

MEXICO

CCPR A/38/40 (1983)

60. The Committee considered the initial report of Mexico (CCPR/C/22/Add.1) at this 386th, 387th and 404th meetings, held on 13 and 26 October 1982 (CCPR/C/SR. 386, 397 and 404).

61. The report was introduced by the representative of the State party who indicated that lengthy and meticulous comparative studies had shown that Mexico's laws were in perfect harmony with the international legal instruments for the protection of the most important human rights, that the rights proclaimed in the Covenant were consonant with the personal and social guarantees embodied in Mexico's political Constitution and laws and that the philosophical foundations of the Covenant and of his country's laws completely coincided.

62. Members of the Committee welcomed the co-operation of the Government of Mexico had shown in submitting, in time, a report drawn up in accordance with the Committee's guidelines and in agreeing, at short notice, to send a delegation for the consideration of that report earlier than the date initially intended. In this respect, it was asked whether it was known in Mexico that the Government was to submit a report to the Committee and whether the provisions of the Covenant had been widely publicized, particularly, among lawyers and members of the judiciary, the police and other authorities, both at the federal and state level. Noting that practices, customs and traditions were more important than the written law and considering the current economic crisis in Mexico, members requested information on any factors and difficulties affecting the implementation of the Covenant, as well as statistical data to illustrate the progress achieved in the enjoyment of the rights and freedoms enshrined in the Covenant.

63. With regard to article 1 of the Covenant, it was observed that it was the first time that a report submitted to the Committee had placed such emphasis on the control of natural resources as an element in the right of peoples to self-determination and that Mexico's experience showed that the more a country was master of its own economy, the better it was able to combat foreign intervention, preserve its national cultures and defend human rights, and it was asked what impact such economic measures had on the enjoyment of human rights in Mexico. In this connection, it was asked whether Mexico interpreted the right of peoples to self-determination as applying to the federal structure of the Mexican State and what Mexico's attitude was towards the peoples struggling for their self-determination in Africa and the Middle East, particularly the Palestinian people.

64. In connection with article 2 of the Covenant, it was noted that, according to the Mexican Constitution, in the event of a conflict, the provisions of the Federal Constitution, the federal laws and the Covenant would prevail over any contradictory provisions in the laws of the individual states comprising the Mexican Federation, and it was asked which would prevail if there were a conflict between the Covenant and the Federal Constitution or some federal law, whether there was any Mexican jurisprudence on that point and whether the Covenant was in fact ever invoked and, if so, whether any judicial decisions had been taken in this respect. Considering that it was at the state or municipal level that violations of human rights were most likely to occur, it was asked what

means of control were exercised by the Federal Government in order to ensure respect for human rights by the state authorities. In this connection, several members requested more information on the amparo procedure, particularly on how wide its sphere of application was, how effective it was in practice, what it could mean in practice to a Mexican peasant and whether he could exercise that remedy himself or would require the assistance of a lawyer and, if so, how costly that procedure was. It was also asked whether the amparo procedure was applicable to any action by the police as well as in the case of disappeared persons, whether it could be resorted to by persons wishing to assert their rights under the Covenant, what organ existed to enforce judicial decisions and whether there were in Mexico any private or public institutions responsible for the promotion and defense of human rights.

65. Commenting on article 3 of the Covenant, members of the Committee observed that the report was very brief and limited to the reference to the relevant article of the Constitution consecrating the principle of equality before the law. This principle, it was pointed out, was only one aspect of equality between the sexes and its inscription in the Constitution was not enough to convert it into actual equality. Referring to another article in the Constitution stipulating that the President of Mexico must be, *inter alia*, the son of Mexican parents by birth, one member wondered whether that was compatible with the principle of equality enshrined in the Covenant. Information was requested on the respective percentages of both sexes in educational institutions, in the executive, legislative and judicial branches of the Government as well as in the liberal professions, and on the measures taken to secure actual equality between men and women and particularly to inform the latter of their rights under the Covenant.

66. With respect to article 4 of the Covenant, several members sought clarification as to whether article 29 of the Constitution was fully in accord with it and whether any emergencies had been declared in Mexico in recent years.

67. As regards article 6 of the Covenant, members noted the lack of information in the report on several aspects of the right to life such as measures required to reduce the currently high infant mortality and to combat criminality. It was asked why abortion was not considered as one measure of family planning which was recognized in the Constitution; what effective measures were taken to limit the use of arms by the security forces or to deal with private security forces or armies or gangs of hooligans; whether it was appropriate to guarantee the right of every inhabitant to possess firearms; and what effective steps were taken to investigate alleged disappearances and deaths at the hands of the security forces, to bring those responsible to justice and to prevent any recurrence of such incidents. Members sought clarification of the information in the report stating, on the one hand, that the death penalty was abolished in Mexico and, on the other, listing the crimes punishable by that penalty as provided for in the laws. In particular, it was asked what exactly were the grave military offences and highway robberies for which the death penalty could be imposed and whether that penalty could be imposed against guerrilla fighters or people active in a civil insurrection.

68. Commenting on article 7 of the Covenant, members praised the express prohibition of any kind of torture in the Mexican Constitution and requested information on any mechanisms that may have been established under Mexican legislation to ensure actual respect for the constitutional prohibitions of ill-treatment. They also asked whether there had been any cases of torture or maltreatment in Mexico of which police or security officers had been found guilty and for which

they had been punished and what the penalties provided for in such cases were. Noting that the Mexican Criminal Code referred to corporal punishment as a normal penalty, some members asked which offences this punishment was prescribed for, and what made the Mexican authorities think that corporal punishment was compatible with article 7 of the Covenant. Maintaining that the non-refoulement of refugees was now, in his opinion, a general principle of international law, and probably constituted an implied duty under this article, one member asked whether Mexico subscribed to the same view and, if so, whether some explanations could be made of the circumstances surrounding the reports to the effect that groups of persons crossing the southern borders were returned to their country of origin. With reference to some articles of the Mexican Health Code, it was asked whether it was to be concluded that medical experiments which did not endanger the life of the subject could be carried out even without his consent.

69. In relation to article 8 of the Covenant, clarification was requested of article 5 of the Constitution, which provided for exception to one's right to engage in the occupation of his choice and made obligatory "the performance of municipal office and of an office held through ... popular election" and it was asked whether a Mexican citizen who had been elected to a civil office, but refused to accept it, could be compelled to do so against his will and, if so, whether that was compatible with the Covenant.

70. In connection with article 9 of the Covenant, it was asked whether administrative authorities were empowered to take measures involving deprivation of liberty; whether there were sufficient guarantees in Mexican law to prevent the arbitrary committal of mentally disturbed persons to psychiatric institutions; whether a "charge, accusation or complaint" supported "by a person of good faith or by some other evidence" indicating "the probable guilt of the accused" as indicated in the report, was sufficient to order remand in custody and, if not, what conditions there were for such an order to be issued; whether a detainee had the right to see his lawyer immediately upon arrest or whether he could be held incommunicado and what the "urgent cases" were in which the Public Prosecutor was authorized to keep the arrested person at his disposal, as mentioned in the report, and whether such a provision could not lead to cases where arbitrary orders were given for immediate arrest. It was also asked whether a person could be kept in prison for up to a year if the penalty for the alleged offence exceeded two years' imprisonment, as implied in the Constitution and, if so, whether that was compatible with the Covenant.

71. Commenting on article 10 of the Covenant, members requested information on the protection of persons detained in places other than prisons. Noting that the Constitution penalized "any molesting without legal justification", one member asked whether there were any legal grounds for molesting a prisoner under the Mexican judicial system. It was also asked what authority was responsible for supervising detention centres for minors and what powers inspectors possessed.

