Francisco de Victoria warned him, “As long as you talk about China, you won’t have any problems. The problem is when you start talking about people here; then you will have all the problems in the world.”

Another aspect of Center Prodh that became part of the Center’s character from the beginning was the manner in which it operated. In his 2014 interview, Maldonado described, “It was very clear from the beginning that we had to support organized groups, not individuals. We will make a bigger impact for change if we support groups who are organized and strong.” The downside of taking cases of individuals was that it was very time consuming and expensive, and it made little to no impact on the underlying fundamental issues, which caused human rights abuses in the first place. Instead, it was believed there should be a focus on those cases that had the potential to have a significant impact on the justice system, which enabled the human rights abuses to occur. Building on this approach, Center Prodh started developing its integral approach to litigating human rights cases.

Following an electoral fraud in the 1988 elections, an economic crisis and the ratification of the North American Free Trade Agreement, in 1994, some members of indigenous populations organized the Ejercito Zapatista de Liberacion Nacional, (EZLN) or Zapatista National Liberation Army. EZLN sought to vindicate indigenous rights, which had been jeopardized by recent developments. The rise of the EZLN was met with repression. Government authorities

began cracking down on the movement and those affiliated with it. This led to cases of detention of Jesuits, counterinsurgency and paramilitary attacks on populations seen as allied with the EZLN. These events brought several cases to the attention of Center Prodh. These were mainly focused on individual liberties and civil and political rights.

In the process, Center Prodh advocates began to recognize that a strategy for defending human rights cases in Mexico required more than just litigation in the courtroom. Action in the courtroom had to be accompanied by social mobilization, community education, as well as national and international publicity. If the case was not publicized, it would have remained an isolated incident to be resolved. In order to effect changes at the structural level, more complex and diversified action was necessary. Eventually this led to the important development of Center Prodh's integral approach. This led to the Center becoming an organization that the United Nations consulted on regional human rights issues, questions, and concerns. Next the Center took its first cases to the Inter-American Commission on Human Rights.

According to Maldonado, from a religious perspective, Center Prodh always had a Catholic Jesuit identity and this was clear even if this factor was not constantly in the spotlight. However, the educational and promotional activities had an autonomous character. The idea was to appeal to disenfranchised groups by focusing on rights linked to civil liberties tied to freedom of expression and assembly, instead of on religious grounds. Disenfranchised groups included peasants, blue color workers, and the urban poor. Center Prodh sought to be a legal shield for these groups by protecting their basic rights so they could continue their social justice efforts within their communities.

Center Prodh began its work as an offshoot of a Jesuit organization investigating human rights repression and violations prevalent throughout Mexico. It initially faced difficulties gathering support from heads of the Church. As support finally came, the Center started to develop a very unique approach to human rights practice. It started with no attorneys and a handful of part time staff. Nevertheless, its human rights work, documented in the article written for Gonzalez Casanova (1990), allowed the Center to gain notoriety and later this led to additional support. Through its experience with early cases, the Center developed the integral approach, which it continued to use in litigating its cases.

### **Center Prodh's Conception of Human Rights**

Center Prodh began with a staff that had limited experience and limited exposure to human rights issues. The original Jesuits came from other areas of the Church. Jesus Maldonado admitted that in the beginning during the late 80s "there was not much knowledge about human rights, but there was an intuition that this could be an interesting field where the Jesuits could give of great service to be involved in." As described in detail above, the Jesuit founders became involved in human rights after discussion at Action Popular meetings demonstrated that human rights issues were a persistent and nationwide problem. As the Center gained experience, there were slight modifications to the initial concept. However, the general idea remained constant. Given the Center's Jesuit background, Center Prodh's concept of human rights was understandably influenced by the Church.

In his interview, Edgar Cortez explained that a significant part of the Church's influence on human rights was derived from liberation theology as described in Chapter Two (Cortez, Interview, August 12, 2014). Liberation theology highlighted the rights of the poor and

interpreted the teachings of the Church with an aim to liberate the poor from unjust economic, social and political conditions. Accordingly, Liberation theologians believed society must create structures that promote improvement in these areas for the poor. Cortez pointed out that several of the Jesuits involved in the early days of Center Prodh were familiar with this theory so it naturally became incorporated into the Center's view of human rights (Cortez, Interview, August 12, 2014). Additionally, this ideology was appropriate given the significant economic, social, and political problems faced by disenfranchised communities in the region.

This liberal perspective of human rights, moreover, expanded upon what was commonly understood in the United States as human rights. A commonly understood view of human rights from a traditional perspective was focused on civil and political liberties, for example, the right to free speech, assembly, due process and things of this nature. In contrast, Center Prodh's concept of human rights became much more expansive, infusing ideas of liberation theology into its conception of human rights.

### **Liberation Theology and Human Rights**

Jesus Maldonado also stated that Center Prodh had begun with the tenets of liberation theology in mind. Several of those interviewed for this study also reflected the view that in the beginning there was a conception of human rights that included social, political, and economic rights. Cortez (Interview, August 12, 2014) explained there was always a concept of human rights that sought to include economic, social, and cultural rights (Interview. August 9, 2014). Similarly, Fernandez confirmed that from the beginning, an ideological perspective was incorporated throughout the work of Center Prodh that emphasized social, economic and cultural



rights, even when legal cases were largely involved with issues of civil liberties and political rights (Fernandez, Interview, August 9, 2014).

This expansive view of human rights worked to ensure that the inclusivity of social, economic, and cultural rights was always present in the Center's analysis. Cortez illustrated this point using the case of *Montiel v. United States of Mexico*, to be analyzed in Chapter Five.

The *Montiel* case had to do with civil liberty type of human rights issues, torture, arbitrary detention, and due process irregularities. However there were underlying social human rights issues, here environmental issues of deforestation. For this area, Center Prodh used the assistance of Greenpeace, who were more experienced with these matters. (Interview, August 12, 2014)

Brewer, the international Area coordinator for Center Prodh, expanded on this subject by describing the Jesuit view on human rights:

Reflecting the prioritization of the poor and of groups in a situation of vulnerability. Rather than seeing human rights “work” as a profession, the Jesuits view it as a “vocation” and an expression of love and service to our fellow human beings. (Interview, August 22, 2014)

Brewer also described how Center Prodh viewed human rights as

Indivisible and universal, based on the dignity of every human being. [Additionally, she noted that the human rights efforts of the Center were focused] on groups in a situation of vulnerability, principally women, migrants, indigenous people and victims of repression. (Interview, August 22, 2014)

## Human Rights in Mexico

As described above in the History of the Center, the very idea of human rights in Mexico was a relatively new concept at Center Prodh's beginning. At that time, Mexican society associated human rights violations with Central America or other parts of the world. It was not until the article by Rodriguez Castañeda in *Proceso* (1990) that human rights entered mainstream debates as a Mexican concern. This change, coupled with the wider liberation theology influenced concept of human rights, brought about what former director Maldonado called

A new battlefield for social justice in Mexico. (Maldonado Interview, August, 2014).

With respect to legal cases, David Velasco described the litigation process as Strategically litigating emblematic cases. (Velasco, Interview, August 29, 2014).

As previously described, Center Prodh selected legal cases based on their potential structural impact on the criminal justice system or on the human rights debate. This approach allowed for a number of individuals beyond the original victims to benefit from the Center's work. As Brewer explained,

Litigation enhances human rights for the direct beneficiary and also by publicizing human rights cases and principles, pressuring authorities to decrease human rights violations, and in some cases setting legal precedents. (Brewer, Interview, August 22, 2014).

Cortez similarly described the goal of the approach as

Attempting to obtain the maximum benefit for the victim as well as helping to bring to light the general underlying problems which lead to the case in the first place. (Interview, August 12, 2014)

By attempting to change the underlying problems that caused or made human rights violations possible, the hope was that there would be less of these violations in the future. After selecting emblematic cases, Velasco explained that Center Prodh staff met and brainstormed in order to determine the best strategies for actually litigating the case, within both the legal and social context in which the Center had to posit their arguments against human rights violations (Interview, August 29, 2014).

### **Integral Approach to Human Rights Cases**

While Center Prodh provided legal services and assistance to victims of human rights violations, this new battlefield for social justice expanded beyond the courtroom. This was precisely from where the idea for an integral approach to human rights emerged. In addition to the legal assistance to the victim, Cortez explained, Center Prodh also sought to have the

Victims participate in the process. (Interview, August 12, 2014).

This allowed the victim to learn, organize, and strengthen their process, empowering the individual and those in the community working to support the victim's case.

With regard to those other than the victim, Cortez noted that an integral approach included

Using international support, providing assistance and support to the victims and those similarly situated and empowering them to participate in the process. (Interview, August 12, 2014).

Banda provided additional details to the integral approach by noting activities, such as Developing seminars, workshops, and forums about the human rights topic associated with the case. (Interview, August 28, 2014)

Gonzalez pointed out that the goal of these social actions was always to

Generate processes that can serve as tools communities can use to vindicate their rights and defend themselves through the law. It was this the inclusion of this very deliberate communal dimension in the strategies employed by Center Prodh that, in particular, defined their integral approach to human rights practice. (Interview, September 15, 2014).

### **Contributions and Influence of the Center**

After 26 years in operation, Center Prodh, through its litigation and other programs had made many important contributions to human rights in Mexico—a fact repeatedly reflected in the interviews for this study. The Center’s approach integrated a dynamic and fluid process. Just as the situation in the Mexico caused the actions of Center Prodh to shift, so too did Center Prodh’s work inspire changes in the country’s attitude and engagement with human rights issues.

Even in its early stages, Center Prodh made important contributions. Perhaps the most important initial contribution was the simple fact of putting the issue of human rights on the table in Mexican society. The opening of this new ‘battlefield for social justice,’ was a significant contribution, particularly in a country that had previously denied having a problem. As described above, the issue of human rights in Mexico as a topic in the mainstream media largely emerged after Rafael Rodriguez Castañeda’s article in *Proceso*. This article, in a leading, reputable nationwide publication described the findings of Center Prodh’s study, which linked ruling party politicians with acts of repression and violence throughout the country. Maldonado recalled the risk and fear associated with this early contribution:

Salinas de Gortari, [the ruling party presidential candidate] was very tough, the whole situation was tough. So publishing this article, we were really putting ourselves at risk. I actually could not sleep that night because I realized the danger that we might be in.

(Interview, 2014)

Fortunately, for Maldonado and Center Prodh, no immediate harm came from the publication of the article.

In addition to addressing general issues related to human rights, Center Prodh's actions also led to public awareness of more specific human rights concerns. Of this Cortez noted, "Our cases and efforts published in the media underlined and illustrated the general underlying problems present in our society such as discrimination, lack of due process, and other topics" (Interview, August 12, 2014). In addition to bringing problems of human rights violations to light, the Center's efforts also brought opportunities and resources to expand its work. Cortez explained,

One thing that is dominant in this country is the use of the law and justice system as a weapon or tool of oppression. Our work showcased how the law can serve as a tool to strengthen and promote social change. (Interview, August 12, 2014)

Once the issue of human rights was on the table, more changes ensued, and Center Prodh made additional contributions to the field. Maldonado recalled how, following the publication of the article in *Proceso*, other small groups promoting human rights formed throughout the country. This reaction, led to the formation of other human rights centers, which were not limited to the private sector but extended to the government itself. Fernandez explained in his

interview that Center Prodh could be credited with influencing the creation of the Comision Nacional de Derechos Humanos (CNDH). As Fernandez noted:

It is true that the creation of the CNDH was a response to the assassination of investigative reporter Norma Corona [lawyer and president of the independent Human Right Commission of Sinaloa who allegedly was assassinated because she uncovered information connecting a power drug kingpin with the murder of 4 Venezuelan's and another Mexican lawyer (Poe, Pilatovsky, Miller, & Ogundele, 1994), and it is also possible that it came as a result of pressure from the United States to improve the human rights situation in Mexico. However, arguably both the government response and the pressure from the United States were a result of the publicity and attention that Center Prodh brought to the assassination of Norma Corona and the dire human rights situation in the country. (Interview, August 9, 2014)

Moreover, it was significant to note that Center Prodh did not only change the institutional make up of official and non-governmental human rights organizations, it also had an impact on human rights jurisprudence (Committee on Economic, Social & Cultural Rights, 1999). These significant contributions were specifically linked to the cases litigated. As will be discussed in detail in Chapter Five, legal cases like *Montiel v. United States of Mexico*, *San Salvador Atenco* and *Marcial* made important and meaningful changes to human rights in Mexico (Inter-American Commission on Human Rights, 2006). Once Center Prodh began litigating and winning cases, and gaining publicity, the impact on and Mexican jurisprudence and policy in human rights was noticeable. The Center's work resulted in legislative reform in areas including the re-characterization of the crimes of forced disappearance, femicide and torture.

Many of these changes, Velasco explained, came directly from Center Prodh's litigation of cases in the Inter-American Court, which resulted in verdicts calling on the Mexican government to make changes to the law, incorporating an international perspective of human rights (Velasco, Interview, August 29, 2014). Brewer pointed to a significant example from the *Montiel v. United States of Mexico* case discussed earlier. This focused on the change in the Code of Military Justice to require investigations of crimes committed by the military against civilians to be subject to civilian rather than military jurisdiction. Center Prodh also succeeded, according to Gonzalez, in decriminalizing the act of providing humanitarian assistance to illegal immigrants crossing through Mexico (Gonzalez, Interview, September 15, 2014). Additionally, Velasco explained that Center Prodh's work actually influenced important changes in the Mexican Supreme Court's interpretation of civil liberties. With these changes, Velasco noted, also came an improvement in the standards used to evaluate human rights issues, sentencing guidelines, and favorable precedent in areas such as torture (Velasco, Interview, August 29, 2014).

A contribution Center Prodh made outside the legal system was in promoting a culture of organized networking and cooperation between different organizations, both nationally and internationally. Fernandez described this as one of the most significant contributions Center Prodh made as it resulted in a permanent network of organizations to assist each other in their human rights work (Fernandez, Interview, August 9, 2014). This network, The National Network of Human Rights Organizations allowed for cooperation between human rights organizations so they could develop joint strategies to promote human rights in Mexico, more effectively and efficiently. Cortez spoke to one example of the effectiveness of working as part

of a network in the *Montiel v United States of Mexico* case, where Center Prodh worked with Greenpeace on environmental issues of deforestation relevant to the case. (Cortez, interview, August 12, 2014).

Another significant contribution of Center Prodh was the work that was done with women's rights organizations, in the aforementioned case of *San Salvador Atenco* (date). Cortez described how

Center Prodh was never an isolated organization. It always saw itself as a part of a wider network and assumed a role as part of a wider collective. (Interview, August 12, 2014)

This attitude led to an established network of international organizations, which worked on different cases and issues with Center Prodh. This network included organizations throughout Latin America, the United States, Canada and Europe. In fact, Maldonado credited Center Prodh with being the human rights organization in Mexico that sought actively to work with other organization as part of a wider network, confirming,

This was very much our idea. (Interview, 2014)

Center Prodh also made important contributions that directly had an impact on the public. Brewer noted,

The litigation and especially the education made the citizenry more aware of human rights and the mechanics available to defend them. This has an effect of empowering disenfranchised communities. (Interview, August 22, 2014).

Cortez, similarly observed that

Perhaps because of its influence from the Society of Jesus, there is an attitude to educate and empower the citizenry. (Interview, August 12, 2014)



Much like Center Prodh brought the issue of human rights itself into the main stream, it also brought attention to contemporary issues related to its broader interpretation of human rights. For example, according to Cortez, Center Prodh's integral approach to litigating cases raised issues related to the environment, particularly access to scarce natural resources such as water, communal land issues, labor issues, and economic inequality (Cortez, Interview, August 12, 2014). Hence, from the time of its inception, Center Prodh made important contributions both in the immediate field of human rights jurisprudence, as well as directly on issues public wellbeing. The integral approach, as noted earlier, was designed with precisely the idea of the Center having a widespread impact.

### **Major Strengths and Challenges**

Center Prodh's efforts and experience over the years allowed it to develop important strengths, which it has been able to use in litigating cases. However, like any other organization, the Center has also faced challenges along the way.

#### **Major Strengths**

An important strength that has played a central role in all of Center Prodh's efforts has been that of the Center's reputation, domestically and internationally. The issue of reputation has been an important strength in that it has been directly linked to the Center's credibility.

Maldonado observed,

I have spoken to lots of people, from different backgrounds, political views, and they all have a respectful view of Center Prodh. They all see it as an organization that is diligent and serious about its work. (Interview, 2014)

Similarly, Brewer added,

The litigation strength of Center Prodh has made it the most recognized case-based NGO at the national level. (Interview, August 22, 2014)

In fact, Fernandez affirmed, Center Prodh now has status at an international level as a respected authority in the area of human rights. The participants all agreed that reputation was important because in litigation as well as in its public relations efforts, a credible respected source was far more persuasive in advocating its position, particularly in very difficult contested terrains.

While Center Prodh initially relied on attorneys from other organizations, its litigation capability at the time of this study was considered one of its strengths. Brewer again credited the success of the litigation efforts with a favorable reputation. With regard to its clients, Brewer noted that a strong ability for litigation had allowed Center Prodh to secure releases and otherwise provide benefits and protections to victims through its successful efforts in the courtroom (Interview, August 22, 2014). Marroquin also described how Center Prodh's strong litigation ability has allowed it to

Sooner or later impulse modifications, will translate improvements in the area of human rights. (Interview, September 9, 2014)

Part of the strength in the litigation area also came from another strength: Center Prodh's ability to select the right cases. About this, Fernandez explained,

The center is very good at not only selecting the right cases but also handling them in a manner conducive to maximizing the impact the case could have. (Interview, August 9, 2014)

This he believed had made the Center's cases more visible, increasing the potential impact of the case on the larger human rights field in Mexico.

