



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Information received from Mexico on follow-up to the
concluding observations on its combined eighteenth to
twenty-first periodic reports^{*, **}**

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* The present document is being issued without formal editing.
** The annexes are on file with the Secretariat and are available for consultation.



1. In order to comply fully with paragraph 41 of the Committee's concluding observations on the combined eighteenth to twenty-first periodic reports of Mexico (CERD/C/MEX/CO/18-21), the Mexican State is presenting the following information on the actions that it has taken through its various competent institutions to follow up on, and implement, the recommendations made by the Committee in paragraphs 11 (racial hatred and incitement to racial discrimination), 21 (b) (free, prior and informed consent) and 31 (b) (human rights defenders) of the above-mentioned document.

Follow-up information relating to paragraph 11 of the concluding observations (CERD/C/MEX/CO/18-21)

2. In Mexico, the Federal Criminal Code¹ currently defines discrimination as an offence against human dignity and, in that regard, article 149 ter of the Code provides that a penalty of 1 to 3 years' imprisonment, or 150 to 300 days' community service and a fine of up to 200 days' income, is imposed on any person who, on the grounds of ethnic or national origin or affiliation, race, skin colour, language, gender, sex, sexual preference, age, marital status, national or social origin, social or economic status, health status, pregnancy, or political or other opinion, undermines human dignity or nullifies or impairs the rights and freedoms of persons by carrying out any of the following acts:

- (i) Refusing someone a service or facility to which he or she is entitled;
- (ii) Denying or restricting someone's labour rights, primarily on the basis of gender or pregnancy; or restricting someone's access to a health service, particularly a woman's access to a pregnancy-related service; or
- (iii) Denying or restricting someone's right to education.

3. The Code also provides that the penalty will be increased when discriminatory acts restrict a person's access to the legal safeguards that are essential to the protection of all human rights.

4. In view of the Mexican State's fundamental obligation to ensure that the legal system is effective in tackling discrimination, and in order to comply with the Committee's recommendation and the judgment handed down by the Supreme Court in *amparo* review No. 805/2018, the federal executive branch has submitted a draft decree to the Senate that amends and adds provisions to article 149 ter of the aforementioned Federal Criminal Code.

5. This decree was published on 28 June 2020 in the Official Gazette of the Permanent Commission of the Senate.²

6. The decree (annex 1) states the following:

"Decree pursuant to which amendments and additions are made to article 149 ter of the Federal Criminal Code

Sole article – Article 149 ter, subparagraphs II and III, are hereby amended and new subparagraphs IV and V, and new third and fourth paragraphs, are hereby added, with the current third, fourth, fifth and sixth paragraphs becoming the fifth, sixth, seventh and eighth paragraphs of article 149 ter of the Federal Criminal Code, which shall read as follows:

Article 149 ter ...

I. ...

II. Denying or restricting someone's labour rights, primarily on the basis of gender or pregnancy; or restricting someone's access to a health service, particularly a woman's access to a pregnancy-related service;

¹ Federal Criminal Code in force in Mexico

http://www.diputados.gob.mx/LeyesBiblio/pdf/9_010720.pdf.

² 28 June 2020, *Gaceta Comisión Permanente del Senado de la República*

https://www.senado.gob.mx/64/gaceta_comision_permanente/documento/109366.

- III. Denying or restricting someone's right to education;
- IV. Disseminating ideas based on racial superiority or hatred; or
- V. Inciting racial discrimination or acts of violence against any race or group of persons of another colour or ethnic origin.

Furthermore, in respect of any person who commits acts of violence against a person or group of persons on the grounds of their race, skin colour or ethnic origin, who assists in or finances racist activities, who participates in organizations or propaganda activities that promote and incite racial discrimination, or who organizes groups that incite acts of racial discrimination, the penalty established for such an offence shall be increased by up to one third.

In the above case, the penalty shall be increased by up to a half when the offence is also committed by a public official in the performance of his or her duties or if the victim is a woman and the offence has been committed for reasons related to her gender, as provided for in the relevant laws.”

