

A b s t r a c t

This paper describes a unique system through which health care-related human rights are now being monitored and protected in Mexico. Based on the ombudsman concept, the system focuses on identifying and responding to violations of human rights and dignity which may occur in the context of health care delivery. Experience thusfar has been encouraging; the Mexican population has identified and used the National Commission of Human Rights as a forum for a variety of health-related complaints. The Mexican system, while requiring strengthening and expansion, is an effort to integrate the monitoring and protection of health-related human rights into the broader field of human rights work in Mexico.

En este trabajo se describe un sistema único a través del cual se monitorizan y protegen los derechos humanos relacionados al cuidado de la salud en México. Sobre la base del concepto de ombudsman el sistema se centra en la identificación y respuesta frente a las violaciones a los derechos humanos en el contexto de la atención a la salud. La experiencia hasta la fecha ha sido muy estimulante: la población mexicana ha identificado y utilizado al la Comisión Nacional de Derechos Humanos como una instancia para presentar quejas relacionadas con la salud. El sistema mexicano, aunque aún requiere fortalecerse y expandirse constituye un esfuerzo por integrar el monitorco y la protección de los derechos humanos relacionados con la salud dentro del amplio campo de los derechos humanos.

Cet article décrit un système unique en son genre, grâce auquel les droits de l'homme liés aux soins de santé sont à présent surveillés et défendus au Mexique. Ce système, basé sur le concept de l'ombudsman, se focalise sur l'identification et le suivi des violations des droits et de la dignité de l'homme pouvant survenir dans le cadre des services de soin. Jusqu'à présent, l'expérience s'est révélée encourageante. La population mexicaine a reconnu la Commission Nationale des Droits de l'Homme en tant que forum pour formuler ses doléances en matière de santé et a eu recours à elle. Le système mexicain, bien qu'il ait encore besoin de se renforcer et de s'étendre, situe la surveillance et la protection des droits de l'homme liés à santé dans le contexte plus vaste des droits de l'homme au Mexique.

MONITORING AND PROTECTING HEALTH AND HUMAN RIGHTS IN MEXICO

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Many of the organizations which monitor and protect human rights were created in response to violations inflicted upon prisoners of war, political prisoners or migrants. However, while people afflicted with a wide variety of health problems, such as tuberculosis, leprosy, cancer, mental illness and HIV/AIDS, have also been victims of a characteristic set of human rights violations, less institutional attention has been given to monitoring and protecting rights in these situations.

This paper discusses the evolution of the governmental system created to help protect health care-related human rights in Mexico and describes the current status of the mechanisms through which respect for these rights can be monitored. After reviewing the ombudsperson concept, which is central to the Mexican approach, the organizations created to monitor human rights and the principles governing their activities will be reviewed. Mexico's recognition of health-related rights can then be understood within the broader evolution of human rights. Finally, a series of recommendations are proposed to strengthen the monitoring and protection of health-related human rights in Mexico.

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The authors hope that this detailed description of the Mexican system will promote self-evaluation, self-discipline and the friendly and effective resolution of conflicts concerning health-related human rights in other communities and countries.

The Ombudsperson

Historically, protection of human rights at a national level has been intimately related to the concept of the ombudsperson.¹ The ombudsperson ("delegate," "representative," "defender," "attorney," or "law officer"), was an official post created by the Swedish Constitution in the early 19th century to establish a new, swift and informal forum through which individuals could complain about arbitrary treatment and other transgressions committed by public officials.^{2,3}

The ombudsperson concept is central to Mexico's approach to monitoring and protecting human rights. The growing popularity of the ombudsperson role is attributable to the expansion of public administration and the multiplication of governmental institutions. In the context of this growth, the potential for problems arising between public agencies and individuals has increased enormously; at the same time few channels exist for filing complaints and the functioning of the court system is slow and rigid.⁴ As traditional mechanisms of monitoring and controlling governmental actions have become inadequate, often new approaches have been taken, including the ombudsperson.⁵

According to Alvaro Gil-Robles (Spain's current Defender of the People), the ombudsperson has the following general characteristics and obligations:

- a) appointment through election by a democratically constituted Parliament
- b) political neutrality
- c) independence from parliamentary influence
- d) accessibility to citizens without requiring proxies, monetary payments or intermediaries like lawyers
- e) power to investigate complaints in a brief and informal way with direct access to administrative documentation concerning the complaint
- f) competence at the public administrative level, including the justice system and the military
- g) obligatory annual or extraordinary reports outlining results of investigations to Parliament and, in some cases, publication

- of the names of those government officials involved in egregiously bad public administration, and
- h) authorization to sanction functionaries or to propose other sanctions.⁶

The ombudsperson's special role reflects these dual realities: the necessity for independence from and for authority within, the government. To maintain independence, according to Carpizo, "the only existing truth for him is that which is derived from the record and the evidence it contains, after appraising such things according to the law, with fairness and consequence."⁷ Yet to function effectively, the ombudsperson must also function as an arm of the state, but not of the government. He or she draws authority and resources from Parliament or the Executive branch, but does not belong to any governmental agency.