Another strength of the Center has been in the area of community education. Brewer noted,

As we have seen from the feedback we receive from the communities we serve, education is another strong area for Center Prodh. This feedback indicates that communities benefit from the workshops and training offered by Center Prodh. (Interview, August 22, 2014).

### **Major Challenges**

According to participant interviews, the most obvious challenge Center Prodh faced over the years was the constant struggle to obtain the necessary financial resources it needed to conduct its work. There was also, according to Brewer, an

Inability to provide services to all of the people that actually need the Center's assistance. (Brewer, Interview, August 22, 2014).

Diaz stated,

There is wide demand for Center Prodh's services given the unfortunate human rights situation in Mexico. While Center Prodh is an important organization, it is a small organization in terms of staff and economic resources. This makes it impossible for us to take a lot of cases. (Interview, September 1, 2014)

Center Prodh also faced challenges due to its relationship and affiliation to certain groups and individuals. Diaz explained,

Many Jesuits maintain relationships with people in the upper class, especially people with influence and wealth. (Interview, September 1, 2014).

These individuals were sometimes the very people in charge of companies or institutions who are accused of violating human rights. Cortez stated that a similar conflict existed even within the Church's hierarchy; in that even if Center Prodh was affiliated with the Church, certain members of the Church would not speak too loudly about human rights issues because they did not wish to jeopardize their power and prestige (Cortez, Interview, August 12, 2014). This internal conflict could become problematic, Fernandez noted, when more radical groups who might consider the assistance of Center Prodh might see the Center as functioning within the rules of a system responsible for the very causes of their struggle. The challenge for the Center then has been to maintain its autonomy, while it was associated with groups and individuals who may not share the same interest in advancing human rights.

Another challenge that Center Prodh faced threatened the Center's reputation. Fernandez explained that opponents of Center Prodh's efforts have attacked its reputation and credibility, in order to undermine the Center's power and influence. There were several examples of such conduct. In 1995, the government attempted to indirectly associate the Society of Jesus with the EZLN armed rebel movement. The accusation was not directed directly at Center Prodh, but Center Prodh was part of the Society of Jesus and two Jesuits were detained. Fernandez also noted that former president Ernesto Zedillo spoke publically against Center Prodh on several occasions. President Zedillo even went to the Provincial to request that he intervene and get the director of Center Prodh to "tone it down" Fernandez offered that as long as Center Prodh's activities threaten those in power, it was predictable that they would be subjected to this type of attack on their reputation.

While it is great that Center Prodh receives publicity, [he insisted] it is important for the Center that it is good publicity, that the information portrayed is accurate. (Interview, August 9, 2014)

Another challenge Center Prodh has faced came from the dynamic environment in which it carried out its work. It was a challenge, given the historical nature of the work, to develop processes that responded to the ever-changing contexts and situations that may emerge in the future. As social, political and economic conditions shifted and changed, Banda noted that the problems might be different than before and would require new methods, ideas, and approaches for dealing with them with them effectively (Banda, Interview, August 28, 2014). There was no question that after years of experience, Center Prodh had acquired significant strengths including its reputation and ability to litigate human rights cases effectively, offering new insights and possibilities to the question of human rights in Mexico. Nevertheless, there have been and will continue to be challenges the Center Prodh will need to constantly contend with in the years to come, by the very nature of their work. As a non-profit organization it has faced and has continued to face the huge challenge of working with scarce resources. Additionally, the Center has had to contend with inner conflicts in the church, as well as external attacks, meant to either undermine their efforts or derail the strengths of their reputation in the field.

## CHAPTER FIVE

### THE CENTER'S MAJOR LEGAL CASES

#### The Methodology of Integral Defense in Legal Cases

In Chapter Two, a literature review was developed based on Center Prodh's concept of human rights. The concept has referred to the interrelatedness and interdependence of some rights and their equal importance. In order to meet the challenge of insuring that all persons and communities were able to exercise these rights fairly, the Center has undertaken an in-depth investigation and analysis in addition to the implementation of the specific methodology.

The early attempts to establish this methodology arose from details set forth in the late 1980's document regarding the concept of integral human rights as referred to in Chapter Four. The document was entitled *Human Rights, A New Field of Social Struggle in Mexico* (Maldonado, Interview, 2014). In his interview, Diaz spoke about his experience:

When I became aware of how the methodology of 'integral defense' was used to respond to complaints of the need for intervention in human rights, I began to become involved in this field not only because of the dynamics of Center Prodh but because I was becoming aware of how human rights were being addressed in Mexico. (Interview, September 1, 2014)

Speaking about establishing the perspective of Integral Defense of human rights implied a certain approach to the law. Human rights have been recognized as positive rights; however, it was important that such recognition alone did not resolve the structural basis that gave rise to the violations of human rights. The Center raised the issue of how to establish not only the integral defense for the victims, but also that the defense of the cases should be an incentive for the

implementation of structural change that would insure those violations would not happen again. The Center decided to put into play and to try to accomplish not only that remedy which was personal but also that which was institutional.

At the beginning of the millennium, Center Prodh had the following objectives for the integral defense of cases:

- (1) To support the defense of persons and organized groups whose human rights were attacked by the state (by action or inaction).
- (2) To offer the judicial support necessary for the defense of human rights in significant cases or of collective character.
- (3) To have an active presence for the verification of the respect of human rights in the eventuality of social conflict.

At that time, it was necessary that an interdisciplinary response be made in two instances: when there were specific violations where the Center would try to untangle the origin of the structural and contextual causes, and where the particular and specific instances did not involve only particular and specific victims but which placed and documented consequences beyond those that are personal such as those affecting the family, the community, and social, cultural, and political organizations.

The proposition to make an alternative use of law for the defense of human rights and to strengthen the popular struggle has caused great theoretical tools and practices as well as critical discourses that have permitted the evidencing and questioning of the use of power, which, also from the perspective of the law, has excluded the interests of the majority (Darder, 2015). For example, it has developed educational principles from a critical perspective that questions the

status quo of domination that had imposed a system of antidemocratic values. Santos (2009) emphasized that legal controversies hardly ever resolve the root causes of the origin of the conflicts.

The integral defense of human rights developed by Center Prodh has had as its goal to motivate structural change in the law and to cause the integral defense of human rights to take advantage of the cases having wide effects so that they would have greater impacts on individuals and advance the wider resolution of the problem, which case could be an example. That has been how an intervention strategy would be conceptualized which sought to preserve and strengthen the enjoyment and fruitfulness of all rights across integral justice for the victims of the violations of human rights. We will illustrate this in the cases which are developed in this chapter.

One fundamental element of integral defense of human rights has been to construct the cases of paradigmatic problems which generate wider violations of human rights. This approach has been more clearly linked to a major political and epistemological shift that sought to rupture the binary and abyssal divide (Santos, 2009).

For Center Prodh it was an opportunity which allowed it to develop the participation and commitments of the affected in their rights in the creation of a solution of one's own problems. This approach created the communal conditions for empowerment, in that empowerment or liberation of the disenfranchised was not something that is given but rather a collective human process (Darder, 2009 date) which evolved in the relationship and joint labor for justice, human rights, and dignity. Banda told us,



Center Prodh not only accomplishes these educational and legal actions, but it also prioritizes the subjects on which it should focus, in our case: migrants, victims of social repression, women and indigenous; in this manner we attempt to insure a closeness with people and groups in serious situations of vulnerability in the nation. (Interview, August 28, 2014)

In essence, integral defense opened the necessary multidimensional space for the participation of Center Prodh's staff *with* the victims, family *and* community. The center strove to enact a defense strategy that was carried out through establishing a relationship of co-creation with those most affected by the violation of human rights. Each case was given an educational and pedagogical character of a type which would require our intervention such as organizations involved in the vigilance of human rights, such that included the participation and corresponding responsibility of those affected as protagonists of their own defense.

In this chapter, three major cases were analyzed in which Center Prodh made outstanding contributions in the area of human rights in Mexico. (The list of specific literature bearing on each of these cases can be seen in Appendix C.) The first one was the case of Teodoro Cabrera and Rodolfo Montiel, ecological peasants who were tortured by the Mexican army. The case was litigated in the Inter-American Court of Human Rights. The court handed down a sentence favorable to the ecological peasants, and it ordered the Mexican government to change its practices that violated human rights, such as by the use of military jurisdiction. The second case was about the brutal repression in San Salvador Atenco, in which the evidence proved sexual torture of women. That case, which commenced in 2010, was still being litigated before the Inter-American System of Human Rights at the time of this study. In addition to the violence

against women, the evidence addressed the criminalization of social protest. Finally, the chapter included analysis of the case of the indigenous woman, Jacinta Francisco Marcial. That case exhibited evidence of triple discrimination by the system of justice, in the areas of gender, ethnicity and social status.

The analysis for each legal cases has been presented in four sections:

- (1) Identification of the context and legal problem: Here the individual problem was addressed that represented the manner in which the government violated the human rights of the many;
- (2) Description of the case: This section set forth the facts of the specific case and how they were repeated;
- (3) The actions taken by Center Prodh: The manner in which the integral defense was applied to the specific problem before Center Prodh was described; and,
- (4) The Results of the case: This not only speaks to the direct effects that the litigated case brought for the victim as it was addressed, but also the indirect effects tied to structural changes or impact on crucial human rights issues.

More importantly, the analysis of cases presented here sought to also emphasize the unique approach of the Society of Jesus' orientation toward the social apostolic: that is, the search for structural change.

### **Military Abuses in Guerrero: Montiel and Cabrera, *ecological peasants in Guerrero***

#### **Identification of the Context and Legal Problem**

The case of *Montiel vs. The United States of Mexico* illustrated several legal and human rights problems in Mexico:

- (1) Military jurisdiction over human rights resulted in an abuse of the investigation process;
- (2) An inadequate justice system consistently failed to provide basic guaranteed rights and encouraged the use of torture, and
- (3) Military jurisdiction resulted in the violation of human rights and in the persecution of environmental activists.

Center Prodh was able to further the progress of human rights in Mexico by using an integral approach before the Inter-American Court of Human Rights, in order to advocate on behalf of Rodolfo Montiel Flores (Montiel) and Teodoro Cabrera Garcia (Cabrera). The *Montiel v United States of Mexico* case helped to illustrate a variety of structural problems that had commonly arisen in Mexico. By arguing such a case, Center Prodh was able to bring these issues before an international forum, through the Inter-American Court of Human Rights, in order to bring about meaningful change for many of those affected by these abuses.

Montiel and Cabrera, two environmental activists, were detained without warrants. They were held for five days and subsequently charged and convicted based on confessions obtained under torture (Arriaga, 2010). When the authorities finally agreed to investigate the allegation of torture, the original civilian agency investigator transferred the matter to his counterpart in the military jurisdiction. Not surprisingly, the military investigation concluded that there was insufficient evidence to support allegations of torture and that the investigation should be closed.

There were a number of reasons the military would not investigate human rights violations by its soldiers, according to the article *Mexico: Ruling Calls for Military Justice Overhaul* (2010). The two major reasons cited included the use of questionable evidence and the

lack of impartiality. Allowing military jurisdiction over cases of abuse committed by military personnel against civilians promulgated their repetition in as much as “military justice courts have characteristically maintained impunity and limited transparency in these cases” (Arriaga, 2012, p.11).

In 1996, in a move to counter a leftist rebel group, the “Ejercito Popular Revolucionario” in the state of Guerrero, the Mexican military entered a number of communities in that state (Arriaga, 2010). This action followed the Mexican authorities’ practice of dispatching the military for domestic crime-fighting tasks, most commonly in combating drug trafficking (World Report, 2011). This Mexican policy led to widespread human rights violations against civilian populations, according to the Amnesty International’s Report (2014) *Out of Control: Torture and other Ill-treatment in Mexico*. The title of the report described well the shocking increase in reported cases of torture and abuse across the nation.

As discussed in more detail below, the investigation into Cabrera and Montiel’s allegations of abuse relied on questionable medical reports prepared by military doctors. Investigations based on biased and questionable evidence failed to provide justice to victims of abuses. However, after finally convincing a judge to investigate the allegations of torture against Cabreara and Montiel, the investigation was transferred to military jurisdiction. The serious lack of impartiality on the part of the military was clear. The same organization responsible for the abuses was in charge of the investigation. The problem of military jurisdiction over human rights abuse investigations came to the attention of the United Nations (Arriaga 2012). In the Special Rapporteur’s Report on the Independence of Judges and Lawyers (2002), the United Nations Rapporteur affirmed “the lack of impartiality on the part of military tribunals and the

reluctance or unwillingness of civil witnesses to come forward before these tribunals are sources of concern.” The lack of an effective independent investigatory mechanism was only a part of the problem with the Mexican justice system’s treatment of human rights.

The fabricated crimes with which Cabrera and Montiel were charged were largely supported by confessions obtained from the environmentalists after they were tortured (Arriaga, 2010). The case highlighted how the Mexican justice system’s design functioned to accept, and even promoted the use of torture in criminal investigations. The United Nations Special Rapporteur’s Report on the Independence of Judges and Lawyers noted that judges in Mexico routinely accepted into evidence declarations without bothering to determine if these were obtained through torture, abuse, or coercion (Amicus Briefs in *Rodolfo Montiel and Teodoro Cabrera v. Mexico*, 2010). Even Mexico’s legislature expressly recognized the severity of the problem noting that the violations of civil liberties and due process in many cases were derived from the courts themselves.

A significant factor contributing to this problem resided in the evidentiary rules of the criminal justice system (Center Prodh, 2006). Simply, torture allowed prosecutors in this case to obtain admissible confessions. Under the Mexican justice system’s principle of “principio de inmediatez procesal” (effective access to justice,) statements made earlier by the accused were accorded more evidentiary weight. An example in Human Rights Watch publication *The Report, El cambio inconcluso: Avances y desaciertos en Derechos Humanos durante el gobiernos de Fox*” (*Achievements and errors in human rights during Fox Government*) illustrated the problem. A law enforcement officer detained an individual arbitrarily. Through abuse, torture or coercion the detainee was forced to sign a confession. The confession contained an admission

about catching the detainee in the act. This undermined any argument the detainee could later make that he was detained arbitrarily, without a warrant.

The signed statement, admitting that he was detained in the act supported the apprehension without a warrant, because the detainee was *in flagranti*. As for any other admissions that may have been contained in the coerced confession, they were accorded more weight than any of the later retractions by the detainee, because the confession was again accorded more evidentiary weight by virtue of being made earlier than any subsequent retraction. As long as judges continued to admit a coerced confession as evidence in criminal trials, the incentive persisted for the authorities to engage in such conduct in order to secure more convictions. This pattern was common in the Mexican criminal justice system and was in fact demonstrative of how Cabrera and Montiel were apprehended and charged.

In addition to structural problems in the criminal justice system that affected all suspects, there existed the deliberate persecution by authorities of specific groups, among these environmental activists (Arriaga, 2010). In this case, Cabrera and Montiel were persecuted because environmental activism was adverse to the interests of those who benefited from the logging activities in the forests of Guerrero.

At the time, logging activity that was highly profitable to a few local “caciques” (a term that refers to local wealthy landowners, roughly translating to barons) was destroying much of the forests in Guerrero (Wilkinson, 2010). Some environmentalists estimated that in the 1990s approximately 38% of the woods in the area were lost. These devastating effects were a threat to peasants in the area like Cabrera and Montiel. This led to an increasing number of protests against the logging activity and those who profited from the logging practice. As the protests

increased, so did military presence. The local barons claimed the peasants were taking up arms in the area that also contained a small leftist guerrilla movement and heavily armed drug traffickers. Under the pretext of combating the guerrillas and drug traffickers, the military suppressed the activities of the environmental activists. Cabrera and Montiel's case illustrated how environmental activists and others who opposed the interests of more powerful sectors of society were criminalized and persecuted by government authorities.

### **Description of the Case**

In 1995, the governor of Guerrero entered into a logging contract with Boise Cascade Corporation to cut down trees from the Costa Grande region. The excessive logging resulted in detrimental environmental impact on the region and surrounding area. Montiel and Cabrera, two Mexican local peasant environmentalists, formed the Organization of Farmer Ecologists of the Sierra of Petatlán and Coyuca of Catalán in 1988. The two environmentalists and their organization fought to protect the Petatlan and Coyuca de Catalan forests from the devastating environmental effects of excessive logging (Supulveda Iguiniz, 2012). Members of organization protested the logging activity by blocking roads and staging disruptive protests. The environmentalists' efforts finally succeed in stopping the logging activity. At the time, the Mexican military was in the area conducting operations against a small guerrilla movement and well-armed drug traffickers (Wilkinson, 2010).

On May 2, 1999 while Montiel and Cabreara were meeting with others at Cabreara's home, approximately 40 soldiers came to the area. The soldiers fired at the home and the occupants, including Montiel and Cabreara, who fled to the surrounding area. The soldiers eventually discovered where Montiel and Cabreara were hiding and set fire to the area. During

their attempt to leave the burning area, soldiers detained Montiel and Cabreara, without a warrant. The army contended that it was in the area as part of an anti-drug trafficking operation and that Montiel and Cabrera were captured during this operation. The army falsely accused Cabrera and Montiel of belonging to the armed guerrilla movement known as the Ejercito Popular Revolucionario.