7. As the Committee will note, the purpose of this draft decree is to criminalize the dissemination of ideas based on racial superiority or hatred and to punish any person who incites racial discrimination or commits acts of violence against any person or group of persons on the basis of their race, skin colour or ethnic origin.

8. In this regard, the penalty is extended by up to one third for any person who commits acts of violence against a person or a group of persons on the grounds of their race, skin colour or ethnic origin, or any person who assists or finances racist activities, participates in organizations or propaganda activities that promote and incite racial discrimination, or organizes groups that incite acts of racial discrimination.

9. Where the offence is committed by a public official in the performance of his or her duties, or where the victim is a woman and the offence is committed for reasons related to her gender, the penalty is increased by up to a half.

10. This draft decree is currently being considered by the Joint Commission on Justice and Legislative Studies of the Senate.

11. In accordance with article 4 of the Convention, the Federal Act on the Prevention and Elimination of Discrimination establishes criteria with a view to ensuring that the right to equality and non-discrimination is respected, protected, guaranteed and promoted in Mexico. In accordance with the Act, discrimination is understood to mean the following:

Any distinction, exclusion, restriction or preference, committed by act or omission, with or without intent, which is not objective, rational or proportional and whose purpose or effect is to hinder, restrict, prevent, impair or nullify the recognition, enjoyment or exercise of human rights and freedoms on one or more of the following grounds: ethnic or national origin; skin colour; sex; gender; age; disability; social, economic, health or legal status; religion; physical appearance; genetic traits; migration status; pregnancy; language; opinions; sexual preferences; political identification or affiliation; marital status; family situation; family responsibilities; criminal record; or any other characteristic. Homophobia, misogyny, any form of xenophobia, racial segregation, antisemitism, racial discrimination and other related forms of intolerance are also considered discrimination.³

12. The concept of discrimination established in the Federal Act on the Prevention and Elimination of Discrimination encompasses a number of the prohibited grounds of discrimination defined in the Convention, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights.

³ Article 1 (III) of the Federal Act on the Prevention and Elimination of Discrimination. See http://www.diputados.gob.mx/LeyesBiblio/pdf/262_210618.pdf.

13. A total of 25 Mexican states have an anti-discrimination clause in their legislation while 19 have criminalized discriminatory conduct.⁴

14. Article 4 of the Convention stipulates that States should “adopt immediate and positive measures (legislative, executive, administrative, budgetary and regulatory instruments, as well as plans, policies, programmes and preferential regimes)⁵ designed to eradicate all incitement to, or acts of, such discrimination” while the Committee’s general recommendation No. 35 (2013) on combating racist hate speech refers to “legislation to combat racist hate speech” and states that “provisions on dissemination of ideas of racial superiority are a forthright expression of the preventive function of the Convention and are an important complement to the provisions on incitement”. In that regard, the Federal Act on the Prevention and Elimination of Discrimination establishes two principles on the basis of which these international obligations are implemented.

15. Pursuant to article 20 (XXIX) of the aforementioned Act, the National Council for the Prevention of Discrimination is responsible for promoting the right to non-discrimination through information-sharing and awareness-raising campaigns and taking steps to prevent and eradicate hate speech in coordination with public institutions, the private sector and civil society organizations. Pursuant to article 20 (XXXII) of the Act, the Council is responsible for developing and disseminating content aimed at preventing and eliminating discriminatory practices and hate speech and encouraging the media to adopt such content.

16. Article 20 (XLVI) of the Act provides that the Council is empowered to implement the following administrative and reparation measures in cases where discriminatory acts and practices, including those referred to in article 83 bis,⁶ have been proven to have taken place.