To promote objectivity and impartiality, the state must guarantee that any recommendations from the ombudsperson be objective and impartial. Therefore, the ombudsperson should be selected from among those having recognized authority and civic commitment, and who, in addition, are insulated from political controversy. To ensure the ombudsperson's autonomy, independence, dignity and efficacy, four basic guarantees are essential: election, permanence, remuneration and responsibility. Carpizo reminds that "these guarantees are not established for the person's benefit...but to insure the independence of his functions, so that he will be the first one to respect them and make them be respected by others."⁸

The ombudsperson's tools *par excellence* are recommendations and periodic public reports. However, often the most appropriate course for complaint resolution is conciliation or friendly agreement. These offer the added benefit of demonstrating to authorities that the ombudsperson is a genuinely neutral party. Should conciliation fail, it becomes necessary to recommend and record complaints through the ombudsperson's public reports. No public agency likes being labelled as a violator of human rights; such agencies are even more sensitive to being considered reluctant or unable to rectify and punish such violations. In this context, the ombudsperson must maintain a delicate balance in his or her relationship with the media.

In addition, since one of the ombudsperson's most important functions is to educate both the public and the government,

his or her work must be published. This will ensure that it “really reaches the people so that they have a better knowledge of their rights and how to defend them, and so that public functionaries know how to better fulfill their obligations.”⁹

Protecting Human Rights in Mexico

In Mexico, applying legal protections to human rights dates from the beginning of the Republic. In 1840, the right to appeal (Juicio de Amparo) was created to defend human rights, first at the local level and then, seven years later, at the federal level. Juicio de Amparo includes the power to issue injunctions, which is the backbone of the defense of constitutional and human rights in Mexico.¹⁰

More recently, other organizations charged with non-judicial protection of human rights include: the Board of Human Rights Defense of Nuevo León, created in 1979; the Neighbors’ Representative, established in the city of Colima in 1983; the Defense Council for University Rights, whose statutes were approved in 1985; the Indian Defense Agency, created in Oaxaca in 1986; the Social Law Office of the Mountain, established in 1987 in Guerrero; the Citizen Protection Agency, established in Aguascalientes in 1988, and the Defense Council for Neighbors’ Rights, created in Querétaro in the same year; and the Social Law Office for the Department of the Federal District, formed in July 1989.^{11,12}

At the federal level, President Salinas de Gortari’s administration (1988-94) created the General Board of Human Rights within the Ministry of the Interior, and shortly thereafter on June 6, 1990, created the National Commission on Human Rights (NCHR) as a decentralized institution belonging to the same Ministry. After only a year and a half of activity, on January 28, 1992, the NCHR acquired constitutional authority by the addition of Section B to Article 102 of the Constitution, which set up a human rights ombudsperson system:

The Congress of the Union and the State legislatures will establish, within the scope of their respective competences, institutions for the protection of human rights, as granted by Mexican legal policy. These institutions will be informed of complaints against acts or omissions of an administrative nature committed by any public authority or servant, with the exception of the Judicial Power of the Federation, which vio-

late these rights. They will make public independent recommendations without entailment, as well as reports and complaints to the respective authorities.

These institutions will not be qualified to interfere in electoral, labor or jurisdictional matters.

The institution established by the Congress of the Union will be informed of any inconsistencies that relate to the recommendations, agreements or omissions of equivalent institutions at the state level.¹³

Thus, the Mexican governmental system for non-judicial protection of human rights now includes 33 organizations - one for each of the 31 states, one for the Federal District and the NCHR. Due to its scope, the Mexican ombudsperson system may be considered the largest of its type in the world.¹⁴

The National Commission of Human Rights

The National Commission of Human Rights (NCHR) is defined as a "decentralized institution, with a legal character and independent budget that has as its central objective the protection, enforcement, promotion, study and publication of those human rights established by the Mexican legal order."¹⁵ According to Article Three of the NCHR Law, the Commission has three areas of competence:

- Administrative violations, procedural flaws and crimes which harm a person or a group and which are committed by a public authority or servant;
- Administrative violations, procedural flaws and crimes which harm a person or a group, committed by other social agents, whose impunity comes from the consent or tolerance of a public authority or servant; and
- In the cases referred to in the previous clauses, harm due to negligence chargeable to a public authority or servant.