The two men were first held in an improvised command post in the area. They spent the first day without food or water. Cabrera and Montiel were subjected to various forms of torture; including beatings, electric shocks, pulling on their testicles and jaw bones, threats of death, and maiming, in order induce them to confess membership in the EPR. The abuse caused the men to lose consciousness on several occasions. Two days later, the men were transferred by helicopter to a military installation where they were once again beaten and threatened with death. On the fourth day, the two men were transferred to the custody of Federal Public Prosecutors, a civil institution. After spending the night in jail, they were brought before a judge for the first time, on the fifth day after their capture. In their statements before the judge, both men described their torture. Montiel and Cabrera were eventually charged with illegal possession of firearms and cultivating marijuana. On August 28, 2000, Montiel and Cabrera were convicted of the illegal possession of firearms and marijuana cultivation charges.

Throughout the trial, Montiel and Cabrera sought an investigation into their torture allegations, given their confessions, admitted as evidence, were obtained under conditions of torture. Eventually, a judge ordered the Public Prosecutor's Office to investigate the allegations of torture. The Public Prosecutor's Office began inquiry but eventually ceded jurisdiction to its military counterpart. The military investigation relied heavily on three medical reports. A



military doctor wrote the first report, the second by a state doctor, and a third by a doctor from the attorney general's office. At the request of Center Prodh, there was a fourth medical examination conducted by a doctor from Physicians for Human Rights—Denmark. The Danish Doctor reported, "The physical effects are fully consistent with the allegations of the time and methods of torture used" (Brief for Harvard Law School Human Rights Program as Amicus Curiae, 2009, p.6). The report by the Danish doctor concluded that the two men were tortured, and they were still suffering effects from the torture. The military investigator largely disregarded the last report and concluded that there was absolutely no evidence to support the claim that military personnel had used coercion or violence against the two detainees to force them to confess to the commission of a crime or to provide information. The military investigation went on to state that because the medical reports did not support allegations of torture the investigation should be closed.

*Montiel and Cabrara* illustrated the difficult environment for activists in Mexico and highlighted the flaws in Mexico's justice system. These flaws have functioned to perpetuate abuses and provide impunity to those responsible. The Mexican government, moreover, has been permitted to use the military in the absence of a capable police force that can confront organized crime and drug trafficking (Arriaga, 2012). However, the cost has been very high, primarily due to military abuses. As the *Out of Control* report by Amnesty International (2014) noted, the use of the armed forces to combat organized crime led to a sharp and sustained increase in reports of human rights violations. The report further upheld the 2012 UN Committee against Torture observation, which noted an alarming increase in the use of torture during the interrogation of persons arbitrarily detained by members of the armed forces.

In addition to the widespread violations of basic rights, and torture, the procedural and evidentiary rules in the criminal justice system encouraged law enforcement to obtain confessions through torture. On the rare occasions where these incidents were investigated, the same actors responsible for the abuses were often the same who were permitted to conduct the investigations. As the case of Montiel and Cabrera illustrated, conditions permitted similar acts to continue occurring, with impunity.

### **The Actions Taken by Center Prodh**

Because the Montiel and Cabrera case was seen as representative of some of the common challenges to justice and respect for human rights in Mexico, successfully litigating such a case offered the possibility of meaningful change. Center Prodh utilized its integral approach to handle the case, through incorporating a systematic process of strategic litigation to maximize the impact of the litigation on larger human rights questions. Specifically, Center Prodh set objectives, tracked the progress, analyzed positive and negative effects, and involved all areas of the organization in the case.

Center Prodh was involved in the case from the early stages. It was the Center that arranged for an independent medical report by doctors from Physicians for Human Rights—Denmark. Center Prodh went on to represent Cabrera and Montiel in their case before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Center Prodh's integral approach served not only to bring justice to the victims, but to further human rights on a wider scale in Mexico. With this in mind, Center Prodh set specific objectives and metrics to evaluate the progress of these objectives and the case as a whole. There were three specific objectives set for the case:

- (1) To obtain a favorable judgment and reparations for Montiel and Cabrera;
- (2) To impact the advancement of the rights to access to justice, due process, personal integrity, specifically regarding persons or groups in vulnerable situations the areas of citizen security and criminal justice; and
- (3) To impact the advancement of the defense and promotion of the human rights of human rights defenders.

To measure the progress of these objectives, Center Prodh designed a chart outlining each objective, its expected result, relevant indicators, activities, and methods of verification. As part of its integral approach, the Center described three specific areas where it wanted Cabrera and Montiel's case to have an impact:

- (1) Public Safety: highlight the concern for public safety when the armed forces were used to carry out functions better suited to civil institutions.
- (2) Criminal Justice: promote awareness about the manner in which the criminal justice system was used to criminalize activism, how torture was used to obtain confessions admissible in court, and how military jurisdiction over investigations into human rights violations deprived victims of justice.
- (3) Abuses Against Human Rights Defenders: threats, harassment, arbitrary detention, torture and extra-judicial killings of human rights defenders.

Center Prodh also considered the case's impact from a geographical perspective. The Center considered what influence the case could be expected to have on local, national, and regional levels. At a local level, the case evidenced the abuses that human rights defenders and environmental activists suffered in Guerrero. Additionally, the case brought attention to the

effects of excessive logging in the state. Bringing attention to these issues could help improve the quality of life of the area's inhabitants. At the national level, the case exposed the human rights situation, specifically in the area of environmental activism, and personal liberties. Additionally, the case established a precedent and provoked modifications to existing laws and practices, to the benefit of all Mexicans. From a regional perspective at the Latin American level, the case formed part of the Inter-American Court's human rights jurisprudence. This important precedent would benefit future litigants. Additionally, the case could potentially benefit cases in the domestic courts of Inter-American member countries.

An integral approach also required considering the secondary effects of litigating the case, both positive and negative. Among the positive secondary effects, there was the possibility that publicity from the case could result in limiting or eradicating excessive and illegal logging in Guerrero's Petatlan forest. Additionally, the case could generate public support for cases involving environmental activists. A possible negative effect was that the Mexican government could partially or completely fail to abide by the Court's judgment. This would deprive the victims of obtaining justice. Even if the judgment was legally binding, given the Mexican government's current attitude towards findings from international organizations, there existed a very real possibility that the government would fail to comply fully with the sentence.

Center Prodh's approach also required the participation of different areas of the organization. The legal defense area was charged with the design and implementation of the litigation strategy. The communications area promoted the case through campaigns. The international section coordinated cooperation with foreign organizations that share similar

interests. The education section, documented and developed educational materials and workshops to disseminate and raise community awareness.

Another significant component of an integral defense included the active participation of the victims. Center Prodh believed that the participation of the victims and their families in the case was essential to the broader goal of promoting human rights. By including the victims as active participants, the process of defending human rights incorporated the input of the victims, as well. With this in mind, Rodolfo Montiel appeared before the Court and for an hour rendered his testimony during the trial at the Inter-American Court of Human Rights (Arriaga, 2010).

In addition to the wider goals of the integral approach, Center Prodh specifically sought justice for Cabrera and Montiel. On November 7, 2001 the two activists were released for humanitarian reasons by an executive order issued by then-President Vicente Fox (Supulveda Iguinez, 2012). However, despite their release, they were still forced into exile (Arriaga, 2010). Cabrera and Montiel received no formal recognition of their innocence of the fraudulent charges for which they were convicted, as well as denied a proper investigation into their allegation of torture and abuse. Since the Mexican legal system failed to effectively and independently investigate the allegations of torture and otherwise provide justice in this case, Center Prodh presented Montiel and Cabreara's case before the Inter-American Commission on Human Rights in 2004. Following Mexico's failure to provide justice, the Commission submitted the case to the Inter-American Court of Human Rights.

The Inter-American System for the protection of human rights consisted of two branches of the OAS: the Inter-American Commission on Human Rights and the Inter-American Court of

Human Rights. Their purpose was to keep watch over respect and safeguards of human rights in the Americas and, in particular, to supervise OAS member states' compliance with their international obligations acquired in the ratification of regional treaties on human rights (Arriaga, 2012). Only in the case that it became evident that a state was not fulfilling its duties in this matter might the victims of human rights violations bring their cases before the Inter-American System. This international forum was then considered the appropriate forum in which to litigate Cabrera and Montiel's case, in an effort to make a broader impact on human rights in Mexico.

### **Description of the Results**

On November 26, 2010, the Inter-American Court issued a holding in *Montiel and Cabrera*. The court condemned many of the actions by the military and issued statements, verdicts, as well as provided guidance on what Mexico would need to do as a state to conform to internationally recognized notions of human rights.

The Court ordered that the state conduct a criminal investigation into the acts of torture against Cabrera and Montiel. Additionally, the state should punish those responsible according to the law. The Court ordered that Mexico widely publish the judgment and pay reparations to the victims. The Court also ordered that Article 57 of the military code of justice be reformed to conform to international standards. It was this code that had allowed the investigation to be transferred to military jurisdiction.

One of the successful outcomes of using the integral approach was that the Court's holding benefitted Mexican society in general as the Court limited the military's jurisdiction by requiring changes to the military code. Additionally, the publicity of the case promoted awareness of the situation and abuses that activists were facing in Mexico. When Montiel was

asked what results he most wanted to see from the outcome of the case, he stated, “Justice would mean no more corruption. . . . It’s important that we have real change. We hope that something is done so that nobody has to suffer in the same way” (Arriaga, 2010).

### **San Salvador Atenco: Violence against Women**

#### **Identification of the Context and Legal Problem**

Another important case Center Prodh litigated was the case of San Salvador Atenco (Amicus Curiae Brief, 2006). The case took its name from a municipality in the state of Mexico that witnessed human rights abuses following a confrontation between law enforcement agencies and social protesters. In litigating the case domestically and internationally, Center Prodh aimed at bringing attention and changes to three areas:

- (1) Human rights violations specifically directed towards women;
- (2) Criminalization of social protests; and
- (3) Lack of access to justice before federal authorities.

The events in San Salvador Atenco involved one of the most notorious human rights issues in Mexico, human rights violations directed specifically toward women. Many accounts of human rights violations and violence towards women in Mexico have been widely covered in both domestic and the international media.

This case also aptly illustrated the common practice of criminalization of social protest . Local, state and federal governments constantly ignored the concerns of citizen's groups until the discontentment led to an intense polarization between citizens and government officials. Once a conflict reached a high pitch, the government used this moment of heightened tension to justify a strong response against the protestors. Often this involved attempts to silence and oppress

legitimate social protests, by using the laws and legal system to charge protesters with crimes (Arriaga, Hudlet, & Marroquin, 2009).

The San Salvador Atenco case illustrated the lack of access to justice for victims of human rights violations such as the women in this case. A major concern in this area centered on the inability or unwillingness of the government at all levels to address the problem in a timely or meaningful fashion. Litigating the San Salvador Atenco case allowed Center Prodh to significantly impact the advancement of human rights in Mexico by directly addressing some of the major obstacles that human rights faced in the country. Thru the pursuit of justice for the victims, Center Prodh aimed to improve conditions related to human rights in Mexico.

### **Description of the Case**

In order to better understand the issues in this case, a general background of the situation in San Salvador Atenco prior to the events giving rise to the case was necessary.

San Salvador Atenco was a municipality in the Mexican state of Mexico. In 2001, Mexico's federal government announced a plan to build an international airport to service the Mexico City metropolitan area in Texcoco, an area neighboring San Salvador Atenco and Mexico City (Arriaga, Hudlet, & Marroquin, 2009). Local farmers organized into a group called Frente De Pueblos en Defensa de la Tierra (FPDT) and protested against the construction of the airport, which threatened to displace them.

The government's response was to repress protests. However, in 2002, bowing to significant pressure from FPDT, the federal government abandoned its plans to construct the new airport. While FPDT succeeded in its goal of protecting lands of local farmers from government appropriation, relations between the local population and the government remained poor.



Following the dispute over the airport, the FPDT remained active in the community, taking on other local social issues. It was in this environment of tension that the next conflict arose.

In an attempt to address and resolve disagreements with the federal, state, and local governments, negotiations were commenced between the FPDT and government representatives. In early 2006, the government failed to adhere to various agreements entered into during the negotiations. Disputes between public officials and the FPDT and members of the local community followed. As a result, FPDT members abducted and later released a public official. During this time he was being held, the public official was permitted to maintain communication with his government agency.

In May 2006, several local vendors became upset over an urban improvement plan that aimed to reorganize Texococo's historic district (Arriaga, Hudlet & Marroquin, 2009). As part of this plan, local flower vendors were no longer permitted to conduct their business in the local marketplace, as they had been doing for years. This resulted in confrontations, when police attempted to remove flower vendors from the area. The flower vendors sought the assistance of the FPDT to initiate a dialogue with the local government, in order to attempt to negotiate and resolve the dispute. The flower vendors sought to obtain temporary permits that would allow them to sell in their regular locations during busier days. Among these busy days was May 3, which celebrated the Catholic holiday of Santa Cruz.

On May 3rd, 2006, local and state police forces acting under orders from the government of the state, attempted to prevent flower vendors from accessing the area where they regularly conducted their business. The situation escalated into violence, pitting the flower vendors, other

vendors, their supporters and members of the FPDT against the police forces. Police forces entered a private residence and arrested several sympathizers of the protesters.

To protest unlawful entry and arrests, the flower vendors and their allies blocked a nearby highway. In the early morning hours of May 4, 2006. Using the justification of reestablishing public order, approximately 2,500 state and federal police officers, along with several municipal police officers, descended on San Salvador Atenco. During the operation, the police arbitrarily arrested more than 200 people, including innocent bystanders.

Forty-seven of those arrested were women and twenty-six reported suffering various forms of sexual abuse including rape, at the hands of police officers. The women reported that police officers beat and kicked them, grabbed and bit their breasts, touched their genitals, forced them to perform oral sex and raped them. The physical abuse took place while the women were being transported to a local detention center. The physical abuse was accompanied by threats of additional violence, including threats to kill them or make them disappear.

In addition to the sexual abuse against the women, there were other human rights violations. The CNDH reported incidents of arbitrary arrests, cruel and inhumane treatment, warrantless entries into dwellings, unlawful detention, and torture. After the confrontation, the authorities brought criminal charges against several FPDT members and other protesters including Ignacio del Valle Medina, Hector Galindo Gochiocoa, and Felipe Alvarez, whose cases would end up in the Supreme Court.

The cases associated with Ignacio del Valle Medina, Hector Galindo Gochiocoa, and Felipe Alvarez came before the Supreme Court Under Article 97 of Mexico's constitution, the Supreme Court has the power *Sua Sponte* to investigate abuses to constitutional rights (Arriaga,

Hudlet, & Marroquin, 2009). In its 2010 holding, which addressed the constitutional violations against Ignacio del Valle Medina, Hector Galindo Gochiocoa, and Felipe Alvarez during their arrests and trials, a divided Mexican Supreme Court ordered the release of the three protesters and nine others (Aranda, 2010). The majority opinion based its holding on lack of sufficient evidence to prosecute the defendants for the crimes of which they were charged and various procedural irregularities. The majority opinion stated that the prosecutions of these individuals were motivated by their political views and associations.

The Mexican Supreme Court also heard a related case arising from these events that addressed to what extent high-level officials were responsible for the abuses that took place in San Salvador Atenco (Aviles, 2009). Among the officials in this case was the governor of the state of Mexico, Enrique Peña Nieto and the federal attorney general, Eduardo Medina Mora, as well as ten other mid to high-level officials. The Mexican Supreme Court exonerated all but one of these officials of any responsibility. The decision stated that the higher-level officials could not be held responsible for the conduct or civil rights violations committed by police officers and lower level commanders in this matter. Similarly, the human rights violations directed at women, criminalization of social protest and lack of access to justice demonstrated by the events in the San Salvador Atenco continue to prevail in many other instances in Mexican society without redress.

An important aspect of human rights violations directed specifically against women was the nature of the target of these violations. As the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) recognized in its General Recommendation, these abuses were based on gender. The violence was directed at a woman not only as an individual,

but because she was a woman. This attitude was supported by a perspective that objectifies women (Arriaga, Hudlet, & Marroquin, 2009). Additionally, gender inequalities introduced a power relationship. As feminist scholar Catharine MacKinnon (1982) observed, crimes of sexual violation were determined not only by gender, but also a power relationship. In the context of social protest like in San Salvador Atenco, the common attitude of objectifying women and the disproportionate power relationship are coupled and further intensified by a view that social protesters are the enemy. Instead of viewing protesters as fellow citizens legitimately exercising their rights, the authorities and law enforcement viewed the protesters as an enemy meant to be defeated. During protests, state agents perceived women aligned with social movements as enemy objects of a subversive group meant to be conquered or suppressed. The UN Rapporteur (1998) on violence against women described further how sexual violence against women was used to send a message of castration and emasculation in order to demonstrate victory over a group of men who have failed to protect their women.

Human rights violations directed at women have been a prevalent issue in Mexico. The UN Rapporteur (2006) reported that Mexico had one of the highest incidences of rapes reported in the world. According to a 2004 study, an average of 13.3 cases of rape were reported for every 100,000 women. It was estimated that the actual number may have been much higher, given that many rapes go unreported. The problem extended to all sectors of society, including the police and military.

