



**International covenant  
on civil and political  
rights**

Distr.  
GENERAL

CCPR/C/MEX/5  
24 September 2008

ENGLISH  
Original: SPANISH

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Fifth periodic report**

**MEXICO\* \*\***

[17 July 2008]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* Annexes may be consulted in the files of the Secretariat.

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## ACRONYMS

|           |                                                                                                         |
|-----------|---------------------------------------------------------------------------------------------------------|
| CDI       | National Council of Indigenous People                                                                   |
| CEFEREPSI | Federal Psycho-social Rehabilitation Centre                                                             |
| CEFERESOS | Federal Centres for Social Rehabilitation                                                               |
| CEJIL     | Centre for Justice and International Law                                                                |
| CEUM      | Political Constitution of the United Mexican States                                                     |
| CIDH      | Inter-American Commission on Human Rights                                                               |
| CIESAS    | Centre for Research and Advanced Studies in Social Anthropology                                         |
| CIM       | Inter-American Commission of Women                                                                      |
| CISEN     | Centre for Investigations and National Security                                                         |
| CNDH      | National Human Rights Commission                                                                        |
| COFIPE    | Federal Code on Electoral Institutions and Procedures                                                   |
| COMAR     | Mexican Commission for Aid to Refugees                                                                  |
| CONACULTA | National Council for Culture and the Arts                                                               |
| CONAPO    | National Population Council                                                                             |
| CONAPRED  | National Council for the Prevention of Discrimination                                                   |
| CPGMDDH   | Commission on Government Policy on Human Rights                                                         |
| CURP      | Single Population Register Key                                                                          |
| DIF       | National System for the Full Development of the Family                                                  |
| ECLAC     | Economic Commission for Latin America                                                                   |
| EZLN      | Zapatista National Liberation Army                                                                      |
| FEAHMCJ   | Office of the Special Prosecutor for Crimes Related to Homicides of Women in the Municipality of Juárez |
| FEMOSPP   | Office of the Special Prosecutor for Past Social and Political Movements                                |
| FMTF      | Border Worker Migration Form                                                                            |
| FSP       | Prison Security Force                                                                                   |
| ICAP      | Institute for Training and Professionalization in the Administration of Justice                         |
| ICHR      | Inter-American Court of Human Rights                                                                    |
| IFDP      | Federal Public Defender Institute                                                                       |
| IFE       | Federal Electoral Institute                                                                             |
| ILO       | International Labour Organization                                                                       |
| IMSS      | Mexican Social Security Institute                                                                       |
| INACIPE   | National Institute of Criminological Sciences                                                           |
| INALI     | National Institute of Indigenous Languages                                                              |
| INBA      | National Institute of Fine Arts                                                                         |
| INEA      | National Institute for Adult Education                                                                  |
| INEGI     | National Institute of Statistics, Geography and Informatics                                             |
| INM       | National Institute for Migration                                                                        |
| INMUJERES | National Institute for Women                                                                            |
| IPN       | National Polytechnic Institute                                                                          |
| IRCT      | International Rehabilitation Council for Torture Victims                                                |
| ISSSTE    | Institute of Social Security and Services for State Workers                                             |
| LFTAIPG   | Federal Law on Transparency and Access to Public Government Information                                 |
| MNPT      | National Mechanism for the Prevention of Torture                                                        |

|          |                                                                                           |
|----------|-------------------------------------------------------------------------------------------|
| OAS      | Organization of American States                                                           |
| PAN      | National Action Party                                                                     |
| PFP      | Federal Police                                                                            |
| PGR      | Office of the Attorney General of the Republic                                            |
| PHR-USA  | Physicians for Human Rights                                                               |
| PIAMF    | Inter-agency Border Programme for Care of Minors                                          |
| PRD      | Party of the Democratic Revolution                                                        |
| PRI      | Institutional Revolutionary Party                                                         |
| PROFECO  | Federal Consumer Protection Agency                                                        |
| PRONIM   | Programme of Primary Education for Migrant Children                                       |
| PT       | Labour Party                                                                              |
| PVEM     | Green Environmentalist Party of Mexico                                                    |
| RENAPO   | National Population Registry                                                              |
| SAGARPA  | Department of Livestock and Fisheries                                                     |
| SCJN     | Supreme Court of Justice of the Nation                                                    |
| SCRPPA   | Office of the Deputy Attorney General for Regional Oversight, Penal Procedures and Amparo |
| SEDENA   | Ministry of National Defence                                                              |
| SEDESOL  | Ministry of Social Development                                                            |
| SEGOB    | Ministry of the Interior                                                                  |
| SEMAR    | Ministry of Naval Affairs of Mexico                                                       |
| SEMARNAT | Ministry of the Environment and Natural Resources                                         |
| SEP      | Ministry of Public Education                                                              |
| SEPOMEX  | Mexican Postal Service                                                                    |
| SHCP     | Ministry of Finance and Public Credit                                                     |
| SIEDO    | Office of the Deputy Attorney General for Investigation of Organized Crime                |
| SIJE     | Election Day Information System                                                           |
| SRA      | Ministry of Agrarian Reform                                                               |
| SRCI     | Indigenous Cultural Broadcasting System                                                   |
| SRE      | Ministry of External Relations                                                            |
| SS       | Ministry of Health                                                                        |
| SSP      | Ministry of Public Security                                                               |
| STPS     | Ministry of Labour and Social Security                                                    |
| TEPJF    | Electoral Tribunal of the Federal Judiciary                                               |
| UNAM     | National Autonomous University of Mexico                                                  |
| UNDP     | United Nations Development Programme                                                      |
| UNESCO   | United Nations Educational, Scientific and Cultural Organization                          |
| UNHCR    | Office of the United Nations High Commissioner for Refugees                               |
| UNIFEM   | United Nations Development Fund for Women                                                 |

## I. INTRODUCTION

1. The Government of Mexico submits for the consideration of the Human Rights Committee (hereinafter the “Committee”) its fifth periodic report pursuant to article 40 of the Covenant on Civil and Political Rights (“the Covenant”).
2. The present document was distributed to the participants in the Subcommission on Civil and Political Rights of the Commission on Government Policy on Human Rights, which comprises representatives of governmental fora and civil society, at a meeting held on 8 July 2008. The views expressed or later conveyed by participants at that meeting were subsequently incorporated into the document.
3. Since the submission of the last periodic report, Mexico has been pursuing a process of consolidation of democracy with significant structural, normative and political changes that have an impact on the full enjoyment of the rights enshrined in the Covenant<sup>1</sup>.
4. The present report takes as its point of departure the observations made by the Committee following consideration of the fourth periodic report of Mexico (document CCPR/C/79/Add.109), including the comments made by the Mexican State in response to those observations (document CCPR/C/79/Add.123), as well as the addendum to that report submitted on 28 April 2000 (document CCPR/C/123/Add.2).
5. Consequently, the fifth periodic report covers advances achieved since August, 2000, measures taken to implement the observations and recommendations of the Committee, as well as the major obstacles and challenges faced in this area.
6. On 2 December 2000, the Federal Executive and the Office of the United Nations High Commissioner for Human Rights signed a Programme of Technical Cooperation for Human Rights.
7. This programme was divided into two phases. The first concentrated on two areas of work: administration of justice, national human rights initiatives and the rights of indigenous peoples.
8. Among the results of this phase are:
  - a) development of model forensic protocols for diagnosis of torture and identification of torture, based on international standards;
  - b) courses given by experts to train doctors and lawyers of some federal and state agencies, autonomous organs and civil society organizations;

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<sup>1</sup>) In addition to the changes referred to in paragraphs below, the following are noteworthy: the consolidation of a multi-party congress as from 1997, the advent of a new party in the Executive in 2000 following more than 71 years of single-party rule, advanced legislation regarding transparency and access to information in 2002, progress in strengthening institutions and harmonizing legislation, a growing contribution to the international system of human rights promotion and protection, and a recent reform in the area of public security and criminal justice, laying the foundations to modernize the system of administration of justice.

- c) a seminar on the rights of indigenous peoples given by experts from the United Nations and the Organization of American States (OAS);
- d) the start of work on the creation of an official Mexican standard for application of the models for diagnosis of torture, with advice from international experts. This first phase laid the foundations to go forward with the joint development of a human rights strategy.

9. In October, 2001, a framework agreement was signed for the second phase of the technical cooperation programme. Its aim was to develop a diagnostic survey of the human rights situation in Mexico, conducted by four national experts, which would identify the political, social and legal factors hampering the full realization of human rights in Mexico.

10. In order to facilitate the pursuit of work by the Office of the United Nations High Commissioner for Human Rights, a headquarters agreement establishing the UNHCHR office in Mexico was concluded on 1 July 2002 and was published in the Diario Oficial de la Federación on 21 February 2003.<sup>2</sup>

11. The Diagnostic Survey was presented on 8 December 2003 and served as the basis for the design and introduction of the first national human rights programme (2004-2006) and the development of its successor programme (2008-2012).

12. In 2006, in the context of the aforementioned technical cooperation programme, the Mexico office of the United Nations High Commissioner for Human Rights launched activities to conduct reviews of the human rights situation in the public sector, with a view to developing state programmes of human rights. The UNHCHR office in Mexico signed an assistance agreement with the High Court of Justice of Guerrero and has plans to sign similar agreements with other local courts. It also has had cooperation agreements with the Supreme Court of Justice of the Nation since June, 2006 and with the Congress of the Union since December, 2006.

13. On 6 February 2008, during a visit to Mexico by the United Nations High Commissioner for Human Rights, the Government of Mexico and the High Commissioner signed a cooperation agreement on the continuation of UNHCHR activities in our country. On that occasion, the President of Mexico reaffirmed the Government's commitment to the goal of ensuring the fullest respect for human rights, for which purpose the National Development Plan lays down a State policy that follows four lines of action:

- a) First. Update the normative framework to reflect international commitments assumed by Mexico;
- b) Second. Establish a federal programme to strengthen respect for human rights, with the participation of 29 federal Government institutions, academic centres and civil society.

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<sup>2</sup>) The establishment of the Office of the Representative of the United Nations High Commissioner for Human Rights came in response to a request by the Government of Mexico; as of June, 2008, Mexico is the only country in a state of internal peace and stability that has taken an initiative of this kind.



- c) Third. Give priority to responding to vulnerable groups in order to prevent violation of their fundamental rights;
- d) Fourth. Pursue campaigns to generate a culture of respect for individual guarantees among the citizenry.

14. In accordance with this agreement, which is to remain in effect until 30 November 202, cooperation will focus on the following themes<sup>3</sup>:

- a) Standardization of legislation in order to incorporate Mexico's international obligations in the Constitution and in federal and state law;
- b) Prevention and elimination of torture;
- c) Promotion of women's rights and the gender perspective;
- d) Promotion of the rights of the indigenous peoples;
- e) Strengthening the training of public officials with regard to human rights.

15. Further, on 20 June 2001 the Mexican Government signed an agreement between the United Mexican States and the International Committee of the Red Cross concerning the establishment in Mexico of a regional delegation of the Committee. That agreement was published in the Diario Oficial on 24 May 2002 and entered into force on 1 June 2002.

16. On 12 March 2002, an agreement on cooperation for the development of a programme of human rights activities was signed between the Ministry of External Relations and the United Nations Educational, Scientific and Cultural Organization (UNESCO), committing to a series of activities in cooperation with the National Autonomous University of Mexico (UNAM) and the Ibero-American University, Mexico City.

17. Pursuant to that agreement, over a period of two years, three Latin American seminars were held leading up to three regional round-tables (in Mérida, Yucatán; Colima, Colima; and Saltillo, Coahuila) and to publications corresponding to each of these:

- a) Higher Education in Human Rights in Latin America and the Caribbean;
- b) Economic, Social and Cultural Rights in Latin America: obstacles to their effective observance and major international instruments;
- c) Human Rights and Migratory Flows on Mexico's Borders.

18. A programme of cooperation in human rights between Mexico and the European Union, signed on 10 February 2004, seeks to "define concrete actions and policies for incorporation of international human rights norms and standards in Mexico, within the framework of the dialogue being conducted by the Commission on Government Policy on Human Rights." That goal took

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<sup>(3)</sup> In addition, a permanent mechanism is established for communication, consultation and dialogue with the federal government regarding the activities of the Representative's Office in Mexico; through this mechanism, channels of communication will be set up between the Office and the various governmental sectors involved in this area.

the form of various international fora on themes such as, inter alia, international human rights instruments; legislative harmonization; torture; economic, social and cultural rights; education; indigenous people and migrants; freedom of expression; rights of children and adolescents. The fora included participation by agencies of federal and state government, civil society organizations of several states of the Republic, autonomous and academic organs. The results of the seminars were disseminated through a campaign.

19. On 31 May 2008, an agreement was signed for the second Mexico-European Union human rights programme, covering three years. The programme encompasses three thematic areas: (a) elimination of gender violence; (b) reform of the justice sector; and (c) harmonizing national legislation with international human rights instruments. Its aim is to foster exchange of knowledge and experience in order to promote the development of public policy proposals based on international human rights norms and standards.

20. This cooperation programme seeks to work in various states of the Republic where needs related to the thematic areas have been identified and will give priority to training actors who are linked to those themes, such as judges, public prosecutors and forensic physicians, in addition to academics and civil society organizations capable of disseminating the contents of these activities.

21. Reflecting its policy of openness to international scrutiny and cooperation with international human rights mechanisms, the Government of Mexico in March, 2001 extended an open invitation to international agencies to visit the national territory and learn about the human rights situation in Mexico first hand. It likewise undertook to accept recommendations deriving from those visits.

22. The international human rights mechanisms that have visited Mexico since the year 2000 are listed below:

| <b>Date</b>           | <b>Mechanism</b>                                                                                               |
|-----------------------|----------------------------------------------------------------------------------------------------------------|
| December 2000         | United Nations High Commissioner for Human Rights, Mrs. Mary Robinson                                          |
| May 2001              | Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumarasamy                             |
| July 2001             | President of the Inter-American Commission on Human Rights, Mr. Claudio Grossman                               |
| August-September 2001 | Committee against Torture, Mr. Alejandro González Poblete and Mr. Ole Vedel Rasmussen                          |
| February 2002         | Special Rapporteur on Women's Rights of the Inter-American Commission on Human Rights, Mrs. Marta Altolaguirre |
| March 2002            | Special Rapporteur on the human rights of migrants, Mrs. Gabriela Rodríguez Pizarro                            |
| March 2002            | Special Rapporteur on adequate housing, Mr. Miloon Kothari                                                     |
| June-July 2002        | United Nations High Commissioner for Human Rights, Mrs. Mary Robinson                                          |
| July 2002             | Special Rapporteur on Migrant Workers of the Inter-American Commission on Human Rights, Mr. Juan Méndez        |

| <b>Date</b>           | <b>Mechanism</b>                                                                                                                                                                          |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| August 2002           | Representative of the Secretary-General on human rights of internally displaced persons, Mr. Francis Deng                                                                                 |
| October-November 2002 | Working Group on Arbitrary Detention, Mr. Louis Joinet                                                                                                                                    |
| July 2003             | Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen                                                                |
| August 2003           | Special Rapporteur on freedom of expression of the Inter-American Commission on Human Rights, Mr. Eduardo Bertoni                                                                         |
| October 2003          | Mission of International Experts, United Nations Office on Drugs and Crime                                                                                                                |
| October 2003          | Committee on the Elimination of Discrimination against Women                                                                                                                              |
| July 2004             | Inter-American Commission on Human Rights                                                                                                                                                 |
| February 2005         | Special Rapporteur on violence against women, its causes and consequences, Mrs. Yakin Erturk                                                                                              |
| June-July 2005        | United Nations High Commissioner for Human Rights, Mrs. Louise Arbour                                                                                                                     |
| August 2005           | Special Rapporteur for Mexico and on the rights of indigenous peoples of the Inter-American Commission on Human Rights, Mr. José Zalaquett                                                |
| November 2006         | Rapporteur for Mexico of the Committee on the Rights of the Child, Mr. Norberto Liewski                                                                                                   |
| April 2007            | Inter-American Commission on Human Rights                                                                                                                                                 |
| May 2007              | Special Rapporteur on the sale of children, child prostitution and child pornography, Mr. Juan Miguel Petit                                                                               |
| September 2007        | Special Rapporteur on adequate housing, Mr. Miloon Kothari and Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen |
| February 2008         | United Nations High Commissioner for Human Rights, Mrs. Louise Arbour                                                                                                                     |
| March 2008            | Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante                                                                                                                  |

23. From 1999 to 2007, Mexico ratified or acceded to a large number of international human rights instruments. It likewise recognized the competence of various international organs to receive and consider individual communications concerning human rights violations attributed to the Mexican State. Mexico thus broadened the range of normative provisions recognizing and protecting human rights within the Mexican legal framework.

24. The actions carried out in this regard are presented below:

| <b>Date</b>     | <b>Action</b>                                                                                                                                      |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| 8 March 1999    | Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families <sup>4</sup>     |
| 7 June 2000     | Ratification of the Convention relating to the Status of Refugees and its Protocol <sup>5</sup>                                                    |
|                 | Accession to the Convention relating to the Status of Stateless Persons and its Protocol <sup>6</sup>                                              |
| 30 June 2000    | Ratification of ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, of 1999 |
| 25 January 2001 | Ratification of the Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities                  |
| 15 March 2002   | Ratification of the Optional Protocol to the International Covenant on Civil and Political Rights                                                  |
|                 | Recognition of the competence of the Committee on the Elimination of Racial Discrimination to receive and consider individual communications       |
|                 | Ratification of the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women                            |
|                 | Recognition of the competence of the Committee against Torture to receive and consider individual communications                                   |

<sup>(4)</sup> Mexico formulated an interpretative declaration in which it reaffirms its political will to guarantee international protection for the rights of migrant workers and indicates that all provisions of the Convention will apply in conformity with national legislation. Likewise, it formulated an express reservation with regard to article 22 (4) with respect to the application of article 33 of the Mexican Constitution and article 125 of the General population act.

<sup>(5)</sup> Mexico formulated two interpretative declarations and three reservations. The first declaration indicates that it falls to the Mexican Government to determine and grant refugee status in keeping with its internal legislation, without prejudice to the definition of refugee in articles 1 of the Convention and I of its Protocol. The second declaration indicates that it is the prerogative of the Mexican Government to grant refugees greater facilities for naturalization and assimilation than those provided for foreigners in general, within the framework of its population policy and national legislation. The first reservation, concerning article 17(2) of the Convention, indicates that the Mexican Government cannot guarantee that refugees who are in the country for over three years and have a spouse or child with Mexican nationality will automatically be exempt from provisions requiring a work permit. The second reservation to articles 26 and 31.2 of the Convention maintains the right of the Mexican Government, in keeping with its national legislation, to assign the place(s) of residence of refugees and establish modalities for their movement through Mexican territory. The third reservation refers to the power granted the Government under article 33 of the Constitution to compel any foreigner whose presence is deemed undesirable to leave the national territory immediately and without prior notice.

<sup>(6)</sup> The Government of Mexico formulated reservations to articles 17, 31 and 32 of the Convention referring to the employment of stateless persons on the same conditions as foreigners, as well as on the application of article 33 of the Constitution; Mexico thus does not consider itself obliged to grant stateless persons greater facilities for naturalization than those granted to foreigners in general.

| Date              | Action                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                   | Ratification of amendments to articles 17 and 18 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment                                                                                                                                                                                                                                                                                                                      |
|                   | Ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts <sup>7</sup><br>Ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and the use of children in pornography<br>Ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity <sup>8</sup> |
| 9 April 2002      | Ratification of the Inter-American Convention on Enforced Disappearances <sup>9</sup>                                                                                                                                                                                                                                                                                                                                                                                 |
| 4 March 2003      | Ratification of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime<br>Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime                                                                                       |
| 11 April 2005     | Ratification of the Optional Protocol to the Convention against Torture                                                                                                                                                                                                                                                                                                                                                                                               |
| 28 October 2005   | Ratification of the Statute of the International Criminal Court                                                                                                                                                                                                                                                                                                                                                                                                       |
| 5 July 2006       | Ratification of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions                                                                                                                                                                                                                                                                                                                                                               |
| 26 September 2007 | Ratification of the Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty                                                                                                                                                                                                                                                                                                                       |
| 17 December 2007  | Ratification of the Convention on the Rights of Persons with Disabilities and its Protocol <sup>10</sup>                                                                                                                                                                                                                                                                                                                                                              |

<sup>(7)</sup> Mexico formulated an interpretative declaration whereby it considers that the responsibility that may be incurred by non-governmental armed groups for the recruitment of minors under age 18 or their use in hostilities attaches exclusively to those groups and shall not be applicable to the Mexican State as such, which shall have the responsibility at all times of applying the principles that govern international humanitarian law.

<sup>(8)</sup> Mexico interposed an interpretative declaration whereby it indicates that non-applicability of statutes of limitations applies only to the crimes set out in the Convention, committed after its entry into force for Mexico. An analysis of the impact of this declaration may be found under article 15 of the Covenant in the present report.

<sup>(9)</sup> Mexico interposed an express reservation to article IX, since the federal Constitution recognizes military law when a soldier has committed an unlawful act while in service. Military law does not constitute a special jurisdiction within the meaning of the Convention, since pursuant to article 13 of the Constitution, no one can be deprived of life, liberty, property, possessions or rights except through a proceeding conducted before courts previously established, with fulfilment of the essential procedural formalities and in accordance with laws enacted prior to the event. Further, at the same time, Mexico formulated an interpretative declaration whereby it will be understood that the provisions of the Convention will apply to acts that constitute enforced disappearance of persons, ordered, executed or committed after the entry into force of the Convention. An analysis of the impact of this declaration may be found under article 6 of the Covenant in the present report.

<sup>(10)</sup> Mexico formulated an interpretative declaration to article 12 whereby it is indicated that, in the event of conflict with national legislation, the provision which affords the greatest legal protection in safeguarding dignity, physical,

| Date          | Action                                                                                                     |
|---------------|------------------------------------------------------------------------------------------------------------|
| 18 March 2008 | Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance |

25. On 9 April 2002, the Mexican State partly withdrew its interpretative declaration and reservation to the American Convention on Human Rights concerning the active vote of ministers of denominations and the performance of public acts of religious worship.

26. On 15 March 2002 Mexico withdrew its reservation to article 25 of the International Covenant on Civil and Political Rights with regard to the vote of ministers of religion.

27. In order to foster direct dialogue between institutions of the federal Government and civil society in designing public policies regarding human rights, the federal Government has created two mechanisms for participation and exchange between different sectors.

28. First, it established the mechanism for dialogue between the Inter-agency Commission to Monitor Mexico's Human Rights Commitments and civil society organizations, with the aim of ensuring participation by the organizations in the design and evaluation of international governmental policies concerning human rights, so that said policies can be reflected in national protection of those rights.

29. This mechanism for dialogue was composed of a technical secretariat (a collegial body) and thematic working groups through which the federal Government and civil society organizations sought to create policies and strategies to strengthen specific areas of human rights, such as the rights of indigenous peoples, enforceability of economic, social and cultural rights, or harmonization of national law with international standards, among other issues. The Inter-agency Commission was presided over by the Ministry of External Relations from its creation in 1997 until 2003.

30. Subsequently, the mechanism for dialogue was moved to the Ministry of the Interior through a decree published in the Diario Oficial on 11 March 2003, creating the Inter-Ministerial Commission on Government Policy on Human Rights, whose functions include:

- a) Designing and coordinating government actions geared to strengthening promotion and defence of human rights;
- b) Designing mechanisms to facilitate compliance with international obligations;
- c) Improving the Mexican legal system with respect to human rights, in light of international standards.

31. The Inter-Ministerial Commission on Government Policy on Human Rights comprises the Ministry of External Relations, the Ministry of National Defence, the Ministry of Naval Affairs, the Ministry of Health, the Ministry of Public Education, the Ministry of Social Development, the Ministry of the Environment and Natural Resources and the Ministry of Public Security. The following also have a standing invitation to participate in deliberations without the right to vote: the Office of the Attorney General, the Ministry of Finance and Public Credit, the National Human Rights Commission, the National Council of Indigenous People, the Mexican Social Security Institute, the Social Security and Services Institute for State Workers, and the National Institute for Women (INMUJERES).<sup>11</sup>

32. The Commission also has a technical secretariat which conducts follow-up of agreements adopted and which has been assigned to work with the Unit for Promotion and Defence of Human Rights of the Ministry of the Interior. It has also been incorporated into the mechanism of dialogue with civil society organizations which operated in the Inter-agency Commission, thus ensuring its presence in plenary meetings of the Commission on Government Policy, with the right to participate but not to vote.

33. For the performance of its functions, the Commission has nine subcommissions: Legislative Harmonization; Civil and Political Rights; Economic, Social and Cultural Rights; Rights of Indigenous People; Rights of Migrants; Rights of Children; Vulnerable Groups; Human Rights Education; and Prevention and Eradication of Violence against Women in Ciudad Juárez. New basic guidelines for operation of the subcommissions, technical committees and working groups were approved at a plenary meeting of the Commission on 16 October 2007.

## **II. ARTICLE 1: SELF-DETERMINATION AND FREE DISPOSITION OF NATURAL WEALTH**

34. The Committee indicated to the Mexican Government that “Despite the acknowledgement 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.”<sup>12</sup>

35. Accordingly, the Committee recommended that “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.”

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(<sup>11</sup>) See: [http://www.derechoshumanos.gob.mx/archivos/anexos/Acuerdo\\_Comision\\_Polticas\\_DH.pdf](http://www.derechoshumanos.gob.mx/archivos/anexos/Acuerdo_Comision_Polticas_DH.pdf)

(<sup>12</sup>) Observations of the Human Rights Committee: México. 27/07/99. CCPR/C/79/Add.109.

36. Mexico has recognized the right of indigenous peoples and communities to self-determination in a constitutional framework which ensures national unity, as may be appreciated from the legislative and other advances that have been adopted.

37. With regard to the Committee's recommendation following the submission of the fourth report of Mexico regarding the need to take adequate steps to increase participation by indigenous communities in the country's institutions, as well as their exercise of the right of self-determination, the Mexican States, in its comments submitted in 2000<sup>13</sup>, reported that peace courts have been established where indigenous ways and customs are respected, in order to provide for the resolution of minor disputes, respecting the different ethnic groups.

#### **A. Legislative advances**

38. On 14 August 2001 a decree was published in the Diario Oficial adding a second and third paragraph to article 1 of the Constitution, recasting article 2 in its entirety and repealing article 4 (1). A sixth paragraph was added to article 18 and a final paragraph to the third section of article 115.

39. In keeping with this reform, article 2 grants the right of self-determination to indigenous peoples in the following terms:

#### **Article 2**

The Mexican nation is unique and indivisible.

The nation has a multicultural composition, originating in its indigenous people, who are descended from people who lived in the current territory of the country, who live in it now, and who keep their own social, economic, cultural, and political institutions or parts of these. The awareness of their indigenous identity shall be the fundamental criterion to determine to whom applies the disposition on indigenous people.

Communities of indigenous people are those that form a social, economic, and cultural unit, situated in a territory, and recognize authorities in agreement with their traditions and customs.

The right of indigenous people to self-determination will be exercised in a constitutional way that assures national unity. The recognition of indigenous people and communities will be made in the constitutions and laws of federated entities, which will take them into account, besides the general principles established in the previous paragraphs of this article, ethnolinguistic criteria, and physical location.

A. This Constitution recognizes and guarantees the right of indigenous peoples and communities to self-determination, and, in consequence, autonomy to:

I. Decide their internal forms of living and social, economic, political, and cultural organization.

II. Apply their own standards in regulation and solution of their internal conflicts, subject to the general principles of this Constitution, respecting individual guarantees, human rights, and, in a relevant manner, the dignity and completeness of women. The law will establish the cases and procedures of validation by the appropriate judges or courts.

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<sup>(13)</sup> See document CCPR/C/123/Add.2, 28 April 2000.



III. Elect, in accord with their traditional standards, procedures, and practices, authorities or representatives for the exercise of their own forms of internal government, guaranteeing the participation of women in conditions of equality to those of men, in a way that respects the Federal Pact and the sovereignty of the states.

IV. Preserve and enrich their languages, awareness of their heritage, and all the elements that constitute their culture and identity.

V. Conserve and improve their habitat, and preserve their lands in the terms established in this Constitution.

VI. Enjoy, with respect to the forms and means of property and land use established in this Constitution and the laws about these, as well as to the rights acquired by third parties or by members of the community, the preferential use of natural resources of the places that these communities occupy and live, except for those that correspond to strategic areas in terms of this Constitution. For these effects, communities may act in terms of the law.

VII. Elect, in municipalities with indigenous people, representatives to municipal governments. The constitutions and laws of federated entities will recognize and regulate these rights in municipalities, with the objective of strengthening indigenous participation and political representation, in conformity with the peoples' traditions and internal standards.

VIII. Accede fully to the jurisdiction of the State to guarantee those rights, in all trials and proceedings in which it takes part, individually or collectively. The State will take into account their customs and cultural specifics, respecting the precepts of this Constitution. Indigenous people have at all times the right to be assisted by interpreters and defenders who are acquainted with their language and culture.

The constitutions and laws of the federated entities will establish the characteristics of self-determination and autonomy that best express the situations and aspirations of the indigenous people in each entity, as well as the standards for recognition of their indigenous communities of public interest.

B. The Federation, states, and municipalities, to promote equal opportunity for indigenous people and eliminate any discriminatory practice, will establish the institutions and determine the necessary policies to guarantee the rights of indigenous peoples and the complete development of their people and communities. These will be designed and operated together with them.

To eliminate the scarcities and leftovers that affect indigenous people and communities, these authorities have the obligation to:

I. Stimulate the regional development of indigenous zones, with the objective of strengthening their local economies and bettering the conditions of life of their peoples, by means of actions coordinated among the three levels of government, with the participation of the communities. Municipal authorities will fairly determine budget allocations that the communities will directly administer for specific ends.

II. Guarantee and increment the levels of education, favouring bilingual and bicultural education, literacy, completion of basic education, vocational training, and mid-superior and superior education.

Establish a system of grants for indigenous students at all levels. Define and develop educational programs of regional level that recognize the cultural heritage of their peoples, in agreement with the laws about the matter and in consultation with indigenous communities. Stimulate the respect and knowledge of the diverse cultures that exist in the nation.

III. Assure effective access to health services by means of the expansion of the coverage of the coverage of the national system, also using traditional medicine, as well as support good nutrition for indigenous peoples by means of programs of food, especially for their children.

IV. Improve the conditions of indigenous communities and their spaces for common living and recreation, by means of actions that facilitate access to public and private financing for the construction and improvement of housing, as well as expand the coverage of basic social services.

V. Aid the incorporation of indigenous women into the development of the community, by means of support for productive projects, the protection of their health, the granting of stipends to aid their education, and the promotion of their participation in decisions relating to community life.

VI. Extend the network of communications that permits the integration of communities into the larger society, by means of construction and expansion of ways of communication and telecommunication.

Establish conditions by which indigenous peoples and communities may acquire, operate, and administer means of communication, in the terms that the laws on the matter determine.

VII. Support productive activities and sustainable development of indigenous communities, by means of actions that permit them to be economically self-sufficient, the application of stimuli for public and private investments for the creation of jobs, the incorporation of technologies to increase their own productive capacity, as well as to assure equal access to the systems of supply and trade.

VIII. Establish social policies to protect migrants who are indigenous people, within national as well as foreign territory, by means of actions to guarantee the rights of labourers and day agricultural workers, improve health conditions of women, support families of migrants with children and youth with special programs of education and nutrition, watch for the respect of their human rights, and promote the knowledge of their cultures.

IX. Consult indigenous peoples in the making of the national plan of development and those of states and municipalities, and, in their case, incorporate the recommendations and proposals that result.

To guarantee the fulfilment of the obligations given in this part, the Chamber of Deputies of the Congress of the Union, the legislatures of the federated entities, and municipal councils, in the area of their respective jurisdictions, will establish the specific parts earmarked to the fulfilment of these obligations in the budgets of spending they approve, as well as the forms and procedures for communities to participate in the exercise and watching over of these, without endangering the rights established in favour of indigenous people and their communities, all people in their communities will have the same rights, as the law establishes.

40. Accordingly, the first paragraph of the Constitution, which read as below, has been repealed.

The Mexican nation has a multicultural composition, originally based on its indigenous peoples. The law will protect and promote the development of their languages, cultures, means, customs, resources, and specific forms of social organization, and will guarantee to

them effective access to the jurisdiction of the State. In judicial and agrarian proceedings in which they are part, their practices and judicial customs shall be taken into account in the terms that the law establishes.

41. And a final paragraph has been added to the third section of article 115 of the Constitution, which provides that:

Indigenous communities may, within the municipal sphere, coordinate and associate with each other on the terms and for the purposes provided by law.

42. This constitutional reform created a legal framework which establishes a new relationship between the Mexican State and indigenous peoples and communities by recognizing that indigenous peoples hold a broad range of rights, including the right to recognition as an indigenous people or community, the right to choose one's own affiliation, self-determination and autonomy within a legal framework that ensures national unity, the right to apply one's own system of norms, the right to preserve cultural identity, the right to land, the right to be consulted and to participate, the right to full access to the jurisdiction of the State, and the right to development. The Constitution enshrines a series of important rights that enable indigenous peoples to adopt a course leading to the establishment of a new, more democratic, inclusive and respectful relationship.

43. It was envisaged that the federation, states and municipalities should establish the institutions and determine the policies necessary to ensure effectiveness of indigenous rights and integrated development of indigenous peoples and communities. The obligations of federal, state and municipal authorities to address the needs of communities were also defined.

44. Based on the 2001 constitutional reform, the following states have reformed their local constitutions: San Luis Potosí (11 July 2003); Tabasco (15 November 2003); Durango (22 February 2004); Jalisco (29 April 2004); Puebla (10 December 2004); Morelos (20 July 2005); Querétaro (12 January 2007); and Yucatán (11 April 2007). The current constitutional reform also provides that state legislatures will establish the forms of self-determination and autonomy. Some states have enacted regulatory laws in regard to indigenous affairs.<sup>14</sup>

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<sup>14</sup>) Law on indigenous justice of the State of Quintana Roo (14 November 1997); Law on the rights of indigenous peoples and communities of the State of Oaxaca (19 June 1998); Law on indigenous rights, culture and organizations of the State of Quintana Roo (31 July 1998); Law on indigenous rights and culture of the State of Chiapas (29 July 1999); Law on the rights, culture and organization of the indigenous peoples and communities of the State of Campeche (15 June 2000); Law on indigenous rights and culture of the State of Mexico (10 September 2001); Law regulating article 9 of the State Constitution on indigenous rights and culture of San Luis Potosí (13 September 2003); Law on indigenous rights and culture of the State of Nayarit (18 December 2004); Law on the administration of indigenous and community justice of the State of San Luis Potosí (30 May 2006); Law on the rights and development of indigenous peoples and communities of the State of Jalisco (11 January 2007); Law on community justice of the State of Durango (22 July 2007); Law on rights and culture of indigenous peoples and communities of the state of Querétaro (27 July 2007); Law on indigenous rights and culture of the State of Baja California (26 October 2007). See: Indigenous Rights in Mexico. Analysis of the legal repercussions of the federal constitutional reform on indigenous rights and culture in the structure of Mexico: CDI, December 2007, pp. 99-100, in: [http://www.cdi.gob.mx/derechos/vigencia\\_libro/vigencia\\_derechos\\_indigenas\\_diciembre\\_2007.pdf](http://www.cdi.gob.mx/derechos/vigencia_libro/vigencia_derechos_indigenas_diciembre_2007.pdf).

45. Several federative entities had already recognized indigenous rights in their constitutions based on what had been established through ratification of ILO Convention 169 on indigenous and tribal peoples of 1989 (Guerrero, Hidalgo, Oaxaca and Querétaro) and on the now-repealed article 4 (1) of the Constitution (Campeche, Chiapas, Chihuahua, México, Michoacán, Sinaloa, Sonora, Quintana Roo and Veracruz), which have not yet been updated. Some local constitutions were reformed after 2001 in regard to the content of the last paragraph of the federal Constitution (Coahuila and Guanajuato).

### **B. Judicial decisions**

46. The Supreme Court of Justice of the Nation has held that the reform of article 2 of the Constitution implies recognition of the unity of the indigenous peoples with the territory they occupy and, therefore, the right to its use in accordance with their own customs and traditions, remaining within the constitutional framework of the Mexican State. That right includes the conserving and improving their habitat, preserving the integrity of their lands and preferred access to the use and enjoyment of the natural resources of the places they occupy, excepting those located within strategic areas. With regard to the right to decide their internal way of life and economic organization, it likewise establishes the possibility of coordination and association of indigenous communities within the municipal sphere, which should be pursued within the constitutional framework, which requires respect for the acquired rights of third parties or members of the community.<sup>15</sup>

### **C. Institutional measures**

47. Details of institutional measures are set out in the section relating to article 27 of the Covenant.

## **III. ARTICLE 2: ESTABLISHMENT OF THE RIGHTS ENSHRINED IN THE COVENANT**

### **A. Legislative advances**

#### **1. Non-discrimination**

48. A decree published in the *Diario Oficial* on 14 August 2001 provides for an additional paragraph to article 1 of the Constitution, prohibiting discrimination. With the amendments of 4 December 2006, that paragraph provides:

“All discrimination motivated by ethnic or national origin, gender, age, differing abilities, social conditions, health conditions, religion, opinions, preferences, marital status, or anything else that may be against human dignity and have as its object to restrict or reduce the rights and liberties of persons, remains prohibited.”

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<sup>15</sup> INDIGENOUS RIGHTS. THE FEDERAL CONSTITUTION RECOGNIZES THE TERRITORIAL PRINCIPLE OF INDIGENOUS PEOPLES AND THE PREFERENTIAL RIGHT OF COMMUNITIES TO THE USE AND ENJOYMENT OF THE NATURAL RESOURCES OF THE PLACES THEY OCCUPY. *Judicial Weekly of the Federation*, ninth period, volume XVI, November 2002, opinion 2. CXXXVIII/2002, pp. 445.

49. The same reform of 14 August 2001 modified article 2 of the Constitution<sup>16</sup> with the aim of recognizing the importance of the different indigenous cultures and peoples comprising the United Mexican States. Section B includes an obligation by the Mexican State to promote the equality of indigenous people in addition to the prohibition of any type of discrimination against their peoples and communities.

50. Article 1 (3) of the Constitution was amended in December 2006 to prohibit discrimination on grounds of disability.

51. The Federal Act to Prevent and Eliminate Discrimination<sup>17</sup> was published on 11 June 2003. Its purpose is to prevent and eliminate all forms of discrimination practiced against any person under the terms of article 1 of the Constitution, as well as to promote equal opportunity and equal treatment. This provision originated in a draft prepared by the Citizens' Committee for Studies against Discrimination (Comisión Ciudadana de Estudios contra la Discriminación).

52. Under the Act, discrimination means any distinction, exclusion or restriction based on ethnic or national origin, sex, age, disability, social or economic status, medical condition, pregnancy, language, religion, opinion, sexual orientation, marital status or any other ground and that has the effect of preventing or nullifying the recognition or exercise of the rights and truly equal opportunities of persons. Discrimination also covers xenophobia and anti-Semitism in all their manifestations.

53. According to law, the following are not considered discriminatory conduct:

- a) Positive or compensatory legislative, educational or public policy measures which, without affecting the rights of others, prescribe differentiated treatment for the purpose of promoting equal opportunity;
- b) Distinctions based on specialized skills or knowledge to perform a specific activity;
- c) The distinction made by public social security institutions between their insured and the population at large;
- d) In the educational arena, academic, pedagogical and evaluation criteria;
- e) Distinctions laid down as requirements for entry or continuing employment in public service or any other provided for in the laws;
- f) The differentiated treatment that a person suffering from a mental illness may benefit from;
- g) Distinctions, exclusions, restrictions or preferences that may be made between citizens and non-citizens;

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<sup>(16)</sup> [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_151\\_14ago01\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_151_14ago01_ima.pdf)

<sup>(17)</sup> See: <http://www.ordenjuridico.gob.mx/Federal/Combo/L-134.pdf>

- h) In general, all those which do not have as their purpose nullifying or undermining rights and freedoms or equal opportunities of persons or offending human dignity.

54. One of the most important points in the aforementioned law is the incorporation of a set of general recommendations and observations issued by various bodies monitoring international human rights treaties.<sup>18</sup>

55. The General Law on Persons with Disabilities was published in the Diario Oficial on 10 June 2005. This law introduces a National Council on Persons with Disabilities as a standing inter-sectoral and inter-agency organ for the purpose of aiding in the establishment of a State policy in this area, as well as promoting, supporting, advancing, monitoring and evaluating actions, strategies and programmes.

## **2. Unconstitutionality actions concerning human rights**

56. On 14 September 2006 a decree published in the Diario Oficial adds a paragraph (g) to section II of article 105 of the Constitution, empowering the National Human Rights Commission to bring challenges to the constitutionality of federal, local and Federal District laws, as well as international treaties concluded by the federal executive and approved by the Senate, which violate human rights enshrined in the federal Constitution.

57. Through this reform, organs for the protection of human rights in the federative entities and in the Federal District may exercise that power as against laws enacted by local legislatures.

## **B. Judicial decisions**

### **1. Status of International Treaties in the Mexican Legal System**

58. In keeping with article 133 of the Constitution, international treaties are the supreme law of the land.<sup>19</sup> This provision was spelled out by the Supreme Court of Justice of the Nation in 1999 when it issued a holding according to which international instruments are hierarchically inferior to the federal Constitution itself but superior to federal laws enacted by the Congress of the Union.<sup>20</sup>

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<sup>(18)</sup> For example, General Observations 4 and 28 of the UN Human Rights Committee, as well as the general recommendations of the Committee on the Elimination of Discrimination against Women.

<sup>(19)</sup> The article provides as follows: “This Constitution, the laws of the Congress of the Union that come from it, and all the treaties that are in accord with it, that have been concluded and that are to be concluded by the President of the Republic with the approval of the Senate will be the Supreme Law of all the Union.”

<sup>(20)</sup> INTERNATIONAL TREATIES TAKE PRECEDENCE OVER FEDERAL LAWS AND STAND BELOW THE FEDERAL CONSTITUTION. The hierarchy of rules of law under our system has been much discussed in legal scholarship. There is unanimity that the federal Constitution is the fundamental rule. Although, in principle, the wording “...shall be the supreme law of all the Union...” seems to indicate that not only the Constitution is supreme, that objection is overcome by the fact that the laws must emanate from the Constitution and be approved by a constituted organ, such as the Congress of the Union, and treaties must be in accord with the fundamental law, which indicates clearly that only the Constitution is supreme. The problem with regard to the hierarchy of the other rules of the system has met with various solutions in case-law and doctrine, the main ones being: supremacy of federal law in respect of local law and same hierarchical status for both, in their straightforward versions, and with

59. On 13 February 2007, the Supreme Court of Justice of the Nation, *en banc*, endorsed that holding by a majority of six votes to five, in a case involving 14 appeals pursuant to a writ of protection (*amparo*) reviewing certain rules contravening international trade treaties.<sup>21</sup>

60. As of June, 2008, this holding does not set binding precedent because according to article 192 of the Law on Amparo, that would require “five executory judgments uninterrupted by any contrary judgment, approved by at least eight ministers if the precedent is one set by the plenary court (*jurisprudencia de pleno*) or by four ministers in cases of precedents set by chambers (*jurisprudencia de las salas*).”

61. Nevertheless, the holdings adopted by the Supreme Court of Justice of the Nation represent one further step towards the recognition of Mexico’s international obligations within the national legal order and are especially relevant to the efforts being exerted domestically in order to embody in national legislation the international human rights treaties to which Mexico is party.

62. The Supreme Court of Justice of the Nation has determined that prohibiting discrimination consists of a legal duty incumbent on authorities to afford the same treatment to all persons who are similarly situated. Therefore, it has laid down that in the Mexican Nation all types of

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the existence of “constitutional laws”, with the supreme law being the one that is characterized as constitutional. Nevertheless, this Supreme Court of Justice considers that international treaties stand immediately below the fundamental law and above federal and local law. That interpretation of article 133 of the constitution derives from the fact that these international undertakings are assumed by the Mexican State as a whole and encompass all of its authorities in respect of the international community; that is why the Founders empowered the President to sign international treaties in his capacity as Head of State and, similarly, the Senate intervenes as representative of the will of the States and, by its ratification, obliges their authorities. Another important aspect in considering the status of treaties is the fact that, in this matter, there is no limitation of jurisdiction between the federation and the states, i.e. federal or local jurisdiction is not taken into account as to the content of the treaty, but rather by an express mandate of article 133 the President and senate alone can oblige the Mexican State in any field, independently of the fact that, for other purposes, such field may be the competence of the States. As a result of the foregoing, the interpretation of article 133 leads us to consider federal and local law in the same position in third place, pursuant to article 124 of the fundamental law, which commands that “The powers that are not expressly conceded by this Constitution to federal officials are understood to be reserved to the States.” We are not unmindful that, as formerly constituted, this Court had adopted a different position in opinion P. C/92 published in the *Judicial Weekly of the Federation*, No. 60, of December 1992, page 27, under the heading “Federal laws and international treaties have the same normative status”; however, this Plenary Court considers it appropriate to abandon that view and adopt the view that considers treaties as standing above even federal law. *Judicial Weekly of the Federation*, ninth period, volume X, November 199, opinion P.LXXVII/99, p. 46.

<sup>21</sup> INTERNATIONAL TREATIES. ARE AN INTEGRAL PART OF THE SUPREME LAW OF THE UNION AND STAND HIERARCHICALLY ABOVE GENERAL, FEDERAL AND LOCAL LAWS. INTERPRETATION OF ARTICLE 133 OF THE CONSTITUTION. Systematic interpretation of article 133 of the Constitution enables us to identify a higher body of national law comprised of the federal Constitution, international treaties and general laws. Based on that interpretation, harmonized with the principles of international law interspersed in the constitutional text, as well as the fundamental rules and premises of this branch of law, we conclude that international treaties stand below the federal Constitution and above general, federal and local laws, inasmuch as the Mexican State, upon signing them, in conformity with the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, and in light of the fundamental principle of customary international law “*pacta sunt servanda*”, freely assumes obligations towards the international community that cannot be disregarded by invoking rules of domestic law and whose observance presupposes a responsibility of an international character. *Judicial Weekly of the Federation*, ninth period, volume XXV, April 2007, opinion P.IX/2007, p.6.

discrimination which offend human dignity or which nullify or undermine rights and freedoms of men and women are prohibited.<sup>22</sup>

## **2. Amparo action and action for protection of political rights of citizens in regard to the rights contained in the Covenant**

63. In Mexico, the governed may avail themselves of jurisdictional mechanisms to demand respect for their fundamental rights recognized by the federal Constitution or in international treaties signed by the Mexican State through an action for amparo.

64. In order for the action for amparo to fulfil its purpose, the Supreme Court of Justice of the Nation has established the possibility that the legal effects of a judgment in first instance may be modified on appeal when the legal consequences of the judgment in first instance are not sufficient to restore the individual to the enjoyment of his rights, even if the individual has not sought such a change.<sup>23</sup>

65. For the same reasons, the Supreme Court of Justice of the Nation has held that a citizen may appeal a judgment in his favour when his purpose is to challenge the effects of the judgment.<sup>24</sup>

## **3. Guarantee of non-discrimination**

66. With respect to the right to non-discrimination, the Supreme Court of Justice of the Nation has held that this individual guarantee encompasses, firstly, the subjective public right of the citizen to be treated in the same manner as all others and, secondly, the concomitant legal duty of the authorities to ensure equal treatment to all similarly situated persons. Finally, the Supreme Court of Justice of the Nation holds that, in consonance with article 1 (3) and article 4 (1) of the federal Constitution, in the Mexican Nation all types of discrimination which offend human dignity or which nullify or undermine rights and freedoms of men and women are prohibited, because both must be protected by law without any distinction, regardless of their preferences,

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<sup>(22)</sup> GUARANTEE OF NON-DISCRIMINATION. ITS CONSTITUTIONAL PROTECTION. *Judicial Weekly of the Federation*, ninth period, volume XXVI, August 2007, opinion 2<sup>a</sup> CXVI/2007, p. 639.

<sup>(23)</sup> EFFECTS OF A JUDGMENT OF CONSTITUTIONAL PROTECTION. ITS INCORRECT FORMULATION CONSTITUTES AN INCONGRUITY WHICH MUST BE CORRECTED BY THE REVIEWING COURT, EVEN WHERE NO HARM IS ALLEGED. *Judicial Weekly of the Federation*, ninth period, volume XX, December 2004, opinion 1<sup>a</sup>. CLIII/2004, p. 360

<sup>(24)</sup> REVIEW UNDER INDIRECT AMPARO. THIS REMEDY IS APPROPRIATE WHEN THE COMPLAINANT ALLEGES ERRONEOUS FORMULATION OF THE EFFECTS OF THE GRANTING OF AMPARO. *Judicial Weekly of the Federation*, ninth period, volume XXII July 2005, opinion 1<sup>a</sup>/J. 78/2005, pp 298; REVIEW UNDER INDIRECT AMPARO. THE ISSUE OF CONSTITUTIONALITY REMAINS PRESENT IN THE APPEAL WHEN THE COMPLAINANT OBJECTS THE CONSIDERATIONS ON THE BASIS OF WHICH THE EFFECTS OF GRANTING AMPARO WERE SPECIFIED. *Judicial Weekly of the Federation*, ninth period, volume XVIII, November 2003, opinion 1<sup>a</sup>. LXII/2003, pp. 126.



and should therefore enjoy the same rights and equality of opportunity to exercise fundamental freedoms in the political, economic, social, cultural civil or any other sphere.<sup>25</sup>

67. Similarly, the Court has determined that members of the armed forces who are carriers of the human immunodeficiency virus (HIV) shall not be objects of discrimination or be subjected to mandatory discharge solely for that reason.<sup>26</sup>

### **C. Institutional measures**

#### **1. Non-discrimination**

68. Through the Federal Act to Prevent and Eliminate Discrimination<sup>27</sup>, a National Council for the Prevention of Discrimination (CONAPRED) was established as the organ entrusted with leading and coordinating anti-discrimination policies in Mexico.

69. CONAPRED is a decentralized entity with legal personality, ownership of assets and technical and managerial autonomy. In resolving the claims or complaints submitted to it, it is not subordinate to any authority and adopts its decisions in complete independence. Since 2004, CONAPRED has been exercising a federal mandate to deal with proceedings relating to claims and complaints of discrimination.

70. The purpose of CONAPRED is:

- a) to contribute to the country's cultural, social and democratic development;
- b) to carry out activities aimed at preventing and eliminating discrimination;
- c) to formulate and advance public policies favouring equal opportunity and equal treatment for people within the nation's territory;
- d) to coordinate the actions of agencies and entities of the executive branch with respect to prevention and elimination of discrimination.

71. From December 2006 to June 2007, through various social communication, production and editorial distribution strategies, COAPRED succeeded in positioning itself as a point of reference for citizens seeking to assert their right to non-discrimination and helping to encourage a culture of accountability. During that period, it handled 1,065 cases of complaints, claims and provision

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<sup>(25)</sup> GUARANTEE OF NON-DISCRIMINATION. ITS CONSTITUTIONAL PROTECTION. *Judicial Weekly of the Federation*, ninth period, volume XXVI, August 2007, opinion 2<sup>a</sup>. CXVI/2007, pp. 639.

<sup>(26)</sup> SOCIAL SECURITY FOR THE MEXICAN ARMED FORCES. ARTICLE 226, SECOND CATEGORY, SUBSECTION 45 OF THE LAW OF THE RELEVANT INSTITUTION, WHICH PROVIDES THE LEGAL BASIS FOR RETIREMENT DUE TO UNFITNESS FOR SERVICE BASED ON SEROPOSITIVITY TO ANTIBODIES AGAINST THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) VIOLATES ARTICLE 1 OF THE FEDERAL CONSTITUTION. *Judicial Weekly of the Federation*, ninth period, volume XXVI, December 2007, opinion P. /J. 131/2007, pp. 12.

<sup>(27)</sup> Promulgated 11 June 2003.

of guidance, by comparison with a forecast of 526, i.e. almost double what had been programmed for the first half of 2007.

## **2. Human rights administrative bodies in the federal public administration**

72. During the early months of 2001, with a view to enhancing the visibility of human rights in national institutions, the Ministries of the Interior and of External Affairs created a Sub-secretariat for legal affairs and human rights and a Sub-secretariat for human rights and democracy, respectively. The latter subsequently changed its name to Sub-secretariat for multilateral affairs and human rights.

73. Subsequently, an Office of Assistant Attorney General for Human Rights, Victim Protection and Services to the Community was created within the Office of the Attorney General. A Sub-secretariat for prevention, coverage and human rights was created within the Secretariat of Public Security. The Directorate General for human rights of the Ministry of National Defence began operation on 1 January 2008.

## **3. Public education**

74. Finally, with a view to instilling in all Mexico's residents a spirit of respect for fundamental rights and the rights of the human person, the Ministry of Public Education has considerably strengthened the human rights contents of programmes and plans of study in primary and secondary education. The Inter-American Institute of Human Rights has attested to this in its Fifth Report on Human Rights Education. Textbooks to be distributed nationwide as from the 2008-2009 school year deal specifically with topics of gender equity, freedoms and slavery. This measure seeks to consolidate a culture of human rights for future generations.

## **IV. ARTICLE 3: EQUALITY BETWEEN MEN AND WOMEN IN THE ENJOYMENT OF RIGHTS UNDER THE COVENANT**

75. Mexico's gender equality policy seeks to promote fair treatment for women and men in keeping with their respective needs. That aim and that conviction have inspired a variety of legislative provisions in both the constitutional and legal spheres, in addition to the ratification of two important international instruments:

- a) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 15 March 2002;
- b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 4 March 2003.

76. Considering that gender equality is involved in the majority of the rights recognized under the Covenant, this section will refer only to the central aspects of the subject, without attempting to be exhaustive. Other questions pertaining to equality between men and women, and analysis of the specific conditions under which it is addressed, will be approached in a more cross-cutting manner, with the aim of providing a gender perspective concerning the degree of compliance with all the rights protected and promoted by the Covenant.

## A. Legislative advances

### 1. Promotion of gender equality

77. On 14 August 2001, article 2, section A (III) of the Constitution, concerning civil and political rights of indigenous women, was amended. The purpose of this reform was to ensure that procedures for election of indigenous authorities and representatives ensured the participation of women under conditions of equality with men:

A. This Constitution recognizes and guarantees the right of indigenous peoples and communities to self-determination, and, in consequence, autonomy to:

[...]

III. Elect, in accord with their traditional standards, procedures, and practices, authorities or representatives for the exercise of their own forms of internal government, guaranteeing the participation of women in conditions of equality to those of men, in a way that respects the Federal Pact and the sovereignty of the states.

78. On 12 January 2001, the Diario Oficial published the Act establishing the National Institute for Women, created as a decentralized federal public entity whose aim is to promote and foster conditions conducive to non-discrimination, equal opportunity and egalitarian treatment towards women; the full exercise of all women's rights and their equitable participation in the political, cultural, economic and social life of the country.

79. Under article 6 of the Act, specific goals of the National Institute for Women are protecting and disseminating the rights of women and girls enshrined in the federal Constituting and in international treaties ratified by Mexico; and promoting a culture of non-violence and non-discrimination against women and gender equality with a view to strengthening democracy.

80. Reforms adopted in 2002 to the Federal Code on Electoral Institutions and Procedures include affirmative steps to promote gender equality in achieving access to public elected office (article 4), the obligation to promote political participation with equal opportunity between men and women in the procedures for legal registration (article 25), and the obligation of political parties to ensure equality and achieve gender parity in their executive bodies and in candidatures to publicly elected offices (article 38).<sup>28</sup>

81. The Law on Professional Career Service in the Federal Administration, published on 10 April 2003, was prepared with a gender approach, also reflected in the corresponding Regulations. Among the principles contemplated in article 4 of those Regulations is "equity," which is defined as "equality of opportunity, without discrimination by reason of gender, age, race or ethnic affiliation, state of health, differing capacities, religion or creed, marital status, social condition or political preference."<sup>29</sup>

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<sup>(28)</sup> It should be noted that the Federal Code on Electoral Institutions and Procedures was repealed and replaced in 2008, while the elements concerning gender equity contemplated in the 2002 reform were retained. See: <http://www.diputados.gob.mx/LeyesBiblio/ref/cofipec.htm>

<sup>(29)</sup> See: <http://www.ordenjuridico.gob.mx/Federal/Combo/L-95.pdf> and the regulations pursuant thereto at: [http://www.funcionpublica.gob.mx/leyes/leypc/r\\_lspcapf.html](http://www.funcionpublica.gob.mx/leyes/leypc/r_lspcapf.html)

82. With participation by INMUJERES in analyzing the outlines of the different sub-systems which make up the Professional Career Service and in the drafting of the aforementioned Regulations, the Chamber of Deputies in October 2005 approved reforms to articles 2, 14 and 32 and additions to articles 13 and 30 of the Law on Professional Career Service in the Federal Administration in order to strengthen the gender perspective. That reform was published in the Diario Oficial on 9 January 2006.

83. The Law on the National Council of Indigenous People, adopted on 21 May 2003, lays down the principles which govern public activities aimed at the integrated and sustainable development of the indigenous population, and specifically requires the inclusion of the gender perspective in policies, programmes and actions of the federal administration, following consultation with indigenous peoples and communities, in order to promote participation, respect and full opportunity for indigenous women.<sup>30</sup>

84. The General Law on Social Development, published in the Diario Oficial on 20 January 2004, lays down principles and general guidelines to be followed by the National Social Development Policy, ensuring access to social development programmes, equal opportunity, and the overcoming of discrimination and social exclusion, pursuant to the principle of diversity, which includes recognition of gender as a factor.

85. Article of the General Education Act was amended on 10 December 2004 to establish that education imparted by the Mexican State shall combat discrimination, especially that which is practiced against women:

“The principle that shall guide education which is imparted by the State and its decentralized organs –as well as all pre-school, primary, secondary, teacher-training and other education for the training of teachers of basic education in the private sector—shall be based on the results of scientific progress; shall combat ignorance and its causes and effects, forms of servitude, fanaticism, prejudices and the formation of stereotypes, and discrimination, especially that which is practiced against women.”

86. On 26 January 2006 a decree published in the Diario Oficial added a section XIV bis to article 6 of the National Human Rights Commission Act in order to give the Commission authority over the observance, follow-up, evaluation and monitoring of provisions relating to equality between women and men. Accordingly, the Commission created a Programme of equality between women and men, which began operation in February, 2006.

87. This programme concentrates on the follow-up, evaluation and monitoring of national policy regarding gender equality through a system of information that indicates the status of equal rights between women and men around the country, in order to be able to formulate proposals aimed at the effective exercise of the right to equality, to safeguard the principle of non-discrimination, and to evaluate the impact of public policies in this area applied by competent entities. It also takes up complaints regarding alleged equal-rights violations, puts forward proposals for conciliation and, as appropriate, issues special recommendations and reports.

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<sup>30</sup>) See: [http://www.cdi.gob.mx/derechos/vigencia/ley\\_de\\_la\\_cdi.pdf](http://www.cdi.gob.mx/derechos/vigencia/ley_de_la_cdi.pdf)

88. The Federal Law on the Budget and Fiscal Responsibility, published on 30 March 2006, lays down an obligation in article 1 for federal public resources to be managed based on the criteria of legality, honesty, efficiency, effectiveness, economy, rationality, transparency, oversight, accountability and gender equality.
89. The General Law on Equality between Women and Men, published in the Diario Oficial on 27 April 2006, aims at regulating and ensuring equality between women and men. It is based on the principles of non-discrimination and equality.
90. Article 17 of the law, which took effect on 3 August 2006, provides that policies of the federal executive must promote equality between women and men in all spheres of life; ensure that budgetary planning incorporates the gender perspective; support the cross-cutting approach and provide for fulfilment of programmes, projects and actions aimed at equality between women and men; promote balanced political representation between women and men; promote equality of access to and full enjoyment of social rights for women and men; promote equality between women and men in civic affairs; and promote the elimination of stereotypes based on sex.
91. The law creates a National System for equality between women and men which applies to units and entities of the federal government and which seeks to ensure appropriate decision-making with respect to equality between women and men within each entity.<sup>31</sup>
92. On 8 May 2006, article 150 of the Law on the Social Security Institute for the Mexican Armed Forces was amended to ensure breast-feeding assistance as part of the mother and child care service provided to female military personnel and wives of military personnel.
93. Transitional article 17 of the proposed expenditures budget for the fiscal year 2007, published in the Diario Oficial on 28 December 2006, provides that the federal government shall promote true equality between women and men by strengthening the gender perspective in the implementation of all public policies and in the application of resources throughout government departments. In order to conduct follow-up of resources earmarked for gender equity, all federal government programmes will endeavour to generate gender-disaggregated information on beneficiaries and amounts of resources, age groups, regions of the country, federal and municipal entities, updating the information quarterly on the internet and reporting in their reports on actions for the advancement of women and gender equity carried out at each unit or entity of the federal government, resources allocated for performance of the sae, and indicators of results disaggregated by sex and age group, in order to be able measure impact on men and women in a differentiated manner.
94. On 6 December 2007, the National Human Rights Commission presented a special report on the right to equality between women and men to public opinion and to competent federal, state and municipal institutions. The report contains information compiled in 2006 and 2007.

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<sup>31</sup>) See: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LGIMH.pdf>

## 2. Eradicating violence against women

95. On 16 February 2006 the Diario Oficial published an Agreement by the Attorney General of the Republic creating the Office of the Special Prosecutor responsible for handling offences involving acts of violence against women (FEVIM), which arose as a result of irregularities in the investigation of cases detected in Ciudad Juárez, Chihuahua. Noteworthy among its activities is the creation of FEVIM Centres for Comprehensive Care of Victims of Violence Against Women, located in the Federal District and in Ciudad Juárez, Chihuahua; more than 30 cases of cooperation with prosecutors' offices in eight federative entities, and preliminary investigations relating to sexual crimes, assault and abuse of authority arising from events that occurred in 6 federative entities.

96. The General law on access by women to a life free of violence, published on 1 February 2007, aims at establishing coordination between the three levels of government in order to prevent, respond to, punish and eradicate violence against women, as well as promoting principles and modalities to guarantee women's access to a life free of violence that fosters their development and wellbeing in accordance with the principles of equality and non-discrimination, and to guarantee integrated and sustainable development that strengthens sovereignty and the democratic regime established under the federal Constitution.<sup>32</sup>

97. This body of laws provides for:

- a) The creation of the national system to prevent, respond to, punish and eradicate violence against women;
- b) The setting up of "gender alert," a set of emergency governmental measures to confront and eradicate femicidal violence;
- c) The duty of the Mexican State to guarantee the security and integrity of victims through the issuance of orders of protection as well as immediate police and judicial intervention in cases of family violence and/or rape;
- d) The development of measures of assistance and response to victims of family violence;
- e) Regulation of orders of protection as a legal-technical instrument permitting necessary preventive and precautionary measures to be taken in order to protect the safety of victims;
- f) Offences against the security of victims, i.e. non-compliance with orders of protection;
- g) Definitions of the forms that violence takes, as well as the three major known types of gender violence, including recognition of violence in the community and institutional violence;

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<sup>(32)</sup> See: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LGAMVLV.pdf>

- h) Mechanisms in the sphere of education, health, prosecutions and administration of justice so that the State guarantees women access to a life free of violence and promotes change with regard to stereotypes in the public and private spheres;
- i) The division of powers within the federal government, those attributed to the Ministries of Public Security, the Interior, Public Education, and Health, those assigned to the Office of the Attorney General of the Republic, to INMUJERES, and those falling to federative and municipal entities.

98. The General law on access by women to a life free of violence also establishes that the Ministry of Public Education will be part of the National System to prevent, respond to, punish and eradicate violence. In article 45, it sets out the functions of that ministry with regard to prevention:

- a) To define in educational policies the principles of equality, equity and non-discrimination between women and men and full respect for their human rights;
- b) To develop educational programmes at all levels of instruction that promote a culture conducive to a life free of violence against women, as well as respect for their dignity;
- c) To guarantee actions and mechanisms that encourage the advancement of women in all phases of the educational process;
- d) To guarantee the right of girls and women to education: their right to literacy and to enter and remain in school through completion of studies at all levels, through access to scholarships and other subsidies;
- e) To pursue interdisciplinary research aimed at creating models for detecting violence against women in educational settings;
- f) To provide training on the human rights of women and girls to teaching personnel;
- g) To incorporate into educational programmes at all levels of instruction respect for the human rights of women, as well as educational contents conducive to changing models of social and cultural behaviour that imply prejudices and are based on the idea of inferiority or superiority of one sex and on stereotyped functions assigned to women and men;
- h) To develop and apply programmes that permit early detection of problems of violence against women in educational centres so that an initial urgent response can be provided for students who suffer some type of violence;
- i) To require that all personnel contracted have no prior record of violence against women;
- j) To design and disseminate teaching materials that promote prevention of and response to violence against women;

- k) To provide training activities for all personnel of educational centres concerning the human rights of girls and women and policies of prevention, response, punishment and eradication of violence against women;
- l) To eliminate from curricula teaching materials which apologize for violence against women or which contribute to promoting stereotypes that discriminate and foment inequality between women and men;
- m) To establish, use, supervise and maintain all instruments and actions aimed at improving the System and the Programme;
- n) To design, with a cross-cutting approach, a comprehensive gender policy aimed at prevention, response, punishment and eradication of violent crimes against women.

99. As a result of the entry into force of this law, in July 2008 the Congress of each of 21 federative entities had passed legislation in keeping with the commitment to harmonize laws in the federal and state domains: Aguascalientes, Baja California Sur, Campeche, Chiapas, Chihuahua, Federal District, Durango, Guerrero, Hidalgo, Jalisco, Morelos, Nuevo León, Puebla, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Veracruz and Yucatán.

100. The Regulations pursuant to the General Law on access by women to a life free of violence, published in the Diario Oficial on 11 March 2008, aim at regulating the provisions of the General Law on access by women to a life free of violence, with respect to the federal executive power and the bases for coordination between the federal executive, federative entities and municipalities, as necessary for its implementation.

101. On 17 June 2008 section VI of article 7 of the General Education Act was amended to “Promote the value of justice, observance of the Law and equality of individuals before the law, and to promote the development of a culture favouring peace and against violence in any of its manifestations, and fostering knowledge of human rights and respect for those rights.”

### **3. Combating trafficking in persons**

102. On 27 November 2007 the Diario Oficial published the Law to prevent and punish trafficking in persons, which relates especially to women and children. This law seeks not only to prevent and punish this offense, but also to protect, respond to and assist victims of this conduct in order to secure respect for the full development of the personality of the victims and possible victims, resident in or brought into the national territory, as well as Mexican persons abroad.<sup>33</sup>

103. In order to develop a criminal law policy of the Mexican State in this area, this law establishes an inter-agency commission,<sup>34</sup> in accordance with article 21 of the Organic Law of

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<sup>(33)</sup> See: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LPSTP.pdf>

<sup>(34)</sup> The Inter-agency Commission will include, at minimum, the Ministers of the Interior, External Relations, Public Security, Labour and Social Security, Health, Social Development, Communications and Transport, Public Education, Tourism, and the Attorney General of the Republic, with participation by the heads of the National System for the Full Development of the Family, the National Institute for Women, the National Migration Institute, the National Institute of Criminological Sciences and the National Population Institute.



the Federal Public Administration, in order to coordinate actions of its members in this sphere with a view to putting into practice the National programme to prevent and punish trafficking in persons.

104. The Commission will pursue inter-agency cooperation agreements and coordination agreements with governments of the federative entities and municipalities with respect to the security, placement, transit and/or destination of victims of the crime in order to protect them, give them orientation, attend to their needs and, as appropriate, assist them with return to their place of origin or repatriation, as well as to prevent trafficking in persons and punishing those involved in perpetrating it.

105. The Federal Penal Code has been amended to include a specific chapter against so-called “sex tourism” and the Federal Law against Organized Crime with respect to child sexual exploitation, with a view to further strengthening the legal framework in this area.