- Restitution of the violated right. This reparation measure consists of a series of actions aimed at restoring the victim’s rights by re-establishing the situation prior to the violation of the right to non-discrimination.
- Compensation for harm caused. This reparation measure is considered when the violated right cannot be restored or when the parties reach an agreement. It consists of compensation, which may be monetary, for harm suffered as a result of a violation of the right to non-discrimination.
- Public reprimand. This reparation measure involves issuing a warning to perpetrators of discrimination that makes them aware of the consequences of the offence committed so that they may correct their behaviour and avoid repeating the actions, omissions or practices that gave rise to the violation of the right to non-discrimination.
- Public or private apology. This reparation measure consists of a statement made by perpetrators of discrimination, addressed to the victims, in which they assume responsibility for violating the right to non-discrimination. It may be public or private, depending on the nature of the case and the impact of the violation.
- Guarantee of non-repetition of the discriminatory act or social practice. This is a positive measure consisting of a series of actions to prevent future violations of the right to non-discrimination on similar grounds, and in similar areas, to those investigated in the complaint and to eliminate the root causes of such violations. The measures in question may include institutional and legal reforms to promote respect for and protection of the right to non-discrimination.

⁴ National Council for the Prevention of Discrimination. States that have an anti-discrimination clause in their constitutions or that have adopted an anti-discrimination law or criminalized discriminatory conduct. http://www.conapred.org.mx/index.php?contenido=pagina&id=505&id_opcion=650&op=650&id_opcion=651&op=651.

⁵ Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination (online). See https://conf-dts1.unog.ch/1%20SPA/Tradutek/Derechos_hum_Base/CERD/00_3_obs_grales_CERD.html#GEN35.

⁶ More information on this subject can be found in the guidelines governing the application of administrative and reparation measures in cases of discrimination: http://www.conapred.org.mx/index.php?contenido=pagina&id=528&id_opcion=670&op=.

17. Reparation measures are implemented in accordance with general recommendation No. 35 (2013), which states that “the criminalization of forms of racist expression should be reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, inter alia, the nature and extent of the impact on targeted persons and groups.”

18. Article 7 of the Convention, which is analysed in general recommendation No. 35, states that it is necessary to address the root causes of hate speech by adopting appropriate measures to eliminate racial discrimination, “particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups”.

19. In 2013, in order to meet the Committee’s recommendation, the National Council for the Prevention of Discrimination joined the global No Hate Speech Movement, which is organized by the Council of Europe. Through this campaign, the National Council has taken steps to prevent and combat hate speech in online and offline environments, thereby complying with general policy recommendation No. 15 on combating hate speech of the European Commission against Racism and Intolerance of the Council of Europe, adopted on 8 December 2015.

20. As a first step, the National Council implemented the “Without Tags” campaign (2014–2016), which sought to address discrimination and cyberbullying among young persons by publishing content on social media that related to tolerance and human rights in connection with racism, classism, xenophobia and other forms of discrimination.

21. Subsequently, in 2016, the National Council began promoting the Movement to Combat Hate Speech, which seeks to counteract online and offline hate speech targeted at groups subject to discrimination by creating inclusive narratives that foster dialogue.

22. This initiative responds to the need to counteract rising levels of online and offline hate speech targeted at groups subject to discrimination, including migrants, women and young persons. Its purpose is to mobilize young persons, community-based youth organizations, public institutions, private companies and all those interested in preventing and combating hate speech by providing them with training materials with which to develop projects in this field.

23. Through the creation of narratives and counter-narratives, and the use of recreational and theoretical tools by the Movement, steps are taken to debunk hate speech by breaking down the violent narratives that justify it and proposing non-exclusive visions of the world based on values rooted in human rights such as openness, respect for difference, freedom and equality.

24. Some of the activities carried out within the framework of the Movement to Combat Hate Speech in 2019 are listed below.

Relationship with the Sentinel Project

25. On 3 April 2019, a workshop on language, messages and hashtags containing hate speech was held as part of the collaboration undertaken between the National Council for the Prevention of Discrimination, acting through the No Hatred Movement, and the Sentinel Project of Canada. The information gathered from the workshop will be systematized for inclusion in the Hatebase platform.