Aside from the events in San Salvador Atenco, there were numerous other reports of state agents violating human rights by abusing women. In February 2002, eight soldiers with the 41st Infantry Battalion in Guerrero raped 17-year-old Valentina Rosendo (Nobel Women's Initiative,

2014). Another example was from July 2006 in the state of Coahuila, where 20 soldiers beat and raped 13 women (Human Rights Watch, 2007). These were just two other examples of a widespread problem that the San Salvador Atenco case helped to highlight in Mexico.

Authorities arrested and prosecuted several protesters in San Salvador Atenco. As discussed above in the related case before the Mexican Supreme Court, a number of these prosecutions were plagued with civil rights violations and other abuses. The motivation behind these prosecutions was not to enforce the law but to suppress dissent and opposition, by using the law as a weapon. The practice of criminalizing social protest, like human rights violations directed at women was another prevalent problem.

Historically social protest has been tied to strengthening the democratic process by facilitating deliberation and consensus over public policy issues. Additionally, collective action allowed marginalized groups to bring attention to their issues. In fact, many of the current human rights protections were the product of social protest and collective action.

Notwithstanding the legitimate purpose of social protest as a tool to participate in a democracy, the state, more often than not, has viewed the situation as a conflict between the state and subversive elements. The state then has attempted to resolve the conflict through confrontation. By characterizing acts of protest as crimes, the state has sought to transfer the social conflict from the political arena to the criminal arena. By prosecuting protesters with charges such as “obstruction of public transit pathways,” “destruction of federal property” or “kidnapping with intent to blackmail” and leaving out any formal charges related to political dissidence, former Mexican presidents Vicente Fox and Felipe Calderon made the claim that in Mexico there were no political prisoners (Reygadas & Fontanot, 2012).

The practice of criminalizing social protest, however, was not limited to Mexico and has received widespread criticism. In the United States Supreme Court case of *Adderley v. Florida* (1996), Justice Douglas described the legitimate function of social protest and the state's troubling response.

Conventional methods of petitioning may be, and often have been, shut off to large groups of our citizens. Legislators may turn deaf ears; formal complaints may be routed endlessly through a bureaucratic maze; courts may let the wheels of justice grind very slowly. Those who do not control television and radio, those who cannot afford to advertise in newspapers or circulate elaborate pamphlets may have only a more limited type of access to public officials. Their methods should not be condemned as tactics of obstruction and harassment as long as the assembly and petition are peaceable, as these were. (*Adderley v. Florida*, 1996)

Similarly, the Inter-American Commission on Human Rights (2006) stated that governments cannot simply invoke restrictions on freedom of expression such as “maintaining public order” as a tool to suppress fundamental rights.” Unfortunately, the state engaged in this exact conduct.

The criminalization of social protest has had two main adverse effects on human rights. First, it unjustly punished those who advocated their rights, while those responsible for the abuses enjoyed impunity (Arriaga, Hudlet, & Marroquin, 2009). The charges brought against these persons often relied on insufficient evidence. For example, following the events in San Salvador Atenco, 12 people were arrested and held on insufficient evidence, accused of a kidnapping they did not commit. Many of these were simply neighbors or bystanders caught up

in the confusion during the police operation. The San Salvador Atenco facts, therefore, illustrated this common problem in Mexico.

The third issue representative of the problems with human rights in Mexico, also illustrated by the San Salvador Atenco case, was a lack of access to justice. As discussed above, protesters like the ones in San Salvador Atenco were prosecuted on falsified charges, while authorities responsible for human rights violations enjoy impunity. The Mexican justice system consistently has failed to provide solutions to these abuses. Six years after the events in San Salvador Atenco, not a single police officer had been punished and no one in the chain of command, including the former governor of the state of Mexico and now the current president, Enrique Peña Nieto, was held in any way responsible (Reygadas & Fontanot, 2012). In fact in 2009, the Mexican Supreme Court absolved several high-level officials, including Peña Nieto, from any wrongdoing (Aviles, 2009).

This lack of access to justice was seen in related areas outside social protest contexts as well, specifically concerning the rights of women. In 2008 a special section of the federal attorney general's office was reorganized to deal specifically with crimes against women, the *Fiscalia Especial Para la Atencion de Delitos Relacionados con Actos de Violencia Contra las Mujeres en el Pais* (FEVIM) or Special Prosecutor for Crimes Related to Acts of Violence against Women (Reygadas & Fontanot, 2012). The special prosecutor produced dismal results. From 2006 to 2008, FEVIM initiated 220 investigations, of these 55 were later dropped because it was deemed that the FEVIM was not the "competent authority for the case". Of the remaining cases, only four went thru the FEVIM's entire process, and only one resulted in a warrant being issued.

Engrained negative attitudes towards women were significant causes for the lack of access to justice. In its investigation of a string of murders of women in Ciudad Juarez, the Inter-American Commission on Human Rights (2003) observed a prevailing attitude that women were to blame for rape and violence because they put themselves at risk due to their manner or dress or for being loose or acting like prostitutes. These attitudes prevailed and extended to the highest levels. In June 2006, Enrique Peña Nieto, Governor of the state of Mexico during the San Salvador Atenco conflict replied to allegations of abuse against women by stating, “The issue needs to be seen in context because the manual of radical groups instruct their members to claim they were raped”. Given these attitudes towards women, it has not been surprising that the rare examples where victims of human rights violations did receive some form justice involved male victims.

Rare has been the case when victims of human rights abuses received justice from domestic institutions. One such example was that of the group of protesters in San Salvador Atenco, whose case went all the way to the Supreme Court. However, it was not until the Supreme Court heard their cases that these individuals were released (Aranda, 2010). At all lower levels of the justice system, the courts failed to recognize and respond to the irregularities and abuses to civil liberties. In a rare victory for victims of human rights abuses, the Supreme Court, in its majority opinion in the case of the protesters, observed that the criminalization of social protest demonstrated the unfortunate attitude that the state held toward the rights to personal integrity, freedom of expression and assembly. Moreover, human rights violations directed at women, the criminalization of social protest and the lack of access to justice are not



limited to the victims of San Salvador Atenco. These problems have persisted in modern Mexican society and many others continue to fall victim to these abuses.

### **The Actions Taken by Center Prodh**

Because the case of San Salvador Atenco involved three major concerns of human rights in Mexico, its litigation using an integral approach had the potential to result in significant improvements. Center Prodh became involved at the very early stages of the case. A few days after the events in San Salvador Atenco, Center Prodh sent an investigative team to the location in order to gather facts. Members of the investigative team met with victims, witnesses, and even some police officers who participated in the acts and discussed their roles but wished to remain anonymous. Using some of this information along with photos and video from the conflict, Center Prodh issued a press release on May 10th detailing the preliminary findings of its investigation (*Atenco: Six years of impunity for sexual torture against women*, 2012). By quickly bringing public attention to the events, Center Prodh highlighted the importance of the problem and brought attention to the victims, thus putting a sense of urgency on addressing the abuses and underlying causes. The public awareness aspect of the integral defense continued throughout Center Prodh's handling of the case.

From a litigation perspective, Center Prodh eventually took on the representation of 11 of the women who suffered abuses at the hands of law enforcement. The Center represented the women in their legal fight for justice at both the national and international levels. In 2008, after two years of failing to receive justice at the national level, the 11 women represented by Center Prodh presented a petition before the Inter-American Commission on Human Rights.

Other related legal work by Center Prodh included submitting two Amicus Curiae (Friends of the Court) briefs for other cases arising from the events in San Salvador Atenco that went before the Mexican Supreme Court. The first for the case where the Supreme Court using its constitutional authority under Article 97 was investigating civil rights violations that occurred during the conflict in San Salvador Atenco. Center Prodh submitted the second Amicus Curiae brief (2010) in the case where the Court later ordered the release of several protesters who were arrested and convicted on falsified charges. The second Amicus Curiae brief served as an example of the impact Center Prodh's actions could have. When the Supreme Court announced its decision, the protesters were released and the Court formally recognized the state's conduct of criminalizing social protest (Aranda, 2010).

As part of its integral approach, Center Prodh also formed strategic alliances with other interested non-profit organizations. For example, Center Prodh, entered into an inter-organizational agreement with the Latin American Committee for the Defense of the Rights of Women. This agreement allowed the two organizations, with an interest in defending the human rights of women to contribute personnel and experience towards a common cause.

The Center's integral approach once more required the participation of those affected by human rights violations. With this in mind, Center Prodh actively included the victims of San Salvador Atenco in its campaign for justice. One testament to this approach of empowering victims is a book published by Center Prodh in 2012 entitled *Atenco: 6 años de impunidad, de Resistencia (Atenco: 6 Years of Impunity, or Resistance)*. The book began with a Prologue from Nobel Prize winner Jody Williams and documented stories of the victims and their continuing struggle for justice. Included in the book are the firsthand accounts from the victims themselves,

their opinions, and hopes for justice. Through an integral approach, instead of yielding to injustice and impunity, the victims of San Salvador Atenco took an active role in the movement to defend their rights.

The integral defense of the San Salvador Atenco case involved action on many fronts. This included representing many of the victims in their judicial proceedings, forming a strategic alliance with another non-profit, submitting Amicus Curiae briefs in related cases, and including the victims in its efforts. This comprehensive action again increased the chances of bringing about an improvement to the human rights situation in Mexico, particularly for women.

### **Results in Terms of Women's Rights**

At the time of this study, the San Salvador Atenco case was pending before the Inter-American Court of Human Rights. As previously discussed, ingrained sexist attitudes about women have created an atmosphere in the Mexican legal system that has led to injustice for the victims and impunity for those responsible. Center Prodh's integral defense of the case, however, has generated some positive results. First, the case was brought before the Inter-American system, and at the time of this study the victims were waiting to have an international tribunal address their concerns. Through the Center's approach to empowering victims, the women of Atenco were an important part of the continuing fight for human rights in Mexico. Additionally, the Mexican Supreme Court's 2010 decision was also an important step for two reasons. First, the court expressly condemned the state for its criminalization of social protest giving the issue high profile attention and creating a significant precedent in Mexican jurisprudence. Second, the court's decision made some progress in improving access to justice, in that at least one domestic institution provided some, even if minimal, redress to some of the

victims. The impact of Center Prodh's efforts to bring public attention to the case also opened an international front in this fight for justice.

In 2008, Spanish citizen Cristina Valls a victim of the abuses in San Salvador Atenco represented by non-profit organization Women's Link (2011) filed a complaint with Spain's National Court, asserting the court's universal jurisdiction over human rights abuses. The complaint before the Spanish court brought some hope for justice to the victims and highlighted the impunity enjoyed by the perpetrators of the abuses, under the domestic legal system. The San Salvador Atenco case also received international attention from the United States Congress. In May 2008, several members of the U.S. Congress addressed a letter to then Governor of the state of Mexico, Enrique Peña Nieto and the federal attorney general, Eduardo Medina Mora, expressing concern for the allegations of abuse and human rights violations. The letter urged that all evidence in the case be used to identify and file charges against those responsible and that the Mexican government effectively implement recommendations issued by the CNDH. The case also received substantial support from individuals around the world, as evidenced by the 15,000 letters the CNDH received from supporters.

Undoubtedly the victims of San Salvador Atenco continue to face significant challenges in receiving justice. At the time of this study, sexism still prevailed, negatively impacting attitudes towards women and a justice system that ignored abuses, punished those who exercised their civil rights, and exonerated the perpetrators of abuses. However, using an integral approach in handling this case, Center Prodh was able to secure some victories for the victims and continued to provide hope that someday justice would prevail in responses to human justice violations suffered by these women and countless others across Mexico.

## **Triple Discrimination: The Case of Jacinta Francisco Marcial**

### **Identification of the Context and Legal Problem**

Like the San Salvador Atenco case, the case of Jacinta Francisco Marcial illustrated the prevalent problem of the criminalization of social protest in disenfranchised communities. The Mexican justice system has consistently failed to prosecute crimes and, thus, protect the public welfare. That same system has been surprisingly efficient in prosecutions when it has utilized the law as a weapon against social protest. The Marcial case also illustrated discrimination and specifically, the concept of triple discrimination based on ethnicity, gender, and social status. On a positive note, the case was a rare example of an instance where a victim succeeded in receiving compensation from the government for abuses suffered.

The almost unbelievable facts in the Jacinta Marcial case demonstrated just how brazen government agencies could be in the practice of criminalizing social protest. The government arbitrarily detained, charged, and convicted, three middle-aged poor, indigenous women of kidnapping six members of an elite law enforcement unit. The women suffered triple discrimination throughout the criminal justice process. After a lengthy term of wrongful incarceration, Jacinta Marcial (Marcial) was awarded damages for the abuses sustained.

### **Description of the Case**

The events leading up to Jacinta Marcial's case took place in the town of Santiago Mexquititlan in the state of Queretaro (Rocha, 2009). Santiago Mexquititlan had a large Otomi indigenous population. In Santiago Mexquititlan and its surrounding area there were approximately 13,000 people who spoke the Otomi language of nha-nhu. The law enforcement agency involved, Agencia Federal de Investigacion, (AFI) (Federal Agency of Investigation),

was subsequently dissolved. The AFI was tasked with investigating and prosecuting federal crimes. It was partially modeled after the United States Federal Bureau of Investigation (McKinley, 2008).

On March 26, 2006, six plain-clothes agents of the AFI arrived at the local flea market in Santiago Mexquititlan, claiming to be there to investigate the sale of pirated goods (Rocha, 2009). The agents then began to confiscate and destroy some of the merchandise. A group of the affected local vendors surrounded the agents and demanded to see their identification and warrants authorizing the intrusion. The agents had no warrants and the local vendors continued protesting the intrusion. The agents then contacted the local police force and a regional representative of the AFI office. Upon the arrival of the AFI, local authorities and vendors discussed what had happened and the parties reached an agreement. AFI agents agreed to replace the damaged and destroyed goods and leave the area (Fray Jacobo Daciano Human Rights Center, 2009).

The AFI agents returned with confiscated merchandise from other similar raids and offered these products as replacements. The local vendors recognizing that this was not their merchandise again voiced their discontent. After further negotiation, the authorities offered to pay cash for the damages AFI agents had caused. Additionally, because the agents had to leave to retrieve cash for the payment, they offered to leave one of the agents behind at the flea market as a guarantee that they would return. It was the authorities that had offered to leave the agent behind and he was not harmed nor restrained. He maintained his weapons and to cell phone to communicate, while he waited.

A few hours later the other five agents returned with the agreed to payment, accompanied by other authorities and a large crowd. The large and crowded scene caught the attention of bystanders and other vendors not connected with the earlier events. Among those curious onlookers was Jacinta Marcial, who sold soft drinks in another part of the flea market. Jacinta was not a victim of the AFI intrusion nor was she present when the negotiations took place. She only stopped to watch the large crowd that gathered when AFI agents returned with payment for the other vendors. As she was standing nearby observing, a reporter from a local newspaper snapped a picture for his story.

Four months later, a group of people in civilian clothes went to Jacinta's home and asked that they accompany her to the state capital to testify about a tree that was illegally cut down (Rocha, 2009). Absent of any suspicions, Jacinta agreed. It was after arriving and struggling with the language barrier that Jacinta became aware that she and two other co-defendants, also Otomi women, were being charged with kidnapping. Jacinta and her co-defendants primarily spoke the Otomi language of *nha-nhu*. The women spoke and understood little Spanish. This language barrier contributed to the confusion and feeling of helplessness that Jacinta felt throughout her ordeal.

In order to contextualize Jacinta's situation as an indigenous woman, it was important to understand some general background of indigenous people in Mexico. There are approximately 62 indigenous ethnic groups in Mexico, representing approximately 10% of the population (Federico, 2008). Because of history, economics, and discrimination, this population was largely marginalized compared to mainstream Mexican society. Indigenous people were usually identified as the descendants from the original inhabitants of the area that is Mexico and who

spoke their original languages. This was in contrast to the mestizo majority, people who were of mixed indigenous and European descent and spoke Spanish.

The Mexican Constitution contained some protections for indigenous minorities. Under Articles 2, 14 and 16 of the Mexican Constitution, indigenous persons who were defendants in a criminal proceeding had the right to a translator during the judicial process. The right attached the moment the defendant was detained and was expansive. The translator was not limited to translating language but must also assisted in communicating with the defendant such things as what was transpiring and how the process was affecting his or her rights. Despite the availability of these protections, Jacinta's trial was plagued with a multitude of violations and irregularities.

Jacinta was appointed a public defender who failed to secure a translator for her. Not only were her constitutional rights violated, but the person who should have been defending her failed to ensure that she receive the most basic of procedural protections. Without a translator, Jacinta suffered a significant disadvantage at trial. Not only did she have great difficulty understanding what was said, there was no way she could have known exactly what was going on.

The prosecution, often incapable of prosecuting those who presented a genuine risk to society, worked quickly in securing a conviction. Naturally, because Jacinta had not kidnapped anyone the prosecution's evidence was false, inadequate, and contradictory. The prosecution relied on the picture in the *Noticias* newspaper in 2008, in which Jacinta, a bystander appeared in the background. Additionally, the prosecution relied on written declarations from AFI agents present that day. The prosecution also used additional declarations from these and other local police taken 39 days after the events. This second set of declarations identified Jacinta and her



co-defendants. A declaration from one of the AFI agents stated that Jacinta had threatened to “burn and lynch” him (Center Prodh dossier, 2009). The prosecutions’ evidence consisted of the newspaper photo and the declarations of the authorities involved. Jacinta’s difficulty in communicating during her trial illustrated that she could not speak or understand Spanish. Accordingly, it was difficult to imagine that the AFI agents who only spoke Spanish could have overheard or understood anything Jacinta may have said, assuming she was near them. However, the judge failed to consider this fact.