106. In addition, the Mexican State deemed it appropriate to expand the powers of the Office of the Special Prosecutor responsible for handling offences involving acts of violence against women to cover crimes defined under the Law to prevent and punish trafficking in persons, as well as international commitments assumed in this respect<sup>35</sup>, without prejudice to the important work it has done since its inception in the area of violence against women. Thus, on 31 January 2008, the Office of the Special Prosecutor for crimes of violence against women and trafficking in persons (FEVIMTRA) was created, replacing the FEVIM.<sup>36</sup>

107. As an agency of federal administration of justice, FEVIMTRA is under the authority of the Office of the Attorney General of the Republic and enjoys such powers as are necessary to investigate and prosecute federal offenses relating to acts of violence against women, as well as those relating to trafficking in persons, according to applicable legal provisions. FEVIMTRA likewise participates with competent bodies in developing and carrying out federal and local programmes for prevention and eradication of violence against women and trafficking in persons, as well as follow-up and fulfilment of recommendations addressed to the Mexican State by international bodies.

108. FEVIMTRA has been assigned the resources of the Office of the Special Prosecutor responsible for handling offences involving acts of violence against women and the technical secretariat of the Advisory Council to apply the economic assistance fund for relatives of victims of homicides in the municipality of Juárez, Chihuahua, which is entrusted with continuing to process, through full completion, the economic assistance cases that had been the responsibility of the Special Prosecutor for offences involving acts of violence against women.

## **B. Judicial decisions**

109. In accordance with the principle of equality, the Supreme Court of Justice of the Nation has held that it is constitutional for either spouse to lose custody of the children if found guilty of

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<sup>(35)</sup> Particularly the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

<sup>(36)</sup> See: AGREEMENT A/024/08 creating the Office of the Special Prosecutor for Crimes of Violence against Women and Trafficking in Persons, Diario Oficial, 31 January 2008.

a ground for divorce, regardless of whether the person is male or female, since this prevents a type of discrimination by reason of sex and the loss is linked to an objective reason.<sup>37</sup>

110. In regard to access to popularly elected offices, the Supreme Court of Justice of the Nation has confirmed the constitutionality of the obligation of each political party to have a minimum of candidates of each sex, as a measure to promote greater equality of participation between men and women in electoral contests.<sup>38</sup>

111. The Supreme Court of Justice of the Nation ruled that article 152 of the Law on Social Security was unconstitutional in that it granted a survivor's pension only to a woman who had been the wife of the insured or pensioner, or his domestic partner (concubina) if she fulfilled the requirements set forth, or to a widower who fell within the terms set out in the provision. The Court held that this violated the guarantees of equality and non-discrimination contained in articles 1 (1), 1 (3) and 4 (1) of the federal Constitution. This was so because the rule barred a male domestic partner of a female insured from the right to receive a pension, even though he would be situated similarly to the widow or female domestic partner of the male insured, or to the widower, and he should not be treated in an unequal or discriminatory manner by comparison with those persons.<sup>39</sup>

112. A collegial court issued a decision in which it found unconstitutional the temporary guardianship of the wife (depósito de la mujer) upon the separation of the spouses as provided in article 287, paragraphs 2 and 3 of the Civil Code of the State of Morelos, since that rule established different treatment for the spouses based on their sex.<sup>40</sup>

### C. Institutional measures

113. On 12 January 2001, by publication in the Diario Oficial of the Law on the National Institute for Women, that institute was established as a decentralized public body, with its own

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<sup>(37)</sup> LEGAL EQUALITY OF WOMEN AND MEN. ARTICLE 299, RULE ONE, OF THE CIVIL CODE OF THE STATE OF CAMPECHE, DOES NOT VIOLATE THIS PRINCIPLE EMBODIED IN ARTICLE 40 OF THE CONSTITUTION. *Judicial Weekly of the Federation*, ninth period, volume XII, July 2000, opinion 2<sup>a</sup>. LXXIV/2000, pp.159.

<sup>(38)</sup> POLITICAL INSTITUTIONS AND ELECTORAL PROCEDURES OF THE STATE OF COAHUILA DE ZARAGOZA. ARTICLES 20 PARAGRAPH 2, 21 PARAGRAPHS 4 & 5, AND 26, SUBSECTIONS VII AND VII OF THE LAW CONCERNING THE ESTABLISHMENT OF A MAXIMUM PERCENTAGE OF PARTICIPATION BY CANDIDATES OF ONE GENDER IN POPULARLY ELECTED POSITIONS DOES NOT CONTRAVENE THE PRINCIPLE OF EQUALITY, *Judicial Weekly of the Federation*, ninth period, volume XXII, July 2005, opinion P./J. 58/2005, pp. 786.

<sup>(39)</sup> SOCIAL SECURITY. ARTICLE 152 OF THE RELEVANT LAW, IN FORCE UNTIL 30 JUNE 1997, VIOLATES THE GUARANTEES OF EQUALITY AND NON-DISCRIMINATION, *Judicial Weekly of the Federation*, ninth period, volume XXVI, August 2007, opinion 2<sup>a</sup>. CXV/2007, pp. 645.

<sup>(40)</sup> SEPARATION OF SPOUSES AND TEMPORARY GUARDIANSHIP OF THE WIFE. ARTICLE 287, PARAGRAPHS TWO AND THREE, OF THE CODE OF CIVIL PROCEDURE FOR THE STATE OF MORELOS, WHICH PROVIDES FOR THE MANNER IN WHICH THEY CAN BE DECREED, VIOLATES THE GUARANTEE OF EQUALITY BETWEEN MEN AND WOMEN, *Judicial Weekly of the Federation*, ninth period, volume XIII, May 2001, opinion 1<sup>a</sup>. XXX/2001, pp 286.

assets, legal and managerial personality, and responsibility for implementation and follow-up of the policy with regard to women at the national level.

114. The general purpose of the National Institute for Women (INMUJERES) is to promote and advance conditions conducive to non-discrimination, equal opportunity and equal treatment between the genders; the full exercise of all women's rights and their equitable participation in the political, cultural, economic and social life of the country.

115. INMUJERES began its work with the 2001-2006 national programme for equal opportunity and non-discrimination, PROEQUIDAD, responding to the premises laid down in the 2001-2006 National Development Plan. Through its nine objectives and goals, the programme focused on mainstreaming the gender perspective, respect for human rights, conditions of equality in the economy, combating poverty, fighting discrimination in education, promoting equity in health, eradicating gender violence, combating marginalization in political participation and decision-making, and equality of access to culture, sports and the media.

116. Among the initiatives pursued by the Mexican Government to eradicate gender and family violence, the following stand out:

- a) The 2002-2006 INMUJERES national programme for a life free of violence, a product of the work done by the Institutional Board to Coordinate Actions of Prevention and Response for Family Violence and Violence against Women, which worked in close cooperation with civil society in order to combat family violence. The programme followed 8 strategies:
  - i) Prevention;
  - ii) Response;
  - iii) Detection;
  - iv) Standard-setting;
  - v) Communication and institutional liaison;
  - vi) Coordination and liaison with civil society;
  - vii) Information and evaluation;
  - viii) Follow-up of and compliance with the Convention of Belém do Pará. In October of 2005, INMUJERES revised and updated various aspects of the programme based on the definition of the Convention of Belém do Pará and on 7 December 2005 it began implementing the follow-up mechanism of the Convention;
- b) The Mexican Social Security Institute (IMSS) is conducting training activities with respect to perpetrators or victims of family violence and organizing support groups. It also distributes and applies the Training Manual among health-care personnel and

distributes booklets on family violence at child-care centres and social security centres;

- c) In 2001, IMSS set in motion its PREVENIMSS Strategy, geared to prevention, which includes education sessions to identify forms of family abuse and violence, to encourage reporting, and to provide guidance about services and support networks available within and outside the institution;
- d) As part of the “renewing manhood” programme conducted under the IMSS opportunities programme, training was provided in highly marginal areas with a view to preventing quarrels over the economic resources distributed by the programme;
- e) The sectoral projects of the National Council of Indigenous People (CDI) sought to help reduce gender inequalities among indigenous people through cross-cutting actions for awareness-raising and capacity-building. These actions aimed at strengthening the capacity of indigenous women as organizers, technicians, citizens and managers; at seeking more openness to their participation in community public affairs; at generating occupational alternatives; at raising awareness among traditional authorities and officials about the need for equality; at supporting indigenous women through scholarships; and at preventing highlighting and responding to family and gender violence.
- f) With the same end in view, CDI organized workshops and seminars. In particular, in 2007 in the states of Morelos, Michoacán, Puebla and Jalisco. It also broadcast programmes with a gender approach through the Indigenous Cultures Radio Broadcasting System;
- g) The project for Health Care Houses (Casas de Salud) for indigenous women emerged in 2003 and continues to date, based on an agreement between CDI and the Department of Health. That project seeks to promote a model for reproductive health care and family violence for the female indigenous population that is culturally appropriate and suited to the needs and demands of women of the different indigenous peoples and communities;
- h) Initially, the effort sought to establish health care units managed by midwives, therapists and health providers recognized in their community, with support from the formal health institutions to attend to high-risk cases of those with obstetric complications, and with advice from a team of experts on indigenous health, gender and violence. Five houses took shape in Chiapas, Guerrero, Oaxaca (two) and Puebla;
- i) For the period 2008-2010 the aim is to develop a joint strategy to extend the model of care and promote the establishment of other units of this kind in other indigenous areas of the country;
- j) The Department of Health conducted a study on the death rate due to assaults against women along the border areas and, in cooperation with the National Institute of Public Health, coordinated the incorporation of initiatives to prevent violence and to

promote healthy relationships into its strategy. Similarly, it carried out a campaign entitled International Day for Non-violence against Women and conducted surveys on violence towards adult women and women in relationships of courtship or engagement.

117. With regard to education for gender equality, the Ministry of Public Education (SEP) has conducted several activities aimed at improving the situation of women, notably the following:

- a) The “Aiming for High School” (“Camino a la secundaria”) programme, to train teachers, mothers and fathers in areas where there is less opportunity to attend and remain in secondary school;
- b) Inclusion of gender as a cross-cutting issue in community trainers’ workbook for the “Healthy Life” (“Una vida saludable”) education and health project;
- c) Continuous updating through the national programme of the on-line workshop “Gender Equity in Basic Education”;
- d) Development, with the National Council for the Prevention of Discrimination, of a book for girls and boys which deals with violence and broaches the subject of education and gender perspective;
- e) Holding of over 30 workshops in 15 federative entities to train staff of the institution and educators on the gender perspective, sexuality and self-esteem, as well as family-oriented modules;
- f) Broadcasting via the Educational Television Satellite Network of programmes on gender issues and combating violence, as well as tele-conferences and round tables;
- g) Broadcasting by Educational Radio of programmes encouraging equality, ensuring that all radio and television spots broadcast do not reproduce sexual stereotypes;
- h) Assigning 10% of the scholarship budget to girls and women of marginal sectors: indigenous, disabled, girl street children, and older adults;
- i) Operation of the “Second Chance” (“Una segunda oportunidad”) programme to help pregnant adolescents remain in school through financial and educational aid.

118. In addition, the Ministry of Public Education has launched the following actions, which are under way:

- a) Inquiries to generate research that is useful for the design of public policies in this area;
- b) Review and analysis of the existing legislation that is most relevant with a view to determining the level of legislative protection that should be given to persons under age 18, especially girls, in light of the principles deriving from the International Convention on the Rights of the Child, ratified by Mexico.

- c) Analysis of free textbooks from the gender equity perspective in the framework of the General Law on Access by Women to a Life Free of Violence.

119. Working with INMUJERES, the Ministry of Public Education designed four workshops that have already become part of the National Teacher Training System:

- a) Diagnostic review of the situation of human rights in Mexico: the gender approach, a necessary perspective in pre-school and early education, with a view to increasing awareness of persons involved in designing the pre-school educational curriculum;
- b) Building gender equity in primary school, approved for application by the National Permanent Updating Programme of the Ministry of Public Education;
- c) Building gender identities in secondary school, whose aim is to enable recipients of the programme to identify and be aware of the transmission and promotion of female and male stereotypes in the school setting, through the explicit curriculum and the unwritten curriculum;
- d) Preventing violence from childhood onwards: a guide for facilitators, describing how to prevent violence and promote a culture of peace and non-violent conflict resolution as from childhood. This methodology is being distributed as from 2006.

120. The Programme of scholarships for young mothers and expectant young women began as from the 2004-2005 school year, in order to provide support to this sector of the population coping with economic difficulties and/or pregnancy in order to continue and finish their basic education or become involved in some non-school educational pursuit. The scholarships provide 650 pesos per month for the 10 months of the school year.

121. In December, 2002, a cooperation agreement was signed between the Ministry of External Relations and the United Nations Development Fund for Women (UNIFEM), under which far-reaching work was undertaken on the follow-up to Mexico's human rights commitments for women. The aim of this project was to evaluate and promote the advancement of women in fulfilment of the commitments assumed by Mexico through the international instruments to which it is a party.<sup>41</sup> Over a period of three years, this programme gave rise to a variety of initiatives, even beyond Mexico's borders, including 132 noteworthy proposals for legislative harmonization, the Gender Agenda of the Puebla-Panama Plan, and the impetus given by Mexico to the creation of the Belem do Pará Convention mechanism.

122. For its part, the National Council of Indigenous People has a programme of productive organization for indigenous women, aimed specifically at indigenous women with little organizational and economic-commercial skill, to support productive processes and production-for-consumption, enabling them, through capacity-building and technical assistance, to pursue and consolidate their organization and development, thus gaining opportunities for access to other sources of support and for reflection on their social condition and self-esteem.

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<sup>(41)</sup> *Follow-up of the international commitments of Mexico with regard to human rights of women and strengthening of the gender perspective in the Ministry of External Relations*, Mexico City: Ministry of External Relations, UNIFEM, UNDP, 2006.

123. The Ministry of National Defence implemented the Programme of training and awareness-raising on a culture of peace and gender perspective, whose general purpose is to promote, disseminate and strengthen a culture of peace and respect for fundamental rights in the Mexican Army and Air Force, through training, awareness-raising and implementation of actions giving priority attention to human resources on the basis of gender equity and equality, providing better quality of life, expanding health care services coverage, and promoting opportunities for professional development for women, disseminating these actions through a media campaign, in order to strengthen links with society.

124. Chapter V of the diagnostic survey on the human rights situation in Mexico, relating to human rights of women, was updated to December of 2007 and was distributed in early 2008. This was done in the framework of the second phrase of the programme of technical cooperation for human rights signed between the Mexican Government and the Mexico Office of the United Nations High Commissioner for Human Rights, in October of 2001.

125. The 2008-2012 National Development Plan not only incorporates the gender perspective in a cross-cutting manner into each of its component programme areas, but also expressly adopts the goal of “Eliminating any discrimination on grounds of gender and ensuring equal opportunity so that women and men can attain their full development and exercise their rights equally.” To that end, it undertakes to promote various actions designed to foster a life without violence or discrimination as well as a genuine culture of equality through public policies that seek to defend the integrity, dignity and rights of all Mexican women.

126. Of the actions proposed for the 2008-2012 National Development Plan, the following are already under way:

- a) The three branches of government have signed an agreement in which they undertake to adopt the principle of gender equity as a guiding principle in their plans and actions. The next stage will be to generate permanent channels of consultation, participation, follow-up and accountability, in order to ensure its fulfilment.
- b) Dissemination and public information activities are being carried out on the importance of equality between women and men, promoting the elimination of entrenched stereotypes based on gender, and this component has been strengthened in educational programmes nationwide;
- c) The Programme of Child Care Centres is under way to help working mothers to remain employed, knowing that their children are well cared for. The programme is of help both to mothers who have a job and to ladies who have a suitable place to set up a small child care centre where they can take care of 15 or 20 children. These are often ladies whose children no longer live with them, who have sufficient space for an activity of this kind, and who have the experience and knowledge necessary to carry it out. The latter are given economic support through a loan to remodel and equip their house, in addition to training and technical assistance in order to operate a centre that is physically and psychologically safe.

## 1. Political participation and decision-making

127. In order to encourage political participation by women, women's share in the Congress has been enhanced. Following the federal elections of 2006, women's participation in the Senate reached 18.8% with a total of 24 women senators,<sup>42</sup> while in the Chamber of Deputies 23.2% of all representatives (116 deputies) are women.

### Composition by Gender and Parliamentary Group

| Parliamentary Group | Men | %    | Women | %    | Total |
|---------------------|-----|------|-------|------|-------|
| PAN                 | 155 | 74.9 | 52    | 25.1 | 207   |
| PRD                 | 100 | 78.7 | 27    | 21.3 | 127   |
| PRI                 | 86  | 81.1 | 20    | 18.9 | 106   |
| CONV                | 14  | 77.8 | 4     | 22.2 | 18    |
| PVEM                | 12  | 70.6 | 5     | 29.4 | 17    |
| PT                  | 9   | 81.0 | 2     | 18.2 | 11    |
| NA                  | 5   | 55.6 | 4     | 44.4 | 9     |
| ALT                 | 3   | 60.0 | 2     | 40.0 | 5     |
| TOTAL               | 384 | 76.8 | 116   | 23.2 | 500   |

Source: Chamber of Deputies, [http://sitl.diputados.gob.mx/cuadro\\_genero.php](http://sitl.diputados.gob.mx/cuadro_genero.php)

128. In the federal administration, the participation of women in 2007 was as follows:<sup>43</sup>

| Position                | Percentage |
|-------------------------|------------|
| Secretary of State      | 12.5%      |
| Undersecretary of State | 13.5%      |
| Senior Official         | 11.4%      |
| Head of Unit            | 16.8%      |
| Director General        | 14.0%      |
| Advisor                 | 38.6%      |
| Deputy Director General | 16.4%      |
| Area Director           | 19.9%      |
| Deputy Director of Area | 25.3%      |
| Department Head         | 28.4%      |
| Liaison                 | 34.3%      |

129. Progress has been slower at the state and local levels. In the Congresses of the federative entities, as of January 2007, women accounted for 20.3. Among mayors, who are the government officials closest to the population, women's share is minimal: in January 2007 it

<sup>(42)</sup> Senate: <http://www.senado.gob.mx/legislatura.php?ver=senadoras>.

<sup>(43)</sup> INMUJERES, *Women in decision-making. Participation of women in Government*. Bulletin. 2006.



stood at 3.4%. Among aldermen and councilmen, the share of women began to climb from 8.2% of aldermen and from 23.2% of councilmen in 2004 to 12,6% and 27,4% respectively in 2007.<sup>44</sup>

130. The following are some of the noteworthy institutional initiatives in this area:

- a) The programme to promote electoral and political participation by women in municipalities, carried out by INMUJERES jointly with the Federal Electoral Institute and the electoral councils of the federative entities;
- b) In 2006, INMUJERES formulated a regional project on governability with a gender approach and political participation by women at the local level, focusing on empowering women leaders of political parties in municipalities. During 2006, this project enhanced the leadership skills of 861 women leaders of political parties representing over 200 municipalities in 17 federative entities and 13 wards of the Federal District, using actions such as leadership training for political participation by women in the local sphere offered in the federative entities where there had been and will be elections;
- c) Until September 2006 this workshop course had been taught to 528 women leaders in 13 federative entities (in Chiapas it was held also in 2005). The workshops enjoyed the participation of all political parties, national and local. Literature was distributed concerning political participation, international conventions and the publication of the Guide to leadership for political participation by women at the local level, composed of two documents: the participant's book and the facilitator's guide.
- d) The democratic governability and gender equality project for Latin America and the Caribbean of the Economic Commission for Latin America (ECLAC) for 2002-2004 was carried out in Mexico to contribute to mainstreaming the gender perspective in policies, programmes and initiatives under way to promote governability in relation to the creation of a political culture including a gender perspective. Among the outputs of the project in 2003, an Institutional legal framework for political participation by women in Mexico was published, a forum for dialogue was created (institutions, civil society organizations, academe), and a concluding forum was held on Political culture with a gender perspective for democratic governability in Mexico;
- e) In 2003 and 2004 INMUJERES conducted a programme of capacity-building for women leaders and awareness-raising for men leaders within the framework of the generosity programme of the World Bank. Its aim was to strengthen the capacities of women leaders, consolidate their role, and encourage new attitudes among men leaders (shared responsibility and harmonious relations). Eight federative entities participated.
- f) The second national INMUJERES-CONACYT research and development event, launched in 2004, took up the topic of political participation and decision-making by

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<sup>(44)</sup> INAFED, *National System of Municipal Information*, January 2007 (Revision by INMUJERES).

women in Mexico with a view to generating new knowledge as an input for the design, implementation and execution of public policies, programmes, projects and concrete actions aimed at strengthening participation and leadership (empowerment) of Mexican women in public and social fora for decision-making and in civic-political processes. The goals and outputs sought under this theme were: cultural of citizen and political participation: building civic-political involvement by women in Mexico; representative fora and the exercise of power in political parties and civil organizations; representative fora and the exercise of power (gender agenda and legislative power);

- g) Similarly, information has been generated through surveys and fora for discussion and analysis. Among these are:
  - i) Three national surveys on political culture and citizen practices (ENCUP2001, ENCUP2003 and ENCUP2005) conducted by the Ministry of the Interior;
  - ii) Survey on the nature of civic commitment: social capital and political culture in Mexico, Federal Electoral Institute, 2003;
  - iii) National survey on Citizens, culture and democracy: Rules, institutions and values of democracy, Federal Electoral Institute, 1999;
- h) Another tool is the National System of Municipal Information, which is composed of sex-disaggregated socio-demographic data from the population census and from political participation data from offices of mayors, aldermen and councilmen;
  - i) INMUJERES has published a variety of publications to promote political participation by women, notably:
    - j) Women and the vote, 17 October 2001, the 48th anniversary of women's suffrage in Mexico. INMUJERES, Mexico, 2001.
    - k) Reports of the forum Women and Politics. INMUMERES, Mexico, 2002.
    - l) Women in decision-making in the federal administration. 2002 and 2003 editions.
  - m) The gender approach in production of statistics on political participation and decision-making in Mexico: a guide for users and a reference for producers of information. INMUJERES, Mexico, 2004.
- n) To strengthen the capacities of elected women, candidates, leaders and members of political parties, researchers and other persons from civil society oriented towards promoting women's participation in the political arena, on 4 March 2008 Mexico launched the international network of information on women and politics (iKnowPolitics) in coordination with the United Nations Fund for Women (UNIFEM), the United Nations Development Programme (UNDP), the Inter-American Institute for Democracy and Electoral Assistance (IDEA International), the National Democratic Institute for International Affairs, INMUJERES and the Ministry of External Relations.

- o) The Federal Electoral Institute designed a model for educational intervention that it will initially apply to 50,000 women in the poorest communities of the country's 300 electoral municipalities during the period from April to December 2008, in order to build civic awareness and strengthen the exercise of basic civil and political rights. The model is being implemented with the holding of workshops that work with teaching materials which strengthen interest in participating in federal elections and in casting a free and responsible vote.

## **2. Administration of and access to justice**

131. In keeping with the premises of the National Development Plan concerning the impartial administration of justice, the 2007-2012 sectoral programme for administration of justice includes as Goal No. 6 "Consolidate a culture of protection, promotion and observance of individual guarantees and gender equality with full respect for human rights in penal proceedings."

132. This goal seeks to ensure fulfilment of the principles of legality, honesty, fairness, impartiality and respect for human rights, better performance by the justice system, and better administration of justice for society. It includes the ministerial, expert and police dimensions.

133. The programme recognizes that there remain gaps in legislation which facilitate violations of fundamental rights. It therefore considers it necessary to promote a review of the legislation in force and to oversee respect for individual guarantees, human rights and gender equity.

134. On 6 February 2008, INMUJERES and the Federal Judicial Council signed a cooperation agreement in which they committed to carrying out actions to promote the elimination of any kind of violence prompted by reasons of gender, as well as to extend and disseminate knowledge obtained from research projects and studies that promote gender equity and prevention, response, punishment and eradication of violence against women.

135. In 2008, a budget of 31 million pesos was allocated to the Federal Judicial Council for training and specialization of all personnel involved in the administration of justice.

## **3. Federal budget to promote gender equality**

136. The Congress, unanimously and for the first time, appropriated a budget earmarked for Women and Gender Equity within the Budget of Expenditures of the Federation for the year 2008, published in the Diario Oficial on 13 December 2008. In article 25, it highlights the importance of generating methodologies and indicators, as well as accountability by administrative agencies through a system of information that will make it possible to identify the results that specifically benefit women. For 2008 an appropriation of approximately 670 million dollars was approved, broken down into specific programmes by sector.<sup>45</sup>

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<sup>(45)</sup> Annex 9A of the Decree enacting the Budget of Expenditure of the Federation for the year 2008. See: [http://www.diputados.gob.mx/LeyesBiblio/pdf/PEF\\_2008.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/PEF_2008.pdf)

## V. ARTICLE 4: STATES OF EXCEPTION

137. Although Mexico's Constitution contains a provision, in article 29, providing for the suspension of individual rights and freedoms, that provision has been applied only once, on the occasion of the declaration of war against Germany, Italy and Japan on 13 June 1942.

138. Article 29 lays down the conditions under which rights may be restricted, defines the authority which may do so, and clearly establishes the limits within which said measure must be taken, in the following terms:

“In the event of invasion, serious disturbance of public order or any other circumstances in which society is placed in serious danger or in conflict, only the President of the United Mexican States, with the agreement of the Ministers, heads of administrative departments and the Office of the Attorney General of the Republic, and with the approval of Congress or, if it is not in session, the Permanent Commission, may suspend throughout the country or in a particular place any guarantees that prevent the situation from rapidly and easily being brought under control. He may do so for only a limited period, by means of general measures not limited to a particular individual. If the suspension is ordered while Congress is in session, the latter shall grant such authorizations as it deems necessary to enable the executive to deal with the situation; if Congress is in recess, it shall be convened without delay in order to grant them”

### A. Legislative advances

139. On 5 April 2004 amendments were adopted to articles 73 and 89 of the Constitution, concerning the powers of the legislative and executive branches with respect to national security, in order to expand representativity in decision-making in this area. That reform was followed by the enactment of the Law on National Security of 31 January 2005, which lays down the goals it pursues and defines the actions that may be taken in their pursuit and the conditions that must be satisfied, in addition to introducing a mechanism of legislative oversight<sup>46</sup>. The aim is to avoid possible adverse consequences for the observance of human rights flowing from actions intended to safeguard national security.<sup>47</sup>

140. The law is expressly aimed at maintaining constitutional order, preserving democracy and establishing that national security is governed by the principles of legality, responsibility, respect for fundamental rights for the protection of the human person, and individual and social guarantees.

141. The law allows for the possibility of intercepting communications, subject to judicial warrant and solely in the event of a threat to national security. Such intercepts shall be used for a

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<sup>(46)</sup> See: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LSegNac.pdf>

<sup>(47)</sup> This concern has been expressed on several occasions by governments and civil society groups. “Hemispheric Security and Human Rights, International Humanitarian Law and the Law of Refugees”, presented by the International Coalition of Non-governmental Organizations to the Commission on Hemispheric Security of the OAS at the preparatory session of the Special Conference on Security held on 27 and 28 October 2003 in Mexico City. In the final declaration of the Conference, the member countries of the OAS affirmed that the “foundation and reason for security is the protection of the human person.” See Declaration on Security in the Americas, Paragraph II, number 4, paragraph e), OEA/Ser K/XXXVIII.

period not exceeding 180 calendar days, which the judge may renew for the same period as the original warrant in cases where grounds are duly presented. It also contemplates the possibility of immediately authorizing measures that may be required in cases of duly identified urgency.

## **B. Judicial decisions**

142. With regard to the suspension of rights provided for in article 29 of the federal Constitution, the Supreme Court of Justice of the Nation has held that it is not needed in order for intervention by the armed forces to be lawful, since there may be situations which, while not considered a state of emergency, may require such intervention in order to prevent the situation from worsening.<sup>48</sup>

143. The Supreme Court of Justice of the Nation has handed down a historic, harmonious and reasoned interpretation of article 29 of the Constitution in taking the view that the article authorizes the armed forces to take action in aid of the civil authorities when the latter request the support of the forces available to them. In this manner, the conduct does not violate the aforementioned article of the Constitution. The Court further rules that article 89, section VI of the Constitution empowers the President to deploy said forces for domestic security. For these reasons, it is not necessary to declare a suspension of civil liberties pursuant to article 29, designed for extreme situations, in order for the Army, Navy and Air Force to intervene, since reality can generate any number of situations which do not justify a state of emergency but, given the danger that they may deteriorate, may necessitate the use of the force available to the Mexican State subject to the applicable constitutional and legal provisions.<sup>49</sup>

144. The Supreme Court of Justice of the Nation has held that the armed forces are constitutionally empowered to act, following orders from the President of the Republic, when a situation arises which, in light of its characteristics, provides grounds to fear that if it is not immediately dealt with, one or more of the grave situations referred to in article 29 of the Constitution might imminently arise. In that event, without declaring a suspension of guarantees, given viable alternatives for peacefully resolving conflicts or because the conflicts have not reached the degree of gravity contemplated by the aforementioned constitutional text, care must be taken scrupulously to respect individual guarantees, even establishing, through competent organs, close vigilance to ensure that the action is taken in the manner specified.<sup>50</sup>

145. The Supreme Court of Justice of the Nation has held that it is constitutionally possible for the Army, Air Force and Navy, during times when no suspension of guarantees has been

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<sup>48</sup> ARMY, NAVY AND AIR FORCE. THEIR PARTICIPATION IN SUPPORT OF CIVIL AUTHORITIES IS CONSTITUTIONAL. (INTERPRETATION OF ARTICLE 129 OF THE CONSTITUTION), *Judicial Weekly of the Federation*, ninth period, volume XI, April 2000, opinion P./J. 38/2000, pp. 549.

<sup>49</sup> ARMY, NAVY AND AIR FORCE. THEIR PARTICIPATION IN SUPPORT OF CIVIL AUTHORITIES IS CONSTITUTIONAL. (INTERPRETATION OF ARTICLE 129 OF THE CONSTITUTION), *Judicial Weekly of the Federation*, ninth period, volume XI, April 2000, opinion P./J. 38/2000, pp. 549.

<sup>50</sup> ARMY, AIR FORCE AND NAVY. THEY MAY ACT PURSUANT TO ORDERS OF THE PRESIDENT, IN FULL COMPLIANCE WITH INDIVIDUAL GUARANTEES, WHEN, WITHOUT REACHING SITUATIONS REQUIRING THEIR SUSPENSION, THERE ARE GROUNDS TO FEAR THAT IF NOT IMMEDIATELY FACED, GRAVE CONDITIONS NECESSITATING SUCH SUSPENSION WOULD BECOME INEVITABLE, *Judicial Weekly of the Federation*, ninth period, volume XI, April 2000, opinion P./J 37/2000, pp. 551.

declared, to act in support of the civil authorities with respect to various public security tasks. However, they may in no event do so “by and for themselves”; rather, it is indispensable that they do so at the expressly stated and well-founded request of the civil authorities and, in their support functions, must remain subordinate to those authorities and, fundamentally, to the legal order laid down by the Constitution, the laws deriving from it and treaties that are consistent with it, in keeping with the provisions of article 133 of the fundamental law.<sup>51</sup>

146. The Supreme Court of Justice of the Nation has likewise established that the concepts of individual guarantees (fundamental rights) and public security not only are not contradictory but are in fact mutually determinative. For the Court, there would be no reason for public security if one were not seeking thereby to create adequate conditions for citizens to enjoy their fundamental rights; it was with that aim in mind that the founding fathers and great reformers of the constitution provided the foundations whereby, in an a balanced manner always strictly consonant with the law, situations of violence that notoriously menace people in their lives, liberty, possessions, property and rights can be prevented, remedied and eliminated, or at least significantly abated.<sup>52</sup>

### C. Institutional measures

147. On 7 March 2007, the federal executive set in motion a programme of security within the framework of the Comprehensive Crime Prevention Strategy in order to protect national security; accordingly, the President of the Republic ordered the participation of the army in order to fight organized crime, specifically narcotics trafficking and organized crime, with full respect for human rights.

148. The federal executive has created a legal framework for the participation of the armed forces in the aforementioned tasks, contained in two decrees which regulate the participation of the armed forces in public security tasks in the country:

- a) Decree creating the special army and air force corps named the Federal Support Forces Corps (9 May 2007).<sup>53</sup>
- b) Decree amending the decree creating special army and air force corps named the Federal Support Forces Corps (17 September 2007).<sup>54</sup>

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<sup>(51)</sup> ARMY, AIR FORCE AND NAVY. WHILE THEY MAY PARTICIPATE IN CIVIL ACTIONS IN SUPPORT OF PUBLIC SECURITY, IN SITUATIONS WHERE SUSPENSION OF GUARANTEES IS NOT CALLED FOR, THEY MUST DO SO UPON THE EXPRESS REQUEST OF THE CIVIL AUTHORITIES, TO WHOM THEY MUST REMAIN SUBORDINATE, IN STRICT COMPLIANCE WITH THE CONSTITUTION AND THE LAWS, *Judicial Weekly of the Federation*, ninth period, volume XI, April 2000, opinion P./J 36/2000, pp. 556.

<sup>(52)</sup> PUBLIC SECURITY. ITS REALIZATION REQUIRES RESPECT FOR LAW AND ESPECIALLY FOR INDIVIDUAL GUARANTEES, *Judicial Weekly of the Federation*, ninth period, volume XI, April 2000, opinion P./J 35/2000, pp. 557.

<sup>(53)</sup> See: <http://www.senado.gob.mx/comisiones/LX/defensanacional/decretofuerzasdeapoyo.pdf>  
[http://portal.ssp.df.gob.mx/NR/rdonlyres/7BCFC6B7-4E80-486E-9A90-B6168B1B8679/5008/Decreto\\_Ejercito.pdf](http://portal.ssp.df.gob.mx/NR/rdonlyres/7BCFC6B7-4E80-486E-9A90-B6168B1B8679/5008/Decreto_Ejercito.pdf)

<sup>(54)</sup> See: [http://www.ordenjuridico.gob.mx/Federal/PE/APF/APC/SEDENA/Decretos/2007/17092007\(1\).pdf](http://www.ordenjuridico.gob.mx/Federal/PE/APF/APC/SEDENA/Decretos/2007/17092007(1).pdf)

149. These normative instruments regulate the participation of the army with regard to support for civil authorities in tasks relating to public security and, in the final analysis, the nation. Support action by the Federal Support Forces Corps is given pursuant to an express request, stating grounds and reasons, spelling out the exceptional circumstances supporting it, from the civil authorities requiring it.

## **VI. ARTICLE 6: RIGHT TO LIFE**

150. In accordance with General Comment 6 of the Committee, expressing the view that the right to life contemplated in this article includes the duty “to prevent acts of mass violence causing arbitrary loss of life”, the Mexican State considers that the Committee may wish to analyze under this heading the situation of cases of violence presented in Ciudad Juárez, Chihuahua. However, it is felt that said situation falls under article 14 of the Covenant concerning due process and protection of crime victims.

151. During the consideration of the Fourth Periodic Report of Mexico pursuant to article 40 of the Covenant, the Committee expressed its 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”.<sup>55</sup> Accordingly, information on actions taken in that respect has been included under article 6.

### **A. Legislative advances**

#### **1. Death penalty**

152. Mexico has been in practice a country favouring abolition of capital punishment<sup>56</sup> and, in accordance with that practice, adopted on 10 December 2005 a constitutional reform to article 22 whereby the death penalty was abolished and indeed prohibited:

“Article 22. Penalties of death, mutilation, dishonour, branding, whipping, blows with a stick, torture of any type, excessive fines, confiscation of property, or any other unusual and excessive penalties are prohibited.”

153. Mexico has reiterated in national and international fora its resolve to continue cooperating in the promotion of actions aimed at a moratorium on executions and, eventually, the abolition of the death penalty in the world.

154. On 29 June 2005, amendments were made to the Code of Military Justice to abolish the death penalty provided for in article 142 and replace it with a prison term of 30 to 60 years.

155. In 2007, the Mexican State ratified two important international instruments in this area: the Second Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the American Convention on Human Rights to Abolish the Death Penalty, on 26 September and 20 August respectively.

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<sup>(55)</sup> Observations of the Human Rights Committee: Mexico. 27/07/99. CCPR/C/79/Add.109, 27 July 1999, p. 2

<sup>(56)</sup> The last application of the death penalty in Mexico was on 9 August 1961.

## 2. Enforced disappearance

156. In the year 2000, Chapter III *bis* was added to Title Ten of the Federal Penal Code (articles 215A to 215D) in order to define the offense of enforced disappearance of persons. In accordance with article 215A, the offense is defined as having been committed by any public servant who, regardless of whether or not he participated in the legal or illegal detention of a person or persons, abets or wrongfully maintains their concealment under any form of detention.<sup>57</sup>

### B. Judicial decisions

157. The First Chamber of the Supreme Court of Justice of the Nation has issued several decisions in which it clearly establishes that the statute of limitations for the crime of enforced disappearance of persons begins to run from the time when the victim appears or his fate is determined.<sup>58</sup>

158. The Court has also endorsed the oft-stated principle that genocide and political crimes are distinct legal concepts. A political crime means a crime committed against the State<sup>59</sup>, whereas the crime of genocide<sup>60</sup> encompasses any act perpetrated with the intent of totally or partially destroying a national, ethnic, racial or religious group.

159. With regard to the right to life, the Supreme Court of Justice of the Nation has held that this right constitutes one of the essential rights of the human person, since the possibility of enjoyment of all other rights derives from respect for the right to life<sup>61</sup>. In response to the provisions of the Covenant, the Court has determined that the product of conception is entitled to the right to life without regard to the stage of gestation attained.<sup>62</sup>

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<sup>(57)</sup> In accordance with said addition, article 194, paragraph 3 of the Federal Code of Criminal Procedure was amended in order to make enforced disappearance of persons a felony.

<sup>(58)</sup> ENFORCED DISAPPEARANCE OF PERSONS. THE STATUTE OF LIMITATIONS FOR THE CRIME OF ENFORCED DISAPPEARANCE OF PERSONS BEGINS TO RUN FROM THE TIME WHEN THE VICTIM APPEARS OR HIS FATE IS DETERMINED. *Judicial Weekly of the Federation*, ninth period, volume XX, September 2004, opinion P./J. 87/2004, pp.1121.

<sup>(59)</sup> Article 144 of the Federal Penal Code provides that political crimes are: rebellion, sedition, mutiny and conspiracy to commit them.

<sup>(60)</sup> In accordance with article II of the Convention for the Prevention and Punishment of the Crime of Genocide of 9 December 1948.

<sup>(61)</sup> RIGHT TO LIFE. ITS CONSTITUTIONAL PROTECTION. *Judicial Weekly of the Federation*, ninth period, volume XV, February 2002, opinion P./J. 13/2002, pp. 589.

<sup>(62)</sup> RIGHT TO LIFE OF THE PRODUCT OF CONCEPTION ITS PROTECTIN DERIVES FROM THE CONSTITUTION OF MEXICO, INTERNATIONAL TREATIES AND FEDERAL AND LOCAL LAWS. *Judicial Weekly of the Federation*, ninth period, volume XV, February 2002, opinion P./J. 14/2002, pp. 588.



160. With regard to the death penalty, the Court has determined that requests for extradition are subject to the requesting state guaranteeing that the death penalty will not be applied to the accused, when that punishment exists in its legislation for the crime for which extradition is sought.<sup>63</sup>

### C. Institutional measures

#### 1. Enforced Disappearance

161. From 1999 to 2001, the National Human Rights Commission conducted an investigation into the cases of 532 persons included among the complaints received by the Commission regarding enforced disappearances occurring during the 1970s and early 1980s. This investigation included for the first time the files of the Centre for Investigations and National Security (CISEN), which keeps the heretofore classified files of what were then known as the Federal Directorate of Security and the Federal Directorate of Political and Social Investigations, and resulted in an extensive and detailed report.

162. Pursuant to the investigation of the 532 files, the Commission concluded that: there are 275 cases of persons in which it can be concluded that they were victims of detention, interrogation and possible enforced disappearance by public servants of various governmental agencies in the country; in 97 cases there are only some indications, insufficient in and of themselves from a legal point of view to conclude that there was enforced disappearance or another violation of human rights, although that possibility cannot be ruled out; and in 160 cases the enforced disappearance was not proven but also cannot be ruled out as an investigative hypothesis. On the basis of this investigation, the Commission published a Special Report which constituted the basis for Recommendation 026/2001 of 27 November 2001.<sup>64</sup>

163. That recommendation proposed the creation of an Office of Special Prosecutor “to assume responsibility for investigation and, as appropriate, prosecution of crimes that may result from the facts referred to in this recommendation; [and] if appropriate, place before competent judicial authorities the results of the investigations,” so that necessary legal steps may be taken to identify and punish the guilty.

164. On 27 November 2001, the Diario Oficial published Agreement A/01/02, creating the “Office of special prosecutor for acts likely to constitute federal crimes committed directly or indirectly by public officials against persons connected with past social and political

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<sup>63</sup>) EXTRADITION. LIFE IMPRISONMENT DOES NOT CONSTITUTE AN UNUSUAL PUNISHMENT AMONG THOSE PROHIBITED BY ARTICLE 22 OF THE CONSTITUTION; CONSEQUENTLY, WHEN IT IS SOUGHT, IT IS UNNECESSARY FOR THE PROSECUTING STATE TO UNDERTAKE NOT TO APPLY IT OR TO IMPOSE A LESSER PENALTY SET BY ITS LEGISLATION. *Judicial Weekly of the Federation*, ninth period, volume XXIII, February 2006, opinion P./J. 2/2006, pp. 5.

<sup>64</sup>) See: <http://www.cndh.org.mx/lacndh/informes/espec/desap70s/index.html>

movements,” also known as the Special Prosecutor for Past Social and Political Movements (FEMOSPP), as a body of the Office of the Attorney General of the Republic.<sup>65</sup>

165. In order to shed light on cases of disappearance, particularly those committed during the fight against subversive groups in the 1970s and early 1980s, the federal government carried out a declassification of the files of state security organs of the Mexican State, which made it possible to consult files dating from that period.

166. On 30 November 2006, by Agreement A/317/2006, the Attorney General announced the closing of FEMOSPP and the aforementioned cases were referred to the General Coordinator for Investigations of the Attorney General’s Office.

167. Further, in compliance with the Agreement issued by the federal executive and published in the Diario Oficial on 27 November 2001, the Ministry of the Interior established the “Interdisciplinary committee to compensate victims or complainants for violations of human rights of individuals associated with social and political movements in the decade of the sixties and seventies”. The Committee is composed of the Ministries of the Interior, External Relations, Social Development, Finance and Public Credit, Communications and Transport, the Attorney General, the National Archive, and the Institute for Historical Studies of the Revolutions of Mexico, as well as guests and the Mexico Office of the United Nations High Commissioner for Human Rights serving as an external advisor.

## **2. Human rights defenders and journalists**

168. The Mexican Government has encouraged the creation of institutions and mechanisms to provide protection for human rights defenders.

169. Through the Commission on Government Policy on Human Rights work is proceeding on the preparation of a plan to apply the principles of the Declaration on human rights defenders. The Subcommittee on Legislative Harmonization has included an item on its agenda on the development of mechanisms of protection for human rights defenders.

170. As the Committee is aware, in May of 1997 the National Human Rights Commission created a programme to respond to attacks upon journalists and human rights defenders, in order to be in a position to have better contacts and receive complaints from workers in the mass media and members of civil society organizations devoted to defending human rights and who, in carrying out their activities, are affected by some authority.

171. A source of special concern has been the case of the killings of journalists and communicators. Consequently, based on article 13 of the Organic Law on the Office of the Attorney General,<sup>66</sup> Agreement number A/031/06 was issued on 14 February 2006 and published

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<sup>(65)</sup> The mandate under which FEOSPP was created does not restrict its action with respect to military personnel, permitting it to invoke civilian jurisdiction with respect to human rights violations committed by members of the armed forces.

<sup>(66)</sup> This article provides that the Attorney General of the Republic has the power to create Offices of Special Prosecutors to deal with and prosecute specific offenses which so warrant by virtue of their importance, interest and characteristics.

in the Diario Oficial on 15 February 2006, creating the Office of Special Prosecutor for Crimes against Journalists.

172. That office has as its purpose dealing with crimes committed against journalists, in addition to being competent to direct, coordinate and supervise the investigation and, as needed, the prosecution of crimes committed against national or foreign journalists in the national territory by reason of their professional activity.

173. The Chamber of Deputies has constituted a Special Commission on Response to Attacks on Journalists and the Media, which reported<sup>67</sup> that from 1997 to 2007 it had received complaints of 228 attacks against communicators, 25 of them relating to homicide. These cases have been frequently associated with investigations into drug trafficking and organized crime. Their solution therefore depends in large measure on the success of the campaign being waged by the Mexican Government, which has intensified since December, 2006.

### **3. Reduction of infant mortality**

174. The Department of Health is exerting major efforts to reduce the infant mortality rate through the Universal Vaccination Programme<sup>68</sup>. In addition to increasing coverage through a comprehensive plan, during the period from 2000 to 2007 infant mortality was reduced by 19.7%, falling from 19.4 to 15.7 children per 1000 live births under age 5.

175. The programme has come to include National Health Weeks, incorporating the themes of nutrition, universal vaccination, prevention and control of diarrhoeal diseases and acute respiratory infections, as well as oral hydration, with a view to preventing the diseases most common among minors under age 5.

176. Beginning in December, 2000, the National Health Weeks were expanded to include the population between ages 5 and 9, and then women of childbearing age. In 2004, vaccination against influenza was included for children under 23 months, older adults and persons at risk.

177. The results of vaccination initiatives have been significant: eradication of poliomyelitis has been maintained, and diphtheria and neonatal tetanus have been eliminated. Other diseases, such as whooping cough, parotiditis, and rubella, are under control. With regard to measles, after nearly 6,000 deaths due to that cause were recorded in 1990, the last death occurred in 1995 and since 1997 there have been no endemic cases of the disease.

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<sup>(67)</sup> Chamber of Deputies, January 2008.

<sup>(68)</sup> Mexico maintains the most complete vaccination programme in Latin America by the number of biologicals comprising it, which total 11. The population that benefits, in addition to minors under age 10, are adolescents aged 10 to 19, women aged 2 to 45, and adults over age 65.

## VII. ARTICLE 7: COMBATING TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

178. As part of the process of modernization of the State and the action of civil society, the Mexican Government has stepped up its efforts to eradicate torture.

179. Following the submission of the Fourth Periodic Report of Mexico, the Committee recommended that necessary steps be taken to comply fully with article 7 of the Covenant. As a result, all forms of torture contemplated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are punishable both under the Federal Law to Prevent and Punish Torture and under the laws of the 32 states.

180. As the Committee was informed in 2000<sup>69</sup>, all complaints concerning acts of torture, enforced disappearances and extrajudicial killings that have been filed with the federal and local prosecutorial authorities have been investigated with a view to clarifying the facts and, as appropriate, bringing perpetrators to justice.

### A. Legislative advances

181. On 15 March 2002, the Mexican State accepted the amendments to article 17 (7) and to article 18 (5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which were published in the Diario Oficial on 3 May 2002.

182. On the same date, an instrument of acceptance was deposited with the Secretariat of the United Nations whereby Mexico recognizes as compulsory the jurisdiction of the Committee against Torture and to receive and examine communications submitted by persons who allege that they are the victims of a violation by a State Party to the Convention.

### B. Judicial decisions

183. The Supreme Court of Justice of the Nation has reiterated that torture and cruel, inhuman or degrading treatment or punishment are prohibited in the Mexican State and that they are to be abolished as cruel, defamatory and excessive or because they are not consonant with the purposes of punishment<sup>70</sup>.

### C. Institutional measures

184. Following the signature in December, 2000, of the Technical Cooperation Agreement between the Office of the United Nations High Commissioner for Human Rights and the Mexican Government, an initial phase was launched, consisting of training activities relating to medical and forensic documentation of torture directed to federal and state authorities, through a component for the development of a model procedure for medical examinations of torture and other abuses, based on United Nations parameters.

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<sup>69</sup>) See document CCPR/C/123/Add.2 of 28 April 2000.

<sup>70</sup>) UNUSUAL PUNISHMENT. ITS CONSTITUTIONAL MEANING, *Judicial Weekly of the Federation*, ninth period, volume XIV, October 2001, opinion P./J. 126/2001, pp. 14.

## 1. Office of the Attorney General of the Republic

185. In 2002, the Attorney General's Office began working to apply to the national context the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), being the first country in the world to undertake such an effort.

186. This came in response to the recommendation contained in the report which followed the visit of the Committee against Torture<sup>71</sup> to Mexico, which states:

“In all cases in which a person alleges torture, the competent authorities should initiate a prompt, impartial inquiry that includes a medical examination carried out in accordance with the Istanbul Protocol.”

187. Also in 2002, by publication in the Diario Oficial on 7 January, Mexico recognized the contentious jurisdiction of the Committee against Torture to receive and consider individual communications concerning torture or ill-treatment committed by public servants of the three levels of government or the three powers of the Union.

188. By that time, the Office of the Attorney General, as part of the Institutional Programme of training and educational services on human rights, had been conducting various activities, courses and workshops with the aim of consolidating the training of public servants in the task of combating torture and cruel, inhuman and/or degrading treatment.

189. From 2001 to 2003, 21 courses were held, with a total of 730 participants. In 2003, 8 courses were given to 377 public servants on legal and forensic aspects of the application of the Medical/Psychological opinion.

190. The Office of the Attorney General also signed a cooperation agreement with the National Human Rights Commission whose objectives include coordinated action and use of the material and human infrastructure of both institutions to promote measures of prevention and eradication of torture. Under this agreement, the Office of the Attorney General undertakes to provide information to the National Human Rights Commission concerning, for example, the follow-up of cases in which public servants or former public servants had been identified as allegedly liable for the crime of torture.

191. In the second phase of the aforementioned cooperation agreement, Mexico prepared the diagnostic survey on the human rights situation in the country, which served as the basis for designing the national human rights programme of the federal government. The diagnostic survey, presented on 10 December 2003, produced the following proposal, among others:

“To adopt the Istanbul Protocol fully ensuring the independence of investigations with regard to alleged perpetrators of torture, as well as the prosecutorial offices or other bodies to which they may belong. At the same time, in the preparation of the respective expert opinions, emphasis should be placed on the importance of the context within which the events took place.”

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<sup>(71)</sup> See CAT/C/75, UN, 2003.

192. It was also decided that the programme of cooperation on human rights with the European Commission would devote a substantial part of its funds to training public servants on the Istanbul Protocol and the Optional protocol to the Convention against Torture. That fund made it possible to train more than 600 forensic medicine experts at the federal and regional levels.

193. During the second phase of the cooperation programme, it was agreed that activities for the first year would include the legal expert opinion of the International Rehabilitation Council for Torture Victims (IRCT) on the expert operational Guide for the medical opinion concerning physical recognition developed by the Office of the Attorney General.

194. Within this framework, the Office of the Attorney General proceeded to adapt its Guide. This process, known as contextualization, is regulated by the international standards of the Istanbul Protocol. Subsequently, the Office of the Attorney General formalized its request to IRCT international experts to review of the medical expert opinion. It also sought technical assistance from the non-governmental organization Physicians for Human Rights (PHR-USA).

195. The result of the contextualization process is the Specialized Medical-Psychological Opinion for Cases of Possible Torture and/or Maltreatment.

196. On 18 August 2003, the Diario Oficial published Agreement A/057/03 of the Office of the Attorney General establishing institutional guidelines to be followed by agents of the federal prosecutorial authorities (Ministerio Público de la Federación) and forensic medicine experts of the Office of the Attorney General in applying the Specialized Medical-Psychological Opinion for Cases of Possible Torture and/or Maltreatment. The Agreement took effect on 18 September 2003.

197. Pursuant to the Agreement a number of safeguards are established that must be respected in applying the Medical-Psychological Opinion, such as the obligation to appoint a medical/forensic expert schooled in the contents and application of the international rules contained in the Istanbul Protocol when an expert is not available in the Prosecutor's Office of the entity where the agents of the federal prosecutorial authorities are proceeding.

198. To establish quantitative indicators, Agreement A/057/2003 contemplates the creation of a committee for the monitoring and evaluation of the Medical-Psychological Opinion<sup>72</sup>, to act as the normative organ of operation, control, oversight and evaluation of the Opinion.

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(<sup>72</sup>) The powers of the Committee are:

- i) To verify that the application of the Medical/Psychological Expert Opinion is in keeping with the institutional guidelines laid down in the Agreement;
- ii) To create mechanisms that permit effective monitoring of the application and evaluation of all cases in which the Opinion is used;
- iii) To issue guidelines which permit the administrative and human resources areas of the institution to provide continuing training in the use of the Opinion;
- iv) To prepare reports on the difficulties, obstacles and shortcomings that may have arisen in the documentation and investigation of cases of alleged torture and/or mistreatment in the institution, making any necessary suggestions to overcome them;
- v) To design programmes of dissemination and eradication in order to promote among personnel of the institution and society at large a knowledge of the Opinion and its usefulness, and to foster a culture of respect for human rights that will make it possible to eradicate torture and ill-treatment;

199. It also establishes a consultative group of the monitoring and evaluation committee<sup>73</sup> to act as a technical advisory body in evaluating quality in the application of the Medical/Psychological Opinion and advise the monitoring committee on specifically technical, scientific and professional aspects implicit in this instrument. Representatives of public institutions and of civil society participate in both of these collegial bodies.

200. The Medical/Psychological Opinion is applied with the express, informed consent of the person who alleges having been subjected to torture and/or ill-treatment so that the person's physical and psychological integrity can be examined; otherwise, the person's refusal must be made a matter of record in the preliminary investigation, in keeping with the guidelines established by the Istanbul Protocol.

201. At the time the procedure is applied, the person is examined individually and privately, without the presence of agents of the federal prosecutorial authorities, federal police investigators or any other police entity, except when, in the judgment of the expert, there is a safety risk to the person conducting the examination, which is a matter to be recorded in the Medical/Psychological Opinion, whose format contains technical safety specifications.

202. Complaints of alleged torture against public servants of the Office of the Attorney General submitted to the National Human Rights Commission before the entry into force of Agreement A/057/03, from December 2000 to July 2003, present the following picture:

| Year | Cases | Resolution  |                  |                 |
|------|-------|-------------|------------------|-----------------|
|      |       | Orientation | During procedure | Recommendations |
| 2000 | 6     | 6           |                  |                 |
| 2001 | 32    | 18          | 7*               | 2**             |
| 2002 | 24    | 15          | 6***             |                 |
| 2003 | 6     | 5           | 1                |                 |

\*In one case (complaint 2001/446-1, Norberto Jesús Suárez Gómez) alleged torture was established, although there was an expert determination that the injuries were self-inflicted; another was not pursued by the complainant; another was dismissed; another was found cumulative; a case was proposed for conciliation with a view to initiating the appropriate administrative procedure.

\*\* Two recommendations were issued, but for facts other than torture.

\*\*\* Two cases for lack of interest.

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- vi) To adopt actions necessary to formalize before the institution's oversight bodies allegations of irregularities detected by the Committee in its work of verifying the application of the Opinion;
  - vii) To consider the reports submitted by the Consultative Group in the framework of its competence;
  - viii) To elect the members of the Consultative Group proposed by the President of the Committee; and
  - ix) To publish an annual report giving an account of its activities, actions and resolutions adopted.

(<sup>73</sup>) It is the technical advisory body. It has the following functions:

- i) To evaluate the quality of application of the Opinion in each case in which there has been involvement by forensic specialists of the institution;
- ii) To report to the Committee the results of the evaluation of cases examined and, as needed, of any irregularities detected; and
- iii) To advise the Committee about technical, scientific and professional aspects of the forensic domain related to the various aspects involved in the application of the Opinion.

203. There were no cases in 2003 and 2004 in which it was necessary to apply the Medical/Psychological Opinion, because the cases were resolved by orientation<sup>74</sup> since they were not violations of human rights.

204. During the period 2001-2006 (with data through 31 October 2006), 4,041 complaints were filed with the National Human Rights Commission against the Office of the Attorney General. Of these, 92 related to allegations of torture (2.27% of the total).<sup>75</sup>

205. During the same period, the National Human Rights Commission addressed to the Office of the Attorney General 12 recommendations, 2 of them for torture (in 2001 and 2006) and one for cruel and/or degrading treatment (2002). Of the total of complaints received, recommendations for torture account for 0.05% and recommendations for cruel and/or degrading treatment account for 0.02%.<sup>76</sup>

206. In December, 2004, the federal Government urged the federative entities to adopt the Medical/Psychological Opinion. The offices of state's attorney of the entities of Baja California, Chiapas, Chihuahua, Durango, Guanajuato, Morelos, Michoacán, Nayarit, Nuevo León, Sinaloa, Tabasco and Veracruz expressed the political will to do so.

207. According to data of the Office of the Attorney General, the application of the Medical/Psychological Opinion from September 2003 to October 2006 was as follows:

| <b>Results of the application of the Medical/Psychological Opinion since its introduction<br/>(September 2003 - October 2006)</b> |                                                   |                                                  |                                                  |              |          |
|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|--------------------------------------------------|--------------------------------------------------|--------------|----------|
| <b>Expert result</b>                                                                                                              | <b>1st stage<br/>(Sept. 2003 –<br/>Aug. 2004)</b> | <b>2nd stage<br/>(Aug. 2004 –<br/>June 2005)</b> | <b>3rd stage<br/>(June 2005 –<br/>Oct. 2006)</b> | <b>Total</b> | <b>%</b> |
| Torture:                                                                                                                          | 3                                                 | 1                                                | 5                                                | 9**          | 12%      |
| Physical                                                                                                                          | 2                                                 | 1                                                | 0                                                |              |          |
| Psychological                                                                                                                     | 0                                                 | 0                                                | 2                                                |              |          |
| Mixed (Physical and Psychological)                                                                                                | 1                                                 | 0                                                | 3                                                |              |          |
| Ill-treatment                                                                                                                     | 7                                                 | 1                                                | 4                                                | 12           | 16%      |
| No torture or ill-treatment                                                                                                       | 13                                                | 14                                               | 17                                               | 44           | 58.7%    |
| No determination*                                                                                                                 | 0                                                 | 2                                                | 8                                                | 10           | 13.3%    |
| Number of cases analyzed                                                                                                          | 23                                                | 18                                               | 34                                               | 75           | 100%     |

\* Due to lack of informed consent; due to altered and/or insufficient information of the examinee; due to technical impossibility.

\*\* In no case attributable to personnel of the Office of the Attorney General.

<sup>(74)</sup> Orientation consists of explaining to the complainant his legal situation and the options available to him in response to his grievance.

<sup>(75)</sup> General Report on complaints for alleged torture against public servants of the Office of the Attorney General interposed before the National Human Rights Commission during the period 2001 – 2006.

<sup>(76)</sup> <http://portal.sre.gob.mx/oi/popups/articleswindow.php?id=94>



| <b>Authorities which requested the application of the Medical/Psychological Opinion since its introduction (September 2003 – October 2006)</b> |                    |                     |                    |              |               |
|------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|---------------------|--------------------|--------------|---------------|
| <b>Authority</b>                                                                                                                               | <b>First Stage</b> | <b>Second Stage</b> | <b>Third Stage</b> | <b>Total</b> | <b>%</b>      |
| Federal prosecutorial authorities                                                                                                              | 22                 | 18                  | 25                 | 65           | 86.7%         |
| Prosecutorial authorities of general jurisdiction                                                                                              | 0                  | 0                   | 4                  | 4            | 5.3%          |
| State Human Rights Commission (Mexico State)                                                                                                   | 0                  | 0                   | 3                  | 3            | 4.0%          |
| District Judge                                                                                                                                 | 0                  | 0                   | 2                  | 2            | 2.7%          |
| Federal Public Defender                                                                                                                        | 1                  | 0                   | 0                  | 1            | 1.3%          |
| <b>TOTAL</b>                                                                                                                                   | <b>23</b>          | <b>18</b>           | <b>34</b>          | <b>75</b>    | <b>100.0%</b> |

| <b>Age and sex of persons to whom the Medical/Psychological Opinion was applied since its introduction (September 2003 – October 2006)</b> |               |             |              |                   |
|--------------------------------------------------------------------------------------------------------------------------------------------|---------------|-------------|--------------|-------------------|
| <b>Age</b>                                                                                                                                 | <b>Female</b> | <b>Male</b> | <b>Total</b> | <b>Percentage</b> |
| 17 years                                                                                                                                   | 0             | 1           | 1            | 1.3%              |
| 20 to 29 years                                                                                                                             | 0             | 22          | 22           | 29.3%             |
| 30 to 39 years                                                                                                                             | 2             | 21          | 23           | 30.7%             |
| 40 to 49 years                                                                                                                             | 2             | 21          | 23           | 30.7%             |
| 50 or above                                                                                                                                | 0             | 4           | 4            | 5.3%              |
| Unknown                                                                                                                                    | 0             | 2           | 2            | 2.7%              |
| <b>TOTAL</b>                                                                                                                               | <b>4</b>      | <b>71</b>   | <b>75</b>    | <b>100.0%</b>     |

208. On 30 October 2006, the 60th legislative session of the Chamber of Deputies adopted the following resolution:

“The Honourable Chamber of Deputies of the Congress of the Union urges the Attorney General of the Republic, in his capacity as President of the National Conference on the Administration of Justice, to advance therein the establishment of the Istanbul Protocol in the offices of the Attorneys General of all the States.”

209. In 2007, following the adoption of the above resolution, the Office of the Attorney General developed a new programme in order more effectively to conduct courses on the Istanbul Protocol in the federative entities.

210. The first part of the programme, consisting of theory, was broadcast by television to the facilities of the Delegations of the Attorney General’s Office where personnel from the State’s Attorney offices of the states were in attendance. The second part consisted of speakers who went to each office of the Attorneys General (Procuradurías de Justicia) of the federative entities and presented the modules concerning analysis of existing legislation in each of those entities, compared with international treaties ratified by Mexico, as well as research and expert documentation on torture and ill-treatment, with the participation of a doctor and a psychologist of the Office of the Attorney General.

211. That phase of the programme also included a theory-practice workshop on the legal scope of application of the agreement and the institutional guidelines to be followed by the personnel of the corresponding institutions.

212. Towards the end of 2007, the appropriate authorities of the following states had received training and/or already had the Medical/Psychological Opinion procedure: Aguascalientes, Baja California, Baja California Sur, Campeche, Chiapas, Coahuila, Colima, Distrito Federal, Estado de México, Guerrero, Hidalgo, Jalisco, Nayarit, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sonora, Tamaulipas, Tlaxcala, Veracruz, Yucatán and Zacatecas.

213. In 2007, The Office of the Attorney General carried out the following actions to prevent torture:

- a) Discussion forum on proposals to design national machinery for prevention of torture, sponsored by the Ministry of External Relations;
- b) Presentation to public servants of the National Institute for Migration of the content and scope of the Istanbul Protocol;
- c) Presentation at the National Polytechnic Institute of the content and scope of the Istanbul Protocol;
- d) Cooperation with the National Human Rights Commission on a workshop on the application of the Istanbul Protocol and the Optional Protocol of the Convention against Torture;
- e) Presentation to public servants of the National System for the Full Development of the Family of an explanation of the link between their subject matter and the Istanbul Protocol;
- f) Conduct of a new training programme in combating torture for the Office of the Attorney General of the State of Guanajuato aimed at recently recruited forensic, police and ministerial personnel.

## **2. Ministry of Public Security**

214. The Ministry of Public Security, for its part, has held 7 workshops on the application of the Istanbul Protocol designed primarily to share and exchange experience among authorities, experts, promoters and defenders of human rights, both national and international, with a view to providing training to the personnel of the Federal Centres for Social Rehabilitation (Centros Federales de Reclusión (CEFRESOS)) of high and medium security, and of centres for minors.<sup>77</sup>

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<sup>77</sup>) Several of these workshops included participation by international experts such as: José Zalaquett, Rapporteur for Mexico to the Inter-American Commission on Human Rights; Amerigo Incalcaterra, successor to Mr. Compás; Alejandro Moreno Jiménez, of Physicians for Human Rights; and Elías Carranza Lucero, Director General of the UN Latin-American Institute for the Prevention of Crime and the Treatment of Offenders.

215. Implementation of the Istanbul Protocol was planned in two stages:

First (August 2005 – August 2007): training at the CEFERESOS centres for personnel of different areas (awareness-raising and general knowledge).

Second (second half of 2008): specialized training for implementation of the Istanbul Protocol aimed especially at the legal, medical and psychological areas as well as the General Office for Response to Victims of Crime and Abuse of Power of the Ministry of Public Security.

216. Application of the Istanbul Protocol in the federal prison system has the following goals:

- a) To provide effective protection of human rights in the exercise of public security functions, protecting the physical and psychological integrity of persons;
- b) To combat impunity among law-enforcement personnel;
- c) To have an effective document consistent with international standards which provides for the physical and psychological integrity of the inmate from the time of entry and/or release to the centre, and which provides transparency regarding activities by our public servants;
- d) To have a document which will assist with the activities of the Detached Administrative Offices of Social Prevention and Rehabilitation with respect to the national mechanism for the prevention of torture.

217. These workshops have taken place at the following centres: CEFERESOS centres No. 1 “Altiplano”, No. 2 “Occidente”, No. 3 “Noroeste”; the Ciudad Ayala federal psycho-social rehabilitation centre (CEFEREPSI); the Centre for diagnosis and treatment of women; and the “Islas Marias” federal prison colony; on the following dates: 27 August and 10-11 November 2005; 2-3 March, 16-17 March, 8-9 May, 18-19 May 2006; and 11-12 August 2007. With these workshops, the federal prison system became the first system of its kind to train its personnel in the application of the Istanbul Protocol.

218. The workshops have been organized jointly with the Ministry of Public Security, the Ministry of External Relations, the Ministry of the Interior, the Office of the Attorney General and the National Human Rights Commission, with the participation of authorities from the executive and judicial branches of each of the federative entities where they were held, as well as that of state human rights commissions.

219. Some of the topics covered in the workshops are listed below:

| Topic                                                                                                                                                          | Goal                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Doctrinal aspects of international instruments and standards of application with respect to national legislation concerning possible torture or ill-treatment. | To provide a broader perspective on torture and cruel, inhuman and degrading treatment, in keeping with what has been established both in the international legal framework and in the contents and scope of existing national criminal laws. |

| Topic                                                                                                                                                                                                         | Goal                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| General considerations on the governing principles of the Istanbul Protocol, and application, scope and consequences of the medical/psychological opinion for cases of possible torture and/or ill-treatment. | To share and discuss appropriate application of the medical/psychological opinion in federative entities that have opted to apply measures to detect torture, as well as penalties imposed on all who have committed this violation of the human rights of persons deprived of their liberty.                                                                   |
| Torture as a violation of human rights and as a criminal offense.                                                                                                                                             | To clarify that in Mexico torture is viewed as a violation of human rights and as a criminal offense; i.e. conduct which violates the rights of a person and falls within the purview of human rights commission, and unlawful conduct which is to be investigated by the prosecutorial authorities, who are in charge of investigating and prosecuting crimes. |
| Basic elements to diagnose a case of possible torture and how it differs from battery. Exchange of experience on physical and psychological evaluation of torture and ill-treatment.                          | Analyzing experiences of other States in applying the guiding principles of the Istanbul Protocol, seeking appropriate treatment for victims of possible torture or cruel, inhuman and degrading treatment.                                                                                                                                                     |
| Legal linkage to international instruments with regard to administrative, civil and penal duties of public servants, with respect to their acts or omissions related to torture and ill-treatment.            | Informing about the possible national and international legal consequences arising from a case of torture and ill-treatment.                                                                                                                                                                                                                                    |
| Reparation of injury: measures to be followed to carry it out by the authority held responsible.                                                                                                              | Informing about possible means to carry out reparation of injury, as one of the legal consequences that would result from the commission of torture and ill-treatment.                                                                                                                                                                                          |

220. With these 7 workshops, the Ministry of Public Security has trained 795 public servants of the Sub-secretariat for Prevention and Citizen Participation, of the Detached Administrative Offices of Social Prevention and Rehabilitation, of the CEFEREPSI, of the CEFERESOS federal rehabilitation centres No. 1, 2, 3 and 4, of the General Directorate for Prevention and Treatment of Minors, of the Centres for Minors, and of the “Islas Mariás” federal prison colony, as indicated in the following table:

| Workshop | Venue                                                                  | Staff trained |
|----------|------------------------------------------------------------------------|---------------|
| First    | Federal Rehabilitation Centre No. 1 Altiplano (formerly La Palma)      | 111           |
| Second   | Federal Rehabilitation Centre No. 2 Occidente (formerly Puente Grande) | 107           |
| Third    | Federal Rehabilitation Centre No. 3 Noreste (formerly Matamoros)       | 106           |
| Fourth   | Federal Rehabilitation Centre No. 4 Noroeste (formerly El Rincón)      | 133           |
| Fifth    | Federal Psychosocial Rehabilitation Centre                             | 170           |
| Sixth    | Centre for Diagnosis and Treatment of Women                            | 111           |
| Seventh  | Islas Mariás Federal prison colony                                     | 057           |
| TOTAL    |                                                                        | 795           |

### 3. Ministry of National Defence

221. With regard to training for the armed forces within the framework of the Programme for the promotion and strengthening of human rights and international humanitarian law, the Ministry of National Defence held a workshop/course on medical examination and documentation of torture and forensic investigation of deaths suspected of having occurred in violation of human rights.