26. In this exercise, steps were taken to create a basic repository of knowledge about the language used to exclude and restrict the human rights of groups that have historically been subjected to discrimination. This was achieved by establishing a dialogue between various social actors with a view to shedding light on hate speech in Mexico. A total of 13 people (4 men and 9 women) from social organizations with first-hand experience of hate speech took part in the exercise.

Awareness-raising and training activities

27. The Movement carries out awareness-raising and training activities for the general public and young persons belonging to particular organizations and social groups in order to enhance access to the information and tools required to combat hate speech.

- Workshop on hate expressions, speech and narratives in universities, held at the National Autonomous University of Mexico – Directorate General for Guidance and Educational Support
- Course entitled “Racism: related forms of intolerance and hate speech in social networks”, held at the University of the Cloister of Sor Juana as part of the seminar on gender studies
- Workshop on youth, hate narratives and non-discrimination, aimed at young persons participating in the School of Human Rights for Young Persons of the Fray Francisco de Vitoria Organization, Xalapa chapter
- Workshop on hate speech and the analysis of counter-narratives as a tool for combating hate speech and discrimination, aimed at social service providers at the School of Advanced Studies of Acatlán
- Discussion of educational measures and the work undertaken by the No Hatred Movement at the National Council for the Prevention of Discrimination, aimed at young persons participating in the “Get Stronger” programme organized by YAAJ and Asistencia Legal por los Derechos Humanos (Legal Aid for Human Rights)
- Course on hate narratives and young persons, aimed at persons belonging to the British Council network (international webinar)
- Hate narratives, speech and expressions: another online community, aimed at the administrators of the social networks of public institutions and social organizations
- Training teachers to deal with hate and the programme for young activists against hate narratives, Jalisco branch

Dissemination of information

28. Within the framework of the No Hatred Movement, the National Council for the Prevention of Discrimination continuously publishes information on countering discrimination on social media channels associated with national and international human rights days.

29. In 2019, on the dates of national and international events held in connection with human rights, the department of social communication produced and disseminated materials related to the Movement on the social media accounts of the National Council for the Prevention of Discrimination.

30. The manual “We Can! Taking Action against Hate Speech through Counter and Alternative Narratives” is a reliable working tool that the Movement can use to shape and deploy content for constructing alternative and counter-narratives.

Memorandum of understanding with Twitter

31. As the memorandum of understanding was signed on 21 September 2017, there is no information on the situation prior to that date.

32. The purpose of the memorandum is to:

- Establish a collaborative relationship between Twitter and the National Council for the Prevention of Discrimination with a view to creating a safe, secure and enjoyable environment for Twitter users
- Enable the National Council to put forward views that foster safe practices on Twitter in order to promote responsible digital citizenship
- Designate the National Council for the Prevention of Discrimination as a Twitter Safety Partner, enabling the Council to be recognized as an expert in the field of non-

discrimination that provides feedback to the company on equality and non-discrimination policies

- Ensure that steps are taken (campaigns, “chats for peace”, work on specific themes) to promote the work of the Council
- Ensure that priority attention is paid to the reports submitted by the Council on the misuse of the platform by users who make statements that might incite hatred on the grounds of race, ethnic origin, nationality, age, disability or illness so that they can be analysed by the Twitter team and appropriate action can be taken

Combating xenophobia

33. The Council is aware of the need to combat discrimination and xenophobia in society and has therefore produced and disseminated the following materials.

Myths and realities concerning migrants and refugees

34. As part of an information strategy to prevent xenophobia in the various contexts of migration, the Council has prepared a document entitled *Mitos y realidades sobre la Caravana Migrante y las personas refugiadas* (myths and realities concerning the migrant caravan and refugees), which explains seven myths or prejudices surrounding migration crises. This text examines expressions of xenophobia, racism and classism in connection with the migrant caravan with a view to breaking down the prejudices and stereotypes that fuel these expressions, thereby helping to debunk myths about migrants.