The judge also gave no evidentiary value to testimony that exculpated Jacinta. The reporter from *Noticias* who took the picture testified that while he was at the flea market, he did not see any AFI agents that appeared to be deprived of their liberty. Other witnesses testified that Jacinta was at her stand selling soft drinks during the entire time of the dispute between AFI agents and the local vendors, and that she had only left to get a shot at a pharmacy. On December 19, 2008, without considering this testimony, the judge convicted Jacinta and her co-defendants of kidnapping, with the aggravating factor that the alleged kidnapping victims were government employees. She was sentenced to 21 years of prison and ordered to pay a fine. Her co-defendants were also convicted.

The case of *Jacinta* was emblematic because it involved serious human rights issues in Mexico, including the adverse environment, the many challenges indigenous people face in the criminal justice system, and the criminalization of social protest. The case also illustrated a common victim of these circumstances. In a 2010 article in the respected Mexican newspaper *El Universal*, the problematic situation that indigenous people faced in the country’s criminal justice system was highlighted (Alcantara, 2010). The article cited a 2007 OAS study that

described how indigenous persons in the criminal justice system were lost because they did not understand Spanish and lacked access to translators. Additionally, arbitrary detention like that of Jacinta Marcial, was common as well as were lengthy terms of pretrial detention. The report also found that torture and maltreatment were commonly used to obtain confessions, for example as in the case of *Rodolfo Montiel* discussed earlier. Among the most common complaints of imprisoned indigenous persons were physical mistreatment while in custody, arbitrary detention, warrantless entries into homes, inadequate public defenders, and lack of translators.

The consistent failure of the state to adhere to required procedural protections such as providing translators placed indigenous groups at a significant disadvantage. The problem was compounded by the fact that many indigenous persons were poor. With insufficient resources to retain more qualified attorneys, indigenous criminal defendants were forced to rely on public defenders, which were often, overworked, less skilled and often failed to assert their client's rights. The problems of indigenous populations surely were not always tied to another issue common to the case of *Jacinta* and *San Salvador Atenco*, the criminalization of social protest. *El Universal's* article, however, described that a 2007 OAS study found many cases where legitimate protest activity by the most marginalized was arbitrarily criminalized—often without adequate evidence.

The *San Salvador Atenco* case discussed above was an example of the government's use of the criminal justice system as a weapon against those manifesting discontent or otherwise expressing their point of view thru legitimate exercise of their civil liberties. On the other side of the spectrum was Jacinta's case and the cases against her co-defendants which illustrated the extreme version of this practice, where an innocent person completely unconnected with the

protest activity was nevertheless targeted, arrested, and convicted solely based on the government's assumption that she was associated with the protesting group. In cases like these, the government could target anyone believe to be associated with a movement, in order to discourage future protest or expression of discontent from the community.

Individuals like Jacinta were even more at risk of becoming victims of this practice because of the practice of triple discriminations (Arriaga, 2010). In this instant, the victim faced discrimination based on gender, ethnicity and social status. A review of the facts and the prosecution's evidence suggested that essentially the state used a scapegoat to punish a community for standing up to the abuses of AFI agents. The prosecution relied on a newspaper photograph and false and contradictory declarations from AFI agents and other law enforcement officials. In selecting a scapegoat for its reprisal, the state unsurprisingly used triple discrimination and selected a member of one of the most marginalized groups, a poor indigenous woman.

The case, however, also provided an opportunity to bring attention to these longstanding human rights issues, in order to call for change. The case was emblematic and illustrative of the severity of both issues. The fact that the state secured a conviction on an unbelievable set of facts such as those in this case demonstrated the seriousness of the situation. The state was successfully able to try and convict three middle-aged women, vendors at a flea market, of kidnapping six armed members of the AFI. The facts of the case were also conducive to provoking public indignation and demands for change. For these reasons, Center Prodh saw Jacinta's case as an opportunity to make an important contribution to furthering human rights, while helping her obtain justice.

## **The Actions taken by Center Prodh**

In December 2008, shortly after Jacinta's conviction, Center Prodh accepted her case. Center Prodh, convinced of Jacinta's innocence, implemented an integral defense in order to obtain justice. From a legal perspective, Center Prodh appealed the trial court's conviction and later obtained compensation for Jacinta. From a public opinion perspective Center Prodh sought to publicize this injustice thru a widespread media campaign that would garner support for Jacinta. The Mexican Supreme Court later ordered Jacinta's co-defendant released. However, this analysis focused mainly on Jacinta, as she was the only victim represented by Center Prodh.

In order to better understand Center Prodh's legal actions, it was important to understand some key differences between the Mexican and American criminal justice systems. In Mexico, judges at a trial have often acted like fact finders compared to the jury in American Criminal Law. Additionally, in Mexico criminal defendants have not been released on their recognizance. The wider discretion Mexican judges have enjoyed concerning evidence explained why the trial judge gave no evidentiary value to evidence pointing to Jacinta's innocence. As judge and fact finder, the judge was largely free to admit and then apply the evidence. Criminal defendants have not been released on their recognizance and bail has been unavailable for certain crimes. Jacinta was imprisoned for three years from her detention in 2006, until released after her appeal and retrial in 2009.

Center Prodh was convinced of Jacinta's innocence by various pieces of evidence to which the trial judge gave no evidentiary value. The following were some of the evidence and arguments that Center Prodh used in Jacinta's Appeal. First, it was ridiculous to believe that six agents trained, equipped, and armed to respond to physical aggression could be kidnaped by

three unarmed female flea market vendors. During the alleged kidnapping, the agent who stayed behind was never disarmed. The AFI agents were the ones who offered to make the cash payment for the goods they illegally confiscated and destroyed earlier. Jacinta had no interest in the ordeal; AFI agents did not attack her market stand and nothing was taken. The declarations of the agents failed to mention any person matching Jacinta's description. At the appellate level, Center Prodh stressed the importance of these points and other evidence excluded or ignored by the trial court.

While attorneys from Center Prodh fought for Jacinta in the appeals court, the media relations department worked diligently to disseminate Jacinta's story and increase public awareness and pressure for her release. The media campaign included newspaper and television coverage by reputed journalists such as Ricardo Rocha of *El Universal*. In addition to the article about Jacinta, newspapers ran stories about discrimination against indigenous people in the criminal justice system (Alcantara, 2010). Jacinta's story was covered extensively by the Mexican Media.

Beyond the public media campaign appealing for the public's support, Center Prodh also contacted and requested support from government authorities. Center Prodh wrote letters directed to members of the Mexican Congress who chaired committees that might be able to support Jacinta's cause. One letter was directed to Raymudo Cardenas Hernandez, who served as chairman of committee on constitutional issues in the lower house of Congress. Another letter was sent to Maricela Contreras Julian, president of the lower house commission on equality and gender issues. The public media and campaign reached out to government officials that were in areas outside from the courtrooms where Center Prodh advocated for Jacinta's case.

The court in reviewing Jacinta's case did not undertake a detailed review of the evidence and failed to find Jacinta not guilty. Instead, the appellate court observed that there were several irregularities in Jacinta's trial. Among these, she was not provided with a translator, there were several inconsistent declarations from prosecution witnesses, and some evidence was inadequate or obtained illegally. Accordingly, on April 7, 2009, the appellate court issued its ruling and sent the case back to the trial court level to address these issues. Because the appeal court sent the case back to the trial level for further proceedings instead of finding Jacinta not guilty, Jacinta had to remain incarcerated, awaiting the next phase.

However, her unjust incarceration would not continue for long. Later that year, the attorney general admitted that it did not have sufficient evidence and dropped all charges against Jacinta. While Jacinta was now free, she nevertheless had suffered a grave injustice. When Center Prodh took on Jacinta's representation, the goals were not only to secure her freedom but also to obtain justice in a broader comprehensive sense. It also sought to obtain compensation for her unjust imprisonment.

### **Description of the Results in terms of Gender and Ethnic Discrimination**

Center Prodh's actions in the courtroom and in the media ultimately succeeded when Jacinta was released and later received compensation for her wrongful incarceration. The specific results from the actions described in the previous section provided insight into the types of successes Center Prodh's integral defense obtained over the years. The clearest result of Center Prodh's actions was that the attorney general dropped the charges against Jacinta. Center Prodh's legal team began representing Jacinta shortly after her conviction and continued as her attorney throughout the appeals process. Although the appellate court had sent the case back

down to the trial court for further proceedings, the attorney general finally recognized that it had no evidence for conviction and opted to drop charges. During this process, Center Prodh emphasized the amount and quality of evidence indicating Jacinta's innocence. Although the trial court had essentially ignored this evidence, Center Prodh persisted on its relevance. This eventually resulted in the appellate court's decision to declare that there were significant problems with the first trial. After realizing that the appellate court would not condone the initial trial court's treatment of the evidence and, instead, required proper consideration of the exculpatory evidence, the Attorney General decided to drop the charges.

The decision to drop the charges was influenced by the appellate court's ruling as well as the immense public support for Jacinta generated by Center Prodh's efforts. As discussed above, respected journalist like Ricardo Rocha and Mexico's leading newspapers like *El Universal*, covered Jacinta's case and helped generate tremendous support for her. The impact of Center Prodh's media campaign was evidenced by an outpouring of support for Jacinta during her ordeal.

Center Prodh's media campaign achieved a significant accomplishment on August 18, 2009 for the case, when Amnesty International declared Jacinta a prisoner of conscience (Amnesty International, 2009). In its decision to adopt Jacinta as a prisoner of conscience, Amnesty International stated that it was convinced there was no evidence against her. Additionally, Amnesty International expressly stated that Jacinta "had been arrested, tried and convicted because she was a poor indigenous woman," (Amnesty International, 2009) recognizing how triple discrimination played a role in this injustice. Amnesty International called for a full impartial investigation including the case of her co-defendants. Center Prodh

continued to work with Amnesty International to obtain comprehensive justice for Jacinta. On June 19, 2013, the two human rights organizations initiated an international campaign to collect signatures for a petition calling on the Federal Attorney General not to oppose Jacinta's petition to obtain compensation for wrongful imprisonment. In just two weeks, the campaign gathered over 8,000 signatures.

In addition to generating international support, Center Prodh's media efforts also had an important domestic impact. Several governmental bodies expressed their concerns about Jacinta's case. These included the National Institute for Indigenous Languages, The National Woman's Institute, and the National Human Right's Commission. Strong support from various sectors became important to the next phase of Jacinta's case. Although Jacinta was released and the attorney general dropped charges against her, she nevertheless, spent years of her life behind bars and was tainted with the social stigma of having been tried and convicted. The next step toward justice for Jacinta was aimed at addressing these wrongs.

Although uncommonly used, Mexico's constitution contained a mechanism whereby an individual who was harmed by the unlawful conduct of a federal entity could obtain monetary compensation. This protection was contained in article 113 of the constitution. Center Prodh represented Jacinta during this complex and lengthy process, which involved filling a complaint against the attorney general's office with the Federal Tribunal for Fiscal and Administrative Justice. On May 28th, 2014, this tribunal ordered that the attorney general's office publically apologize to Jacinta and her co-defendants and compensate them for the three years they were unjustly imprisoned.



The tribunal's ruling was a significant victory for the victims as well as for human rights generally in Mexico. Although the legal framework for compensation in cases such as this exists, it has been rarely successfully litigated. Center Prodh's integral defense approach, designed to obtain comprehensive justice for victims of human rights violations, seemed to make the difference. While the harm and humiliation Jacinta endured could not be easily quantified, the payment of compensation provided some remedy.

Although Jacinta's case was a strong example of the serious human rights problems in Mexico's justice system, it also illustrated how Center Prodh's integral approach could achieve a significant victory. Like the San Salvador Atenco Case, Jacinta's case served as another example of the use of repressive practices to criminalizing social protest, by using the criminal justice system as a weapon against those asserting legitimate rights. Jacinta's case also illustrated the impact that human rights violations have had on the most marginalized groups.

### **Summary**

An analysis of these three major cases litigated by Center Prodh illustrated the manner in which the Center's integral approach made it possible to not only address the individual human rights violations suffered by plaintiffs, but also to use these emblematic cases to highlight longstanding human rights issues in the society at large. By embracing a human rights approach that moved beyond individual concerns, significant opportunities were created through litigation, media communications, networking, and community education to advance the cause of human rights in Mexico.

## **CHAPTER SIX**

### **ANALYSIS AND DISCUSSION**

The literature and data that comprised the foundation for this study of Center Prodh and its human rights work in Mexico among disenfranchised populations provided an excellent opportunity to reflect and consider more closely the possibilities of a critical approach to human rights. As stated earlier, the lens of analysis that I utilized was based on the principles of critical pedagogy as developed by Antonia Darder (2009). From this standpoint, this chapter sought to bring together the human rights literature, the data from interviews, and the analysis of internal documents, legal cases and materials, in a discussion that analyzed these particularly with respect to the social apostolate of the Society of Jesus and the Jesuit Mission.

Moreover, to conserve the integrity of the proposed vision for this study, the discussion was organized in a way that responded to the research questions guiding this study. With this in mind, the discussion was organized as follows:

- (1) Jesuits and Center Prodh;
  - (2) Center Prodh and the concept of human rights;
  - (3) Center Prodh's contribution to the mission of the apostolate of the Society of Jesus;
  - (4) Center Prodh's influence on Mexican law and public policies related to human rights;
- and
- (5) Center Prodh's strengths and challenges.

#### **The Jesuits and Center Prodh**

Center Prodh was founded by the Mexican Jesuits in response to the suffering in the form of extreme poverty, inequality, the painful reality of violence, arbitrariness, impunity,

discrimination, and many types of discrimination that affected vulnerable communities in Mexico. The Jesuits, influenced by liberation theology noticed the huge imbalance in power and inequality in Mexico, especially with respect to the poor. In a letter dated January 24, 2000, regarding the social apostolate, P. Peter-Hans Kolvenback, former superior of the Jesuits, affirmed that since its origin, the preferred option of the poor had been documented in the history of the Society. When Center Prodh was founded, the Jesuits took seriously the call of Pope Paul VI:

Wherever in the Church, even in the most difficult and extreme fields, at the crossroads of ideologies, in the social trenches, there has been and there is confrontation between the burning exigencies of man and the perennial message of the Gospel, here also there have been, and there are, Jesuits. (Address to the 32nd General Congregation of Jesuits, 1974)

In Latin America and particularly in religious orders, the cause of human rights and of injustice was taken up (Hennelly, 1982).

Although they have faced stumbling blocks in their efforts to serve these communities, the Jesuits have learned to respond by using various tools at different times and places. The flexibility of the order seemed to have always been their greatest strength. However, there have been times when the strength of the order has declined, particularly when members wrongfully believed they did not have the capability or ignored conditions that could have benefitted from their efforts.

Since Center Prodh was founded, it was clear that the defense of human rights would bring with it consequences of persecution (Maldonado, Interview, 2014). They knew they

were challenging the power structure (Stammers, 2009). It was part of a new movement that emerged in Mexico in the late eighties. In practice, they began to take notice that there was also a challenging economic movement that provoked violations of human rights. That became clear to Center Prodh in 1990. From then on, the actions of the Jesuits in taking up the defense of human rights became a new field for social struggle (Rodriguez & Casteneda, 1990).

The response strategy of promoting justice by those, who like at Center Prodh, have united with the social efforts of the Mexican Province of the Society of Jesus, has been very useful. This has spoken to the contributions that have been made by Jesuits and non-Jesuits alike, working within disenfranchised communities, working within and/or collaborating with various efforts of the Jesuits. These efforts have resulted, in part, in decreasing the indignity and suffering of victims of human rights violations. This pain and suffering might not be inevitable, rather it could be provoked by certain structural dynamics and the decisions of those in positions of power.

For the Jesuits of Accion Popular, as Hollenbach pointed out (1982), human rights referred to the rights of the oppressed. And because of that “the rights of those deprived of both political and economic power, should take priority in policy over privileged forms of influence and wealth (p.21).” For the Jesuits of Accion Popular, this approach was clear. This concept was contrary to that of Boaventura de Sousa Santos (2009) described in his article: *If God Were a Human Rights Activist: Human Rights and Challenge of Political Theologies*. He described the human rights concept of that time as the concept of the dominant class in power.

He believed that concept was destined to reproduce the Western Eurocentric perspective responsible for the exclusionary structures related to class, race, gender, in the first place.

The Jesuits of Accion Popular who founded Centro Prodh conceptualized human rights as a new field of social struggle, a deliberate posture against those in power. Their approach was oriented toward the construction of a more just society, in sync with the official documents of the Society of Jesus.

Taking into account the critical principle of historicity as outlined by Darder (2009), the Jesuits and the first collaborators who established Center Prodh felt compelled to address the historical realities and current needs of the poor and marginalized, who were forced to grapple with the effects of several forms of domination. The goal of these Jesuits, from inception, was to create conditions that would support the empowerment of oppressed groups, by forming a group in support of human rights that worked with the people.