In the context of the previous discussion, the NCHR qualifies for ombudsperson status in the following ways: it provides for the filing of complaints; has investigative power; gives the

complaining party direct access to the office in charge of protecting that individual's rights; has the authority to review all documents pertaining to the case; performs its duties in an informal and efficient manner; has an apolitical nature; performs its functions independently; and writes and publishes periodic public reports. The NCHR serves at the prerogative of the President of the Republic, is officially located within the Executive branch, and bears no sanctioning power.

The Defense of Healthcare-Related Human Rights in Mexico

The history of monitoring and protecting health-related human rights in Mexico began on September 17, 1983, when the President of the Republic announced that he would create the position of Commissioner for Health Protection. In designing the role of the Commissioner, the model of the Swedish ombudsperson was followed explicitly. Thus, the Commissioner's central functions were set out as follows:

To gather claims filed by the Mexican people and to demand that health institutions render their services properly; to carry out studies, and request from authorities the information he [the Commissioner] considers to be pertinent, and to establish the appropriate instrument to carry out his mission.¹⁶

The General Health Law, sent to the Mexican Congress towards the end of 1983, also proposed the creation of the National Commission for Health Protection as a public decentralized body, having a legal character and an independent budget, and responsible to the President of the Republic. Further, Article 54 of the General Health Law proposed the following functions for this commission:

- To act as the people's representative before public, social and private institutions that render health services, private physicians and manufacturers and the providers of medicines, curative materials, health instruments and equipment;
- To know, prevent, conciliate and arbitrate those conflicts that may arise between the people and health authorities; and between individuals, on the one hand, and the persons, institutions, and public, private and so-

cial organizations that render health services, on the other.

- To establish mechanisms for coordination with public, social or private organizations, as well as with international organizations that may be convenient for the achievement of its goals;
- To promote, before the appropriate authorities, the regulation and control of professional medical and paramedical practice, and of the supply of health resources, in order to correct deficiencies or irregularities in these areas; the possible modification of the environmental situations in order to promote more favorable conditions for health development.

However, the Congress of the Union decided to eliminate article 54 from the General Health Law, arguing that many of the duties assigned to the Commissioner belonged to the health authority.

Seven years later, in 1990, with the establishment of the NCHR, the mechanisms were in place for monitoring and protecting human rights in health-related situations involving interactions between the healthcare system and individuals.

The NCHR has expressed great interest in protecting health-related human rights by receiving and processing complaints, carrying out investigations, making recommendations, and designing guidelines for general use. In addition, the NCHR has organized conferences dedicated to the study of health-related human rights and the diffusion of national and international experience in this field.

Table 1 demonstrates that the Mexican population has identified and used the NCHR as a forum for health-related complaints. In the first half of 1993, the NCHR fielded a total of 176 health-related complaints. Three types of health-related complaints were among the 20 principal complaints filed with the Commission. Figure 1 shows that the number of health-related complaints has increased considerably since the Commission's creation.

The importance and number of complaints led the Commission to create a department in charge of supervising hospitals and shelters within its Third General Inspectorship. Until now, this department has been entrusted with monitoring and

protecting the human rights of psychiatric patients, but its medium-term plan has broadened its mission, to include responsibility for all health-related activities.

A variety of governmental and nongovernmental organizations have also developed programs to defend health-related human rights. Such organizations include the Federal Environmental Protection Agency; the National Committee for the Prevention and Control of AIDS (CONASIDA), which is a decentralized body of the Ministry of Health; the Mexican Foundation for the Rehabilitation of the Mental Patient; the Department of Human Rights of the Mexican Archdiocese; the Group for Social Research and Human Rights in AIDS; and the Mexican Foundation for the Fight Against AIDS. The mere existence of these institutions, together with the number of claims they process, are evidence of citizen discontent with certain practices of public institutions. For example, in 1992, CONASIDA received 191 complaints that met strict criteria and were found to constitute violations of human rights.¹⁷ In 1993, that number nearly doubled, to 367, mainly involving complaints of denial of medical care, harassment, and abuse by medical authorities.

Recommendations

To strengthen, expand and diversify protection of health-related human rights in Mexico, several initial recommendations are proposed:

- To study the operation of and to strengthen those offices that receive complaints at public institutions (i.e. claims departments, social work departments). For example, courses on human rights could be offered to public hospital social workers both as general education and to enhance their ties to the NCHR and to state human rights commissions.
- A health ombudsperson position could be appointed to strengthen the efforts by the Ministry of Health, the NCHR, and the state human rights commissions, as well as to promote respect for health-related human rights and to deal with health-related complaints.