72. In connection with article 13 of the Covenant, members of the Committee wondered, without contesting Mexico's sovereign right to enter a reservation in respect of this article, whether there was any real need to deprive aliens of the safeguards afforded by the Covenant and whether considering the current work of the Third Committee of the General Assembly on the right of aliens, the Mexican Government was giving thought to the possibility of amending the Constitution so as to provide those safeguards and to enable the reservations to this article to be withdrawn.

73. As regards article 14 of the Covenant, more information was requested on the composition of the judiciary, the social origin of judges, the conditions for their appointment and removal, and on the access the man in the street had to the administration of justice. Noting that, according to the Criminal Code of Mexico, “criminal intent” is presumed, members sought explanation of that provision, which appeared to be in contradiction with the principle of presumption of innocence enshrined in the Covenant. It was also asked whether the right of everyone convicted of a crime, including vagrance, to appeal to a higher court was available in practice.

74. Commenting on article 18 in conjunction with articles 2 (1), 19, 22, 25, and 26 of the Covenant, members wondered why acts of public worship should be performed inside places of public worship and whether the Mexican authorities had encountered any difficulty as a result of religious practices followed by adherents of certain religions but not necessarily performed inside specific places of worship; why religious schools were banned and why courses of study pursued in seminaries were not recognized in the same way as courses in other educational institutions; why the law recognized no juridical personality in churches; why the state legislatures should solely be empowered to determine the maximum, number of ministers of religious creeds, according to the needs of each locality; why ministers of any religious cult should be debarred from becoming deputies; why ministers of religious creeds could not criticize the fundamental laws of the country, the authorities in particular, or the Government in general; and whether a minister of religion would be prevented from expressing his views in a case of abuse by the police, for example.

75. With regard to article 19 of the Covenant, more information was requested on the existing legal régime with respect to Mexican radio and television, on the provisions ensuring that there was no domination by a single political movement, and concerning control over the provision of newsprint by a body known as PIPSA.

76. As regards article 22 of the Covenant, it was asked whether it was true that there was in Mexico a prohibition with respect to the election of trade union officers as well as to the setting up of a trade union in a public establishment if the majority of employees already belonged to any trade union and, if so, what justification could be given for such interference with freedom of association. It was also asked whether foreign residents were entitled to join trade unions in Mexico.

77. In relation to articles 23 and 24 of the Covenant, more information was requested on the rights and responsibilities of spouses, particularly in such areas as property rights, divorce and inheritance; on the attitude of judges to adultery and on whether children born out of wedlock had the same rights as those born in wedlock.

78. As to article 25 of the Covenant, information was sought on the conduct of elections and on any restrictions that may exist on the functioning of political parties. Did all people have the right to vote and to exercise that right freely? How were candidates for election chosen? Did electors have a choice of candidates? Noting that, according to a number of provisions, only Mexican nationals by birth might hold certain public offices, one member asked whether that was compatible with the Covenant.

79. Commenting on article 26 of the Covenant and with reference to article 1 of the Mexican Constitution, one member asked whether there were other laws or provisions affording special

protection against the types of discrimination referred to in article 2 of the Covenant and whether any positive measures had been taken to remedy discriminatory situations.

80. In connection with article 27 of the Covenant, more information was requested on ethnic minorities and their legal status and on the official policy towards them; whether they received education in their mother tongues; what practical opportunities were available to enable the Indian communities to maintain their native languages and cultures and to use their own resources and land for their own development; whether national minorities were adequately represented in Parliament by their own members and whether there were any seats reserved for them and how many ministers, ambassadors and leaders were of Indian origin.

81. Before replying to questions raised by members of the Committee, the representative of the State party stated that the limited time available had allowed him to have only brief consultations with his Government, that his comments should, therefore, be viewed merely as part of an informal dialogue and not as his Government's official or definitive position on the issues raised and that his replies should be understood in the spirit of his country's dedication to human rights and its recognition that much remained to be done, both within and outside the country, to ensure their full promotion and protection.

82. With respect to the publicity given to the Covenant in Mexico, he explained that there had been insufficient time, since its accession thereto, for the text to be made known throughout the country, considering the geographic isolation of some communities and the economic and social circumstances of certain sectors of the population. However, following the decree of accession on 20 May 1981, the decree of promulgation, containing the full text of the Covenant, together with the interpretative statements and reservations made, had been published and had received considerable coverage in the mass media. Administrative authorities as well as judges at all levels were informed of the provisions of the Covenant which was published in the Diario Oficial de la Federación which was required reading for all Government officials. The Covenant would certainly become better known as citizens began to invoke its provisions in defense of their rights. He also stated that no publicity had been given in Mexico to the fact that the Committee was to consider the Mexican report.

83. Replying to comments made under article 1 of the Covenant, he pointed out that the prospects for the implementation of the Covenant had actually been improved, at least as far as article 22 was concerned, due to the nationalization on 1 September 1982 of private banks, whereby bank employees had obtained the labour and trade union rights previously denied them. However, there had been insufficient time for any practical difficulties in the application of the Covenant to come to light but that his Government would be in a better position to give information on that point in its next report. He also stated that his country had made self-determination of peoples one of the central principles of its foreign policy and had constantly advocated the application of that principle in all parts of the world, to all peoples, Palestinian, Nicaraguan or Cuban and that Mexico's active participation as a member of the United Nations Council for Namibia was the best possible illustration of that policy.

84. As to questions raised under article 2 of the Covenant, the representative stated that the Constitution gave that instrument supremacy over international treaties binding on Mexico, that this

provision should be considered in the light of the fact that his country was a party to the Vienna Convention on the Law of Treaties, which governed Mexico's capacity to invoke its domestic law in relation to an international treaty to which it was a party; that there was no Supreme Court jurisprudence relevant to the matter of precedence, and the fact that Mexico had only recently acceded to the Covenant had thus far precluded the courts from receiving or settling any case based specifically on the rights set forth in the Covenant. He indicated, however, that according to the Constitution, the judges of every state of the Union must apply the Federal Constitution, and laws and treaties, notwithstanding any contradictory provisions that might appear in the Constitution or laws of the individual states and that the remedy of amparo also afforded a means of exercising control over the implementation of human rights since it could be invoked by the federal authorities against laws or acts of the state authorities. He also pointed out that under a recent Act on responsibilities of federal and state officials and employees, systematic violations by such officials of individual and collective guarantees were classified as offences liable to severe punishment. He explained that an action for amparo could be brought against any legislative, administrative or judicial authority as well as in respect of any acts, laws or decisions of such authorities, and that this remedy could be invoked in the case of a violation of any of the rights provided for in the Covenant in so far as those rights were embodied in the Constitution. He also clarified the distinction between direct and indirect amparo and the cases in which one or the other could be invoked. The remedy of amparo was recognized as being available to all individuals in the Republic. In the case of the rural population, there was a special procedure in the Amparo Act designed to safeguard their rights and which would enable cases to go forward even when there were defects in the manner of their presentation in the courts. Assistance of a lawyer was not mandatory for amparo proceedings but permissible, particularly for those sectors of the population which had absolutely no knowledge of the law. Although proceedings were free of charge, persons requiring legal assistance would, however, have to incur costs that they would not always be able to afford. There could be no appeal against an amparo verdict but, according to the Amparo Act, review and complaint remedies existed. He referred, further, to a number of institutions engaged in the protection of human rights in Mexico, including the National Committee for Human Rights and the group on Disappeared Persons.

85. Replying to questions raised under article 3 of the Covenant, the representative stated that not only had legislation been enacted to ensure equality of the sexes but progress had been made towards such equality in the economic, political and social life of the country. He gave a number of examples and statistics to that effect and stressed, in particular, the progress made in the area of education. He pointed out that the use of the masculine gender in the reference in the Constitution to the qualifications required to be President of the Republic was merely a grammatical matter and that the relevant article could only be interpreted as meaning that it was legally possible for a woman to hold that office. However, there were cases in the legislation in force in which it would probably be necessary in the future to eliminate distinctions based on sex, as, for example, in cases of rape, in which connection the Penal Code for the Federal District indicated that the injured party was necessarily a woman.