In his interview, Fernandez stated that during the time when he was director of the Center, several other organizations were also formed. Among them was the establishment in 1991 of The National Civil Human Rights Organization For All of the Rights of Everyone . Its foundation was due in large part to the influence of the Jesuits working with Center Prodh. Above all, they were moved by community experiences linked to the formation of social movements that were submerged in ideas of liberation theology.

One of the strongest supporters of the liberation theology movement was Ignacio Ellacuria. Ellacuria was a Jesuit who was assassinated in El Salvador. He was a philosopher, a liberation theologian, a social scientist and a promoter of the critical theory of human rights. He also was President of the Central American University. In 1990 and 1991, he co-authored a very

important book with Jon Sobrino: *Conceptos fundamentales de la Teología de la Liberación*. At that time, it was the best and most complete global vision of the Latin American theology. The second very important book of those years was *Filosofía de la realidad histórica* (Tamayo, 2014). He was a Jesuit who did not simply comment on conditions of oppression but became directly involved in the lives of the poor through his practice. Ellacuría raised the idea that the history of salvation must be understood as historic salvation; that was to say, it had a specific application in the life of the people, at particular historical moments. His position, that it was impossible to achieve justice without a revolution of the social and economic system, was also inspiring for many Latin American Jesuits. (Ellacuría, 1999, quoted by Santos, 2009). Hence, the Jesuits at Center Prodh, following Ellacuría's example, also believed it necessary to fight for an equitable economic and social system that respected the human rights of the population, especially in the marginalized and excluded sectors of society.

From the time the Jesuits at Center Prodh began to look at the needs that existed in their world, they promised themselves they would respond to this tradition of the Society of Jesus, in order to transform the perverse dynamics that threatened the lives of vulnerable individuals and their communities. That was a part of the vision that Sobrino (2010) linked with the life of Jesus who fought for justice because that was what one does for faith. In this sense, the mission or religion for human rights, as Sousa (2009) posited, must be understood as a contribution to social emancipation.

### **Center Prodh and the Concept of Human Rights**

The Universal Declaration of Human Rights, as discussed earlier, was promulgated more than 67 years ago with a concrete context: the desire of universal peace, which would survive

beyond the Second World War. It was proposed that humanity should attempt to create a world in which it would be possible to live free of fear and misery. In this way, human rights were converted into a new vision to build societies where it would be possible to live with dignity. From the time it was established, Center Prodh was compelled by this concept of human rights, albeit a more limited and individualistic view. This was in concert with the liberal outlook of the Universal Declaration of Human Rights. However, by keeping faith with the fundamental inspiration and mission of the Jesuits, Center Prodh maintained its focus on the most vulnerable and those whose dignity has been denied: women, the poor, indigenous, victims of repression, migrants, and all those whose basic rights have been compromised.

According to the literature, these rights appeared to be converted into one universal ethical reference (Hollenbach 1979, 1982). What was expressly included in the Declaration has continually been complemented with other declarations and conventions. We have been able to actually only count on one system of human rights with an operating structure equally applicable to the universe, as it was within regional instances. The strengthening of human rights systems has also included the translation of these rights to judicial settings oriented toward and guaranteeing these rights as mandatory.

There have been advancements by way of judicial decisions and there has been a strong conscience in many sectors to attempt to eradicate abuses (Alston, Goodman, & Steiner, n.d.). In the process, the defense of human rights internationally has become professionalized. Many organizations and individuals have experimented with a vocation in the defense of human rights and many even have made a career of defending and/or protecting human rights. Even states have been obligated to transform their procedures to include the participation of defenders of

human rights ( Alston, Goodman, Steiner, n.d.). Center Prodh, among other organizations, similarly amended its procedures to include such professionals.

But, although Center Prodh had become aware of certain advances, their daily experiences within vulnerable communities were not always consistent with the advances in the field. The continuation of economics-as-usual results in the profound dynamics that continued generating poverty and augmenting inequality. This was more apparent in that there existed an inextricable connection between the economy and abuses that lead to human rights violations (Darder, 2009), many illustrated in the analysis of the three legal cases discussed in Chapter Five. While it was claimed, for example, that there had been a significant increase in financial opportunities, millions of people in Mexico and other parts of the world were forced to emigrate without having their rights recognized. Achievements in some parts of the world served to highlight the scandal of great wealth living alongside great poverty. Hence, what Center Prodh recognized over the years was that praiseworthy intentions of pacts, declarations, and conventions were heavily contrasted with the reality of a world where people continued to be enslaved by fear and poverty (Universal Declaration of Human Rights, 1948), including in Mexico.

There was no doubt that in the framing and conception of human rights by Center Prodh, initial assumptions informed by the Western perspective were prominent, despite Jesuit principles within a Mexican context. In this context, the meaning of human rights recognized basic experiences that were common to all humanity. At the same time, it addressed barriers to guarantee of the dignity of the person under the authority and actions of the state. This context, however, inevitably emphasized the individual. But such recognition



should not imply the disqualification of the emancipating quality of human rights. These could be far greater than the facts generally used to discuss the formation of human rights work. This issue was notable in an expanding acknowledgement of political, civil, economic, social right, and rights of townships over the years.

Basic assumptions of human rights have been anchored in a modernist concept of universality, which originated within the context of western liberalism. The nature of being human has included the ability to think logically. A person's nature has been considered superior and different from other aspects of reality. The individual has had absolute and inalienable dignity that must be defended from all coercion. The autonomy of the individual has required a horizontal organization of society. The application of these assumptions universally has been the object of many serious debates. These debates have often refuted the notion of human rights as neither neutral nor universal. This was to say that the traditional human rights perspective has been bound by ideology and must be understood as the production of ideas expressed from a dominant worldview (Darder, 2009). As such, with regard to the universal application of human rights, there have been many exceptions. The hegemonic states have relied on human rights arguments to justify interventions into other states. In positing a rationale, on one hand, contradictory exposés against capitalistic greed have been claimed; while on the other, a defense of capitalist enterprise has been secured, arguing for protection of property rights and the liberty of the individual.

Given the preceding discussion, Center Prodh has not argued a relative approach that betrayed the emancipatory character of human rights. In order for human rights to serve as an instrument to demand and create conditions for living with dignity, the Center has insisted that

concepts that safeguarded a person's dignity were required. This has been true especially for the dignity of those who everyday have been subjected to threats against their lives, due to the impunity of the state. Without a more open conceptualization, a hegemonic interpretation of human rights could, wittingly or unwittingly, degenerate into an instrument for domination. To safeguard from such an outcome, methods have been developed in the execution of human rights work.

Most of the methods employed originated in Western culture itself, although the debate has remained open. However, through the defense and promotion of human rights in Mexico, Center Prodh also developed some significant methods in response to the often-contradictory nature of traditional human rights discourses. One of these had to do with the appropriation of human rights as a framework for making local claims, as discussed by several participants in the study. These claims represented important moments that provided an opportunity to make significant advances. They arose from engaging vital experiences generally tied to suffering-like the human rights violation experienced by those who were at the center of the Center Prodh's legal cases.

Maldonado stated in his 2014 interview that Center Prodh viewed human rights as a “new battlefield in the struggle for social justice” based on this dynamic, which included the appropriation of human rights as an instrument to make claims and social demands to the government. Centro Prodh's perspective was influenced by the understanding that all human experiences were incomplete and, thus, required engagement with the missing elements in order to provide a more sense of the experience. What the legal cases illustrated was that this was even more so where human rights violations of the state were at work.

The concept of human rights that Center Prodh defended and protected was based upon integrity. This was so, given that for the Center human rights were understood as communal, interdependent, and above all that they were products of historical legal battles by and simultaneously the philosophical ideas of human beings (Darder, 2009; Motilal, 2010). They were communal and interdependent because no expression of human rights was more important than another. People and communities should be able to rejoice in and exercise their rights, and be able to advocate for them in equal form, if violated. From a critical perspective, we must then keep in mind that human rights could also serve as an instrument to raise barriers, in order to block dictatorial measures. At the same time, it was a powerful tool that could be used to accomplish a respectful attitude of the differences of human rights, particularly when engaging with the rights of racial and gender minorities, as well as those of indigenous townships.

Another important aspect of a critical analysis repeatedly noted by the Center Prodh participants in this study was that the execution of human rights was always dependent on the political, economic, and cultural conditions of a community. On the one hand their universality has been recognized, but only if no other entity has had a reason to renounce their personal right of self-determination. Again this dimension was exemplified by the legal cases with respect to the manner in which human rights violations sanctioned by the state manifested themselves in the communal conditions of the defendants.

Associations, groups, and organizations promoting human rights, including Center Prodh, more often than not, assumed a Western liberal perspective, which defined human rights as a barrier to abuse and interference of the state, adjusting for this aspect in their

practice. The human rights discourse of Center Prodh has been truly emancipating and has helped broadened the defense of individuals and collectives before the state, as well as hegemonic non-state actors, for example organized crime and large corporations. An example was the defense of the workers of the Ford Motor Company in Mexico City (Maldonado, Interview, 2014). Constant complaints of human rights violations prompted a search for efficient tools such as agreements, institutions, and procedures to protect society's interests, which in an ostensibly democratic society, such as Mexico, were various; so that the actions, mechanisms, and complaints could be very diverse. However, as noted by participants in this study, these systems were insufficient, in that it was necessary to create conditions that foster the respect, promotion, and defense of human rights. One of these, as repeatedly affirmed in interviews by former directors Maldonado, Fernandez, and Cortez (2014), was the reframing of the assertion of human rights to support local claims. Not only was there a need to close gaps in the law but also in social, political, and economic conditions.

These conditions must first assume the recognition of the plurality in society. Above this, there must be true plurality so that the voice of those who have been traditionally excluded because of the structural conditions in society could be heard. Discussions and dialogue of what is necessary in a society should be open to all perspectives so that there could be conditions from which to reach communal solutions that would be genuinely adequate and widespread. In many ways, the educational component of Center Prodh's work has worked precisely to incorporate this dimension and to address this need.

What this study pointed to was that addressing human rights from a critical perspective more firmly made possible the living of life with dignity for the individual as

well as the community as a whole (Darder, 2009). The notion held by Center Prodh of human rights as a field of social battle (Center Prodh, 1990; Maldonado, 2004) was of major relevance to this study. Thus, human rights was understood as a medium for the empowerment of excluded voices that sought a harmonious living environment, respect for the differences, and appreciation of the dignity and quality of the individual and the community (Center Prodh internal documents, 2002). In this critical approach, human rights have been promoted in an historic situation, temporary, spatial and cultural, which surrounded the living environment of the people (Center Prodh internal documents, 2002). Ultimately, Center Prodh's approach continued to seek effective responses to counter hegemonic discourses of human rights and the inequalities that these inadvertently conserved (Santos, 2009)

### **Contributions of Center Prodh to Mission of the Social Apostolate of the Society of Jesus**

The characteristics of the social apostolate of the Society of Jesus were discussed in Chapter One. The major goal of the society has been to "build so that the structures for human coexistence are permeated and become the fullest expression of justice, and charity, and so that the justice of the Gospel may be taken to society and culture" (Social Apostolate Secretariat of the Society of Jesus, 1998). In short, this spoke to: a clear option for the poor, the analysis of social problems, and an attempt to provide effective answers from the standpoint of the promotion of social justice.

In essence, Center Prodh's mission has been fully consistent with the mission of the Society of Jesus. From the standpoint of its identity as a nongovernmental organization, it set forth a framework for what should be done in the promotion and defense of "the human rights

of those people and groups excluded by their vulnerability or their poverty, to contribute to the building of a more just, equal and democratic society, in which human dignity is respected" (Center Prodh Internal Plan, 2008). These principles have been consistent with the general guidelines of the religious order.

Center Prodh's mission was developed and carried out by way of several approaches, including education, analysis, communication, integral defense, and international relationships. The successful defense of litigated cases and the educational procedures were the result of the joint efforts of those who work at and those who collaborate with the Center. Responses by participants on this question indicated that it would be desirable to take the path toward consolidating a stable and dynamic staff, without losing sight of the fact that to go forward, Center Prodh must face a fundamental challenge: to elevate, day by day, the staff's technical capabilities and to professionalize the daily work performed in the different departments of the Center.

As a summation of my review of documents, cases, and interview data collected for this study, the seven main contributions of Center Prodh to the mission of the Social Apostolate of the Society of Jesus appear to have been economic, social, cultural, and social rights; systems or justice; security and militarization; joining organizational procedures and strengthening social agents; strategic defense of legal cases; collaboration with others, and; human rights perspective in diverse areas of action of the Jesuits in Mexico

### **Economic, Social, Cultural, and Environmental Rights**

It cannot be doubted that the market has imposed and extended to merchandize a large number of rights and human activities. The principals affected in this process existed

traditionally under other models of cohabitation of many indigenous towns. Today the construction of grand projects and the mercantile compulsion has altered the lifestyles of many, while stripping away rights that were for a very long time established as these pertain to water, air and, relations of cohabitation. Once acting within this environment in defense of human rights, the processes that have deepened inequality and extended domination were halted. Accepting the defense of these human rights has implied attacking the causes of a socio-economic system that brought about injustice (Santos, 2009).

The perception of unstable and isolated strategy used has implied that the state has abandoned its responsibilities in matters of economic, social and cultural rights. Center Prodh has held that the security of such rights as health, education and housing should not be separated. Because of this, the cases representing Cortez, Marroquin, and Fernandez all attested that this critical vision of integrating human rights was a very important contribution that the Center has made. For example, guaranteeing one's security also has implied the guarantee of other aspects, equally fundamental, in the framework of a democratic society, which has aspired to make participants of all of its members, affording them respect and dignity.

### **System of Justice**

Notwithstanding the peculiarities of Mexico's system of justice, it alone did not own the two edged standard. On the one hand, the rights were conceived in the framework of the state an instrument of emancipation, which placed highly the arbitrariness of the powerful. On the other hand, when employing the state as an instrument, it potentially deepened the discrimination and, thus, could participate in the impunity of the powerful and the punishment

of those who have been viewed as enemies of the state or business interests. People who have been viewed as enemies have been those to whom the state previously denied the status of legal persons, as we saw at work in the Center Prodh legal cases analyzed for this study.

Within the system of justice, the process of exclusion has been simply a continuation from that which has occurred in other aspects of life. Empirical studies conducted by Center Prodh (2009) demonstrated that in Mexican prisons the poorest people have been incarcerated longer, not because they have committed the most serious crimes. This preferential imprisonment of the poor as part of the prosecutorial system of justice was dramatic evidence of the asymmetry and the existing discrimination in Mexican society. Notwithstanding that, the Center chose to defend persons who found themselves vulnerable and who were unable to pay for a quality judicial defense. The Jacinta case and that of the other ñhañhús women, Alberta and Teresa, demonstrated this point, and at the same time they proved that living in this environment was essential to being able to take action against the discrimination and exclusionary system of justice. These injustices were in concert with what Santos (2009) called injustices of post-colonial history, where the state sought to maintain the status quo domination and oppression over the most vulnerable sectors, even after their supposed emancipation and recognition as citizens.

### **Security and Militarization**

One should not forget that the increasing concern for security has driven the entire world to adopt increasing measures of citizen surveillance and security force, the most extreme, on the pretext of combating terrorism. For Center Prodh the issue of security here went hand-in-hand with the securing of strategic resources. Above all, powerful Western



countries operating under the dictate of neoliberalism have promoted high levels of consumerism under a free market ideology that also coerced state deregulation, in order to maintain further control and consolidation of their wealth and resources.

The fact, that in Mexico Armed Forces participated in tasks relegated to the civil authorities brought with it serious risks that affected the arena of human rights. Center Prodh, as shown by the data collected, has documented increasing abuses in which human rights violations were committed by the military, in addition to the joint operations against crime. The situation seriously exacerbated from 2007 to 2010 due the fact there was no civil control of the army, which should have been obliged to conduct itself within the framework of a democratic state. The Center, as seen across the analysis of legal cases, denounced multiple incidents of wrongful extension of and unconstitutional military jurisdiction. This was clearly evident in the case of *Montiel v. United States of Mexico* (2010) where the army captured and tortured peasants. There was no recourse to report the torture. The Center, therefore, worked to address the structural causes that originated when the military violated human rights, in order to protect a political system that was morally repugnant (Santos, 2009).

With the work of the last few years, Center Prodh has substantially enriched its prestige and has focused its services on legal cases that could make a difference in the society at large. Most recently, Center Prodh participated in the documentation of cases, defense, and dissemination of incidents of most importance to the country, including, but not limited to the disappearance of the 43 students of the Normal de Ayotzinapa School.

## **Joining Organizational Procedures and Strengthening Social Agents**

The educational procedures undertaken since the Center's creation have been some of its major accomplishments to strengthening citizenship rights and the exercise of Mexican democracy. The goal of Center Prodh has been to maintain as values those of solidarity and social justice. In Oaxaca, an educational project intended to strengthen the local organizations was conducted in 2008 and 2009. Center Prodh has repeatedly shown that working together with local organizations is necessary, in order to effectively impact issues of human rights across wider physical and ideological environments.

The exchange of skills and knowledge has facilitated the Center's design of efficient strategies. More important, what they have found has been that it must be done precisely through this type of joint effort—a process that reinforced the construction of citizenship and implicitly connoted action with conscience and the exercise of human rights. Oaxaca was an appropriate place for the joining of these procedures, in response to the 2006 social conflict, which at the same time revealed the activation of local processes, due to the weaknesses and dilution of some mechanism of social cohesion. The cohesion obtained at the time was threatened today by the expansion of influential procedures such as that of capital accumulation, the support of local land owners under the pretext of federalism, the deepening of inequality, and the presence of organized crime which itself took advantage of and destroyed social networks for its own advantage.