222. The aim of the course is to have military doctors, surgeons, dentists and military justice personnel trained to conduct specialized medical investigations regarding victims of torture and cases of deaths suspected of having occurred in violation of human rights (forensic pathology and anthropology).

223. Through 2007, the Ministry of National Defence had held 20 courses, training 702 people, including lawyers, doctors, surgeons, dentists and psychologists, as per the following schedule:

- a) In 2001, 2 courses at the facilities of the Central Military Hospital and Scientific Research Laboratory of the Office of the Attorney General for Military Justice, training 33 lawyers and 32 physician-surgeons, a total of 65;
- b) In 2005, 5 courses at the facilities of the Central Military Hospital and Scientific Research Laboratory of the Office of the Attorney General for Military Justice, training 27 lawyers, 192 physician-surgeons and 9 dentists (a total of 228);
- c) In 2003, 3 courses at the facilities of the Central Military Hospital and Scientific Research Laboratory of the Office of the Attorney General for Military Justice, training 16 lawyers, 30 physician-surgeons and 61 dentists (a total of 107);
- d) In 2004, 4 courses at the facilities of the Central Military Hospital and Scientific Research Laboratory of the Office of the Attorney General for Military Justice, training a total of 122 persons, including military lawyers, psychologists, physician-surgeons and dentists;
- e) In 2005, 2 courses at the facilities of the Central Military Hospital and Scientific Research Laboratory of the Office of the Attorney General for Military Justice, training a total of 60 persons, including military lawyers, psychologists, physician-surgeons and dentists;
- f) In 2006, 2 courses at the facilities of the Army/Air Force Studies Centre, training a total of 60 persons, including military lawyers, psychologists, physician-surgeons and dentists;
- g) In 2007, 2 courses at the facilities of the Army/Air Force Studies Centre, training a total of 60 persons, including military lawyers, psychologists, physician-surgeons and dentists;

224. In 2005 the National Human Rights Commission issued Recommendation 10, addressed to the Attorneys General of the Republic, of Military Justice and of the federative entities, to Secretaries, Deputy Secretaries and Directors General of Public Security and of the federative entities, recommending, among other measures:

- a) That torture be formally defined as a criminal offense in order to prevent impunity and ensure effective application of the law;
- b) Avoidance of any form of incommunicado detention or ill-treatment which could facilitate the practice of torture, both physical and psychological;

- c) That necessary conditions be met in order for the Mexican State seriously to conduct investigations promptly and effectively against any public servants involved, permitting appropriate penalties to be imposed and ensuring appropriate compensation to victims;
- d) That video and audio recording equipment be provided to public servants for medical examination procedures, in order to ensure greater impartiality and objectivity in the work of forensic medical experts, as well as in interrogations conducted by prosecutorial authorities, or that the defender of the detainee be permitted to make such recordings.

225. In the area of training and dissemination, the National Human Rights Commission is working to disseminate knowledge of the Istanbul Protocol as well as the Istanbul Protocol booklet. It is also conducting workshops on application of the protocol addressed to personnel of the human rights commissions of the federative entities.

#### **4. Creation of the National Mechanism for Prevention of Torture**

226. On 11 July 2007, the Ministry of External Relations announced to the United Nations Mexico's fulfilment of the obligations it had assumed pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In letters addressed to United Nations Secretary General Ban Ki-moon and to United Nations High Commissioner for Human Rights Louise Arbour, it was indicated that the Government of Mexico had proposed that the National Human Rights Commission serve as the national mechanism for prevention of torture, and that the Commission had agreed.

227. The functioning of the national mechanism for prevention of torture is governed by a cooperation agreement between the Ministry of the Interior, The Ministry of External Relations, the Ministry of National Defence, the Ministry of Naval Affairs, the Ministry of Public Security, the Department of Health and the Office of the Attorney General with the National Human Rights Commission.

228. The national mechanism can be expanded through agreements which the National Human Rights Commission may sign with state human rights commissions.

229. The choice of the National Human Rights Commission for the national mechanism was the result of a process of consultations by the Ministry of External Relations with the aforementioned institutions and, in particular, on the basis of articles 3, 17 and 18 of the Optional Protocol. The consultation process took into consideration the system of periodic visits established by the Optional Protocol.

230. Also considered were the experience of the network of public human rights bodies with respect to inspection visits to places of detention and the conclusions of the seminars organized by the Mexico office of the United Nations High Commissioner for Human Rights on implementation of the Optional Protocol and design of the national mechanism, during which there was recognition of the desirability of taking advantage of the infrastructure of the public human rights commissions, both national and state, in order to implement the Protocol in Mexico.

231. On 20 June 2007, members of civil society who participate in the work of the Commission on Government Policy on Human Rights were informed of the contents of the intergovernmental agreements in this area. The reasons for having chosen the National Human Rights Commission as the national mechanism were also explained.

## 5. Informed consent

232. With regard to the second part of article 7 of the Covenant, the informed consent of the patient to be subjected to experimental treatments has been required in Mexico under the General Law on Health since 1984, provided that there is a possibility of saving the patients' life or diminishing their suffering. To that end, the patient, his legal representative or a relative must give their consent in writing in order for the treatments to be carried out.<sup>78</sup>

233. The Regulations of the General Law on Health with regard to provision of medical services provide that, at the time a patient is admitted to hospital, when his conditions permits, he must give an informed authorization, written and signed, for purposes of diagnosis, treatment or surgical medical procedures that his condition requires; in the event that the patient lacks the capacity to give such consent, it must be given by the closest relative accompanying him, or by a guardian or legal representative and, failing this, by two doctor authorized to give such authorizations by the hospital itself.<sup>79</sup>

234. The Regulations of the General Law on Health with regard to health research defines informed consent as an agreement in writing by which the subject of the research or, as appropriate, his legal representative authorizes his participation in the study, with full knowledge of the nature of the procedures and risks to which he will be subjected, with the capacity to make a free choice without any coercion.<sup>80</sup>

235. In order for consent to be considered valid, the person granting it must be informed about:

- a) the justification and purposes of the research;
- b) the procedures to be practiced, clearly identifying those which are experimental;
- c) the discomforts or risks expected; d) the benefits expected;
- e) the alternative procedures;
- f) the freedom to withdraw his consent at any time; and

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<sup>(78)</sup> See article 103 of the General Law on Health. <http://www.ordenjuridico.gob.mx/Federal/Combo/L-153.pdf>

<sup>(79)</sup> See articles 80 and 81 of the Regulations of the General Law on Health with regard to Provision of Medical Services. <http://www.ordenjuridico.gob.mx/Federal/Combo/R-124.pdf>

<sup>(80)</sup> Article 20 of the Regulations of the General Law on Health with regard to Research for Health. <http://www.ordenjuridico.gob.mx/Federal/Combo/R-123.pdf>

- g) the assurance that the subject will not be identified and that his personal information will be kept confidential.<sup>81</sup>

### **VIII. ARTICLE 8: PROHIBITION OF SLAVERY, SERVITUDE AND FORCED LABOUR**

236. Slavery in its traditional sense has not existed in Mexico's recent history. Nevertheless, gravely unjust labour conditions affecting marginal groups, especially in rural areas, have not been fully eradicated.

#### **A. Legislative advances**

237. A constitutional reform was published on 14 August 2001 which moves to article 1 the prohibition of slavery previously contemplated in article 2 of the Constitution.

238. On 30 June 2000, Mexico ratified ILO Convention 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

239. On 5 June 2008, the Diario Oficial published a Decree approving the declaration recognizing the jurisdiction of the Committee on the protection of all migrant workers and members of their families, established by article 72 of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families adopted in New York on 18 December 1990.

240. On 21 July 2008, the Diario Oficial published a Decree reforming and repealing various provisions of the General Population Act<sup>82</sup>. Pursuant to these reforms, no migrant may incur criminal penalties for entering the country undocumented, returning after having been expelled, or for other infractions of said Act.

#### **B. Institutional measures**

241. In 1990, a national programme for agriculture day-labourers was created with the mission of contributing to the betterment of the living and working conditions of farm workers through a comprehensive approach to the workers and their families, aiming especially at reducing child labour among the children of the workers' families, through provision of support for services to prevent their early inclusion in the labour force. Under this programme, research projects and initial actions of promotion and institutional coordination were carried out.

242. The aim of the programme was to improve the lot of this group by developing measures of comprehensive attention in coordination with the three levels of government. The programme promoted participation by producers, civil society organizations and organizations of the farm workers themselves within this process. In light of its results, the programme has been continued.

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<sup>(81)</sup> See article 21 of the General Law on Health with regard to Research for Health.

<sup>(82)</sup> See: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5053819&fecha=21/07/2008](http://www.dof.gob.mx/nota_detalle.php?codigo=5053819&fecha=21/07/2008)



243. The Ministry of Social Development, through the aforementioned programme, has attended to the day-labour population located in 1,055 work units of 228 municipalities in 18 states of the country where it has an operational presence, which represents 91.4% of the work units programmed and 91.9% of the municipalities included in coverage for 2007.

244. For the period January – July 2007, the state of progress of human capital and investment projects by area of activity is as follows: 1,203 for housing and environmental sanitation; 561 for health and social security; 542 for food and supplies; 955 for education, culture and recreation; 266 for employment, training and productivity; 636 for administration of justice; and 473 for strategic implementation.

245. The project known as “Proyecto Monarca” has benefited the children of migrant farm workers concentrated in shelters. It contemplates a scheme of economic transfers premised on three factors: health, food and education. It contemplates a scale of monthly economic support payments according to degree and level, for minors enrolled in services under the National Council for Educational Advancement (CONAFE), the National Programme for Education of Migrant Children managed by the Ministry of Public Education and the General Office for Indigenous Education of the Ministry of Public Education.

246. Owing to the high mobility of agricultural labourers, who travel long distances in response to seasonal needs in the countryside, the Ministry of Public Education has developed a special school pass which records the progress children have made in the educational system and enables them to continue their studies regardless of the locations of the schools. It is hoped that this will help to raise the level of schooling of this human group, who often fail to finish primary education.

247. From 2000 to 2003, the Ministry of Labour and Social Security conducted a study specifically on this subject<sup>83</sup>, finding that, of 1,513,236 agricultural day labourers identified, 351,589 were children and adolescents aged 12 to 19 and 111,403 were adults over age 60.

248. Of the total, 1,417,679 were receiving pay below the minimum wage: 687,389 were receiving less than the minimum wage and 17,024 were receiving no pay at all. Similarly, 1,362,367 were receiving no benefits whatsoever, including social security, while 17,210 were receiving some form of benefit but not social security.

249. Federal and local labour authorities are empowered to ensure compliance with labour legislation in terms of several sources of jurisdiction, in keeping with the provisions of article 123 (A) of the federal Constitution and the Federal Labour Act.

250. The Federal Labour Act provides for concurrent jurisdiction over this area by federal and local authorities. The state labour authorities are responsible for monitoring compliance with labour regulations, in workplaces devoted to agriculture, with respect to general working conditions. But where general conditions of hygiene, training and instruction are concerned, monitoring falls to the federal labour authorities, with assistance from the local authorities.

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<sup>(83)</sup> Statistics on “Employed Agricultural Workers” prepared on the basis of data of the Agricultural Module of the National Employment Survey, 2002 – 2003, STPS-INEGI.

251. In 2007, the Ministry of Labour and Social Security received authorization from the finance authorities to increase the number of federal labour inspector posts to 100, so that at the end of this year there were 318 posts devoted to implementing the monitoring function in accordance with the labour laws at work sites under federal jurisdiction.

252. Within the strategy to address the situation of agricultural day labourers and their families coordinated by the Ministry of Labour and Social Security, various actions have been put forward with a view to strengthening the monitoring of compliance with labour regulations for the benefit of the workers in this sector; the most noteworthy are the following:

- a) Actions among federal executive agencies linked to agricultural workers, enterprises and establishments devoted to agriculture, with a view to accurately defining the universe of agricultural enterprises or establishments which could be subject to labour inspection;
- b) Promoting vigilance in compliance with labour standards, given the need to strengthen labour inspection at the local level, especially in the fields, through tripartite fora such as the National Advisory Commission on Labour Safety and Hygiene and the state commissions (presided over by the governors of the states), fora whose function it is to propose preventive measures against workplace risks;
- c) The proposal to sign agreements with employers' groups linked to the agricultural sector with a view to adoption of alternatives to the traditional inspection schemes that the Ministry of Labour and Social Security has in place, such as the programme for self-management of security and health in the workplace, use of electronic labour registration, and use of a system of verification units in which individuals act as monitors to check on compliance with official Mexican standards of security and health in the workplace;
- d) In 2001, a Study on improving the quality of life of agricultural and indigenous day labourers in Mexico was launched;
- e) A diagnostic survey was conducted of the situation in the Mixteca area, which was considered the area with the highest rate of outflow of labour in both to the northern part of the country and to the south of the United States;
- f) Based on this study, a number of productive projects were selected in order to provide employment alternatives in the area and thus reduce migration. Follow-up was provided for this programme, which covered some 2,000 beneficiaries in the high-priority Mixteca area alone. In addition, in the Chocholteca area to the north of Oaxaca, productive projects were carried out with the support of federal institutions in the fields of aquaculture and poultry breeding. Also, in the southern part of Oaxaca, with the Huaves indigenous people, productive projects in agricultural conversion were carried out. In total, the number of indigenous people and farm labourers covered by these projects was approximately 20,000.
- g) A consultancy and training campaign was conducted to promote agricultural production and marketing in Sonora and Sinaloa. In coordination with the Shared

Risk Trust Fund, a series of development and marketing projects were carried out in the state, for the benefit of about 300 people. As part of the campaign to disseminate knowledge of labour rights, 4,000 leaflets on labour rights and obligations of field workers were distributed, and 300 books on the responsibilities of agricultural employers were distributed through the federal labour offices.

- h) During 2002, the ongoing campaign to promote and disseminate indigenous labour rights and obligations was intensified. The campaign was conducted in Spanish and 32 indigenous languages.
- i) The ongoing campaign to promote and disseminate labour rights and obligations for farm workers was intensified, with the distribution of 10,000 leaflets, 24,000 posters, 24,000 charters labour rights, radio spots, and inclusion of messages relating to this population group through 100,000 LADATEL cards.
- j) In 2003, a campaign was carried out to disseminate and promote labour rights and obligations of indigenous people in Spanish and 32 indigenous languages. More than 24,000 charters of labour rights in indigenous languages were distributed; 23,000 posters were distributed to stores to make known the labour rights and obligations of the indigenous and day-labourer population. Activities were conducted aimed at promoting labour rights and fostering self-employment, reaching just over 20,000 day labourers and indigenous people in Mexico;
- k) In 2004, in order to promote respect for the labour rights of farm workers, in cooperation with the system of economic supports for internal labour mobility and the programme known as “Go Healthy” (“Vete Sano”) 20,000 travel cards, 175 illustrated booklets on labour rights and 775 posters were distributed;
- l) 19,597 charters of labour rights were distributed through federal labour offices, the Ministry of Agrarian Reform and civil society organizations working in this sector. Similarly, 2,912 posters on labour rights of women in the country were distributed and, in order to raise awareness among farm employers of their social responsibility, 900 copies of the booklet “Responsibilities of employers in the farm sector” were distributed;
- m) Awareness-raising meetings were held with the aim of promoting the development of productive projects with agricultural day labourers and their families. Specialized training workshops were held with agricultural day labourers who participated in the Canada-Mexico guest worker programme and in order to follow up the inter-agency support programme for agricultural day labourers;
- n) For 2006, a workshop was organized entitled “Follow five steps to turn your idea into a project” (“Sigue cinco pasos para hacer de tu idea un proyecto”) whose aim was to educate wives, mothers, relatives and guest workers migrating to Canada in order to enhance employability through development of productive projects;
- o) In cooperation with the Ministry of Social Development and the Chapingo Autonomous University, a forum was organized on Challenges and advances in

public policy for agricultural workers. This forum focused on two themes: farm workers viewed from an academic perspective; public policies in favour of farm workers and civil society initiatives in favour of farm workers.

253. There are official Mexican farm work standards issued by the Ministry of Labour and Social Security which provide for on-the-job safety, such as:

- a) NOM-003-STPS-1999, relating to agricultural activities – use of phytosanitary inputs or plaguicides and vegetable nutrients or fertilizers – conditions of safety and hygiene;
- b) NOM-007-STPS-2000, relating to agricultural activities – facilities, machinery, equipment and tools – conditions of safety.

254. On 22 November 2007, the Inter-agency Group on Agricultural Workers was formed, with participation by 12 federal agencies. This group's general aim is to strengthen institutional coordination and synergy in government programmes to promote access by the farm workers population to decent work with respect for labour rights, conditions of safety and social security and under conditions of equality, justice and legality, in order to permit individual, family and community development in their places of origin, transit and destination.

255. Among the main results achieved by the Inter-agency Group are the following:

- a) Development of a model for agricultural enterprises based on the models of programmes by the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food, the Ministry of Social Development and the Ministry of Labour and Social Security, as a guide for the various activities of the strategy, especially those relating to inspection;
- b) Implementation of the strategy for inspection of agricultural enterprises and the corresponding programme of work;
- c) Diagnostic survey of medical-hospital infrastructure geared to agricultural workers at their places of origin and destination, as the basis for activities to promote insurance and special health campaigns;
- d) Presentation of the project on creation of an Office of Social Oversight (Contraloría Social) by the Ministry of Labour and Social Security in order to implement a strategy of communication and reporting between society and the federal government.

256. The Ministry of Labour and Social Security developed a manual for Guatemalan agriculture workers whose purpose is to inform about rights and obligations of the employer and the worker.

257. In recent years, Guatemala and Mexico have dealt formally with the subject of migration in the framework of the Mexico-Guatemala Binational Commission, instituting a Binational Group on Migratory Affairs in 1989, which has met 15 times, as well as a Mexico-Guatemala Ad Hoc

Group on Guatemalan Temporary Migrant Workers which, since its inception on 12 February 2002, has met five times.

258. In the health sector, independently of whether temporary workers can be eligible for any private or public medical coverage, the Health Department of the State of Chiapas provides prompt and free attention to all agricultural workers and their families who request it. Similarly, vaccination campaigns are conducted at agricultural production units in Chiapas.

259. In the state of Chiapas, it has been found that 10% of the population of minors working in agriculture are illiterate. Surveys show that the majority reached only third grade, while others – only 7%-- reached the preparatory school level but did not finish their studies.<sup>84</sup>

260. Consequently, in coordination with the National System for the Full Development of the Family, the Red Cross, the Ministry of Public Education and the United Nations Fund for Children (UNICEF), progress is being made towards an agreement to become part of the Programme of primary education for migrant girls and boys (PRONIM). As of December 2007, PRONIM was functioning in 21 federative entities, with the aim of facilitating access by the children of farm workers to primary education regardless of nationality, as well as bringing teachers to agricultural production units that are remote from public schools.

261. Further, under the Southern border programme, the Centre for Migration Studies of the Centre for Migration Studies of the National Institute for Migration effected an expansion of the programme of migratory regularization in 2006, reducing the requirements for Guatemalans affected by hurricane Stan in Chiapas, in order to facilitate their legal stay within the national territory and protection of their rights as workers and those of their families.

262. In November, 2006, the National Institute for Migration authorized the facilities of the “Casa Roja” in Talismán, Chiapas to issue the Visiting Farm Worker Migration Form (Forma Migratoria de Visitante Agrícola) in order to have better conditions of infrastructure and technology to facilitate the process of documentation of these workers.

263. As part of the programme of reorganization along Mexico’s southern border, beginning in March 2008, Guatemalan women engaged in commercial and domestic work in the border area will be entitled to a new Border Worker Migration Form which allows documented entry of foreign workers so that they can contribute their efforts to various sectors of the state economies on the southern border –Chiapas, Quintana Roo, Tabasco and Campeche– in a more orderly manner, simplifying the task of protecting their human and labour rights.

264. The new Border Worker Migration Form replaces the Visiting Agricultural Worker Migration Form. This Form enables all Guatemalans to obtain a temporary work permit to work in the 4 federative entities along Mexico’s southern border: Chiapas, Quintana Roo, Tabasco y Campeche. They may also work in all sectors of the region’s economy, provided they have an offer of employment from a Mexican employer (in agriculture, construction, commerce, domestic service and other sectors). The circular which sets out the criteria for issuance of this

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<sup>(84)</sup> Chiapas: Meeting with diversity, equity and respect for migrants. Government of the State of Chiapas, March 2008.

new migration form, as well as the requirements, procedures, safeguards, rights and obligations, was published on 12 March 2008.

265. In parallel with this legal process, pilot programmes are being carried out in Chiapas to try out the system that will be used for its issuance, design and publication.

266. The Border Worker Migration Form will be issued as from March in Chiapas and will gradually be introduced in the 4 federative entities along the border.

## IX. ARTICLE 9: RIGHT TO PERSONAL FREEDOM AND SECURITY

267. As reported to the Committee in 2000<sup>85</sup>, the concept of flagrancy has been limited, circumscribed and confined to very specific cases, as is laid down in article 193 of the Federal Code of Criminal Procedures. In those cases, the prosecutorial authorities will order the detention of the suspect if procedural requirements have been met and if the offense is one that warrants deprivation of liberty, or they will order the release of the person detained when the penalty is not one of deprivation of liberty or is an alternative sentence.<sup>86</sup>

### A. Legislative advances

268. From 1997 to 2003 a number of reforms were made in various articles of the Federal Penal Code<sup>87</sup> bearing directly on the right to personal freedom. Pursuant to the reforms to article 85 published in the Diario Oficial on 17 May 1999, parole will not be granted to persons sentenced for certain crimes.<sup>88</sup> However, with regard to crimes against health, a reform of 2 June 2003 lays down an exception to the denial of parole with respect to individuals who manifestly exhibit cultural backwardness, social isolation and severe economic hardship.

269. On 4 January 1999, the Diario Oficial published the Federal Police Act, a law implementing article 21 of the Constitution, which regulates the organization and operation of the Federal Police, under the authority of the Ministry of Public Security<sup>89</sup>. Among the functions of the Federal Police are performing arrests, participating in arrests or securing operations in cases of flagrant offenses and carrying out certain migration tasks.

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<sup>(85)</sup> See addendum IV to the Periodic Report of Mexico to the Human Rights Committee, document CCPR/C/123/Add.2, 28 April 2000.

<sup>(86)</sup> With the reform of and addition to article 19 of the Constitution to limit to 72 hours any judicial detention without a sentence of imprisonment, the groundwork was laid for dismissal of police officers who exceeded the scope of their substantive or administrative duties. Reform of articles 16 and 19 of the Constitution. See: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_139\\_08mar99\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_139_08mar99_ima.pdf)

<sup>(87)</sup> See: <http://www.diputados.gob.mx/LeyesBiblio/pdf/9.pdf>

<sup>(88)</sup> Offenses such as unlawful use of facilities intended for air transport, against health, corruption of minors or incompetents, rape, homicide, kidnapping, trafficking in minors, trading in stolen goods, vehicle theft, theft or transactions with unlawful proceeds.

<sup>(89)</sup> The latest change in this Law was published in the Diario Oficial on 25 October 2005.

270. On 30 November 2000, by an amendment to article 30 bis of the Organic Act on the Federal Public Administration, the Ministry of Public Security was created in order to respond to citizens' demand to give the highest priority to public security.

271. On 6 February 2001, the Diario Oficial published the Internal Regulations of the Ministry of Public Security, which contemplate the Department of Community Services and the General Directorates for Community Services and Citizen Participation, as well as the General Directorate for the Protection of Human Rights. These administrative units continued to be developed and refined with further changes to the regulations in the years 2002, 2005 and 2007.

272. On 19 May 2006, the Diario Oficial published an amendment to the Federal Penal Code aimed at defining the offense of false imprisonment, establishing a sentence of 6 months to 3 years of imprisonment and a fine of 25 to 100 times the daily minimum wage for the offense of depriving another person of his freedom.

273. On 12 March 2007, the Diario Oficial published the internal regulations of the Department of Health, which include among its functions the management of the federal prison system, organizing and directing support activities for released prisoners and administering the federal system of treatment for youthful offenders.

274. On 9 May 2007 the Diario Oficial published a decree creating a special unit of the army and air force known as the Federal Support Forces Corps.

275. On 17 September 2007, the Diario Oficial published a decree amending the decree creating special army and air force corps named the Federal Support Forces Corps. This decree and the prior decree of 9 May provide that the participation of the army and air force in public security may occur only at the request of the civil authorities, in support of law-enforcement agencies or to deal with organized crime and must have the authorization of the Minister of National Defence. Their involvement assumes a commitment scrupulously to respect human rights and can never supplant the functions which belong to the federal or local authorities that they are supporting.

276. On 18 June 2008, the Diario Oficial published a decree amending articles 16, 17, 18, 20, 21, 22, 73, 122, and 123 (B) (XIII) of the Constitution concerning judicial matters in order, inter alia, to introduce the accusatory criminal trial model. It should be noted that the legislative branch decided to delete the eleventh paragraph of article 16 of the reform concerning the procedure for issuance of search warrants.

277. This decree, known as the "Reform of the System of Public Security and Criminal Justice," effects a radical change in the systems of administration of justice and public security. The reform proposes a system of guarantees affording respect for the rights of the victim, the offender and accused, based on the presumption of innocence for the latter. The system will be public and adversarial in nature, with unified submission of evidence in a single tripartite oral proceeding in which the Ministerio Público (prosecutorial authorities) will conduct the prosecution, the accused will be able to defend himself, and it will be the judge in the end who determines the appropriate course. Oral proceedings will contribute to promoting transparency, at the same time providing for a direct link between the judge and parties, thus tending to make criminal procedures simpler and more flexible.

278. It provides for the inclusion of a supervisory judge (juez de control) who, immediately and by any means, rules on requests for interim measures, restraining orders and methods of investigation of the requesting authority, ensuring that the rights of the parties are respected and that actions by the party bringing charges are in compliance with the law. The supervisory judge is in charge of the case from the time the suspect is charged to the opening of the trial. The oral hearings are conducted by a judge or court that has not had contact with the case, and the application of the penalty is under the responsibility and supervision of a sentencing judge.

279. It establishes new regulations with respect to interim measures, including preventive detention, which can be applied exceptionally when other interim measures are not sufficient to ensure the appearance of the accused at trial, the pursuit of the investigation, protection of the victim, witnesses or the community, or when the accused is being tried for or has previously been convicted of committing a crime of malice (delito doloso). It also contemplates application of preventive detention in all cases of organized crime, intentional homicide, rape, abduction, crimes committed with violent means such as arms and explosives, and grave crimes defined by law against the security of the nation, against the free development of the human person, and against health.

280. It provides for alternative dispute-resolution mechanisms which, by constitutional mandate, seek to effect reparation of damage to crime victims. Such mechanisms will be subject to judicial oversight in accordance with the terms deemed appropriate under secondary legislation. This measure will be conducive to judicial economy and attain a fundamental objective: ensuring that the victim of a crime is protected and that the defendant is held accountable for his actions, repairing the damage done insofar as possible.

281. In the defence of the accused, the reform eliminates the “trustworthy person” (“persona de confianza”) and ensures the right to an adequate defence conducted by a lawyer. In order to reach that objective and ensure equality in its fulfilment, provision is made to establish a quality public defender’s service for the population and to create conditions for a professional career for public defenders, providing that their emoluments may not be less than those of agents of the office of the Ministerio Público.

282. It provides that the accusatorial criminal procedure system will enter into force when so provided by the appropriate secondary legislation, but without exceeding a period of eight years. For the time being, June 18th was also the date of approval of the decree which reforms article 1 of the Organic Act on the Office of the Attorney General.

283. Two aspects deserve special mention because they were singled out as sensitive by various social actors: short term detention (arraigo) and the definition of organized crime. Regarding the former:

- a) The decree incorporates short-term detention into article 16 of the Constitution, exclusively for cases of investigations and prosecutions pertaining to organized crime. In the case of investigations, short term detention may apply under the terms and conditions laid down by the judge in keeping with the applicable law, and for a period of up to forty days, with the possibility of extending it for another forty days, provided that the circumstances which originally justified it still exist.



- b) Short-term detention was included because the increasingly organized character of crime was jeopardizing judicial institutions and procedures. The judicial reform seeks to broaden the spectrum of effective measures in order to contain the impact of organized crime on public security. The aim is to ensure that accused persons do not evade legal process initially or judicial proceedings at a later stage and that they do not hamper investigation or affect the integrity of persons involved.

284. Regarding the latter, the decree proposes a special regime for organized crime, which it defines as “an organization in fact consisting of three or more persons to continuously or repeatedly commit crimes under the terms of the governing law,” empowering the Congress to legislate in that regard. For these cases, short-term detention may be decreed by the supervisory judge at the request of the prosecutorial authority subject to the modalities of time and place provided by law, so long as it is necessary for the success of the investigation, for protection of persons or property, or when there is a well-founded risk that the accused may escape the administration of justice. It may not exceed forty days, which term may be extended only upon a showing by the prosecutorial authority that the causes which gave rise to it still exist, and may not in any event exceed eighty days.

285. The exceptional provisions laid down against organized crime are intended exclusively to combat this type of crime and in no event may be used for other kinds of conduct, which will prevent the competent authority from making abusive use of the powers conferred against social militants of persons who oppose or criticize a particular regime.

286. The definition contains elements that distinguish organized crime from conspiracy (asociación delictuosa), since the latter applies to any offense contained in the criminal laws, while the regime for organized crime is created to address a very special form of crime as regards operational capacity, organization, sophistication and impact.

287. This constitutional reform comes in response to repeated appeals to modernize the system of administration of justice with a view to giving full effect to the individual guarantees enshrined in the Constitution and contributing to fulfilling the fundamental duty of the Mexican State to ensure due security for persons and property, as well as respect for the rule of law.

288. The process of adoption of the reform was characterized by consultation and constructive dialogue between the three branches of government and with social actors concerned, which led to significant changes in the original initiative.<sup>90</sup>

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<sup>(90)</sup> The major changes were:

Article 16: In cases of organized crime, the judicial authority, upon motion by the Prosecutor, may order short-term detention of a person subject to the modalities of time and place provided by law, but not to exceed forty days, provided it is necessary for the success of the investigation, the protection of persons or legal property, or when there is well-founded risk that the suspect will evade the administration of justice.

Article 17: The laws provide alternative dispute resolution mechanisms. In the criminal area, they shall regulate their application, ensure reparation of damages, and determine in which cases judicial supervision is required.

Article 18: The word social “readaptation” (“readaptación”) replaces the word “reintegration” (reinserción). Special centres shall be provided for preventive detention and for the serving of sentences for organized crime.

Article 19: The term “auto de formal prisión” is replaced by the term “auto de vinculación a proceso”. The judge informally orders preventive detention in cases of organized crime, intentional homicide, rape, kidnapping, and crimes committed with violent means. In other words, in those cases, although there is no formal indictment, there

## B. Judicial decisions

289. The Supreme Court of Justice of the Nation has held that an individual's freedom may be restricted, exceptionally, in the following cases:

- a) in *flagrante delicto* cases, in which event the suspects must without delay be brought before a judicial authority;
- b) in urgent cases, in regard to serious crimes and when there is a serious risk that the suspect may evade justice;
- c) by an arrest warrant issued by a judicial authority;
- d) by a formal sentence of imprisonment issued by the judge in the case;
- e) by penalties for contravention of governmental and police regulations (such detention not to exceed 36 hours).<sup>91</sup>

290. The Court has held that the arrest warrant must meet the same formal requirements as the sentence of imprisonment; the latter must therefore include modalities or circumstances which tend to modify or qualify the offense.<sup>92</sup>

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may be preventive detention as an interim measure. If, after the "auto de vinculación a proceso" for organized crime, the suspect evades the administration of justice or is placed at the disposal of another court seeking him abroad, both the proceeding and the statute of limitations for bringing criminal charges will be suspended.

Article 20: The criminal procedure established is oral, public and adversarial, with unified submission of evidence in a single proceeding. The possibility is established that the law may afford advantages to an accused who provides effective assistance in the investigation and prosecution of crimes in the area of organized crime. Victims are permitted to intervene in the trial and pursue such remedies as the law may provide, and to challenge before the judicial authority any omissions by the prosecution in the investigation of the crimes.

Article 22: Provision is made for forfeiture in cases of organized crime, crimes against health, vehicle theft, and trafficking in persons. That is, a judicial determination may declare the loss of property of goods that are an instrument, object or product of the crime, said property becoming the property of the Mexican State.

Article 115: The police will be under the command of the municipal president according to the Law on Public Security of the State, complying with the orders of the Governor of the State, and shall refer to him those cases which the latter judges as being cases of force majeure or of grave disturbance of public order.

Article 123: In the area of labour, it is provided that agents of the Public Prosecutor, experts and members of police institutions will be governed by their own rules.

(<sup>91</sup>) INCIDENTAL PROCEEDING FOR ADJUSTMENT OF OFFENSE AND ADJUSTMENT OF PRISON SENTENCE. DECISIONS TAKEN THEREIN MAY BE APPEALED THROUGH AMPARO AT ANY TIME, SINCE SAID ACT IS ONE WHICH AFFECTS THE PERSONAL LIBERTY OF THE COMPLAINANT. *Judicial Weekly of the Federation*, ninth period, volume XX, December 2004, pp. 137.

Review on appeal. In penal matters the appeal for amparo shall be deemed to be interposed, even in the total or partial absence of submission of copies of the bill of appeal, when the appellant is the complainant, defender or authorized person and the act appealed against implies an effect upon personal liberty. *Judicial Weekly of the Federation*, volume XX, October 2004. Page 203.

Heteroapplicative laws applying to deprivations of personal liberty. Application of the same may not be deemed approved although their unconstitutionality is challenged upon the passing of final sentence and not upon their application in the warrant of arrest or decree of constitutional term. *Judicial Weekly of the Federation*, Volume XIV, August 2001. page 238.

291 The Court has also determined that the arrest warrant must be issued by an authority which has jurisdiction to take up the criminal case which may be brought against the suspect for the offense or offenses for which the arrest warrant is issued.<sup>93</sup>

292. The Court has established that, if the person is sentenced to prison, the period during which he was held in pre-trial detention must be counted as time served under the sentence.<sup>94</sup>

293. The Court held that an arrest warrant can violate different rights protected under article 16 of the Constitution. Thus, cases may arise, among others, where the warrant is applying a law retroactively to the detriment of the complainant; where the warrant was issued without satisfying the essential formalities of the procedure according to laws enacted before the fact; where authorities of general jurisdiction decide on issuance of an arrest warrant in reference to acts involving a person belonging to the armed forces and it is necessary to examine the conduct from the standpoint of military law; or where the act has not been established or corroborated. For these reasons, the Court was of the view that it was erroneous to conclude that all that was necessary for issuance of an arrest warrant was to meet the requirements set out in article 16 and its issuance could therefore not contravene articles 14, 16 or any other articles of the Constitution.<sup>95</sup>

294. A Circuit court panel determined that lack of foundation (guarantee of legality) is a formal violation different from undue or improper foundation, which is a material violation of substance, the effects engendered by the two being different. Lack of foundation occurs when one fails to state the legal provision applicable to the matter and the reasons why it is considered that the case falls under that provision. Undue foundation occurs when the legal rule is indeed invoked but it proves to be inapplicable to the case due to characteristics of the case which render the rule inapposite. Improper foundation occurs when the authority does indeed state the reasons for the act but those reasons are not in consonance with the legal rule that is being applied to the case. The foregoing distinction makes it possible to note that, in the first case, we are dealing with a formal violation because the act of authority lacks elements deriving from a constitutional imperative; therefore, a mere reading of the act challenged reveals their absence and a constitutional appeal (amparo) will lie. In the latter case, there is a material violation of

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<sup>(92)</sup> ARREST WARRANT. UPON ISSUING THE SAME, JUDGE MUST ANALYZE THE MODALITIES OR CHARACTERISTICS OF THE OFFENSE, *Judicial Weekly of the Federation*, ninth period, volume XVII, May 2003, opinion 1/J. 18/2003. Page 175.

<sup>(93)</sup> ARREST WARRANT. MUST ISSUE FROM COMPETENT JUDICIAL AUTHORITY, *Judicial Weekly of the Federation*, ninth period, volume IX, May 1999, opinion 1/J. 26/99, pp. 267.

<sup>(94)</sup> PREVENTIVE DETENTION. TIME SPENT IN DETENTION MUST BE CONSIDERED PARTIAL FULFILMENT OF SENTENCE OF DEPRIVATION OF LIBERTY, FOR PURPOSES OF COMPUTATION OF ITS COMPLETION, *Judicial Weekly of the Federation*, ninth period, volume XVIII, August 2003, opinion 1/J. 35/2003, pp. 176.

<sup>(95)</sup> ARREST WARRANT MAY VIOLATE GUARANTEES PROTECTED IN ARTICLES OF THE CONSTITUTION OTHER THAN ARTICLE 16, *Judicial Weekly of the Federation*, ninth period, volume IX, May 1999, opinion 1/J. 31/99, pp. 285.

substance because the formality has been satisfied by stating foundations and reasons, but both are incorrect and, therefore, as a general rule, also give rise to a protective decision.<sup>96</sup>

### **C. Institutional measures**

#### **1. Public security**

295. During the reporting period several initiatives have been taken to safeguard essential individual rights in a climate of respect for freedoms by agencies entrusted with tasks of public security.

296. Under the 1995-2000 National Public Security Programme, and specifically as part of the National Crusade against Crime begun in August 1998, the federal Government, in coordination with the governments of the states and the Federal District, made headway in the pursuit of the eight lines of action laid down as a comprehensive response to crime and impunity.

297. With that aim in view, a National Public Security Programme was established with the participation of the governments of the 32 federative entities, in accordance with the General Act Establishing the Foundations for Coordination of the National Public Security Programme. In particular, a strategy was shaped encompassing four aspects: strengthening the legal framework, consolidating the National Public Security Programme, integrating and developing the Federal Police and the fight against organized crime, and strengthening the National Drug Control Programme.

298. In 1999, pursuant to the Federal Police Act, the various crime fighting functions that had been performed by different agencies were unified in a single institution, thereby seeking to establish the police function as a substantive responsibility, recognizing the degree of specialization needed to deal with increasingly sophisticated organized crime, safeguarding scrupulous respect for human rights, and developing activities under the following principles:

- a) strengthening the Mexican State in the sphere of public security;
- b) coordinating all public security agencies of the federation, federative entities and municipalities, with full respect for their respective areas of jurisdiction;
- c) establishing a new concept of public security which includes crime prevention, administration of justice, and social rehabilitation;
- d) enhancing the status, image and social acceptance of public security institutions in order to make them fully able to train their personnel based on constitutional principles of legality, honesty, fairness, impartiality and efficiency;
- e) providing, exchanging and systematizing information on public security;

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<sup>(96)</sup> FOUNDATION AND GROUNDS. THE DIFFERENCE BETWEEN FAILURE TO SATISFY THE TWO CONSTITUTIONAL REQUIREMENTS AND SATISFYING THEM INSUFFICIENTLY EXCEEDS THE SCOPE OF EXAMINATION OF THE CONCEPTS OF VIOLATION AND THE EFFECTS OF THE DECISION ON APPEAL, Judicial Weekly of the Federation, ninth period, volume XXVII, February 2008, opinion I.3rd.C.J/47, pp. 1964 ss.

- f) fostering community participation in the planning of policies and measures to improve public security services;
- g) promoting mechanisms to provide a service for emergencies and for locating missing persons and property.

299. In 2000, in response to citizen demand to give the highest priority to public security, the Ministry of Public Security was created. Among its goals are: developing public security policies and proposing a federal policy against crime which includes rules, instruments and actions to effectively prevent the commission of crimes; promoting citizen participation in the formulation of plans and programmes of prevention of federal crimes and, through the National Public Security System, crimes falling under general jurisdiction; protecting the integrity and property of persons, preventing the commission of federal crimes, and preserving public freedom, order and peace.

300. The 2001-2006 National Public Security Programme<sup>97</sup>, as well as the “Emerging National Programme of Action to Combat Crime” under goal 7, “Ensuring Public Peace for the Citizenry,” provide for the following:

“Protecting public security is the primary and essential responsibility of the State. Protecting and guaranteeing the liberty, physical integrity and property of the population are the bases for sound economic, political and social development in order to enjoy certainty, confidence, order and stability. The impact of the campaign against crime will be measurable by the number of crimes committed and reported. It is essential to promote a culture of reporting by the victims of crime...”

301. With the publication in 2001 of the Internal Regulations of the Ministry of Public Security, the Department of Community Services, the General Directorate of Community Services and Citizen Participation, and the General Directorate for the Protection of Human Rights were created.

302. The Department of Community Services retained the function of developing agreements, policies and general guidelines for inter-agency coordination with public, social and private entities with a view to preventing crime and responding to victims. Responding to crime victims specifically fell under the responsibility of the then General Directorate of Community Services and Citizen Participation, with its functions including that of establishing guidelines consonant with institutional policies to provide guidance to crime victims about necessary legal, medical and psychological services and directing them towards the appropriate institutions to help with their recovery.

303. The General Directorate for the Protection of Human Rights was assigned responsibility for designing policies and guidelines to promote and disseminate to the citizenry and public servants of the Ministry of Public Security a culture of protection and respect for human rights in the framework of public security. In September 2002, General Directorate for the Protection of Human Rights and the General Directorate of Community Services and Citizen Participation

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<sup>(97)</sup> Published in the Diario Oficial, 14 January 2003.

were merged to form an Office of General Coordination, combining the functions formerly assigned to the two General Directorates.

304. In early 2005, the Office of General Coordination for Citizen Participation and Human Rights was placed under the responsibility of the Sub-secretariat for Prevention and Citizen Participation. The General Office for Response to Victims of Crime was also created, under the jurisdiction of the Sub-secretariat for Criminal Policy, with the mandate of carrying out the functions formerly entrusted to the General Directorate of Community Services and Citizen Participation with respect to crime victims.

305. On 13 March 2007, the Sub-secretariat for Prevention, Liaison and Human Rights was created, replacing the former Office of General Coordination for Citizen Participation and Human Rights, which became responsible for the General Directorate for Human Rights. The structure and functions of the former General Directorate for Response to Victims became under the General Directorate for Human Rights.

306. With this institutional structure, the Ministry of Public Security attends to its responsibilities in the domain of human rights through the following actions:

- a) It keeps channels open continuously with society so that it responds to and investigates any complaint or charge of human rights violations;
- b) It follows up on the fulfilment of recommendations accepted that have been issued by the various public and private entities that protect human rights;
- c) It fosters a culture of human rights among public servants of the Ministry and its detached administrative agencies through ongoing and continuous training with special emphasis on the human rights of crime victims;
- d) It protects human rights defenders through interim and provisional measures which give security to their persons, families and property;
- e) It prevents human rights violations in police operations and in prisons through the presence of observers, intervenors, visitors and personnel specialized in human rights;
- f) It implements the lines of action of the National Human Rights Programme relating to crime prevention and ensuring respect for the human rights of persons deprived of their liberty who are serving sentences;
- g) It promotes mediation as an alternative conflict resolution system;
- h) It engages in inter-agency cooperation with other government entities, international agencies and with the human rights commissions on matters such as migration, indigenous affairs, vulnerable groups, prisoners, women, children and youth, persons with disabilities, economic, social and cultural rights, etc., and in all matters falling within the responsibilities of the Ministry of Public Security.

- k) With the participation of civil society organizations, it develops specialized programmes in human rights and humanitarian law which impact on the national public security agenda;
- l) It participates in the inter-agency group which, together with the CIDE, designs the contents of the four basic protocols on detention, torture, prisoners and public demonstrations;
- m) It participates in the Commission on Government Policy on Human Rights, which is chaired by the Ministry of the Interior, and whose vice-chairmanship falls to the Ministry of External Relations, in order to seek harmonization of the international bodies of rules which protect human rights with the national legal framework, and in order to ensure their observance;
- n) It promotes the establishment of a comprehensive system of response to victims which encompasses the specialized multidisciplinary services needed by crime victims.
- o) It develops protocols for responding to victims by type of crime (kidnapping, family violence, victims of natural disasters and acts of violence);
- p) It manages a National Registry of Missing Persons;
- q) It intervenes in disasters situations, acts of violence and mass events through mobile units with medical, psychological, social-work and legal personnel who take care of participants who are victims of natural disasters or in events involving large concentrations of people;
- r) It develops strategies of prevention and care for victims of trafficking in persons;
- s) Representatives of the Human Rights area of the Ministry of Public Security took part in the hearings before international mechanisms that took place in March and July of 2007 which addressed disputes against the Mexican State pertaining to torture, persons deprived of their liberty in Oaxaca, and interim measures in favour of the media and journalists in the context of freedom of the press in Mexico. They also attended the 17th session of the United Nations Commission on Crime Prevention and Criminal Justice, which discussed organized crime trends worldwide and worked on the characterization of the offense of violence against women.

307. The Ministry of Public Security put forward proposals to identify national goals and design the general strategies of the 2007-2012 National Development Plan of 1 May 2007, which lays the foundation for the design of sectoral, special, institutional and regional programmes which fall under the Plan, specifically:

- a) Under the contents of Guiding Principle 1, “Rule of Law and Security,” it is stated that the progress of every nation is based on effective justice under the rule of law. Human development requires unqualified respect for the law, because it is through observance of the law that people can achieve better opportunities in life, participate

freely and responsibly in democracy, and enjoy security in their lives and property. A democratic state cannot be achieved without the rule of law.

- b) Under this first guiding principle of public policy, the sub-theme “Human Rights” appears, emphasizing Mexico’s participation in the universal goal of disseminating and protecting the full enjoyment of human rights.

308. On 12 June 2008, the Ministry of Public Security signed an agreement to engage in coordinated action with the International Committee of the Red Cross (ICRC) with a view to integrating national and international rules with respect to Human Rights and Humanitarian Principles applicable to the police function, as well as to train the personnel of the Ministry and its detached administrative organs based on the model of the “Serve and Protect” programme. Stress will be laid on aspects such as the use of force, the use of firearms, arrest and detention, with the aim of promoting ethics and values in service, as well as unqualified respect for individual guarantees.

309. In light of the threat to public security and institutions presented by the growth of drug trafficking and other forms of organized crime during the reporting period, the Mexican Government has taken a variety of steps, including resort to armed force, with the aim of ensuring the full effectiveness of the rule of law. Intervention by the armed forces, however, is provided for and circumscribed by specific legal provisions, contained in the decrees of 9 May and 17 September 2007. Those decrees provide that such support may be given only at the request of civil authorities, cannot displace the functions which fall to those authorities, and must be authorized by the head of the Ministry of National Defence.<sup>98</sup>

310. In view of the fact that governability and protection of the rule of law are possible only when institutions and public servants comply with the law in all their activities, forming a culture of legality within the Ministry of Public Security is one of its basic missions, and one of its guiding principles is the protection of human rights. The same consideration applies to intervention by the armed forces when they provide support to federal or local authorities in the area of public security.

311. The governmental units which are empowered to make legitimate use of force and firearms have programmes in place to adopt international rules such as those contained in the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Declaration on the Protection of All Persons from Enforced Disappearance, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

312. In order to ensure appropriate conduct by police forces, several mechanisms are in place, including the Citizens’ Council of the Ministry of Public Security, composed of recognized personalities from the social sector, private enterprise, academic institutions and civil society

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<sup>(98)</sup> See:

[http://www.dof.gob.mx/nota\\_to\\_imagen\\_fs.php?codnota=4987036&fecha=09/05/2007&cod\\_diario=211043](http://www.dof.gob.mx/nota_to_imagen_fs.php?codnota=4987036&fecha=09/05/2007&cod_diario=211043) and  
[http://www.dof.gob.mx/nota\\_to\\_imagen\\_fs.php?codnota=5000808&fecha=17/09/2007&cod\\_diario=211767](http://www.dof.gob.mx/nota_to_imagen_fs.php?codnota=5000808&fecha=17/09/2007&cod_diario=211767)



organizations. The activities of these persons, like that of persons in other like bodies operating at the state and municipal level, is strictly on a volunteer basis and they are completely independent.

## **2. Non-jurisdictional protection of human rights**

313. The National Human Rights Commission has a programme on indigenous affairs under which action is taken with appropriate authorities nationwide to obtain parole for indigenous prisoners in cases where it is in accordance with the law. This programme benefited:

- a) 922 persons from 16 November 2000 to 31 December 2001;
- b) 1,206 persons in 2002;
- c) 688 persons in 2003;
- d) 864 persons in 2004;
- e) 811 persons in 2005;
- f) 804 persons in 2006;
- g) 1,137 persons in 2007.

314. On 19 June 2001, the National Human Rights Commission issued General Recommendation No. 2 concerning the practice of arbitrary detentions, addressed to offices of Attorneys General and to the Attorney General of the Republic, to the Minister of Public Security, and to officials in charge of public security in the federative entities. The Commission warns in this recommendation that arbitrary detentions are contrary to the principle of presumption of innocence.

315. With regard to the recommendation of the Committee following the submission of the Fourth Report of Mexico concerning the need to amend legal provisions and establish procedures compatible with the provisions of article of the Covenant, it is reiterated, as stated to the Committee in 2000,<sup>99</sup> that the concept of flagrancy has been limited, circumscribed and confined to very specific cases, as in article 193 of the Federal Code of Criminal Procedure.

316. In those cases, the prosecutorial authorities will order the detention of the suspect if procedural requirements have been met and if the offense is one that warrants deprivation of liberty, or they will order the release of the person detained when the penalty is not one of deprivation of liberty or is an alternative sentence.<sup>100</sup>

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<sup>(99)</sup> See document CCPR/C/123/Add.2, of 28 April 2000.

<sup>(100)</sup> Offenses which are treated as felonies for all legal purposes because they significantly affect fundamental social values are those addressed in the following articles of the Penal Code: grave intentional murder (homicidio por culpa grave), treason, espionage, terrorism, sabotage, piracy, genocide, escape from prison, attacks upon means of communication, unlawful use of facilities intended for air transport, crimes against health, corruption of minors, trafficking in persons, exploitation of the body of a minor through sexual intercourse, counterfeiting of currency,

317. The presence of defence counsel is a constitutional guarantee that is given effect from the arrest of the accused and extends throughout the preliminary investigation and the trial. It is, in fact, one of the indispensable requirements in order for the accused to be validly charged (article 20 of the Constitution). It is prohibited to hold persons in incomunicado detention. Any person detained has the right to a lawyer and to be represented by a lawyer from the moment of his arrest.

## **X. ARTICLE 10: RIGHTS OF PERSONS DEPRIVED OF LIBERTY**

### **A. Legislative advances**

318. On 14 August 2001, the Diario Oficial published an addition to article 18 of the Constitution,<sup>101</sup> which establishes that persons sentenced must serve their sentences at the prisons closest to their domicile, in such cases and under such conditions as may be established by law, in order to favour their reassimilation into the community as a form of social rehabilitation.

319. That reform requires the establishment of specialized institutions, courts and authorities for the administration of justice for adolescents aged 12 to 18 who by their conduct have broken the criminal law. Persons under age 12 who have engaged in criminal conduct shall be subject only to rehabilitation and social assistance.

320. This new system bases its principles on the best interests and comprehensive protection of adolescents, due process and measures of treatment aimed at social and family reassimilation of the adolescent and full development of his personality and capacities.

321. On 12 March 2006, a reform of article 18 of the Constitution entered into force which changed the age at which treatment in confinement can be applied to adolescents aged 14 to 18 who have engaged in antisocial conduct that is considered serious, providing that it be for as short a time as possible.

322. From 1997 to 2007, several provisions of the Federal Penal Code<sup>102</sup> were reformed, including the following:

- a) The possibility of granting parole to persons sentenced for crimes against health who manifestly exhibit cultural backwardness, social isolation or severe economic hardship;
- b) For drug transportation offenses, parole may be granted to first offenders, even if they do not fall within the three aforementioned categories. The importance of this provision results from the fact that 85% of those sentenced for crimes against health fall into the category of persons transporting small quantities of drugs. This reform

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rape, highway robbery, homicide, kidnapping, aggravated theft, theft, extortion, transactions with funds of unlawful provenance, torture, and trafficking in undocumented persons.

<sup>(101)</sup> See: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_151\\_14ago01\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_151_14ago01_ima.pdf)

<sup>(102)</sup> See: Federal Penal Code, <http://www.ordenjuridico.gob.mx/Federal/Combo/C-8.pdf>

seeks to satisfy a demand arising from social reality in this area and responds to the presence of a large number of people in prisons;

- c) The maximum prison term was set at 60 years.<sup>103</sup>

323. Based on the reform of article 18 of the Constitution, on 12 March 2006, which establishes a specialized juvenile system of justice, all federative entities have made changes in their regulatory laws. As of early 2008, all of them have a Law on Juvenile Justice, except the Federal District, where it will enter into force on 6 October 008. With respect to federal law, the legislation is under review in the Senate.

324. Accordingly, the term juvenile offender is being replaced by the term adolescent and the so-called offenses by conduct characterized as criminal by the penal laws. The juvenile proceeding will no longer be administrative in nature, since preparation of the case will not depend on an administrative organ; rather there will be a specific proceeding of a jurisdictional character, a form of administration of justice.

325. The reform also provides that the jurisdictional organ and the executive party are not part of the same entity (prior to this provision, the Ministry of Public Security participated as both judge and party). Following the reform, the jurisdictional entity is the Council for Minors and the executive entity is the General Directorate for Prevention and Treatment of Minors. The reclassification of minors derives from the offense committed and the applicable body of law. The Detached Administrative Offices of Social Prevention and Rehabilitation can only deal with adolescents over age 12 and prior to reaching their 18th birthday who have violated the Federal Penal Code.

326. In addition, the reform of the system of public security and penal justice published on 18 June 2008 in the Diario Oficial contains several provisions on deprivation of liberty. In particular, it provides for pre-trial detention, which can be applied exceptionally when other interim measures are not sufficient to ensure the appearance of the accused at trial, the pursuit of the investigation, protection of the victim, witnesses or the community, or when the accused is being tried for or has previously been convicted of committing a crime of malice (*delito doloso*). It also contemplates application of preventive detention in all cases of organized crime, intentional homicide, rape, abduction, crimes committed with violent means such as arms and explosives, and grave crimes defined by law against the security of the nation, against the free development of the human person, and against health.

327. It also includes short-term detention, in article 16 of the Constitution, exclusively for cases of investigation and prosecution of organized crime. In the case of investigations, short-term detention can be applied according to terms and conditions determined by the judge pursuant to the applicable law, for a period of up to 40 days and with the option of extending it for another 40 days if the circumstances which initially warranted it continue. This provision resulted from the resources available to organized crime to flout justice, and seeks to develop effective means to counteract its impact on public security. The aim is to ensure that accused persons do not evade legal process initially or judicial proceedings at a later stage, and that they do not hamper investigation or affect the integrity of persons involved.

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<sup>(103)</sup> See: <http://www.diputados.gob.mx/LeyesBiblio/pdf/9.pdf>, Diario Oficial, 17 May 1999.

## B. Judicial decisions

328. The Supreme Court of Justice of the Nation has held that persons being tried must be kept completely separate from convicted persons in prisons and cannot be subjected to the same regime of treatment as that designed for the latter, since convicted persons are subject to a regime of labour and education with a view to achieving their social rehabilitation, while the former do not even have the status of offenders.<sup>104</sup>

329. With regard to juvenile offenders, the Court has held that they can be deprived of their liberty only when they commit serious antisocial offenses, as defined by rules of criminal law, so that their arrest for civic or administrative offenses must be considered unconstitutional.<sup>105</sup>

330. The Court has concluded that determining the form of treatment in confinement (deprivation of liberty) must be decided and individualized with the greatest possible precision.<sup>106</sup>

331. A panel of judges has held that the legal interpretation of article 1 of the Convention on the Rights of the Child, together with article 34 of the Law on social adaptation and guardianship boards for youthful offenders of the state of Veracruz, which provide that minors under age 16 are not subject to criminal liability (same provision contained in article 66 the Law on social assistance and protection of youthful wards of the state), mean that the fact that the applicable state law sets the age of majority earlier, as happens in the case of this law, does not constitute a violation of the aforementioned convention, because this power is expressly reserved to the federative entities. Consequently, if both the Law on social adaptation and guardianship boards for youthful offenders of the state of Veracruz and the Law on social assistance and protection of youthful wards of the state in Veracruz consider only minors under age 16 as immune from criminal liability, it is to be understood that they reach adulthood upon reaching that age and have the legal capacity to understand the unlawful character of an act and to behave in accordance with that understanding; therefore, a decision by a district judge that the complainant in the case in question was chargeable with criminal conduct was correct, as it was a matter of record that, at the time of the appeal against the decision, he was considered to be probably responsible for the unlawful act with which he was charged.<sup>107</sup>

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<sup>(104)</sup> PREVENTIVE DETENTION MUST TAKE PLACE IN A SEPARATE PLACE AND UNDER A REGIME DIFFERENT FROM THAT INTENDED FOR THOSE SERVING PRISON SENTENCES, *Judicial Weekly of the Federation*, ninth period, volume X, September 1999, opinion 1 XXV/99, pp. 91.

<sup>(105)</sup> CIVIC CULTURE OF THE FEDERAL DISTRICT. ARTICLE 43, PARAGRAPHS FOUR AND FIVE, OF THE RELEVANT LAW, PUBLISHED IN THE OFICIAL GAZETTE OF THE ENTITY ON 31 MAY 2004, PROVIDING FOR ARREST OF JUVENILE OFFENDERS AGAINST SAID LAW, VIOLATES ARTICLE 18 OF THE CONSTITUTION, *Judicial Weekly of the Federation*, ninth period, volume XXVI, December 2007, opinion P./J. 106/2007, pp. 978.

<sup>(106)</sup> JUVENILE OFFENDERS. THE RESOLUTION WHICH IMPOSES THE MEASURE OF TREATMENT IN CONFINEMENT MUST SET ITS DURATION IN A DETERMINED AND INDIVIDUALIZED MANNER, *Judicial Weekly of the Federation*, ninth period, volume XXII, July 2005, opinion 1/J. 68/2005, pp. 19 ss.

<sup>(107)</sup> CRIMINAL LIABILITY. ARTICLE 34 OF THE LAW ON SOCIAL ADAPTATION AND GUARDIANSHIP COUNCILS FOR JUVENILE OFFENDERS AND ARTICLE 66 OF THE LAW ON SOCIAL ASSISTANCE AND PROTECTION OF CHILDREN OF THE STATE OF VERACRUZ, WHICH ALLOW CRIMINAL

### C. Institutional measures

332. With the aim of giving renewed impetus to the improvement of the situation in the prison system, a comprehensive overhaul of the system was set out in the 2001-2006 National Development Plan and in the framework of the 2001-2006 National Public Security Plan. This effort sought to find solutions to factors hampering the proper functioning of correctional institutions and preventing proper rehabilitation and social reintegration of inmates: factors such as prison overpopulation and overcrowding, corruption, scarcity of resources and trained personnel, as well as the slowness with which the legal situation of inmates is resolved: 31.75% of persons tried under general jurisdiction and 9.18% of those tried under federal jurisdiction have not been sentenced.<sup>108</sup>

333. The Detached Administrative Office of Social Prevention and Rehabilitation was created to provide institutional support for these plans. This organ of the Ministry of Public Security seeks to establish effective strategies within the institutions responsible for applying programmes of prevention and social rehabilitation which consider the active participation of the public, private and social sectors with the aim of preventing the commission of crimes and socially rehabilitating individuals who have broken the law.

334. The functions of this organ are: to propose policies, strategies and programmes that ensure the operation of the federal prison system; to verify application of policies and programmes for application of sentences and measures of non-custodial security, and to establish prison alternatives; and to coordinate the national prison policy and promote its adoption by the Federal District, federative entities and municipalities.

335. In addition, inter-agency coordination mechanisms have been set up to strengthen inter-governmental links and implement strategies of general benefit to prevention and social rehabilitation. To implement these mechanisms, regional meetings have been held for prevention and rehabilitation in various parts of the country, where different topics were addressed according to the characteristics of each region, thereby fostering harmonization and exchange views on prison matters.

336. National conferences for the prevention and rehabilitation, which had been held previously, continued to be held in order to lay the groundwork for the formation of a real national system of prevention and rehabilitation. They have discussed issues such as the adequacy of the system of social rehabilitation to meet minimum standards for rehabilitation; treatment of minors; the implementation of prison alternatives and probation; setting up programmes and mechanisms that contribute to maintaining order, internal security and respect for human rights in the prison system; the process for the granting of early release; the international transfer of prisoners; transfers within and between states, the transfer of highly dangerous inmates to maximum security Federal Centres for Social Rehabilitation; and measures of prevention and rehabilitation.

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LIABILITY FROM AGE SIXTEEN, DO NOT CONTRAVENE ARTICLE 10 OF THE CONVENTION ON THE RIGHTS OF THE CHILD OR THE PRINCIPLE OF SUPREMACY OF INTERNATIONAL TREATIES, *Judicial Weekly of the Federation*, ninth period, volume XIX, February 2004, opinion pp. 1068.

(<sup>108</sup>) Prison statistics of the National Archive of Sentenced Persons and Prison Statistics, published on the web site of the Ministry of Public Security, June 2008.

337. The Ministry of Public Security obtained recognition through international standard ISO 9001.2000 for the process of recruitment and selection of personnel under the Office of Innovation and Quality in Development of the Detached Administrative Office for Prevention and Rehabilitation, in which new strategies were applied in order to enhance the quality of the institution's services.

338. The Centre for training and human development of the Detached Administrative Office for Prevention and Rehabilitation was also created. This unit provides training, skill-building, induction and capacity-building for the personnel; promotes their personal and career development; pursues professionalization, enhanced recognition and an improved image of the tasks of prison personnel, and strengthens a culture of quality, competent work and respect for human rights. This is reflected primarily in the pursuit of programmes of prevention and social rehabilitation for the benefit of the inmate population

### **1. Prison population**

339. The growth of the prison population is one of the main problems faced by the authorities of detention centres, since it implies greater investments in infrastructure, security personnel and health.

340. In June of 2007, the national prison system is composed of 447 prison centres, of which six are under the responsibility of the federal government. The total capacity is 163,867 spaces.

#### **NATIONAL PRISON SYSTEM**

| <b>Prison Centres</b>       | <b>Number</b> | <b>Capacity</b> |
|-----------------------------|---------------|-----------------|
| federal Government          | 6             | 6,192           |
| Federal District Government | 10            | 18,340          |
| State Governments           | 336           | 135,978         |
| Municipal Governments       | 95            | 3,557           |

Source: Detached Administrative Office for Prevention and Rehabilitation

341. The number of inmates has experienced a continuous growth that has practically outstripped any measure of expansion and/or modification of the prisons. The national prison population in May 2008 reached 213,530 inmates in the Prison Centres of the Mexican Republic and 3,927 inmates in the Federal Centres for Social Rehabilitation.

342. The following table shows the growth of the national prison population from the year 2000, as well as installed capacity:

| NATIONAL PRISON SYSTEM 2000 - 2007                                     |             |         |         |         |         |         |         |                |         |        |
|------------------------------------------------------------------------|-------------|---------|---------|---------|---------|---------|---------|----------------|---------|--------|
| Item                                                                   | ANNUAL DATA |         |         |         |         |         |         | January - June |         |        |
|                                                                        | 2000        | 2001    | 2002    | 2003    | 2004    | 2005    | 2006    | 2006           | 2007    | Change |
| Prison infrastructure                                                  |             |         |         |         |         |         |         |                |         |        |
| Existing prisons                                                       | 444         | 446     | 448     | 449     | 454     | 455     | 454     | 455            | 447     | -1.8   |
| Total spaces available                                                 | 121,135     | 134,567 | 140,415 | 147,809 | 154,852 | 159,628 | 164,929 | 158,945        | 163,867 | 3.1    |
| Prison population                                                      | 154,765     | 165,687 | 172,888 | 182,530 | 193,889 | 205,821 | 210,140 | 212,744        | 216,845 | 1.9    |
| -Federal jurisdiction                                                  | 41,647      | 44,594  | 47,776  | 49,160  | 49,618  | 51,471  | 49,217  | 51,523         | 50,450  | -2.1   |
| -General jurisdiction                                                  | 113,118     | 121,093 | 125,112 | 133,370 | 144,271 | 154,350 | 160,923 | 161,221        | 166,395 | 3.2    |
| Overpopulation (%) (1)                                                 | 27.8        | 23.1    | 23.1    | 23.5    | 25.2    | 28.9    | 27.4    | 33.8           | 32.3    | -1.5   |
| Inmates tried                                                          | 63,724      | 71,501  | 73,685  | 80,134  | 80,661  | 87,844  | 89,601  | 92,265         | 92,381  | 0.1    |
| -Federal jurisdiction                                                  | 119,917     | 13,089  | 13,594  | 15,675  | 15,527  | 18,082  | 18,048  | 18,884         | 18,496  | -2.1   |
| -General jurisdiction                                                  | 51,807      | 58,412  | 60,091  | 64,459  | 65,134  | 69,762  | 71,553  | 73,381         | 73,885  | 0.7    |
| Inmates sentenced                                                      | 91,041      | 94,186  | 99,203  | 102,396 | 113,228 | 117,977 | 120,539 | 120,479        | 124,464 | 3.3    |
| -Federal jurisdiction                                                  | 29,730      | 31,505  | 34,182  | 33,485  | 34,091  | 33,389  | 31,169  | 32,639         | 31,954  | -2.1   |
| -General jurisdiction                                                  | 61 311      | 62 681  | 65 021  | 68 911  | 79 137  | 84 588  | 89 370  | 87 840         | 87 840  | 5.3    |
| Islas Mariás<br>Federal<br>Penal Colony<br>Inmates serving<br>sentence | 1,858       | 1,670   | 1,504   | 997     | 649     | 986     | 915     | 694            | 804     | 15.9   |

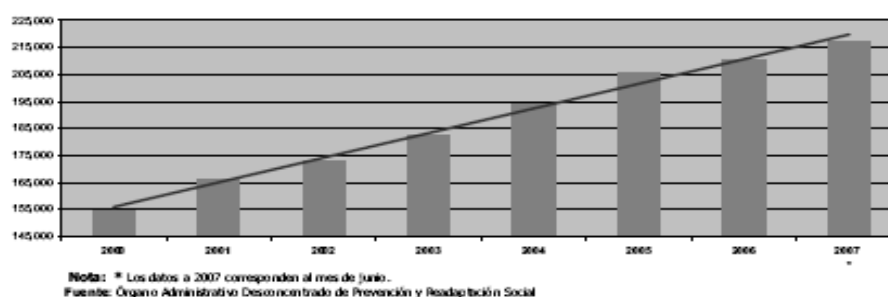
(1) Tried and sentenced inmates in relation to spaces available.

(2) June data.

Source: Ministry of Public Security and Detached Administrative Office for Prevention and Rehabilitation

343. From December 2000 to June 2007 absolute capacity grew by 42,732 spaces and overpopulation showed an increase of 4.5%. With the exception of federal prisons, there is insufficient space in 53% of prisons nationwide. In absolute terms, this means that the prison infrastructure is burdened with 52,978 extra prisoners.

