



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Ninety-eighth session

#### Summary record (partial)\* of the 2688th meeting

Held at Headquarters, New York, on Tuesday, 9 March 2010, at 3 p.m.

*Chair:* Mr. Iwasawa

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Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

*Fifth periodic report of Mexico (continued)*

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\* No summary record was prepared for the rest of the meeting.

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*The meeting was called to order at 3.10 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant** *(continued)*

*Fifth periodic report of Mexico (continued)*  
(CCPR/C/MEX/5; CCPR/C/MEX/Q/5 and Add.1)

1. *At the invitation of the Chair, the members of the delegation of Mexico took places at the Committee table.*

2. **The Chair** invited the members of the delegation to continue replying to the questions on the list of issues.

3. **Mr. Negrín Muñoz** (Mexico), responding to question 19 on the list of issues, said that the Public Prosecutor's Office for Investigation into Special Affairs had conducted a pretrial investigation into the complaint filed by Ms. María de la Luz Torrijos Villaseñor, legal counsel for the Human Rights Commission of the Federal District, against Mr. Hans Von Herrera for allegedly accessing the Commission's web server through illegal means. On 8 October 2009, following presentation of the evidence, it was decided not to institute criminal proceedings; the complainant, duly informed of the decision, had not filed objections. With regard to the alleged destruction of mail belonging to the non-governmental organization Servicios y Asesoría para la Paz, no complaint had been received.

4. Turning to question 20 on the list of issues, he said that while Mexican law did not recognize conscientious objection as grounds for exemption from military service, the Ministry of National Defence was authorized to excuse anyone who did not satisfy the conditions for military service, which covered physical, moral or social impediments.

5. On the issue of freedom of expression, he said that various alternatives to better protect journalists were under discussion, including strengthening the work of the Office of the Special Prosecutor for Crimes against Journalists and the National Human Rights Commission. A recent draft decree proposed to add a section entitled "crimes committed against freedom of expression" to the Federal Penal Code and to create a new criminal category for illegal acts aimed at hindering, limiting, endangering or interfering with journalism. The draft decree had been adopted by the Chamber of Deputies in April 2009 and was currently

being considered by the Senate. In April 2007, the offences of calumny and defamation had been abolished in the Federal Penal Code. Currently, the Federal District and 13 of Mexico's 31 states had carried out reforms to bring their legislation into line with those amendments, and the process had been launched in a number of other states.

6. In respect of the National Human Rights Commission's recommendation No. 7, the Commission had implemented a programme to respond to attacks upon journalists and human rights defenders, which interacted directly with the communications sector and civil society to foster the creation of mechanisms for the protection of journalists' human rights. The programme had resulted in the opening of 492 cases thus far. The Congress of the Union, moreover, had approved a legal reform to guarantee the right of journalists not to reveal their sources. The functions of the Office of the Special Prosecutor for Crimes against Journalists, established in 2006, were to conduct investigations into cases involving crimes against Mexican journalists and crimes committed in Mexican territory against foreign journalists. The Office employed 24 civil servants and, as of July 2009, had dealt with 305 cases.

7. Responding to question 24 on the list of issues, he said that the trafficking and abuse of minors and child pornography were indeed treated as crimes in all the states (federative entities) of Mexico. Trafficking in persons and the prostitution of minors were criminalized under article 138 of the General Population Act and the Law to Prevent and Punish Trafficking in Persons, respectively. Between 2005 and 2008, the National Institute for Migration had identified 78 potential victims of human trafficking. A unit had been established exclusively to protect migrant children along the border and in migrant holding centres. The unit's employees assessed the need for international protection for refugees and victims of domestic violence and trafficking; notified consulates of situations involving nationals of their countries; and ensured that children were given medical care and accompanied them to their final destination if necessary. The "From the Streets to Life" programme sought to improve coordination between the public, private and social sectors working with street children and their families in order to contribute to medium- and long-term solutions. As of 2008, the programme, which was run by state committees, had

provided care to 23,000 street children and funding to 76 civil society organizations; it had also granted 1,814 scholarships and financed targeted projects for some 20,000 beneficiaries.

8. A number of initiatives were under way to promote political participation by indigenous peoples. The constitutional reform establishing the rights of indigenous peoples in 2001 had led to similar changes in local legislation. At the federal level, the National Programme of Action for the Development of Indigenous Peoples carried out activities to boost the involvement of indigenous communities in their own development and to assist them in learning about and exercising their rights.