On the other hand, in 2008, the data submitted by civil organizations to the United Nations Human Rights Council indicated City of Juarez was the most violent and dangerous city of the world. The scale of violence was so great that local citizens became victims of

numerous human rights violations. In 2009, Center Prodh created a project in Juarez. Its purpose was “to develop capabilities and interdisciplinary tools for the expansion and instrumentation of strategies of integral defense through materials prepared for the Juarez civil and social organizations (Center Prodh Internal Documents, 2009). During the program, participating organizations learned about the methodology of integral defense discussed in the methodology and made reference to in the analysis of cases.

### **Strategic Defense of Legal Cases**

Over more than 27 years, Center Prodh developed its own strategy for the defense of cases, which we called integral defense. This methodology, which was unique to Center Prodh, has proven to be an efficient and effective way to defend human rights in Mexico. The defense was not limited to the preparation of documents that would be presented in the formal justice system. Nor was it limited to solely the benefit of the victim. His or her defense has been integrated with Center Prodh’s four primary areas of services. It could use the legal system for the legal defense of the victim but it could also use the media to apply social pressure to the government to achieve the desired result.

The victim and his or her family must have agree to the integrated defense and that the Center could use the case for teaching purposes to attempt to bring about change for the benefit of others who might be threatened with the same form of victimization. The Center could use the facts in the case as part of the information taught in its workshops. Depending on the facts in the individual case, the Center might send something similar to press releases to international NGOs whose primary objective was also to protect human rights in their own regions.

As described in the previous chapter, the methodology consisted of work in the diverse areas of operation of Center Prodh. This way, the defense area designed and implemented the judicial strategies of defense. The area of communication and analysis disseminated the case and developed marketing campaigns. The international activities of the Center included denouncing civil rights violations in international cases and joining with foreign organizations of interest. In its own way, the education area reviewed the topic to give an adequate focus to the courses and workshops that were offered on a particular subject. In this manner, the activities planned for this Project were offered in whole on the subject of four operative areas of Center Prodh::

- (1) Integral Defense Center Prodh uniquely developed and designed this defense methodology. It was based on 27 years of experience in defense of cases and consisted of defending in a manner integral to the person who was the victim in the case. There must be timely monitoring of the case in national and international spheres and judicial assistance must be sought. Victims and their families have always been accompanied by Center Prodh members during all significant legal procedures.
- (2) Education. This area planned strategies of intervention that were directly imparted to grass roots, popular, and social groups, courses on leadership and in human rights training with the goal of providing tools that could enforce the demands, in a specific political context. The methodology consisted in providing and applying knowledge in a reflective and dialogical manner together with other groups, within specific situations in a local context or as part of a particular action.

- (3) Communication, analysis and monitoring. In this area, there were monitoring activities, seminars, conferences, and talks presented to publicize the cases. Bulletins were published and disseminated as were notes, articles, and position papers published in the press. In that way, as many people as possible could be informed about the specifics of the case.
- (4) International relationships. Throughout the international world of Center Prodh, international incidents have been denounced, and the Center has joined with foreign entities of interest—embassies, NGOs, and international organizations, among others. Materials have been published in English, to improve the visibility of the human rights violations in the north.

A fundamental principle of the integral defense methodology was that the beneficiaries of the work such as the persons affected by the violations of their human rights and their families, must have overtly agreed to begin the integral defense of the case. The experience of Center Prodh has shown that the participation of the victims and the family members was fundamental to their work. In this manner, the defense strategies were developed in consensus with the victims and their families and the different alternatives were discussed to better inform and support the empowerment of their communities of origin in matters of human rights. In that way, Center Prodh has contributed to the larger social struggle to reverse the socio-economic, historical, sexual, racial, cultural, and post-colonial practices (Santos, 2012) based on its mission and focus to promote structural change.

The Center has had a multidisciplinary team of persons to handle the proposed methodology. They have all been professionals specializing in human rights, such as attorneys,

educators, political scientists, anthropologists, professionals in international relations, social scientists and public relations professionals. Center Prodh members received periodic training. The Director and each coordinator of the departments conducted the work in connection with each particular case.

### **Collaboration with Others**

Over more than 27 years by the time of this study, Center Prodh had adopted diverse procedures for the defense and promotion of human rights. This knowledge and experience had been offered for the service of many Mexican organizations along with baseline procedures, helping to strengthen their social agents, giving workshops, organizing forums, leading the denouncement of international incidents such as the Universal Periodic Review before United Nations, having a presence before the Committee on Human Rights, and diverse cases and hearings before the Inter-American Commission of Human Rights. A hearing worthy of notice here was for the purpose of addressing the abduction of migrants with groups that represented them. Center Prodh accomplished the publication of its position on the issues in which it had expertise, disseminating and production of materials oriented to specific aspects of human rights.

At the same time, the Center has established some fruitful relationships with other organization of the Society of Jesus. For example, the Center formed a partnership with the Ibero-American University and participated actively in the network of social centers of the Jesuits in Latin America. Some of these projects had begun to take form and it was expected they would have advantageous results toward greater collaboration on human rights issues.

## **Human Rights Perspective in Diverse Areas of Action of the Jesuits in Mexico**

We know well that in reality human rights have been the object of numerous debates and analysis. Nonetheless, the conviction of Center Prodh has been that human rights are, at heart, forms of guaranteeing the sustainability of the human community in conditions of freedom, equality and justice.

Considering that human rights as practiced by Center Prodh outweighed their liberal reading, the Center saw this work as an instrument to fight against all which made vulnerable human dignity. The Center's diverse areas of action included differing perspectives: for example the right to education, to assemble with whom we wish, from the perspective of women, of the indigenous, of youth, and/or of children. In all these factions, there was a constant denominator: the pain of those who had suffered discrimination according to whichever criteria pertains: gender, ethnicity, religion, sexual orientation, or economic condition. Sometimes, addressing these topics has been in conflict with other Catholic Institutions. This has been so more due to the Center's ideological imperative abstract—the work could only be done in integrity if we have allowed ourselves to suffer the pain of those who suffered the indignities of human rights abuses.

Most important here has been that for Center Prodh, the defense of human dignity was not in the abstract, it was applicable and palpable in actual historic and current situations (Hollenbach, 1982). With that principle in mind, Center Prodh has attempted to make tangible the option for the poor, along with not only the Society of Jesus but also the Church through its Doctrine of Social Thought. Julio L. Martinez, A Jesuit of the Comillas University stated that the understanding of human dignity, of justice, and human rights

combined was an option for the poor that had three criteria that Center Prodh has integrated in its practice:

- (1) The needs of the poor should have priority over the desires of the rich. In determining which cases to accept, Center Prodh considered this principle.
- (2) The freedom of the exploited should have priority over the freedom of the powerful. The services provided by the Center were directed toward disenfranchised communities in order to accomplish social change from the bottom up.
- (3) The participation by marginalized groups must have priority over the conservation of members from a social order that excluded them. The Center had as its goal the empowerment of the marginalized, so that they could have some power in political decision making that would impact the case and their lives.

With reference to the above, the Society of Jesus would reiterate that the option for the poor was not ideological but it was born of the Gospel; which for the Jesuits was necessary to commit one's self to combat the causes of injustice and poverty of the world. (Congregation General 35, 2008).

### **Strengths and Challenges of Center Prodh**

At the time of this study, Center Prodh was on the path of becoming a much more stable and dynamic organization, without losing sight that it would continue to face serious challenges in the future. Overall, the following described the strengths of the Center identified based on the data collected, the analysis of cases, as well as my own personal experience as a former Director of the organization. What must be understood here is that each of the strengths



were, simultaneously, linked to the long term challenges that have arisen commonly in the daily practice of Center Prodh:

- (1) Forming partnerships with organizations, centers of investigation, academic institutions, that view Center Prodh as a reliable reference because of its professionalism and accuracy in documenting cases of violations of human rights, as well as the inclusion of the victims of such violations in the approach taken for the case. The challenge here entailed the overwhelming number of referral cases and the inability of a small staff to accommodate all those who would benefit from the Center's services.
- (2) Extensive presence in academic and governmental forums (federal and state), principally related to issues of public security, military abuse, past crimes and transitional justice. Among the issues were regulation of the use of force, assessment of federal police, reforms of systems of justice, suggestions to motivate state initiatives to pass statutes on the crime of politically motivated forced disappearance of people (an initiative of first impression at the national level). The challenge here was tied to insufficient infrastructure and overwhelming workload for a small staff, which again pointed to the need for more resources and people power to expand the work and the dissemination of information about human rights violations in Mexico.
- (3) Dissemination of trustworthy information regarding international incidents: Amnesty International, Human Rights Watch, Center for Justice and International Law (2010), Centro Internacional para la Justicia Transicional, foreign diplomatic

parties, North American and European political consultants. Center Prodh relied on its international relations department with 800 contacts throughout the world. The copious amount of information that Center staff processed daily was, in itself, a huge challenge. The need for well-prepared and efficient support staff to assist with review and analysis of information received and exchanged among this huge network, as well as preparation of summaries of materials made this strength also a challenge.

- (4) Collaboration relationship with the United Nations High Commissioner for Human Rights in Mexico: participation in the assessment of human rights in the Federal District, development together with other organizations the proposition for constitutional reform on the subject of human rights. These relationships were both important and time consuming, with respect to necessary research, travel, and meeting attendance. Beyond the need for support staff, this raised, as did the other challenges, the question of the financial sustainability for the Center, as it continued to grow and evolve in the human rights field in Mexico.
- (5) International standing before the Inter-American Commission as much for the presentation of cases as to obtain trustworthy information about Mexico. An actual example was that of the issue oriented hearings that were held during the sessions of this international organization. The challenge was the work of accompanying persons and communities, victims of violations of human rights, using a strategic tool that offered the international right and mechanisms of regional and international organizations.

- (6) Effective advocacy in public policy with their basis in cases strategically handled by the Center. The freeing of Jacinta and the two other women resulted in the standing decision of the Supreme Court. The case of the women of San Salvador Atenco resulted in an important change in the national agenda regarding violence against women. The case of the two ecologists *Montiel v. United States of Mexico* has been a key on motivating the reform of military Jurisdiction in Mexico. As a result of Center Prodh's work, there have been significant successes resulting in changes in public policy, which have become incorporated standards of international protections in human rights. The challenge in this area was the evaluation, monitoring, and follow-up of the public policies to bring human rights to a national level. That is to say that there existed indicators so that the execution of these policies might be monitored consistently.
- (7) The development of an integral concept of human rights with a critical vision that contradicted traditional, conservative, and hegemonic notions has been an ongoing process. The challenge of building a discourse of human rights has been paramount as it has had a characteristic of the universality but, at the same time, a specific application that included legitimate demands of impoverished sectors. The challenge here was epistemological (Santos, 2012) in that Center Prodh's approach to human rights required that collaborators also thought differently and more broadly about the issues and their approach, willing to engage in a more communal definition and participatory practice of human rights. Inherent here was the challenge of preparing

critical human rights advocates, with all the sorted staff and fiscal challenges this entails.

### **Final Reflection**

Lastly, in the analysis of data from Center Prodh, a serious question kept surfacing: What has gone wrong? The answer required an analysis of what Center Prodh has done since its inception and of its continued acts and failures to act. Some of these faults and challenges were the need to establish realistic mechanisms to be able to diagnose and analyze the work of Center Prodh which must be oriented to establish specific, critical, and realistic solutions; the need to incorporate the formation of public policy as it pertained to human rights as an indispensable element to strengthen the work of Center Prodh; to implement a financial plan that would assure the economic viability of the Center in the long run given that global economic crises also affect the foundations that financed the activities of the Center; to design indicators that permitted the evaluation as to whether the state was complying with its obligations as they pertained to human rights. It must be consistently clear to what extent the government was advancing or decreasing its efforts in the area of human rights. These indicators must be addressed by the entire Center Prodh team.

It was also necessary to address the criticism of weak points present in the system. Even more so, it was important to listen to those who had been deprived of their dignity, of their lives, and of their means of support. Addressing this painful subject also raised another fundamental question: Who has caused this terrible condition? And this question does not seek to indict an individual person, but, rather to critique the economic, political, judicial, cultural, social, and religious conditions that at the time of this study still made it possible for

the violation of human rights to continue with impunity in many parts of the world—including Mexico.

## **CHAPTER SEVEN**

### **CONCLUSIONS AND RECOMMENDATIONS**

The Miguel Agustin Pro Juarez Center for Human Rights is a civil organization dedicated to the defense and promotion of human rights. From the time it was established in 1988 until the time of this study, it had received national and international recognition, as a result of the tenacity and commitment of all those who, through it, have dedicated their lives to defend and protect human rights. The Center had progressed through many stages during these 27 years. It had continually become stronger since its founding, notwithstanding the many times it had been burdened with severe obstacles and adversity. Notwithstanding those challenges and the complexity of the environment in which it had addressed its mission, there had been the certainty of its being an institution that has had and continued to have a clear and definite direction. It had successfully handled numerous and vigorous projects, which were the reason for which it was founded by the Society of Jesus.

From the standpoint of my experience at Center Prodh, this research raised a strong challenge: executing a dissertation that included the theoretical considerations of leading human rights scholars, obtaining information contained in Prodh's numerous documents, but above all securing the voices of past and present directors and coordinators of the Center. This was a most valuable experience. I was able to obtain quick access to a variety of discussions, which reflected and at the same time nurtured the practice of the diverse participants immersed in the practice of human rights work, including, but not limited to academics, activists and governmental functionaries.

One of the most valuable contributions of the Center has been the effort to reconceptualize human rights. For the employees of the Center, human rights have been considered universal, interdependent, communal, and historic in nature. As Pope Francis said, “Human rights are not only violated by terrorism, repression or assassination, but also by unfair economic structures that create huge inequalities” (Rice-Oxley, 2013). The reader may be left with unanswered questions because of the breadth of the subject. The social apostolate of the Society through the Center might be viewed from the perspective of academics, of victims of violations, of governmental and international agents, of people who were novices to the practice of human rights, and from many other perspectives. I know it is impossible to have a study that at the same time encompasses all that is practical and all that is theoretical and which can address all perspectives.

In the recent past, Mexican organizations, such as Center Prodh, have engaged in major activism through international forums such the United Nations, the organizations of treaties of the Council of Human Rights that have been applying the Universal Periodic Examination, and through the Inter-American System, the Commission, and the Court. The Center actually has litigated cases before these venues and it has been actually litigating against the Mexican government, such as in the case of San Salvador Atenco, discussed in Chapter Six.

One’s attention is drawn to explain certain recurring voices to that which has been established by international norms of human rights and jurisprudence complemented by regional tribunals such as the European and Inter-American Courts. What these forums have produced has not only directly benefitted the object of their decisions, but the decisions have also resulted in consolidating a body of international norms that potentially could be recognized as rights that

transform the daily lives of the most vulnerable populations. These decisions have the capability of affecting the lives not only of individuals but also of specific sectors and entire communities. In Mexico, to become binding authority, the Mexican decisions must have produced consistent results in four similar cases.

Going forward, it will be necessary to be attentive also to new voices, to continue creating a more varied dialogue and each time attempting to come to a more dialectical multidimensional/universal vision of human rights, as Santos (2012, 2009) proposed in his work. This multidimensional universality should be one whose origin transports us back to the main reason for social justice practice—one that moves us toward those whose vulnerability and dignity has been compromised by societal oppression. The dignity of those who are vulnerable has been sometimes risked in the name of protection of human rights. This multidimensional view of human rights could help us to safeguard against the reification of this significant concept in the struggle for our humanity.

Accordingly, within the contradictions that have been and will be raised by conceptual debates at Center Prodh, a key one then has been the one that originates in the tension between the universal and the local. Center Prodh has needed and will need to think globally but act locally in order to carry out its human rights practice. Addressing global issues, however, may best protect beneficiaries of the Center's local work, in the long run, given the proliferation of human rights violations and abuses that still persisted in Mexico at the time of this study.

It will be necessary, therefore, to continue to prompt conceptual debate of human rights at the Center. It has been and will continue to be a necessary dialogue in some emerging cases, and unavoidable if we aspire to a genuinely emancipated universality of human rights. This



universality has been becoming consolidated and has been expressed in international judicial decisions. Although at the time of this study, there still remained much to be done to establish the links necessary in order to create a major impact on international human rights. There have been also conflicts that must be resolved among those actions supposedly undertaken for the protection of economic and human rights interests.

This process would best be enhanced, I argue, through a critical human rights lens; one that is grounded in the critical pedagogical principles elaborated by Antonia Darder (2009) in her writings on culture, pedagogy, and power. Her theoretical perspective has been linked to a critical epistemological lens, which has functioned to open the conceptual field of consciousness in ways that supported the integration of cultural politics, economics, the historicity of knowledge, ideology, dialectical theory, hegemony, resistance, counter-hegemony, and the alliance of theory and practice—namely praxis—into efforts to deepen our current conceptual understanding of human rights, at Center Prodh and beyond. The fluid and dynamic features of Darder’s critical pedagogical principles, as outlined in Chapter Two, offer a coherent conceptual lens for human rights—one that both has acknowledged the obstacles of oppressive social forces, while simultaneously calling for the voice, participation, and self-determination of the most vulnerable populations. More importantly, all of the principles have been fully in sync with the vision that has informed Center Prodh’s practice of human rights in Mexico.