### GROWTH OF PRISON POPULATION: 2000 – 2007

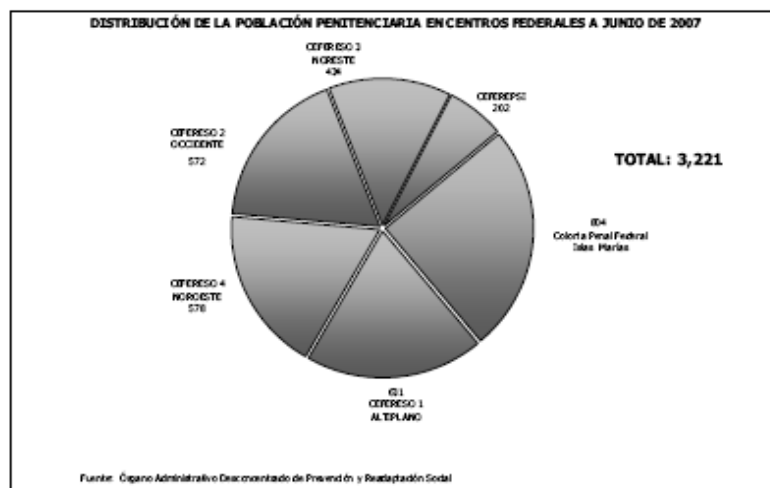


344. There are 236 state and municipal prison centres with overpopulation; 81 have prisoners held under general jurisdiction and 155 have prisoners held under both general and federal jurisdiction. In some prisons of the federative entities, overpopulation has reached such levels that it renders any rehabilitation measure virtually impossible.

345. Coordinated actions have been carried out by the authorities of the three branches of government to reduce the high rates of overpopulation. However, the trend of the prison population has continued to increase steadily, so that it is necessary to modernize the prison model in order to respond to the conditions prevailing within prisons and ensure effective rehabilitation of inmates.

346. In early 2008, Federal Centres for Social Rehabilitation did not present problems of overpopulation. Unlike the state centres, their mission is to provide for maximum security. That approach calls for a programme of progressive treatment aimed at containing, neutralizing and diminishing criminal conduct in order later to modify the negative behaviour patterns of the inmate.

347. As of June 2007, the federal prison system has 6 Centres for Social Rehabilitation, with capacity for 6,192 inmates.



348. In the Federal Centres for Social Rehabilitation, there is a programme of preventive and corrective maintenance which addresses the most urgent problems of infrastructure. Among the more important activities carried out through 2007, the following are noteworthy:

- a) At Federal Social Rehabilitation Centre No. 2, “Occidente,” construction was completed on a space for safekeeping of valuables of employees, with a view to preventing the entry of prohibited objects and/or substances. Cubicles in the visiting area were also built, which are used to deal with matters such as bank accounts, taking of photographs and paperwork, in order to help optimize rules and security procedures.



- b) As part of the programme to relieve pressure at the Islas Mariás Federal Prison Colony, remodelling work was done in order to accommodate 399 inmates from state rehabilitation centres.

349. In 2001, the National Human Rights Commission, through recommendation 015/2001 addressed to the Ministry of Public Security, referred to the situation of women in prison and specific conditions required for their incarceration, in light of their gender. That recommendation is not applicable to the Centres for Social Rehabilitation, since there are no women inmates in those centres, with the exception of the Islas Mariás Federal Prison Colony.

350. In 2008, the Ministry of Public Security introduced programme of conservation and management of the Islas Mariás biosphere reserve, for the purpose of complying with the inter-agency consultation phase during which comments may be made, before the programme undergoes public consultation and approval and publication of such a programme in the Diario Oficial, and in order to make the operation of this prison compatible with the presidential decree of November 2000 declares the Islas Mariás archipelago a natural biosphere reserve.

351. The Islas Mariás Federal prison colony has been certified by the United Nations and the Red Cross as a paradigm of the Istanbul Protocol (agreement to eliminate all forms of torture). On 23 May 2008, the presidents of the state human rights commissions of the 32 federative entities made a visit to the penal colony in order to learn about the life of the inmates.

## 2. Early release

352. From December 2006 to June 2007, 11,453 federal sentencing records were analyzed in order to submit to the Commission on Prevention and Social Rehabilitation cases of inmates who were eligible for some of the benefits of early release provided in criminal law in accordance with the objectives of the penitentiary regime of the Mexican penal system. To that end, the results of the rehabilitation process and compliance with legal requirements for granting such benefits were fully evaluated.

353. As an advisory organ, the Commission on Prevention and Social Rehabilitation held 35 meetings, 25 ordinary and 7 extraordinary, in which it conducted a legal and criminological assessment of 2,789 federal sentencing records. Of these, 2,206 cases were found eligible. In total, 2,314 certificates of early release were issued and delivered.<sup>109</sup>

### CASES OF EARLY RELEASE

| MONTH         | CASES APPROVED BY COMMISSION | RELEASE CERTIFICATES DELIVERED |
|---------------|------------------------------|--------------------------------|
| December 2006 | 0                            | 492                            |
| January       | 276                          | 68                             |
| February      | 414                          | 403                            |
| March         | 431                          | 413                            |
| April         | 296                          | 415                            |

<sup>(109)</sup> The Detached Administrative Office of Social Prevention and Rehabilitation informally reviews the files on inmates who may be eligible for some form of early release, and these are examined by the Review Committee weekly.

| MONTH | CASES APPROVED BY COMMISSION | RELEASE CERTIFICATES DELIVERED |
|-------|------------------------------|--------------------------------|
| May   | 424                          | 192                            |
| June  | 365                          | 331                            |
| Total | 2,206                        | 2,314                          |

Source: Detached Administrative Office for Prevention and Rehabilitation

354. Of the cases evaluated and approved, 80 related to inmates of indigenous extraction, 13 related to older adults, and 41 were approved because imprisonment was incompatible with the state of health of the inmate and the sentence was modified.

355. 14 multidisciplinary mobile units were organized in the Federal District and in the federative entities of Coahuila, Nuevo León, Quintana Roo, Sinaloa, Veracruz, Yucatán and Zacatecas.

356. The Office of the Attorney General was requested to provide information about 3,418 cases that were nearing eligibility for release in order to ascertain whether there had been participation in organized crime and to submit the data to the Commission on Prevention and Social Rehabilitation, entrusted with evaluating the background of the cases.

357. The Ministry of Public Security issued 161 designations and 1,186 commutations to inmates under federal jurisdiction who will serve out their sentence at a Social Rehabilitation Centre in one of the states.

### **3. Early release of indigenous detainees**

358. The National Council of Indigenous People has two programmes relating respectively to administration of justice and release of prisoners.

359. The programme to promote agreements in the area of justice had a budget of 37 million pesos during the 2007 fiscal year. It was used to support 504 social organizations and agrarian units which provided a variety of legal services (advice, case processing, defence); training in and dissemination of individual guarantees, human rights and indigenous rights; and case work regarding registration with the civil registrar and release of indigenous prisoners. These activities benefited 139,820 people in 2,256 localities of 451 municipalities within 26 federative entities.

360. In 2008, the programme has a budget of 37 million pesos for the conclusion of 535 cooperation agreements with social organizations and approved agrarian units to develop projects to promote and defend the rights of indigenous peoples. An estimated 120,000 people are expected to benefit directly.

361. Under the Project for release of indigenous prisoners, support was given during fiscal year 2007 to the release of 946 indigenous people in 28 states, with a total expenditure of 7,375,548.31 pesos. A census was conducted of indigenous persons deprived of liberty in 402 prisons in the country, showing a population of 9,888 indigenous people in the national prison system.

362. For fiscal 2008 there is a total budget of 1,500,000 pesos, to be used, among other planned activities, for updating the census during the period from July to October. Up to May 2008, support has been provided for the release of 214 indigenous people.

#### **4. Supervision of released persons under sentence**

363. In 2006, the national prison system dealt with 5,190 requests from judicial authorities and various authorities involved in prevention and rehabilitation to provide information about alternative sentences, suspended sentences and early release, endeavouring to maintain constant contact with authorities and to ensure prompt and expeditious administration of justice.

364. 5,453 administrative cases were prepared pertaining to the start of a monitoring period in order to initiate the control files for issuing notice of obligations for cases of alternative sentences and suspended sentences, as well as certificates of release for cases of early release. Thus, physical records are kept of the population of sentenced persons set free who are currently being monitored, and it is possible to collect the postal reports and appearance vouchers which these persons must submit as a condition of their suspended sentence or prison alternative.

365. 124,933 postal reports from sentenced persons were classified in order to ascertain whether the subjects were fulfilling their obligations and to gather information in order to convey a conclusion to judicial or administrative authorities or to the sentenced persons themselves.

366. In 5,155 cases, termination of the monitoring period was issued for sentenced persons who had been granted a suspended or alternative sentence; in 560 cases, certificates were issued for sentenced persons upon the beginning of the social follow-up.

367. There were 656 home visits made to released prisoners in the Federal District and the greater metropolitan area as part of the monitoring carried out by administrative authorities to note and observe the family, work and community context that contributes to their social reintegration. 3,187 counselling and awareness-raising sessions were also conducted aimed at therapeutic treatments and institutional or non-institutional measures.

368. As a result of the functioning of the system which the federal Government has been applying for the filing, registration and control of persons who benefited from early release or prison alternatives, "Plataforma México", a system to combat crime which consists of several databases that are generated from information submitted by various government agencies, is considering the introduction of the system in the 32 states over the short to medium term, since the system makes it possible to control and systematize uniform submissions of 40,528 people, eliminating the sending of postal reports.

369. Recently, steps were taken with the National Institute of Statistics, Geography and Informatics (INEGI) to obtain the programme IRIS (Geospatially Referenced Information Integrated into a System). Data concerning the population of persons deprived of their liberty and/or granted early release will be entered in the IRIS system in order to generate statistics for use in guiding the planning of programmes or activities for prevention and rehabilitation.

## **5. Inmates and their families**

370. As part of the early release process, strategies and actions have been pursued aimed at fulfilling the right of petition, informing and guiding sentenced inmates and their close relatives on the legal situation they face to be eligible for early release, in order to protect them from possible abuse and deception by public officials, lawyers or managers.

371. In 2007<sup>110</sup> there were a total of 21,239 consultations:

- a) 5,352 interviews in person;
- b) 11,383 interviews by telephone;
- c) 4,504 queries answered by mail.

372. In the interests of transparency and public access to government information, the web page of the Ministry of Public Security published the Application to initiate a request for early release and the Request for access to documents concerning federal inmates under an executory sentence with a view to applying for early release, as well as documents contained in each individual file which enable them to be apprised of steps taken towards obtaining early release and whether or not they may be considered eligible.

## **6. Comprehensive system of social rehabilitation**

373. The Ministry of Public Security developed the Integrated programme of rehabilitation, which includes implementation of educational, employment, cultural, sports and recreation activities through the Ministry's detached administrative bodies: the Detached Administrative Office for Prevention and Rehabilitation and the Minors' Council, in coordination with the governments of the states. The programme also contemplates improving living conditions and environments for prison inmates so as to avoid situations that encourage further criminal or antisocial behaviours.<sup>111</sup>

374. Social rehabilitation activities encompass a wide range of actions which include prevention and overcoming of addictions, work towards family and social reintegration, the organization of creative and artistic events, caring for mentally ill inmates, job training and performance of work, early release programmes, help with finding employment following release, and monitoring of inmates released. These activities are ongoing and are part of the process of rehabilitation of inmates.

375. Within the programme, in collaboration with the Youth Integration Centres, a cycle of activities to prevent addiction was organized at Care and Treatment Centres for Juveniles and at the Centres for Social Rehabilitation. For dissemination at the national level, the 32 Directorates

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<sup>(110)</sup> Analysis with a view to granting early release is a daily activity. First report on the work of the Ministry of Public Security, 2007:  
<http://www.ssp.gob.mx/portalWebApp/ShowBinary?nodeId=/BEA%20Repository/270966//archivo>

<sup>(111)</sup> Third report on the work of the Ministry of Public Security, section 1.4 "Comprehensive Overhaul of the Prison System," *op. cit.*

of Prevention around the country were invited to take part in activities aimed at inmates, their families and prison personnel.

376. During 2007, support by public and private institutions was solicited so that Federal Rehabilitation Centres would provide activities and materials that contribute to the development of programmes for culture, sport and recreation addressed to the prison population.

377. As regards stimulating creative development, Directorates for prevention and social rehabilitation of the states were sent diplomas and certificates of participation in the 2006 National Short Story, Poetry, Art and Theatre Contest for Prisons, to be issued to inmates who made entries in the contest.

378. In May 2007, calls went out for artistic and literary contests to 164 participating prisons which had received prior approval from the National Institute of Fine Arts. Posters were also sent out for the 14th Annual "José Revueltas" short story contest, the 13th Annual "Salvador Díaz Mirón" poetry contest, the 11th Annual "David Alfaro Siqueiros" drawing contest, and the 10th Annual national prison theatre contest.

379. In February 2007, the jury decided unanimously to award the 2006 DEMAC (Documentación y Estudios de Mujeres, A.C. - Women's Documentation and Studies) Prison Prize to "Women who dare to tell their story." The civil organization DEMAC selected the works, which were published in the book "Literatura Carcelaria Femenina" ("Women's Prison Literature") to disseminate the decision in the contest to women's prisons and to make known the names of the winning entries.

380. On January 25, 2007, there was a concert reading of three works published in the book "Freedom within Walls" which had been the winning entries in the national prison theatre competitions in 2004 and 2005.

381. In February 2007, distribution began of the book "Freedom within Walls," with the winning entries in the national prison theatre competitions of 2004 and 2005. Copies were sent to the directorates of prevention and rehabilitation of the states, as well as to personalities and public and private institutions that support rehabilitation programmes.

382. Through the National Coordination Office for Literature of the National Institute of Fine Arts, a donation was received of 432 works of prison literature. These publications will be sent to the libraries of the federal prisons for use by the inmate population.

383. With regard to social rehabilitation, as part of the celebration of "Family Day" from 8 to 15 March, interactive rallies were held under the theme of prevention for families of the "Islas Marías" Federal prison colony. There were 25 family reunion events emphasizing family unity, communication and emotional ties.

384. To promote the social rehabilitation of prisoners, procedures for visits from relatives and friends of federal prison inmates were streamlined, in keeping with current regulations. This helps nurture prisoners' bonds of affection with the outside, which is needed for rehabilitation. Pursuant to a "Commitment to the Citizenry Charter," 588 requests for authorization of visits by family and/or friends of federal prisoners were answered.

385. In collaboration with the Department of Prevention and Social Rehabilitation Systems, a geographical map of the population of released persons is being developed in order to identify the total number of released persons under federal sentence who are in the Federal District and the greater metropolitan area, broken down by district, municipality, community, age, sex and type of offense.

386. Medical care for mental illness in prison is a priority, in light of the situation of those affected. A programme of specialized medical care has begun in the Ciudad Ayala federal prison, in coordination with the prisons of different states, aimed at detecting inmates with mental disorders which might be treated. In that regard, specialized psychiatric care was provided for 284 inmates, of whom 96 were discharged due to significant progress in treatment and 97 were admitted to specialized treatment.

387. The types of work performed at federal prisons include: candy packaging, shirt making, sportswear and uniforms, braided nylon cord, assembly of doors, packaging of plastic bags, manufacturing of bed frames, and resin carving, among others. This job training is done through inter-agency agreements.

388. During 2007, 19 cooperation agreements with the public and private sectors were signed, focused on organizing the criminal justice system as regards job training and education. These agreements are designed to create joint endeavours that permit the participation of private investors and governmental agencies or entities.

389. The federal rehabilitation centres provide academic and support programmes. Each centre has a community area to provide basic education to the inmate population: literacy, primary and secondary schooling. These facilities were set up by the National Institute for Adult Education (INEA). So far this year the programme has reached 880 inmates.

390. The Information system for social rehabilitation was established, to provide a reliable record of federal inmates in rehabilitation centres of the states who are engaged in work activities and training.

391. A social rehabilitation programme was inaugurated which aims at achieving self-sufficiency in items of basic necessity, an initiative of the federal Government which incorporates three models of productive work geared to achieving self-sufficiency in the federal rehabilitation centres. The aim of the programme is the production of basic necessities such as footwear, apparel, uniforms and sporting goods.

392. With the Ministry of Labour and Social Security (STPS), the groundwork was laid for collaboration between the National Employment Service and the prison authorities of the states to merge strategies that benefit persons convicted under general and federal jurisdiction through the granting of scholarships to support job training and to enable inmates advantageously to join the labour force, intramurally or extramurally.

393. A project was launched on "Training for self-employment: How to do domestic technology," which was conducted in October 2007 at the Islas Marías Federal prison colony. Its aim is to carry out job training activities jointly with the Federal Consumer Protection Office. Although the penal colony has a number of productive projects and has always been engaged in

productive activities, plans have recently been made for an economic investment with a view to promoting more projects.

394. To make products and handicrafts produced by the Islas Mariás inmate population better known, a Crafts Catalogue was designed with information provided by the penal colony. The catalogue will soon be posted on the internet portal of the Ministry of Public Security.

395. In order to strengthen social and emotional bonds of inmates conditionally or finally released, 121 sessions of family psychotherapy were provided, and support was provided for psycho-social rehabilitation, prevention and treatment to 180 minors in extreme poverty. To monitor services provided and verify that they were of advantage to the beneficiaries, 59 home visits to released inmates took place.

## **7. Professionalization of prison security**

396. During the reporting period, efforts were made in human resources and personnel training. To that end, there were 44 meetings with directors of prevention and social rehabilitation of the states to solve common problems in prison matters, and interviews were conducted with representatives of various national and international human rights organizations.

397. To combat corruption and criminal operations inside the Federal Rehabilitation Centres, a process of internal renewal of the control and surveillance systems is under way that includes the creation of the Prison Security Force (PSF), a highly professional corps of security personnel who are continuously in training and are subject to mobility among the centres in order to prevent links being formed with organized crime.

398. Planning began for the programme to professionalize the Prison Security Force, through the processes and operational and training phases, at the National Prison School. This will be a career civil service programme which is expected to extend through the year 2010.

399. Numerous meetings have also been held with directors of prevention and social rehabilitation of the states to solve common problems in prison matters. Interviews were also conducted with representatives of various national and international human rights organizations.

400. As of June 2007, the Prison Security Force numbered 2,102, with the largest number, 24% of the total, being posted at the Altiplano federal rehabilitation centre. Of that number, 27 contingents have received training, each group being made up of 25 or 30 members who have been rotated and assigned to the rehabilitation centres.

401. Soon after the establishment of the Detached Administrative Office for Prevention and Rehabilitation, the Inter-agency programme of promotion and dissemination of human rights was created. Its aim is to provide human rights training to public servants in the area of prevention and rehabilitation. That training was provided by the National Human Rights Commission.

402. Through joint training activities with federal centres and support from various institutions, courses have been introduced on topics such as quality of life, work, human development and total security.

403. However, between 2004 and 2007, the National Human Rights Commission made 12 recommendations to the Administrative Office for Prevention and Rehabilitation. Those resolutions have been heeded and implemented in every case. To that end, the facts are brought to the attention of the Internal Control Organ with a view to taking appropriate investigative action and identifying such administrative responsibilities as may have been incurred by public servants involved. If appropriate, the matter is reported to the prosecutorial authorities and action is taken to prevent the recurrence of such acts.

404. During 2007, attention was given a total of 193 complaints lodged by federal inmates or their relatives with the National Human Rights Commission, of which 81 are pending and 112 have been concluded. In the same period, 13 conciliation proceedings were initiated based on observations made by the Commission, of which 8 are concluded and 5 are being processed

405. On 6 November 2007, there began a nationwide project setting up the network of comprehensive care for victims of crime. This programme proposes to extend the coverage of legal, psychological and medical services provided by the relevant units and institutions, through pooling of efforts, material and human resources, development a draft Law on Models of Care for Crime Victims, and the constitution of a national registry of missing persons, among other measures.

406. In order to raise levels of human rights compliance, the Administrative Office for Prevention and Rehabilitation holds a monthly meeting with the National Human Rights Commission to examine complaints from inmates in order to respond in timely fashion, to improve procedures and to take preventive measures. Similarly, such meetings will also work on the overall list of inmates' applications for relief, in keeping with the terms of the agreement between the Commission and the Ministry of Public Security.

407. To date, there has been no recommendation concerning cases of torture of inmates and corruption of public officials of the federal rehabilitation centres. Some complaints have been lodged on these grounds but they have not been formalized due to insufficient verification before the National Human Rights Commission. The most frequent subject of complaint concerns petitions for early release, i.e. parole, partial remission of sentence, and pre-release treatment, which is granted if and when the requirements set by law are met.<sup>112</sup>

## **8. Youthful offenders: prevention and rehabilitation**

408. With regard to prevention, 2007 saw the second "National meeting on prevention of juvenile delinquency – Models and alternatives for prevention" at the National Institute of Criminological Sciences (INACIPE), with the participation of 293 representatives of various states, private entities and government, whose actions will strengthen existing links and take shape in concrete collaborative endeavours.

409. On 29 March 2007, a ceremony was held marking the release of nine minors from the "Therapeutic Re-education Community" treatment centre. The same ceremony marked the official inauguration of the centre's library, in the presence of representatives of TELEMEX,

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<sup>(112)</sup> See: Annex 10.1 *Review of Recommendations*. Ministry of Public Security, Office of Legal Affairs and Human Rights.



REINTEGRA, the Directorate of Medical Services and the General Directorate of Libraries of the National Council for Culture and the Arts (CONACULTA).

410. From 4 to 8 June 2007, a fourth “Week for prevention of delinquent conduct among girls, boys and adolescents” took place, with the participation of Baja California Sur, Colima, Morelos, Nuevo León, Puebla, Querétaro, Quintana Roo and Tabasco.

411. Working meetings were held with entities of the public and private sectors to develop inter-agency agreements or arrangements in favour of young people in trouble with the law. Participants included: the General Directorate of the National Commission of Physical Culture and Sports, Youth Integration Centres, the National Council for Culture and the Arts and the Archdiocese of Mexico.

412. Technical support was provided for training through the course entitled “Assimilating theoretical and practical criminological knowledge” addressed to the staff of the Islas Mariás Federal prison colony.

413. Regarding prevention of unlawful behaviour, children and adolescents were provided guidance in workshops for preschool, primary, middle-school and high-school; there were recreational activities, information stands, and exhibitions on prevention.

414. Pursuant to the general prevention activities being carried out during the first half of 2007, a total of 21,694 persons were served.

#### **PERSONS REACHED BY PREVENTION ACTIVITIES**

|               |               |
|---------------|---------------|
| Children      | 3,836         |
| Adolescents   | 10,117        |
| Young people  | 4,349         |
| Parents       | 1,786         |
| Professionals | 1,561         |
| Employees     | 44            |
| <b>TOTAL</b>  | <b>21,694</b> |

415. As an important part of the administration of justice in regard to juvenile offenders, the Department of Children's Commissioners of the Detached Administrative Office for Prevention and Rehabilitation has among its primary functions: to investigate the alleged offenses committed by juvenile offenders that are referred to it by prosecutorial authorities; to take additional steps to verify elements of the offenses; to receive testimony; and to attest to the facts, circumstances, instruments, objects and proceeds of the offense.

416. In light of the entry into force of the reform of article 18 of the Constitution, published on 12 March 2006, which among other things changed the age at which treatment in confinement may be applied to adolescents who are over 14 and under 18 years of age, there was a decrease of preliminary investigations involving arrested juveniles and a substantial increase in the receipt of preliminary investigations without juvenile arrests from the Office of Juvenile

Prosecutions and the different agencies and organs of administration of justice in the Federal District and the nation, as well as the Judiciary.

417. To achieve a more efficient administration and optimize the resources of the Directorate of Commissioners, technological tools have been installed such as the "Voice and Data Network" and "National System for Registration of Minors." The latter will consolidate the information compiled by the Commissioners in different areas into a large database.

418. From December 2006 to July 2007, a total of 2,595 biopsychosocial diagnoses were conducted, of which 2,384 were of men and 211 of women. This diagnosis portrays the biopsychosocial structure of the minor and provides an expert foundation for the results of studies and interdisciplinary investigations applied to the minor.

419. Special prevention refers to the implementation of systems, techniques and specialized methods from the disciplines of medicine, psychology, social work and education in an integrated, sequential and interdisciplinary approach to adolescents and their families in order to achieve their social adaptation strengthening self-esteem, developing their potential and self-discipline; changing negative aspects of their biopsychosocial structure, of their values, their appreciation of and respect for moral and social standards, and forming habits that contribute to social integration.

420. Integrated treatment refers to the design of a therapeutic plan that includes medical, psychiatric, educational, job-training and social work goals. Such treatment is applied within or outside the institutional setting. In each Treatment Centre, weekly meetings of its Technical Advisors take place where they evaluate, discuss and determine institutional life in each of these Centres.

421. As part of the educational support activities for treatment and social reintegration activities, the following tasks were performed:<sup>113</sup>

- a) 859 adolescents were followed at different treatment centres by personnel from the social work area, with the aim of strengthening and consolidating the minor's adjustment;
- b) Service was provided to 909 school-age minors; with success in certifying 67 adolescents, of whom 15 were in basic education and 52 at the middle-school level;
- c) The Parents Programme conducted 2,113 sessions addressed to 12,102 parents;
- d) To promote care of one's health and to develop hygienic habits, 2,327 minors were received in 251 sessions.

## **9. Minors' Council**

422. The mission of the Minors' Council is providing prompt, thorough and impartial justice to juvenile offenders throughout the country, to promote compliance with the Constitution, laws, the Convention on the Rights of the Child, and other applicable international instruments, in

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<sup>(113)</sup> Treatment Centres of the Interdisciplinary Technical Council.

order to establish the National System of Juvenile Justice and to contribute to public security, the rule of law and combating impunity.

423. Among its goals is to achieve the harmonization of laws, procedures and practices in all the federal entities in order to establish a modern and humanistic national system of juvenile justice that will contribute to a culture of legality and respect for human rights.

424. In order to resolve the legal situation of juvenile offenders, the Unitary Councils and Councils of the Higher Chamber of the Council of Minors issued 6,721 jurisdictional resolutions. A historical analysis shows that from 2001 to 2006 the workload of the Council of Minors in this regard increased 21%.

425. In order to promote the Convention on the Rights of the Child, the Council of Minors carried out the following activities:

- a) The lecture “The teaching function in the Council of Minors” was given to 14 students at the Universidad Insurgentes.
- b) The article “Ungovernable young women” was published in the journal *Revista de Ciencias Penales Iter Criminis*, Third Period, No. 9, published by the National Institute of Penology;
- c) A 12-hour workshop on domestic violence was given to 18 students at the Faculty of Psychology of the National Autonomous University (UNAM);
- d) An exchange of information and experience concerning juvenile justice took place through research conducted with Rio de Janeiro State University and Universidad Federal Fluminense.

426. The participation of civil society in rehabilitating young offenders has been invaluable. Through partnerships and support activities, various efforts for their reintegration into society and economic activity are being carried out.<sup>114</sup>

## **10. Rehabilitation of women in detention**

427. In 2008, an Inter-agency Group for the Care of Women in Detention was formed, composed of units of the federal civil service, civil society and academia. Its overall objective is to promote the recognition and observance of the fundamental rights of women deprived of their liberty, and those of their children.

428. It is made up of four thematic groups:

- a) Group 1: Legislation;
- b) Group 2: Access to justice for women;

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(<sup>114</sup>) E.g.: Código Ayuda, A.C. has the programme called “Goodbye to the Street” (*Adiós a la Calle*), which takes a comprehensive approach covering health, education, training, employment and housing for adolescent offenders joining this rehabilitation programme.

- c) Group 3: Improving living conditions for women deprived of their liberty and for their children;
- d) Group 4: Prison training.

429. The Ministry of the Interior conducted a research project between 2001 and 2006 on work in female prisons, in order to promote productive work with a gender perspective. It provided training to prison personnel and female inmates in several states.

430. The Ministry of Public Security, in collaboration with the National Institute for Women, the National Council for Culture and the Arts and the National Autonomous University of Mexico, conducted 3 broadcasts of the certificate course "Human rights of women inmates" addressed to federal civil servants and to society at large.

431. It also carried out the following actions:

- a) It conducted a research project on the situation of women inmates at prisons in the Federal District, Oaxaca, Querétaro, Chiapas, Hidalgo, Puebla, Monterrey and Sinaloa;
- b) It carried out a Programme on women and crime prevention at the *maquiladoras* of Ciudad Juárez;
- c) It promoted an alternative approach to comprehensive attention and education for the children of women living in federal rehabilitation centres;
- d) It implemented the programmes: "Human rights for women and children in prison," "Medical care in prisons for women with HIV/AIDS," and "Human rights petitions for women and children in prison."
- e) It organized working groups to carry out a diagnostic study on needs for training and work at state prisons in Puebla, Querétaro, Aguascalientes, Hidalgo and the Federal District.

432. The National Human Rights Commission conducted a study to better understand and promote improvement of the status of women in prison. It implemented the programme to publicize the human rights of persons in custody. It conducted two campaigns to promote respect for fundamental rights of women, which discussed issues such as violence against women, women in prison and the children that accompany them, working women and access to justice for women. It designed and developed the basic guidelines which should be included in model regulations for women's prisons.

433. The National Human Rights Commission conducted workshops on administration of justice with a gender perspective for staff of the prosecutorial authorities in 16 states. Twice, it conducted a simulated trial concerning human rights of women, coordinated jointly by the Commission, the Office of the United Nations High Commissioner for Human Rights and a jury consisting of prominent international jurists.

434. Under the Training Programme for Attorneys, the National Institute for Women conducted a workshop on administration of justice with a gender perspective addressed to public prosecutors of general jurisdiction in the states; a training programme for litigators; a certificate programme on the anthropology of violence; a certificate programme on public policies and democratization of the family, in the framework of the project on “Proposals for a new democratic lifestyle in the family”; and a series of lectures on human rights for career police officers and police trainees of the Federal Police.

435. The National Human Rights Commission designed and developed the basic guidelines which should be included in model regulations for women's prisons and a set of model regulations for such prisons. As part of the programme of promotion and dissemination of human rights of persons deprived of liberty, it distributed the publications “Human rights of women deprived of their liberty,” and a “Guide to early release.” To support programmes of social rehabilitation, Petróleos Mexicanos held an exhibition and sale of paintings styled “Shades of freedom” during 2003 and 2004.

436. The National Institute for Women has conducted several activities in support of women prisoners:

- a) Study and analysis of judicial dossiers of female first offenders tried and/or sentenced for offenses under general jurisdiction and held at the Social Rehabilitation Centres of the Federal District, Sonora, Morelos and Chiapas;
- b) Proposed changes in the Law on Minimum Standards for the Social Rehabilitation of Convicted Prisoners, the Regulations for Rehabilitation Centres for Women, and the First Regulations for Execution of Criminal Penalties for Women in Mexico;
- c) Preparation of the document “Premises for the incorporation of women in correctional legislation,” in order to further the revision of prison legislation of the states through 3 regional working groups and a national one;
- d) Regional working groups on the topic “Analysis of premises for the incorporation of women in correctional legislation,” with the aim of promoting and disseminating the rights of women deprived of their liberty in light of international human rights treaties, through the presentation by the federal executive of a proposed prison legislation reform which ensures observance of their human rights;
- e) Presentation of the video “Unravelling Sentences, Embroidering Freedoms,” which deals with indigenous women in prison;
- f) Participation in a seminar-workshop on violence against women deprived of their liberty in Latin America.

437. As part of activities by the Attorney General's Office through the Working Group on Justice, Equity and Gender aimed at forging an institutional culture of full respect for and observance of women's rights, a lecture series on “The gender perspective in the administration of justice,” took place in Mexico City in 2004, addressed to women civil servants of the institution and the general public.

438. In coordination with the Commission on Equity and Gender of the Chamber of Deputies of the Congress, the National Campaign for Equity and Security for Women got under way, seeking to promote agreements, actions and public policies in favour of equity and security for women, to disseminate their rights, and to promote in society a culture of nonviolence conducive to the reporting of violence.

439. In 2004, in collaboration with the National Institute of Criminological Sciences, a workshop on Justice, equity and gender was conducted for public servants who serve as links to the Working Group on Justice, Equity and Gender of the Office of the Attorney General and, in coordination with the National Institute for Women, a workshop on Gender perspective in the administration of justice was held for public servants of the institution.

440. The Federal Institute for Training and Professionalization in the Administration of Justice held a training course for federal investigators on matters relating to human rights, victimology, criminal law and ethics, which dealt with issues of equality, justice, equity, gender and vulnerable groups. In 2004, a Human Rights Day conference on women, violence and manliness was held, providing training for career police officers in training and administrative personnel in the Police Training Centre of the Federal Police, located in San Luis Potosí .

## **11. Persons not subject to criminal liability**

441. The Federal Centre for Psychological Rehabilitation at Ciudad Ayala is designed for prisoners who are mentally ill and persons not subject to criminal liability. Equipped to improve their conditions and contribute to specialization of prison psychiatric treatment through third-level medical-psychiatric care, this Centre is the first of its kind in Latin America. The National Human Rights Commission has made a number of favourable comments on its work.

442. The Centre provides diagnosis and rehabilitation treatment of inmate patients, with a view to improving their quality of life and biopsychosocial functionality through multidisciplinary and progressive technical intervention. Follow-up to assessments of progress is provided by the Treatment and Rehabilitation Committee, which proposes release or continued detention, observing patterns of behaviour to develop a semiological profile of the inmate patient.

443. Patients in the Centre fall into two groups: the mentally ill (those who commit a crime in full possession of their faculties and mental capacities, but become ill during the trial or in any of the Federal Centres) and persons not chargeable with criminal liability (those who commit an illegal act when already ill). Among the most common offences of patient inmates in this centre are homicide, crimes against property and crimes against freedom and normal psychosexual development.

444. The Centre is divided into seven wards each of which has sanitary services, an infirmary, a dining hall and an open area with a basketball court. It has trained personnel in the areas of psychology, psychiatry, ophthalmology, dentistry, social work and security. The hospital has an X-ray room, a haematic biometry room, ultrasound, an operating room and an emergency room. The inmate-patients have the opportunity to continue their studies because the centre is supported by the National Institute for Adult Education, which provides primary, secondary and high school education and counselling for meeting secondary-school completion requirements, in addition to the support of a library.

445. While the entire country has a population of 2,469 persons who are mentally ill or not subject to criminal liability who are deprived of their liberty for having committed a criminal act, the institution is unable to accommodate all of them. Therefore it carefully evaluates each of the proposals made by states for inmates to enter the facility. In late 2007, the centre housed 297 inmate patients and, although its total capacity is 460 spaces, the optimal number is 300, due to the personal attention required for these patients because of the medical and psychological treatment that should be provided. In order to provide quality care, the capacity of the Centre should never be exceeded.

446. Despite their high cost, it seems desirable to have other centres of specialized care for persons not subject to criminal liability. The National Human Rights Commission, as a result of visits made between 2002 and 2004 to 451 prisons throughout the country to investigate whether they are equipped adequately to meet the needs of inmates with mental illnesses, particularly those related to their imprisonment, pharmacological treatment and psychosocial rehabilitation, issued General Recommendation No. 9<sup>115</sup> on 19 October 19, 2004. The recommendation deals with the human rights situation of inmates with mental disorders held in the nation's prisons and is addressed to the governors of the states, the Head of the Federal District Government, the Federal Minister of Public Security and the Federal Minister of Health.

447. Similarly, in accordance with the programme to monitor prisons and detention centres, as well as the Programme on Matters Relating to Women, Children and the Family, the National Human Rights Commission during 2002 carried out visits to 54 centres for minors throughout the country to examine conditions at these centres as well as their observance of the rights of juvenile inmates. As a result of this work, on 8 July 2003, the Commission made public the Special Report on the human rights situation of inmates at Centres for Minors of Mexico.<sup>116</sup>

## **12. Securing of migrants**

448. In February 2007, the National Institute for Migration, through administrative circular 002/2007, instructed regional offices that as of 1 March 2007, no state, municipal or federal jail was to be used as a migrant centre for any reason whatsoever.

449. In accordance with article 208 of the Regulations of the General Population Act, which defines migrant centres as physical facilities managed by the National institute for migration, they are to be populated only by migrants whose situation is irregular, who are not to be mixed with persons deprived of their liberty for other reasons.

450. In addition, a programme has been implemented to refurbish migration centres: buildings used for detention by the National Institute for Migration have been upgraded to provide suitable treatment for migrants.

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(<sup>115</sup>) The National Human Rights Commission indicates that, in most states, these persons are in a situation arising out of violations of the human rights to decent treatment, health care, freedom, legality and legal security. Therefore, it calls upon the authorities to take necessary steps so that inmates with mental illnesses in state prisons will receive the medical care and psycho-social rehabilitation they need and will be placed in areas suited to their treatment, relying to that end on the support of the Federal Ministry of Health.

(<sup>116</sup>) See Annex 9.1. See: <http://www.cndh.org.mx/lacndh/informes/espec/espec.htm>

451. The Institute, in turn, is under an obligation to train its staff on an ongoing basis to provide, at all centres, medical services, supplies and food, as well as security in keeping with gender and degree of vulnerability (children, the elderly, the sick) and to give effect to the right to an interpreter. Similarly, the Institute should focus on respect for all human rights and guarantee undocumented persons the right to a defence and the right to a hearing.

452. A mechanism for protecting human rights of migrants in migrant centres is visits by the National Human Rights Commission. Such visits make it possible to take stock of migration trends, engage in dialogue with migrants and garner their complaints, and gauge and promote quality of operation in the centres.

453. During 2007, the Commission<sup>117</sup> conducted a total of 1,308 visits to migrant centres, locations authorized to deal with migration matters, and inspection checkpoints. In 2,122 instances, steps were taken to promote human rights of migrants. Through these visits, it followed up on the comments and suggestions outlined in the Report on the status of human rights of migrants in centres operated by the National institute for migration, issued by the National Human Rights Commission in December 2005.

454. When, during visits to the migrant centres, deficiencies are found in health care, decent and suitable dormitories, special areas for people with infectious diseases, female staff for the custody of female migrants, mattresses and blankets for the migrants and hygiene facilities in proper working order, appropriate steps are taken with the person responsible and immediate solutions are found for requests from the detainees that are related to human rights.

455. To provide a better response to complaints of violations of human rights of migrants, the National Human Rights Commission has installed offices at various points along the northern and southern borders of Mexico and in the centre of the country. There are regional offices located in Tijuana, Baja California; Ciudad Juárez, Chihuahua; Nogales, Sonora; Reynosa, Tamaulipas; Campeche, Campeche; Tapachula and San Cristobal de las Casas, Chiapas; Coatzacoalcos, Veracruz; Villahermosa, Tabasco; and Aguascalientes, Aguascalientes.

456. These sites also have mobile units (“ombudsmobiles”) that cover the areas of greatest influx of migrants, with the aim of getting closer to them in order to receive complaints and implement promotional activities.

457. Of a total of 370 complaints regarding probable human rights violations that were submitted to the National Human Rights Commission and referred by it to National institute for migration (127 for the period January-April 2005, 84 for the same period in 2006, and 159 for the same period in 2007), the following points are noteworthy:

- a) The complaints were prompted by Commission visits to National institute for migration facilities or other places of concentration of undocumented migrants, accounting for 30% in 2005, 34.5% in 2006, and 56.6% in 2007, which indicates

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(<sup>117</sup>) National Human Rights Commission, June 2008. See: [http://www.inmujeres.gob.mx/dgpe/migracion/res/Anexo\\_47\\_05.pdf](http://www.inmujeres.gob.mx/dgpe/migracion/res/Anexo_47_05.pdf), <http://portal.sre.gob.mx/espana/pdf/boletin64.pdf> or <http://www.cndh.org.mx/lacndh/informes/informes.htm> (Report of 2007 )



increased activity by the Commission's Fifth Inspection Unit (Visitaduría) in receiving complaints, at least during the period from January to April of each year;

- b) A part of the complaints are resolved in the course of being processed or are concluded due to lack of substantiation to establish violations of human rights. This occurred in 52.7% of cases reviewed in 2005, 38.1% in 2006, and 26.4% in 2007, although the latter two figures may increase since the Commission has not yet reached a decision on 21.4% of the cases reviewed in 2006 and 70.4% of those reviewed in 2007;
- c) Regarding settlements through mediation between the National Institute for Migration and the National Human Rights Commission, resolutions were reached in 26.8% of cases reviewed in 2005 and 21.4% of those reviewed in 2006. No cases resolved by this means have yet been recorded for 2007.
- d) Among complaints reviewed, there were 2 recommendations of the National Human Rights Commission for 2005, 3 for 2006 and 1 for 2007, although the latter two figures may yet change.
- e) Among the reasons for the complaints there was a notable decrease since 2005 in the category of "failed extortion" (31.1% in 2005, 4.8% in 2006, and 0.6% in 2007), "detention or holding of persons legally present" (16.5%, 9.5% and 5.7% respectively), "rejection" (3.1%, 2.4% and 0.6%), "overcrowding" (3.9%, 1.2% and 1.9%), and "excessive delay in procedures" (9.4%, 0.5% and 5.7%).

458. Among the reasons for the increase in the period considered, there was a slight increase under the category "inadequate facilities" (9.4% in 2005, 9.5% in 2006 and 10.7% in 2007), suggesting the programme for upgrading migrant facilities is in need of some attention as regards some details (cleaning, running water, etc.) more than the mere expansion or improvement of infrastructure. There is also an increase in positive opinions expressed by persons held about the migrant centres (2.3% in 2005, 0% in 2006 and 6.3% in 2007) and a drastic decrease in the negative views expressed (15.7%, 15.5% and 3.1% respectively).

459. Refugees benefit from the provisions of the Operating Standards for INM Holding Centres of 26 November 2001, which provide that social work personnel shall provide attention and follow-up to cases of detainees who wish to seek political asylum or refugee status. However, since early 2007, these standards have been under review, with a view to enabling international agencies of the United Nations, NGOs, lawyers and relatives of detainees to have access to them in the legitimate performance of their duties.

## **XI. ARTICLE 11: IMPRISONMENT FOR CONTRACTUAL OBLIGATIONS**

460. Under this heading, the Supreme Court of Justice of the Nation has ruled that deprivation of liberty in cases of breach of contractual obligations is unlawful, as the harm caused to individuals gives rise to civil liability and the aim should be only to repair that harm.

461. During the period covered by this report, no additional legislation has been adopted concerning the right protected by article 11 of the Covenant<sup>118</sup>. This is because that right is referred to in the final sentence of Article 17 of the Constitution of Mexico, which states that "No one shall be imprisoned for debts of a purely civil nature."

## **XII. ARTICLE 12: FREEDOM OF MOVEMENT AND RESIDENCE**

### **A. Legislative advances**

462. In the period covered by this report, Mexico has ratified several international instruments concerning the rights covered by article 12 of the Covenant: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (8 March 1999), the Convention relating to the Status of Refugees and its Protocol (7 June 2000) and the Convention relating to the Status of Stateless Persons and its Protocol (7 June 2000).

463. In 1999, several articles of the General Population Act<sup>119</sup> were amended to include the new powers of the newly established Federal Police (PFP) regarding migration. Thus, it was established that members of the Federal Police have priority to inspect any form of entry of persons into the national territory or exit from it.

464. Article 17 of the Act provides that, with the exception of health services, the Federal Police is in charge of all matters relating to inspection within the national territory of persons in transit by air, sea and land, when such transit is of an international character.

465. On 14 April 2000, the Diario Oficial published the Regulations of the General Population Act<sup>120</sup>, which spell out the administrative procedures to be followed by the authorities regarding inspection, monitoring and removal of aliens, as laid down in Article 125 of the Act; its latest amendment was enacted on 29 November 2006.

466. However, on 9 April 2008, the Senate approved amendments, additions and deletions to Chapter 8 regarding Penalties under the General Population Act. This will decriminalize sanctions against foreigners in the framework of Article 118 of the Act, imposing only administrative sanctions --fines and expulsions-- if necessary. However, these changes have not been published in the Diario Oficial, so that the current law remains in force.

### **B. Judicial decisions**

467. The Supreme Court of Justice of the Nation has defined the right to freedom of movement as the right of any individual to enter the country, depart from it, travel through its territory and change residence without need of identity papers (carta de seguridad), passport, safe-conduct or other like requirement.

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<sup>(118)</sup> *Generic fraud. Article 386 of the Penal Code of the Federal District, which provides for it, does not violate article 17 of the Constitution, since it does not lay down imprisonment as a penalty for civil debts.* Judicial Weekly of the Federation, Volume XV, April 2002. Opinion 2, XXXVIII/2002. p. 583.

<sup>(119)</sup> See: <http://www.ordenjuridico.gob.mx/Federal/Combo/L-151.pdf>

<sup>(120)</sup> See: <http://www.ordenjuridico.gob.mx/Federal/Combo/R-120.pdf>

468. The Court has likewise ruled that the exercise of that right is subject to the powers of the judicial branch in cases of criminal or civil liability; and to administrative authorities with regard to limitations imposed by law on emigration, immigration and general public health by the Republic.<sup>121</sup>

469. With regard to trials in general, the federal courts, in doctrine or case law, have established that migrants, especially those who have arrived in Mexico in an irregular situation, are a vulnerable population and therefore susceptible to violations of their most fundamental rights. Consequently, denying them access to justice because of their migration status would make them an even more vulnerable population.

470. In the case of undocumented aliens, the Supreme Court of Justice of the Nation has noted that failure to prove their legal status in the country does not deprive of them of the right to appear in court, and in cases of stay of extradition, it is appropriate to grant the stay because the constitutional principles protecting individual guarantees are to take precedence over all international measures which regulate relations with foreign countries, since there is a more compelling interest in the observance of those guarantees than in compliance with other rules of an international character; and stay of extradition is all the more appropriate in that it is the duty of federal courts to retain control over the subject matter of proceedings pertaining to fundamental rights, taking such steps as are necessary to do so, as provided in Article 138 of the Amparo Act.

### **C. Institutional measures**

471. The National Population Council (CONAPO), in cooperation with the Ministry of External Relations, the Ministry of Labour and Social Security, the National Institute for Migration and El Colegio de la Frontera Norte, have pursued the production of statistical information to quantify and characterize the Mexican migration to the United States, as well as migration across the southern border of Mexico. To that end, from 1993 to 2003, a survey on migration across the Guatemala-Mexico border was conducted. The main findings are being disseminated through publications and databases on magnetic media.

#### **1. Migrant minors**

472. On 11 June 2007, an agreement was signed between the National Institute for Migration (INM) and the National System for the Full Development of the Family (DIF) to establish joint measures to benefit migrant children and adolescents, repatriated Mexicans, and unaccompanied aliens. This agreement aims at safeguarding the physical and mental integrity of children and adolescents, from the time they are held until their reintegration into their home community.

473. On 12 July 2007, a specific cooperation agreement was signed between the INM, the DIF of Chiapas and the Mexican Commission for Aid to Refugees (COMAR). The agreement aims to lay the groundwork for joint actions to provide temporary shelter for children and adolescents who are foreign migrants in the border state of Chiapas. It also allows participation by public and

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<sup>(121)</sup> CONSUMER PROTECTION. ARTICLE 96 OF THE RELEVANT FEDERAL LAW, AMENDED BY DECREE IN THE DIARIO OFICIAL ON 4 FEBRUARY 2004, DOES NOT VIOLATE FREEDOM OF MOVEMENT, *Judicial Weekly of the Federation*, ninth period, volume XXIII, January 2006, opinion 1, CXCIV/2005, pp. 734.

private institutions related to this field, pursuing a comprehensive approach to the needs of migrant children and adolescents.

474. On 30 March 2007, the Government of Mexico established an Inter-agency roundtable on unaccompanied children and adolescents and migrant women, led by the Ministry of the Interior through the Technical Secretariat at the INM. This roundtable has been consolidating two main goals: the implementation of actions at places of origin and the implementation of a single communication network of information to protect of the rights of unaccompanied migrant children.

475. On 15 October 2007 the aforementioned roundtable reviewed a model for safeguarding the rights of migrant children and adolescents and unaccompanied returnees along the northern border. The strategic value of the model is to standardize processes of repatriation, taking into account the characteristics of each state, the definition of the processes of return to their places of origin of repatriated children, identification and tracking of support to be given to the child once at home, and ensuring coordination between institutions at different levels (federal, state and municipal) and between border states and states of origin.

476. The proposed model was developed jointly by the DIF, the INM and the United Nations Fund for Children (UNICEF). The model covers five stages:

- a) Detention of the minor in the United States;
- b) Coordination of repatriation;
- c) Action by the border states;
- d) Safe return home;
- e) Activation of the Inter-agency System of Protection at the places of origin.

477. The INM, in coordination with the DIF, the United Nations Fund for Children (UNICEF), the International Organization for Migrations (IOM), the Mexican Commission for Aid to Refugees and the Office of the United Nations High Commissioner for Refugees (UNHCR), has initiated a training strategy to enable migration officers to become officers specialized in child protection. The first course took place from 4 to 7 and from 11 to 13 March 2008.

478. With regard to care for migrant minors, the following achievements of the Inter-agency programme for children in border areas deserve special mention:

- a) Expansion of coverage;
- b) Enhancement of the operational capacity of transit shelters (with a larger budget);
- c) Design of a single system of information;
- d) Development of information and awareness-raising materials;
- e) Improved response to minors in Central-American countries;

- f) Establishment of the first transit shelter at Tapachula, Chiapas;
- g) Development of an operating model at migrant holding centres;
- h) Local agreements for repatriation of Mexican nationals from the United States signed in 2006, which seek to ensure greater security especially for vulnerable groups (minors), through establishment of specific locations and hours.

479. Through the “quality and care” strategy of the Inter-agency Programme for Children in Border Areas, migrant and repatriated children are treated with dignity and in conformity with their rights. The main goal is to have qualified staff in adequate facilities to receive them. To that end, various training courses have been conducted for operational personnel of the state and municipal Systems for the Full Development of the Family and of civil society organizations.

480. The National System for the Full Development of the Family, in coordination with ITESO A.C. (Jesuit University of Guadalajara), with funding from UNICEF, produced a welcome booklet for migrant children and returnees and adolescents, and a technical guide for personnel working in transit shelters for migrant and returnee children and adolescents. These materials facilitate the work done with children and adolescents during their stay in the network of transit shelters comprised in the programme.

481. The annual meeting of the Inter-agency Programme for Children in Border Areas in October 2007 sought to strengthen the grasp of best practices in implementing programmes for migrant and returnee children and adolescents, and to learn from and recognize different approaches to intervention (gender, rights, family violence and abuse) that are to be consolidated as cross-cutting aspects of prevention and care in this area.

482. A national meeting was attended by 75 people from state and municipal systems of the National System for the Full Development of the Family, as well as civil society organizations, representatives of the Mexican Commission for Aid to Refugees, the National Institute for Migration, and the Ministry of Social Development, who were trained in areas such as: vulnerability of children and social policy; containment of crisis situations; human rights in programmes for vulnerable children; detection of violence and abuse; and strengthening of families, among others.

483. Located on the southern border in the city of Tapachula is the DIF-Chiapas shelter for migrant children, which coordinates with the field office of the INM, which, in turn, has a model migrant holding centre. The latter has a specialized area for the care of minors, so that children and adolescents can be referred to either institution, depending on their age and sex.

484. Since June 2007, the Tapachula temporary shelter for migrant children has provided care for children accompanied by their mothers, emphasizing family unity. Accordingly, the shelter not only receives and attends to children under age 12, but also their mothers and, if required, special cases of girls up to 16 or 17 years of age.

485. At the state level, local coordinating committees have been established in each municipality participating in the programme. They are comprised of personnel from the state and municipal DIF systems, representatives of the Consulate of Mexico in the United States, the

local branches of the INM and the National Human Rights Commission, the municipal police and civil society organizations involved in caring for this population.

486. These committees are fora for sharing experiences and ideas that strengthen public policy in favour of young migrants and returnees. During 2007, work proceeded on the re-establishment of the committees where it has been necessary to update the cooperation agreements on which they are based.

## **2. Improvement of migrant holding centres**

487. As a complement to migration policies respectful of human rights, the National Institute for migration (INM) has since 2003 operated a programme for upgrading migrant holding centres which aims to improve the physical condition of facilities and services for securing undocumented migrants, in order to provide better care for them during their entry into, stay in and departure from the centres.

488. In April 2004, the INM created the Directorate of migrant holding centres to pursue the ongoing goals of improvement in those facilities and monitor proper treatment and due respect for aliens in keeping with human dignity and full respect for their human rights. This directorate takes the lead in the Programme for upgrading migrant holding centres, coordinating efforts of different areas of the Institute to implement the programme in regard to: preventive and corrective maintenance; technical and computer equipment; communications and telephony; services foreigners; food, immigration personnel; training and construction of new migrant centres, among other tasks.

489. From 2003 to 2007, the programme has made significant progress. For example, in 2003 two migrant holding centres were built and 23 were upgraded. In 2004, 2 were built and 18 upgraded. In 2005, one was built and 11 were upgraded. In 2006, one was built and 22 were upgraded. And in 2007 two were built and 10 were upgraded. In late 2007, the Institute already had 47 migrant holding centres in 23 states.<sup>122</sup>

490. The construction of new centres was as follows: in 2003, Tijuana, Baja California, and Los Cabos, Baja California Sur; in 2004, Aguascalientes, Aguascalientes, Mexicali, Baja California, San Cristobal de las Casas, Chiapas, and Tlaxcala, Tlaxcala; in 2005, Puebla, Puebla; and in 2006, Querétaro, Querétaro.

491. In March and June 2007, the construction of two new migrant centres in Janos, Chihuahua and Acayucan, Veracruz was completed. The latter began operation in January 2008.<sup>123</sup>

492. The Institute has 48 migrant centres located in 23 states, with a total capacity to accommodate 3,958 people nationwide.

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(<sup>122</sup>) The difference between the number of upgrading projects and the number of migrant holding centres is due to the fact that 27 are referred to as “maintenance” projects. The programme is divided into two phases: the first is a far-reaching overhaul to improve the holding centre, or the purchase of a building; the second involves supervisory and maintenance work, which is entered in the accounts as a programme activity.

(<sup>123</sup>) Information provided by the National Institute for Migration, included in the reply of the Government of Mexico to the recommendations of the Committee on the protection of migrant workers and their families, March 2008.

493. The following table gives details of migrant centres by regional office:

| <b>Table of location of migrant centres by regional office</b> |                           |                                                                                                                                                                    |
|----------------------------------------------------------------|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Regional Office</b>                                         | <b>Centres per Office</b> | <b>Migrant Centre</b>                                                                                                                                              |
| Aguascalientes                                                 | 1                         | Aguascalientes                                                                                                                                                     |
| Baja California                                                | 2                         | Tijuana, Mexicali                                                                                                                                                  |
| Baja California Sur                                            | 1                         | Los Cabos                                                                                                                                                          |
| Campeche                                                       | 3                         | Campeche, Ciudad del Carmen, Escárcega                                                                                                                             |
| Chiapas                                                        | 11                        | Tapachula, El Hueyate, Huehuetán, Tuxtla Gutiérrez, Comitán, Echegaray, Palenque, El Manguito, Playas de Catazajá, San Gregorio Chamic, San Cristóbal de las Casas |
| Chihuahua                                                      | 3                         | Ciudad Juárez, Janos, Chihuahua                                                                                                                                    |
| Coahuila                                                       | 2                         | Saltillo, Torreón                                                                                                                                                  |
| Distrito Federal                                               | 1                         | Iztapalapa                                                                                                                                                         |
| Guerrero                                                       | 2                         | Acapulco, Zihuatanejo                                                                                                                                              |
| Michoacán                                                      | 1                         | Morelia                                                                                                                                                            |
| Oaxaca                                                         | 3                         | La Ventosa, Salina Cruz, San Pedro Tapanatepec                                                                                                                     |
| Puebla                                                         | 1                         | Puebla                                                                                                                                                             |
| Querétaro                                                      | 1                         | Querétaro                                                                                                                                                          |
| Quintana Roo                                                   | 1                         | Chetumal                                                                                                                                                           |
| San Luis Potosí                                                | 1                         | San Luis Potosí                                                                                                                                                    |
| Sinaloa                                                        | 1                         | Mazatlán                                                                                                                                                           |
| Sonora                                                         | 1                         | Agua Prieta                                                                                                                                                        |
| Tabasco                                                        | 2                         | Tenosique, Villahermosa                                                                                                                                            |
| Tamaulipas                                                     | 4                         | Tampico, Matamoros, Nuevo Laredo, Reynosa                                                                                                                          |
| Tlaxcala                                                       | 1                         | Tlaxcala                                                                                                                                                           |
| Veracruz                                                       | 3                         | Veracruz, Acayucán/Actual, El Fortín                                                                                                                               |
| Yucatán                                                        | 1                         | Mérida                                                                                                                                                             |
| Zacatecas                                                      | 1                         | Zacatecas                                                                                                                                                          |

494. For the National Human Rights Commission, visiting the migrant centres remains one of the most effective tools to understand the behaviour of migration, to engage in dialogue with migrants and to gather their complaints, and to gauge and promote improvement in the quality of performance of these facilities.

### **3. Voluntary repatriation**

495. The Ministry of the Interior and the Ministry of External Relations have conducted a programme of voluntary repatriation to the interior since 2004. This measure is offered to Mexican nationals detained by U.S. immigration authorities in the Arizona desert, giving them the possibility of returning to the interior of the country instead of returning only to the Mexican border area.

496. The programme is based on the Memorandum of Understanding on the safe, orderly, dignified and humane repatriation of Mexican nationals, signed by the governments of Mexico and United States of America in February 2004. The purpose of this measure is to prevent deaths of people who venture to cross the border through the Sonora-Arizona corridor, which has unusually high summer temperatures.

497. As regards Central American citizens, within the framework of the Eleventh Regional Conference on Migration, at the initiative of Mexico, the Memorandum of Understanding between the Governments of Mexico, El Salvador, Guatemala, Honduras and Nicaragua for the dignified, orderly, prompt and secure repatriation of migrant Central American nationals by land was signed on 5 May 2006.

498. This memorandum is based on the Guidelines for the establishment of multilateral and/or bilateral mechanisms between member countries of the Regional Conference on Migration concerning overland return of migrants and aims at establishing a regional cooperation mechanism ensuring orderly, prompt and safe return along the borders of Mexico, Guatemala, El Salvador, Honduras and Nicaragua for nationals of the latter four countries who have been secured in the territory of States Parties.

499. It consists of twelve articles: I, Purpose; II, Target Population; III Guidelines; IV, Verification of Nationality; V, Procedures; VI, Safeguards; VII, Coordinating Authorities; VIII Financing; IX, Other Agreements; X, Annexes; XI, Dispute Resolution; XII, Final Provisions.

500. This regional instrument provides a differentiated response to vulnerable groups such as pregnant women, minors, persons with disabilities and adults over 60. In the four annexes referred to in Article X, detailed operational aspects are covered, such as hand-over locations, schedules, and specifics concerning transit, such as food, medical care and communication with consular authorities. The Mexico-Guatemala annex was agreed in May 2006; Mexico - El Salvador in July 2006; Mexico - Honduras in November 2006; and Mexico - Nicaragua on 26 April 2007.

501. The stay of a secured migrant depends on the work done by INM authorities and the cooperation extended by the migrant's consular and diplomatic representatives. If the migrant does not have consular representation in Mexico, the stay in the migrant holding centre is longer, as it is necessary to turn to the corresponding representations in the United States of America to obtain identity and travel documents required for completion of the procedure to which the foreign person is subject.

#### **4. BETA Migrant Protection Groups**

502. Beta Migrant Protection Groups have been established, in accordance with the Regulations of the General Population Act, in settlements along the route used by migrants from the southern border of Mexico to the United States. Their main aim is to defend the human rights of migrants, their integrity and heritage, whatever their nationality or origin.

503. The Beta Groups have 16 offices in Tijuana and Mexicali (Baja California); Comitán and Tapachula (Chiapas); Ciudad Juárez and Puerto Palomas (Chihuahua); Piedras Negras (Coahuila); Agua Prieta, Nogales, Sasabe, San Luis Rio Colorado and Sonoyta (Sonora); Tenosique (Tabasco), Matamoros (Tamaulipas;) and Acayucan (Veracruz).<sup>124</sup>

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<sup>(124)</sup> Annexed are two tables showing migrant service activities by the Beta Groups from January to December 2007 and a comparative table of activities carried out in 2006 and 2007.



504. The National institute for migration deploys a total of 124 persons belonging to Beta Migrant Protection Groups, aiming to provide medical care, counselling and delivery of information on the rights of migrants who cross the nation's territory.

## **5. Complaints of violations of human rights of migrants**

505. Given that the National Human Rights Commission has received complaints from migrants alleging abuses against them, and therefore violations of their human rights, committed by elements of the Federal Police, the Ministry of Public Security has developed a close collaboration with institutions that deal with the migration process and with policies to protect migrants.

506. The Ministry of Public Security has coordinated with various agencies in creating a programme to train members of the Federal Police who are assigned to surveillance or inspection duties in areas of migration influx at airports, providing them with the necessary knowledge about migration to enable them to perform their duties in conformity with a culture of legality and respect for human rights of migrants, through the appropriate agencies.

507. The programme has the following objectives:

- a) To train elements of the Federal Police involved in monitoring and verification procedures, so that they have the skills necessary for review of immigration documents, response, referral and detention of migrants;
- b) To promote respect for and protection of human rights of migrants;
- c) To understand the phenomenon of migration;
- d) To know the laws on migration;
- e) To contribute effectively and efficiently with the INM in migration operations;
- f) To understand the reasons why recommendations and proposals for conciliation are issued by the National Human Rights Commission.

508. The strategy of this programme is, through inter-agency cooperation, to train personnel assigned at airports across the country as trainers in order to disseminate the knowledge they have gained among the staff of their areas, to increase the efficiency of service at points of entry via air travel.

509. From 21 to 25 January 2008, a total of 47 members of the Federal Police were trained through a course on Support by the Migration Inspectorate of the Federal Police for the INM in the training of trainers.

510. Of the staff trained, two are assigned to administrative functions and 45 to operational functions at airports in Acapulco, Aguascalientes, Cancun, Mexico City, Ciudad Juárez, Guadalajara, Hermosillo, León, Matamoros, Mazatlán, Mérida, Mexicali, Monterrey, Nuevo Laredo, Oaxaca, Puebla, Querétaro, Tapachula, Tampico, Tijuana, Toluca, Veracruz and Villahermosa.

## 6. Trafficking in persons

511. At the regional level, in 2004 the Government of Mexico made a donation to the Inter-American Commission of Women, through the National Institute for Women, to help achieve the objectives of the regional project "Trafficking of Women and Children in the Americas for the purpose of exploitation" developed jointly by the Inter-American Commission of Women, the Organization of American States and the International Organization for Migrations (IOM).

512. From 2004 to 2005 the project "Combating Trafficking in Women, Adolescents and Children in Mexico" took place: the IOM, the National Institute for Women, the INM and the Inter-American Commission of Women hosted four information seminars and training on the subject. The documents "Basic Aspects of Trafficking in Persons" (2006) and "Trafficking in Women, Adolescents and Children in Mexico. An Exploratory Study in Tapachula, Chiapas" (2007) were published as a combined edition.<sup>125</sup>

513. In November 2004, the Ministry of the Interior, through the INM, the IOM and the Ministry of External Relations, organized the International Seminar on Trafficking in Human Beings, which also included the participation of the International Research and Training Institute for the Advancement of Women (INSTRAW) and the United Nations Office on Drugs and Crime (UNODC).

514. The National institute for migration is involved in operations to combat migrant smuggling and trafficking in persons, together with other units, such as the Attorney General's Office and the Federal Police.

515. The Institute, within its sphere of competence, has initiated immediate actions aimed at prevention, response and combating of trafficking in persons, specifically in regard to foreigners in the national territory, even when their stay is irregular; these actions include:

- a) INM cooperation with investigating authorities to identify and arrest organizations trafficking in persons;
- b) Systematization of information to identify routes, as well as criminal organizations;
- c) Creating a database of information specific to this issue.

516. As a central part of the Institute's activities to address this problem, it instructed regional offices to form internal working groups to identify victims of trafficking in persons in their respective areas; a task so far achieved 100%. These groups already have an established methodology and schedule of working meetings.

517. To give a national perspective to the fight against trafficking in persons, in 2006 the Institute took the initiative to form inter-agency committees in providing care to victims of human trafficking in all states of the country and the Federal District.

518. Government departments have been invited to form such working groups with their respective state representatives. Such departments include the Office of the Attorney General,

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(<sup>125</sup>) The research for this document was entrusted to Dr. Rodolfo Casillas, a Mexican expert.

the Centre for Investigation and National Security, the Federal Police, the Federal Ministry of Public Security and the state and municipal offices of Public Security, the National Human Rights Commission, the Offices of State's Attorney, the Systems for the Full Development of the Family, and the Women's Institutes of each state, as well as NGOs and, in the case of tourist resorts like Acapulco, representatives of hotel chains.

519. Each of the inter-agency committees formed must have a database, which collects information on the number of arrests and prosecutions, the number of convictions of smugglers and traffickers in human beings, and who commits these crimes. Moreover, it should have the number of victims found, their sex, marital status, nationality, type of victimization and migration status. The database should also contain details of the routes and means of transport used by criminal organizations to cross borders.

520. In collecting statistics on human trafficking, since 2005 the Institute has identified 22 trafficking victims. Among them 81% were victims in the sexual mode, while the remaining 19% were victims of labour exploitation. Five<sup>126</sup> of these aliens were given humanitarian visas for victims of trafficking, which affords them legal certainty and allows them to regularize their migration status in the country in order to cooperate in the prosecution of traffickers. The remaining victims were repatriated voluntarily to their home countries with the support of their consular representatives and international organizations such as IOM.

521. The table below shows the number of victims of human trafficking by nationality.

| Country      | 2005     | 2006     | 2007     | Total     |
|--------------|----------|----------|----------|-----------|
| China        | 1        | 1        | 0        | 2         |
| Guatemala    | 0        | 0        | 1        | 1         |
| Nicaragua    | 0        | 0        | 2        | 2         |
| Honduras     | 2        | 2        | 0        | 4         |
| El Salvador  | 0        | 1        | 0        | 1         |
| Argentina    | 1        | 3        | 4        | 8         |
| Slovakia     | 0        | 0        | 1        | 1         |
| Ecuador      |          |          | 2        | 2         |
| <b>Total</b> | <b>4</b> | <b>7</b> | <b>6</b> | <b>21</b> |

522. In order to implement law enforcement, the Institute has created official notices and circulars which regulate activities and enable the necessary assistance to be provided to victims:

- a) Circular INM/CCVM/007/2006: relates to custody of victims of trafficking, in the care of a solvent person, in order to regularize them and enable them to testify against traffickers;
- b) Circular INM/CCVM/031/2006: relates to the repatriation of trafficking victims, so that those who have been victims of this crime and have provided full information on their alleged traffickers may be immediately repatriated to their countries of origin;

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(<sup>126</sup>) Of these women victims, three were Argentine, one Slovak and one Brazilian.

- c) Circular INM/CCVM/039/2006: refers to implementing the principles of equality, non-discrimination, due process and labour rights of foreigners secured by the INM, in particular those who have been victims of labour trafficking in Mexico;
- d) Official Notice No. CRM/189/2007: deals with recognition of the status of victim or witness of various crimes, as well as the requirements for granting a stay in the country to trafficked witness.

523. With regard to training, in 2006 courses were taught to 295 public servants of the INM through 12 workshops on human trafficking. The workshops were taught by the Embassy of the United States of America; IOM Mexico; IOM Costa Rica; and the Regional Coalition against Trafficking in Women and Children.

524. For their part, the Office of the Attorney General and the Embassy of the United States of America trained 13 civil servants in the central sector of the INM and regional offices of the central area of the country on interviewing victims and witnesses of human trafficking, as well as on the detection of forged documents. The training took place from 30 July to 3 August 2007.

525. As a second stage of training on human trafficking, a course was held from 16 to 25 October 2007 for 150 INM public servants, also including representatives of 15 Central American consulates.

526. This training was aimed at civil servants of the INM, who, as the first point of contact with trafficking victims, should have the capacity to identify them and be sensitive to the psychological situation in which they find these people.

527. Since October 2007, this course has been repeated in almost all states, providing training for 300 persons, including officials of the INM and 170 staff from other units. On 20 and 21 December 2007, the course was taught to migration agents and to the Beta Groups in Tapachula, Chiapas. During 2008, the INM will continue to build awareness and provide training on the subject among its officials, especially in the Beta groups, in light of their profile and the humanitarian work they do, and in order to have at each of its offices migration agents specialized in identifying victims.