86. As regards questions raised under article 6 of the Covenant, the representative stated that it was difficult for his delegation to interpret the right to family planning as a right to abort children already conceived, since a couple that did not wish to have children might have recourse to numerous other methods that were readily accessible to the entire population; that the use of firearms by the police was regulated, inter alia, by the Federal Firearm and Explosives Act, which also restricted the

possession and carrying of weapons, that all the pertinent legislation had been strictly applied and that there was a clear trend towards making the possession or carrying of weapons more difficult; and that evidence as to the Mexican Government's attitude to disappeared persons could be found in its co-operation with the Working Group on Enforced or Involuntary Disappearances which had visited Mexico and received the full assistance of the authorities. He stated that the death penalty had last been applied in Mexico in 1929 but conceded that the retention in the Constitution of that penalty for various offences, while abolishing it in the Federal and State Penal Codes could give rise to certain interpretations. He explained the offences punishable by the death penalty under military law, but stated that he would inform his Government of comments made in the Committee to the effect that there was an inconsistency between the Covenant and the Constitution, in so far as the former allowed the death penalty only for the most serious crimes, while the latter made provision for it, inter alia, in the case of offences of doubtful gravity such as highway robbery. Replying to a question concerning guerrilla fighters, he pointed out that the Penal Code described the crime of those who disturbed the public peace by acts of violence or sought to diminish the authority of the State or to bring pressure on the authorities in their decisions, as the crime of terrorism

87. In connection with questions posed under article 7 of the Covenant, the representative stated that there was no specific mechanism for preventing and punishing torture or cruel, inhuman and degrading treatment; that any violence exercised by a public official against a person without legitimate cause, or any harassment or insult, as well as any other act prejudicial to individual guarantees, was classified in the Penal Code as an abuse of authority, an offence punishable by a maximum of six years' imprisonment, a fine and removal from office; and that corporal punishment could only be taken to be the penalties and security measures stipulated in the Penal Code. His Government had scrupulously respected the principle of non-refoulement of refugees, although there might have been isolated cases in which local authorities had infringed it. As to medical experimentation, he pointed out that the Health Code required the written consent of the individual, or his legal representative in the case of the mentally sick or other incapacitated persons, whether or not there was any risk to his life.

88. Replying to questions raised under article 9 of the Covenant, the representative pointed out that, as an exception to the general rule, the Public Prosecutor or the judicial police could detain a person without a warrant of the court but only in cases of flagrante delicto or extreme urgency; that "urgent cases" were the ones in which there was a justified fear that the suspect might try to hide or escape from justice when there was no judicial authority on the spot; that the Public Prosecutor could release a person whose detention he considered unjustified under the Federal Code of Penal Procedure; that in the jurisprudence of the Supreme Court of Justice the words "other evidence indicating the probable guilt of the accused", stated in the Constitution, meant evidence of the commission of an offence and evidence of circumstances creating a presumption of the probable guilt of the person arrested, even though he might be cleared of responsibility during the trial; that an official who, after making an arrest, failed to bring the arrested person before a judge within 24 hours would himself be turned over and that the right to defense counsel was guaranteed from the very moment of arrest.

89. As regards article 10 of the Covenant, the representative stated that the Federal District Prison Regulations of 1979 prohibited any form of physical or moral violence and acts or procedures which impaired the dignity of prisoners. Apart from the Tutelary Council mentioned in the report, there

were other Institutions, such as the Minors' Association, whose purpose was to provide moral and material assistance to those who had committed offences, who were socially abandoned or who were perverted or in danger of becoming so.

90. Replying to comments made under article 13 of the Covenant, he pointed out that restrictions on the enjoyment by aliens of certain rights provided for in the Covenant, for which reservations were entered by his country, had emanated from his Government's discretionary right to determine the undesirability of an alien who engaged in illicit or dishonest activities, interfered in the political affairs of the country or entered the country illegally. He also stated that the current state of consideration at the General Assembly of the United Nations of the human rights of individuals, who were not citizens of the country in which they live, did not seem to call for any review of Mexican legislation applicable to foreigners.

91. In connection with questions raised under article 14 of the Covenant, the representative referred to the provisions relevant to the qualifications required for the appointment of judges as well as to the conditions and procedures for their removal. He pointed out that the professional qualifications required of a judge operated in favor of persons coming from sections of society which had greater possibilities of meeting them, especially through access to higher education. He maintained that the report was incomplete in its references to the presumption of innocence which every individual ought to enjoy. There was no question of a presumption of guilt or innocence of an accused but rather whether an act or omission which was classed as an offence and whose commission had been proved was intentional or unintentional. He maintained that, since neither the Constitution nor the Amparo Act made exceptions in respect of the right of appeal to vagrants, and since the Constitution took precedence over the Code of Penal Procedure for the Federal District, it would, in his view, be for the competent legal authorities to determine whether or not the application of the relevant article of that Code would be consistent with the Constitution.

92. Replying to questions raised and comments made under article 18 of the Covenant, the representative stated that his delegation had informed the Mexican Government that, in the view of some members of the Committee, there was an inconsistency between the Covenant and the provisions of the Constitution and other Mexican laws which restricted the rights of ministers of religion and some aspects of religious freedom, those provisions being distinct from the ones expressly mentioned by Mexico in its reservation to article 25 (b) of the Covenant and from those covered by its interpretative statement on article 18 of the Covenant. He could not agree that legal limitations in Mexico on the exercise of the freedom of religion and on the civil and political rights of ministers of religion constituted discrimination on the ground of religion, since the provisions in question applied to all religions, not just to any particular one. He stressed that Mexican legislation sought to avoid the formation of any kind of political group, the name of which contained any word or indication whatsoever linking it to any religious denomination, and stated that anyone familiar with the history of Mexico should see in such a legislative policy nothing more than the desire to maintain the lay character of the State, in total separation from the churches.

93. Responding to questions raised under article 19 of the Covenant, he stated that, according to the Federal Act on Political Organizations and Electoral Processes, all political parties had access to the communication media, equally and on a monthly basis, as well as at the time of elections, and that each party was free to decide on the content of the broadcasts during the time allowed it.

94. The representative informed the Committee that he would convey to his Government the concern expressed by several members in respect of the implementation in Mexico of the provisions of article 22 of the Covenant concerning freedom of association. He also stated that foreigners might belong to trade unions but could not be on their governing body.

95. Replying to a question under article 24 of the Covenant, he stated that, according to the Civil Code, a child born out of wedlock who was recognized by one or both of his parents was entitled to inherit as much as any other child.

96. Commenting on questions raised under article 25 of the Covenant, he pointed out that the Federal Act on Political and Electoral Processes regulated the constitution of political parties and required that they should be registered in order to enjoy juridical personality for all legal purposes and also provided rules to guarantee legal freedom and security during elections; that the Constitution laid down the sort of requirements for such elective posts as those of President of the Republic, deputies and senators, as those normally expected in any country, and that in the presidential and parliamentary elections held earlier in the year, the people of Mexico had had the widest choice between candidates in its history, due mainly to the participation in the electoral process of various political parties.

97. Replying to a question under article 26 of the Covenant, the representative referred to relevant provisions in the Constitution, the Penal Code, the Press Act, the Radio and Television Act as well as to a number of international conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Prevention and Punishment of the Crime of Genocide, to which Mexico was a party and which formed part of its national law.

98. In connection with many questions raised under article 27 of the Convention, the representative indicated that in 1978 the indigenous population of Mexico had been estimated at 6 million, or approximately 9 per cent of the population calculated for that year, and had been divided up into more than 55 ethnic groups. According to the Federal Education Act, the teaching of the national language, as the common language for all Mexicans, should not be to the detriment of the use of indigenous languages and that one of the objectives of the Instituto Nacional Indigenista was to promote respect for and the dissemination of the indigenous languages of Mexico. For further information he referred members of the Committee to reports submitted by his Government to the Committee on the Elimination of Racial Discrimination (CERD).