With the litigated cases, Center Prodh has searched for integral defense for the victims of human rights violations. This has included not only the restitution of the actual right violated, the sanction of those responsible, the reparation of the damage, but also the measures of enjoining the violations. Such results have influenced the laws and public policy of Mexico.

From a critical perspective, human rights must be recognized as an outcome of social struggle, recognizing the cultural, political, and economic necessities of individuals and communities. Established rights have served as guidelines that have brought about a just and respectful environment, where people could live together with those who were different and which facilitates their voice and participation in civil society.

With its contributions, Center Prodh has made it possible for groups and organizations to appropriate the discourse of human rights as a political project and above all as an instrument of social transformation. The integration of the critical vision developed in this thesis has promoted on-going dialogue about its educational and legal work. Center Prodh has had the conviction that the defense of human rights is not just for a few specialists, but it is the communal work of everyone.

The Center has been quite correct in addressing the concerns of its own communities, but its activities as a national organization have also been marked by the tension that has been generated by diverse regional and international proceedings. This discussion has not only faced difficulties, it has above all, the basis of a diversity that permits us to construct the multidimensional universal, notwithstanding the peculiarities of each proceeding.

Center Prodh's experience has resulted in my conviction of the need to debate human rights; but for such debate to be most effective, it must also be about the daily realities of people's lives, apart from actual cases. Without failing to recognize the weight of the body of judicial decisions, local and international, there are other disciplines and knowledge available to help us understand better the world and how to struggle for its transformation. It is not about adopting cultural relativism, but to develop a strong conceptual base for the construction of

global frames of reference that can assist us in documenting the lack of human rights as universal service to the issue of human dignity, in addition to local experiences, concerns, problems and solutions.

From the standpoint of my own experience, and certainly from the data collected, I noted there remains little time to incorporate suggestions of debates, which could be acted upon by the Center. Some of these include: more details of the history of the Center and other social institutions coordinated by the Jesuits, other major legal cases, the relationship between the Society of Jesus and the Church with regards of LGBT and women's rights among other debatable topics. My intention here has been that access to this study will encourage an opening to the many possibilities still needing attention in order help to accomplish Center Prodh's mission of promoting social justice in the most marginalized communities.

It would be desirable to have a dialogue on the subjects of academics and the social work of the Society of Jesus, currently before Center Prodh that would incentivize these debates. Hopefully in the not too distant future, they will learn of organizational channels or structures that will permit an opening for the incorporation of diverse voices, not only voices from two different places, but also a voice that conceives life and dignity that arrives through other means. Through organizational channels of this type, the globalization of human rights will be advanced as a powerful practice for the solution of multiple problems of oppression that still affect our societies today.

The content of the interviews, moreover, gave me much to think about, enough to open new horizons. With those, I have been able to accomplish the intended objective for this study. Those interviewed provided viewpoints and effectively provided coordinates to advance securely

in the development of conditions that would make it possible to live and struggle with greater dignity.

According to the data, Center Prodh has become one of the most successful civil defense institutions for human rights at a national level. It provides personal attention to the victims and the families are included throughout the entire legal process. It also counts on the team specialized in legal actions to reverse the violations of human rights through the agents of the state. Similarly, it has positioned itself as a resource for other national and international human rights organizations as it has for civil society, in terms of providing trustworthy information and undertaking factual diagnosis on human rights issues in the country. I am aware that it has positioned itself publicly and that it has denounced acts that violate human rights done by agents of the state. At an international level, it is a resource in matters of human rights. With all this in mind, Center Prodh has had major relevance in the actual moment, within national instances that have been insufficient to guarantee the human rights of all Mexico's citizens.

### **Recommendations**

The observations and recommendations set forth here are suggestions that might assist in improving the internal operations of the Center. They are general guidelines that are not intended to be followed in detail, but to generate a response for the collaborators at the Center and for the Jesuits who work through grass roots organizations. As mentioned previously, Center Prodh has four departments of operations. Each coordinator and nearly all the prior directors were interviewed. In addition to the interviews, numerous documents were analyzed and my own experience as director of the Center guided the following recommendations to the

Communications, Integral Defense, Education, and International Departments, and to the Center to improve its accountability.

### **Communication Department**

Determination of the public is critical. The public who should receive this data can be more specifically identified, by requiring a more precise defining of the legal strategies and themes of the cases.

- (1) To obtain more effective results, the entities upon which pressure should be applied must be precisely identified. It is fundamental that the means of communication be established within civil organized society and society in general, in order to effectively design major debates adequately to provide relief from pending violations.
- (2) To leverage the relationship with more effective means of national communication and ensure that Prodh collaborators ensure not only a temporary but a permanent presence in national and international awareness.
- (3) Methodologies of analysis must be developed together to achieve an overall perspective for the team to consider at the time of establishing strategies and problem definitions. This should be a joint effort by the entire staff, coordinated through the communication department.
- (4) Serious and profound analyses are required to achieve the objectives and deadlines for specific actions. It is imperative we recognize the dynamics that comprise the reality in which the Center operates, the one in which it attempts to create possibilities to realize its mission.

## **Integral Defense Department**

Diaz, the coordinator of this department stated:

They were able to learn empirically and at the same time while on the job. (Interview, September 1, 2014).

This occurred as we advanced the cases and the documentation of the human rights violations.

- (1) For that reason, the first recommendation is to reinforce the defense by establishing clear processes of documentation while working the cases. We must standardize formats and criteria for monitoring that speed up the follow-up of the case in accord with the methodology.”
- (2) Center Prodh needs more internal discussion and consultation to look toward other realities: strategic cases or themes. During his interview, Jesus Maldonado, stated that he has strongly emphasized the individual cases. However, the individual cases help only two or three people. Those cases take a lot of time and they do not accomplish enough in view of the time and resources required. For that reason, it is necessary to rethink the defense of human rights cases to attempt to achieve results that are economic, social cultural and which apply to thousands of people.
- (3) However, the mission of Center Prodh requires its work address actual needs, the defense of cases of actual violations of human rights. These must be conducted in such manner that a significant impact is actually realized from these situations. Although it is not enough that the impact results in theoretical lobbying, such factors must be considered in the equation when attempting to force actual change in the lives of the victims.

- (4) The archives of the legal arguments, facts and authorities of the cases provide the most rigorous follow up method because they reflect all the work by the integral defense department. The department can look to a computerized database which can guarantee an adequate follow up and still maintain the privacy of the clients and other people who interact with the Center
- (5) Center Prodh must ask deeper questions about the relationship between the defense and the expectation that by making structural changes that can cause human rights issues to be more visible in the prosecutorial system and within the administration of justice.
- (6) Innovation in the strategies of the defense of cases. Certain efforts have been profiled to demonstrate strategies that have been successful in resolving the types of problems the staff at the Center must address. These strategies include interdisciplinary approaches and the application of rigorous processes that are consistent with the daily activities of Center Prodh.
- (7) One fundamental means to improve the judicial system is to improve opportunities for the better training for lawyers. Center Prodh is also one of the better human rights schools. As a result, many lawyers have become experts in human rights and work in national and international institutions.

### **Education Department**

There are perceived differences between organizations that receive and those that did not receive training from Center Prodh and its publications. Banda, Coordinator of Education, urged the need

To develop processes that respond to the context, those evolving from these processes and those which generate viable tools to promote and defend human rights. (Interview, August 28, 2014)

I recommend two major things here:

- (1) In the same vein, it is necessary to promote the relationship with local media when there are local forums by working closely with the communication department. The Education Department must be responsible to train the staff on issues such as gender mainstreaming perspective of fairness, as necessary in a dedicated organism to the defense of human rights.
- (2) Each workshop should be separately evaluated as well the forums used. The links and interchanges with the local organizations which the Center serves should be strengthened. In light of the procedures used by the Education Department, we should ask: Which role should the Education Department play in order to motivate formative procedures at the Center? What problems are the Center coming to be aware of? What is mobilizing the people? Which path should the Center take?

### **International Department**

Stephanie Brewer, an attorney highly knowledgeable in international law, managed the Internal Department at the time of this study. She had a history of strong educational and professional accomplishments in the field. She had helped the Center to become a strong resource and had raised the image of the Center viewed as a desirable a resource among the region's NGO community. Three key recommendations came from the research:



- (1) To increase substantially the efforts to elicit responses from key international figures regarding the cases and the victims' needs that have priority.
- (2) To provide a context for more of the cases, for more of the abuses from a perspective of international human rights and of the same general situations that affect the entire world. That is to say, to help people understand that the disturbing trend of the increase in abuses comes as part of a broader specter of violations, poverty, and marginalization.
- (3) To consider how to respond to the government's strategy of lying regarding international situations before international forums such as the Inter-American Commission and the Agencies of the United Nations.
- (4) As a whole, Center Prodh should improve its institutional features, which could result in reflecting a stronger institutional image:

### **To Improve Its Accountability**

The internal affairs of the Center could also be strengthened.

- (1) The Center should schedule opportunities for discussion, not to determine abstract positions, but to address emerging needs and issues. To consider and analyze these subjects, the Center could also invite specialists to address those specific issues.
- (2) It would be helpful if the Center would categorize the issues, the facts and the personal experiences in the cases and archive them by such categories.
- (3) One solution that emerged from the interviews with coordinators is the need to establish a methodology to have better communication with the Center's departments. The object is to create more streamlined approaches, to recognize, systematize and

socialize the information for the entire Staff. It is important to elaborate the projects they have in common and to experiment with new models of institutional practices.

(4) One way to systematize the numerous documents is by use of an electronic database that can segregate the documents by diverse topics. Money is needed to buy the electronic program. Money is needed to pay people to input the information into the database.

### **Final Thoughts**

Finally, it is necessary to strengthen the Staff's spirit of vocation. Sharing the spirit of vocation with those who address the defense of the victims' rights is an inescapable part of the work. The spirit of vocation addressed here is not linked to a specific religious option, but about a major characteristic of ethics that attempts to respond to the questions of those who suffer.

When David Fernandez was interviewed (2014) he expressed this concept in the following way.

[A]t the same time as saying that one has to bestow it from an inspiration and from a clear identity, I am saying this: the spirit of vocation must be practical, realistic for the service to people's dignity. It is something that is transmitted by what is done, more than by talk. And that is the responsibility of the Society of Jesus. That it not be a mercenary work such as the public agencies for human rights.

Engaging the actual pain experienced by victims of human rights violations within the real world, not solely as abstract analysis or the review of statistics, has been a characteristic practice of Center Prodh staff. This implies the acknowledgement of one's dignity apart from one's own acts of assertion and resistance in the work. This commitment brings about the

acknowledgment of the option that the Society and its work have provided to its General Congregations, especially in the Decree Four.

For that reason it is recommended to the Society of Jesus that the Center:

- (1) Emphasize the specific contributions of its social work, and emphasize the difference of the impact of its work, and its application at the actual time;
- (2) Frame the policy of its program of activities in a wide context of commitment and the good works accomplished in the world for the promotion of justice; and,
- (3) Highlight the inspirational character of the membership in the Society; that it mark its works with a spirit of vocation that implies contributions not confessionals, but of professionals committed to the world, in dialogue with others.

The Society of Jesus, with its resources, its universities, its social centers and Jesuits of high profile needs to engage in a serious critical analysis, presupposing this implies a proposed methodology that recognizes the actual attitude of the Jesuits about social problems—not only condescending good intentions and attitudes— with a sense that it is strategically planning what it hopes to realize in the world. It is important that the Society of Jesus publish a document focused on human rights and practices related to the defense and protection of human rights. It would also be relevant for the Society to convene a conference of human rights specialists, so that its mission in this field can be advanced.

From the standpoint of Center Prodh's work, it is important to demonstrate the exceptional contributions of the Center in various aspects, from its unique perspective, its interests, and its capabilities. All of the different departments would have to have these issues in common, as it does not appear that a congruent and coherent posture currently exists. In other

words, if the analysis only exists as a backdrop to address areas of work and procedures previously decided upon—to make reality adjust to the options already determined— it will then be an exercise of legitimizing a conclusion detached from reality. If it is assumed that our analysis, with its serious intent, is grounded in the same reality that demands our attention, then major possibilities will emerge for effective social action by the Jesuits. The overall intention is to construct a socially just and culturally inclusive society, where justice and the law are truly instruments for freedom genuinely protecting the human rights of all.

## APPENDIX A

### Interview Questions That Will Be Used In the Study

- (1) When did you become Director of Center Prodh? Who appointed you? What was the context of the Center?
- (2) Did you receive any orientation or training on Human Right before you became director? How did you get involved in human rights?
- (3) What was the human rights situation in Mexico during your tenure?
- (4) What was the approach of Center Prodh to Human Rights? Did you discuss the approach with the team? How was your approach different from the past?
- (5) How would you describe your understanding of Human Rights in accordance with the Jesuit Mission?
- (6) In what ways do you think Center Prodh's educational programs and litigation practices enhance the Jesuit Mission within disenfranchised communities?
- (7) Based in your experience, what are particular examples of Center Prodh's influence on law and public policy?
- (8) What do you think are the strengths and challenges of Center Prodh, with respect to its human rights practices in communities?
  - Litigation Practice
  - Education
  - Relationship between society and Center
- (9) Anything she missed you would like to add.

## APPENDIX B

### Comparing Provisions of *Pacem in Terris* and *Universal Declaration of Human Rights*

#### *Pacem in Terris*, 1963

#### *Universal Declaration on Human Rights*, 1948

Man has the right to live. (11)

All individuals have the right: To live (art. 3)

To bodily integrity (11)

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 5)

To meet together and to form associations with their fellow man (23)

Everyone has the right to freedom of peaceful assembly and association (art. 20.1)

To freedom of movement and of residence within the confines of his own state (25)

Everyone has the right to freedom of movement and residence within the borders of each state (art. 13.1)

When there are just reasons in favor of it, he must be permitted to emigrate to other countries and take up residence there (25)

Everyone has the right to leave any country, including his own, and to return to his country (art. 13.2)

Everyone has the right to seek and to enjoy in other countries asylum from persecution

He has the right to the legal protection of his rights, and such protection must be effective, unbiased, and strictly just (27)

Everyone has the right to recognition everywhere as a person before the law (art. 6)

All are entitled to equal protection before the law (a.7)

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him (art. 10)

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. (art. 11.1)

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law (art. 8)

**Comparing Provisions of *Pacem in Terris* and *Universal Declaration of Human Rights*  
(Continued)**

***Pacem in Terris*, 1963**

***Universal Declaration on Human Rights*, 1948**

No one shall be subjected to arbitrary arrest, detention or exile (art. 9)

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed. (art. 11.2)

Man has a natural right to be respected (12)

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. (art. 22)

He has a right to his good name (12)

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks. (art. 12)

He has a right to freedom in investigating the truth (12)

Everyone has the right to freedom of thought (art. 18)  
Everyone has the right to seek, receive and impart information and ideas (art. 19)

He has a right to freedom of speech and publication within the limits of the moral order and the common good (12)

Everyone has the right to freedom of opinion and expression (art. 19)

**Comparing Provisions of *Pacem in Terris* and *Universal Declaration of Human Rights*  
(Continued)**

***Pacem in Terris*, 1963**

To worship God in accordance with the right dictates of his own conscience, and to profess his religion both in private and in public. (14)

Human beings have also the right to choose for themselves the kind of life which appeals to them: whether it is to found a family—in the founding of which both the man and the woman enjoy equal rights and duties—or to embrace the priesthood or the religious life (15)

He has the right to a family, founded upon marriage freely contracted, one and indissoluble (16)

Man's personal dignity involves his right to take an active part in public life, and to make his own contribution to the common welfare of his fellow citizens (26)

He has the right to the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, rest, and, finally, the necessary social services. In consequence, he has the right to be looked after in the event of ill health; disability stemming from his work; widowhood; old age; enforced unemployment; or whenever through no fault of his own he is deprived of the means of livelihood. (11)

***Universal Declaration on Human Rights*, 1948**

Everyone has the right to freedom of religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (art. 18)

Everyone has the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (art 16.1)  
Marriage shall be entered into only with the free and full consent of the intending spouses (art. 16.2)  
Everyone has the right to a nationality (art. 15)

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives (art. 21)

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (art. 25.1)



**Comparing Provisions of *Pacem in Terris* and *Universal Declaration of Human Rights*  
(Continued)**

***Pacem in Terris*, 1963**

***Universal Declaration on Human Rights*, 1948**

A man has the inherent right not only to be given the opportunity to work, but also to be allowed the exercise of personal initiative in the work he does (18-20)

Everyone has the right to work, to free choice of employment, to just and favorable conditions of work (art. 23.1)

To rest (11)

Everyone has the right to form and to join trade unions for the protection of his interests (23.4)

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay (art. 24)

To own private property entails which a social obligation (22)

Everyone has the right to own property alone as well as in association with others (art. 17.1)

He has the natural right to share in the benefits of culture, and hence to receive a good general education (13)

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory (art. 26)

Of course, the support and education of children is a right which belongs primarily to the parents. (17)

Parents have a prior right to choose the kind of education that shall be given to their children (art. 26.3)

Everyone has the right freely to participate in the cultural life of the community (art. 27.1)

## APPENDIX C

### List of Background Reference Documents for Legal Cases

#### *Montiel vs. United States of Mexico, 2009*

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