- To guarantee the right to protection of health which is already codified in the Mexican Constitution, it is necessary to define the content and constraints of Mexico's legal régime with respect to this protection. This will help to ensure enforcement of the legal mandate.
- To promote the active monitoring and protection of the human rights of "at risk" groups and of those patients particularly subject to stigmatization such as disabled individuals, persons with HIV/AIDS, mental patients, and lepers.
- Implementation of a policy to guarantee safe handling of transplants and genetic material, and stimulating a culture of informed consent and respect for the Helsinki Declaration and the Regulation of Health Research.^{18, 19}

This paper has focused on violations of human rights and dignity which may occur in the specific context of health care, settings in which services are provided by or regulated by the government. It is hoped and anticipated that strengthening of this important system will be accompanied by an effort to broaden the scope of health-related human rights monitoring and protection, to include a wider appreciation for the complex relationships between government and the rights and health of people.

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References

1. The modern use of the word 'ombudsperson' has replaced the original 'ombudsman.'
2. A. Bullock, O. Stallybrass, eds. *The Fontana Dictionary of Modern Thought* (London: Fontana and Collins, 1977).
3. The *Ombudsman* was a substitute for the 16th century legal figure called

- Justitie Kansler*, a delegate of the crown in charge of supervising governmental enforcement of its laws and regulations. He was also responsible for periodically informing the Parliament on the results of his negotiations.
4. P.E. Nilsson, "El ombudsman, defensor del pueblo ¿o qué?" *La defensa de los derechos universitarios de la UNAM y la institución del Ombudsman en Suecia* (México, D.F.: UNAM, 1986).
 5. J. Maiorano quoted in J. Carpizo Algunas, "Reflexiones sobre el Ombudsman y los derechos humanos," J. Carpizo *Derechos humanos y ombudsman* (México, D.F.: UNAM, Comisión Nacional de Derechos Humanos (CNDH) 1993), pp. 41-74.
 6. J. Carpizo, "La Comisión Nacional de Derechos Humanos y el ombudsman." In: J. Carpizo, " *Derechos humanos y ombudsman* (México, D.F.: UNAM, (CNDH), 1993): 15-18.
 7. J. Carpizo, "Algunas preocupaciones sobre la institución del ombudsman," J. Carpizo, *Derechos humanos y ombudsman* (México, D.F.: UNAM, CNDH, 1993), pp. 51-63.
 8. *Ibid.*
 9. Ley de la Comisión Nacional de Derechos Humanos. Diario Oficial de la Federación 1992, 29 de junio.
 10. "Juicio de Amparo" is defined as "a public institution that has as its objective the protection, under the tutelar forms of judiciary proceedings, of the rights granted by the Constitution, or the maintenance and conservation of equilibrium between the diverse ruling powers of the nation, inasmuch as the rights of individuals are offended or injured by the invasions of these powers." Moreno quoted in: A. Trueba-Urbina, J. Trueba-Barrera, *Ideas generales del amparo de la nueva legislación de amparo reformada*. (México, D.F.: Porrúa, 1987).
 11. F. Fix-Zamudio, "El ombudsman en México" (CNDN) *Memorias del congreso internacional, "La Experiencia del ombudsman en la actualidad"* (México, D.F.:CNDH, 1992), pp.147-153.
 12. J. Cuellar-Madrado, "Cincuenta años de evolución de los derechos humanos," *Rev UNAM* (1994): 516-517,17-23.
 13. *Constitución Política de los Estados Unidos Mexicanos*, 110a. Edición. (México, D.F.: Editorial Porrúa, 1993).
 14. In addition, according to Sergio Aguayo, President of the Mexican Academy of Human Rights, more than 200 nongovernmental institutions guard and protect human rights in Mexico.
 15. See note 9.
 16. P. Arroyo, "Posible papel de los usuarios de los servicios médicos," *Gac Med Mexico* 127 (6) (1991): 292-295.
 17. S. Panebianco-Labbé: "México: La respuesta nacional ante la violación de los derechos humanos de las personal que viven con VIH-sida," Unpublished paper.
 18. According to the National Registry of Transplants, in Mexico, until December 1991, transplants carried out included 3433 kidney, 14 heart, 17 liver, 9 pancreas, and 53 bone marrow. The total of these transplants represents between 0.1-8% of the identified national demand. (J.M. Cacho-Salazar, "Factores económicos y los trasplantes de órganos." *Gac Med México* 129(23) (1993): 172-176).
 19. In this sense, recent creation of the National Bioethics Commission is worth mentioning. This is a permanent group for the study and judgment of bioethical concerns. Belonging to the General Health Council, the group is charged with participating in public and private programs related to problems that jeopardize life and health in general, and which are known to effect the ecosystem.G. Moctezuma-Barragán, "Aspectos ético-legales de los trasplantes en México," *Gac Med México* 129(2) (1993): 169-172.