CCPR A/44/40 (1989)

96. The Committee considered the second periodic report of Mexico (CCPR/C/46/Add.3) at its 849th to 853rd meetings, held from 30 October to 2 November 1988 (CCPR/C/SR.849-853).

97. The report was introduced by the representative of the State party who stated that the Covenant formed part of Mexican law and was implemented within the framework of the structural principles laid down in the Constitution, which included the establishment of a republican, democratic, representative and federal régime; the rule of law; and equality before the law. He noted that during the period covered by the second periodic report the Congress had adopted two relevant constitutional amendments and three federal laws, and that the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture had been ratified by Mexico.

Constitutional and legal framework within which the Covenant is implemented.

98. In connection with that issue, members of the Committee wished to know whether there had been any judicial decisions where the Covenant had been directly invoked before the courts; what the relationship was between the Covenant and the Mexican Constitution and whether an Act had been promulgated to incorporate the Covenant into Mexican law; what opportunities existed for challenging a normative Act that was considered to be incompatible with the Constitution, the laws of Congress or international treaties; and what action was taken in cases where a legal contradiction was ascertained between the Covenant and a legislative act or a provision of the Constitution. In addition, some members wanted to know why Mexico had not acceded to the Optional Protocol.

99. Members also requested clarification as to the precise meaning of the term “direct amparo” and whether in practice the amparo procedure could be resorted to by a person held in arbitrary detention.

100. In addition, with regard to measures taken to disseminate information concerning the Covenant, members asked about the role of non-governmental organizations in that effort and about the status, role and current composition of the Mexican Academy of Human Rights; whether any efforts were being made to translate the Covenant into the various indigenous languages; and whether any consideration had been given to the dissemination of information on the rights provided for under the Covenant and in human rights instruments in general to the people as a whole, particularly to rural dwellers, minorities and schools, and to law enforcement officials, prisoners and detainees.

101. Replying to the questions raised by members of the Committee, the representative of the State party stated that there had been no judicial decisions where the Covenant had been directly invoked by the courts. Article 133 of the Constitution provided that the Congress could under no circumstances promulgate laws or ratify international instruments that conflicted with the Constitution. The Federal Constitution, the laws of Congress and treaties prevailed over the Constitutions and laws of the individual Mexican States. International instruments were examined in detail before they were ratified by the executive, thus avoiding any conflict between an international instrument like the Covenant and Mexican legislation. The term “direct amparo” signified an action for protection submitted directly to the Supreme Court or Collegiate Circuit Courts and was applicable in the case of appeals against final rulings in civil, criminal or administrative cases. Where there seemed to be a lack of awareness of the remedies available under the law, a judge could draw the attention of the defense to safeguards such as amparo. In cases involving violation of the rights of peasants, the peasants’ associations or leagues could invoke the

remedy of amparo before the courts. As to the ratification of the Optional Protocol, the representative said that he would inform his Government of the comments made in that connection.

102. During the period covered by the report, various institutions had organized seminars on human rights, which had received due attention from the media. These included seminars organized by the Legal Research Institute of the National Autonomous University of Mexico (UNAM), the Metropolitan Autonomous University, the Matías Romero Institute for Diplomatic Studies, the College of Mexico, the Consumer Protection Institute, the National Institute of Penal Sciences, the Mexican Human Rights Academy and universities of various States of the Republic. The Mexican Human Rights Academy was a civilian association whose main objective was to promote the study, teaching and dissemination of human rights in Mexico. In addition, UNAM had published studies on the international protection of human rights, the Government had issued a publication on human rights conventions and the National Indigenous Institute had prepared a set of 19 posters in indigenous languages on the individual guarantees enshrined in the Constitution of the Covenant.

Self-determination

103. With regard to that issue, members of the Committee wished to know what the position of Mexico was in relation to the right to self-determination of the Namibian and Palestinian peoples and what measures Mexico had taken to prevent public and private support for the apartheid régime of South Africa.

104. The representative of the State party explained that article 89 (X) of the Constitution, as amended, provided that the President of the Republic must observe the principle of self-determination in conducting foreign policy. Mexico was an active member of the United Nations Council for Namibia and supported the Namibian people's inalienable right to determine their own future. The principle of self-determination was also applicable to the Palestinian people and each people in the region had the right to peace and security. The Government of Mexico complied strictly with Security Council decisions relating to South Africa.

State of emergency

105. With reference to that issue, members of the Committee wished to receive clarification as to the compatibility of article 29 of the Constitution with article 4 (2) of the Covenant. In addition, further information was sought regarding the notification of other States parties in cases, if any, where the state of emergency had been proclaimed by Mexico.

106. In his reply, the representative of the State party stated that there was no incompatibility between article 29 of the Constitution and the Covenant. The purpose of the procedure for the suspension of guarantees outlined in the article was to deal with exceptional situations such as invasion or serious disturbances of the public peace or other events that might place society in grave danger, and only those guarantees which presented an obstacle in dealing with the emergency could be suspended. The last occasion on which guarantees had been suspended was at the outbreak of the Second World War.

Non-discrimination and equality of the sexes

107. With regard to that issue, members of the Committee wondered whether article 364 of the Criminal Code was applicable to cases of non-discrimination and, if so, requested that examples of the types of offences and the frequency of prosecutions under that provision be provided. They also wished to know in which respects the rights of aliens were restricted as compared with those of citizens, and asked about the ratio between men and women in secondary and higher education and in the Congress following the elections of July 1988. In addition, it was asked to what extent equality was achieved with regard to matrimonial property and whether it was possible for one of the spouses to go to court in cases of disagreement. Some members also wished to know what the difference was between the terms “Mexicans” and “Mexican citizens” as used in their report, and wondered in that connection about the meaning of the stipulation in the Constitution according to which a citizen of the Republic was a person who, inter alia, had an “honest means of livelihood”. Furthermore, clarification was sought as to the apparent contradiction between article 33 of the Constitution, which granted the executive power the right to expel a foreigner without trial, and article 14 of the Covenant.

108. In his reply, the representative of Mexico pointed out that article 364 of the Criminal Code was applicable in cases of a breach of any of the individual guarantees enumerated in chapter I of the Constitution. The access of women to education had improved considerably in the previous 10 years and women now accounted for 13.9 per cent of the membership of parliament. Spouses could choose between the separation of property and community property systems. The principle of equality of rights between foreigners and Mexicans was embodied in the Constitution although rights and freedoms such as the right of petition, the right to participate in political affairs, freedom of assembly and association, freedom of movement, and the right to purchase real estate, were not granted, or only granted with restrictions, to foreigners. A reservation to article 13 of the Covenant had been made by Mexico in view of the slight contradiction between the provisions of the Covenant on aliens and article 33 of the Constitution. Only “citizens” had political rights, which were not conferred merely on the basis of nationality. The restriction in the Constitution concerning an “honest means of livelihood” related to those who infringed or had infringed the law. Although the President was empowered to order the immediate expulsion of a foreigner, any such decision had to be justified, which provided protection from arbitrary acts.

Right to life

109.

With regard to that issue, members of the Committee wished to receive necessary additional information in accordance with the Committee’s general comments Nos. 6 (16) and 14 (23). Since the death penalty in Mexico had fallen into disuse, they wondered whether there were any plans for its formal abolition. They also wished to know what the rules and regulations governing the use of firearms by the police and security forces were; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; whether there had been any complaints during the reporting period concerning alleged disappearances and deaths caused by or with the co-operation or co-ordination of the police, the security forces or other authorities and, if so, whether such allegations had been investigated by the authorities and with what results; what the current rate of infant mortality in Mexico was; and how the infant mortality rate among the ethnic groups compared with that of the general population.