528. A major effort to combat trafficking in persons is the Project to combat trafficking in women, adolescents, and children in Mexico, presented on 14 October 2004 by the Inter-American Commission of Women (CIM), IOM, and the National Institute for Women. The Project has spurred various activities at the national level from its inception through September 2005, including:

- a) Capacity building of government institutions and NGOs through the holding of four training workshops in Monterrey, Nuevo Leon, in Tuxtla Gutierrez, Chiapas, and two in Mexico City, which have trained officials, academics, civil society organizations and media on the dynamics of trafficking, victim assistance and the international legal framework in the field;
- b) Publication and distribution of an informative / educational brochure on trafficking in persons.

529. During the meeting of the Regional Consultative Group on Migration held on 25 and 26 October 2005, it was agreed to note the initiative of Guatemala to conduct a meeting to assess the possibility of developing a regional protocol on the repatriation of trafficking victims and vulnerable groups in the countries of the region.

530. On 9 and 10 March 2006, a workshop was conducted in Guatemala City, from which emerged a draft set of regional guidelines for special protection in cases of return of children and adolescent victims of human trafficking.

531. The guidelines were adopted by the Deputy Foreign Ministers and Ministers of the Interior and of Justice of the member countries of the 12<sup>th</sup> Regional Conference on Migration during their meeting in New Orleans, United States of America, 24 to 27 April 2007.

532. The primary purpose of this document is to serve as a framework for institutions dealing with situations identification, protection and care of victims of trafficking, and it is not intended to be viewed as a normative instrument. It was developed based on the content of the various international instruments in this area and contains as fundamental principles the best interests of the child or adolescent and respect for their human rights.

533. As regards procedures for identifying and directing trafficking victims, the INM, in coordination with civil society organizations and intergovernmental organizations with expertise in the subject, is developing specific and targeted procedures geared to identifying and responding to victims of trafficking in four key areas: children identified by the INM, children referred by other authorities; adults who come forward voluntarily; and adults detected by the migration authorities.

534. The INM has, as a formal and primary source of information related to human trafficking, the information that is derived from interviews and statements by secured foreigners, which are duly substantiated by migration records, based on the internal regulations of the institution.

535. Since 2006, operations have been conducted at questionable business establishments and companies that hire foreigners to prevent sexual and labour exploitation in the country. Through the INM Coordinating Office for Migration Verification and Control, an annual programme of oversight of all regional offices has been put in place, for the purpose of conducting the appropriate verification of companies that hire foreigners.

536. In regard to international cooperation, the Memorandum of Understanding for the protection of women and minors who are victims of human trafficking on the border between Mexico and Guatemala was signed on 23 April 2004 and entered into force on 22 February 2005.

537. The Memorandum of Understanding between El Salvador and Mexico for the protection of persons, especially women and minors, who are victims of human trafficking was signed on 17 May 2005 and entered into force on 14 March 2006.

538. In the context of these international instruments, annual programmes of work have been developed which include the following activities:

- a) Bi-national training workshops;
- b) Compilation of a list of local, state, national and regional programmes on human trafficking and smuggling;
- c) Evaluation of procedures for repatriation;
- d) Coordination for the identification and protection of victims;
- e) Exchange of information;
- f) Conducting prevention campaigns.

## **7. Women migrants**

539. From 2004 to date, the National Institute for Women, in coordination with various agencies of the federal and state governments, NGOs, religious organizations and representatives of academia, has been pursuing actions aimed at protecting human rights of migrant women and eliminating of discriminatory practices in four areas of work: a) Mexican migrant women in the United States; b) Mexican migrant women within the country and in the border areas; c) foreign migrant women in Mexico; and d) Women living in areas of high migration mobility.

540. Among the actions cited in the previous paragraph is coordination, in conjunction with INM, of the Inter-agency coordinating roundtable on gender and migration, constituted in June 2005. As of June 2008 eight meetings have been conducted, involving 168 representatives of federal and state agencies, state women's institutes, academia, NGOs and religious organizations. Its main objectives are: to promote inter-agency coordination; to develop public policy proposals and initiatives with a gender perspective on migration; to assist in the development of strategies and programmes for migrant women; to promote and disseminate human rights of migrant women; and to promote exchange of experience, research and information on gender and migration.

541. In 2006, the National Institute for Women initiated a project to form a National network for the care of women affected by migration, with the objective of furthering public policies on gender and migration and promoting models of action consistent with international instruments, directed at the protection of human rights and capacity building for migrant women, working in coordination with various entities of federal, state and municipal government, nongovernmental organizations and academic institutions.

542. Based on the commitments deriving from the work of the Inter-agency coordinating committee on gender and migration, as well as regional meetings of the Network for the care of women affected by migration, a National Migration Week to take place from 20 to 24 October 2008 was proposed, focusing on gender and human rights, with the participation of federal, state and municipal government agencies, centres of higher education, civil society organizations, religious organizations and international agencies.

543. Since 2007, the National Institute for Women incorporated into the 2007-2012 National programme for equality between women and men strategies and actions relating to the protection of human rights of migrant women, including Strategic Objective 1, Strategy 1.5, line of

action 1.5.4 and Strategy 1.6. Line of action 1.6.5, Strategic Objective 2, ensuring legal equality, human rights of women and non-discrimination under the rule of law; Strategy 2.3. Ensuring strict observance and exercise of human rights of women in terms of discrimination, age discrimination and equal treatment for the enjoyment of their rights; Lines of Action 2.3.1. Further harmonizing national legislation on human rights of women in line with international conventions and treaties ratified by the Mexican State, especially for women with disabilities, prisoners, migrants, elderly women, children and adolescents; 2.3.6. Strengthening training and professionalization of civil servants serving in migrant holding centres, rehabilitation, health and justice institutions, regarding human rights of women and gender equity; 2.3.7. Establish the National network of integrated Services for referral to basic services, counselling, legal counselling, psychological, health, labour, or referral, which serves women in transit or in a situation of international or national migration, to protect their human rights with the cooperation of the states and competent federal authorities, Strategic Objective 3, Strategy 3.3., Lines of Action 3.3.1. 3.3.6.

### **XIII. ARTICLE 13: DUE PROCESS IN EXPULSION OF ALIENS**

#### **A. Legislative advances**

544. Under the Mexican legal system, it falls to the executive branch to determine the expulsion of any alien who falls under the cases provided for in Article 33 of the Constitution and article 125 of the General Population Act.

545. In practice, this power is exercised through the National Institute for Migration (INM), which is governed by the Regulations of the General Population Act, to carry out procedures for expulsion, as provided in Section VI, Article 27 of the Organic Act on the Federal Public Administration, as well as the Internal Regulations of the INM.<sup>127</sup>

546. It should be noted, as regards the difference between expulsion proceedings under Article 33 of the Constitution and Article 125 of the General Population Act, that the former is an exceptional procedure that falls exclusively to the federal executive and is not subject to appeal through amparo and review, although the decision must be duly founded and substantiated, while the latter is an administrative procedure which can be challenged through amparo and review.

547. The Regulations of the General Population Act of 1992 were repealed and replaced by the current Regulations<sup>128</sup> published in the Diario Oficial on 14 April 2000.

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(<sup>127</sup>) Chapter VIII, SANCTIONS, of article 125 of the General population act empowers the National Institute for Migration to remove an alien, and article 126 empowers it to readmit the alien. In other cases of expulsion, different from those envisaged in these articles, the basis is article 33 of the Constitution, which provides that “the Federal Executive may compel any foreigner whose stay is deemed inappropriate to leave the national territory immediately and without the need for a prior judgement.”

(<sup>128</sup>) See: <http://www.ordenjuridico.gob.mx/Federal/Combo/R-120.pdf>, corresponding to article 12 of the Covenant, wherein the regulation in question has been included.

548. In the event that the expulsion of a foreigner is decided but not carried out immediately, the person may be secured and remanded to the officer in charge of a migrant holding station.

549. In accordance with Article 209 of the aforementioned Regulations, when an alien is secured at a migrant holding centre for having violated the General Population Act, the procedure is as follows:

- a) a medical examination is performed to certify the person's physical-psychological condition;
- b) The alien is allowed to communicate with a person of his choosing, by telephone or by any means available;
- c) If he so requests, his consular representative accredited to Mexico is notified immediately and, if he does not have a passport, a request is made for a passport or identity and travel papers to be issued;
- d) An inventory is drawn up of the alien's personal effects, which are deposited in a space set aside for that purpose;
- e) From the moment the migrant is secured, his statement is taken in the form of an administrative record in the presence of two witnesses; and he is informed of the facts alleged against him, his right to offer evidence and to assert such arguments as he may be legally entitled to, provided the migration authority had not already taken his statement at the time he was secured. If necessary, an interpreter is provided for this procedure

550. Also, when an accredited consular representative, a legal resident alien or a Mexican so request, the alien may be placed in their custody, provided he meets the conditions set out in Article 153 of the Act. Such custody remains in effect so long as the corresponding removal order has not been executed.<sup>129</sup>

#### **Expulsions based on the Regulations of the General Population Act**

| <b>Year</b>     | <b>Federal District</b> | <b>INM Total</b> |
|-----------------|-------------------------|------------------|
| 2002            | 6,479                   | 110,573          |
| 2003            | 7,533                   | 178,519          |
| 2004            | 7,542                   | 211,218          |
| 2005            | 7,984                   | 221,756          |
| 2006            | 3,822                   | 179,345          |
| 2007            | 3,214                   | 45,785           |
| 2008 (to March) | 655                     | 10,855           |

The 2006 data include voluntary repatriations, departure notices and departure notices under regulations. From 2007, a distinction was made. The 2007 figure corresponds only to expulsions. Source: National Institute for Migration, June 2008

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<sup>(129)</sup> Article 211, subsection III of the Regulations of the General population act.



551. Regarding refugee matters, the Regulations provide in article 166, part VIII, paragraph (d) that a refugee cannot be returned to his country of origin, or sent to another where his life, liberty or security are threatened.

### **B. Judicial decisions**

552. The Supreme Court of Justice of the Nation has held that even in applying article 33 of the Constitution, the Federal Executive is obliged to state grounds and reasons, and consequently the remedy of amparo may also apply. In that regard, the Court has stated:

“Although article 33 of the Constitution exclusively empowers the Federal Executive to compel any foreigner whose stay is deemed inappropriate to leave the national territory immediately and without the need for a prior judgement, it does not relieve said officer of the duty he has, like any other authority in the country, to state the reasons and legal grounds for so proceeding, given the inconvenience occasioned by deportation, since this guarantee is spelled out by article 16 of the Constitution itself. Consequently, his acts may not be arbitrary but must comport with the rules laid down by the Constitution and the laws. This being the case, an appeal against his decisions based on fundamental rights will lie, in accordance with article 103, section I, for which purpose the procedure to be followed is laid down by the corresponding regulations.”<sup>130</sup>

553. That opinion was confirmed in a decision of 2005 to the following effect:

“...a proceeding for annulment will lie...even when a foreigner is ordered to leave the country; this is so because, in dealing with such acts, federal legislation does not impose requirements greater than those contemplated under the Amparo Act in order to grant the stay of an act challenged, since its consequences are not to be confused with expulsion applied by the President of the Republic in conformity with article 33 of the Constitution, the latter being a case in which it is indeed appropriate to proceed with an appeal based on guarantees without need of exhausting any legal remedy or recourse, since in dealing with such a determination, the Amparo Act in article 123, section I, provides that the stay be granted outright.”<sup>131</sup>

554. In December 2007, the Court issued a settled precedent (tesis jurisprudencial) that establishes the validity of an ex officio stay against the expulsion of an alien ordered by an administrative authority based on the General Population Act.<sup>132</sup>

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<sup>(130)</sup> EXPULSION OF ALIENS MUST BE JUSTIFIED. DIEDERICHSEN TRIER WALTER, *Judicial Weekly of the Federation*, volume XCV, fifth period, January 1948, pp. 720.

<sup>(131)</sup> FINALITY IN AMPARO PROCEEDING. AGAINST A DETERMINATION ISSUED BY THE NATIONAL INSTITUTE FOR MIGRATION RESOLVING THE REVIEW PROCEEDING REFERRED TO IN ARTICLE 83 OF THE FEDERAL LAW ON ADMINISTRATIVE PROCEDURES, THE PROCEEDING FOR ANNULMENT MUST FIRST BE EXHAUSTED, *Judicial Weekly of the Federation*, ninth period, volume XXIII, February 2006, opinion XX.1 69 A, pp. 1797.

<sup>(132)</sup> STAY OF ORDER MAY ISSUE OUTRIGHT AGAINST EXPULSION OF ALIENS ORDERED BY AN ADMINISTRATIVE AUTHORITY BASED ON THE GENERAL POPULATION ACT, *Judicial Weekly of the Federation*, ninth period, volume XXVI, December 2007, opinion P./J. 80/2007, pp. 13.

## C. Institutional measures

### 1. Guatemalan refugees

555. The year 1999 marked the conclusion of the voluntary repatriation programme for about 46,000 Guatemalan refugees who in the early 1980s had entered Mexico fleeing violence in their country. Under this programme of support for repatriation, 42,737 refugees and their Mexico-born descendants returned to Guatemala. Those who chose to remain in Mexico were able to do so based on a legal reform in 1996 that created the “assimilated” category and launched the migration regularization programme. From 1996 to 1999, in coordination with the INM, documents were issued consisting of 8,149 non-immigrant forms and 10,686 assimilated immigrant forms.

556. Under the naturalization programme, from 1996 to 2004 the Ministry of External Relations delivered 10,098 letters of naturalization to former Guatemalan refugees who acquired Mexican nationality.

### 2. Other refugees

557. Additionally, Mexico has received applications for refugee status from places other than the one described above. Between 2002 and 23 July 2008, recognized refugees and their dependents in Mexico totalled 517 people. The table below details the numbers of asylum seekers and those whose status as such is recognized in this period.

| CATEGORY | APPLICANTS        |            |       | RECOGNIZED        |            |       | NOT RECOGNIZED    |            |       |
|----------|-------------------|------------|-------|-------------------|------------|-------|-------------------|------------|-------|
|          | Head of household | Dependents | Total | Head of household | Dependents | Total | Head of household | Dependents | Total |
| 2002     | 204               | 17         | 221   | 44                | 2          | 46    | 68                | 7          | 75    |
| 2003     | 233               | 39         | 272   | 38                | 2          | 40    | 134               | 24         | 158   |
| 2004     | 333               | 68         | 401   | 60                | 12         | 72    | 135               | 22         | 157   |
| 2005     | 599               | 86         | 685   | 116               | 15         | 131   | 123               | 68         | 191   |
| 2006     | 435               | 68         | 503   | 75                | 8          | 83    | 107               | 39         | 146   |
| 2007     | 321               | 54         | 375   | 71                | 17         | 88    | 125               | 21         | 146   |
| 2008*    | 157               | 34         | 191   | 42                | 15         | 57    | 43                | 9          | 52    |
| TOTALS   | 2282              | 366        | 2648  | 446               | 71         | 517   | 735               | 190        | 925   |

558. On 12 April 2007, the INM issued a circular which states how the principle of non-refoulement of refugees should be implemented. Also, circular CRM/016/2007 of 3 July 2007 provided that, upon the recommendation of the Mexican Commission for Aid to Refugees (COMAR), foreigners cannot be returned if they are from countries for which there are guidelines of the United Nations High Commissioner for Refugees (UNHCR) on non-refoulement, or if these refugees had been subjected to torture or degrading treatment, in accordance with the international instruments to which Mexico is party.

559. The foregoing applies even in cases where aliens have not met the requirements for obtaining refugee status. Also the joint circular of these institutions (CRM/028/2007 of 13 November 2007) states that once the application is filed and until it is resolved, migration authorities will be asked to refrain from taking action regarding removal the applicant.

### **3. Migratory regularization programmes**

560. The INM, as one of its activities to protect human rights of migrants, implemented the programme to regularize migration, through which the INM has regularized just over 20,000 foreigners during the this reporting period. Further details may be found in Annex 13.1.

561. The aim of this programme is to reduce irregular stays in the country, which can be conducive to violations of migrants' human rights, especially for migrants from Central America, since, given their irregular presence in the country, they can become victims of their employers.

### **4. Remedies**

562. If it is decided to remove an alien, he can choose two ways to seek an effective remedy: judicial and non-judicial.<sup>133</sup>

563. As regards the non-judicial remedy, the alien may appeal to the Civil Service Department to request that an administrative proceeding be initiated against a public official who issued the expulsion order. If the Department concludes that the official is responsible and has caused damage to the injured parties, they can apply to the Internal Monitoring Body of the INM to issue its finding regarding the payment of compensation.

564. Further, when a recommendation has been accepted from an institution which is legally responsible for monitoring and defending human rights, and the recommendation proposes reparations for damages, the entity in question must confine itself to determining the amount in cash and issuing the appropriate payment order.

565. Complainants can also opt for the judicial remedy and apply to the courts for payment of compensation for damage sustained, in this case the moral damage referred to by the Federal Civil Code.

566. Further, The Federal Public Servants' Responsibilities Act, which entered into force on 1 January 2005, lays the foundations and provides procedures to recognize a right to compensation for persons who, without any legal obligation to do so, sustain damage to their property and rights as a result of irregular administrative activities of the State<sup>134</sup>. The extra-contractual liability of the State is objective and direct, and compensation must be in keeping with the terms and conditions set out in said Law and the other legal provisions to which it refers.

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(<sup>133</sup>) Initial report of Mexico on the protection of the rights of all migrant workers and their families. Document CMW/C/MEX/1, paragraphs 48 to 51.

(<sup>134</sup>) Article 113, paragraph 2 of the Constitution.

567. Under article 20 of that law, an expulsion decision that has already been carried out and is subsequently revoked does not in itself give rise to a right to compensation.

#### XIV. ARTICLE 14: JUDICIAL GUARANTEES

568. As reported to the Committee in 2000<sup>135</sup>, the Mexican Constitution and the laws that emanate from it guarantee every defendant the right to be informed of the reasons and causes for the charges against him, the right to a public trial by a competent and impartial court, and the right to confront those who accuse him. One of the rights guaranteed by the Constitution and laws to every defendant is the right to be present at all stages of the preliminary investigation and the trial, at which he can produce in his defence the evidence he deems relevant.

569. The criminal procedure laws guarantee public hearings, in which the accused can defend himself *pro se* or through counsel, both having full opportunity to speak for that purpose (articles 86 and 90 of the Federal Code of Criminal Procedure).

570. As regards the Committee's recommendation to amend the laws as needed to ensure that it is the State which has the burden of proving that confessions used as evidence were given voluntarily by the accused, and to ensure that confessions extracted by force are not used as evidence at trial, it is worth reiterating that in Mexico, a confession obtained through coercion can not be used as evidence against the accused.

571. In this regard, the law states that no confession extracted by duress is admissible as evidence. For the refinement of this test, the criminal law requires that a number of conditions be met, without which the confession loses all evidentiary value: among others, the confession must be made before a jurisdictional authority and in the company of a person trusted by the accused, ensuring that no confession can be extracted by coercion. Moreover, a confession alone is not enough evidence to convict a person.

572. In the Committee's Concluding Observations to the Fourth Periodic Report submitted by Mexico, the Committee observed that "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."<sup>136</sup>

573. The Mexican Government recognizes that one of the main challenges is to reform the system of public security and criminal justice so as to ensure respect for human rights. Accordingly, as mentioned in regard to Article 9 of the Covenant and as will be discussed below, the Diario Oficial published on 18 June 2008 the decree amending articles 16, 17, 18, 20, 21, 22, 73, 122 and 123, Paragraph B, section XIII of the federal Constitution on judicial matters, in order to establish the accusatory model of criminal justice, which goes beyond what is mentioned in the observation and will be implemented in the coming years.

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<sup>(135)</sup> See Addendum to Fourth periodic report of Mexico to the Human Rights Committee, document CCPR/C/123/Add.2 of 28 April 2000.

<sup>(136)</sup> Consideration of reports of states parties under article 40 of the Covenant. Observations of the Human Rights Committee. Mexico. Human Rights Committee, 66th session, CCPR/C/79/Add.109, 27 July 1999, paragraph 11.

### A. Legislative advances

574. On 11 June 1999 a number of provisions were amended that, taken together, are aimed at strengthening the Supreme Court of Justice of the Nation as a constitutional court, expressly establishing the powers of the Court and Federal Judicial Council.

575. Article 94 of the Constitution<sup>137</sup> was amended in order to empower the Judicial Council to decide on the number, division into circuits, territorial jurisdiction, and, where appropriate, field of specialty of federal courts.

576. An amendment was adopted at the same time to article 100 of the Constitution<sup>138</sup> on the Federal Judicial Council, establishing the Council's technical and administrative independence and its independence in issuing rulings.

577. An addition to article 20 of the Constitution,<sup>139</sup> published on 21 September 2000, establishes the rights of victims and / or complainants in criminal proceedings. Among these are:

- a) The right to receive legal advice, and urgent medical and psychological care;
- b) The right to be informed, upon request, of the procedure;
- c) The right to participate with the prosecution in both the preliminary investigation and the trial, submitting such evidence as they may have;
- d) The right to compensation for damage;
- e) If the victim and / or complainant are minors, they may refuse confrontation with the accused in cases of kidnapping or rape;
- f) The right to apply for such measures as the law may provide for their safety and assistance.

578. Continuing with the development of article 20 of the Constitution, it should be noted that, in regard to reparation for damage, the prosecutorial authorities are obliged to request the same, and a judge cannot relieve a convicted person from paying damages. The procedure by which judgments regarding reparation for damages are to be carried out, in keeping with the Constitution, shall be determined by law, but such a law has not yet been passed.

579. On 17 May 2001, the Amparo Act was amended. Article 95, section X; article 99, first paragraph; and article 105, fourth paragraph were amended. A third paragraph was added to article 99, the remaining articles being renumbered accordingly. The fifth and sixth paragraphs of article 105 were amended, and second and third paragraphs were added to article 113. The

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(<sup>137</sup>) See: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_140\\_11jun99\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_140_11jun99_ima.pdf)

(<sup>138</sup>) *Idem*.

(<sup>139</sup>) See: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_149\\_21sep00\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_149_21sep00_ima.pdf) Latest reform of 18 June 2008 at: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_180\\_18jun08\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_180_18jun08_ima.pdf)

purpose was to include substitute performance of judgments of amparo in the text of secondary laws. The chambers of the Supreme Court of Justice of the Nation are thereby expressly empowered to resolve appeals against decisions of the Collegial Tribunal with regard to substitute performance of judgments of amparo.<sup>140</sup>

580. On 14 August 2001 the Diario Oficial published an amendment of Article 2 of the Constitution<sup>141</sup> to include the rights of indigenous peoples. The amendment establishes the right of indigenous peoples and communities to have full access to the jurisdiction of the State, giving consideration to their customs and cultural differences in any trial or proceeding to which they are parties, individually or collectively. It also establishes the right of any indigenous person to have a translator and advocate who knows his language and culture.

581. On 12 March 2006 an amendment of Article 18 of the Constitution came into force which changed the age at which treatment in confinement can be applied to adolescents over age 14 and under 18 who have committed antisocial conduct considered serious; such treatment is to be for as short a duration as possible. This reform provides a specialized justice system for adolescents. It replaces the term juvenile offender by the term adolescent and the so-called offenses are instead referred to as conduct defined as a crime under criminal laws.

582. The procedure for adolescents will no longer be an administrative one. Preparation of the case will no longer depend on an administrative body; rather, there is a specific procedure of a judicial character, part of the administration of justice. The reform provides that the jurisdictional organ and the executive party are not part of the same entity (prior to this provision, the Ministry of Public Security participated as both judge and party). Following the reform, the jurisdictional entity is the Council for Minors and the executive entity is the General Directorate for Prevention and Treatment of Minors.

### **1. Reform of the public security and penal justice system**

583. With the "Reform of the Public Security and Criminal Justice System" published on 18 June 2008 in the Diario Oficial, amendments were made to articles 16, 17, 18, 20, 21, 22, 73, 122 and 123, section B, paragraph XIII of the federal Constitution on judicial matters, in order to establish the accusatory model of criminal procedure, which implies a radical change in the administration of justice in Mexico.

584. The reform sets up a system of guarantees affording respect for the rights of the victim, the complainant and the accused, based on the presumption of innocence for the latter. The system will be public and adversarial in nature, with unified submission of evidence in a single tripartite oral proceeding in which the Ministerio Público (prosecutorial authority) will conduct the prosecution, the accused will be able to defend himself, and it will be the judge in the end who determines the appropriate course. Oral proceedings will contribute to promoting transparency, at the same time providing for a direct link between the judge and parties, thus tending to make criminal procedures simpler and more flexible.

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<sup>(140)</sup> See: <http://www.ordenjuridico.gob.mx/Federal/Combo/L-9.pdf>

<sup>(141)</sup> See: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_151\\_14ago01\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_151_14ago01_ima.pdf)

585. It provides for the inclusion of a supervisory judge (juez de control) who, immediately and by any means, rules on requests for interim measures, restraining orders and methods of investigation of the requesting authority, ensuring that the rights of the parties are respected and that actions by the party bringing charges are in compliance with the law. The supervisory judge is in charge of the case from the time the suspect is charged to the opening of the trial. The oral hearings are conducted by a judge or court that has not had contact with the case, and the application of the penalty is under the responsibility and supervision of a sentencing judge.

586. It contemplates alternative dispute-resolution mechanisms which seek to effect reparation of damage to crime victims. Those mechanisms will be subject to judicial oversight in accordance with the terms deemed appropriate under secondary legislation. This measure will be conducive to judicial economy and attain a fundamental objective: ensuring that the victim of a crime is protected and that the defendant is held accountable for his actions, repairing the damage done insofar as possible.

587. In the defence of the accused, the reform eliminates the “trustworthy person” (“persona de confianza”) and ensures the right to an adequate defence conducted by a lawyer. In order to reach that objective and ensure equality in its fulfilment, provision is made to establish a quality public defender’s service for the population and to create conditions for a professional career for public defenders, providing that their emoluments may not be less than those of agents of the office of the Ministerio Público.

588. It provides that the accusatory system of criminal procedure will enter into force when so provided by the corresponding secondary legislation, without exceeding eight years. For the time being, the decree reforming the first article of the Organic Law on the Office of the Attorney General of the Republic was approved on 18 June 2008.

589. It proposes a special regime for organized crime and empowers the Congress of the Union to legislate on this matter. For these cases, short-term detention may be decreed by the supervisory judge at the request of the prosecutorial authority subject to the modalities of time and place provided by law, so long as it is necessary for the success of the investigation, for protection of persons or property, or when there is a well-founded risk that the accused may escape the administration of justice. It may not exceed forty days, which term may be extended only upon a showing by the prosecutorial authority that the causes which gave rise to it still exist, and may not in any event exceed 80 days.

590. The exceptional provisions laid down against organized crime are intended exclusively to combat this type of crime and may in no event be used for other kinds of conduct, preventing competent authorities from making abusive use of the powers conferred against social militants or against opponents or critics of a particular regime.

591. The definition contains elements that distinguish organized crime from conspiracy (asociación delictuosa), since the latter applies to any offense contained in the criminal laws, while the regime for organized crime is created to address a very special form of crime as regards operational capacity, organization, sophistication and impact.

592. This constitutional reform comes in response to recurrent demands for modernization of the system of administration of justice with a view to giving full effect to the individual

guarantees enshrined in the Constitution without hampering the fundamental task of the Mexican State to ensure due security to persons and property as well as the rule of law.

## 2. Military justice

593. The existence of military law in the Mexican legal system has its foundation in article 13 of the Constitution. That principle, which prohibits private laws and special courts, also provides expressly and categorically:

“Military jurisdiction shall be recognized for the trial of crimes against and violations of military discipline, but the military tribunals shall in no case have jurisdiction over persons who do not belong to the army. Whenever a civilian is implicated in a military crime or violation, the respective civil authority shall deal with the case.”

594. As the very wording of the article indicates, military law does not constitute a set of exceptional laws or privileges in favour of the military. Rather, it implies recognition of a specialized subject-matter which ensures the legal certainty necessary for just and equitable administration of military justice. To achieve those aims, it is necessary that those who administer military justice have general legal knowledge and specific military knowledge in the areas that are part of this specialized realm of justice. All of the foregoing is conducive to the strengthening and refinement of the rule of law in our country.

595. Article 57 of the Code of Military Justice establishes as offenses against military discipline both those set out in Book Two of said code and those falling under general or federal jurisdiction when they are committed in connection with one of those provided in the Code of Military Justice or in the course of service. If such circumstances are not present, jurisdiction over them falls to the civil authorities, which shows that the legislation does not seek to privilege the application of military law. Consequently, to interpret the military law as a privilege would indicate a lack of understanding of the nature of military justice.

596. Article 13 of the Constitution enshrines equality before the law and the courts by prohibiting special laws and special courts, but to establish military law for crimes and misdemeanours against military discipline, it ensures legal certainty and equal protection in the administration of justice by preventing it from being extended to the civilian population and ensuring that its exclusive sphere of competence is circumscribed to crimes and misdemeanours of a military character, in keeping with the provisions of military laws and regulations, without prejudice to federal or general laws which may be applicable to military personnel when a member of the armed forces is not in active service and offenses against military discipline are not involved.

597. In the 19th Century, before the Juárez Law of 1858, military law was constituted as a privilege. With the entry into force of the Juárez Law, all privileges were abolished and specialized courts to deal with military offenses remained for the purpose of enforcing strict compliance with the law.

598. Military tribunals are designed for the administration of justice by a specialized body with in-depth knowledge of military law, in the same way that a district court deals exclusively with



federal crimes. Furthermore it may be noted that the penalties established in the Code of Military Justice are more stringent than those laid down by civil law.<sup>142</sup>

599. Given the concern expressed by the Committee during its consideration of the Fourth Periodic Report of Mexico regarding the lack of institutionalized procedures to investigate alleged violations of human rights by military personnel and security forces, the National Human Rights Commission has not experienced any impediment to raising matters and making recommendations to the Ministry of National Defence and to the Ministry of Naval Affairs of Mexico.

600. As the Committee on that occasion encouraged the Mexican State to establish adequate procedures for allegations of human rights violations committed by military and security forces, on 30 June 2006, the Diario Oficial published a decree adding a second paragraph to Article 72 and a second and third paragraph to Article 73 of the National Human Rights Commission Act, by which this body was empowered to request the internal oversight bodies of different entities to initiate accountability proceedings against public servants.

601. With this reform, the National Human Rights Commission may follow up also on actions and steps that are carried out in preliminary investigations and criminal and administrative proceedings begun in response to its intervention, and may take steps conducive to pursuance of such proceedings, without intervening as a party in them. In the event that a public servant, including a member of the military, in response to a request for information made by the entity, reports false or partially true information, he shall be punished as provided by article 214, section V, Federal Criminal Code. These actions strengthen respect for human rights.

602. One cannot fail to mention, finally, that article 37(a) of the Organic Law on the Federal Judiciary, empowers the circuit courts to examine judgments or resolutions adopted by the military courts, regardless of the penalties imposed. As a result, according to data of the Federal Judicial Council, the circuit courts reviewed 360 decisions of the Supreme Military Tribunal from 2000 to 2008.

603. Only in 40% of these cases was amparo denied or dismissed, upholding the decision of the Supreme Military Tribunal and the conviction against the soldier or sailor. In 125 cases, the federal judges acquitted the complainant, and in 91 cases amparo was granted remanding to the Supreme Military Tribunal for a new sentence.

### **3. Provisions to ensure fair trial for the indigenous population**

604. For indigenous communities, the federal Constitution states that they have the right, in all cases and proceedings to which they are party individually or collectively, to have their customs and cultural differences taken into account. They must also be assisted by interpreters and advocates who have knowledge of their language and culture, in order to understand and be understood in legal proceedings, and must serve sentences in prisons that are closest to their communities.

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<sup>(142)</sup> A recent study by the Judicial Council issued in June 2008 brought out that those who turn to civilian courts to challenge a decision of a military tribunal achieve more lenient sanctions or rulings than those received under military law. See: <http://www.dgepj.cjf.gob.mx/>

605. The Federal Code of Criminal Procedure has incorporated the provisions of the federal Constitution, guaranteeing the right to legal certainty and the protection of the laws for indigenous peoples and communities.

606. The states of Baja California, Campeche, Chiapas, Durango, Mexico, Hidalgo, Jalisco, Michoacan, Morelos, Nayarit, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosi, Sinaloa, Sonora, Tabasco, Veracruz and Yucatan have legislated the right of access to the full jurisdiction of the State, this right being most fully developed at the federal level, as well as in local laws.

#### **4. Minors in trouble with the law**

607. In regard to juvenile justice, the Act on the Protection of the Rights of Children, published in the Diario Oficial on 29 May 2000, states in its fourth title, "The right to due process in cases of violation of criminal law," that the laws shall protect children and adolescents against any interference that is arbitrary or contrary to their constitutional guarantees and the rights recognized by law and by treaties signed by Mexico.<sup>143</sup>

608. To comply with the above, legal rules must establish a basis for ensuring that:

- a) Minors are not subjected to torture or other cruel, inhuman or degrading treatment;
- b) They are not deprived of their liberty unlawfully or arbitrarily. Detention or deprivation of liberty of adolescents will be conducted in accordance with the law and observing the right to trial, defence and procedural safeguards afforded by the Constitution;
- c) Deprivation of liberty is used provided there has been found to be a serious violation of the criminal law, and as a last resort for the shortest period possible, in keeping with the principle of the best interests of children;
- d) As to those adolescents who violate the criminal law, their treatment or placement shall be different from adults and they shall be placed in different locations. To that end, specialized institutions for their treatment and confinement will be created;
- e) Laws or codes will be developed that establish procedures and create specialized institutions and authorities to treat those who are alleged to have broken criminal laws. These will include specialized prosecutorial authorities;
- f) Consideration shall be given to the importance of promoting adaptation and social reintegration of the adolescent so that he can assume a constructive role in society;
- g) Treatment measures that are applicable to those who violate the criminal law will include the following: care, guidance, supervision, counselling, probation, placement in foster care, education and vocational training, as well as other alternatives to

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<sup>143</sup>) Article 44 of the Act on the Protection of the Rights of Children. See:  
<http://www.ordenjuridico.gob.mx/Federal/Combo/L-200.pdf>

institutional placement, in order to ensure they are treated in a manner conducive to their social reintegration and adaptation, in keeping with their welfare, ensuring that the measure applied is commensurate with the circumstances of commission and the appropriate sentence;

- h) Any adolescent who has allegedly broken the penal law is entitled to prompt access to legal assistance and any other appropriate assistance to safeguard their rights. Consequently, action shall be taken to establish specialized public defender services;
- i) In cases of alleged violation of criminal laws, the right to the presence of their parents, guardians, or custodians who are responsible for their care is to be respected;
- j) Those who are legally deprived of their liberty are to be treated with respect for their human rights and the inherent dignity of every person;
- k) Those who are deprived of their liberty shall have the right to maintain permanent contact with their family, with whom they shall be allowed to live save in cases where it is inconsistent with the best interests of the child;
- l) There shall be no deprivation of liberty in any case concerning children. In the case of adolescents who find themselves in extraordinary circumstances of neglect or in the streets, they may not be deprived of liberty due to such hardship.

609. Article 46 of the Act on the Protection of the Rights of Children provides that the procedures applied to an adolescent who has allegedly broken the criminal law shall respect all the procedural safeguards laid down in the Constitution, particularly the following:

- a) The presumption of innocence, under which he is presumed innocent until proven guilty;
- b) The right to a speedy trial, which consists of expeditious oral proceedings for those deprived of liberty;
- c) The right to a defence, which implies the duty to inform the adolescent at all times of the charges against him and of the state of the proceedings, to secure for him the assistance of a public defender in the event that the adolescent or his guardian has not appointed one, and to ensure that he is not compelled to testify against himself or his relatives;
- d) The right not to be required to confront the court or the prosecutor;
- e) The right to adversarial procedures, which means that an adolescent placed on trial shall timely be informed of all steps and procedures in the trial so that he can assert what he is legally entitled to in his defence and interpose appeals;
- f) The right to oral proceedings, which entitles the adolescent directly to hear the proceeding.

610. As a result of the reform on indigenous rights, amendments have been made to some provisions of the Act on the Treatment of Juvenile Offenders, which were published on 25 June 2003. They established the State's obligation to accord the highest priority to defending and promoting the rights of indigenous communities, which, among many other implications, must be given full access to the State's jurisdiction.

611. This reform gives the Minors' Council new powers, so that when the minors under its jurisdiction are indigenous, they must take into account the customs, ways and language of the community to which they belong. Among other measures, an obligation is established to assign a public defender who knows their language and culture, and an interpreter.

## **5. Patrimonial liabilities of the State**

612. On 14 June 2002 the Diario Oficial published an amendment to article 113 of the Constitution pertaining to the liability of the State in cases of violation of human rights and the right to compensation for victims. The article now in force reads as follows:

“The State shall bear direct and objective liability for such damages as may be caused to the property or rights of individuals by irregular administrative acts of its agents. Individuals shall have the right to compensation on the grounds established by law and subject to the limits and procedures established by law.”

613. Violations of the human rights recognized under the Covenant are among the acts which may give rise to such state liability. For the federal Government, this being an objective liability, it will not be necessary to prove the element of intent by the official committing the violation in order for reparation of the damage to be due. In addition, the State must respond immediately to the individual, without need of the public servant being found responsible, while the State retains its own cause of action against the latter.

## **B. Judicial decisions**

614. The Supreme Court of Justice of the Nation has handed down a number of opinions recognizing fundamental rights of citizens in relation to article 20 of the Constitution regarding the rights of persons in court. These decisions pertain in particular to the right against self-incrimination, preliminary statements, the presumption of innocence, and the right to competent defence.

615. The Supreme Court of Justice of the Nation has held that the right against self-incrimination should be understood as the right of any accused person not to be obliged to testify, whether by confessing or denying the facts alleged against him. The law therefore prohibits incommunicado detention, intimidation and torture, and even a confession made to any authority other than the prosecutor or judge, or made to them without the presence of defence counsel; otherwise, such statement shall lack any evidentiary value. However, this guarantee

does not mean that the accused may testify falsely to the authorities, only that he is not obliged to testify.<sup>144</sup>

616. The First Chamber of the Supreme Court has made a distinction between the generic right to a defence and the right against self-incrimination, based on the fact that the former entitles the accused to competent defence through positive acts, whilst the latter guarantee refers to a form of inaction on the part of the subject who is accused, i.e. the right not to confess or admit guilt to the authorities.<sup>145</sup>

617. In regard to the preliminary statement of the accused, the Court has held that omission of the statement is a direct violation of article 20 of the Constitution which requires instituting the procedure anew as from the order for ministerial investigation. Consequently, a sentence of imprisonment arrived at without having complied with the requisite preliminary statement violates the individual rights of the accused and an appeal in amparo should be granted so that the court can order the case to be instituted anew as from the order for ministerial investigation, take the statement of the accused and, within the constitutional time-limit, resolve his legal situation as required by law, on the understanding that so doing does not have the effect of nullifying other ministerial acts.<sup>146</sup>

618. Under the same analysis, the Court has established that if the State fails to prove criminal liability at trial, the court must issue an opinion examining all the issues raised and must acquit the accused.<sup>147</sup>

619. With regard to due process, the Court has held that this refers to observance of the fundamental conditions which must be met in a jurisdictional proceeding; therefore due process obliges the court to decide the controversies placed before it, considering each and every argument adduced in the complaint, in the answer, and in such other filings as may arise in the case, so that it resolves all the points at issue.

620. The Court has taken the view that the authorities have an obligation to duly articulate grounds and reasons for their acts, i.e. state the legal rationale and factual background underlying

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<sup>(144)</sup> RIGHT AGAINST SELF-INCRIMINATION. SCOPE OF CONTENT OF ARTICLE 20, SECTION A, SUBSECTION II OF THE FEDERAL CONSTITUTION. *Judicial Weekly of the Federation*, ninth period, volume XXI, January 2005, opinion 1 CXXIII/2004, pp. 415.

<sup>(145)</sup> RIGHT TO DEFENCE. ITS CHARACTERISTICS; DISTINGUISHED FROM THE RIGHT AGAINST SELF-INCRIMINATION, *Judicial Weekly of the Federation*, NINTH PERIOD, VOLUME xxi, January 2005, opinion 1 XCCIV/2004, pp. 414.

<sup>(146)</sup> PRELIMINARY STATEMENT. ITS OMISSION GIVES RISE TO INSTITUTING THE PROCEDURE ANEW (LEGISLATION OF THE FEDERAL DISTRICT). *Judicial Weekly of the Federation*, ninth period, volume XXIV, August 2005, opinion I.2 P. 128P, p. 2171.

<sup>(147)</sup> THE PRINCIPLE IN DUBIO PRO REO IS IMPLICITLY PROVIDED FOR IN THE CONSTITUTION, *Judicial Weekly of the Federation*, ninth period, volume XXII, August 2005, opinion 1 LXXIV/2005, pp. 300.

their conclusion, which must be real, certain and supported by sufficient legal force to trigger the authority used.<sup>148</sup>

621. Regarding the right to competent assistance of counsel for the accused, the Court has established that the detainee should have legal assistance from the time he is remanded to the prosecutorial authorities.

622. The Court also noted that assistance of defence counsel is not limited to his physical presence in court proceedings, but must be understood as a real possibility for the detainee to have the effective assistance of counsel. Thus, it has held that a person arrested in flagrante delicto, if he so decides, may meet with the person who is to serve as his counsel immediately upon request and before making his first statement.<sup>149</sup>

623. The Court has stated *en banc* a concept of the right to trial laid down in article 14 of the Constitution which requires giving the person an opportunity to defend himself prior to the act which is to deprive hi of liberty, property, possessions or rights. Respect for this concept requires the authorities, among other obligations, to ensure that the trial “observes the essential formalities of the proceeding.” The Court determined that those formalities are necessary to guarantee an adequate defence before the act of deprivation and, generally, consist of the following: (a) notice of the beginning of the proceeding and its consequences; (b) the opportunity to produce and present the evidence on which the defence is based; (c) the opportunity to present arguments; and (d) a resolution which addresses the issues raised. If these requirements are not met, the purpose of the right to trial, which is to ensure that the affected person is not rendered defenceless, has not been satisfied.<sup>150</sup>

624. The Court has established that among the requirements to be satisfied by bodies of law that provide for procedures that may result in the deprivation of rights of the governed is the requirement to be able to produce and present evidence and the requirement to be able to present arguments; these requirements must be addressed in the procedural laws. Thus, in order to create the material conditions needed to mount a defence, in observance of the right to trial, it is essential that the party be able to know all of the items of evidence put forward by others involved in the procedure, so that he can grasp such facts and items of evidence as have been

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<sup>(148)</sup> FOUNDATION AND GROUNDS FOR JURISDICTIONAL RULINGS MUST BE ANALYZED IN LIGHT OF ARTICLES 4 AND 16 OF THE CONSTITUTION, RESPECTIVELY, *Judicial Weekly of the Federation*, ninth period, volume XXII, December 2005, opinion 1 /J. 139/2005, pp. 162.

<sup>(149)</sup> EFFECTIVE DEFENCE. SCOPE OF SAID GUARANTEE IN PRELIMINARY INVESTIGATION (INTERPRETATION OF SUBSECTION II, IN RELATION TO SUBSECTIONS IX AND X OF ARTICLE 20, SECTION A, OF THE CONSTITUTION), *Judicial Weekly of the Federation*, ninth period, volume XXIII, May 2006, opinion 1/J 23/2006, pp. 132.

<sup>(150)</sup> THE ESSENTIAL PROCEDURAL FORMALITIES ARE THOSE WHICH ENSURE AN EFFECTIVE AND TIMELY DEFENCE PRIOR TO THE ACT OF DEPRIVATION OF LIBERTY, *Appendix 2000*, ninth period, volume I, opinion 218, pp. 260.

adduced in the matter in order to facilitate the preparation of his defence through submission of evidence and arguments within the time-limits imposed by law.<sup>151</sup>

625. The Court is of the view that the final hearing in a federal criminal trial must be conducted in the presence of counsel for the accused, failing which there would be a violation of his fundamental rights.<sup>152</sup>

626. Regarding the right not to be tried twice for the same offense, the Court has established that the annulment of criminal trials and sentences because the proceeding took place before an authority that lacked jurisdiction should lead to the accused being declared not guilty, and never to re-instituting the case and remanding to the competent authority.<sup>153</sup>

627. Regarding the obligation arising from the right of the citizenry to have access to a legal remedy, the Court has held that none of the branches of government—executive, legislative or judicial— may make access to the courts dependent upon any condition; therefore, the Court holds that rules imposing requirements that hamper access to the courts have no place within the Mexican legal system.<sup>154</sup>

628. The Court has acknowledged that article 2 of the Constitution, amended by a decree published in the Diario Oficial on 14 August 2001, provides that the customs and cultural specificities of indigenous peoples should be taken into account in access to State jurisdiction, and that they have the right, in trials and proceedings, to the assistance of interpreters and advocates with a knowledge of their language and culture. These rights are considered to be protected when rules of criminal procedure tend to ensure that indigenous people are not in a defenceless position when criminal proceedings brought against them.

629. For its part, the Electoral Tribunal of the Federal Judiciary, to provide access to justice for indigenous peoples, has established that the procedural rules, especially those that impose certain burdens, must be interpreted in the manner most favourable indigenous communities. For the Court, the legislature, in amending article 4 of the Constitution, has established various protective or guardianship procedures, responding primarily to the need for special legal protections for indigenous communities and individuals, in light of their particular conditions of inequality, providing easier access to justice in order to render it effective by setting longer time-

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(<sup>151</sup>) RIGHT TO HEARING. FOR SAID RIGHT TO BE RESPECTED IN PROCEEDINGS FOR DEPRIVATION OF RIGHTS, THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENTS MUST BE NOT MERELY FORMAL BUT REAL, *Judicial Weekly of the Federation*, ninth period, volume VII, April 1998, opinion: P. XXXV/98. pp. 21.

(<sup>152</sup>) ORAL HEARING ON APPEAL. HOLDING SUCH HEARING WITHOUT ASSISTANCE OF DEFENCE COUNSEL VIOLATES THE FEDERAL RULES OF CRIMINAL PROCEDURE, *Judicial Weekly of the Federation*, volume XXII, October 2005, opinion 1 /J. 131/2005, pp. 126

(<sup>153</sup>) AMPARO IN CRIMINAL CASES. EFFECTS OF DECISION GRANTING AMPARO WHEN THE COURT ISSUING THE DECISION SOUGHT LACKS JURISDICTION, *Judicial Weekly of the Federation*, ninth period, volume XX, July 2004, opinion 1/J. 21/2004, pp. 26.

(<sup>154</sup>) GUARANTEE OF JURISDICTIONAL OVERSIGHT PROVIDED FOR IN ARTICLE 17 OF THE CONSTITUTION. ITS SCOPE, ninth period, volume XXV, April 2007, opinion 1/J. 42/2007, pp. 124.

limits, among other more generous features. Accordingly, members of indigenous peoples should not be placed in a true state of helplessness by requiring them to satisfy or fulfil procedural burdens that are irrational in light of their well-known disadvantaged situation, recognized by the legislator in various bodies of law.<sup>155</sup>

630. A Circuit Court has determined that essential guarantees of criminal proceedings are violated if the accused proves to be an indigenous person who does not speak or understand Spanish language and the competent authority does not grant him the right to be assisted by an interpreter of the language he speaks in the proceedings carried out within the criminal case against him, so that he will have explained to him, through the respective translation, the meaning and import both of what occurs in the course of the proceeding and the result of the proceeding decided by the jurisdictional authority; otherwise he is deprived of the information necessary for his defence, which constitutes a procedural violation.<sup>156</sup>

631. The Court has defined the scope of the principle of presumption of innocence with regard to criminal procedure as to the burden of proof on the accused since through its application protection is afforded to other fundamental rights such as human dignity, freedom, honour and reputation, which could be damaged by irregular penal or disciplinary proceedings. Consequently, this principle applies also in situations outside the courtroom and constitutes a right to receive consideration and treatment as a “non-perpetrator and non-participant” in a criminal act or other type of violation so long as guilt has not been demonstrated.<sup>157</sup>

### C. Institutional measures

632. In order to prevent and deal with the causes of human rights violations in the administration of justice, the Attorney General's Office has established a programme of institutional response and guidance for the citizenry in regard to human rights, which consists of the establishment of permanent monitoring offices within the offices of prosecutorial authorities that are intended to receive and respond to complaints, as well as to provide the guidance necessary to restore confidence among the general population in the work and service provided by the Office of the Attorney General.

633. The system of monitoring and inspection of human rights of the Office of the Attorney General is intended to ensure the protection of human rights of persons detained as suspects in federal crimes, assisting with the needed legal support. These measures are carried out during the transfer, short-term detention and extradition of suspects.

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<sup>(155)</sup> INDIGENOUS PEOPLES AND COMMUNITIES. INTERPRETATION OF PROCEDURAL RULES MUST BE IN THE FORM MOST FAVOURABLE TO THEM, *Official Compilation of Relevant Jurisprudence and Case Law*, 1997-2005, Mexico City, TEPJF, 2005, relevant decisions volume, pp. 839-840.

<sup>(156)</sup> VIOLATION OF PROCEDURE IN CRIMINAL TRIAL. ITS OCCURRENCE WHEN THE ACCUSED DOES NOT SPEAK OR UNDERSTAND THE SPANISH LANGUAGE AND AN INTERPRETER TO ASSIST HIM IS NOT APPOINTED, *Judicial Weekly of the Federation*, ninth period, volume X, October 1999, opinion: V.I.P.12, pp. 1363.

<sup>(157)</sup> PRESUMPTION OF INNOCENCE. SCOPE OF SAID CONSTITUTIONAL PRINCIPLE, *Judicial Weekly of the Federation*, ninth period, volume XX, May 2007, opinion 2 XXXV/2007, pp. 1186.



634. The Federal Public Defender Act of 28 May 1998 created the Federal Public Defender Institute (IFDP) as an organ of the federal judicial branch and the Federal Judicial Council, endowing it with technical and operational independence. By providing public defender services, the Institute secures a right to defence in criminal matters and access to guidance, counselling and legal representation in administrative, fiscal, and civil matters deriving from federal criminal cases.

635. The IFDP serves the most vulnerable people the country, following the principles of free service, probity, honesty and professionalism. It strives to overcome social inequalities and to strengthen the rule of law. To safeguard these principles, it has a career civil service for public defenders and legal advisers, with mechanisms for entry and promotion by merit and competition, ensuring retention and providing training and continuing education.

636. To comply with the provisions of articles 2 of the Constitution and 154 of the Federal Code of Criminal Procedure, which guarantee indigenous people the right to an advocate who knows their language and culture, IFDP identified 84 lawyers who speak an indigenous language, employing 14 who meet the legal requirements to be a federal public defender for indigenous people.

637. IFDP established a pilot programme with law students whose credits enabled them to meet the bilingual service requirement, and constituted a pool of 210 students with those characteristics. Taken together, they speak the following languages: Caposcatli, Chatino, Chinantec, Chocholteco, Chontal, Cho'ol, Huichol, Maya, Mayo, Mazahua, Mazatec, Mixe, Mixtec, Náhuatl, Otomí, P'hurepecha, Rarámuri, Seri, Teenek, Tlapanec, Totonac, Trique, Tzeltal, Tzotzil, Yaqui, Yoreme, Zapotec and Zoque.

638. The National Council of Indigenous People has a programme to execute agreements relating to justice. For the fiscal year 2007, it had a budget of 37 million pesos, which was used to support 504 social organizations and rural groups that provided legal services in various areas of law (legal advice, management, defence); as well as providing training and dissemination regarding individual guarantees, human rights and indigenous rights; and management regarding the civil registry and the release of indigenous detainees. The foregoing activities directly benefited 139,820 people in 2,256 locations of 451 municipalities in 26 states.

639. In 2008, the programme has an annual budget of 37 million pesos for the signing of 535 cooperation agreements with social organizations and rural groups approved to develop projects to promote and defend the rights of indigenous peoples, designed to directly benefit a programmed number of 120,000 people.

640. The Supreme Court of Justice of the Nation has signed cooperation agreements regarding human rights with the Inter-American Court of Human Rights, the Mexico office of the United Nations High Commissioner for Human Rights, the Human Rights Office of the State of Guanajuato, the Human Rights and Citizen Protection Office of the State of Baja California, the Commission for the Defence of Human Rights of the State of Nayarit, and the Human Rights Commissions of the states of Coahuila, Chiapas, San Luis Potosí, Yucatán, Quintana Roo, Campeche, and Aguascalientes, among others.

641. The following are among the goals set by the agreements signed:

- a) Carrying out research projects;
- b) Conducting seminars, conferences and forums;
- c) Holding meetings among officials on areas of common interest;
- d) Assistance and specialized technical advice in institutional development, legal organization and dissemination of human rights;
- e) Exchange of information of common interest produced by the signatory institutions, as well as assistance and specialized technical advice for accessing and systematizing the information;
- f) Preparation and publication of works of common interest;
- g) Mutual cooperation in marketing works prepared jointly or separately;
- h) Setting up inter-library loans or loans of works published.

642. A series of lectures was conducted by the Centre for Justice and International Law on incorporating international human rights standards and executing decisions of the Inter-American Court of Human Rights, and on the rights of the child. It was addressed to clerks of chambers of the Supreme Court of Justice of the Nation entrusted with examining and analyzing cases submitted to the Court and preparing drafts for the resolution of cases before this court of final appeal.

643. To support the training of public servants involved in the judicial function, educational programmes were conducted, including the following: the Diploma in International Law of Human Rights (addressed to the District Judges and Circuit Judges, organized in cooperation with the Office of the United Nations High Commissioner for Human Rights, the Institute of the Federal Judiciary, the Universidad Iberoamericana and the Supreme Court) and the seminar “The inter-American system of protection of human rights and its impact on national legal systems” (organized by the Inter-American Court of Justice in coordination with the Inter-American Institute of Human Rights).

#### **1. Violence against women in Ciudad Juárez, Chihuahua**

644. In light of the complex situation in Ciudad Juárez, which has resulted in violence, killings and disappearances of women since 1993, the Government of Mexico saw the need to carry out strategies and actions across the three levels of government.

645. On 13 August 2003, a cooperation agreement was signed for the implementation of joint investigative actions to elucidate murders of women committed with certain characteristics and / or a similar modus operandi. The cooperation included the Attorney General's Office and the Attorney General for the state of Chihuahua, and aimed to establish mechanisms of cooperation,

the implementation of joint investigative activities, as well as laying the groundwork for policy coordination to design and implement common strategies in the fight against crime.<sup>158</sup>

646. Within the joint endeavours, a Joint Office of the Public Prosecutor was formed, comprising a group of federal and local agencies assigned to investigate crimes that are covered by the agreement. These agencies have operational independence, so that persons who are detained as suspects should be made available to the Office of Public Prosecutions in charge of the matter.

647. On 18 February 2004, the Diario Oficial published a decree establishing the Commission for the Prevention and Eradication of Violence against Women in Ciudad Juarez, as a detached body of the Ministry of the Interior.

648. The Government of the State of Chihuahua has implemented actions with a view to safeguarding the rule of law in that state. In the effort to eradicate violence against women, the following are noteworthy:

- a) Allocation of public resources to ensure implementation of public policies for prevention, investigation, punishment and reparations;
- b) Strengthening institutional capacity for investigation and judicial follow-up in order to guarantee punishment and reparations in keeping with international standards to which Mexico is party;
- c) Operational overhaul of the local Office of the Public Prosecutor, leading to the following results:
  - i) Pursuit of criminal investigations in keeping with highly rigorous technical and scientific standards;
  - ii) Full respect for the rights of victims, and right of access to justice and truth by relatives;
  - iii) Restoring the human rights of victims, implementing appropriate measures to prevent their being doubly victimized in their pursuit of justice.

649. On 25 January 2005, a Special Investigation Unit on Missing Persons was created, with the aim of establishing an appropriate operational method to locate such persons, in coordination with local, state and federal agencies.

650. On 30 January 2004, the Diario Oficial published agreement A/003/04 of the Office of the Special Prosecutor for Crimes Related to Homicides of Women in the Municipality of Juárez, Chihuahua (FEAHMCJ).

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<sup>158</sup> “Cooperation agreement for the implementation of joint actions in strategies to elucidate homicides of women committed with certain characteristics or modus operandi,” Diario Oficial, 29 August 2003. See: [http://www.dof.gob.mx/nota\\_to\\_imagen\\_fs.php?cod\\_diario=28187&fecha=&pagina=108&seccion=0](http://www.dof.gob.mx/nota_to_imagen_fs.php?cod_diario=28187&fecha=&pagina=108&seccion=0) (page. 108)

651. FEAHMCJ originally focused exclusively on homicides with sexual motives but, since its operations were overhauled in August 2005, it has expanded its prosecutorial activities to all cases of intentional homicide of women, which enabled it to avoid duplication of work; helped to promote specialization of human resources and the conduct of investigations with a gender perspective; promoted optimal use of financial and material resources; helped to standardize the quality of results and outputs; and supported families of victims in receiving the comprehensive care they need.

652. The reform of FEAHMCJ made it possible to reorganize its operational structures and models and improve its technical, legal, scientific and ethical capacities. In addition, an administrative unit was formed to conduct analysis and to pursue the cases initiated from 1993 to 2004, with another administrative unit for more recent cases.

653. FEAHMCJ ceased operation in 2006 with the creation of the Office of the Special Prosecutor for Crimes Related to Violence Against Women (FEVIM)<sup>159</sup>, with a wider range of powers and nationwide coverage. To maintain focus on the situation in Ciudad Juarez, the Chihuahua state government has taken various measures to strengthen institutions responsible for the investigation of killings of women and punish those responsible, making progress in the investigation and resolution of cases.

654. In the period from 21 January 1993 to 23 May 2008, proceedings were conducted with records of preliminary investigations for 432 recorded cases of killings of women. Of these, 45.25% have been resolved before a jurisdictional authority, 16.62% are pending before a jurisdictional authority, and 33.02% are under investigation.

655. The state of progress of the investigations is presented below.

#### Procedural stages in percentage terms

| Item                                  | Number     | Percentage |
|---------------------------------------|------------|------------|
| Resolution by jurisdictional organ    | 181        | 41.33%     |
| Resolved by Juvenile Court            | 17         | 3.92%      |
| Pending before a jurisdictional organ | 75         | 16.62%     |
| Under investigation                   | 137        | 33.02%     |
| Referred to the Public Prosecutor     | 2          | 0.46%      |
| Filed                                 | 20         | 4.61%      |
| <b>Total</b>                          | <b>432</b> |            |

656. Presented below is a yearly breakdown of cases for the purpose of showing their real situation and advances achieved as a result of reconfiguring the structure and procedures of the investigating authority:

<sup>159</sup> Agreement of the Attorney General of the Republic, published in the Diario Oficial on 16 February 2006. IN early 2008, FEVIM assumed the issue of trafficking in women and girls, its name thereupon changing to FEVIMTRA. See: [http://www.dof.gob.mx/nota\\_to\\_imagen\\_fs.php?cod\\_diario=151947&pagina=0&fecha=16/02/2006](http://www.dof.gob.mx/nota_to_imagen_fs.php?cod_diario=151947&pagina=0&fecha=16/02/2006) (page 18)

|                                       | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|---------------------------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Resolution by jurisdictional organ    | 7    | 8    | 15   | 17   | 17   | 17   | 12   | 15   | 15   | 15   | 16   | 7    | 16   | 2    | 1    | 1    |
| Juvenile court                        | 2    | 1    | 4    | 4    | -    | 2    | -    | -    | 2    | -    | 1    | 2    | -    | -    | 1    | -    |
| Pending before a jurisdictional organ | 2    | 2    | 4    | 2    | 6    | 9    | 2    | 2    | 5    | 3    | 2    | 8    | 5    | 10   | 13   | 6    |
| Under investigation                   | 7    | 7    | 13   | 13   | 8    | 6    | 2    | 12   | 14   | 16   | 7    | 1    | 9    | 5    | 4    | 6    |
| Filed                                 | 1    | 1    | -    | 1    | 1    | 1    | 2    | 3    | 1    | 2    | 2    | 1    | 2    | 2    | -    | -    |
| Total                                 | 19   | 19   | 36   | 37   | 32   | 36   | 18   | 32   | 37   | 36   | 28   | 19   | 32   | 19   | 19   | 13   |

\* Figures to 23 May

657. Annual indices for cases resolved, cases pending, and cases under investigation are presented below:

|      | Annual percentage of cases resolved | Annual percentage of cases pending | Annual percentage of cases under investigation |
|------|-------------------------------------|------------------------------------|------------------------------------------------|
| 1993 | 47.36%                              | 10.52%                             | 36.84%                                         |
| 1994 | 47.36%                              | 10.52%                             | 36.84%                                         |
| 1995 | 52.77%                              | 11.11%                             | 36.11%                                         |
| 1996 | 56.73%                              | 5.40%                              | 35.13%                                         |
| 1997 | 53.12%                              | 18.75%                             | 25%                                            |
| 1998 | 52.77%                              | 25%                                | 16.66%                                         |
| 1999 | 66.66%                              | 11.11%                             | 11.11%                                         |
| 2000 | 46.87%                              | 6.25%                              | 37.5%                                          |
| 2001 | 45.94%                              | 13.51%                             | 37.83%                                         |
| 2002 | 41.66%                              | 8.33%                              | 44.44%                                         |
| 2003 | 60.71%                              | 7.14%                              | 25%                                            |
| 2004 | 36.64%                              | 10.52%                             | 42.10%                                         |
| 2005 | 50%                                 | 15.62%                             | 28.12%                                         |
| 2006 | 10.52%                              | 52.63%                             | 26.31%                                         |
| 2007 | 10.52%                              | 68.42%                             | 21.05%                                         |
| 2008 | 7.69%                               | 46.15%                             | 46.15%                                         |

658. The 2004-2010 State Development Plan includes a new criminal justice system with two main aspects: a comprehensive reform of the criminal justice system, and measures for its implementation through the creation of basic structures to ensure its operation.

659. The new penal system of the state of Chihuahua took effect in January 2007 and, in the territory that includes Ciudad Juárez, in January 2008.

660. The objectives of the system are:

- a) To reduce impunity through the professionalization and specialization of the personnel of the system via recruitment and selection processes that ensure their technical competence and ethical standards;
- b) Implement alternative solutions for victims with prompt compensation for damage caused;
- c) Promote legal celerity and certainty through shorter procedures;
- d) Achieve equitable judicial decisions through oral and public trials;
- e) Reduce pre-trial detention and apply it exclusively to serious crimes.

661. The new framework defines the operational context of the institutions with a gender perspective, bearing in mind the aim that specific cases of violence against women should be adequately prevented, investigated, punished and compensated.

662. This normative framework includes the following provisions:

- a) The Organic Law on the Ministerio Público, published 9 August 2006<sup>160</sup>, includes in article 5 the State Agency for Investigation, the Centre for Penal and Forensic Studies, the Directorate of Expert Services and Forensic Sciences, and the Directorate for Victims of Gender Violence and Family Violence, with the aim of preventing violence against women and ensuring adequate investigation of the facts;
- b) The Organic Law on the Judiciary of the State of Chihuahua (amendments published 9 August 2006)<sup>161</sup> creating judges to oversee observance of fundamental rights (jueces de garantía) and courts employing oral proceedings<sup>162</sup> which, according to articles 150 bis and 150 ter, have the following functions:

Article 150 bis: Judges to oversee observance of fundamental rights (jueces de garantía) have the following functions:

Issuing prior judicial orders requested by prosecutorial authorities in order to perform acts which deprive, restrict or disturb the rights secured by the federal Constitution, the State Constitution and the international treaties and conventions in force in the country;

Preside over judicial hearings in the investigative phase and rule on motions made therein;

Decide on release or preventive detention and other interim measures with regard to defendants or juvenile offenders;

Decide on the involvement of defendants or juvenile offenders in the trial;

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<sup>160</sup> See: <http://www.pgr.gob.mx/que%20es%20pgr/historia.asp>

<sup>161</sup> See: <http://www.ordenjuridico.gob.mx/Estatal/CHIHUAHUA/Leyes/CHIHLEY065.pdf>

<sup>162</sup> The Centre for Training and Continuing Education was also created, for the purpose of providing training and professional enhancement of officials and employees of the judicial branch, especially in human rights and gender equity.

Pursue alternative methods of dispute resolution insofar as allowed by law;  
For cases brought against persons who are adults at the time of commission of the offense, preside over the intermediate hearing;  
Issue judgments in summary proceedings; and  
Such other functions as are provided by law.  
Article 150 ter: Criminal courts conducting oral trials and judges specializing in oral trials for juvenile offenders shall have the following functions:  
Receive and decide the cases submitted to them;  
Resolve all issues presented at trial;  
Issue a judgment based on the evidence presented during the trial; and  
Such other functions as are provided by law.

- c) The Code of Penal Procedure of the State of Chihuahua, published 9 August 2006<sup>163</sup>, provides that criminal proceedings will be public and adversarial in nature, efficient, and with unified submission of evidence in a single proceeding, in order to ensure fair and efficient administration of justice. It also sets out the rights of crime victims. As a special protection for women, it includes additional rights for victims of sexual crimes or domestic violence;
- d) The Penal Code of the State of Chihuahua, published 27 December 2006<sup>164</sup>, includes aggravated offenses in order to punish killings of women, with a sentence of thirty to sixty years' imprisonment, as a deterrent and a special protection for women;
- e) The Alternative Penal Justice Act of the State of Chihuahua (published 9 December 2006)<sup>165</sup> implements the alternative dispute resolution system, operated by personnel highly trained in processes of negotiation and conciliation. It pursues solutions to cases through various avenues such as compensation agreements. In addition, it sets out the organization and operation of the Centre for Alternative Justice, which, from December 2006 to April 2007, handled 2,264 cases, achieved a resolution between the parties in 1,448 of them; in the remaining 346 cases, proceedings are under way.
- f) The Special Justice for Adolescent Offenders Act<sup>166</sup> of the State of Chihuahua, published 16 September 2006, introduces a system which pursues comprehensive training of the adolescent offender to reintegrate him into society, encouraging all activities conducive to strengthening respect for his dignity and the fundamental rights of all persons;
- g) The Crime Victims Protection Act of the State of Chihuahua, published 21 October 2006<sup>167</sup>, recognizes the right of victims to receive professional legal advice from the

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<sup>163</sup>) See: <http://www.ordenjuridico.gob.mx/Estatal/CHIHUAHUA/Codigos/CHIHCOD04.pdf>

<sup>164</sup>) See: <http://www.ordenjuridico.gob.mx/Estatal/CHIHUAHUA/Codigos/CHIHCOD08.pdf>

<sup>165</sup>) See: <http://www.ordenjuridico.gob.mx/Estatal/CHIHUAHUA/Leyes/CHIHLEY079.pdf>

<sup>166</sup>) See: <http://www.juarez.gob.mx/descentralizados/dif/Ley-Adole-Infractores.pdf>

<sup>167</sup>) See: [http://www.congresochihuahua.gob.mx/nueva/enLinea/biblioteca/leyes/617\\_06.pdf](http://www.congresochihuahua.gob.mx/nueva/enLinea/biblioteca/leyes/617_06.pdf)

beginning of the investigation and to be informed about all activities conducted by the prosecutorial authorities; as well as to receive medical or psychological help and, as needed, ongoing medical or psychological treatment. It also contemplates the right of victims to obtain reparation for damages when appropriate.

## **XV. ARTICLE 15: NON-RETROACTIVITY OF THE LAW**

663. The principle of non-retroactivity of the law is enshrined in Article 14 of the Constitution. It does not preclude the possibility of applying later rules when their provisions are more favourable to the individual. That has been a long-standing practice in the Mexican legal system, which has been reiterated and supported by various opinions of the Supreme Court of Justice of the Nation during the period covered by this report.