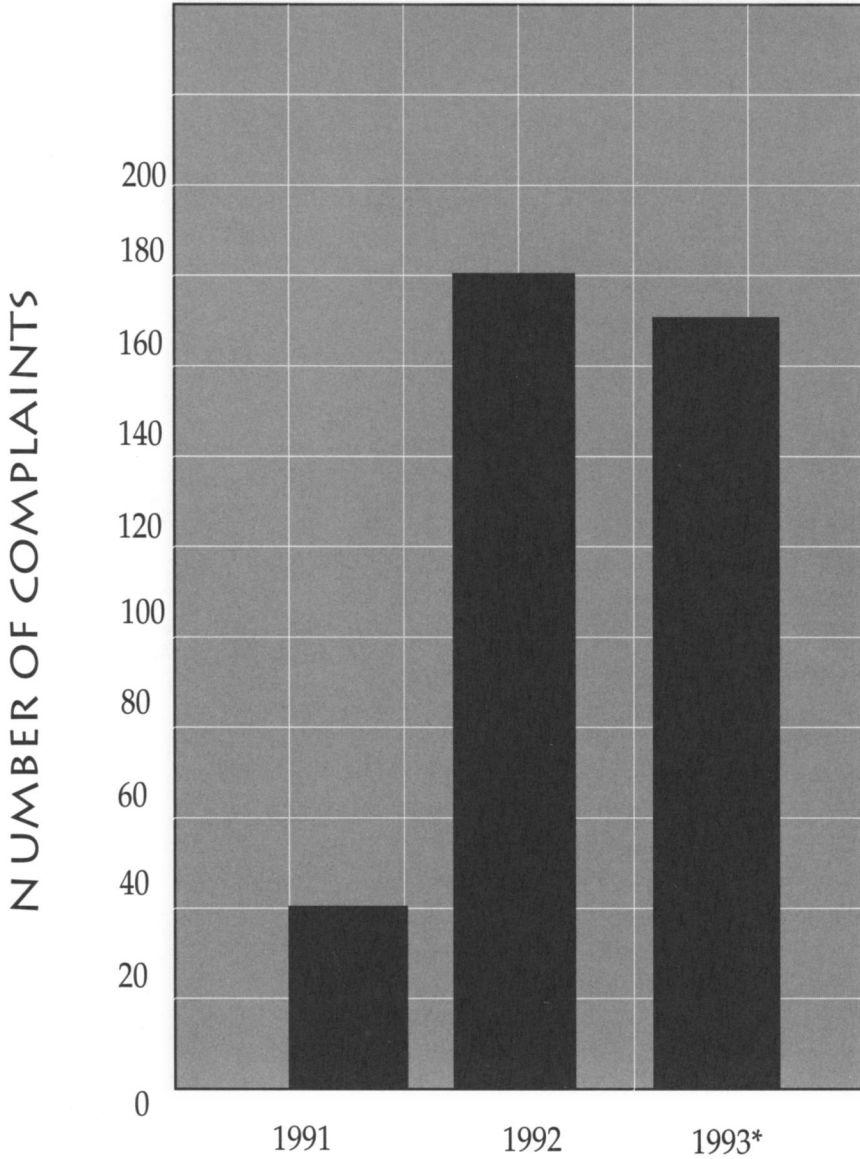
Table 1
Principal Causes of Complaints Filed
at the NCHR of Mexico
January- June 1993

Type of Complaint	Number
Abuse of authority	365
Violation of prisoners' rights	248
Delay in the procurement of justice	237
Arbitrary detention	231
False accusation	127
Procedural vices	127
Denial of the right of petition	119
Public servants' responsibility	114
Disagreement as to administrative resolution	97
Torture	77
Delay in administrative procedure	68
Denial of a request for medical attention *	66
Medical negligence*	66
Denial of justice	51
Denial of access to medical services*	42
Delay in the jurisdiction process	39
Incommunication	38
Non-performance of resolution, sentencing or finding	37
Undue practice of public service	33
Intimidation	33
* Healthcare-related complaint	

Source: Comisión Nacional de Derechos Humanos.
Cuarenta meses en cifras. Mexico, D.F. CNDH, 1993.

Figure 1

Health-Related Complaints
Filed at the NCHR of Mexico
June 1993



*Only includes January - June of 1993
NCHR: National Commission of Human Rights