110. Noting that a large number of the deaths occurring in Mexico in recent years had been linked to conflicts over land, some members wished to know what policy was followed by the Government in order to settle such conflicts. Clarification was also sought of the high number of journalists who seemed to have died in mysterious circumstances. Members also requested further information on the percentage of murder cases that the police had failed to solve; on controls over the police; on the relations between the police and the judiciary; on offences that were considered “political”; and regarding provisions, if any, designed to ensure that complaints relating to cases of disappearances or murder were transmitted to the competent body. In addition, information was requested on legal provisions relating to the protection of unborn children and on new artificial fertilization techniques.

111. In his reply, the representative of the State party stressed that Mexico had played an active role in promoting disarmament, peace and security. Life expectancy in Mexico had now reached 69 years and the illiteracy rate had fallen to 7.5 per cent. The infant mortality rate was 23.3 per 1,000. While some of the provisions of article 22 of the Constitution relating to the death penalty were undoubtedly outdated, there had not been any efforts within the Congress of the Union to amend that article. Any police officer who made unlawful use of his weapons was liable to a penalty of six months’ to six years’ imprisonment and a fine.

112. Turning to questions relating to summary or arbitrary executions and involuntary disappearances, the representative noted that his Government collaborated with the Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions and that certain cases had been cleared up, while others were still being investigated. Regarding the alleged assassination of 10 peasants by members of a group called the Armed Execution Front for Peasant Liberation, it had been established that those events had been caused by a conflict of interest between the members of two families and that the local authorities had not been involved. Five of the persons involved in those killings had been sentenced to 20-year person terms. The Government of Mexico has also co-operated closely with the Working Group on Enforced or Involuntary Disappearances and had sent it all the information it had been able to obtain. Unfortunately, land disputes were still continuing in some areas.

113. All cases of unresolved murders of journalists continued to be closely investigated. Only in one case had a journalist been killed in the exercise of his profession, but neither in that case nor in any other case had it been established that death was attributable to what the journalist had said or written.

Treatment of prisoners and other detainees

114. With regard to that issue, members of the Committee wished to know whether there had been any complaints during the reporting period about alleged torture or inhuman treatment and, if so, whether such allegations had been investigated by the authorities and with what results; whether there had been any prosecutions under the Federal Act for the Prevention and Punishment of Torture since that Act came into force in 1986; whether there had been any complaints about the arbitrary detention of peasants in the course of land disputes and, if so, whether such complaints had been investigated and with what results; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and whether the relevant regulations and directives were known and accessible to the detainees; what the maximum period was for which persons might be

detained pending trial; how quickly after arrest a person's family was informed; and how soon after arrest a detainee could contact his lawyer. Members also sought further information concerning the use of corporal punishment under articles 24 and 56 of the Penal Code and on the compatibility of resort to that procedure with article 7 of the Covenant and requested information on detention in institutions other than prisons and for reasons other than crimes. In addition, members requested information regarding practices relating to pre-trial detention, release on bail, release on parole and conditional release, and to the suspension of the execution of a sentence.

115. Responding to the questions raised by members of the Committee, the representative of the State party said that seven members of the Federal District judicial police had been brought before a Federal District criminal court in May 1988 on charges of having committed acts of torture and their trial was still in progress. During the period under review the competent authorities had investigated a number of other complaints concerning acts of torture and ill-treatment, which, under the Federal Act on Torture, had been made a federal offence in June 1986. Complaints about the arbitrary detention of peasants in connection with land disputes had been considered by the competent authorities and bodies had been established in the States of Guerrero and Oaxaca for the defense of indigenous populations. "Corporal punishment", as referred to in paragraphs 231 and 293 of the report, only consisted of deprivation of liberty and detention of convicted persons and did not involve physical punishment or ill-treatment. Most of the United Nations Standard Minimum Rules for the Treatment of Prisoners were recognized by Mexico and incorporated in the relevant texts and prison regulations were made available to detainees.

116. Replying to questions relating to detention, the representative stated that no one could be detained for more than three days without a formal order of commitment. An accused person had to be tried within four months if the maximum sentence for the offence did not exceed two years' imprisonment and within one year if the maximum sentence was greater. Any time spent in pre-trial detention was deducted from the length of the sentence imposed and pre-trial detention could not exceed the maximum sentence for the offence. Where the maximum sentence did not exceed two years' imprisonment the accused could be released on bail. The time within which a person's family was informed of an arrest was the amount of time needed to contact the person with whom the detainee wished to communicate. Persons who were addicted to or needed narcotics or psychotropic substances could be detained or submitted to treatment. Mentally ill persons could only be detained in special institutions in accordance with the relevant ethical and social principles and the corresponding scientific and legal requirements.

Right to a fair trial

117. With regard to that issue, members of the Committee requested clarification of a reference, in paragraph 286 of the report, to "certain traditional principles and procedures concerning preventive action and access to and administration of justice" that had been rendered inoperative and ineffective. They also asked whether any major reforms had been adopted under the current five-year National Development Plan; what guarantees there were for the independence of the judiciary; how the Bar was organized; whether free legal assistance was available to criminal defendants without means; what remedies were available to persons who alleged that their rights or freedoms had been violated; and whether counsel for the defense was appointed in both criminal and civil cases.

118. Referring to several instances in which individuals belonging to peasant and Indian organizations had alleged that they had been arbitrarily detained by the federal police or the security forces, one member inquired whether measures had been taken to bring those cases to the attention of the federal authorities and to ensure that the individuals concerned had been brought to trial and asked whether peasants and Indians were provided with legal assistance to facilitate their contacts with the Federal Government. Members also sought clarification as to the compatibility with article 14 (2) of the Covenant of article 38 of the Constitution, which provided that the rights or prerogatives of citizens were suspended during a criminal prosecution for an offence punishable by imprisonment.

119. In his reply, the representative of the State party stated that a number of measures had been adopted to expedite the administration of justice, including increases in the number of delegations to circuit courts and federal prosecutor's offices; increases in the number of training courses in crime prevention and control; the introduction of competitive examinations for recruitment into the judicial branch; and carrying out basic training programmes for members of the police force in 24 States. Additionally, the Attorney-General's Office Organization Act was amended in 1987 through the addition of provisions covering organizational, procedural and operational matters and establishing arrangements to facilitate international co-operation.

120. Responding to other questions, the representative noted that the independence of the judiciary was guaranteed under articles 94 and 97 of the Constitution, which, *inter alia*, protected the salaries and tenure of judges. Counsel for the defense was appointed in both criminal and civil cases. A special prosecutor's office had been established in Oaxaca and other States with the specific mandate of prosecuting those who abused the rights of individuals lacking in cultural and economic resources. The Bar in Mexico was a private association in which membership was open to all but was not obligatory for the exercise of the legal profession.

Freedom of movement and expulsion of aliens

121. In connection with that issue, members of the Committee wished to know how the provisions of article 33 of the Constitution relating to the immediate expulsion of undesirable aliens was applied in practice and requested additional information on the position of aliens in Mexico, in the light of the committee's general comment No. 15 (27). Members also wished to know what was the procedure for expulsion of an alien who was not in a major city or a frontier zone; whether Mexican legislation drew any distinctions between aliens who were in the country for business purposes, asylum seekers or refugees; and whether an alien had the right to choose which country he was to be expelled to.

122. In his reply, the representative of the State party said that the Mexican Constitution provided for equality before the law of Mexicans and foreigners except for the limitations authorized under articles 2, 3 and 26 of the Covenant and that foreigners lawfully present in the country enjoyed the same rights as Mexican citizens in practice. Article 33 of the Constitution, which provided for the expulsion of aliens, had not been applied in an arbitrary manner. If the State decided to expel an undesirable alien, the authorities would either escort him to an airport or transport him to the nearest border post, assuming that he was a national of the neighboring country. If the person to be expelled was in an inaccessible part of Mexico, he would be detained and transported to a place from which

he could leave the country. Regarding asylum seekers, the representative emphasized Latin America's traditional respect of the right to asylum, noting that that right was guaranteed by three inter-American Conventions to which Mexico was a party. There were currently about 200,000 refugees in Mexico, chiefly of Central American origin, many of whom were registered with the Office of the United Nations High Commissioner for Refugees, with which the Government of Mexico collaborated closely.