### **A. Judicial decisions**

664. The Supreme Court of Justice of the Nation has held that in order to ascertain whether a legal provision is or is not retroactive, it is essential to determine what scenarios may arise in regard to the time when the components of the legal provision come into being. The Court has considered the following situations: a) The case where, during the time a legal rule is in force, both the premise and the consequence established in it are realized immediately. In that case, no subsequent legal provision can change, eliminate or modify the premise or the consequence without contravening the guarantee of non-retroactivity, such contravention occurring before the new rule at the time when the components of the old rule came into being. b) The case where the legal rule establishes a premise and several successive consequences. If, during the time this rule is in force, the premise and one or more –but not all—of the consequences come into being, no subsequent rule can change the acts already performed without being retroactive. c) It may also happen that one or some of the consequences of the prior law, which did not occur while it was in force, does not depend on the realization of the premises envisaged in the law, occurring after the new provision entered into force, but rather such realization was only deferred in time, through the establishment of a specific time-period or time-limit, or simply because the realization of those consequences is successive or ongoing; in that event, the new provision also should not eliminate, modify or condition the unrealized consequences, for the simple reason that these are not subject to the modalities laid down in the new law. d) The case where the legal rule contemplates a complex premise comprised of various partial, successive acts and one consequence. In this case, the later rule cannot modify the acts of the premise that has been realized while the old rule envisaging them was in force without running afoul of the guarantee of non-retroactivity. As regards the rest of the component acts of the premise that did not come into being while the rule envisaging them was in force, if they are changed by a later rule, this rule cannot be considered retroactive. In that circumstance, the acts or premises must be realized under the old rule and, consequently, it is the provisions of that rule which should govern the relationship, as well as the consequences related to such premises.<sup>168</sup>

665. The Supreme Court of Justice of the Nation has held that the guarantee of correct application of the law in criminal matters set out on the third paragraph of article 14 of the

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<sup>168</sup>) RETROACTIVITY OF LAWS. ITS DETERMINATION ACCORDING TO THE THEORY OF THE COMPONENTS OF THE RULE, *Judicial Weekly of the Federation*, ninth period, volume XIV, October 2001, opinion: P./J. 123/2001, pp. 16.



Constitution is not confined to mere acts of implementation but also encompasses the law that is applied. The law should be so drafted that the terms which specify the respective elements are clear, accurate and precise. Thus, the legislative authority cannot evade the duty to use clear, accurate and precise language in the penal laws which it adopts, in providing for penalties, and in describing typified conduct, including all of its elements, characteristics, conditions, terms and time-limits when necessary to prevent confusion in application or adverse effect on the defence of the accused.<sup>169</sup>

666. The Court has held that if an individual is sentenced to prison for committing a crime and a law is subsequently enacted providing for a lesser sanction or eliminating the crime, that individual is entitled to the retroactive application of the new law and, hence, is entitled to have his sentence reduced or to be set free.<sup>170</sup>

667. It has also been established that changes in sentencing of a convicted person as a result of new legislation which provides a lesser penalty is the responsibility of the judicial authority which issued the sentence, since the act of reducing a sentence is directly related to the power of judges to impose penalties.<sup>171</sup>

668. The Court has determined that at the time of issuing an order for provisional release on bail, a court should consider the legislation that is most favourable to the defendant, whether it be the law that was in force at the time of the alleged wrongdoing or the law in force at the time the order is issued.<sup>172</sup>

## **XVI. ARTICLE 16: RECOGNITION OF LEGAL PERSONALITY**

### **A. Legislative advances**

669. Because they are Mexicans, indigenous people have legal personality and are holders of rights and obligations, but the Constitution does not have a provision that recognizes their legal personality collectively and is limited to recognizing the indigenous peoples and communities as entities of public interest (entidades de interés público).

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<sup>(169)</sup> PROPER APPLICATION OF THE LAW IN CRIMINAL CASES, GUARANTEE THEREOF. ITS CONTENT AND SCOPE ALSO ENCOMPASSES THE LAW ITSELF, *Judicial Weekly of the Federation*, ninth period, volume I, May 1995, opinion: P. IX/95, pp. 82.

<sup>(170)</sup> ADJUSTMENT OF CHARGE AND OF SENTENCE IS A CONSTITUTIONALLY PROTECTED RIGHT, *Judicial Weekly of the Federation*, ninth period, volume XX, December 2004, opinion 1, CI/2004, pp. 366.

<sup>(171)</sup> REDUCTION OF SENTENCE. APPLICATION OF THE LAW MOST FAVOURABLE TO THE ACCUSED, EVEN WHEN HE IS SERVING SENTENCE, FALLS TO THE JUDICIAL AUTHORITY (FEDERAL LEGISLATION), *Judicial Weekly of the Federation*, ninth period, volume XXIII, February 2006, opinion 1 /J. 174/2005, pp. 455.

<sup>(172)</sup> PROVISIONAL RELEASE ON BAIL IS A SUBSTANTIVE RIGHT WITH RESPECT TO WHICH THE EXCEPTION CONTAINED IN ARTICLE 14 OF THE CONSTITUTION ON RETROACTIVE APPLICATION OF THE LAW TO THE BENEFIT OF THE ACCUSED APPLIES, *Judicial Weekly of the Federation*, ninth period, volume XIII, April 2001, opinion 1/J. 10/2001, pp. 333.

670. The states have concurred in the recognition of indigenous peoples and communities as subjects of public law in constitutions and local laws, including:

- a) Constitution of the State of Yucatán;
- b) Law on Indigenous Rights and Culture of Baja California;
- c) Law on Indigenous Peoples and Communities of Oaxaca;
- d) General Law of Indigenous Peoples and Communities of the State of Durango;
- e) Law on the Rights and Development of Indigenous Peoples and Communities of the State of Jalisco;
- f) Law of Rights and Culture of Indigenous Peoples and Communities of the State of Queretaro;
- g) Law Regulating article 9 of the Political Constitution of the State of San Luis Potosi, on indigenous rights and culture;
- h) Law on Rights, Culture and Organization of Indigenous Peoples and Communities of the State of Campeche.

671. The Nationality Act<sup>173</sup> published in the Diario Oficial on 23 January 1998 was amended on 2 December 2004 and 12 January 2005 to extend the deadline for Mexicans living abroad to comply with the necessary formalities to choose another nationality without losing the Mexican nationality.

672. On 29 May 2000, the Diario Oficial published the Act on the Protection of the Rights of Children which aims to ensure for children and adolescents observance of and respect for fundamental rights enshrined in the Constitution. For purposes of the Act, children are persons through the age of 12 and adolescents between ages 12 and 18.

673. On 24 October 2007, the Diario Oficial published the decree promulgating of the Convention on the Rights of Persons with Disabilities and its Optional Protocol, whose article 12 recognizes the legal personality of persons with disabilities.

674. Upon ratifying the Convention, Mexico submitted an interpretative statement to paragraph 2 of article 12 concerning the recognition of legal capacity, meaning that in case of conflict between this paragraph and national legislation, the provision that is to be applied in strict compliance with the pro homine rule is the provision that affords the greatest legal protection, safeguards the dignity and ensures the physical, psychological and emotional integrity of persons and protects their property.

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<sup>(173)</sup> See: <http://www.ordenjuridico.gob.mx/Federal/Combo/L-51.pdf>

## B. Institutional measures

675. As a result of the agreement announcing the programme for the establishment of a national registry of citizens and the issuance of a citizen identity card, published on 30 June 1997, the task was undertaken of assigning a Single Population Register Key (Clave Única de Registro de Población – CURP)<sup>174</sup> to all persons domiciled in the country. Progress was made in the assignment of the CURP keys to records of people that are managed by offices the Federal Public Administration; plans were likewise made to incorporate them into the records managed by state and municipal agencies through the conclusion of agreements between the competent authorities.

676. The main objectives set in the programme are:

- a) Establish and operate a comprehensive national citizen registry system that allows issuance of an official document with legal force as a means of identification to ensure the exercise of the rights and fulfilment of obligations of individuals;
- b) Contribute to strengthening population policy, to allow access by all Mexicans to the benefits of political, economic, social and cultural development;
- c) To contribute to the performance of the functions of public institutions by providing statistical information and of the electoral bodies by providing certified and updated information on citizens.

677. With support from the federal Government, through the programme of modernization of the Civil Registry, from 1997 to the end of 2007, 2,058 civil registry offices were equipped, out of a total of 5,024 in the country. In the provision of computer equipment and technology services to improve customer service, priority was given to those offices that receive the largest number of requests for documents and paperwork.

678. Birth registration campaigns have also been carried out in the 32 states that make up the country. These campaigns are designed to bring the service of the registry office to the most remote and poor communities, so that the most vulnerable groups are not deprived of the means to prove their legal identity. These campaigns, in most cases, offer the service free of charge or at a nominal cost. In the last ten years, 1,675,749 people have benefited from these campaigns (see table below).

|                     | 1998 | 1999 | 2000 | 2001  | 2002  | 2003 | 2004 | 2005 | 2006 | 2007 | TOTAL |
|---------------------|------|------|------|-------|-------|------|------|------|------|------|-------|
| Aguascalientes      | 59   | 186  | 174  | 916   | 684   | 705  | 523  | 456  | 470  | 260  | 4,433 |
| Baja California     |      |      |      |       |       |      |      |      |      |      | 0     |
| Baja California Sur |      |      |      | 3,244 | 1,482 |      |      |      |      |      | 4,726 |

<sup>(174)</sup> The Single Population Register Key (CURP) is assigned to all natural persons domiciled in the national territory as well as to nationals domiciled abroad; its purpose is to have a unique identification as an element to economize resources and to further administrative streamlining. It also strengthens coordination of legal security for the population. The CURP is made up of 18 alphanumeric characters generated from the data of the document used as evidence of identity (birth certificate, letter of naturalization or migration document) and the elements refer to: last name, given name, date of birth, gender, state of birth, and elements which prevent duplication of the CURP and ensure its correct incorporation into the system.

|                  | 1998 | 1999 | 2000 | 2001    | 2002    | 2003    | 2004    | 2005    | 2006    | 2007    | TOTAL     |
|------------------|------|------|------|---------|---------|---------|---------|---------|---------|---------|-----------|
| Campeche         |      |      |      |         | 537     |         | 3,798   | 848     | 618     | 685     | 6,486     |
| Chiapas          |      |      |      | 58,298  | 15,794  |         | 54,154  | 44,536  | 34,357  | 51,385  | 258,524   |
| Chihuahua        |      |      |      | 20,890  | 25,730  | 192,591 |         |         | 18,070  | 18,015  | 275,296   |
| Coahuila         |      |      |      | 3,173   | 2,288   |         |         |         | 2,228   | 1,870   | 9,559     |
| Colima           |      |      |      |         |         | 2,100   |         |         |         |         | 2,100     |
| Distrito Federal |      |      |      | 533     |         | 267     | 549     | 2,055   |         |         | 3,404     |
| Durango          |      |      |      | 1,622   | 1,547   |         |         |         |         |         | 3,169     |
| Guanajuato       |      |      |      | 1,124   |         | 3,117   | 1,906   |         |         |         | 6,147     |
| Guerrero         |      |      |      |         | 19,500  |         | 25,227  | 10,000  |         | 6,888   | 61,615    |
| Hidalgo          |      |      |      |         |         | 7,500   |         |         |         |         | 7,500     |
| Jalisco          |      |      |      | 3,788   | 3,942   | 3,632   |         |         | 3,532   | 2,365   | 17,259    |
| México           |      |      |      | 46,887  | 23,297  |         |         |         |         |         | 70,184    |
| Michoacán        |      |      |      | 7,498   |         | 4,788   |         |         |         |         | 12,286    |
| Morelos          |      |      |      |         | 5,081   | 1,186   |         |         | 4,962   | 4,184   | 15,413    |
| Nayarit          |      |      |      | 14,000  |         |         |         |         |         |         | 14,000    |
| Nuevo León       |      |      |      | 1,080   | 223,000 | 293,165 |         |         | 1,173   |         | 518,418   |
| Oaxaca           |      |      |      | 13,998  | 27,221  |         | 28,544  | 12,762  | 7,607   | 10,190  | 100,322   |
| Puebla           |      |      |      |         | 15,615  |         |         |         | 1,475   | 5,141   | 22,231    |
| Querétaro        |      |      |      |         |         |         |         |         |         |         | 0         |
| Quintana Roo     |      |      |      |         |         |         | 3,826   | 1,568   |         |         | 5,394     |
| San Luis Potosí  |      |      |      | 407     | 51      | 16      |         |         | 13,049  |         | 13,523    |
| Sinaloa          |      |      |      | 5,373   |         | 5,294   |         |         | 1,132   | 2,909   | 14,708    |
| Sonora           |      |      |      | 1,465   | 1,505   |         |         |         |         |         | 2,970     |
| Tabasco          |      |      |      |         |         |         | 28,200  | 3,771   |         | 1,008   | 32,979    |
| Tamaulipas       |      |      |      |         | 4,971   | 7,250   |         |         |         | 25,578  | 37,799    |
| Tlaxcala         |      |      |      |         |         |         |         |         | 1,375   | 1,502   | 2,877     |
| Veracruz         |      |      |      | 51,624  | 30,539  |         | 19,000  | 27,978  | 27,978  | 2,348   | 159,467   |
| Yucatán          |      |      |      |         |         |         | 2,810   | 1,062   | 2,236   | 1,341   | 7,449     |
| Zacatecas        |      |      |      |         |         | 62,600  |         |         |         |         | 62,600    |
| TOTAL            | 59   | 186  | 174  | 232,747 | 379,910 | 569,461 | 168,537 | 105,036 | 116,559 | 103,080 | 1,675,749 |

\* Data from the General Directorate of the National Registry of Population and Personal Identification of the Ministry of the Interior

679. On 3 August 2006, Mexico ratified the Statute of the Latin American Council on Civil Registration, Identity and Vital Statistics, whose mission is to encourage and facilitate the coordination, support and cooperation of government agencies and institutions of the Member States, as well as the modernization and incorporation of technologies which enable operational compatibility between the institutions in order to provide reliable, secure services worthy of public confidence, with the full cooperation of other public and private entities.

#### **XVII. ARTICLE 17: RESPECT FOR PRIVACY, THE FAMILY, THE HOME, HONOUR AND REPUTATION**

680. As regards the interest of the Committee stated in its General Comment 16 regarding the meaning that Mexican society gives to the terms of "family" and "domicile", it should be noted that the Federal Civil Code provides in article 29 that the domicile of natural persons is the place where they ordinarily reside, and, failing this, their main place of business, and, failing this,

simply where reside, and, failing that, the place where they are. The legal domicile of an individual is where the law fixes his residence for the exercise of his rights and fulfilment of his obligations, even if he is in fact not present there.

#### **A. Legislative advances**

681. In late 2007, there were two initiatives for constitutional reform. The first was presented to the Senate and proposed adding two paragraphs to article 16 of the Constitution to recognize the protection of personal data as a fundamental right. This initiative was approved by the 59<sup>th</sup> legislative session and was sent to the Chamber of Deputies, where it is still pending discussion and approval.

682. The second initiative was submitted by the Executive on 27 March 2007 and aims to strengthen the first, as it proposes to give powers to Congress to legislate on the protection of personal data held by individuals (article 73 of the Constitution). The initiative states that giving the Congress in this power has an undeniable effect on extending the protection of a fundamental right, namely the protection of personal data held by individuals, in addition to the beneficial effect that a federal law on the subject may have on the national economy.<sup>175</sup>

683. In light of the legislative agenda, the outcome of these two initiatives will be addressed in the next periodic report the Government of Mexico to the Committee.

#### **B. Judicial decisions**

684. Regarding the concept of domicile, the Supreme Court of Justice of the Nation has indicated that it includes both the place where a person establishes his or her habitual residence (objective element), and all of that space within which the person carries out life activities characterized as private (subjective element). The scope of this concept was expanded in criminal matters, being considered to include any establishment or location of the person of an accidental and temporary nature in which that person acts within his private sphere.<sup>176</sup>

685. With regard to entry by the authorities into personal domiciles, the Court has held that this may be done only pursuant to a judicial warrant.<sup>177</sup> Out of concern for the inviolability of the home, the Court has held that any evidence obtained in violation of this right has no evidentiary value.<sup>178</sup>

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<sup>(175)</sup> Parliamentary Gazette, Chamber of Deputies, No. 222-I, Tuesday 27 March 2007.  
<http://gaceta.diputados.gob.mx/>.

<sup>(176)</sup> DOMICILE IN CRIMINAL CASES, *Judicial Weekly of the Federation*, ninth period, volume XXVI, August 007, opinion 1 L/2007, pp. 363.

<sup>(177)</sup> SEARCH. IN COMPLIANCE WITH THE GUARANTEE OF INVIOABILITY OF THE HOME, THE ORDER ISSUED BY THE JUDICIAL AUTHORITY MUST MEET THE REQUIREMENTS SET OUT IN ARTICLE 16 OF THE CONSTITUTION; OTHERWISE, SAID ORDER AND EVIDENCE OBTAINED PURSUANT TO IT ARE WITHOUT LEGAL OR EVIDENTIARY VALUE, *Judicial Weekly of the Federation*, ninth period, volume XXVI, August 2007, opinion 1 /J. 22/2007, pp. 111.

<sup>(178)</sup> SEARCH. IN COMPLIANCE WITH THE GUARANTEE OF INVIOABILITY OF THE HOME, THE ORDER ISSUED BY THE JUDICIAL AUTHORITY MUST MEET THE REQUIREMENTS SET OUT IN

686. The Court has held that only the federal judicial authority can authorize interception of a private communication. However, it takes the view that such authorizations may not be granted when the matter pertains to electoral, fiscal, commercial, civil, labour or administrative issues, nor in the case of communications between a detainee and his defender.<sup>179</sup>

687. Regarding the right to privacy, the Court has determined that this right is protected in the first paragraph of article 16 of the Constitution. This paragraph provides, in general, the right of all citizens not to be troubled in their person, family, papers or possessions, save pursuant to a duly grounded warrant from the competent authority. Hence the inviolability of the home, whose primary purpose is to provide an area of personal and family privacy that should be excluded from the knowledge and intrusion of others, with the limitation that the Constitution establishes for the authorities. The Court has defined the scope of privacy rights, which may extend to protection that goes beyond the home as the physical space in which privacy and intimacy normally prevail. Hence the recognition in article 16, first paragraph, of the Constitution, of a right to privacy or private life of the citizens includes interference or disturbance by any means into this reserved sphere of privacy.<sup>180</sup>

688. Concerning the right to privacy, the Court has determined that financial or banking secrecy is part of the privacy of a debtor or a client and is therefore protected by this guarantee of legal certainty.<sup>181</sup>

689. However, with regard to the above, there are exceptions. The Electoral Tribunal of the Federal Judiciary has ruled that the electoral authority may require financial authorities to disclose financial information (bank or trust secrecy) where the investigation being conducted concerns resources for the financing of political parties. This situation was resolved with the constitutional reform of 2007, in which it was expressly established that fulfilment of the oversight powers of the electoral authority is not limited by banking, fiduciary or fiscal secrecy.<sup>182</sup>

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ARTICLE 16 OF THE CONSTITUTION; OTHERWISE, SAID ORDER AND EVIDENCE OBTAINED PURSUANT TO IT ARE WITHOUT LEGAL OR EVIDENTIARY VALUE, *Judicial Weekly of the Federation*, ninth period, volume XXVI, August 2007, opinion 1 /J. 22/2007, pp. 111.

(<sup>179</sup>) PRIVATE COMMUNICATIONS. EVIDENCE OFFERED IN CIVIL PROCEEDINGS OBTAINED BY A CITIZEN WITHOUT RESPECTING THE INVIOLABILITY OF SAID COMMUNICATIONS VIOLATES THE CONSTITUTION; WHEREFORE SUCH EVIDENCE IS CONTRARY TO LAW AND SHOULD NOT BE ADMITTED BY A COURT, *Judicial Weekly of the Federation*, ninth period, volume XII, December 2000, opinion 2. CLXI/2000, pp. 428.

(<sup>180</sup>) RIGHT OF PRIVACY IS PROTECTED BY ARTICLE 16, PARAGRAPH ONE OF THE CONSTITUTION, *Judicial Weekly of the Federation*, ninth period, volume XXVII, May 2008, opinion 2 LXLIII/2008, pp. 229.

(<sup>181</sup>) BANK OR FINANCIAL SECRECY IS INCLUDED IN THE RIGHT OF PRIVACY OF THE CLIENT OR DEBTOR AND IS THEREFORE PROTECTED BY GUARANTEE OF LEGAL SECURITY IN ITS ASPECT OF RIGHT TO PRIVACY, *Judicial Weekly of the Federation*, volume XXVII, May 2008, opinion 2 LXIV/2008, p. 234.

(<sup>182</sup>) BANK SECRECY. THE FEDERAL ELECTORAL INSTITUTE MAY REQUIRE CONFIDENTIAL INFORMATION WHEN THE INVESTIGATION PERTAINS TO PRIVATE RESOURCES OF POLITICAL

690. With regard to the protection of honour and reputation, the Court has determined that the fundamental right to privacy consists of the possibility that individuals have not to be interfered with or disturbed by any person or entity as to everything they wish to share only with persons of their own choosing. It has also established that there are a number of rights for the protection of privacy, including honour. Thus, when someone's honour is injured by a malicious expression or manifestation, this affects their private life.<sup>183</sup>

691. The Electoral Tribunal of the Federal Judiciary has held that protection of honour and reputation in the course of an electoral campaign is justified because it involves fundamental rights that are recognized by freedom of expression.<sup>184</sup>

### **C. Institutional measures**

692. In the period covered by this report several plans and programmes have been implemented to prevent unlawful or arbitrary interference with the privacy of citizens, family, home or correspondence, as well as attacks on their honour and reputation by public servants. These programmes include training of staff, support and advice to victims of such acts, as well as a series of cooperation agreements between various bodies, including in particular those concluded with the National Human Rights Commission in order to expedite the fulfilment of recommendations issued by that body.

## **XVIII. ARTICLE 18: RIGHT TO FREEDOM OF THOUGHT AND RELIGION**

### **A. Legislative advances**

693. National legislation does not provide, strictly speaking, provisions governing the religious freedom of indigenous peoples and communities. However, there is express provision in the Constitution about their right to preserve their cultural identity, which involves the recognition, promotion and dissemination of the rich heritage of indigenous peoples embodied in their identity, represented by language, dress and economic, social and religious practices, which form part of their world view.

694. On 16 August 2001, the *Diario Oficial* published an amendment to article 1 of the Constitution<sup>185</sup>, which prohibits all discrimination on religious grounds when it is contrary to human dignity and has the aim of nullifying or impairing the rights and freedoms of individuals.

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PARTIES, *Official Compilation of Relevant Jurisprudence and Case Law 199702005*, Mexico City, TEPJF, 2005, relevant decisions volume, pp. 922-923.

<sup>(183)</sup> PRIVACY. ARTICLE 10 OF THE LAW ON PRESS OFFENSES, BY PROTECTING HONOUR AND REPUTATION AGAINST MALICIOUS EXPRESSIONS, DOES NOT EXCEED THE LIMIT LAID DOWN BY ARTICLE 7 OF THE FEDERAL CONSTITUTION, *Judicial Weekly of the Federation*, ninth period, volume XXVI, July 200, opinion 1 CXLVIII/2007, pp. 272.

<sup>(184)</sup> In that respect, see precedential holding of 14/2007 published at the internet page: <http://www.trife.org.mx>.

<sup>(185)</sup> See: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_151\\_14ago01\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_151_14ago01_ima.pdf)

695. On 6 November 2003, the Diario Oficial published the Regulations of the Law on Religious Associations and Public Worship<sup>186</sup>, in order to regulate the Law on Religious Associations and Public Worship<sup>187</sup>. These regulations provide that the authority empowered to implement them is the Ministry of the Interior, through the Office for Population, Migration and Religious Affairs and the Directorate General for Religious Associations, which are prohibited from intervening in the internal affairs of religious associations.

696. Chapter II of the regulations concerns the internal organization of religious associations, requesting the names of the people who make up their governing bodies and the identity of the persons on whom they confer the status of minister of worship.<sup>188</sup>

697. They are asked that their statutes set forth their system of authority and operation, the powers of their organs of government, management and representation, the duration of appointments, the requirements to be met in order to qualify as ministers of religion, and the procedure for their appointment. The regulations also lay down the requirements for churches and religious groups to be able to exercise their right of free association, which had not been set out in detail in articles 6 to 10 of the corresponding law.

698. The regulations also state in article 6 that persons responsible for health centres and social welfare institutions of the public or private sector, as well as the authorities of social rehabilitation centres and migrant holding centres, must take appropriate measures so that their users or detainees, upon their express request, can receive spiritual ministrations from religious organizations and ministers of religion.

699. The regulations reiterate the provisions of the Law on Religious Associations and Public Worship regarding public worship services outside their buildings, stating that these can only be held exceptionally and with prior notice to the authorities. There are also restrictions on the broadcasting of worship services by the non-print media unless they have been authorized by the Directorate General for Religious Associations.

## **B. Judicial decisions**

700. The Supreme Court of Justice of the Nation has established that freedom of religion (in the first paragraph of article 24 of the Constitution) includes freedom to profess the religious belief of one's preference and the freedom to change religious beliefs. It has held that this freedom has two aspects: the internal dimension of religious freedom and the external dimension.

701. The internal aspect of religious freedom is intimately connected with ideological freedom, and pertains to the ability of individuals to develop and act in accordance with a particular vision

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<sup>(186)</sup> See: <http://www.ordenjuridico.gob.mx/Federal/PE/APF/APC/SEGOB/Reglamentos/4.pdf>

<sup>(187)</sup> The Law on Religious Associations and Public Worship was published in the Diario Oficial on 15 July 1992 and remained without regulations for eleven years. <http://www.ordenjuridico.gob.mx/Federal/Combo/L-14.pdf>

<sup>(188)</sup> The Supreme Court of Justice of the Nation has held that "upon registering with the Ministry of the Interior, legal persons, regardless of name, that are devoted to religious activities acquire the legal personality of religious associations under the terms of article 130 (a) of the Constitution." *Judicial Weekly of the Federation*, ninth period, volume II, July 1995, opinion XX.8.A, p. 239.



of the world that defines man's relationship with the divine. In this internal dimension, freedom of religion is in some sense unlimited, since the State has no direct means to change, eliminate or impose what the individual develops in his most quintessential sphere of privacy: his thinking.

702. In contrast, the external dimension or expression of freedom of religion is manifold and is closely intertwined, in many cases, with the exercise of other rights such as freedom of speech, freedom of assembly or freedom of education. A typical and specific form of this, but by no means the only one, that the Constitution expressly mentions is the freedom of worship, which refers to the freedom to practice ceremonies, rituals and meetings that are associated with the cultivation of certain religious beliefs.<sup>189</sup>

### C. Institutional measures

703. The implementation of the Religious Associations and Public Worship Act and its regulation falls to the Office for Population, Migration and Religious Affairs of the Ministry of the Interior, which aims to:

- a) Promote the activities of competent bodies in regard to allegations of religious intolerance, as well as to substantiate and resolve conciliation and arbitration cases in disputes between religious organizations;
- b) Develop programmes and activities relating to federal executive policy in religious matters;
- c) Represent and act on behalf of the federal executive in its relations with associations, churches, groups and other religious institutions

704. At the end of 2006, the General Directorate for Religious Associations had registered 6,656 religious associations, showing great diversity. These include Asian associations (Hindu, Buddhist, and Krishna), Jewish, Islamic, Christian (mainly Roman Catholic but also Orthodox, Anglican, Lutheran, Presbyterian, Methodist, Baptist, Salvation Army, Pentecostals, Adventists, members of the Church of the living God, the pillar and support of the truth, spiritualists, Christian Scientists, the Church of Jesus Christ of the Latter Day Saints in Mexico, and Christian congregations of Jehovah's Witnesses) and yet others which are grouped under the heading "new religious expressions."

705. As from 1 December 2006, under the Religious Associations and Public Worship Act, 32 applications for registration as a religious association have been approved.

706. To ensure freedom of belief and worship, there were 15,848 requests for procedures and services, including: 4,804 notices of extraordinary public acts of worship to be held outside the houses of worship; 4,207 applications to authorize broadcasts of extraordinary acts of worship through non-print mass media; 4,234 immigration approvals concerning the entry and lawful stay in the country of ministers of religion and other religious of foreign nationality.

707. The actions carried out in this area from 2001 to 2007 present the following picture:

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<sup>(189)</sup> RELIGIOUS FREEDOM. ITS VARIOUS FACETS, *Judicial Weekly of the Federation*, ninth period, volume XXV, February 2007, opinion 1 LXI/2007, pp. 654.

| Item                                                       | Annual data |        |        |        |        |        |                  | January – June |        |                       |
|------------------------------------------------------------|-------------|--------|--------|--------|--------|--------|------------------|----------------|--------|-----------------------|
|                                                            | Observed    |        |        |        |        |        | Estimate<br>2007 | 2006           | 2007*  | Annual<br>%<br>change |
|                                                            | 2001        | 2002   | 2003   | 2004   | 2005   | 2006   |                  |                |        |                       |
| Free consultations on religious matters                    | 6,441       | 7,461  | 6,488  | 7,194  | 6,264  | 4,778  | 5,150            | 2,579          | 1,789  | -30.6                 |
| Services to ensure exercise of freedom of belief & worship | 18,776      | 19,739 | 27,118 | 32,080 | 32,921 | 30,517 | 31,452           | 16,999         | 14,059 | -17.3                 |

\* Preliminary figures

708. During the first months of 2007 there were 11 workshops to promote the culture of legality and tolerance in different parts of the country with the participation of authorities of the three levels of government and members of religious associations.

709. With regard to encouraging relations of openness, respect and constructive dialogue with religious organizations, 87 meetings were conducted with religious leaders of various faiths and religious traditions, including: Catholic Church, evangelical Christian churches of various denominations.

710. With regard to applications for legal entry and stay in the country of ministers of religion and associated religious of foreign nationality, in accordance with the Religious Associations and Public Worship Act, 5,392 approvals were issued in the period December 2006 to August 2007. With the support activities conducted by foreign ministers, the ministry work done by religious organizations was enriched, to the benefit of the general population.

711. From December 2006 to August 2007, 10 conflicts arising out of religious intolerance were resolved in coordination with state and municipal authorities: three in Hidalgo, two in Chiapas, two in Michoacán, two in Jalisco, and one in Mexico State.

**RESPONSE TO CONFLICTS DUE TO RELIGIOUS INTOLERANCE  
(September 2000 to August 2007)**

| Item                | 2000-2001 | 2001-2002 | 2002-2003 | 2003-2004 | 2004-2005 | 2005-2006 | 2000-2007 |
|---------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Conflicts presented | 31        | 17        | 22        | 13        | 14        | 20        | 8         |
| Conflicts resolved  | 31        | 17        | 17        | 7         | 16        | 21        | 10        |

\*Source: Directorate General for Religious Affairs.

712. From January to June 2007, a total of eight complaints of religious intolerance were received, one of which was resolved satisfactorily and seven of which are still pending. The degree of conflict in all of them has been limited. The annual statistics show a downward trend in incidents of religious intolerance in Mexico during the period covered by this report: there were 154 complaints in 1997, 31 in 2001 and 16 in 2006.

713. On 13 June 2001, the Ministry of the Interior concluded a cooperation agreement for the promotion of religious tolerance with the National Human Rights Commission and the National

Institute for Indigenous Affairs<sup>190</sup> aimed at preventing any form of discrimination on religious grounds towards or between indigenous communities.

714. On 14 May 2003, the National Human Rights Commission issued General Recommendation Number 5 on the case of discrimination in schools on religious grounds, addressed to the governors of 31 states and the Minister of Public Education. The aim was to avoid school officials engaging in discriminatory treatment towards students who profess the religion of Jehovah's Witnesses.

715. As regards the recommendation of the Committee after the fourth periodic report of Mexico<sup>191</sup> to ensure that persons liable to military service can raise conscientious objector status, it should be noted that military service is a civic duty that is done by lottery and there is flexibility in performing it, especially for students. To date, there has not been a single case of conscientious objection.

## **XIX. ARTICLE 19: FREEDOM OF EXPRESSION**

716. With respect to the Committee's recommendation<sup>192</sup> regarding the need for journalists to enjoy freedom of expression under article 19 and other concordant provisions of the Covenant so that they can conduct their activities without hindrance and, in particular, to repeal offence of "defamation of the State," it should be noted that on 14 April 2007 a decree came into effect repealing various provisions of the Federal Penal Code and adding various provisions to the Federal Civil Code.

717. This reform repeals the offences of calumny, defamation and insult (*injuria*) contemplated in the Federal Penal Code and determines what persons will be liable to make reparations for moral damage upon the commission of one of the illegal acts set out in article 1916 of the Federal Civil Code.

### **A. Legislative advances**

#### **1. Access to information**

718. On 11 June 2002, the Diario Oficial published the Federal Law on Transparency and Access to Public Government Information<sup>193</sup> (LFTAIPG), which entered into force on June 12, 2003.

719. The purpose of this law is to ensure everyone's access to information held by the executive, legislative and judicial branches, autonomous constitutional bodies or those with legal autonomy, or any other federal entity. It also seeks to promote transparency in public management by

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<sup>(190)</sup> In 2003 the Institute became the National Council of Indigenous People.

<sup>(191)</sup> Observations of the Human Rights Committee. Mexico. 27/07/99. CCPR/C/79/Add.109.

<sup>(192)</sup> Observations of the Human Rights Committee. Mexico. 27/07/99. CCPR/C/79/Add.109.

<sup>(193)</sup> See: <http://www.diputados.gob.mx/LeyesBiblio/pdf/244.pdf>

disseminating information generated by those who are obliged to do so; to secure the protection of personal data in possession of those persons; to promote accountability to citizens; as well as managing the organization, classification and handling of documents.

720. The primary objective of LFTAIPG is to enable individuals to know the information that is in government hands. At the same time, it seeks to make as transparent as possible the use and allocation of public funds and make society aware of basic matters such as concessions, permits, contracts, procedures and services. The fundamental principles of the law are:

- a) The information held by federal authorities and agencies is public and must be accessible to society, unless, under the terms of the Law itself, it is shown in a clear and properly substantiated way that its disclosure could jeopardize matters of general interest to the country, such as national security, public safety and national defence, in which case retention of the information must be legally justified and temporary, for a period of no more than 12 years;
- b) The right of access to information is universal, meaning that any person, without distinction, can apply without having to prove a legal interest or show the reasons or purposes for the application;
- c) Personal data held by public institutions are confidential and, therefore, should not be used or disclosed for purposes other than those for which they were received or requested. This secures the right to privacy and private life of individuals, as well as ensuring that the persons to whom the data refer will have access to them upon request.

721. To comply with the provisions of transitional article 6 of the LFTAIPG, on 11 June 2002 the Diario Oficial published the Regulations pursuant to the Law. This instrument covers only access to information regarding the Executive, its agencies and other bodies that are part of the Federal Civil Service.<sup>194</sup>

722. The regulation makes the following contributions to providing maximum transparency and access to information:

- a) It spells out the manner in which the obligations of transparency and disclosure of government information are to be fulfilled on the internet;
- b) It regulates in detail the procedures for access to government information, personal data and their correction, as well as with respect to filing petitions for review before the Federal Institute for Access to Information (IFAI), opening up the possibility of doing so by electronic media;
- c) It introduces specific chapters on classification and archives;
- d) It promotes access through public versions of documents and records containing reserved or confidential information;

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<sup>(194)</sup> See: [http://www.diputados.gob.mx/LeyesBiblio/regley/Reg\\_LFTAIPG.pdf](http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LFTAIPG.pdf)

- e) It sets parameters for determining periods of confidentiality in the case of classified information.

723. Since its publication and entry into force, LFTAIPG has undergone changes and adjustments to improve its implementation.

724. On 11 May 2004 the Diario Oficial published the decree repealing section I of article 22 of the LFTAIPG, which provided that the individual's consent was not required to provide personal data required for medical prevention or diagnosis, provision of medical care, or the management of health services, where such consent could not be obtained.

725. On 30 March 2005, the Senate approved amendments and additions to LFTAIPG, which largely reflected the criteria issued and implemented by the Federal Institute for Access to Information through guidelines derived from the resolution of appeals.

726. On 27 April 2005, Congress approved various reforms to the Law on the Institute of the National Fund for Workers' Housing, including the establishment of the Committee on Transparency and Access to Information as a new body whose main mission is "to provide what is necessary so that everyone can gain access to information generated by the Institute."

727. On 17 March 2005, the Senate introduced a draft Law on the Federal Archives, which was approved by the Committees on the Interior and on Legislative Studies on 13 December 2005. The committee report spells out technical concepts on the subject. It recognizes IFAI as the authority responsible for administrative archives and the General Archive of the Nation as the authority responsible for historical archives. At this time, the draft law has not yet been adopted.

728. Also, on 18 April, 2006 the Senate approved the initiative for the Organic Act for the Federal Court of Fiscal and Administrative Justice, which aims to relieve the upper division of the Court of administrative matters, so that it can devote itself primarily to dealing with jurisdictional matters without losing its character as the upper division of the Court. It also provides for the creation of an organ of the Federal Court of Fiscal and Administrative Justice entrusted with management, oversight, discipline and judicial careers, enjoying technical and managerial autonomy for the proper discharge of its duties.

729. However, the nature of the draft, originally in article 15, paragraph XVII of the initiative, gave the Federal Court of Fiscal and Administrative Justice the power to hear challenges presented by agencies and entities regarding administrative decisions in favour of an individual with regard to access to public government information. This would have meant that IFAI decisions which were favourable to the citizen and which were final vis-à-vis agencies and entities, would have lost that character.

730. On 25 April 2006, Congress decided to amend article 6 of LFTAIPG to reinforce the objectives of transparency, access to public information and accountability by establishing that the principle of maximum disclosure of information not only applied in interpreting LFTAIPG, but also in its Regulations and the general rules referred to in article 61 of the Law, and by establishing specific rules governing how right of access to public information is to be interpreted, incorporating into the law the principle that it must comport with the Constitution and a number of international instruments.

731. The most noteworthy of these changes to the Law are:

- a) It spells out the content of the concept of federal public resources;
- b) It strengthens the principle that information is public;
- c) The Law applies to any organ of State that provides public services, is endowed with powers under a grant of authority, or receives federal public resources;
- d) Obligations of transparency are clarified;
- e) It is clarified that the exercise of access to government information by citizens is different from the information that obligated parties are required to provide to the Supreme Audit Institution;
- f) Obligated parties that are contributors to or beneficiaries of public trusts, or who perform bank or fiscal transactions that involve federal public funds, may not classify as confidential the information pertaining to the use of such resources;
- g) A system is established to randomly check the IFAI Index Records Classified as Confidential. This index must now show the "reasons" for the classification given;
- h) Trade secrets, industrial, fiscal, banking and trust secrets, will now be considered as confidential information and used only for persons other than the obligated parties, i.e. when the holders of such secrets may be individuals or legal persons from the private or social sector;
- i) Legal persons may now have access to their confidential information --their own data— in possession of the obligated parties by the same procedure used by individuals to request access to personal data;
- j) Explicit authority is given to IFAI to establish, revise and update the criteria for classification, declassification and safekeeping of classified or confidential information, in addition to being able to reclassify information of obligated parties and reduce classification time periods, thereby strengthening its framework for action.

732. Transitional article 8 of LFTAIPG set the starting date for submitting requests for information at 12 June 2003. From that date until 31 December 2007, 266,892 requests for information were received by federal agencies, of which 236,472 have been answered, i.e. 88.6%.

733. The year 2006 was decisive for legislation in this area: with the adoption of laws for transparency in the states of Oaxaca, Chiapas, Hidalgo and Tabasco, all 32 states now have laws on the subject, completing the first round of legal and institutional construction.

734. On 20 July 20 2007, the Diario Oficial published a reform that added a paragraph with seven sub-paragraphs to article 6 of the Constitution.

735. The exercise of this right is based on the following principles:

- a) The public nature of information is subject to exceptions on grounds of public interest;
- b) Access to information of all State bodies and political parties;
- c) Expedited procedures for access to information;
- d) Expedited procedures for access to and correction of personal data;
- e) Procedure for review of unfavourable decisions by a specialized and impartial body which enjoys operational, budgetary and decision-making autonomy;
- f) Evidence of harm and of public interest;
- g) Administrative penalties for public servants;
- h) Duty to provide information;
- i) Existence of updated and reliable administrative records;
- j) Protection of privacy.

736. Accordingly, the existing article 6 states:

- a) All information held by any federal, state and municipal authority, entity, or agency is public and may be kept confidential only temporarily on grounds of public interest as provided by law. In interpreting this right, the principle of maximum transparency shall prevail;
- b) Information relating to privacy and personal data will be protected according to the terms and subject to the exceptions laid down by law;
- c) Any person, without proof of any interest or need to justify its use, will have free access to public information, personal data or rectification thereof;
- d) There will be mechanisms for access to information and procedures for expedited review. These proceedings shall be brought before specialized and impartial organs or agencies with operational, managerial and decision-making autonomy;
- e) All states and municipalities with populations greater than 70,000 inhabitants must have electronic systems such that, no later than two years after its entry into force, anyone can make use of remote mechanisms for access to information and procedures for review referred to the reform

737. With the reform of article 6 of the Constitution on 20 July 2007, began a second round of legal construction incorporating minimum standards to ensure, among other things, that applicants can obtain government information without having to prove their personal capacity;

that priority will be given to the existence of an autonomous body to resolve disputes, and that there will be an expeditious procedure for access to information, which will require the installation of electronic access mechanisms in all municipalities with more than 70,000 inhabitants. Promotion of this right in the states and municipalities will have a favourable impact at the federal level, since the culture of transparency is part of a public demand that is present on all governmental agendas.

738. To date, 41 legal initiatives with an impact on LFTAIPG have been monitored; of these, 23 have been presented in the Chamber of Deputies and 18 in the Senate, as shown below:

| <b>Initiatives of the Congress which have an impact on LFTAIPG</b>                                                                                                                                                                                                                                                       |                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| <b>Initiative</b>                                                                                                                                                                                                                                                                                                        | <b>Originating Chamber</b> |
| 1. Federal law on protection of personal data (introduced 14/02/01)                                                                                                                                                                                                                                                      | Senate                     |
| 2. Reforms to articles 8 and 14, sections IV and V of LFTAIPG (introduced 21/08/02)                                                                                                                                                                                                                                      | Senate                     |
| 3. Reforms to articles 1, 3, 5, 63, 64 and to heading of Title Four; addition of a Title Five and its respective articles 65 and 66 of LFTAIPG (introduced 06/11/03)                                                                                                                                                     | Deputies                   |
| 4. Reform of articles 6, 10, 16, 17, 18, 19, 21, 23, 25, 28, 39, 58 and 66; addition of articles 18 <u>bis</u> , 18 <u>bis</u> 1, 19 <u>bis</u> , 19 <u>bis</u> 1, 25 <u>bis</u> , and 25 <u>bis</u> 1; repeal of article 20 of the Law on the Institute of the National Fund for Workers' Housing (introduced 21/10/03) | Senate                     |
| 5. National Security Act (introduced 30/10/03)                                                                                                                                                                                                                                                                           | Senate                     |
| 6. Reforms to article 6 of the Constitution, proposing issuance of Federal Law on Archives (introduced 09/12/03)                                                                                                                                                                                                         | Senate                     |
| 7. Addition of section VIII-B of article 76 of the Constitution (introduced 09/06/04)                                                                                                                                                                                                                                    | Deputies                   |
| 8. Reform of articles 33, 34, first and second paragraphs, of LFTAIPG and addition of article 27 <u>bis</u> to the Printing Act (introduced 09/06/04)                                                                                                                                                                    | Deputies                   |
| 9. Reforms and additions to articles 1, 2, 3, 4, 5, 7, 12, 13, 17, 33, 34, 35, 36, 39 and 55 of LFTAIPG (introduced 09/06/04)                                                                                                                                                                                            | Senate                     |
| 10. Reforms and additions to articles 6 and 108 of the Constitution (introduced 09/06/04)                                                                                                                                                                                                                                | Senate                     |
| 11. Addition of section X to article 1 of the General Law on Social Development and LFTAIPG (introduced 21/09/04)                                                                                                                                                                                                        | Deputies                   |
| 12. Reform to articles 13 and 18 of LFTAIPG (introduced 28/10/04)                                                                                                                                                                                                                                                        | Deputies                   |
| 13. Reform of articles 6, 116 and 122 of the Constitution (introduced 07/12/04)                                                                                                                                                                                                                                          | Deputies                   |
| 14. Various provisions of LFTAIPG (introduced 11/11/04)                                                                                                                                                                                                                                                                  | Senate                     |
| 15. Reform of article 13 of LFTAIPG and various provisions of the Organic Law of the General Congress of the United Mexican States (introduced 23/11/04)                                                                                                                                                                 | Senate                     |
| 16. Reform of articles 102, 116 and 122 of the Constitution with regard to transparency and access to information (introduced 14/12/04)                                                                                                                                                                                  | Senate                     |
| 17. Federal Law on the Budget and Financial Responsibility                                                                                                                                                                                                                                                               | Deputies                   |
| 18. Reform of and various provisions added to the Federal Law on the Administrative Responsibilities of Public Servants, of LFTAIPG and of the Federal Law on Administrative Procedure (introduced 14/03/05)                                                                                                             | Deputies                   |
| 19. Issuance of the Federal Archives Act and reform of the Organic Law on the Federal Public Administration (introduced 17/03/05)                                                                                                                                                                                        | Senate                     |
| 20. Addition of article 65 to the Federal Law on Transparency and Access to Public Government Information (introduced 29/06/05)                                                                                                                                                                                          | Deputies                   |
| 21. Reform of and various provisions added to the Federal Law on Transparency and Access to Public Government Information, making national political parties and associations subject to it (introduced 29/06/05)                                                                                                        | Deputies                   |
| 22. Reform of, addition to and repeal of various provisions of the Federal Law on Transparency and Access to Public Government Information (introduced 13/12/05)                                                                                                                                                         | Deputies                   |
| 23. Reform and addition of various provisions of the Federal Penal Code (introduced 13/12/05)                                                                                                                                                                                                                            | Deputies                   |
| 24. Draft decree creating the Federal Law on Protection of Personal Data (introduced 02/02/06)                                                                                                                                                                                                                           | Senate                     |



| <b>Initiatives of the Congress which have an impact on LFTAIPG</b>                                                                                                                                                                                                                                                                                                                                                                                             |                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| <b>Initiative</b>                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>Originating Chamber</b> |
| 25. Draft of Organic Act for the Federal Court of Fiscal and Administrative Justice (introduced 09/02/06)                                                                                                                                                                                                                                                                                                                                                      | Senate                     |
| 26. Draft decree reforming the Constitution, the Federal Code on Electoral Institutions and Procedures, the General Act on the System to Appeal Electoral Matters, the Fiscal Act for the Federation, the National Human Rights Commission Act, the Federal Law on Transparency and Access to Public Government Information, the Law on the Bank of Mexico, the Law on Statistical and Geographical Information, and the Law on Planning (introduced 16/02/06) | Senate                     |
| 27. Draft report to repeal article 59 f the National Security Act and adding a final paragraph to article 14 of the Federal Law on Transparency and Access to Public Government Information (introduced 21/02/06)                                                                                                                                                                                                                                              | Senate                     |
| 28. Federal Act on the Protection of Personal Data (introduced 23/02/06)                                                                                                                                                                                                                                                                                                                                                                                       | Deputies                   |
| 29. Draft decree creating the Law o Non-contributory Pensions for Persons Age 70 and Over (introduced 07/03/06)                                                                                                                                                                                                                                                                                                                                                | Deputies                   |
| 30. Draft decree reforming and adding to the Federal Law on Transparency and Access to Public Government Information (introduced 14/03/06)                                                                                                                                                                                                                                                                                                                     | Senate                     |
| 31. Federal Act on the Protection of Personal Data (introduced 22/03/06)                                                                                                                                                                                                                                                                                                                                                                                       | Deputies                   |
| 32. Reform of and addition of various provisions to the Federal Law on Transparency and Access to Public Government Information and the Federal Law on the Administrative Responsibilities of Public Servants (introduced 28/03/06)                                                                                                                                                                                                                            | Deputies                   |
| 33. Addition of article 16 of the Constitution (introduced 05/04/06)                                                                                                                                                                                                                                                                                                                                                                                           | Senate                     |
| 34. Reform of article 34 and transitional article 5 of the Federal Law on Transparency and Access to Public Government Information (introduced 06/04/06).                                                                                                                                                                                                                                                                                                      | Deputies                   |
| 35. Reform of article 39 of the Organic Law on the General Congress of the United Mexican States (introduced 06/04/06).                                                                                                                                                                                                                                                                                                                                        | Deputies                   |
| 36. Issuance of Federal Archives Act and reform of article 27 of the Organic Law on the Federal Public Administration (introduced 12/09/06)                                                                                                                                                                                                                                                                                                                    | Deputies                   |
| 37. Addition of an article 65 to the Federal Law on Transparency and Access to Public Government Information (introduced 10/10/06).                                                                                                                                                                                                                                                                                                                            | Deputies                   |
| 38. Issuance of Federal Archives Act (introduced 14/11/06).                                                                                                                                                                                                                                                                                                                                                                                                    | Deputies                   |
| 39. Law on Transparency, Accountability and Access to Public Information, and reform of and addition of various provisions to the Federal Law on the Administrative Responsibilities of Public Servants (introduced 16/11/06)                                                                                                                                                                                                                                  | Deputies                   |
| 40. Reform of and addition of various provisions of the Federal Law on Transparency and Access to Public Government Information (introduced 07/12/06)                                                                                                                                                                                                                                                                                                          | Senate                     |
| 41. Reform of article 6 of the Constitution (introduced 07/12/06)                                                                                                                                                                                                                                                                                                                                                                                              | Deputies                   |

739. On transparency and access to information, thematic area No. 5 of the National Development Plan, “Effective democracy and responsible foreign policy,” established Point 5.5 “Transparency and accountability,” which aims to promote and ensure transparency, accountability, access to information and protection of personal data in all areas of government.

740. To achieve this objective it plans to implement the following strategies:

- a) Strategy 5.1 Coordinate and establish mechanisms for transparency and accountability of state and municipal governments in the use of federal resources;
- b) Strategy 5.2 Strengthen agencies responsible for facilitating access to public government information and protect personal data;

- c) Strategy 5.3 Develop a regulatory framework to ensure that information relating to privacy and personal data will be protected;
- d) Strategy 5.4 Develop laws and procedures governing the proper organization and maintenance of government records;
- e) Strategy 5.5 Promote mechanisms to ensure that public government information is clear, accurate, timely and reliable;
- f) Strategy 5.6 Promote among the population the benefits of using the right of public access to government information, with particular emphasis on educational programmes in schools and training of public servants;
- g) Strategy 5.7 Promote transparency and accountability of political parties, national political groups and associations of workers;
- h) Strategy 5.8 Develop a civic culture of transparency and accountability;
- i) Strategy 5.9 Conduct awareness campaigns to provide the public with useful information on government programmes and projects.

741. An initial assessment shows that since its creation, IFAI has positioned itself as an institution recognized for its work and its contribution to the consolidation of Mexican democracy by enabling anyone to gain access to information held by the federal Government. The increase in the number of applications submitted to agencies and entities, and their increased complexity, suggests that a significant number of citizens have assumed this right, although most applicants are concentrated in Federal District and Mexico State.

## **2. Access to the media**

742. After discussion in the Congress under the heading of "political reform", the Diario Oficial on 13 November 2007 published a number of amendments to Articles 6, 41, 85, 97, 99, 108, 116, 122 and 134 of the Constitution. With this reform, legislators sought to deal with the various difficulties that arose during the election campaign and the presidential elections that were held on 2 July 2006. Among the amendments that were adopted are a number of provisions regulating access by political parties to the media.

743. Among other things, the reform enshrines in the Constitution the right of political parties to permanent use of the mass media, including free access to radio and television, provided during public broadcasting air time. But, to ensure a level playing field, there are also the following specific prohibitions:

- a) A political party may not contract or acquire, directly or indirectly, radio and television air time;
- b) No natural or legal person may contract for propaganda aimed at influencing the electoral preferences of citizens in favour of or against candidates or parties, or broadcast in national territory such messages contracted abroad;

- c) Negative electoral or political propaganda are prohibited;
- d) The three levels of government may not engage in propaganda (with the obvious exception of institutional electoral campaigns, health, education and civil protection in emergency situations);
- e) Personalization of government propaganda in any form, at any time at the three levels of government.

744. In June 2007, the Supreme Court of Justice of the Nation, through an open, pluralistic and transparent process, declared unconstitutional reforms to various articles of the Federal Telecommunications Act and the Federal Law on Radio and Television because they did not guarantee equal access to the media and favoured monopolistic practices. The purport of the decision is for Congress to legislate anew to establish the principle of equality in granting media concessions to individuals. It also recommended establishment of firm bases for the operation of independent and community radio and television stations.

745. Accordingly, on 7 September 2007, the Senate formally set up the Plural Group for the Review of Legislation on Telecommunications and Broadcasting. To date, the Plural Group has met with various stakeholders involved in the matter, including a meeting on 20 February 2008 with the National Front for a New Media Law to incorporate their proposals into a single initiative. On 28 February 2008 the Senate Plural Group presented a report on advances and contributions to the reform of telecommunications and broadcasting.

## **B. Judicial decisions**

746. The Supreme Court of Justice of the Nation has established<sup>195</sup> the scope of freedom of expression. Adapting its approach to international law standards such as the Inter-American Convention on Human Rights, it has established that the fundamental right to freedom of expression includes both the freedom to express one's thought (individual dimension) and the right to receive any information and the expression of thought of others (collective dimension). That is, freedom of expression guarantees an exchange of ideas and information that protects the communication of one's own views to other people and the right to know the opinions, accounts and news that others disseminate.

747. The Court has likewise recognized<sup>196</sup> that the right to freedom of expression has limits. In this sense, the prohibition of censorship does not mean that freedom of speech has no limits, or that the legislature is not authorized to enact rules on how to exercise it, particularly as regards to respect for private life, morality and public order. Moreover, the Court has noted that article 6 of the Constitution emphasizes the impossibility of subjecting the expression of ideas to inquiry by public authorities, except in cases where there is an attack on morality or the rights of others, or

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<sup>(195)</sup> FREEDOM OF EXPRESSION. DIMENSIONS OF ITS CONTENT, *Judicial Weekly of the Federation*, ninth period, volume XXV, May 2007, opinion P./J 25/2007, pp. 1520.

<sup>(196)</sup> FREEDOM OF EXPRESSION. DIMENSIONS OF ITS CONTENT, *Judicial Weekly of the Federation*, ninth period, volume XXV, May 2007, opinion P./J 25/2007, pp. 1523.

when crime or disturbance of public order is brought about. These are, therefore, discrete limits directly specified in the federal Constitution.

748. For its part, the Electoral Tribunal of the Federal Judiciary (TEPJF) has recognized<sup>197</sup> that one of the elements needed in order for the charters of political parties to be considered democratic is that they guarantee their members the right to freedom of expression within political organizations.

749. The TEPJF has also determined<sup>198</sup> that freedom of expression and association in the political-electoral arena has limits. That is so because the freedoms of expression and association are constitutionally-grounded and legally developed fundamental rights and, where appropriate, restrictions or limitations on their exercise are to be established by law --especially with regard to members of the organs that make up the State. The reason is that the freedom to vote means that the voters should not be subject to pressure, intimidation or coercion of any kind, and that public bodies and authorities should keep out of the electoral process so as not influence the intentions of voters, and thus not infringe the constitutional principles that govern the electoral process. Therefore, the freedoms of a public servant as a citizen can be restricted in the interests of protecting public order, national security or respect for the rights of others.

750. During its fourth period, the TEPJF ruled<sup>199</sup> that honour and reputation are fundamental rights which constitute limits on freedom of expression and which are protected in the course of electoral processes. Therefore, in the context of the political debate, expressions or assertions of any kind made by those involved in electoral contests for the main purpose of denigrating or discrediting the name, marital status, nationality or ability of one's opponents implies a violation of the rights of others or the reputation of others because it is at variance with the guiding principles established by the Founders of the Constitution and the international covenants signed by the Mexican State.

751. The TEPJF has recognized that proceedings may be brought to protect political-electoral rights of the citizen against violations of the right to information in the political-electoral sphere<sup>200</sup> and, at the same time, has limited the content and scope of the right to public information in the political-electoral sphere granted to Mexican citizens under LFTAIPG, stating

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(<sup>197</sup>) CHARTERS OF POLITICAL PARTIES. MINIMUM ELEMENTS TO CONSIDER THEM DEMOCRATIC, *Official Compilation of Relevant Jurisprudence and Case Law 1997-2005*, Mexico City, TEPJF, 2005, jurisprudence volume, pp. 120-122.

(<sup>198</sup>) FREEDOM OF EXPRESSION IS NOT VIOLATED WHEN GOVERNMENT IS PROHIBITED FROM EXPRESSING SUPPORT FOR OR OPPOSITION TO A CANDIDATE (LEGISLATION OF COLIMA), *Official Compilation of Relevant Jurisprudence and Case Law 1997-2005*, Mexico City, TEPJF, 2005, relevant case-law volume, pp. 682-684.

(<sup>199</sup>) In this regard, see precedential decision 14/2007 published at internet page: <http://www.trife.org.mx>.

(<sup>200</sup>) RIGHT OF ACCESS TO PUBLIC ELECTORAL INFORMATION. THE ELECTORAL TRIBUNAL OF THE JUDICIAL POWER OF THE FEDERATION IS COMPETENT TO HEAR CHALLENGES TO ITS VIOLATION, BY WAY OF PROTECTION OF THE POLITICAL-ELECTORAL RIGHTS OF THE CITIZEN, *Official Compilation of Relevant Jurisprudence and Case-law 1997-2005*, Mexico City, TEPJF, 2005, relevant case-law volume, pp. 487-489.

that this right is of a highly political nature because the right belongs to all Mexican citizens; that the subject directly obliged to provide information is the federal electoral authority and those indirectly obliged are political parties and groupings; that the substance or content of the right is to request information about the management of public finance; and that the values legally protected are transparency, accountability and democratization of Mexican society.

752. Regarding the scope of the law, TEPJF determined that the information which is available to citizens is that relating to the source and use of the resources of political parties<sup>201</sup>, especially information relating to public financing obtained in connection with oversight procedures by the administrative electoral authority.

753. In June 2007, the Supreme Court of Justice of the Nation declared unconstitutional reforms to various articles of the Federal Telecommunications Act and the Federal Law on Radio and Television because they did not guarantee equal access to media and favoured monopolistic practices. With a provision that strengthens democracy, the Court called for an open, pluralistic and transparent process, including public meetings, to discuss this constitutional challenge. Its decision requires the Congress to legislate anew to establish the principle of equality in granting media concessions to individuals. It also recommended establishment of firm bases for the operation of independent and community radio and television stations.

### C. Institutional measures

754. In reference to rules that define the scope of freedom of expression or lay down restrictions, and any condition which in practice affects the exercise of this right, as noted by the Committee in its General Observation 10, it should be noted that with respect to the media for indigenous communities, community radio stations are defined on the basis of three aspects: non-profit activity, community control over ownership, and community participation.

755. The 2007-2012 National Development Plan sets out actions to guarantee the free exercise of freedom of expression and access to the operation of the media, in particular:

- a) Developing a precise definition of the concept of community and public media and promoting their recognition;
- b) Reviewing the existing regulatory framework to identify the provisions that provide a legal basis for the operation of community and public media, considering their objectives and their social, cultural, technical and economic characteristics.<sup>202</sup>

756. Mexico has registered the following data on the number of radio stations that broadcast a signal:

- a) AM stations licensed: 755;

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<sup>(201)</sup> RIGHT OF ACCESS TO PUBLIC ELECTORAL INFORMATION. CONTENT AND SCOPE, *Official Compilation of Relevant Jurisprudence and Case-law 1997-2005*, Mexico City, TEPJF, 2005, relevant case-law volume, pp. 485-487.

<sup>(202)</sup> National Human Rights Programme (2004-2006), Specific Goal 1.3, strategic line of action 1.3.3: "Freedom of thought, expression and rights to information."

- b) AM stations with permits: 93;
- c) FM stations licensed: 470;
- d) FM Stations with permits: 169.

757. License concessions are given to those stations that are commercial, while the permits are for official, cultural or experimental stations, radio schools, or radio stations established by public entities and agencies to perform their missions and services; thus, stations with permits cannot operate commercially. There are 13 community radio stations and more than 100 stations have broadcasts without a permit.

### **1. Access to information**

758. Enforcement of and compliance with the LFTAIPG is in the hands of the Federal Institute for Access to Information (IFAI), an organ of the federal Government with operational, budgetary and decision-making autonomy tasked to promote and disseminate the right of access to information, to rule on rejections of requests for access to information, and protect personal data held by agencies and entities.

759. IFAI has the following accomplishments to its credit, among others:

- a) Making a reality of the guarantee of the right to public information and protection of personal data held by agencies of the federal Government, through the resolution of appeals for review brought before the Institute pursuant to the LFTAIPG, and adherence to criteria of promptness in delivery and maximum transparency of government information;
- b) Contributing to transparency and accountability in governance through enforcement of plenary resolutions of IFAI and recommendations to the agencies of the federal Government to comply with the transparency obligations set out in article 7 of LFTAIPG;
- c) Introducing into the public sphere the right of access to public information through programmes of promotion and dissemination of this right of public officials, obligated agencies, the states and municipalities, civil society organizations, international agencies and the general public.

760. A central element of the LFTAIPG is the establishment of a review procedure, which is conducted before the IFAI or the Liaison Unit of the agency that considered the request, in cases where the requested information was denied or it was reported that the requested documents were unavailable.

761. A noteworthy feature is the creation of an Internet-based system (System of Requests for Information, SISI), which facilitates the submission of applications, the filing of appeals, the receipt of information, and receipt of electronic notifications. The Regulations also established continuous coordination between the IFAI, the Ministry of Finance and Public Credit and the Civil Service Department, to establish and continuously improve the system in order to facilitate

the transmission of information, reduce costs and facilitate payments, avoiding the need for applicants to be physically present at the agencies.

762. The SISI is a tool to facilitate the receipt and handling of information requests addressed to the agencies of the federal Government.<sup>203</sup>

763. As shown in the table below, in its first six years of existence, the IFAI has received 305,232 requests for information. It has responded to 26,833 while 269,713 were terminated for failure to pay the costs of reproduction of information (2,986) or lack of response to the request for additional information (23,937) while the rest are in process.

764. The IFAI has received 15,124 appeals against the institution's refusal to provide information. All appeals presented are examined to assess whether the refusal was justified under the law; if not, IFAI requires that the information be provided.

| <b>Requests received. Replies. Consultations at the Portal of Transparency Obligations, and Appeals submitted as of 22 May 2008</b> |             |             |             |             |             |             |              |
|-------------------------------------------------------------------------------------------------------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| <b>ITEM</b>                                                                                                                         | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> | <b>TOTAL</b> |
| Electronic requests                                                                                                                 | 22488       | 35055       | 47874       | 57739       | 92261       | 31239       | 292656       |
| Manual requests                                                                                                                     | 1609        | 2677        | 2263        | 2484        | 24662       | 1101        | 12576        |
| Total requests                                                                                                                      | 24097       | 39932       | 50127       | 60213       | 94723       | 38340       | 305232       |
| Electronic replies                                                                                                                  | 19831       | 31744       | 42673       | 51169       | 81439       | 32557       | 259413       |
| Manual replies                                                                                                                      | 1445        | 2369        | 1925        | 1929        | 1948        | 684         | 10300        |
| Total replies                                                                                                                       | 21276       | 34113       | 44598       | 53098       | 83387       | 33241       | 269713       |
| Requests concluded due to lack of reply to request for additional information                                                       | 1158        | 2374        | 3688        | 5140        | 8224        | 3355        | 23937        |
| Requests concluded due to lack of payment of costs of reproduction of information                                                   | 92          | 277         | 418         | 740         | 883         | 486         | 2896         |
| Total requests concluded due to lack of payment or of reply to request for additional information                                   | 1248        | 2651        | 4106        | 5880        | 9107        | 3841        | 26833        |
| Consultations at portal of transparency obligations                                                                                 | none        | none        | none        | none        | 4966618     | 4900750     | 98867368     |
| Appeals before IFAI                                                                                                                 | 625         | 1431        | 2639        | 3533        | 4864        | 2022        | 15124        |

765. The above table shows an increasing willingness of citizens to seek information through the IFAI between 2003 and 2007, which recorded a notable increase in the number of applications and reached its peak with almost 95,000 requests. The year 2008 shows a trend similar to that recorded in 2007.

| <b>The 20 agencies and entities with the most requests as of 22 May 2008</b> |             |             |             |             |             |             |                         |                                       |                                |
|------------------------------------------------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------------------|---------------------------------------|--------------------------------|
| <b>Agency / Entity</b>                                                       | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> | <b>Cumulative Total</b> | <b>% of requests with final reply</b> | <b>% of requests concluded</b> |

<sup>(203)</sup> See: System of Requests for Information, <http://www.informacionpublica.gob.mx>.

| The 20 agencies and entities with the most requests as of 22 May 2008 |      |      |      |      |       |      |                  |                                |                         |
|-----------------------------------------------------------------------|------|------|------|------|-------|------|------------------|--------------------------------|-------------------------|
| Agency / Entity                                                       | 2003 | 2004 | 2005 | 2006 | 2007  | 2008 | Cumulative Total | % of requests with final reply | % of requests concluded |
| Mexican Social Security Institute                                     | 1114 | 2230 | 3825 | 6074 | 13276 | 6192 | 32711            | 88                             | 7                       |
| Ministry of Public Education                                          | 1061 | 1413 | 2042 | 2475 | 5914  | 1885 | 14790            | 85                             | 12                      |
| Ministry of Finance and Public Credit                                 | 1570 | 2068 | 2247 | 2500 | 3032  | 1117 | 12534            | 94                             | 5                       |
| Ministry of the Environment and Natural Resources                     | 779  | 1294 | 1823 | 2032 | 2657  | 1240 | 9825             | 85                             | 12                      |
| Ministry of Health                                                    | 474  | 858  | 1312 | 1959 | 3018  | 1236 | 8857             | 84                             | 12                      |
| Civil Service Department                                              | 696  | 1065 | 1659 | 1818 | 2443  | 903  | 8584             | 79                             | 16                      |
| Office of the Attorney General                                        | 528  | 1138 | 1524 | 1488 | 2242  | 803  | 7723             | 87                             | 10                      |
| Ministry of Communications and Transport                              | 636  | 964  | 1297 | 1468 | 2321  | 1020 | 7706             | 84                             | 13                      |
| Ministry of the Interior                                              | 694  | 1011 | 1406 | 1508 | 2026  | 822  | 7457             | 87                             | 11                      |
| Revenue Administration                                                | 354  | 751  | 1291 | 1576 | 1660  | 598  | 6230             | 89                             | 9                       |
| Ministry of External Relations                                        | 419  | 784  | 997  | 1239 | 1661  | 763  | 5863             | 83                             | 13                      |
| Presidency of the Republic                                            | 685  | 651  | 841  | 1104 | 1942  | 597  | 5820             | 92                             | 6                       |
| Institute of Social Security and Services for State Workers           | 333  | 552  | 843  | 987  | 2050  | 996  | 5761             | 79                             | 17                      |
| Ministry of National Defence                                          | 490  | 849  | 866  | 1108 | 1771  | 669  | 5753             | 92                             | 7                       |
| Federal Electrical Commission                                         | 536  | 740  | 1037 | 1059 | 1512  | 705  | 5590             | 86                             | 11                      |
| National Water Commission                                             | 385  | 437  | 1142 | 1238 | 1564  | 724  | 5491             | 90                             | 7                       |
| Federal Institute for Access to Information                           | 329  | 630  | 987  | 1155 | 1455  | 546  | 5102             | 92                             | 7                       |
| Ministry of Social Development                                        | 332  | 584  | 707  | 970  | 1913  | 524  | 5030             | 84                             | 13                      |
| Petróleos Mexicanos                                                   | 446  | 589  | 738  | 1059 | 1437  | 733  | 5002             | 90                             | 6                       |
| Ministry of the Economy                                               | 422  | 636  | 776  | 990  | 1485  | 554  | 4863             | 93                             | 4                       |

766. On 4 April 2004, the *Diario Oficial* published the Regulations of the Supreme Court of Justice of the Nation and of the Federal Judicial Council for the Implementation of the Federal Law of Transparency and Access to Public Government Information, whose purpose is to "[...] establish criteria, procedures and organs to ensure access to information held by the Supreme Court of Justice of the Nation, the Federal Judicial Council, the Circuit Courts and District Courts, and is based on the recognition that, in principle, said information is public, and, unless subject to restrictions set by law, may be consulted by any citizen."<sup>204</sup>

<sup>(204)</sup> See article 1 of the Rules of the Supreme Court of Justice of the Nation and the Federal Judicial Council for the application of the federal law on transparency and public government information.