Workshop for media professionals and the staff of social communication offices

35. In coordination with the Institute of Social Communication and Public Relations of the state of Chiapas, two workshops were held on 22 January 2019. One of the workshops was aimed at the staff of the state government’s social communication offices, and was attended by 15 persons, while the other was aimed at that entity’s journalists and communicators and was attended by 25 persons.

36. The purpose of both workshops was to provide the participants with basic tools and knowledge of human rights and non-discrimination in order to enhance the entity’s ability to investigate, cover and report on events and occurrences related to migration from an anti-discriminatory perspective. The subjects on the programme included: “Discrimination: What is discrimination and how can it be identified?”, “Forums where discriminatory views are expressed”, “Human rights obligations” and “Xenophobia”.

Workshop on communication without discrimination

37. As part of the 2019 Border Book Fair, the theme of which was culture and diversity, the National Council for the Prevention of Discrimination, in conjunction with Arizona State University, held two workshops designed to equip communicators, journalists and the staff of State communications departments with basic tools and knowledge of human rights and non-discrimination in order to facilitate the investigation, coverage and reporting of migration-related events. The same workshop was held in Mexico City.

Follow-up information relating to paragraph 21 (b) of the concluding observations

The following information is provided in connection with this recommendation

38. The main purpose of the National Institute of Indigenous Peoples, as the federal executive authority responsible for indigenous and Afro-Mexican affairs, is to ensure the exercise and implementation of the rights of indigenous and Afro-Mexican peoples and the comprehensive and sustainable development of those peoples and the strengthening of their cultures and identities.

39. In connection with the above, the Institute has produced a document entitled *Derecho a la consulta libre, previa e informada de los Pueblos Indígenas. Bases, Principios y*

Metodología para su implementación en el marco de la Administración Pública Federal (The right to free, prior and informed consultation of indigenous peoples: the foundations, principles and methodology for its implementation within the framework of the federal administration). This document has been distributed to the various authorities of the federal Government, Congress and the federative entities, which are responsible for ordering, granting and/or authorizing administrative and legislative measures that may directly affect indigenous and Afro-Mexican peoples and communities.

40. Using this document as a guide, the National Institute of Indigenous Peoples acts as a technical advisory body in consultation processes at the federal level, issuing technical opinions on projects likely to affect indigenous peoples at the request of government agencies. It also provides advice and support related to indigenous and Afro-Mexican affairs to states, municipalities and public and private sector organizations that request it.

41. Within the framework of the democratic planning system, the National Institute of Indigenous Peoples is incorporating the Special Programme for Indigenous and Afro-Mexican Peoples (2020–2024) and the Institutional Programme (2020–2024) of the National Institute of Indigenous Peoples, in accordance with the criteria set out by the Ministry of Finance and Public Credit. The priority goal of both programmes is to guarantee that the rights of indigenous and Afro-Mexican peoples and communities are recognized and that these peoples can fully exercise their rights, including the right to self-determination, lands, territories and natural resources and the right to participation and consultation from a comprehensive, intercultural and gender perspective. In order to ensure that indigenous and Afro-Mexican peoples and communities may fully exercise their rights, it is essential to strengthen mechanisms enabling them to participate in, and be consulted about, decisions that affect their development and well-being.

42. Pursuant to article 6 of the National Institute of Indigenous Peoples Act, the Institute is governed by the principle that the indigenous and Afro-Mexican peoples and communities must be able to exercise the right to consultation and free, prior and informed consent whenever the federal executive branch carries out legal reforms and administrative actions that may affect them.

Follow-up information relating to paragraph 31 (b) of the concluding observations

The following information is provided in connection with this recommendation

43. The mechanism for the protection of human rights defenders and journalists protects the rights of these groups. Such protection is afforded in accordance with a public policy coordinated by the Ministry of the Interior.

44. Since 2018, the number of cases dealt with by the mechanism has risen considerably. A total of 422 and 485 cases were recorded in 2018 and 2019, respectively, representing a considerable increase on the number registered from 2013 to 2016, when only 409 cases were addressed. In other words, 16 per cent more cases were dealt with in 2019 than in the whole of the period from 2013 to 2016.