Right to privacy

123. With reference to that issue, members of the Committee wished to receive necessary additional information on article 17 in accordance with the Committee's general comment No. 16 (32). They also asked whether Mexico had enacted any legislation relating to wire-tapping or bugging and requested further information regarding fiscal searches and unlawful attacks on honor or reputation.

124. In his reply, the representative of the State party noted that article 16 of the Constitution provided for the authorities at all levels to act only on the basis of the law and the Constitution so as to avoid arbitrariness. No one could be molested in his person, family, domicile, papers or possessions except by prior written authorization from the competent authorities, issued in accordance with procedures established by law. The procedures to be followed for house searches were laid down in the Code of Penal Procedure and the Federal Code of Civil Procedure.

Freedom of religion and expression

125. With regard to that issue, members of the Committee requested clarification of the meaning of the statement in the report that places of worship "shall at all times be under government supervision" and requested additional information on church-State relations and, in particular, on the reasons for material and other restrictions placed on ministers of religion and acts of worship.

126. Regarding freedom of expression, members wished to receive information about the legal régime relating to ownership and licensing of the press and the broadcast media; about restrictions on the exercise of the profession of journalism; and about the status and ethical standards of journalists. Observing that there was a trend in Mexico towards the concentration of ownership of newspapers, television and radio, members also asked how the Government ensured that all population groups had access to information and whether the Government was planning any countermeasures to ensure that a broad range of opinion was reflected in the media. They also asked why there were differences in the restrictions applicable to the written and electronic media and what legal, administrative and other measures had been adopted to ensure the practical implementation of the guarantees laid down in articles 6 and 7 of the Constitution.

127. In his reply, the representative of the State party explained that freedom of religion, as guaranteed by article 24 of the Constitution, comprised an internal aspect that was part of the inner life of each individual and was therefore outside the scope of state intervention, and an external aspect that was reflected in the freedom to practice ceremonies, devotions or observances and was controlled by law and subject to supervision by the Constitution. Restrictions on the external aspect derived from general legal rules applicable without discrimination and were designed to safeguard public health, safety, morality and well-being.

128. Responding to questions raised by members of the Committee relating to freedom of expression, the representative noted that the ownership and licensing of the press and the broadcasting media were regulated by legislation, such as the Press Act, the Federal Radio and Television Act and the Regulations on Illustrated Publications and Reviews. The sole requirement for circulating printed matter was that the name and address of the printer and the name of the author had to be included in publications. Licenses to operate radio and television stations could only be granted to Mexican citizens or companies subject to compliance with technical, administrative and legal requirements. Privately owned commercial stations required a government licence, which was renewable every five years. The Televisa television network had been created and operated in strict conformity with Mexican legislation. Respect for private life, morals and public order were the only permissible limitations on freedom of opinion and expression.

Freedom of assembly and association

129. In connection with that issue, members of the Committee wished to receive further information on the relevant laws and practices relating to the establishment of political parties. They also wished to know how trade unions were organized, what the size of their membership was and what percentage of the labour force belonged to them; whether associations established for helping disadvantaged persons, particularly in the legal sphere, enjoyed government support; whether public meetings were subject to prior authorization and, if so, under what conditions and by what powers the competent authorities granted authorizations; and whether restrictions on the freedom of association in Mexico and provisions prohibiting public sector workers from withdrawing from a trade union were compatible with article 22 of the Covenant. In the latter connection, one member requested clarification of the Mexican Government's position on the finding of the ILO Committee of experts on the Application of Conventions and Recommendations that the Federal Act on Workers in the Service of the State was not in conformity with the provisions of ILO Convention No. 87.

130. In his reply, the representative of the State party explained that political parties were entities of public interest whose establishment was governed by the Federal Electoral Code. That Code stipulated, inter alia, that a party had to have a minimum of 65,000 members nation-wide and was obliged to hold assemblies in each State or electoral district as well as a national consultative assembly. There were a number of large national trade unions composed of workers in the petroleum industry and the railways, or in mining, electricity and telecommunications, teachers, etc. Within the individual Mexican States, there were company, corporation and industrial trade unions, which were members of such trade confederations as the Confederation of Mexican Workers and the Revolutionary Confederation of Workers and Peasants. In all, more than 10 million workers were trade union members in Mexico. A complaint concerning the prohibition of the establishment of more than one trade union within a single department of the Federal Government, which had been submitted to the ILO Committee on Freedom of Associations in 1985, had been rejected by that Committee.

Protection of family and children

131. With reference to that issue, members of the Committee wished to receive information on any differences existing in the status and rights of children born in wedlock or out of wedlock; on law

and practice relating to the employment of minors and on whether there were differences in that regard between urban and rural areas; and on any cases where children had been subjected to physical maltreatment and on the measures that had been taken to prevent such violations in the future. One member drew attention to the importance of registering a child immediately after birth and questioned whether the six-month time limit granted to parents or grandparents to declare the birth of a child was compatible with article 24 of the Covenant.

132. In his reply, the representative of the State party said that Mexican legislation made no distinction whatsoever between the status and rights of children born in or out of wedlock and that upon the death of the parents an inheritance was divided equally among the surviving children, without distinctions of any kind. Children below the age of 14 were strictly prohibited from working and several provisions of Mexican legislation were designed to ensure the protection of the rights and health of working minors. No distinction was made between the protection of minors in urban and rural areas. Article 4 of the Constitution stated that it was the parents' duty to protect the physical and mental health of their children and the relevant legislation provided for assistance to children in public institutions. There were organizations in Mexico with a specific mandate to protect children, such as the Mental Health Institute, which dealt specifically with child abuse, and the Government was taking a number of measures to combat violations of children's rights. The legal personality of the individual was recognized from birth.

Right to participate in the conduct of public affairs

133. With regard to that issue, members of the Committee asked whether there was any legislation governing access to the public service and, if so, how that legislation was applied in practice and whether it ensured equitable access to public service by members of minority groups. Members also wished to know how the articles of the Constitution relating to the obligation to vote in popular elections were applied in practice; whether members of parliament were representative of all social classes or only of an intellectual and social élite; and why ministers of religion were not covered by the rule of universal suffrage.

134. Replying to questions raised by members of the Committee, the representative of Mexico stated that all citizens were eligible for any elective office or for appointment to any other post or assignment if they possessed the required qualifications. A citizen was not required to exercise his right to vote and his failure to do so in no way provided grounds for suspending that right. However, in order to vote, all citizens were required to register. Peasants and people of working class origin were duly represented in the two Chambers of Congress. The current status of ministers of religion could be explained by the painful historical experience of Mexico where, prior to independence, the Catholic Church had wielded absolute power in all areas - economic, political and cultural. The complete separation of Church and State had been an established fact since 1861. Cordial and respectful relations between the State and the various churches should nevertheless continue to exist in the future.

Rights of minorities

135. In connection with that issue, members of the Committee wished to know whether there were any special factors and difficulties in the effective enjoyment by minorities of their rights under the

Covenant; whether concrete measures had been taken to provide to the various indigenous groups greater economic and political opportunities; and whether minorities were represented in Congress and on local governing bodies.