767. By Agreement 9 / 2003 dated 27 May 2003, issued by the Supreme Court of Justice of the Nation in plenary, organs, criteria and procedures for transparency and access to public information in the Court were established. Among the requirements for access to information held by the Court, persons must submit to the Access Units a written request or fill in the form approved by the Commission, which can be submitted electronically.<sup>205</sup>

768. The Senate issued a parliamentary agreement for the application of LFTAIPG,<sup>206</sup> which aims to give effect the provisions of the Law by establishing a catalogue of information that the Senate will make available to the public, including:

- a) the Parliamentary Gazette;
- b) the Record of Debates;
- c) draft laws, draft decrees and points of agreement;
- d) the register of attendance at meetings and the vote of every senator;
- e) the monthly salary of senators and other public servants of that chamber;
- f) the procedures, requirements, formats and services of the Library of the Chamber and Historical Archives;
- g) the budget appropriation and accounts for the period;
- h) results of audits of the budget year.

769. The Chamber of Deputies issued Regulations on the subject<sup>207</sup> in which it identifies the bodies, criteria and procedures for accessing information from the Chamber of Deputies and sets, as in the case of the Senate, a catalogue of information to be made available to the general public.

770. By contrast with the agreement of the Senate, this set of regulations does not contain a list of premises on the basis of which information may be classified. In contrast, it sets deadlines to decide upon a request and to deliver the required information: Article 13 states that if a request is not resolved within the prescribed time, it will be understood that the answer to the applicant is in the affirmative.

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<sup>(205)</sup> See Agreement 9/2003 of 27 May 2003, issued en banc by the Supreme Court of Justice of the Nation, [http://www.scjn.gob.mx/NR/rdonlyres/63A74449-8130-449E-B65B-864942779EA8/0/Acuerdo92003\\_vTE07.pdf](http://www.scjn.gob.mx/NR/rdonlyres/63A74449-8130-449E-B65B-864942779EA8/0/Acuerdo92003_vTE07.pdf)

<sup>(206)</sup> See: Parliamentary Agreement for the Application of the Federal Law on Transparency and Access to Public Government Information in the Senate. [http://transparencia.senado.gob.mx/index.php?option=com\\_content&task=view&id=15&Itemid=33](http://transparencia.senado.gob.mx/index.php?option=com_content&task=view&id=15&Itemid=33)

<sup>(207)</sup> See Regulation for Transparency and Access to Public Information of the Chamber of Deputies, <http://www.contraloria.df.gob.mx/prontuario/vigente/119.htm>

771. To ensure access to information on matters of national security, the IFAI sought, through dialogue with the appropriate bodies, to ensure that the special law on security<sup>208</sup> should not contain provisions that obstruct or impede access to documents of the State. Thus, legislators decided that the concept of national security applies only to the pursuance of policies in that area, and is not to be resorted to unjustifiably by other State institutions to keep information confidential, in order to ensure that the criteria of LFTAIPG should prevail.

772. The Ministry of the Interior, through the General Directorate for Legislative Information, has established a Legislative Information System to streamline institutional relations between it and the Congress, its Chambers, organs and members, as well as the Standing Committee. This system is located on the website of the Ministry and its main objectives are: to monitor all legislative issues and present them in an integrated manner, to disseminate this information to the general public and to present in an orderly and user-friendly manner the procedural posture of legislation. In this way, public users may learn where the matter they are interested in stands.

## **2. Protection of journalists**

773. In its Concluding Observations to the Fourth Periodic Report of Mexico, the Committee expressed its concern over “the serious violations of freedom of expression represented by the frequent murders of journalists and by the acts of intimidation making it difficult for representatives of the press to exercise their profession freely in Mexico.”<sup>209</sup>

774. In 2003, with the aim of protecting and guaranteeing the rights of journalists, the Attorney General's Office issued Agreement A/118/2003, instructing the various judicial authorities to guarantee the right of journalists not to reveal their sources, which has helped to improve confidence in the authorities among complainants belonging to this profession.

775. To facilitate and foster a culture of reporting, the Attorney General's Office has 01-800 telephone numbers for complaints against public servants, as well as for environmental crimes, crimes against journalists, kidnapping and drug trafficking. These numbers operate 24 hours a day, 365 days a year, serving also for anonymous complaints against drug dealing and human rights violations

776. On 9 August 2004, the National Human Rights Commission issued General Recommendation No. 7 on violations of freedom of expression of journalists or communicators, addressed to the Attorney General and to the Attorney General for Military Justice, the Governors and the Head of Government of the Federal District.

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<sup>(208)</sup> The Law on National Security was published on 31 January 2005 in the Diario Oficial in order to delineate the concept of national security, define the organs involved in the nation's policy in that area and the principles pursuant to which it is to be governed. It also determines the obligations of the bodies entrusted with preserving national security and raises to the rank of a law the creation of the National Security Cabinet; it regulates intelligence work; organizes the Centre for Research and National Security; sets parliamentary and judicial controls; and establishes the foundations for coordination between the three levels of government.

<sup>(209)</sup> Consideration of Reports of States Parties under Article 40 of the Covenant. Observations of the Human Rights Committee. Mexico. Human Rights Committee, 66th session, CCPR/C/79/Add.109, 27 July 1999.

777. This recommendation seeks to foster respect for human rights of journalists and, in particular, the exercise of freedom of expression and professional secrecy. To this end, the Human Rights Commission recommended that administrative measures be taken with a view to ensuring that public servants who, by virtue of their role, have contact with journalists are instructed on how to conduct their actions, to guarantee journalists' right to perform their activities with full freedom of expression, and to provide for the framing of appropriate guidelines for agents of public prosecutors' offices so that they will not pressure or force journalists to disclose their sources.

778. To deal with cases of intimidation and murder of journalists, on 15 February 2006 the Attorney General's office created the Office of Special Prosecutor for Crimes against Journalists (FEADP). From then until 7 June 2007 FEADP has dealt with 163 cases, of which 95 have been resolved through various means, ranging from withdrawal of the complaint to dismissal of the criminal case for lack of elements.<sup>210</sup>

779. Of the 163 cases examined during this period, 54 have been handled directly by FEADP; 87 are with the Regional Office of the Deputy Attorney General, Criminal Proceedings and Amparo (SCRPPA); 21 with the Deputy Attorney-General's Office for Special Investigation of Organized Crime; and 1 with the Inspectorate General.

780. Of the 54 cases being handled directly by FEADP, 32 have been resolved, one by remand, three by dismissal, 11 were shelved due to lack of evidence, another 11 were shelved due to lack of federal jurisdiction, and in six more a preliminary investigation was initiated after the case had begun with a detailed report. A total of 22 are in process. Of the 87 being dealt with by SPCRPPA, 56 have been resolved and, as of December 2007, 31 were under investigation; SIEDO, for its part, resolved seven and continues investigating 14.

781. The type of crime most often reported by the media communicators is threats (66 cases), followed by homicide (17 cases), battery (11 cases), unlawful imprisonment and abuse of authority (10 cases), damage to property (9 cases); the remaining cases being minor offenses.

782. The federative entities with the largest number of complaints are: the Federal District, 31; Oaxaca, 28; State of Tamaulipas and Mexico State with 12; Michoacán and Tabasco with 7; Chiapas, Chihuahua and Puebla, 6; Sonora and Baja California with 5; Guerrero, Hidalgo, Jalisco and Yucatan with 4; Nayarit, Sinaloa and Veracruz with 3; Aguascalientes, Baja California Sur, Coahuila, and Quintana Roo with 2; and a Tlaxcala and Morelos with 1. There are three cases in with no indication as to the state or involving several states.

783. One of the additional powers that were conferred on the FEADP since its inception is to train representatives of the media on legal issues to be considered for the protection of their professional activity, as well as preventive measures they might adopt to avoid being placed at risk. To this end, the Office of the Special Prosecutor has conducted seven "Seminars on Crime Prevention in the practice of journalism" in the cities of Taxco, Guerrero; Toluca, State of Mexico; Jalapa, Veracruz; Guadalajara, Jalisco; Morelia, Michoacán; Saltillo and Torreón in the state of Coahuila. Representatives of the media in these areas have taken active part.

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<sup>(210)</sup> Office of the Attorney General of the Republic, Press Release 260/07, 7 June 2007. See: <http://www.pgr.gob.mx/Prensa/2007/bol07/Jun/b26007.shtml>

784. FEADP has an Agent of the Public Prosecutor's Office in each state of the Republic, who, in addition to his daily work, has specialized training to address concerns of representatives of the media who, for reasons related to their professional activity, have been victims of some crime. FEADP conducts ongoing training for federal offices of public prosecutors.

785. The activity of FEADP has been intensifying. From 1 December 2006 to 30 June 2007, 57 complaints were completed for the following reasons:

- a) 31 for lack of jurisdiction;
- b) 6 were closed;
- c) 7 led to no criminal proceeding;
- d) 8 were in placed in reserve;
- e) 4 detailed reports were submitted to preliminary investigation;
- f) 1 was remanded.

### **3. The electoral sphere**

786. The Federal Electoral Institute (IFE) has adopted a series of measures grouped into four categories: creation of bodies, regulatory development, training, and dissemination to citizens of relevant information about the electoral process.

787. In 2005, in collaboration with the IFAI, four modules for shared access to electoral and government information were established, based in Aguascalientes, Chihuahua and Yucatan. This programme aims to make available to anyone who lacks computer equipment and / or internet access the means to submit requests for information with regard to electoral matters and to any other area of the federal Government.

788. As regards regulatory development, the IFE has issued regulations on transparency, access to information, personal information and archives.

789. In September and October 2007, the IFE concluded cooperation agreements on transparency and access to information with two national political parties: Convergence and Social-Democratic Alternative. The purpose of the agreement is to establish a benchmark of minimum requirements for political parties, their organizational structure, the monthly remuneration for their leadership positions, the contracts and agreements they conclude, annual campaign reports, and internal selection processes, among other matters.

790. In October, November and December 2005, a training programme on transparency and access to information was carried out at all local and district boards of the IFE, with the aim of sensitizing the staff of the detached bodies to the importance of the topic and to practices and procedures for access to information.

791. With the aim of providing the public the relevant information from federal elections, an Election Day Information Programme was introduced in 1997, and, as from 2000, the Election Day Information System (SIJE).

792. The SIJE is a system for collecting and processing data necessary for monitoring the course of events on election day. To the extent that this flow of relevant information is accessible not only to members of the management bodies of the IFE but also to all citizens, the information system becomes an instrument of transparency.

793. For the 2005-2006 federal electoral process, the IFE's General Council approved an agreement establishing the criteria for conducting and disseminating the important stages, events or activities of the electoral bodies of the Institute, during the federal election 2006; instructing its branch offices to prepare a report on progress achieved in organizing and conducting the process and to disseminate that information.

794. The Electoral Tribunal of the Federal Judiciary, the highest authority in electoral matters, has issued the following determinations on electoral processes and their conduct:

- a) In 2002, it established that the right of petition in political matters also belongs to political parties;<sup>211</sup>
- b) The same year, it defined the legal scope of the prerogative of citizens to know information held in the public records relating to political parties, under very broad criteria because they are defined by Mexican law as public interest entities and recipients of State resources;<sup>212</sup>
- c) In 2005, it defined the content and scope of the right of access to public information on electoral matters, again adopting broad criteria favourable to the citizen;<sup>213</sup>
- d) On the same subject and that same year, the Electoral Tribunal ruled that the right of access to public information on electoral matters subsists despite the loss of registration of citizens' organizations as political parties;<sup>214</sup>
- e) Also in 2005, it ruled that information on electoral matters that can be monitored by the administrative authority is public even if it is held by the political party;<sup>215</sup>

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<sup>(211)</sup> RIGHT TO PETITION IN THE POLITICAL DOMAIN. ALSO BELONGS TO POLITICAL PARTIES, *Official Compilation of Relevant Jurisprudence and Case Law*, Mexico City, TEPJF, 2005, jurisprudence volume, pp. 95-96.

<sup>(212)</sup> RIGHT TO INFORMATION IN POLITICAL-ELECTORAL MATTERS. LEGAL SCOPE OF CITIZENS' RIGHTS TO KNOW DATA KEPT IN PUBLIC RECORDS PERTAINING TO POLITICAL PARTIES, Mexico, TEPJF, 2005, jurisprudence volume, pp. 84-86.

<sup>(213)</sup> RIGHT OF ACCESS TO PUBLIC INFORMATION IN ELECTORAL MATTERS. CONTENT AND SCOPE, Mexico City, TEPJF, 2005, relevant case law volume, pp. 58-61.

<sup>(214)</sup> RIGHT OF ACCESS TO PUBLIC ELECTORAL INFORMATION SUBSISTS DESPITE LOSS OF REGISTRATION OF CITIZENS' ORGANIZATIONS AS NATIONAL POLITICAL PARTIES, Mexico City, TEPJF, 2005, relevant case law volume, pp. 489-490

- f) In 2007, the Tribunal issued four holdings: the first establishes that there is no contradiction between the Law on Transparency and the Federal Electoral Code, which states that ballots cannot be opened after the election process, given that it is in the hands of the public, that there is oversight by the political parties themselves and participation by election observers, all elements that ensure the transparency of the voting;<sup>216</sup>
- g) The second holding states that the right to information does not depend on the capacity or profession of the applicant;<sup>217</sup>
- h) The third indicates that political parties are obliged to respect the right to information;<sup>218</sup>
- i) The fourth holds the freedoms of expression and information should be maximized in the context of political debate;<sup>219</sup>
- j) Finally, in 2007 the TEPJF issued a precedential ruling to the effect that the protection of honour and reputation during the election campaign is justified because these are fundamental rights which are recognized in the exercise of freedom of expression.<sup>220</sup>

795. In June 2003, the TEPJF, in conjunction with the IFE, the Ibero-American University, the New Journalism Foundation and the United Nations Development Programme in Mexico, held a forum on “International Journalism and consolidation of democracy in Latin America,” aimed at promoting a high-level professional dialog among a representative group of national and international journalists specialized in political coverage, civil society members, electoral advisers and magistrates for the purpose of exchanging experiences and ideas on ethical and technical issues related to how the media can help consolidate democracy in Latin America.

796. The specialized seminar on electoral issues was given for 70 representatives of the media covering the activities of TEPJF, geared to understanding the judicial function of the institution and its judicial role in the democratic political process.

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(<sup>215</sup>) ELECTORAL INFORMATION. ELECTORAL INFORMATION WHICH IS PART OF OVERSIGHT BY THE ADMINISTRATIVE AUTHORITY IS PUBLIC ALTHOUGH IT IS IN THE HANDS OF POLITICAL PARTIES, Mexico City, TEPJF, 2005, relevant case law volume, pp. 637-639.

(<sup>216</sup>) In that regard, see precedential holding 5/2007 published on internet site <http://www.trife.org.mx>

(<sup>217</sup>) *Íbidem*

(<sup>218</sup>) In that regard, see precedential holding 12/2007 published on internet site <http://www.trife.org.mx>

(<sup>219</sup>) See precedential holding 15/2007 published on internet site <http://www.trife.org.mx>

(<sup>220</sup>) Precedential holding 14/2007 published on internet site <http://www.trife.org.mx>

#### 4. Electronic communications media

797. In accordance with the decision of the Supreme Court of Justice of the Nation, which in June declared unconstitutional the 2007 amendments to various articles of the Federal Telecommunications Act and the Federal Law on Radio and Television, on 7 September 2007 the Senate formally established the Plural Group to Review the Law on Telecommunications and Broadcasting. To date, the Plural Group has met with various stakeholders on the issue in order to incorporate their proposals into a single initiative. On 28 February the Group presented the Senate its report on advances and contributions to the reform of telecommunications and broadcasting.

### XX. ARTICLE 22: FREEDOM OF ASSOCIATION

#### A. Legislative advances

798. On 13 September 2007 several amendments to the federal Constitution were approved containing provisions relating to political association; they entered into force on 14 November of that year.

799. Among the noteworthy reforms are: the provision in article 41 which prohibits the involvement of trade-union organizations, or other organizations with a different social purpose, in the creation of political parties, lays the groundwork for legislation on the rules and requirements for registration of parties, and sets limits on the intervention by electoral authorities in their internal affairs. It also establishes new rules for public funding of political parties and election campaigns, places limits on expenditures to promote votes for their candidates, and establishes the constitutional basis for regulating the legal procedure for settling obligations of parties which lose their registration, defining cases in which their assets and residuary property are to be awarded to the Federation.

800. In the political-electoral sphere, in 2003 the following amendments were made to the Federal Code on Electoral Institutions and Procedures (COFIPE): reform of article 22, paragraph 1; 24, paragraph 1(b); 28, paragraph 1(a); 29, subparagraph 1; 30, subparagraph 1; 35, paragraph 1(a); 38, paragraph 1(d); a subparagraph 2 was added to article 30, and a subparagraph 4 was added to article 56.

801. These amendments provide that a national political group that seeks to be a political party must prove to the Federal Electoral Institute that it has 3,000 members in at least 20 states or 300 members in at least 200 single-member electoral districts. These participants must have a voter photo-identification and their total number at the national level cannot be less than 0.26% of the federal electoral roll that was used in the last election.

802. To obtain registration as a national political organization, the organization must have a minimum of 5,000 members in the country, a national governing body and branches in at least 7 states.

803. On 14 January 2008, the Diario Oficial published new reforms to COFIPE. A noteworthy provision is article 96, which seeks to achieve greater transparency in voting to ensure that

political parties do not seek to form coalitions for the sole purpose of obtaining enough votes to maintain their registration.

804. Article 96 sets out a differentiated vote in cases of coalitions and provides that parties which do not reach 1% of the vote lose their registration. It also lays down certain limits and conditions under which parties that gained more than 1% of vote but do not reach the minimum required to retain registration can benefit from a transfer of votes from the party or parties in the coalition in order not to lose their registration.

### **B. Judicial decisions**

805. The Supreme Court of Justice of the Nation has conceptualized the freedom of association enshrined in Article 9 of the Constitution as the right of persons, both individuals and legal persons, to create a new legal entity which will have its own personality, distinct from that of its members. With regard to the scope of the freedom of association, the Court has indicated that the area of protection under this constitutional guarantee can operate in three directions: a) the right to associate by forming an organization or joining an existing one; b) right to remain in the association or leave it; and c) the right not to associate. Accordingly, the authorities may not prohibit an individual from joining, may not restrict his right to remain in or to leave the association, and may not force him to join.<sup>221</sup>

806. The Court takes the view that this right implies the power of individuals to form organizations or entities with fully identified goals, whose realization is constant and ongoing, with the only constraint that only citizens of the Republic (Mexicans over eighteen years of age) may do so in order to take part in the political affairs of the country.<sup>222</sup>

807. Regarding the right to freedom of association, Court has established the following fundamental freedoms for workers: the right to join a trade union already constituted or form a new one, the right not join a particular union, the right not to join any union, and the freedom to leave or resign from any trade-union association.<sup>223</sup>

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<sup>(221)</sup> PRIVACY. ARTICLE 10 OF THE LAW ON PRESS OFFENCES, BY PROTECTING HONOUR AND REPUTATION AGAINST MALICIOUS EXPRESSIONS, DOES NOT EXCEED THE LIMIT LAID DOWN BY ARTICLE 7 OF THE FEDERAL CONSTITUTION, *Judicial Weekly of the Federation*, ninth period, volume XXVI, July 200, opinion 1 CXLVIII/2007, pp. 272.

<sup>(222)</sup> CITIZEN PARTICIPATION. ARTICLE 75 OF THE RELEVANT LAW FOR THE FEDERAL DISTRICT, WHICH PROVIDES THAT THE CITIZEN ASSEMBLY SHAL BE MADE UP OF INHABITANTS OF THE TERRITORIAL UNIT, INCLUDING MINORS AND ALIENS, DOES NOT VIOLATE THE RIGHT OF ASSOCIATION, *Judicial Weekly of the Federation*, ninth period, volume XXII, November 2005, opinion P/J. 138/2005, pp. 113.

<sup>(223)</sup> CLOSED-SHOP UNIONIZATION. LAWS OR CHARTERS PROVIDING FOR IT VIOLATE TRADE-UNION FREEDOM ENSHRINED IN ARTICLE 123, SECTION B, SUBSECTION X OF THE CONSTITUTION, *Judicial Weekly of the Federation*, ninth period, volume IX, May 1999, opinion P/J. 43/99, pp. 5.



808. Consistent with this, the Court has declared invalid rules that allow employers to terminate an employment relationship due to the mere fact that the employee leaves the union to which he belongs.<sup>224</sup>

809. The Court has taken the view that freedom of association implies the autonomy of trade unions to develop their own rules, under which they can, without restrictions, establish guidelines to freely elect their representatives, determine their terms of office, as well as organize their administration, activities and programmes of action.<sup>225</sup>

810. The Court has recognized the right to form more than one union, so that laws that seek to impose membership in a single union are to be regarded as restrictive of freedom of association.<sup>226</sup>

811. The Electoral Tribunal of the Federal Judiciary (TEPJF) has handed down several decisions that are relevant to Article 22 of the Covenant.

812. In 2001, it held that anyone who has a legitimate interest can not only request the relevant registration but also, if necessary, challenge a denial,<sup>227</sup> and noted that the cancellation of registration of a political party does not necessarily result in the dissolution of the underlying civil association.<sup>228</sup> It also warned that political parties that have lost their national registration cannot participate in special elections, even if they have taken part in an election that was declared void.<sup>229</sup>

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<sup>(224)</sup> CLAUSE ON EXCLUSION FOR SEPARATION FROM UNION. ARTICLES 395 AND 413 OF THE FEDERAL LABOUR LAW WHICH AUTHORIZE ITS INCLUSION IN COLLECTIVE EMPLOYMENT CONTRACTS AND IN STATUTORY CONTRACTS RESPECTIVELY, VIOLATE ARTICLES 50, 90 AND 123, SECTION A, SUBSECTION XVI OF THE FEDERAL CONSTITUTION, *Judicial Weekly of the Federation*, ninth period, volume XIII, May 2001, opinion 2, LIX/2001, pp. 443.

<sup>(225)</sup> TRADE UNIONS. ARTICLE 75 OF THE FEDERAL LAW ON STATE WORKERS, WHICH PROHIBITS RE-ELECTION OF UNION LEADERS, CONTRAVENES TRADE-UNION FREEDOM ESTABLISHED BY ARTICLE 123 OF THE CONSTITUTION, *Judicial Weekly of the Federation*, ninth period, volume XII, August 2000, opinion P. CXXVII/2000, pp. 149.

<sup>(226)</sup> CLOSED-SHOP UNIONIZATION. LAWS OR CHARTERS PROVIDING FOR IT VIOLATE TRADE-UNION FREEDOM ENSHRINED IN ARTICLE 123, SECTION B, SUBSECTION X OF THE CONSTITUTION, *Judicial Weekly of the Federation*, ninth period, volume IX, May 1999, opinion P./J. 43/99, pp. 5.

<sup>(227)</sup> POLITICAL PARTY. PERSONS HAVING A LEGITIMATE INTEREST MAY REQUEST THE RELEVANT REGISTRATION AND, ACCORDINGLY, CHALLENGE ITS DENIAL (Legislation of Tlaxcala), *Official Compilation of Relevant Jurisprudence and Case Law 1997-2005*, Mexico City, TEPJF, 2005, relevant case-law volume, pp. 747-748.

<sup>(228)</sup> CANCELLATION OF REGISTRATION OF POLITICAL PARTY. DOES NOT NECESSARILY IMPLY THE DISSOLUTION OF THE UNDERLYING CIVIL ASSOCIATION, *Official Compilation of Relevant Jurisprudence and Case Law 1997-2005*, Mexico City, TEPJF, 2005, relevant case-law volume, pp. 378-380.

<sup>(229)</sup> SPECIAL ELECTIONS. POLITICAL PARTIES THAT HAVE LOST THEIR NATIONAL REGISTRATION MAY NOT PARTICIPATE IN THEM, ALTHOUGH THEY MAY HAVE PARTICIPATED IN THE ELECTION THAT WAS DECLARED NULL (Legislation of Tabasco), *Official Compilation of Relevant Jurisprudence and Case Law 1997-2005*, Mexico City, TEPJF, 2005, relevant case-law volume, pp. 522.

813. In 2002, TEPJF spelled out the content and scope of the right to membership in the political-electoral arena<sup>230</sup> and defined it as the basis for the formation of political parties and political groupings.<sup>231</sup> It also held that the right of association is one of the fundamental political-electoral rights, so that its interpretation and application should not be treated restrictively.<sup>232</sup>

814. In the same year, it defined the legal effect of the formal expressions of association and membership lists in the process of reviewing applications for registration of national political groups.<sup>233</sup> It held that the right of political-electoral association is consummated by joining a political party or group<sup>234</sup> and therefore its exercise precludes simultaneous membership in two or more political entities.<sup>235</sup>

815. In 2002 delineated the specific differences in political and electoral-political matters as regards the right of association<sup>236</sup> and warned that an association which intends to obtain registration as a national political organization must prove that its members are enrolled in the voter rolls.<sup>237</sup>

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(<sup>230</sup>) RIGHT OF AFFILIATION IN POLITICAL-ELECTORAL MATTERS. CONTENT AND SCOPE, Official Compilation of Relevant Case Law 1997-2005, Mexico City, TEPJF, 2005, jurisprudence volume, pp. 424.

(<sup>231</sup>) RIGHT OF ASSOCIATION IN POLITICAL-ELECTORAL MATTERS. CONTENT AND SCOPE. *Official Compilation of Relevant Jurisprudence and Case Law 1997-2005*, Mexico City, TEPJF, 2005, jurisprudence volume, pp. 424.

(<sup>232</sup>) FUNDAMENTAL POLITICAL-ELECTORAL RIGHTS. THEIR INTERPRETATION AND APPLICATION SHOULD NOT BE RESTRICTIVE, *Official Compilation of Relevant Jurisprudence and Case Law 1997-2005*, Mexico City, TEPJF, 2005, jurisprudence volume, pp. 441-424.

(<sup>233</sup>) NATIONAL POLITICAL GROUPS. LEGAL EFFECTS OF FORMAL MANIFESTATIONS OF ASSOCIATION AND MEMBERSHIP LISTS IN THE PROCEDURE FOR REVIEW OF REQUESTS FOR REGISTRATION, *Official Compilation of Relevant Jurisprudence and Case Law 1997-2005*, Mexico City, TEPJF, 2005, jurisprudence volume, pp. 369-370.

(<sup>234</sup>) RIGHT OF POLITICAL-ELECTORAL ASSOCIATION. IS CONSUMMATED BY JOINING A PARTY OR POLITICAL GROUP, *Official Compilation of Relevant Jurisprudence and Case Law 1997-2005*, Mexico City, TEPJF, 2005, jurisprudence volume, pp. 90-92.

(<sup>235</sup>) RIGHT OF POLITICAL-ELECTORAL ASSOCIATION. ITS EXERCISE PRECLUDES BELONGING SIMULTANEOUSLY TO TWO OR MORE POLITICAL ENTITIES, *Official Compilation of Relevant Jurisprudence and Case Law 1997-2005*, Mexico City, TEPJF, 2005, jurisprudence volume, pp. 66-68.

(<sup>236</sup>) RIGHT OF ASSOCIATION. ITS DISTINGUISHING CHARACTERISTICS IN THE POLITICAL-ELECTORAL AREA. *S3ELJ 61/2002*

(<sup>237</sup>) NATIONAL POLITICAL GROUP. AN ASSOCIATION SEEKING REGISTRATION SHOULD ESTABLISH THAT ITS MEMBERS ARE REGISTERED ON THE VOTER ROLLS, *Official Compilation of Relevant Jurisprudence and Case Law 1997-2005*, Mexico City, TEPJF, 2005, jurisprudence volume, pp. 335-336.

816. In 2005, in connection with the charters of political parties, it held that review of their constitutionality and legality should balance citizens' right of association with the freedom of political organizations to govern themselves.<sup>238</sup>

### C. Institutional measures

817. In 2003, the Ministry of Labour and Social Security, as one of the measures taken to prevent gender discrimination in relation to trade-union freedom, conducted the first "National meeting of working women-maternity protection: for unionism with gender equity." During this meeting more than 800 women presented concrete proposals on issues of social security, housing and family responsibilities.

818. In April 2002, a cooperation agreement to improve the working conditions of women in the maquiladora industry was concluded between the STPS and the National Maquiladora Industry Council to promote equal opportunities, rights and obligations for women in the workplace.

819. In 2002, as part of IFE general policies and programmes, a programme was established to grant public resources and manage legal options. Its general policy was to continue with the processes and procedures initiated in 2001 to strengthen the system of political parties and development of political groupings through the application of rules that promote its proper functioning.

820. The course of action established was the review of documentation relating to the registration of new parties and political groupings. Furthermore, in order to ensure the results of that review, IFE has signed an agreement on support and cooperation in the establishment of new national political parties with the National Association of Mexican Notaries, AC.

821. In 2003, IFE has continued to implement the programme through procedures to verify of the resources of parties and national political groups, among which are:

- a) receipt and review of annual reports;
- b) preparation and reporting of errors and omissions arising from the review;
- c) receipt of clarifications;
- d) sending information regarding regular audit cycles for the development of statistical tables;
- e) advice and support to those political organizations.

822. The guidelines for registration of parties and national political groups in 2004-2005 were updated. Moreover, pursuant to decision S3ELJ03/2005 of the Supreme Court of Justice of the

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<sup>(238)</sup> CHARTERS OF POLITICAL PARTIES. REVIEW OF THEIR CONSTITUTIONALITY AND LEGALITY SHOULD HARMONIZE CITIZENS' RIGHT OF ASSOCIATION WITH THE FREEDOM OF SELF-ORGANIZATION OF POLITICAL ENTITIES, *Official Compilation of Relevant Jurisprudence and Case Law, 1997-2005*, Mexico City, TEPJF, 2005, relevant case law volume, pp. 559-560.

Nation, criteria were included for analyzing the charters of political parties in terms of the minimum elements of democracy that such charters should contain.

823. The number of citizens' associations that were registered with the IFE as national political groups has been increasing, as can be seen in the following table:

| Year | Number of national political groups |
|------|-------------------------------------|
| 1997 | 13                                  |
| 1999 | 32                                  |
| 2002 | 41                                  |
| 2005 | 105                                 |
| 2008 | 126                                 |

Source: www.ife.org.mx. (In years not indicated, there were no changes.)

## **XXI. ARTICLE 23: RIGHT TO FAMILY**

### **A. Legislative advances**

824. In the period covered by this report, several articles of the Federal Penal Code which criminalize conduct have been amended in order to punish and eradicate the problem of domestic violence.

825. As mentioned above, the Act on the Protection of the Rights of Children was promulgated on 29 May, 2000. This Act aims to protect the fundamental rights of minors, including the right to family life. In Title II, the Act mandates the creation of programmes to ensure that lack of resources is not a factor that leads to the separation of the family; it prohibits separating a minor from his parents for economic reasons unless specifically ordered by a competent judicial organ.

826. Article 25 states that "when a girl, boy or adolescent are deprived of their family, they shall be entitled to protection by the State, which will provide them with a foster family and, while the child is a ward of the State, it shall provide the child with the special care that may be required due the lack of a family's protection."

827. Among the duties of parents or guardians identified in the Act are: to provide children a decent life, ensuring their basic needs such as food, housing, education, clothing, help in case of illness, and recreation, as well as the full and harmonious development of the child's personality within the family, school, society and institutions, (ii) to protect children against all forms of mistreatment, prejudice, harm, assault, abuse, trafficking and exploitation.

828. The State shall provide the procedures and legal assistance needed to ensure that parents, guardians and those responsible for children and adolescents comply with the duty of feeding them, and shall establish criminal liability for those guilty of unjustified neglect.

829. In accordance with this law, the federal, state and municipal authorities should, within their respective spheres of competence, promote the provision of child care services, as well as provision of aid and support to parents or responsible guardians who work.

830. On March 18, 2002, the Ministry of Health published Official Mexican Standard 190-SSAI-1999, Provision of health services, Criteria for responding to domestic violence, for the purpose of establishing the criteria to be observed in providing medical care to patients involved in situations of family violence and in the reporting of such cases. The care given to victims of domestic violence cases will be provided by health personnel who are properly trained and sensitized.

831. This standard defines domestic violence as "an act or omission, on one or more occasions, consisting of physical, psychological, or sexual abuse or neglect committed by a family member in a relationship of power --according to sex, age or physical condition-- against another member of the same family, regardless of the physical space where it occurs."

832. On 2 September 2004, the Social Welfare Act was published. The Act provides for social assistance to individuals and families who, for physical, mental, legal or social reasons, require special services for their protection and full welfare.

833. Article 5 stipulates that the State will provide, on a priority basis, health care services for the development of the family, understood as the unit of society that provides its members the elements required in the various circumstances of their development, and will also provide education and sustenance to individuals with fundamental family deficiencies that they cannot overcome on their own.

834. In December 2007, an updated version was published of the Technical Standard of Labour Competence in the Provision of Counselling Services for Family Integration at the Preventive Level. Its purpose is to establish the technical elements needed to provide adequate guidance for the family. It also seeks to prevent problems that may affect family life and to address them properly through quality care. Finally, it provides for developing training programmes based on the standard.

## **B. Judicial decisions**

835. The Supreme Court of Justice of the Nation has stated that the obligation to provide food, clothing, housing and medical care also includes the right to education, which does not depend on whether the child is underage.<sup>239</sup>

836. It has also determined that a breach of this obligation without cause and after a certain period is cause for loss of parental rights,<sup>240</sup> without need to prove damages to the health, safety or morals of children, and without need of said obligation being based on a court order.<sup>241</sup>

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<sup>(239)</sup> FOOD. THE OBLIGATION TO PROVIDE IT AS PART OF EDUCATION DOES NOT NECESSARILY END WHEN THE ENTITLED PERSON REACHES ADULTHOOD (legislation of state of Jalisco), *Judicial Weekly of the Federation*, ninth period, volume XXVI, December 2007, opinion 1 58/2007, pp. 31.

<sup>(240)</sup> PARENTAL RIGHTS. PARTIAL OR INSUFFICIENT FULFILMENT OF THE OBLIGATION TO PROVIDE FOOD WITHOUT JUST CAUSE FOR MORE THAN NINETY DAYS LEADS TO LOSS THEREOF (interpretation of article 444, section IV of the Civil Code of the Federal District, in force as from 10 June 2004), *Judicial Weekly of the Federation*, ninth period, volume XXV, April 2007, opinion 1 /J. 14/2007, pp. 221.

837. In July 2005, the Court ruled that maintenance should be calculated based on total income, including payments for overtime, bonuses, holiday pay, and other benefits, since they are objectively part of the economic resources of the debtor of support. This precedent, adopted by a unanimous vote shall be binding on all courts of the country to monitor and decide on the amount of these payments, which are mainly paid for the support of ex-spouses and minor children.

### C. Institutional measures

838. On 10 December 2002, the “Programme of Action 2002-2010: A Mexico fit for children and adolescents,” was presented. The programme stresses human and social development of children. Its main aim is to develop and support a life with dignity, i.e. an independent life in an atmosphere of peace, tolerance, freedom, equality and solidarity, so that children can exercise their rights not only at that stage, but throughout their lives.

839. In 2008, the federal government launched the Living Better strategy, which focuses all the government's actions on a single objective, preventing their dispersal and getting the most out of public funds invested.

840. Living Better gears public policy to three main lines of action:

- a) Continue to develop the abilities of Mexicans, especially children, ensuring access to education, health and decent housing;
- b) Provide a social safety net that protects the poorest families from illness or job loss;
- c) Facilitating access to formal employment to all Mexican women and men, strengthening coordination between social and economic policy.

841. Through the adoption programme, in 2007 the National System for the Full Development of the Family (DIF) conducted four regional round tables, to review and agree on criteria; seek a shared normative framework; speed up standard procedures, criteria for allocation, monitoring and evaluation at the national level; systematize information in a way that allows orientation and decision-making, ensuring equitable conditions; and pooling efforts in a context of honesty, ethical conduct and professionalism.

842. On 3 October 2007, a cooperation agreement was signed between the DIF and the High Courts of Justice in the country to establish bases for the conduct of work and activities that will improve the judicial process, heighten awareness among officials involved, and contribute to an expeditious legal regularization of the situation of minors in order to make them eligible for adoption.

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<sup>(241)</sup> PARENTAL RIGHTS. IN ORDER TO DECREE LOSS OF PARENTAL RIGHTS FOR REPEATED NON-COMPLIANCE WITH THE OBLIGATION TO PROVIDE FOOD, IT IS NOT NECESSARY TO ESTABLISH CIRCUMSTANCES INDICATING HARM TO HEALTH, SECURITY OR MORALITY OF CHILDREN, OR A PRIOR ORDER TO PROVIDE SUPPORT PAYMENTS FOR FOOD (legislation of the Federal District), *Judicial Weekly of the Federation*, ninth period, volume XXI, April 2005, opinion 1/J. 62/2003, p. 460.

843. The DIF carries out the school programme for education for adopting parents with a view to providing applicants for adoption with the theoretical and practical information needed to incorporate the child into the new family and social context, as well as to strengthen the personal structure of applicants in the face of the emotional changes and changes in family dynamics which adoption brings about. In 2005 and 2006, 27 sessions were held with participation by 532 attendees.

844. DIF created the Programme for prevention of child abuse and family violence, which aims to reduce cases of child abuse and to campaign for the reporting of this crime. Short-term goals of the programme are:

- a) reduce the number of victims of violence through the implementation of preventive programmes;
- b) reintegrate victims of family violence or assign them for adoption;
- c) introduce new models of intervention in all offices of the Attorney General for the Defence of Children and Families

845. The DIF conducts research on legal issues that affect recipients of social assistance, in coordination with other related institutions, while providing legal advice to family members and representation to minors when their interests are affected.

846. The DIF Family Legal Aid Programme provides organized, ongoing legal aid services to children, elderly and disabled people in a state of neglect, teenage mothers and single mothers, the indigent, indigenous people, migrants and those who cannot fully assert their rights, contributing to the conciliation of conflicts in the family setting, and, as appropriate, referring conflicts to the appropriate agencies; providing periodic legal clinics; sponsoring court proceedings; providing legal advice; taking telephone inquiries and providing advice by that means; following up on family-court cases; and providing training to State and Municipal DIF Systems in legal, social and psychological areas.

847. The programme also conducts research on legal issues that affect recipients of social assistance, in coordination with other related institutions, while providing legal advice to family members and representation to children when their interests are affected.

848. The programme responds annually to between 15,000 and 20,000 complaints of abuse and returns about 200 children to their homes. The DIF is also operates the Offices of the Attorney General for the Defence of Children and Families and, together with the State DIF Systems, promotes complete coverage by these offices in order to create a national model of response. It seeks to ensure that everyone, regardless of where they reside, has the opportunity to file complaints or respond to situations of domestic violence and / or to receive legal assistance in family matters.

849. The DIF has developed a system of detection, recording, response and monitoring of cases of family violence against women, and has also established the National Survey of Vulnerable Girls as part of the Federal, State and Municipal Information System in the field of social assistance. It also conducts research on legal issues that affect recipients of social assistance, in

coordination with other related institutions, while providing legal advice to family members and representation to children whose interests are affected.

850. From January 2004 to October 2007, a total of 28,969 people have been served and 155 operations have been conducted in coordination with DIF state and municipal systems in the following areas:

| ITEM                                    | 2004  | 2005  | 2006  | 2007<br>(to October) |
|-----------------------------------------|-------|-------|-------|----------------------|
| Legal consultation – first              | 636   | 1,963 | 2,092 | 2,126                |
| Legal consultation – first - electronic | 860   | 804   | 1,425 | 1,453                |
| Appearance at hearings                  | 209   | 405   | -     | 285                  |
| Procedural case management              | 2,286 | 2,019 | 2,418 | 2,042                |
| Cases filed                             | 124   | 144   | 158   | 179                  |
| Procedures and appearances              | 1,806 | 1,741 | 1,880 | 1,581                |
| Judicial agreements                     | 17    | 15    | 9     | 16                   |
| Extrajudicial agreements                | 22    | 12    | 38    | 21                   |
| Cases concluded                         | -     | 51    | 67    | 65                   |
| Assistance to state & municipal DIFs    | 25    | 33    | 53    | 34                   |
| Courses for state & municipal DIFs      | -     | -     | 5     | 5                    |

851. The DIF programme for the defence of children and family aims to support people in legally vulnerable situations, so that proceedings in which they are involved before the family courts will proceed fairly. The programme also provides counselling to pursue different types of proceedings in family matters:

- a) maintenance;
- b) surrogate court proceedings;
- c) appointment of guardians;
- d) rectifications of personal records in the civil registry
- e) loss of parental rights
- f) protective orders
- g) judicial determinations on custody of minors and disabled persons
- h) uncontested proceedings
- i) court orders in lieu of parental consent to allow a child to leave the country
- j) family disputes
- k) consensual private adoptions and recognition of paternity.



852. The State DIF offices work in coordination with the Offices of the Attorney General for the Defence of Children and Families to receive and file complaints before the Public Prosecutor in cases of child abuse. From January 2004 to December 2006, in 31 states and the Federal District, 103,485 cases of child abuse were handled, and there were 14,244 complaints to the Public Prosecutors. Among the states with the highest rate of child abuse are Chiapas, Coahuila, Mexico State and Yucatan.

853. In addition to programmes for victims of domestic violence and legal counselling for families, the DIF prepared a 2005 Diagnostic Survey of the Mexican Family, which serves as the basis for the analysis, design and implementation of public policies for the benefit of Mexican families. This instrument provides quantitative data to better understand the way of life and interests of families in Mexico. The focus of the survey will be to develop legislative initiatives and public policies to strengthen families.

854. During 2006, an e-mail service and a toll free number began operation with a view to facilitating the reporting and elimination of child abuse and family violence. That year, the DIF received a total of 3,737 complaints of child abuse, and abuse was found in 2,714 cases, of which 537 were lodged with the Public Prosecutor.

855. In order to give continuity to the previous project, the National Institute for Women (INMUJERES) developed the following projects: Proposals for a democratic life in the family; Educating against violence and for peace; and Workshop on violence prevention from childhood on.

856. The Ministry of Social Development (SEDESOL) operates a programme of nurseries and childcare centres to support working mothers, which as of June 2008 has consolidated the opening of 7,000 childcare centres which serve 187,000 children, supporting at least 150,000 working mothers across the country.

857. The programme aims to reduce the vulnerability of households in poverty in which the head of a family with children aged 1 to 3 years, 11 months, and children aged 1 to 5 years, 11 months in cases of children with disabilities, falls to a working mother, a student or a single parent, giving them a safe place for the care of their children, thus having the opportunity to work or seek employment with the assurance that their children are in a place suitable for their development.

858. The programme operates nationally with three modalities

- a) Support for working mothers and single parents. This modality provides monthly support to parents of up to 700 pesos per child aged 1 to 3 years, 11 months, and 1 to 5 years, 11 months in cases of children with disabilities, who are enrolled in a child care centre
- b) Promoting child care services. This arrangement provides support of up to 35,000 pesos for those wishing to establish and operate a new child care centre for a minimum period of one calendar year. This support will go to overhauling and equipping the property and the preparation or acquisition of materials for working with children

- c) Access to the network of childcare facilities. Under this modality financial support of up to 15,000 pesos may be granted to those responsible for nurseries or child care centres already in existence who are serving or intend to serve the target population of the programme, to enable them to make the minimum adjustments necessary to enable the building and equipment to comply with the rules of operation of the programme.

859. As regards the minimum age for marriage for men and women in Mexico, it should be noted that of the 32 states that comprise Mexico, 26 states set the minimum age for marriage at 16 for men and 14 women, 5 set the age at 16 years for both, and one state and has increased the age to 18 and 16 years respectively.

860. As part of an effort to harmonize legislation, in October 2002 an initiative was presented that seeks to set as a condition essential to marriage between minors that both must have reached 17 years of age at the time of marriage, but with the consent of those who are exercising parental authority or guardianship.

861. In regard to nationality, the federal Constitution guarantees women equality with men. In July 2004, Article 37 (a) was added, to establish that Mexican men and women who had lost their citizenship by birth, and therefore their civil and political rights, due to having acquired a foreign citizenship voluntarily, will benefit from the new provision contained therein, which provides that no Mexican by birth may be deprived of his nationality.

862. Accordingly, the Nationality Act in December 2004 will be aligned with the constitutional provision on the subject so that those who had lost their Mexican nationality by adopting a second nationality may apply for reinstatement to offices of the Ministry of External Relations within the country or abroad.

863. As regards the principle of family reunification, the Mexican Commission for Aid to Refugees (COMAR) has established administrative procedures to enable refugees to bring their families into the country. The instruments created indicate that refugees will receive support to complete the relevant procedures.

## **XXII. ARTICLE 24: RIGHTS OF THE CHILD**

### **A. Legislative advances**

864. The federal Constitution provides that the federation, the states and municipalities have an obligation to enhance levels of schooling, emphasizing bilingual and multicultural education and completion of basic education; and to support nutrition among indigenous migrants through food programmes, especially for children.

865. On 4 January 2000, the following articles of the Federal Criminal Code<sup>242</sup> were reformed: 201, 205 and 208, and the following articles were added: 201 bis, 201 bis 1, 201 bis 2, 201 bis 3, and the second paragraph of article 203, in which the crimes of corruption of minors

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(<sup>242</sup>) See: <http://www.ordenjuridico.gob.mx/Federal/Combo/C-8.pdf>

and child pornography are contemplated, establishing severe penalties for those who engage in any of the aforementioned conduct.

866. On 4 January 2000, article 194 of the Federal Code of Criminal Procedure<sup>243</sup> was reformed to treat as federal felonies the sexual corruption of children, child pornography and the exploitation of a minor's body through sexual intercourse.

867. On 7 April 2000, the last paragraph of article 4 of the Constitution was reformed<sup>244</sup> and supplemented in order to establish the right of children have their need for food, health, education and recreation fulfilled for their complete development. Parents, teachers and guardians must preserve these rights. Also guaranteed is the State's commitment to provide what is necessary to promote respect for the dignity of childhood and the full exercise of children's rights, including opportunities for individuals to contribute to the observance of children's rights.

868. On 29 May 2000, a regulatory statute from constitutional article 4, the Act on the Protection of the Rights of Children was published in the Diario Oficial. The law establishes, among others, the following rights:

- a) To priority;
- b) To life;
- c) To freedom from discrimination;
- d) To live in wholesome conditions and to have healthy psychophysical development;
- e) To have one's integrity and liberty protected, and to be protected from mistreatment and sexual abuse;
- f) To an identity;
- g) To live within a family;
- h) To health;
- i) The rights of children and adolescents with disabilities;
- j) To an education;
- k) To rest and to play;
- l) To freedom of thought and the right to one's own culture;

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<sup>(243)</sup> See: <http://www.ordenjuridico.gob.mx/Federal/Combo/C-6.pdf>

<sup>(244)</sup> See: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_148\\_07abr00\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_148_07abr00_ima.pdf)  
Corrigendum: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_fe\\_ref\\_148\\_12abr00\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_fe_ref_148_12abr00_ima.pdf)

- m) To participate;
- n) To due process.<sup>245</sup>

869. On 12 June 2000, articles 366 ter and 366 quater were added to the Federal Criminal Code to establish as a crime trafficking in minors, which occurs when someone under 16 years of age is transported or handed over to a third party unlawfully in order to obtain an illegal economic benefit by transporting or handing over the minor.

870. As mentioned, on 14 August 2001, article 2 of the Constitution,<sup>246</sup> which concerns the rights of indigenous people and communities, was reformed. In the aforementioned reform, the following provisions for children and adolescents were included:

- o) To enhance levels of schooling, literacy and preparation for employment for indigenous students at all levels with the goal of ensuring better living conditions for them;
- p) To support the children and youths of migrant families with special programmes in education and nutrition, these children being identified as a vulnerable group.

871. On 27 March 2007, article 194 of the Federal Code of Criminal Procedure was reformed again to add as a felony trafficking in persons under 18 years of age or persons who lack the ability to understand the meaning of the act or persons who lack the ability to resist it.

872. On 27 March 2007, reforms to the Federal Criminal Code were published in the Diario Oficial regarding the sexual exploitation of children, which includes trafficking in persons under 18 years of age or persons who lack the ability to understand the meaning of the act or the ability to resist it.

873. Also reformed were regulations regarding the crimes of pornography, sex tourism and the procurement of prostitutes committed against the aforementioned persons, in some cases increasing the corresponding penalty. This creates a legal framework that more vigorously defends the sexual security of passive individuals, who are thus described by virtue of their minority or particular state of defencelessness in the face of the socially corrupt behaviour of their assailants, who violate legal values particularly in need of enhanced protection.

## **B. Judicial decisions**

874. A collegiate court delivered an opinion concerning the legal principles that must govern the system of minors' living arrangements when their parents are separated, taking into consideration the 4<sup>th</sup> article of the Constitution and the Convention on the Rights of the Child. The judge determined that in cases of family breakdown caused by the separation of a married couple, although the children in the family were the least responsible, they suffered the most

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(<sup>245</sup>) See: <http://www.ordenjuridico.gob.mx/Federal/Combo/L-200.pdf>

(<sup>246</sup>) See: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_151\\_14ago01\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_151_14ago01_ima.pdf)

from its effects, psychologically, socially and economically. To prevent children from suffering from uncertainty regarding their future and to ensure that they grow up to be healthy and feel secure in all personal areas and in society, they must be protected. Therefore, minors must not be embroiled in their parents' conflicts.<sup>247</sup>

875. Another collegiate court held that minors must be given a hearing during divorce proceedings in order to make the most appropriate decision about the person who will have custody over them, with a view to their physical, moral and psychological development.<sup>248</sup>

876. The Supreme Court of Justice of the Nation (SCJN) delivered an opinion concerning the right of minors to an identity, taking into account what is prescribed in article 7 of the Convention on the Rights of the Child and articles 3 and 22 of the Law on the Protection of the Rights of Children (which is public policy, of social interest and required observance for the entire country). The SCJN established that the right to an identity (which includes the right to a first name and the last names of the parents to whom the minor is born, to a nationality and to know his or her line of descent and origins) implies that the minor should be certain of who his or her parent is. The above represents a public-policy principle that is part of the essential core of the fundamental right to a legal personality, whose importance lies in both the possibility of requesting and receiving information about one's origins, the identity of one's parents and the knowledge of one's genetic origins, and from those components can be deduced, on the one hand one's right to a nationality and on the other hand the right that one's parents should satisfy one's need for food, health, education and recreation for one's full and complete development.<sup>249</sup>

### C. Institutional measures

877. Under the National System for the Full Development of the Family (DIF), the Programme for promoting and publicizing children's rights is developed with the support of local officials so that participation in the community proves effective and responds to specific needs, offering the opportunity to perform various activities within the framework of the United Nations Convention on the Rights of the Child while acting as a tool with which the responsible personnel in the states and municipalities can supervise and assist in the dissemination of information about these rights, carry out local activities in settings for children's participation, promote respect for differences and freedom from discrimination, and support self-determination and the common good.

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<sup>(247)</sup> FAMILY RELATIONS, SYSTEM OF. LEGAL PRINCIPLES THAT MUST BE TAKEN INTO ACCOUNT FOR THEIR PROPER DEVELOPMENT BETWEEN MINORS AND THEIR PARENTS WHEN THE LATTER UNDERGO SEPARATION OR DIVORCE, *Judicial Weekly of the Federation*, ninth period, volume XXVII, April 2008. II.2o.C.520 C, pp. 2327.

<sup>(248)</sup> MINORS. MUST BE GRANTED INTERVENTION WHEN THEIR CUSTODY IS DETERMINED IN DIVORCE PROCEEDINGS (State of Jalisco legislation), *Judicial Weekly of the Federation*, ninth period, volume XXVII, April 2008, opinion III.1o.C.164 C, pp. 2388.

<sup>(249)</sup> MINORS' RIGHT TO AN IDENTITY. ITS CONTENT, *Judicial Weekly of the Federation*, ninth period, volume XXVI, July 2007, 1<sup>st</sup> opinion CXLII/2007, pp. 260.

878. In 2002, a National Network of Child-Information Promoters was established within the framework of this programme, through which it is encouraged that children and adolescents obtain and disseminate information about their rights within their communities, schools and families. This is accomplished with a supporting tool, the Child participation manual for the promotion of children's rights.

879. On an annual basis, the DIF (National System for the Full Development of the Family) runs a national workshop within the framework of the United Nations Convention on the Rights of the Child with the aim of identifying good ideas and challenges drawn from organizing the state and municipal networks. As of October 2007, there were 29 state networks, and the states of Baja California Sur, Hidalgo and Zacatecas remained to be incorporated into this initiative. In addition, there were 31 state DIF promoters, 1,255 municipal DIF promoters, 8,358 local DIF promoters, 88,887 children trained in the Convention on the Rights of the Child and 13,703 children informed of their rights.

880. In April 2003, the Chamber of Deputies created the Ordinary Commission on Family Matters, and in March 2004, it presented a proposal for the creation of the Special Commission on Childhood, Adolescence and Families to review federal laws on this issue; promote the rights of children and adolescents; incorporate the perspective of childhood into the federation's expenditure budget; establish mechanisms for liaison with local congresses; conduct periodic meetings with departments of the federal public administration; and sign cooperation agreements.

881. Through the operation and functioning of the 24 state committees for following up on and monitoring the application of the Convention on the Rights of the Child, the DIF promotes the review of state legal frameworks with the aim of finding compatibility with what the Convention and Law on the Protection of the Rights of Children provide.

### **1. Registration activities**

882. With the aim of promoting the registration of Mexican children, in past years the federal Government, with the assistance of the state officials, has conducted public-awareness campaigns on this topic. Although the campaigns are carried out throughout the year, they are intensified in the month of April via the "April, Month of the Child" campaign, in which spontaneous registration of children is promoted, particularly in rural areas, whose registration documents are submitted at the end of the month. Efforts in these campaigns are also stepped up in the months of February and August (school registration periods).<sup>250</sup>

883. The National Population Registry (RENAPO), an arm of the Ministry of the Interior, is responsible for implementing the CURP single population register key, through whose use clearer monitoring of the population's number and features is sought.

884. To date, data for 120 million out of 220 million persons, stored since 1930, have been collected, 70 million of which have already been computerized. The vast majority of children are already included in those databases, because the criterion established by RENAPO was to collect data from the starting date of the registry going back in time.

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(<sup>250</sup>) Data provided by the National Population Registry (Registro Nacional de Población, RENAPO) in May 2006.

## 2. International cooperation

885. In 2002, the Government of Mexico began a new Programme for Cooperation with the United Nations Children's Fund (UNICEF) in Mexico for the following 5 years to make progress in completely achieving children's, women's and adolescents' rights. The objectives of the aforementioned Programme consist of:

- q) Making the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women the focal points of public policies on children and women;
- r) Increasing respect for the rights of the children and adolescents in need of special protection;
- s) Better fulfilling the rights of indigenous children and adolescents<sup>251</sup>.

886. For its part, on 24 September 2003, the Supreme Court of Justice of the Nation signed a Cooperation Agreement to Promote Children's Rights with UNICEF to promote a culture of respect for and observance of children's rights. Both institutions committed themselves to coordinating efforts to promote to judges, magistrates, officials from the federal judiciary and society as a whole a culture of respect and fulfilment of human rights, particularly those of children and adolescents. In accordance with the agreement and in a coordinated fashion, both institutions carry out academic and promotional activities to achieve the objectives established in the agreement.<sup>252</sup>

## 3. Other actions

887. On 24 July 2001, the National Council for Childhood and Adolescence (a permanent inter-agency commission) and the National Programme on Childhood, whose main objectives are to coordinate and define policies, strategies and actions that guarantee the full and complete development of children and adolescents, were created.

888. In 2001, the National Programme to Monitor and Prevent Homelessness among Children, better known as "From the Street to Life," whose goal is to strengthen ties and coordination among the public and private sectors to prevent and respond to homelessness among children, was introduced. It is also charged with raising awareness and disseminating information about this issue in the media, and training staff working in state and municipal systems and in private organizations incorporated into the programme.

889. The National Human Rights Commission operates a programme whose fundamental objective is to promote and disseminate knowledge and recognition of children's rights and which falls within the Programme on Women's, Children's and Family affairs. By means of this

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<sup>(251)</sup>UNICEF's work in Mexico is centred on 3 programmes: 1. Children's Rights in Public Policies; 2. The Rights of Indigenous Children; and 3. Special Protection of the Rights of Children and Adolescents. 2001 UNICEF Mexico.

<sup>(252)</sup> "SCJN and UNICEF Sign Cooperation Agreement to Promote Children's Rights", UNICEF, press release no. 036/2003 Mexico, 25 September 2003. See: <http://www.scjn.gob.mx/PortalSCJN> or [http://www.unicef.org/spanish/media/media\\_42406.html](http://www.unicef.org/spanish/media/media_42406.html)

programme, CNDH distributes various promotional materials regarding children's rights, fosters programmes such as "Children, Proponents of Their Rights", participates in various forums that deal with this topic and visits confinement centres for youthful offenders, after which special diagnoses and reports are generated, such as The Human Rights Situation of Those Confined to Mexican Centres for Minors.

890. In the 2007-2012 National Development Plan it is recognized that children have basic human rights that must be respected. These rights are fundamentally as follows: the right to survival; to full development; to protection from dangerous influences, maltreatment and exploitation; and to full participation in family, cultural and social life. It is established that in general children have the same human rights as adults, but because they are particularly vulnerable, they must have concrete rights that recognize their need for special protection. Children are not the property of their families, nor are they defenceless objects of charity; they are human beings and also the owners of their own rights. Despite the existence of this long list of rights, children suffer because of poverty, homelessness, maltreatment, abandonment, preventable diseases, disparity in access to education and the existence of justice systems that do not recognize their special needs.<sup>253</sup>

891. In 2007, regulations were issued indicating, *inter alia*, that, "any minor not accompanied by or separated from his or her family shall have the right to file a petition independently. The Child Protection Officer shall try to make the procedure appropriate to the age and maturity level of the minor. Whenever possible, minors shall be interviewed by Child Protection Officers with knowledge about and experience in interviewing minors. All actions taken with respect to minors shall be based on their best interests."

### **XXIII. ARTICLE 25: POLITICAL RIGHTS**

892. As a result of a long process of gradual reform, Mexico has experienced significant advances in political and voting rights for the period of the present report. Foremost among them are: the consolidation of a multi-party Congress, effective 1997; a change in the executive branch in 2000 after over 71 years of single-party domination; the approval, in 2002, of advanced legislation regarding transparency and access to information (an element that contributes to accountability and the strengthening of democracy); the establishment of gender quotas for candidates in 2004; the design of a mechanism that allowed participation in the 2005 presidential election; and a new electoral reform in 2007 to address questions arising from the close result of the 2006 federal presidential election.

#### **A. Legislative advances**

893. In 2000, the following articles of the Federal Code on Electoral Institutions and Procedures (COFIPE) were reformed: articles 22, numeral 1; 24, numeral 1, paragraph b); 28, numeral 1, paragraph a); 29, numeral 1; 30, numeral 1; 35, numeral 1, paragraph a); 38, numeral 1, paragraph d); and an article 30 with a numeral 2 and article 56 with a numeral 4, were added.<sup>254</sup>

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<sup>(253)</sup> National Development Plan 2007-2012, number 3.7 Family, children and youth

<sup>(254)</sup> See : <http://www.diputados.gob.mx/LeyesBiblio/ref/cofipec.htm>



894. These changes affect the registry of new political parties with the Federal Electoral Institute (IFE), and as a result a national political association attempting to form a political party shall have to prove to IFE that it has 3,000 members in at least 200 uninominal electoral districts.

895. In June 2002, articles 4, 38 and 175 of the Federal Code on Electoral Institutions and Procedures (COFIPE) were modified to add, as a citizens' right and political parties' responsibility, equal opportunity and equity between men and women running for office in popular elections. It relied on the legal theory sustaining affirmative action legislative advances to force political parties, in their internal selection processes, to see to it that neither gender composes over 70% of the total number of candidates for representative and senator of the Mexican Congress, in order to increase the presence of women in those chambers. These changes to the COFIPE led to temporary, compulsory affirmative action measures in the states' voting laws.

896. In February 2004, the Diario Oficial published the Federal Law to Promote Activities Carried out by Civil Society.<sup>255</sup> These regulations promote civic participation in public interest matters via support and incentives to organizations that, in accordance with the fifth article of this law, foster legal aid, support for the development of indigenous communities, the promotion of gender equality and the promotion and dissemination of information about human rights, among other activities.

897. On 28 June 2005,<sup>256</sup> the Federal Code on Electoral Institutions and Procedures (COFIPE) was again reformed to regulate the following items, among others: the vote, exclusively for the election of President of Mexico, by citizens living abroad; the mechanisms, methods and requirements for registration in the Name-Based Registry of Voters Living Abroad; the postal mechanism for dispatch of applications for registration with the Registry, of mailed election packages and of envelopes with cast ballots; the procedures for inspecting and counting ballots from abroad; the prohibition of political parties from conducting campaigns abroad; and the issuance by the Federal Electoral Institute (IFE) of guidelines for applying the Sixth Book of the aforementioned regulations appropriately.

898. In June 2007, article 55<sup>257</sup> of the Constitution was modified to tighten restrictions on candidates for representative who have been members of autonomous constitutional agencies, unless they remove themselves permanently from their positions within constitutionally specified deadlines.

899. On 13 November 2007, a decree reforming the Constitution was published in the Diario Oficial effecting the following changes: the first paragraph of article six was amended; articles 41 and 99 were reformed and added; the first paragraph of article 85 was reformed; the first paragraph of article 108 was reformed; section IV of article 116 was reformed and supplemented; paragraph f) of section V of the First Base of article 122 was reformed; three final paragraphs were added to article 134; and the third paragraph of article 97 was repealed.

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<sup>(255)</sup> See: <http://www.ordenjuridico.gob.mx/Federal/Combo/L-106.pdf>

<sup>(256)</sup> See: <http://www.ordenjuridico.gob.mx/Federal/Combo/C-4.pdf>

<sup>(257)</sup> See: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_172\\_19jun07\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_172_19jun07_ima.pdf)

900. These reforms include several measures to ensure greater equity in electoral competitions. This is expressed in the prohibition against contracting propaganda for election purposes (whether explicitly or implicitly) and applies to not only political parties, individuals or legal entities but government officials in the three branches. Given the high cost of such publicity, it is considered that these measures prevent disproportionate influence by the most powerful parties or groups, or the use of political power in order to directly or indirectly favour certain parties or candidates.

901. The reform safeguards the right of access to mass media by granting, at the constitutional level, political parties the right to continuous use of the media, including free access to radio and television. Nevertheless, some groups have interposed appeals against the above-mentioned reforms, asserting that they limit freedom of expression, an issue that the Supreme Court of Justice of the Nation is examining.

902. On 14 January 2008, reforms to the Federal Code on Electoral Institutions and Procedures (COFIPE) were published in the Diario Oficial in accordance with the amendments to the Constitution of Mexico referred to above. These reforms recognize, among others, the right of access of political parties and candidates to the media, and ensure that this right is granted in conditions of equity, particularly in the case of radio and television.<sup>258</sup>

903. At the international level, on 9 April 2002, the Mexican Government informed the Organization of American States (OAS) of its intention to partially withdraw its reservation to the Inter-American Convention on Human Rights concerning the active vote of the ministers of religion and the holding of public acts of religious worship.

904. Similarly, on 15 March 2002, Mexico withdrew its reservation to article 25, paragraph b of the International Covenant on Civil and Political Rights, which refers to the active vote of ministers of religion.

## **B. Judicial decisions**

905. The Supreme Court of Justice of the Nation has held that the right to vote and to run for office are fundamental rights to political participation; that is, that they have the status of true individual guarantees and enjoy constitutional protection.<sup>259</sup>

906. Similarly, it has determined that political rights make up a part of the fundamental rights of the citizenry.<sup>260</sup>

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<sup>(258)</sup> Federal Code on Electoral Institutions and Procedures (COFIPE), art. 49 to 76.

<sup>(259)</sup> RIGHTS TO POLITICAL PARTICIPATION, TO VOTE AND RUN FOR OFFICE. THESE ARE FUNDAMENTAL RIGHTS PROTECTED BY THE CONSTITUTIONAL CONTROL PROCESSES STIPULATED IN THE FEDERAL CONSTITUTION, ACCORDING TO THE JURISDICTIONAL SYSTEM PROVIDED FOR BY THE AFOREMENTIONED, *Judicial Weekly of the Federation*, ninth period, volume XXVI, December 2007, opinion P./J. 83/2007, pp. 984.

<sup>(260)</sup> INDEPENDENT CANDIDACIES. THE AMPARO PROCEEDING IS INAPPROPRIATE AGAINST THE ELECTORAL AUTHORITY'S RESOLUTION, WHICH DENIES THE COMPLAINANT REGISTRATION AS

907. In carrying out its functions, the Electoral Tribunal of the Federal Judiciary has issued rulings aimed at guaranteeing the voting rights of indigenous communities, including respect for the uses and customs of indigenous communities in the election of their officials. The principal resolutions in this regard are:

- a) Indigenous People. The obligation to guarantee citizens effective access to electoral jurisdiction.<sup>261</sup>
- b) Indigenous People and Communities. The obligation to provide the most favourable interpretation possible in applying procedural standards in the case of indigenous people and communities.<sup>262</sup>
- c) Indigenous Uses and Customs. Powers of the General Council of the State Electoral Institute of Oaxaca in elections.<sup>263</sup>
- d) Indigenous Uses and Customs. Effects of the rulings passed by the Electoral Tribunal of the Federal Judiciary when materially administrative electoral acts by a State Congress are involved.<sup>264</sup>
- e) Indigenous Uses and Customs. Include the place in which elections are held (Oaxaca legislation).<sup>265</sup>
- f) Indigenous Uses and Customs Linked to Customary Electoral Procedure. Citizens and officials are required to respect them (Oaxaca legislation).<sup>266</sup>

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AN INDEPENDENT CANDIDATE IN THE ELECTION FOR PRESIDENT OF MEXICO. *Judicial Weekly of the Federation*, ninth period, volume XXV, January 2007, opinion P. IV/2007, pp. 5.

<sup>(261)</sup> INDIGENOUS PEOPLES. CITIZENS COMPRISING THEM MUST BE GUARANTEED EFFECTIVE ACCESS TO ELECTORAL JURISDICTION, *Official Compilation of Relevant Jurisprudence and Case Law, 1997-2005*, Mexico City, TEPJF, 2005, relevant opinions volume, pp. 838-839

<sup>(262)</sup> INDIGENOUS PEOPLE AND COMMUNITIES. THE INTERPRETATION OF PROCEDURAL STANDARDS MUST BE GIVEN IN THE FORM MOST FAVOURABLE TO THEM, *Official Compilation of Relevant Jurisprudence and Case Law, 1997-2005*, Mexico City, TEPJF, 2005, relevant case law volume, pp. 839-840.

<sup>(263)</sup> INDIGENOUS USES AND CUSTOMS. POWERS OF THE GENERAL COUNCIL OF THE STATE ELECTORAL INSTITUTE OF OAXACA IN ELECTIONS, *Official Compilation of Relevant Jurisprudence and Case Law, 1997-2005*, Mexico City, TEPJF, 2005, relevant case law volume, pp. 957-959.

<sup>(264)</sup> INDIGENOUS USES AND CUSTOMS. EFFECTS OF THE RULINGS PASSED BY THE ELECTORAL TRIBUNAL OF THE FEDERAL JUDICIARY WHEN MATERIALLY ADMINISTRATIVE ELECTORAL ACTS BY A STATE CONGRESS ARE INVOLVED, *Official Compilation of Relevant Jurisprudence and Case Law, 1997-2005*, Mexico City, TEPJF, 2005, relevant case law volume, pp 961-962.

<sup>(265)</sup> INDIGENOUS USES AND CUSTOMS. INCLUDE THE PLACE IN WHICH ELECTIONS ARE HELD (Oaxaca legislation), *Official Compilation of Relevant Jurisprudence and Case Law, 1997-2005*, Mexico City, TEPJF, 2005, relevant case law volume, pp 960-961.