45. This increase has occurred because there is greater trust in the institutions of the new Government, because various media outlets have raised the mechanism's profile, and because closer ties have been established with civil society organizations and particular sectors of society. As the mechanism is overseen by the Office of the Under-Secretary for Human Rights, Population and Migration of the Ministry of the Interior, it has become the gateway for addressing various social situations that have required attention for decades.

Persons under the protection of the mechanism

46. In 2019, more cases were registered under the mechanism than in any other year in its history (184 cases, or over 50 per cent more than the 74 cases registered in 2018).

47. As at 31 July 2020, 75 cases have been registered, of which 43 correspond to human rights defenders and 32 to journalists. As of May 2020, 1,282 persons (405 journalists and 877 human rights defenders) are receiving protection under the mechanism.

48. At the start of the current administration, the number of beneficiaries of the mechanism stood at 798. Since then, an additional 484 persons have been added, representing an increase of over 50 per cent.

Protective actions

49. The protection department of the Executive Coordination Office is made up of the reception and early response unit and the risk assessment unit.

50. During this period, a range of actions have been taken to ensure that:

- An immediate response is provided to all requests for intervention
- Cases are registered swiftly
- Risk analyses are prepared using a differential, gender-sensitive approach
- Cases are dealt with at the state level
- Individualized follow-up plans are used to guarantee timely follow-up of the protection measures determined by the governing board

Preventive actions

51. Prevention involves making a commitment to address the situations of risk in which human rights defenders and journalists find themselves. As the main focus during this period has been on developing a public policy to address this issue, the mechanism convened government officials and organizations and representatives of civil society to outline an agenda for dealing with situations of risk and incidents indicative of attacks against human rights defenders and journalists.

52. Steps have been taken to repeal the legislation that criminalized the work of human rights defenders in Hidalgo; monthly reports of patterns of attacks against journalists and human rights defenders around the country have been drawn up; state-level analyses of the situation of human rights defenders and journalists in the states of Puebla, Veracruz and Guanajuato have been published, and state scorecards containing information on the local context in relation to the groups to be protected have been issued.

Consolidation measures and international cooperation

53. At the request of the Ministry of the Interior, the Office of the United Nations High Commissioner for Human Rights in Mexico conducted an evaluation of the mechanism that was submitted to the governing board in July 2019. As a result, 104 recommendations on strengthening the mechanism were issued to the Mexican State, autonomous bodies, and the mechanism's Executive Coordination Office.

54. The mechanism is taking a number of measures to address these recommendations. Measures have been taken to implement them as a matter of priority since they were issued. Specific measures have already been established that have strengthened the mechanism as an institution, including the implementation of a risk-analysis methodology with a differential, gender-sensitive approach that takes into account the cultural, regional and gender-related differences that may affect indigenous peoples and the Afro-Mexican community. Other measures include streamlining services, increasing the number of staff and strengthening cooperation with the states.

55. In this regard, the European Union, the United States Agency for International Development and the British Embassy have supported efforts to develop institutional strengthening projects.

56. As of July 2020, two consultations have been scheduled, with the assistance of the United Nations High Commissioner for Human Rights, with a view to addressing the issues

currently on the mechanism's agenda, including work on a community-based, state-level system for dealing with collective cases, with the involvement of civil society.

Budget

57. With respect to budgetary or financial resources, more resources were allocated to the mechanism in 2019 and 2020 than in any other years in its history. In that regard, the following amounts were allocated:

- 2019 – 369.1 million Mexican pesos.
- 2020 – 414.6 million Mexican pesos.

58. The above figures have been sufficient to allow protective actions to be taken.

Participation of the National Institute of Indigenous Peoples

59. In order to ensure that actions are mainstreamed and coordinated, the National Institute for Indigenous Peoples participates in and assists the mechanism for the protection of human rights defenders and journalists in line with its competence and responsibilities.