136. In his reply, the representative of the State party said that any Mexican, regardless of his origin, had access to the public service and that a Mexican's origin could under no circumstances prevent him from holding any post in the country, even the highest. However, indigenous groups needed special protection so that the members of minorities could be equitably represented at all levels of government. Accordingly, new social, economic and cultural measures had been adopted to deal with the problems of indigenous groups on the basis of the principles of mutual respect, freedom, equality, justice and dignity. Priority had also been given to the settlement of disputes relating to land ownership and to the vocational training of members of indigenous groups to enable them to benefit fully from their own natural resources. Cultural and ethnic minorities were viewed as forming an integral part of the Mexican nation and as being fully entitled to take part in the country's development process and in cultural and political life. The National Indigenous Institute was responsible for implementing relevant measures adopted for encouraging the participation of indigenous groups in national life.

General observations

137. Members of the Committee expressed appreciation to the representative of the State party for his co-operation and competence in responding to the Committee's questions and for facilitating the maintenance of a constructive dialogue between the Government of Mexico and the Committee. They also commended the Mexican authorities for their frankness in acknowledging certain events and difficulties and noted that particular progress appeared to have been made in connection with problems relating to torture and to the status of women. At the same time, members indicated that not all of their concerns had been fully allayed, referring in that connection to continuing problems relating to land disputes; the murder and unjustified detention of Indians and peasants; enforced and involuntary disappearances; the killings of journalists; the discipline of law enforcement officers; freedom of expression and the right of peaceful assembly and association and the treatment of aliens and ministers of religion.

138. The representative of the State party noted that the change of Government in Mexico on 1 December 1988 provided an opportunity for conveying the Committee's concerns at the beginning of a new administration. He thanked the Chairman and members of the Committee for their patience and good will in discussing Mexico's report and listening to his comments, and assured the Committee of his Government's intention to pursue the dialogue through the submission of its third periodic report.

139. In concluding the consideration of the second periodic report of Mexico, the Chairman once again thanked the delegation for the frankness and good will with which it had responded to the Committee's numerous questions. The discussions that had taken place had given the Committee a better idea of Mexico's commitment to progress in guaranteeing human rights. The Chairman expressed the hope that the Committee's concerns would be conveyed to the Government and that the question of the ratification of the Optional Protocol would be given particular attention.

CCPR A/49/40 (1994)

166. The Committee considered the third periodic report of Mexico (CCPR/C/76/Add.2) from its 1302nd to 1305th meetings, held on 28 and 29 March 1994 (see CCPR/C/SR.1302-1305), and adopted 25/ the following comments:

1. Introduction

167. The Committee thanks Mexico for its report and welcomes the appearance of a large high-level delegation before the Committee despite the serious events that recently occurred there. It notes that the report was completed on time and that it takes into account the questions submitted by Committee members during their consideration of the previous periodic report as well as the general comments of the Committee. The oral presentation, accompanied by extensive documentation, served to update the written report and contributed to a frank and fruitful dialogue with the Committee.

168. The Committee thanks the State party for the core document (HRI/CORE/1/Add.12), drafted in accordance with the consolidated guidelines for the initial part of the reports of States parties which must be submitted under the various international human rights instruments (HRI/1991/1).

2. Factors and difficulties affecting the application of the Covenant

169. Socio-economic difficulties and extremely widespread poverty have led to the growing marginalization of a vast portion of the population, in particular street children and members of indigenous groups, who, as a result, are denied the protection of the basic rights guaranteed by the Covenant. Moreover, rural populations are isolated because of the remoteness of agrarian zones from decision-making centres and judicial organs, which impedes the realization of human rights throughout the territory of Mexico.

3. Positive aspects

170. The Committee welcomes with satisfaction the establishment of the National Human Rights Commission responsible for conducting investigations and making recommendations to the Government. The Committee notes the establishment of similar commissions within each of the States of the Union at the local level. These new institutions and the development of human rights legislation, which, in particular, prescribes punishment for torture and provides for compensation of victims, reflect progress towards the promotion and protection of human rights in Mexico. The extension of the right to vote to persons who had hitherto been deprived of that right and access to the public service by citizens who are not Mexican nationals by birth are positive developments in ensuring respect for article 25 of the Covenant.

25/ At its 1315th meeting (fiftieth session), held on 6 April 1994.

Allowing non-governmental organizations the opportunity to visit any part of the country, in particular the sensitive areas, demonstrates the Government's willingness to cooperate with organizations for the defense of human rights.

4. Principal subjects of concern

171. The Committee strongly deplores the events that occurred recently in Chiapas which resulted in many violations of the rights guaranteed by the Covenant, in particular, in articles 6, 7 and 9 thereof. The Committee notes that, since a state of emergency was not declared in Chiapas in early 1994, the authorities have restricted the rights provided for in the Covenant, particularly in articles 9 and 12, without respecting the guarantees provided for therein.

172. The Committee is disturbed by the large number of complaints concerning acts of torture or arbitrary detention when prosecution and sentencing of the guilty parties occurs very infrequently and falls far short of the recommendations of the National Human Rights Commission of Mexico, which has condemned these acts. Similarly, enforced or involuntary disappearances and extrajudicial executions are not systematically followed by investigations in which the perpetrators are identified, brought to justice and punished and the victims compensated. Lastly, the conditions in prison and other detention centres and the slowness of judicial procedures continue to be a major cause for concern.

173. As amparo proceedings have proved to be ineffective, immediate release of a person who has been irregularly detained is not fully guaranteed in accordance with article 9 of the Covenant.

174. The Committee deplores the gross violation of both the right to life and the right to freedom of expression constituted by the frequent murder of journalists, which has reached alarming proportions.

175. The Committee is further concerned by the conditions in which the rights provided for in articles 21 and 22 of the Covenant are exercised, as evidenced by the severe repression of peaceful demonstrations by striking workers.

176. The Committee has doubts and concerns about the electoral system and practices and the climate of violence in which the most important elections have taken place. It notes that this situation precludes the full guarantee of free choice by all voters and the participation of all citizens in the conduct of public affairs, in particular through freely chosen representatives, in accordance with article 25 of the Covenant.

177. Lastly, the Committee has expressed concern about the situation of indigenous populations. Article 27 of the Constitution concerning agrarian reform is often implemented to the detriment of persons belonging to such groups. The delay in resolving problems relating to the distribution of land has weakened the confidence of these populations in both local and federal authorities. Moreover, these persons are subject to special laws, particularly in Chiapas, which could create a situation of discrimination within the meaning of article 26 of the Covenant.

5. Suggestions and recommendations

178. The Committee recommends that the State party should provide the National Human Rights Commission with the authority necessary for its effective functioning, in complete independence from the political and administrative authorities, and should allow it to refer cases to the competent judicial authorities where it finds that rights guaranteed by the Covenant have been violated.

179. The Committee strongly recommends that all cases of extrajudicial execution, torture and arbitrary detention be investigated in order to bring those suspected of having committed such acts before the courts, that those found guilty be punished and that the victims be compensated. Law enforcement officials should be properly trained so that ensuring respect for the basic rights of the persons placed under their control becomes an integral part of their task.

180. The Committee suggests to the Mexican authorities that they fully implement article 25 of the Covenant, in particular with regard to elections, by taking legal and practical measures to ensure equitable representation of the entire electorate and to ensure that the balloting is free from fraud and takes place in an atmosphere of calm essential to the voters' exercise of free choice. To that end, the willingness of the authorities to accept international observers during the balloting would contribute to the transparency of the elections.

181. The Committee invites the authorities actively to pursue programmes for the protection of vulnerable children, particularly street children. Similarly, the progress achieved with regard to the status of women should be developed further and greater efforts should be made to combat family violence.

182. The Committee recommends that the Government give consideration to more equitable land distribution within the framework of agrarian reform and that it take into account the rights and aspirations of indigenous populations in that connection. Furthermore, measures for the implementation of article 4 of the Constitution should be considerably strengthened. Indigenous populations should have the opportunity to participate in decision-making on matters that concern them.