- g) Uses and Customs. Elections that take place under this system may be affected if they violate the principle of universal suffrage.<sup>267</sup>
- h) Uses and Customs. Elections under this system do not in themselves involve a violation of the principle of equality.<sup>268</sup>
- i) Indigenous Affirmative Action. Indispensable liaison to a community (Charter of the Party of the Democratic Revolution) (Partido de la Revolución Democrática, PRD).<sup>269</sup>
- j) Indigenous Communities. Substitution of entire complaint in electoral proceedings brought by their members.<sup>270</sup>
- k) Indigenous Communities. Notice of electoral authority's actions or decisions in the official newspaper. The court must consider specific situations to deem it effective.<sup>271</sup>
- l) Indigenous Uses and Customs. The representation of citizens belonging to indigenous communities or people is valid.<sup>272</sup>

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<sup>(266)</sup> INDIGENOUS USES AND CUSTOMS LINKED TO CUSTOMARY ELECTORAL PROCEDURE. CITIZENS AND OFFICIALS ARE REQUIRED TO RESPECT THEM (Oaxaca legislation), *Official Compilation of Relevant Jurisprudence and Case Law, 1997-2005*, Mexico City, TEPJF, 2005, relevant case law volume, pp. 963.

<sup>(267)</sup> USES AND CUSTOMS. ELECTIONS THAT TAKE PLACE UNDER THIS SYSTEM MAY BE AFFECTED IF THEY VIOLATE THE PRINCIPLE OF UNIVERSAL SUFFRAGE, *Official Compilation of Relevant Jurisprudence and Case Law, 1997-2005*, Mexico City, TEPJF, 2005, relevant case law volume, pp. 956-957.

<sup>(268)</sup> USES AND CUSTOMS. ELECTIONS UNDER THIS SYSTEM DO NOT BY THEMSELVES INVOLVE A VIOLATION OF THE PRINCIPLE OF EQUALITY, *Official Compilation of Relevant Jurisprudence and Case Law, 1997-2005*, Mexico City, TEPJF, 2005, relevant case law volume, pp. 963-964.

<sup>(269)</sup> INDIGENOUS AFFIRMATIVE ACTION. INDISPENSABLE LINK TO A COMMUNITY (Charter of the Party of the Democratic Revolution) (PRD), *Official Compilation of Relevant Jurisprudence and Case Law, 1997-2005*, Mexico City, TEPJF, 2005, relevant case law volume, pp. 317.

<sup>(270)</sup> Regarding this matter, see the precedential opinion of 9/2007 published on the Internet page <http://www.trife.org.mx>

<sup>(271)</sup> Regarding this matter, see the precedential opinion of 10/2007 published on the Internet page <http://www.trife.org.mx>

<sup>(272)</sup> See the precedential opinion of 12/2007 published on the Internet page <http://www.trife.org.mx>

### C. Institutional measures

908. The activities the Federal Electoral Institute (IFE) carried out regarding political rights and the enjoyment of equity during the period of the present report are related to three issues: constitution of electoral bodies, citizen training and voting abroad.

909. Regarding the first issue, the local and district councils are the delegational and subdelegational managing organs of the Federal Electoral Institute (IFE), established during federal electoral processes and responsible, in their fields of expertise, for overseeing the observance of the regulations of the Federal Code on Electoral Institutions and Procedures (COFIPE); adopting measures for the proper conduct of the electoral process; and guaranteeing citizens, political parties and candidates the full exercise of their rights in this regard.

910. Within this framework, the role of electoral advisers as persons directly in charge of supervising and overseeing the conduct of the operational activities of the individual phases of the electoral process is the point of equilibrium between the electoral officials (executive structure) and the political contenders, with the aim of guaranteeing citizens their right to suffrage and to expect reliable results.

911. In the interest of bringing about greater citizen participation in the 2000 federal electoral process, in May 1999 the General Council of the Federal Electoral Institute (IFE) approved the agreement establishing the procedure for assembling citizens' applications to become electoral advisers to the 32 Local Councils, issuing as a result the Guide to composing lists of citizens nominated to act as electoral advisers to the local councils.

912. In work sessions or meetings that took place in November 1999, the local councils of the 32 federative agencies established the procedure for assembling the citizens' applications to become electoral advisers to the 300 district councils. Both the local and district advisers were designated for two electoral processes, and consequently they participated in the federal elections of 2000 and 2003.

913. For the 2006 federal elections, the General Council of the Federal Electoral Institute (IFE) issued an open announcement to the entire citizenry to designate on October 2005 the electoral advisers and alternates from the 32 local councils in the nation. In doing so, special emphasis was placed on maintaining gender equality and ensuring that they had experience in electoral issues; furthermore, applications from civic, academic or business organizations were encouraged.

914. Of the 192 designated local electoral advisers, 47% were women and 53% men, 58% had prior electoral experience, 50% had an academic background, 30% came from civic organizations and 34% were connected to the business sector.

915. Regarding the right to the political participation of indigenous people, article 2 of the Constitution recognizes that indigenous communities shall be able to elect representatives to town councils in municipalities with indigenous populations.<sup>273</sup>

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<sup>(273)</sup> See article 2, paragraph A. section VII, of the Constitution of Mexico.

916. Regarding participation in the legislative branch, on 15 July 2004, the General Council of the Federal Electoral Institute (IFE) issued Agreement CG104/2004, which approves the criteria and operational considerations to be used in formulating plans to divide the country into 300 uninominal federal voting districts and the creation of the technical committee for the follow-up and evaluation of districting work.

917. Effective 11 February 2005, the General Council of the Federal Electoral Institute (IFE) approved the territorial demarcation of the 300 uninominal federal voting districts into which the nation is divided for its use in the electoral processes of 2005-2006 and 2008-2009. In this districting process, the indigenous population was a criterion for forming voting districts. As a result of this process, there are 28 indigenous voting districts, that is, districts in which the indigenous population makes up 40% or more of the population.

918. To ensure that information about citizens' civil and political rights reaches the bulk of the population, from 1997 to 2007 the Federal Electoral Institute (IFE) orchestrated an ongoing broadcast programme that includes mass campaigns in electronic media (radio and television), print media (press inserts, posters, brochures, leaflets, flyers, etc.) and alternative media (loudspeaker cars; exterior wall murals entertainment posters; messages on public transportation, on indigenous-language radio stations; on "talking sticks," on the Internet, etc.).

919. The main themes of the campaigns have been oriented towards promoting democratic culture, exercising human rights and fulfilling political-electoral obligations (voting and running for office, participating in the organization of electoral processes, updating data from voter registration documentation to keep the electoral roll valid, among others). The aforementioned campaigns have been as follows:

- a) 1997 National Campaign for the Promotion of Citizen Participation in the Federal Electoral Process;
- b) 1998 Permanent Updating Campaign (Campaña de Actualización Permanente, CAP) and 1998-1999 Intensive Annual Campaign (Campaña Anual Intensa, CAI);
- c) 1999-2000 CAP/CAI Comprehensive Campaign for Civic Education;
- d) 2000 National Campaign Promoting Citizen Participation
- e) 2001-2003 Campaign for Civic Education;
- f) 2005-2006 Campaign for the Vote of Mexicans Living Abroad;
- g) 2005-2006 Institutional Campaign for the Promotion of the Vote: Vote Promotion and Citizen Participation Campaign;
- h) 2007-2009 "Our Growing Democracy" Institutional Campaign.

920. To build on its work in promoting, reporting on and analyzing democratic political culture, since 1996 the Institute has been broadcasting the programme Voices of Democracy, originally

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in radio format and since 2001 in television format. Since then, it has continued non-stop its task of disseminating the importance of citizen participation, the political participation of youth, political rights as individual guarantees and the fight against discrimination, among other themes.

921. From 1997 to 2007, the Federal Electoral Institute (IFE) organized various citizen-training programmes focused primarily on two population groups, to help them fully exercise their political-electoral rights: 1) children and young people, especially those in the classroom, by using tools for child and youth participation, and 2) the adult population, specifically groups having greater difficulty accessing information due to their socioeconomic condition.

922. Although young people acquire formal knowledge about exercising political-electoral rights until age 18, within the framework of federal electoral processes the Federal Electoral Institute (IFE) has actively promoted the use of tools for child and youth participation and expression at the national level. For example, in 1997, it held a Children's Election; in 2000 and 2003, the Child and Youth Conference and, in 2006, child and family participation exercises: "Our election means participating in the school that we love." Through these projects, children and youth are encouraged to put into practice the principles, values and procedures of democracy.

923. Other programmes aimed at the youth population included The Rights and Values of the Mexican Child, and Child and Youth Civic Study Sessions, whose purpose was promoting the recognition of children and youth as individuals with rights. These programmes dealt in particular with the right to equality, to freedom of expression and to participation. Their educational design also included the promotion of gender equality, starting with developing some of their instructional activities.

924. To promote the right to participate in and express opinions on matters of interest to these population groups, the programme "We, the Young People ... Project Citizen," designed to provide the necessary tools so that young people can create public-policy proposals to affect their immediate social situation, was also planned, as well as the Mexican Children's Parliament, implemented in 2000 in coordination with the Mexican Congress, in which participants experienced legislative work firsthand, exercised their right to participation and expressed their opinions and proposals.

925. In order to promote and spread knowledge about children's basic rights, the Institute has developed various courses for training teachers in this area, and some of them have registered with the Ministry of Public Education's National Permanent Updating Programme for basic-education teachers.

926. Regarding the training of adult citizens, during the past decade the Federal Electoral Institute (IFE) has promoted various programmes that include the application of various group techniques promoting the development of civic skills for democratic participation, such as the Citizen Education Workshop, which provides a flexible methodology to be adapted to various population groups, and whose content focuses on the encouragement and practice of citizen participation, gender equality and responsible voting.

927. With the introduction of a new institutional policy for civic education, the 2005-2010 Civic Education Strategic Programme, the Federal Electoral Institute (IFE) designed the strategy to generate awareness, confidence and citizen participation, setting forth the educational goal of training individuals able to defend their rights and the rights of others, who participate collectively and democratically and who exercise their vote in a free, reasoned manner.

928. This strategy, which takes into account the guiding principles of the Institute's civic education policy, is targeted to highly disadvantaged municipalities, is aimed at strategic population groups,<sup>274</sup> is governed by a decentralized management model that allows for a national vision with a local approach, and uses a mixed model of evaluation so that the Federal Electoral Institute (IFE) is acquainted with the successful results of its educational policies and is accountable to society regarding these results.

929. Within the framework of the 2006 federal elections, the programme Education for the Free, Responsible and Reasoned Exercise of the Vote was designed and orchestrated to develop basic abilities that promote the exercise of free, reasoned and informed voting in voter populations with a high level of abstentionism and among population groups vulnerable to the practices of vote buying and vote coercion.

930. Prior to election campaigns, the Federal Electoral Institute (IFE) initiates the National Campaign for the Promotion of Citizen Participation on the radio and television. In this campaign, it also disseminates information to prevent the reporting of biased information, which could be observed in prior elections. As an example of this, to prevent tampering with citizens' votes, the Federal Electoral Institute announced the Study on Citizen Participation and Free, Secret Voting Conditions in the 2000 federal election. It was an approximation of the magnitude of vote influence and vote coercion. This document concludes: The parties that had the most access to the population to try to influence or coerce the vote were, first, the National Action Party (Partido Acción Nacional, PAN), and, second, the Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI). The other parties had very limited participation compared to the two larger parties. The manipulatory activity that was the most far-reaching for the Mexican citizenry was religious influence, particularly in favour of the National Action Party. The second most far-reaching activity, albeit at a considerable distance, was negotiation strategies, used principally by the Institutional Revolutionary Party. Of the vote coercion and vote-buying activities practiced by the political parties, one out of every five activities was illegal in that money offers, threats or job loss were involved. The Institutional Revolutionary Party stood out most as an implementer of threats. The profile of those manipulated was predominantly the population living in rural or mixed districts with lower levels of education, and, to a lesser extent, men more than women.

931. Regarding the vote for Mexican citizens living abroad, before the 2005 voting reform, the Federal Electoral Institute (IFE) had assisted in various activities to make that exercise possible. In 2004, an internal working group was formed to analyze the possibility of making it feasible

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(<sup>274</sup>) The strategic groups are: i) beneficiaries of social programmes; ii) classroom teachers or students at teachers' colleges; iii) local officials; and iv) representatives of civil and social organizations.



for Mexicans abroad to vote. The group was composed of electoral advisers, executive directors and representatives of the political parties.

932. Concurrently, from 1998 to 2005 the Mexican Congress took up 18 proposals for laws presented by legislators and the President. The number and content of these initiatives made evident the shared opinion among the parliamentary groups as to the need to expand the voter population to include Mexicans living abroad, and the complexity of technical considerations that would need to be reviewed.

933. On account of the legal reform of 30 June 2005, for the first time in the history of Mexico, the 2005-2006 federal electoral process resulted in Mexican citizens living abroad exercising the right to vote in the Mexican presidential election.

934. As a result of these new rules, the Federal Electoral Institute (IFE) created the Coordinating Office for the Vote Abroad, which carried out, among others, the following activities: determining the number of Mexicans living abroad; performing logistical and operational work to publicize the prospect of exercising the right to vote to citizens living outside the country; establishing the agreements needed to facilitate its exercise; and proposing the guidelines that regulated voting logistics and organization, such as applications, registration, dispatch and receipt of the ballots of citizens who decided to exercise this right.

935. The General Council of the Federal Electoral Institute (IFE) approved the 2005-2006 Comprehensive Plan for the Federal Election Process, which established its responsibility to guarantee the right to vote to Mexicans living abroad.

936. On 31 May 2006, the General Council approved the Master Document, which established the guidelines to follow on election day regarding the ballots of Mexicans living abroad and for the inspection and counting of the ballots.

937. Moreover, the following activities were carried out:

- a) The Commission on the Vote of Mexicans Living Abroad (made up of electoral advisers, representatives of the political parties in the Federal Electoral Institute and advisers from the legislative branch) was formed to supervise work related to the project on the vote of Mexicans living abroad;
- b) An election outreach worker network was formed. A network of 138 organizations abroad was formed and voluntarily helped the Federal Electoral Institute (IFE) distribute forms for registration with the Name-Based Registry of Voters Living Abroad. Personnel from the Federal Electoral Institute travelled to the United States to distribute applications at specific places and events and to assist Mexican citizens interested in filling out applications. The work focused on 12 regions in which a large number of Mexican citizens live. As a result of these activities, 505,970 registration application forms were distributed;
- c) Familiarity with the right was achieved. According to some opinion polls, during the period of registration with the Name-Based Registry, 78% of the citizens living in

the USA <sup>275</sup> were able to be informed of this new right. In approximately 158 countries, familiarity with the registration form for the aforementioned Registry was achieved.

- d) Registration forms for the Registry were made accessible. The number of locations in which a registration application could be obtained increased from 140 (the number required by federal voting legislation) to over 7,000 distribution centres throughout the world. Access to the registration application via the Internet was also provided as of 1 October 2005;
- e) Registration forms were sent and distributed. Five million forms, of which 32% were sent to embassies and consulates, 18% to various centres throughout the country and 50% to other distribution points located throughout the world, were prepared and sent;
- f) The Name-Based Registry was composed of 40,876 citizens living in 80 countries on 5 continents who met the Law's requirements and the deadline;
- g) Citizens who made errors or omissions were notified. The 14,125 citizens who made errors or omissions during the procedure of registration with the Registry were notified of these so that they could correct them. The most common reason for rejection was dispatch by regular mail.
- h) Credentials were issued. To make obtaining credentials easier for Mexicans living abroad, in November 2005, 15 citizen-targeted fixed macromodules and 36 mobile modules were installed in border areas, airports, bus stations and places with a high rate of migration;
- i) An informed, reason vote was fostered. Mechanisms were established to promote an informed, reasoned vote. Among other items, included in the election package mailed to all registered citizens were a CD/DVD with candidate statements and a booklet with summaries of the voting platforms;
- j) Contact points were established. Through the free IFETEL numbers throughout the world and the Institute's Internet page, foreign communities established points of contact on the matter of the vote abroad. Through these, citizens could resolve questions about procedures while the Federal Electoral Institute (IFE) had a timely source of information for decision making. Likewise, through the road system, airports and bus stations, personnel were deployed to 75 points in the Fellow Citizen Programme, to submit registration forms to the Name-Based Registry and provided assistance in filling them out.

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<sup>(275)</sup> Roberto Suro and Gabriel Escobar, *Survey of Mexicans Living in the U.S on Absentee Voting in Mexican Elections, 2006*. Telephone survey conducted from 16 January to 16 February 2006 of 987 Mexican citizens, with a margin of error of +/- 4.37 per cent, available at [www.pewhispanic.org](http://www.pewhispanic.org)

- k) A publicity strategy was orchestrated. A campaign to promote the vote was orchestrated using the official broadcast times in the Mexican mass media. Cassettes and compact discs with messages promoting the vote abroad were produced for transmission via loudspeaker cars in areas with high levels of migration or movement. In the United States, a campaign using 15 television spots and 11 radio spots was undertaken. Space was leased on 5 Spanish-speaking television channels and 3 radio stations. Univisión and Telemundo began informational spots and liaison work between Mexicans and the Federal Electoral Institute (IFE), without cost to the institution. Finally, a Spanish-language print media campaign was launched in that country, taking into account demographics for the concentration of Mexicans and the circulation of each newspaper;
- l) Election packages were mailed and ballot envelopes received. All of the mailed election packages were sent to citizens within the legally established deadline. A total of 33,111 votes cast abroad, from 71 countries, were received. Previously, collaboration agreements were signed with the Ministry of External Relations to distribute the registration forms within the embassy and consulate system, and within the Mexican Postal Service (SEPOMEX), to establish a system of mail flow for the receipt of applications and for the dispatch of mailed election packages;
- m) Ballots were inspected and counted. To count the ballots cast abroad corresponding to the 300 districts in the country, 170 working groups in charge of inspection and counting were set up, including 680 officials from the working groups, 543 representatives of political parties and 56 electoral observers;
- n) The legality of the process was examined. The Name-Based Registry was not observed at all by the political parties. Eighty-eight suits for the protection of citizens' political-electoral rights were lodged, of which only 3 were well-founded; however, 6 complaints were introduced for alleged campaigning actions abroad, 2 were dismissed and 4 are pending. In addition, 4 appeals of Federal Electoral Institute (IFE) decisions were brought; in 3, the determinations of the IFE were confirmed and in 1 it was ordered to change the brochure that summarized the party platforms. It should be emphasized that the results obtained from examining and counting the ballots of Mexicans living abroad were not contested.

938. In legal-electoral matters, the Electoral Tribunal of the Federal Judiciary (TEPJF) has issued various decisions that, in addition to resolving differences, have contributed to specifying the scope and interpretation of voting legislation in Mexico.

- a) Right of membership in political parties: its content and scope were specified in a ruling issued in 2002;<sup>276</sup>
- b) Independent candidacies: denial of registration based on a legal resolution establishing that only political parties have the right to nominate candidates, which

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<sup>(276)</sup> RIGHT OF MEMBERSHIP IN POLITICAL-ELECTORAL ENTITIES. CONTENT AND SCOPE, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, jurisprudence volume, pp. 87-88.

violates neither the federal Constitution nor international treaties (Michoacán legislation);<sup>277</sup>

- c) Charters of political parties: control over their constitutionality and legality must be reconciled with citizens' rights to association and political institutions' freedom of self-organization;<sup>278</sup>
- d) Fugitive from justice. Elements of the concept as a cause of ineligibility;<sup>279</sup>
- e) Ineligibility. The possible theft or misplacement of a registered candidate's voter registration documentation with photograph does not cause him or her to be ineligible;<sup>280</sup>
- f) Voter registration document with photograph. It is the duty of the responsible authority to surrender it, even in the case of a claim of deadline expiry or of theft;<sup>281</sup>
- g) Eligibility, requirements for the registration of candidates' forms. It not necessary to display certified copies of birth certificates and voter registration documentation (Veracruz-Llave legislation);<sup>282</sup>
- h) Homonymy. Its existence alone is not sufficient to exclude a citizen from the name-based voter registry;<sup>283</sup>

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<sup>(277)</sup> INDEPENDENT CANDIDACIES: DENIAL OF REGISTRATION BASED ON A LEGAL RESOLUTION ESTABLISHING THAT ONLY POLITICAL PARTIES HAVE THE RIGHT TO NOMINATE CANDIDATES VIOLATES NEITHER THE FEDERAL CONSTITUTION NOR INTERNATIONAL TREATIES (Michoacán legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 394-395.

<sup>(278)</sup> CHARTERS OF POLITICAL PARTIES: CONTROL OVER THEIR CONSTITUTIONALITY AND LEGALITY MUST BE RECONCILED WITH CITIZENS' RIGHTS TO ASSOCIATION AND POLITICAL INSTITUTIONS' FREEDOM OF SELF-ORGANIZATION, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 559-560.

<sup>(279)</sup> FUGITIVE FROM JUSTICE. ELEMENTS OF THE CONCEPT AS A CAUSE OF INELIGIBILITY, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing court decisions, pp. 249.

<sup>(280)</sup> INELIGIBILITY. THE POSSIBLE THEFT OR MISPLACEMENT OF A REGISTERED CANDIDATE'S VOTER REGISTRATION DOCUMENT WITH PHOTOGRAPH DOES NOT CAUSE HIM OR HER TO BE INELIGIBLE, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 628-629.

<sup>(281)</sup> VOTER REGISTRATION DOCUMENTAT WITH PHOTOGRAPH. IT IS THE DUTY OF THE RESPONSIBLE AUTHORITY TO DELIVER IT, EVEN IN THE CASE OF A CLAIM OF DEADLINE EXPIRY OR OF THEFT, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing court decisions, pp. 70-71.

<sup>(282)</sup> ELIGIBILITY, REQUIREMENTS FOR THE REGISTRATION OF CANDIDATES' FORMS. IT NOT NECESSARY TO DISPLAY CERTIFIED COPIES OF BIRTH CERTIFICATES AND VOTER REGISTRATION DOCUMENT (VERACRUZ-LLAVE LEGISLATION), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 535-536.

- i) Ineligibility. A pardon granted by the executive branch of a sentence is not sufficient to render without effect the cause of ineligibility (Chiapas legislation),<sup>284</sup>
- j) The vote. Its confidentiality and secrecy are violated if information provided by citizens is revealed beyond what is permitted by law,<sup>285</sup>
- k) Eligibility of candidates for members of town council. The concepts of “official” and “employee” (Michoacán legislation),<sup>286</sup>
- l) Ineligibility based on a candidate’s status as public servant. Criteria for verification,<sup>287</sup>
- m) Non-re-election. The scope of this principle within town councils,<sup>288</sup>
- n) Ineligibility. Serving on a commission of communal lands is not cause for ineligibility,<sup>289</sup>
- o) Ineligibility of candidates for representative. The district councils must decide on causes to be asserted,<sup>290</sup>

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<sup>(283)</sup> HOMONYMY. ITS EXISTENCE ALONE IS NOT SUFFICIENT TO EXCLUDE A CITIZEN FROM THE NAME-BASED VOTER REGISTRY, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 606.

<sup>(284)</sup> A PARDON GRANTED BY THE EXECUTIVE OF A SENTENCE IS NOT SUFFICIENT TO RENDER WITHOUT EFFECT THE CAUSE OF INELIGIBILITY (Chiapas legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 630.

<sup>(285)</sup> THE VOTE. ITS CONFIDENTIALITY AND SECRECY ARE VIOLATED IF INFORMATION PROVIDED BY CITIZENS IS REVEALED EXCEPT AS PERMITTED BY LAW, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 975-976.

<sup>(286)</sup> ELIGIBILITY OF CANDIDATES FOR MEMBERS OF TOWN COUNCIL. THE CONCEPTS OF “OFFICIAL” AND “EMPLOYEE” (Michoacán legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 528-559.

<sup>(287)</sup> INELIGIBILITY BASED ON A CANDIDATE’S STATUS AS PUBLIC SERVANT. VERIFICATION, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005 volume containing relevant opinions, pp. 618-619.

<sup>(288)</sup> NON-RE-ELECTION. THE SCOPE OF THIS PRINCIPLE WITHIN TOWN COUNCILS, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing court decisions, pp. 189-192.

<sup>(289)</sup> INELIGIBILITY. SERVING ON A COMMISSION OF COMMUNAL LANDS IS NOT CAUSE FOR, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, Mexico, TEPJF, 2005, volume containing relevant opinions, pp. 629.

<sup>(290)</sup> INELIGIBILITY OF CANDIDATES FOR REPRESENTATIVE. THE DISTRICT COUNCILS MUST DECIDE ON CAUSES TO BE ASSERTED, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 621.

- p) Ineligibility of candidates for federal representative and senator per the principle of proportional representation. This can be contested through a motion for reconsideration;<sup>291</sup>
- q) Votes cast for a candidacy that was annulled without possibility of being replaced are counted in favour of the political parties that nominated the candidate;<sup>292</sup>
- r) Ineligibility. A sentence of incarceration does not necessarily result in ineligibility (Aguascalientes legislation);<sup>293</sup>
- s) Separation from position in order to be a candidate. This must continue until the absolute conclusion of the electoral process (Morelos legislation);<sup>294</sup>
- t) Right to run for office. Includes correct position in the list of proportionally represented candidates subject to registration (Zacatecas legislation);<sup>295</sup>
- u) Actual residency. The calculation of the deadline for verifying residency must begin with the period immediately prior to the election (Sonora legislation);<sup>296</sup>
- v) Coalition. It cannot be required that a coalition be complete in the special election for governor (Tabasco legislation);<sup>297</sup>

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<sup>(291)</sup> INELIGIBILITY OF CANDIDATES FOR FEDERAL REPRESENTATIVE AND SENATOR PER THE PRINCIPLE OF PROPORTIONAL REPRESENTATION. THIS CAN BE CONTESTED THROUGH A MOTION FOR RECONSIDERATION, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 620-621.

<sup>(292)</sup> VOTES CAST FOR A CANDIDACY THAT WAS ANNULLED WITHOUT POSSIBILITY OF BEING REPLACED. THIS HAS THE DESIRED EFFECT FOR POLITICAL PARTIES THAT NOMINATE THE CANDIDATE, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 976-977.

<sup>(293)</sup> INELIGIBILITY. A SENTENCE OF INCARCERATION DOES NOT NECESSARILY RESULT IN IT (Aguascalientes legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 630-632.

<sup>(294)</sup> REMOVAL FROM POSITION IN ORDER TO BE A CANDIDATE. THIS MUST CONTINUE UNTIL THE ABSOLUTE CONCLUSION OF THE ELECTORAL PROCESS (Morelos legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 931-932.

<sup>(295)</sup> RIGHT TO RUN FOR OFFICE. INCLUDES CORRECT POSITION IN THE LIST OF PROPORTIONALLY REPRESENTED CANDIDATES, SUBJECT TO REGISTRATION (Zacatecas legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 482-483.

<sup>(296)</sup> ACTUAL RESIDENCE. THE CALCULATION OF THE DEADLINE FOR VERIFICATION OF RESIDENCE MUST BEGIN WITH THE PERIOD IMMEDIATELY PRIOR TO THE ELECTION (Sonora legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 906-907.

- w) Voter registration document with photograph. Cases in which its replacement beyond the legal deadline is appropriate (Michoacán legislation);<sup>298</sup>
- x) Eligibility. Those who are Chiapan by birth;<sup>299</sup>
- y) Voter registration documentation with photograph. Provides complete proof of its holder's registration in the electoral roll;<sup>300</sup>
- z) Ineligibility. Being bound over for trial does not cause ineligibility (Veracruz-Llave legislation);<sup>301</sup>
- aa) Ineligibility. Omissions in a birth certificate do not necessarily cause ineligibility (Guanajuato and similar legislation);<sup>302</sup>
- bb) Candidates for member of town council. Must live in the town, even if local law does not stipulate this requirement;<sup>303</sup>
- cc) Candidates. Removing oneself from a position or a job, with notice stipulated in the law, violates neither freedom nor the right to work (Sinaloa and similar legislation);<sup>304</sup>

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<sup>(297)</sup> COALITION. IT CANNOT BE REQUIRED THAT A COALITION BE COMPLETE IN THE SPECIAL ELECTION FOR GOVERNOR (Tabasco legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 407-409.

<sup>(298)</sup> VOTER REGISTRATION DOCUMENT WITH PHOTOGRAPH. CASES IN WHICH ITS REPLACEMENT BEYOND THE LEGAL DEADLINE IS APPROPRIATE (Michoacán legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 463-464.

<sup>(299)</sup> ELIGIBILITY. THOSE WHO ARE CHIAPAN BY BIRTH, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 534-535.

<sup>(300)</sup> VOTER REGISTRATION DOCUMENT WITH PHOTOGRAPH. PROVIDES COMPLETE PROOF OF ITS HOLDER'S REGISTRATION IN THE ELECTORAL ROLL, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 464-465.

<sup>(301)</sup> INELEGIBILITY. BEING BOUND OVER FOR TRIAL DOES NOT CAUSE INELIGIBILITY (Veracruz-Llave legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 626-628.

<sup>(302)</sup> INELEGIBILITY. OMISSIONS IN A BIRTH CERTIFICATE DO NOT NECESSARILY CAUSE INELIGIBILITY (Guanajuato and similar legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 632-634.

<sup>(303)</sup> CANDIDATES FOR MEMBER OF TOWN COUNCIL. MUST LIVE IN THE TOWN, ALTHOUGH LOCAL LAW DOES NOT STIPULATE THIS REQUIREMENT, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 384-385.

<sup>(304)</sup> CANDIDATES. REMOVING ONESELF FROM A POSITION OR A JOB, WITH NOTICE STIPULATED IN THE LAW, VIOLATES NEITHER FREEDOM NOR THE RIGHT TO WORK (Sinaloa and similar

- dd) Coalition. It is possible to change the agreement even when the deadline for registration has expired (Morelos Legislation);<sup>305</sup>
- ee) Voter registration document with photograph. Deadline to apply for it for local elections;<sup>306</sup>
- ff) Right to vote and stand for office. Its teleology and the elements that it comprises;<sup>307</sup>
- gg) Su interpretación y correlativa aplicación no debe ser restrictiva; Fundamental rights of political-electoral nature. Their interpretation and corresponding application must not be restrictive;<sup>308</sup>
- hh) Independent candidacies. Denial of registration based on a legal resolution stipulating that only political parties have the right to nominate candidates violates neither the federal Constitution nor international treaties (Michoacán legislation);<sup>309</sup>
- ii) Eligibility. What is meant by “permanent removal from position”;<sup>310</sup>
- jj) Candidates. The federal Constitution does not establish exclusivity of political parties for their nomination;<sup>311</sup>

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legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 390-391.

<sup>(305)</sup> COALITION. IT IS POSSIBLE TO CHANGE THE AGREEMENT EVEN WHEN THE DEADLINE FOR REGISTRATION HAS EXPIRED (Morelos Legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 406.

<sup>(306)</sup> VOTER REGISTRATION DOCUMENT WITH PHOTOGRAPH. DEADLINE TO APPLY FOR IT FOR LOCAL ELECTIONS, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing court decisions, pp. 71-73.

<sup>(307)</sup> RIGHT TO VOTE AND RUN FOR OFFICE. ITS TELEOLOGY AND THE ELEMENTS THAT IT COMPRISES, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing court decisions, pp. 96-97.

<sup>(308)</sup> FUNDAMENTAL RIGHTS OF POLITICAL-ELECTORAL NATURE. THEIR INTERPRETATION AND CORRESPONDING APPLICATION MUST NOT BE RESTRICTIVE, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing court decisions, pp. 97-99.

<sup>(309)</sup> INDEPENDENT CANDIDACIES. DENIAL OF REGISTRATION BASED ON A LEGAL RESOLUTION STIPULATING THAT ONLY POLITICAL PARTIES HAVE THE RIGHT TO NOMINATE CANDIDATES VIOLATES NEITHER THE FEDERAL CONSTITUTION NOR INTERNATIONAL TREATIES (Michoacán legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 394-395.

<sup>(310)</sup> ELIGIBILITY. WHAT IS MEANT BY “PERMANENT REMOVAL FROM POSITION”, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 533-534



- kk) Ineligibility. Length of the candidate's term for purposes of nullifying an election (Oaxaca legislation);<sup>312</sup>
- ll) Ineligibility. When this is established for a candidate, a reasonable deadline by which to replace him or her must be granted before election day;<sup>313</sup>
- mm) Ineligibility. Prohibition against registering the same candidate for different popular election positions within a single electoral process (Oaxaca legislation);<sup>314</sup>
- nn) Ministers of religion. Ineligible, although the group or church to which they belong is not legally registered;<sup>315</sup>
- oo) Legal requirements for voting. The electoral administrative authority lacks the ability to change them (Morelos legislation);<sup>316</sup>
- pp) Public servant. The concept contained in local constitutions to determine their responsibility; inapplicable for determining ineligibility;<sup>317</sup>
- qq) Candidates for representative per the principle of proportional representation. The change in their position on the list can only benefit whoever contests it;<sup>318</sup>

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<sup>(311)</sup> CANDIDATES. THE FEDERAL CONSTITUTION DOES NOT ESTABLISH THE EXCLUSIVITY OF POLITICAL PARTIES FOR THEIR NOMINATION, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 387-388.

<sup>(312)</sup> INELEGIBILITY. LENGTH OF THE CANDIDATE'S TERM FOR PURPOSES OF NULLIFYING AN ELECTION (OAXACA LEGISLATION), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 617-618.

<sup>(313)</sup> INELEGIBILITY. WHEN THIS IS DECLARED FOR A CANDIDATE, A REASONABLE DEADLINE BY WHICH TO REPLACE HIM OR HER MUST BE GRANTED BEFORE ELECTION DAY, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 619-620.

<sup>(314)</sup> INELEGIBILITY. PROHIBITION AGAINST REGISTERING THE SAME CANDIDATE FOR DIFFERENT POPULAR ELECTION POSITIONS WITHIN A SINGLE ELECTORAL PROCESS (Oaxaca legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 634-635.

<sup>(315)</sup> MINISTERS OF RELIGION. INELIGIBLE, ALTHOUGH THE GROUP OR CHURCH TO WHICH THEY BELONG IS NOT LEGALLY REGISTERED, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 702-703.

<sup>(316)</sup> LEGAL REQUIREMENTS FOR VOTING. THE ELECTORAL ADMINISTRATIVE AUTHORITY LACKS THE ABILITY TO CHANGE THEM (Morelos legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 905-906.

<sup>(317)</sup> PUBLIC SERVANT. THE CONCEPT CONTAINED IN LOCAL CONSTITUTIONS TO DETERMINE THEIR RESPONSIBILITY; INAPPLICABLE FOR DETERMINING INELIGIBILITY, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 933-934.

- rr) Announcement for the selection of candidates. Elements that it must include:<sup>319</sup>
- ss) Voter registration document with valid photograph. Constitutes a requirement for obtaining registration as a candidate and running for office; failure to comply results in ineligibility (State of Mexico and similar legislation);<sup>320</sup>
- tt) Ineligibility of a candidate. Does not affect the registration of the other members of the slate of candidates (Coahuila and similar legislation);<sup>321</sup>
- uu) Ineligibility of a member of a slate of candidates. Does not nullify the election (Sonora legislation);<sup>322</sup>
- vv) Voter registration document with photograph. Its existence in and of itself does not authorize a citizen's inclusion in the electoral roll;<sup>323</sup>
- ww) Re-election to town councils. Not achieved for positions that, by law, are not to be filled by popular elections;<sup>324</sup>

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<sup>318</sup>) CANDIDATES FOR REPRESENTATIVE PER THE PRINCIPLE OF PROPORTIONAL REPRESENTATION. THE CHANGE IN THEIR POSITION ON THE LIST CAN ONLY BENEFIT THOSE WHO CONTESTED IT, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 383-384.

<sup>319</sup>) ANNOUNCEMENT FOR THE SELECTION OF CANDIDATES. ELEMENTS THAT IT MUST INCLUDE, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 460-461.

<sup>320</sup>) VOTER REGISTRATION DOCUMENT WITH VALID PHOTOGRAPH. CONSTITUTES A REQUIREMENT FOR OBTAINING REGISTRATION AS A CANDIDATE AND RUNNING FOR OFFICE; FAILURE TO COMPLY RESULTS IN INELIGIBILITY (State of Mexico and similar legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing court decisions, pp. 74-77.

<sup>321</sup>) INELIGIBILITY OF A CANDIDATE. DOES NOT AFFECT THE REGISTRATION OF THE OTHER MEMBERS OF THE SLATE OF CANDIDATES (Coahuila and similar legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 623-624.

<sup>322</sup>) INELIGIBILITY OF A MEMBER OF A SLATE OF CANDIDATES. DOES NOT NULLIFY THE ELECTION (Sonora legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 624.

<sup>323</sup>) VOTER REGISTRATION DOCUMENT WITH PHOTOGRAPH. ITS EXISTENCE IN AND OF ITSELF DOES NOT AUTHORIZE A CITIZEN'S INCLUSION IN THE ELECTORAL ROLL, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing court decisions, pp. 73-74.

<sup>324</sup>) RE-ELECTION TO TOWN COUNCILS. NOT ACHIEVED FOR POSITIONS THAT, BY LAW, ARE NOT TO BE FILLED BY POPULAR ELECTIONS, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing court decisions, pp. 269-270.

- xx) The prohibition against being nominated to a federal election position and to a local one simultaneously is triggered when, at some point, the candidate can compete in both processes;<sup>325</sup>
- yy) Removal from position. How months are calculated to fulfil eligibility requirements;<sup>326</sup>
- zz) Eligibility. Complete removal from a public position is accomplished through unpaid leave (Nuevo León and similar legislation);<sup>327</sup>
- aaa) Candidates for member of town council. The requirement of being up to date on contribution payments goes to eligibility (Tlaxcala legislation);<sup>328</sup>
- bbb) Voter registration document. Consequences of the replacement application due to misplacement;<sup>329</sup>
- ccc) Punitive decisions resulting in the suspension of political rights. Suit to protect the citizen's political-electoral rights does not lie;<sup>330</sup>
- ddd) Eligibility of candidates. In Baja California Sur, this can only be challenged in the registry;<sup>331</sup>

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<sup>(325)</sup> CANDIDATE. THE PROHIBITION AGAINST BEING NOMINATED TO A FEDERAL ELECTORAL POSITION AND TO A LOCAL ONE SIMULTANEOUSLY IS TRIGGERED WHEN, AT SOME POINT, THE CANDIDATE CAN COMPETE IN BOTH PROCESSES, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 381-382.

<sup>(326)</sup> REMOVAL FROM POSITION. HOW MONTHS ARE CALCULATED TO FULLY ELIGIBILITY REQUIREMENTS, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 930-931.

<sup>(327)</sup> ELIGIBILITY. COMPLETE REMOVAL FROM A PUBLIC POSITION IS ACCOMPLISHED THROUGH UNPAID LEAVE (Nuevo León and similar legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 533.

<sup>(328)</sup> CANDIDATES FOR MEMBER OF TOWN COUNCIL. THE REQUIREMENT OF BEING UP TO DATE ON CONTRIBUTION PAYMENTS GOES TO ELIGIBILITY (Tlaxcala legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 386.

<sup>(329)</sup> VOTER REGISTRATION DOCUMENT. CONSEQUENCES OF THE REPLACEMENT APPLICATION DUE TO MISPLACEMENT, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 465-466.

<sup>(330)</sup> PUNITIVE DECISIONS RESULTING IN THE SUSPENSION OF POLITICAL RIGHTS. SUIT TO PROTECT THE CITIZEN'S POLITICAL-ELECTORAL RIGHTS DOES NOT LIE, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 910-912.

<sup>(331)</sup> ELIGIBILITY OF CANDIDATES. IN BAJA CALIFORNIA SUR, THIS CAN ONLY BE CHALLENGED IN THE REGISTRY, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 529-530.

- eee) Inclusion of citizens into the electoral roll and the name-based voter registry when political-electoral rights are restored.<sup>332</sup>
- fff) Suspension of a citizen's political-electoral rights as stipulated in section II of article 38 of the Constitution. Only appropriate when he or she is incarcerated due to a crime that merits that punishment.<sup>333</sup>
- ggg) Suspension of political-electoral rights; concludes when the sentence of incarceration that caused this suspension replaces it (State of Mexico and similar legislation).<sup>334</sup>
- hhh) Right to run for office. Not to be violated for holding popularly elected office (Baja California legislation).<sup>335</sup>
- iii) Voter registration document with photograph. Provides complete proof of its holder's registration in the electoral roll.<sup>336</sup>
- jjj) Candidates. The federal Constitution does not establish exclusivity of political parties for their nomination.<sup>337</sup>
- kkk) Ineligibility. Prohibition against registering the same candidate for different popular election positions within a single electoral process (Oaxaca legislation).<sup>338</sup>
- lll) Ministers of religion. Ineligible, even if the group or church to which they belong is not legally registered.<sup>339</sup>

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<sup>(331)</sup> ELIGIBILITY OF CANDIDATES. IN BAJA CALIFORNIA SUR, THIS CAN ONLY BE CHALLENGED IN THE REGISTRY, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 529-530.

<sup>(332)</sup> Regarding this matter, see precedential opinion 1/2007 published on the Internet page <http://www.trife.org.mx>

<sup>(333)</sup> See precedential opinion 15/2007 published on the Internet page <http://www.trife.org.mx>

<sup>(334)</sup> See precedential opinion 30/2007 published on the Internet page <http://www.trife.org.mx>

<sup>(335)</sup> See precedential opinion 51/2007 published on the Internet page <http://www.trife.org.mx>

<sup>(336)</sup> VOTER REGISTRATION DOCUMENT WITH PHOTOGRAPH. PROVIDES COMPLETE PROOF OF ITS HOLDER'S REGISTRATION IN THE ELECTORAL ROLL, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 464-465.

<sup>(337)</sup> CANDIDATES. THE FEDERAL CONSTITUTION DOES NOT ESTABLISH THE EXCLUSIVITY OF POLITICAL PARTIES FOR THEIR NOMINATION, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 387-388.

<sup>(338)</sup> INELIGIBILITY. PROHIBITION AGAINST REGISTERING THE SAME CANDIDATE FOR DIFFERENT POPULAR ELECTION POSITIONS WITHIN A SINGLE ELECTORAL PROCESS (Oaxaca legislation), *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 634-635.

939. Given Mexico's cultural diversity and the conditions of inequality from which indigenous people suffer, the Electoral Tribunal of the Federal Judiciary (TEPJF) has put various mechanisms into place to educate electoral officials in the ways and customs of indigenous people. Moreover, conferences, seminars and workshops have been conducted about the political organization of indigenous people and respect for their traditions. Among these activities, the following are notable:

- a) From 2000 to 2001, the following research projects were carried out: The electoral system through ways and customs; Voting equity: mechanisms for conflict resolution and their democracy; Synthesis of the law on the rights of indigenous people and communities in the State of Oaxaca;<sup>340</sup>
- b) During the same period, the seminar Ways, customs and voting rights was organized. The aim of this seminar was to combine respect for indigenous traditions with the procedures and principles that govern electoral issues;
- c) On 11 March 2002, a videoconference was broadcast to all the regional chambers of the Electoral Tribunal of the Federal Judiciary (TEPJF) on the topic Ways and customs of indigenous people in electoral matters;
- d) From 25 to 28 March 2003, a series of lectures given by the well-known French academic Dr. Étienne Balibar and organized jointly by the Electoral Tribunal of the Federal Judiciary (TEPJF); the Electoral Tribunal of the State of Oaxaca; the Centre for Advanced Studies in Social Anthropology (Centro de Investigaciones y de Estudios Superiores en Antropología Social, CIESAS); the Institute for Social Research (Instituto de Investigaciones Sociales, IIS) of the National Autonomous University of Mexico (Universidad Nacional Autónoma de México, UNAM), Iztapalapa campus; the Federal Electoral Institute (IFE); and the United Nations Development Programme (UNDP) was held. The talks, "The anthropological fundamentals of modern citizenship," "The proposal of equal freedom," "Europe: what power?" and "Citizenry and multiculturalism," were given on the premises of the CIESAS, the IIS/UNAM, the Metropolitan Autonomous University (Universidad Autónoma Metropolitana, UAM) - Iztapalapa campus and the Electoral Tribunal of the State of Oaxaca, respectively;
- e) From 2003 to 2004, the work Indigenous Rights and Elections was published and, as part of the series Informational Books on Doctrinal Aspects of Voting Equity: No. 4, Human rights and voting equity, by Leoncio Lara Sáenz; No. 6, Democracy, citizenship and equity, by Germán Pérez Fernández del Castillo; and No. 7, The internal democracy of the political parties in Latin America and its jurisdictional guarantee, by José de Jesús Orozco Henríquez;

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<sup>(339)</sup> MINISTERS OF RELIGION. INELIGIBLE, ALTHOUGH THE GROUP OR CHURCH TO WHICH THEY BELONG IS NOT LEGALLY REGISTERED, *Official Compilation of Jurisprudence and Relevant Case Law 1997-2005*, Mexico City, TEPJF, 2005, volume containing relevant opinions, pp. 702-703.

<sup>(340)</sup> Among the states of the federation, Oaxaca is one of those whose indigenous population has greater vitality in its cultural expression and political organization.

- f) On 3 and 4 December 2004, the seminar “Democracy and indigenous political representation,” organized jointly by the Electoral Tribunal of the Federal Judiciary (TEPJF), the United Nations Development Programme (UNDP), the Federal Electoral Institute (IFE) and the Centre for Advanced Studies in Social Anthropology (Centro de Investigaciones y de Estudios Superiores en Antropología Social, CIESAS) was held;
- g) From 23 to 25 March 2006, the international seminar Cultural Diversity, Democracy and Development: Current Problems and Perspectives was held, which was organized jointly by the Electoral Tribunal of the Federal Judiciary (TEPJF) with the Juárez Commission and the government of the State of Oaxaca, the Inter-agency Commission of the Executive Branch for the Bicentennial Celebrations of the Birth of Benito Juárez García, the National Council of Indigenous People, the United Nations Development Programme (UNDP) Mexico, the State Electoral Institute, the State Electoral Tribunal, the Congress of the State of Oaxaca, the State High Court of Justice, the Secretaries of Indigenous Affairs and of State Culture and the State of Oaxaca Regional University System;
- h) In helping to make the enormous challenge of reaching out to the four corners of Mexico a reality, the National Council of Indigenous People provided invaluable support, making possible the broadcast of a series of short messages, taped and translated to various indigenous languages, from the 20 radio stations run by the aforementioned national council, in such a way that the information also reached the ears of our indigenous brothers and sisters from 5 to 9 June 2006;

940. One of the measures adopted to combat discrimination and guarantee the free, secret vote for disabled citizens, particularly those who are visually impaired, have reduced motor skills or are of small stature, has been the development of voting instruments, which results in a more positive, egalitarian experience on election day.

941. In the 2003 federal election, for the first time the Federal Electoral Institute (IFE) provided each of the approved polling booths throughout the country a template in Braille, into which the polling booth officer could insert the ballot paper used for the election of federal representatives, providing this to visually impaired citizens and thus allowing them to vote without needing to be accompanied by another person.

942. In the election of 2 July 2006, every approved polling booth was supplied a Braille template for all types of elections (for representatives, senators and president). Moreover, for the first time the Federal Electoral Institute (IFE) provided each polling booth a special plastic partition that allows people with reduced motor skills or of small stature to vote in privacy by resting it on their wheelchair or a table.

943. In view of the impossibility of installing polling booths in districts with fewer than 50 voters, or in districts with more than 50 voters on the name-based list but whose actual number of voters may have declined due to emigration or other causes, in the 2000, 2003 and 2006 electoral processes the General Council of the Federal Electoral Institute (IFE) established criteria so that the district councils could determine the places in which citizens living in these types of voting districts could exercise their right to vote at another voting location; likewise, it

was recommended to the district councils in the border areas of northern Mexico that five special polling booths be installed to allow citizens out of their district to vote.

944. In December 2002, the General Council instructed the executive district committees to plan for and secure, if possible, the facilities needed by citizens of different abilities and seniors so that they could easily access the polling booth and cast their vote. In February 2003, it issued various specific resolutions to be applied in different areas to guarantee equal opportunity and freedom from discrimination to people of different abilities.

945. Regarding electoral organization, the following criteria for the placement of polling booths were established:

- a) Giving preference to sites with wide access and doors at least 90 cm wide;
- b) Locating sites preferably on a single level, and on even, smooth ground, avoiding as much as possible the use of steps or drops to reduce the risk of falls;
- c) Avoiding the presence of furniture or natural obstacles at the entrances to the polling booths' check-in desks;
- d) Ensuring that the area around the polling booths consists of open space to avoid the formation of crowds which impede citizens' free movement.

946. In October 2005, all of these criteria were incorporated into the General Council Agreement, through which the strategy of electoral training and assistance in the 2005-2006 federal electoral process, as well as various regulations to guarantee equal opportunity and freedom from discrimination, were approved.

947. With the 2005-2006 federal electoral process concluded, the Federal Electoral Institute (IFE) prepared a Report on cases of discrimination affecting the make-up of polling station teams during the 2005-2006 federal electoral process, from which the following data are noted:

- a) A visually impaired individual was hired, working as an electoral training assistant in Federal Electoral District 23 based in the Federal District, which assisted citizens in districts 357, 364 and 383, which comprised 9 polling stations;
- b) The hiring of training assistants over age 60 was approved, and polling booth officials were appointed with an age above what is permitted by law, that is, older than 70 years of age;
- c) In 43 voting districts, 59 people with some type of disability were hired as electoral training assistants;
- d) In total, there were 67 citizens who acted as polling booth officials, with an age falling between 71 and 84.

948. In its broadcasting policy, the Federal Electoral Institute (IFE) has collaborated closely with the National Council of Indigenous People (CDI) to translate to various indigenous languages, distribute and broadcast the messages from its campaigns. This was the case, for

example, in the 1999-2000 Comprehensive Permanent Updating Campaign / Intensive Annual Campaign for Civic Education, which was broadcast via the indigenous-culture radio station system, with an average of 4 daily spots in 29 languages or dialects.

949. In 2007, joint work between the Federal Electoral Institute (IFE) and the National Council of Indigenous People (CDI) resulted in the broadcast of short messages related to gender equality and democratic coexistence via 20 National Council of Indigenous People (CDI) radio stations, which were also transmitted to the 11 community radio station members of the Worldwide Association of Community Radio Stations (Asociación Mundial de Radiodifusoras Comunitarias).

950. Mexico is party to the International Institute for Democracy and Electoral Assistance (IDEA), an intergovernmental organization created in 1995 and based in Sweden. Its overall mandate is to support sustainable democracy and improve and strengthen electoral processes. It has 25 Member States, which form the International IDEA Council, the Institute's main body.

951. On 5 December 2002, the Mexican Senate unanimously approved Mexico's affiliation with International IDEA. Thus, Mexico assumed the chairmanship of the International IDEA Council for the June 2008-December 2009 period.

952. The Ministry of External Relations and the Ministry of the Interior have designed a programme of activities that will be developed throughout the Mexican presidency and culminate in the next meeting of the Council, to take place in Mexico in 2009.

953. Among Mexico's priorities in its chairmanship of International IDEA are issues such as the illegal funding of electoral campaigns; transition to democracy; issues of decentralization, local power and women's rights; the full exercise of civil and political rights; the media in electoral campaigns, and the expansion of International IDEA's membership to include new countries.



**XXIV. ARTICLE 26:  
EQUALITY BEFORE THE LAW AND NON-DISCRIMINATION**

**A. Legislative advances**

954. By means of a decree published in the Diario Oficial on 14 August 2001, a paragraph prohibiting all discrimination was added to the 1<sup>st</sup> article of the political Constitution of Mexico. This paragraph, along with the reforms of 4 December 2006, provide as follows:

“All discrimination on grounds of ethnic or national origin, gender, age, different abilities, social status, medical condition, religion, opinions, preferences, civil status or any other discrimination that violates human dignity and is intended to nullify or restrict the rights and freedoms of persons is prohibited.”

955. The Constitution provides that the Federation, states, and municipalities, to promote equal opportunity for indigenous people and eliminate any discriminatory practice, will establish the institutions and determine the necessary policies to guarantee the rights of indigenous peoples and the complete development of their people and communities and that these will be designed and operated together with them.

956. Chapter III of the Federal Act to Prevent and Eliminate Discrimination lays down positive, compensatory measures in support of equal opportunity for the indigenous population.

957. At the local level, provisions have been adopted in constitutions and laws in support of equal opportunity and the prevention and elimination of discrimination by reason of indigenous affiliation by the States of Campeche, Chiapas, Coahuila, Durango, México, Guanajuato, Morelos, Nayarit, Oaxaca, Querétaro, Quintana Roo, San Luís Potosí, Tabasco and Yucatán.

**XXV. ARTICLE 27: RIGHT TO CULTURAL IDENTITY,  
RELIGION AND LANGUAGE**

958. According to the most up-to-date figures from the Second Survey of Population and Housing, Mexico, 2005, more than 10 million indigenous people live in Mexico, which represents 9.8% of the total, a rate that is 0.7% lower than in 2000.

**A. Legislative advances**

959. Approval of the constitutional reform on indigenous matters of 14 August 2001 established the recognition and protection of the culture and rights of indigenous people and communities<sup>341</sup>.

960. The reform establishes the unique, indivisible nature of the Nation, with a multicultural composition originally embodied in its indigenous people. It acknowledges for the indigenous people a wide range of rights, including the right to be recognized as an indigenous peoples or communities, noting the right of indigenous peoples and communities to self-determination and, consequently, to autonomy in deciding their internal forms of coexistence and organization, their own regulatory systems, and the election of officials and representatives. It establishes their right

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<sup>(341)</sup> Through the aforementioned reform, the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 18<sup>th</sup> and 115<sup>th</sup> articles were amended.

to the preservation of their cultural identity, to the land, to consultation and participation, to have complete access to state jurisdiction, and the right to development.

961. Thus, the Constitution recognizes a series of important rights that allow indigenous people to take the path of establishing a new, more democratic, inclusive and respectful relationship<sup>342</sup>. The reform therefore goes beyond what was established by the Covenant, which recognizes the right of a minority to preserve its culture, religion and language, without referring to its political rights.

962. On 21 May 2003, the decree issuing the Law on the National Council of Indigenous People was published in the Diario Oficial. This decree took effect on 5 July 2003. The National Council is a decentralized, unattached agency of the federal Government that has legal personality and its own assets and enjoys operational, technical, budgetary and administrative autonomy. The Council has an Advisory Board, which it uses as a consulting agency and liaison to indigenous people and to society<sup>343</sup>.

963. The states are authorized to stipulate the characteristics of self-determination and autonomy that best express the conditions and aspirations of indigenous people in each state's legislation. Local legislatures have an obligation to carry out appropriate modifications to local constitutions.<sup>344</sup> At the end of 2007, 21 states had constitutional reforms referring to the rights of indigenous people.

964. On 12 March 2003, because the political Constitution of Mexico also grants indigenous people and communities the right and autonomy to preserve and enrich their languages, knowledge and all the elements that make up their culture and identity, the Diario Oficial published the General Law on the Linguistic Rights of Indigenous People in order to regulate the recognition and protection of the individual and collective linguistic rights of indigenous peoples and communities and promote the use and development of indigenous languages.

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<sup>(342)</sup> From 2003 to 2007, the programme made significant progress. For example, in 2003, 2 migrant-holding centres were built and 23 were upgraded; in 2004, 4 were built and 18 upgraded; in 2005, one was built and 11 upgraded; in 2006, one was built and 22 upgraded; and in 2007, 2 were built and 10 upgraded. The NMI (National Institute for Migration) has 47 migrant-holding centres in 23 Mexican states.

<sup>(343)</sup> The Advisory Board is a collegial, multi-party agency through which the National Council of Indigenous People (CDI) seeks to open a constructive, inclusive dialogue with indigenous people and society. By authority of law, the majority of the Advisory Board consists of indigenous people (art. 12). Its goal is to analyze, consider and make proposals to the Governing Board and Director General of the Council on policies, programmes and public activities for the development of indigenous people. It is made up of 140 member advisers who are Mexican indigenous people; 7 advisers who are representatives of national academic and research institutions; 12 advisers who are representatives of social organizations; 7 advisers who are representatives of the supervisory committees of the Councils on Indigenous Affairs of both chambers of the Mexican Congress; and 32 advisers who are representatives of the state governments.

<sup>(344)</sup> Second transitional article. Seven reforms occurred after 2001 and are based on the second article of the Constitution: San Luis Potosí (11 July 2003); Tabasco (15 November 2003); Durango (22 February 2004); Jalisco (29 April 2004); Puebla (10 December 2004); Yucatán (26 May 2005); and Morelos (20 July 2005). Yucatán is also part of this group, although its reform was municipal in scope and only took into consideration issues of consultation and right to development. In 2006, 11 states were in the process of carrying out constitutional or legal reforms to incorporate indigenous rights into their laws.

965. Under the aforementioned law, the National Institute of Indigenous Languages (Instituto Nacional de Lenguas Indígenas, INALI) was created in 2005 as a decentralized agency of the Federal Public Administration in public and social service, with legal personality and its own assets, attached to the Ministry of Public Education, whose objective is to promote the strengthening, preservation and development of the indigenous languages spoken throughout the country and knowledge and enjoyment of the nation's cultural wealth.<sup>345</sup>

966. As provided in articles 15, 16 and 17 of the law, the administration of the National Institute of Indigenous Languages (INALI) is entrusted to a National Council, a collective government agency made up of seven representatives from the Federal Public Administration;<sup>346</sup> three representatives from indigenous schools, institutions of higher learning and universities;<sup>347</sup> and three representatives from academic institutions and civil agencies known for promoting, preserving and protecting the use of indigenous languages.<sup>348</sup> A Director General, appointed by the President of Mexico on the proposal of a list of three candidates presented for selection by the National Council, is in charge of the Institute's operation. The Organic Statute of the National Institute of Indigenous Languages (INALI) was published in the Diario Oficial on 1 September 2006.

967. The right to preserve the cultural identity of indigenous people and communities is more detailed in the states' laws; that is, they govern the aforementioned right more specifically; the following are noteworthy:

- a) Law on the Rights and Indigenous Culture of the State of Baja California;
- b) Political Constitution of the State of Campeche;
- c) Law on the Rights, Culture and Organization of the Indigenous People and Communities of the State of Campeche;
- d) Law on the Rights and Indigenous Culture of the State of Chiapas;
- e) Political Constitution of the Free and Sovereign State of Durango;

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<sup>(345)</sup> Article 14 of the General Law on the Linguistic Rights of Indigenous Peoples.

<sup>(346)</sup> The incumbent head of the Department of Public Education, who chairs the group, and representatives from the Ministry of Finance and Public Credit, the Ministry of Social Development, the Ministry of Communications and Transportation, the National Council for Culture and the Arts, the National Council of Indigenous People and the Ministry of External Relations.

<sup>(347)</sup> At the time of publication of this report, those institutions were: the Centre for Studies in Social Anthropology (Centro de Investigaciones y de Estudios en Antropología Social), Istmo; The Colegio de México; and the University of Guadalajara.

<sup>(348)</sup> At present, the Kadia Ngigua association, a not-for-profit organization; the Centre for Studies in Social Anthropology (Centro de Investigaciones y de Estudios en Antropología Social), Istmo; the National School of Anthropology and History; the Uárhi group, a not-for-profit organization; the Colegio de México; and the University of Guadalajara.

- f) General Law on the Indigenous People and Communities of the State of Durango;
- g) Law on the Rights and Indigenous Culture of the State of Mexico;
- h) Political Constitution of the State of Guerrero;
- i) Political Constitution of the State of Jalisco;
- j) Law on the Rights and Development of Indigenous People and Communities in the State of Jalisco;
- k) Political Constitution of the Free and Sovereign State of Morelos;
- l) Political Constitution of the State of Nayarit;
- m) Law on the Rights and Indigenous Culture of the State of Nayarit;
- n) Political Constitution of the Free and Sovereign State of Oaxaca;
- o) Law on the Rights of the Indigenous People and Communities of the State of Oaxaca;
- p) Political Constitution of the Free and Sovereign State of Puebla;
- q) Political Constitution of the Free and Sovereign State of Querétaro;
- r) Law on the Rights and Culture of the Indigenous People and Communities of Querétaro;
- s) Political Constitution of the State of San Luis Potosí;
- t) Regulatory Statute of the 9th Article of the Political Constitution, on Indigenous Rights and Culture;
- u) Political Constitution of the State of Sinaloa;
- v) Political Constitution of the Free and Sovereign State of Sonora;
- w) Political Constitution of the Free and Sovereign State of Veracruz;
- x) Political Constitution of the State of Yucatán.

### **B. Judicial decisions**

968. In this sphere, the Supreme Court of Justice of the Nation has established that when ruling on indigenous matters, the legislatures of the states must recognize the minimum rights that must be respected in these communities, which can be expanded to be adapted to the specific qualities

of the region or its people, provided that this does not affect the constitutional framework to which the aforementioned rights are subject.<sup>349</sup>

### C. Institutional measures

969. The responsibilities of the National Council of Indigenous People (CDI) include the Programme for the advancement and development of indigenous cultures, presented as an institutional strategy to implement the policy of recognizing the multicultural composition of Mexico; the right of indigenous people to preserve and enrich their languages, knowledge and the set of elements that make up their culture and identity; and the right to decide their internal forms of coexistence and social, economic, political and cultural organization.

970. The National Council of Indigenous People (CDI) relies on the Indigenous Cultural Broadcasting System (Sistema de Radiodifusoras Culturales Indigenistas, SRCI), which creates fora for intercultural dialogue and promotes the protection of rights and the complete development and participation of indigenous people and communities. This system contributes to the recognition of the diversity of indigenous people, to multiculturalism and to the strengthening of the indigenous languages and supports the right of indigenous people to be informed in their own language in addition to providing the public services of communication, information and dialogue among the indigenous communities and other societal groups.

971. The Indigenous Cultural Broadcasting System (SRCI) has at its disposal 20 AM and 4 FM radio stations, which operate in 15 Mexican states and reach over 5.5 million speakers of indigenous languages and approximately 21 million people in 954 municipalities.

972. In its three and a half years of existence, the National Institute of Indigenous Languages (Instituto Nacional de Lenguas Indígenas, INALI) has prepared, among other materials, the “Catalogue of Mexican Indigenous Languages: A Contemporary Mapping of Their Settlement in History,” in which maps can be found showing the communities in which, according to the census undertaken by the National Institute of Statistics, Geography and Informatics (INEGI) in 2000, likewise, when populations speaking an indigenous language are found, the size of the population and the percentage using the language are detailed. To execute this project, meetings were held with communities that speak the aforementioned languages, scholars and linguists specializing in each of the languages.

973 In addition, the Catalogue of National Indigenous Languages: Mexican Linguistic Variants with Their Self-Designations and Geostatistical References was published in the Diario Oficial on 14 January 2008. In the document, identified and officially recognized, are the indigenous languages that the General Law on the Linguistic Rights of Indigenous People has deemed national languages, with the same validity as Spanish in any matter or procedure of a public nature in the territory, location and context in which they are spoken.

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<sup>(349)</sup> INDIGENOUS RIGHTS. THOSE THAT HAVE BEEN ESTABLISHED IN THE POLITICAL CONSTITUTION OF MEXICO CAN BE EXPANDED BY LOCAL LEGISLATURES WITHIN THE FRAMEWORK OF THE FORMER, *Judicial Weekly of the Federation*, ninth period, volume XVI, November 2002, opinion 2 CXXXIX/2002, pp. 446.

974. The National Institute of Indigenous Languages (INALI) has conducted many publicity campaigns promoting indigenous languages, assists officials at the three levels of government with projects involving the translation of different documents or regulations, and cooperates with offices such as the Ministry of Public Education on publicity work through the educational system, indigenous radio stations and indigenous-language programming by the educational television service.

975. The National Institute of Indigenous Languages (INALI) has prepared and contributed to over thirty books, many posters and compact discs exclusively in indigenous languages or used as teaching aids in indigenous-language instruction.

976. For languages in danger of becoming extinct, the National Institute of Indigenous Languages (INALI) formed a binational (Mexico - United States) commission dedicated to these languages, since there are already various languages in the northern area of Mexico in greater danger of disappearing, and some of them are shared or have in common languages from the same linguistic family in the United States.

977. Arising from the formation of the aforementioned binational commission, on 20 February 2008, the formal installation took place of the Advisory Committee on Indigenous Languages at Risk of Disappearing (Comité Consultivo para la Atención a las Lenguas Indígenas en Riesgo de Desaparición, CCALIRD), aimed at supporting the National Institute of Indigenous Languages (INALI) in its work on Mexican indigenous languages at risk of disappearing.

978. The aforementioned committee is made up of a coordinating group (4 persons) and 13 commissions (6 persons on each). Each commission is devoted to studying the problem from different perspectives, among them: revitalization, technology, education, culture and traditions, research and documentation.

979. In addition, although the Ministry of Public Education has always promoted basic bilingual schooling with the goal of facilitating the education of the indigenous population and protecting its languages, in 2001 the General Coordinating Office for Bilingual Intercultural Education was created, which for the first time proposed intercultural education for the entire population and culturally pertinent education for indigenous people at all educational levels.

980. In the 2002 federal budget of expenditures, a specific monetary amount for services to indigenous people, set at 15 billion pesos, was announced for the first time. For the 2008 fiscal year, the Commission on Indigenous Affairs of the Chamber of Deputies set a record budget for these peoples, in the amount of 31,024.70 million pesos.<sup>350</sup>

981. Mexico is the country in which elementary education is provided in the greatest number of indigenous languages in the world, 50 to date, proof of its interest in preserving the cultural wealth of its origins and traditions.

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<sup>350</sup> CDI \$7,330.4; SAGARPA \$1,821.0; SCyT \$948.8; SEP \$4,716.6; SE \$113.2; SS \$1,998.8; SRA \$325.0; SEMARNAT \$449.6; CONAGUA \$363.2; SEDESOL \$6,284.4; federal contribution for agencies and towns \$4,915.6; total \$31,024.7. Figures in millions of pesos.

## **FIFTH PERIODIC REPORT OF MEXICO ANNEXES AND REFERENCES**

Printed annexes to the present Periodic Report have been kept to a minimum, while facilitating the search for additional information by electronic means, as detailed below.

Annexes:

Annex 0.1 Compilation of legal reforms related to the International Covenant on Civil and Political Rights during the period 1997-2001. Congress of the Union.

Annex 3.1 Interactive Library with Gender Perspective. CD-ROM. Ministry of External Relations, United Nations Development Fund for Women.

Annex 6.1 Actions undertaken for the implementation of the International Covenant on Civil and Political Rights. Commission to Prevent and Eradicate Violence against Women in Ciudad Juárez.

Annex 6.2 Fulfilment of aim and functions. Commission to Prevent and Eradicate Violence against Women in Ciudad Juárez.

Annex 7.1 Office of the Attorney General of the Republic

Annex 8.1 Farm Workers Programme. Ministry of Social Development.

Annex 10.1 Follow-up of Recommendations. Ministry of Public Security, Office of Legal Affairs and Human Rights.

Annex 10.2 Código Ayuda Civil Association

Annex 13.1 Programme of Migratory Regularization. Report on Results.

Annex 14.1 Actions undertaken to implement the Covenant on Civil and Political Rights. Commission to Prevent and Eradicate Violence against Women in Ciudad Juárez.

Annex 25.1 Case Law on Electoral Matters 1997-2007, in accordance with articles of the Covenant. Electoral Tribunal of the Federal Judiciary.

Annex 25.2 Judicial Statistics 1997-2007. Electoral Tribunal of the Federal Judiciary

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Political Constitution of the United Mexican States:

<http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf> ó

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Reform of article 2 of the Constitution

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Reform of and addition to last paragraph of article 4 of the Constitution

[http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_148\\_07abr00\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_148_07abr00_ima.pdf)

Corrigendum:

[http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_fe\\_ref\\_148\\_12abr00\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_fe_ref_148_12abr00_ima.pdf)

Reform of Public Security and Criminal Justice:

[http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_180\\_18jun08\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_180_18jun08_ima.pdf)

Reform of and addition to article 19 of the Constitution

[http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_139\\_08mar99\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_139_08mar99_ima.pdf)

Reform of article 20 of the Constitution

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Reform of article 55 of the Constitution

[http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_172\\_19jun07\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_172_19jun07_ima.pdf)

Reform of article 94 of the Constitution

[http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_140\\_11jun99\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_140_11jun99_ima.pdf)

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