CCPR A/54/40 (1999)

313. The Committee considered the fourth periodic report of Mexico (CCPR/C/123/Add.1) at its 1762nd and 1763rd meetings (CCPR/C/SR.1762-1763), held on 16 July 1999, and adopted the following concluding observations at its 1771st to 1773rd meetings (CCPR/C/SR.1771-1773), held on 22 and 23 July 1999.

1. Introduction

314. The Committee welcomes the timely submission of the fourth periodic report of Mexico and of an additional report and other information providing a detailed and up-to-date description of the human rights situation in the State party. It notes that the Committee's comments relating to consideration of the third periodic report of Mexico were taken into account by the State party when preparing its latest report. The Committee notes that the State party was represented by a large delegation which was able to reply to many of the Committee members' concerns in the course of the analysis of the report.

2. Positive factors

315. The Committee takes note with satisfaction of the improvements introduced since the submission of the previous report, including the decision of 8 June 1999, approved by Congress, to allow the National Human Rights Commission independence and the launching of several programmes proposed by the latter to improve the situation of women, children and the family, the programme concerning presumed disappearances and the release of imprisoned indigenous persons. The Committee takes note of the establishment of National Programmes for the Protection of Human Rights, the Development Plan 1995-2000 and the Public Security programme, which are positive developments.

316. The promulgation of the Federal Public Advocacy Act and of the Federal Act for the Prevention and Punishment of Torture constitute significant advances as far as investigating human rights violations and preventing impunity are concerned.

317. The Committee notes with satisfaction the electoral reforms introduced with a view to holding more pluralistic and transparent elections.

3. Principal subjects of concern and recommendations

318. The Committee considers it a matter of the gravest concern that not all forms of torture are necessarily covered by law in all Mexican States, and that there is no independent body to investigate the substantial number of complaints regarding acts of torture and cruel, inhuman or degrading treatment. It is also a matter of concern that the acts of torture, enforced disappearances and extrajudicial executions which have taken place have not been investigated; that the persons responsible for those acts have not been brought to justice; and that the victims or their families have not received compensation.

The State must take the necessary measures to attain full compliance with articles 6 and 7 of the

Covenant, including measures to provide remedies against torture in all the States of Mexico.

319. The Committee is concerned that the possibility exists of placing on an accused person the burden of proof that a confession has been obtained by coercion, and that confessions obtained by coercion may be used as evidence against an accused person.

The State party should amend the provisions of the law as necessary to ensure that the burden of proof that a confession used in evidence has been made by the accused person of his own free will shall lie with the State, and that confessions obtained by force cannot be used as evidence in trial proceedings.

320. The Committee is furthermore concerned by the increase in the activities of the armed forces within society, particularly in the States of Chiapas, Guerrero and Oaxaca, where they carry out activities pertaining to police forces.

Order should be maintained within the country through the civil security forces.

321. The Committee is deeply concerned by the fact that no institutionalized procedures exist for the investigation of allegations of violations of human rights presumed to have been committed by members of the armed forces and by the security forces, and that as a consequence those allegations are frequently not investigated.

The State party should establish appropriate procedures to ensure that independent investigations are conducted into allegations of violations of human rights involving members of the armed forces and the security forces and that the persons accused of such violations are brought to trial. The State should also establish effective remedies for the victims.

322. The Committee has taken note of the combined effect of the implementation of the 1995 Act Establishing Coordination between National Public Security Systems and the 1996 Act Against Organized Crime, as well as the extension of the concept of "flagrancy", which has been to increase the number of circumstances in which an arrest can be made without a warrant issued by a competent official of the judiciary. This implies a serious threat to the security of persons. The Committee has also taken note of the fact that in cases of arrest in "flagrante delicto" and in cases of emergency, an arrested person is handed over to the Office of the Public Prosecutor, which may hold that person in detention for 48 hours (and, in special circumstances, up to 96 hours) before bringing him or her before a court. The Committee deplores the fact that arrested persons do not have access to legal counsel before the time they are required to make a formal statement to the Office of the Public Prosecutor and that the situation regarding access by members of an arrested person's family was not clarified during consideration of the report.

The State party should immediately amend the relevant legal provisions and establish procedures compatible with the provisions of article 9.

323. The criminal procedure established and applied in Mexico constitutes an obstacle to full compliance with article 14 of the Covenant, which requires a trial to take place before a judge, in the presence of the accused person and at a public hearing.

The State party should establish a procedure ensuring that accused persons enjoy all their rights in a suit at law in accordance with article 14.

324. The Committee observes that, although a state of emergency has not been proclaimed in areas of conflict, the population has suffered derogations from rights corresponding to a state of emergency, such as control points that impede freedom of movement.

All necessary derogations from the rights guaranteed by the Covenant must comply with the conditions laid down in article 4 of the Covenant.

325. The Committee is concerned at the obstacles to the free movement of foreigners, especially the members of non-governmental organizations investigating human rights violations on Mexican territory, and in particular the fact that residence permits have been cancelled and visas refused for the same reasons.

The State party should lift the restrictions on the access and activities of persons entering Mexico to investigate human rights violations.

326. The Committee deplores the serious violations of freedom of expression represented by frequent murders of journalists and acts of intimidation making it difficult for representatives of the press to exercise their profession freely in Mexico or preventing them from doing so. It also deplores the existence of the offence of "defamation of the State".

Journalists should be guaranteed freedom of expression as laid down in article 19 and other related provisions of the Covenant so that they can carry out their activities without hindrance. Furthermore, the criminal offence of "defamation of the State" should be abolished.

327. The Committee also deplores the constantly worsening situation of street children. These are the children who are at greatest risk of sexual violence and who are exposed to the practices of sexual trafficking.

The State should take effective measures for the protection and rehabilitation of these children in accordance with article 24 of the Covenant, including measures to end prostitution, child pornography and the sale of children.

328. The Committee is concerned at the level of violence against women, including the many reported cases of abduction and murder which have not led to the arrest or trial of the perpetrators and the many allegations of rape or torture by the security forces of women in detention which the latter are fearful of reporting.

The State party should take effective measures to protect the security of women to ensure that no pressure is brought to bear on them to deter them from reporting such violations, and to ensure that all allegations of abuse are investigated and the perpetrators brought to justice.

329. The Committee is concerned by information to the effect that Mexican women seeking employment in foreign enterprises in the frontier areas of Mexico (maquiladoras) are subjected to

pregnancy tests and required to respond to intrusive personal questioning, and that some women employees have been administered anti-pregnancy drugs. It is also concerned that those allegations have not been seriously investigated.

Measures should be taken to investigate all such allegations with a view to ensuring that women whose rights to equality and to privacy have been violated in this way have access to remedies, and to preventing such violations from recurring.

330. The State party should approve measures to ensure equality of opportunity for women, their full participation in public life in conditions of equality, and the removal of all remaining discriminatory provisions in regard to marriage, divorce and remarriage.

331. Despite the acknowledgment in article 4 of the Constitution of the multicultural composition of the Mexican nation, originally founded by its indigenous peoples, and the determination of the State party to settle the question of self-determination for indigenous communities, article 27 of the Constitution seems to protect only certain categories of rights with regard to indigenous lands and still leaves the indigenous populations exposed to a wide range of human rights violations.

The State party should take all necessary measures to safeguard for the indigenous communities respect for the rights and freedoms to which they are entitled, individually and as a group; to eradicate the abuses to which they are subjected; and to respect their customs and culture and their traditional patterns of living, enabling them to enjoy the usufruct of their lands and natural resources. Appropriate measures should also be taken to increase their participation in the country's institutions and the exercise of the right to self-determination.

332. The Committee notes that the law does not recognize the status of conscientious objectors to military service.

The State party should ensure that persons required to perform military service can invoke conscientious objection as grounds for exemption.

333. The State party should give wide dissemination to the text of its fourth periodic report and to the present concluding observations. It should also include in its fifth periodic report, due in July 2002, information in response to these observations.