9. Since submitting its fourth periodic report, Mexico had taken several significant steps in respect of the international human rights system, including establishing the National Human Rights Commission, recognizing the competence of the Inter-American Court of Human Rights to settle disputes, and extending an open invitation to human rights mechanisms and special procedures to visit Mexico.

10. Human rights information was regularly circulated among a network of institutions, including the Office of the High Commissioner for Human Rights in Mexico, the National Human Rights Commission, independent state-run human rights bodies and universities that offered programmes specializing in international human rights standards. Furthermore, the Covenant was regularly invoked by the judiciary in Mexico in handing down decisions. The Government itself circulated information about the Covenant through various means; in that connection, he highlighted the fact that no fewer than 24 institutions had contributed to the periodic report under consideration. The report had been presented and distributed at the July 2008 session of the Commission on Government Policy on Human Rights, which enjoyed the participation of representatives of Government institutions and civil society alike.

11. **Sir Nigel Rodley** said that it was important to ensure that the State party's commitment to comply with its obligations under the Covenant led to the protection of human rights in practice. Despite the range of measures taken to prevent torture, such abuse still occurred; it was difficult to understand why Mexico had not acted on the recommendations issued by international bodies such as the Committee against

Torture. Moreover, the answer to his previous question on the burden of proof had been less than encouraging: he wished to know whether the burden was in fact on the authorities to show that a confession had been made freely, but the reporting State had merely indicated that judges could exercise discretion in determining how confessions had been obtained.

12. On the issue of *arraigo*, he would like to know whether the State party had put in place safeguards to ensure the rights of detainees, particularly since individuals were not normally brought before a judge prior to the issuance of an *arraigo* order (CCPR/C/MEX/5, para. 327). The delegation should also clarify whether a person could indeed be detained by the military for up to five days before an *arraigo* order was even sought, as indicated in reports received by the Committee. He would appreciate clarification on the nature of evidence needed by a judge to issue an *arraigo* order, as it had been suggested that the mere assertion of an anonymous denunciation in respect of an individual was sufficient. He enquired as to whether detainees were always held in the Federal Investigations Centre referred to in Mexico's written replies to the list of issues, or whether they were sometimes held in informal locations, such as hotels or military barracks. If the latter was not standard practice, it would be interesting to learn whether the State party was aware of cases in which that had allegedly happened. Additional information would also be appreciated regarding cases of torture related to the *arraigo* process that had been referred to the Inter-American Commission on Human Rights and that had involved police officers in Tijuana.

13. Noting that Mexico currently ranked sixth in the world in terms of the rate of incarceration, with particularly high percentages of women prisoners, he enquired about measures to successfully address the problem of overcrowding in order to guarantee the rights of persons deprived of their liberty.

14. **Mr. Salvioli** said that he would welcome additional information on individuals' enjoyment of due process, including access to legal counsel, during deportation hearings under the draft decree providing for various amendments to the National Constitution in the area of human rights. Regarding the significant number of journalists who had been subjected to intimidation tactics, it would be useful to learn whether anyone had been convicted of such crimes. He would also like to know how Mexico planned to bring state

legislation into line with federal legislation abolishing the offence of defamation. While commending the State party for its planned reforms to protect the rights of indigenous peoples, he wondered which reforms had been actively implemented thus far. It would be interesting to learn, moreover, whether Mexico planned to establish the right of consultation as a basic right of indigenous peoples.

15. **Mr. Rivas Posada** thanked the delegation for the additional information it had provided in respect of question 19 on the list of issues, noting that the Committee's primary concern had been to ascertain whether the Mexican Government was familiar with the complaints in question.

16. With regard to compulsory military service, he said that while conscientious objection was not explicitly referred to in the Covenant, the Committee's jurisprudence was consistent in interpreting article 18 to mean that the basic right to freedom of conscience should be extended to conscientious objection as grounds for exemption from military service. Therefore, the State party, which admitted that such grounds were not provided for under its law, was not in full compliance with its obligations under the Covenant. The fact that the Ministry of National Defence could, at its discretion, exempt some individuals from service for religious, moral or social reasons, was not sufficient; the right to conscientious objection must be specifically recognized by law. Noting that the current trend in the international community was to recognize the right to conscientious objection by offering alternatives to military service, he stressed that non-military community service must not be punitive, as that, too, would be contrary to the Covenant's aims and objectives.

17. **Ms. Chanet** echoed the concerns expressed regarding the State party's failure to recognize the right to conscientious objection. Moreover, its assertion that flexibility in completing military service could be granted especially in respect of students seemed discriminatory. She hoped that legislation would be adopted to fully recognize the right to conscientious objection for all.

18. With regard to freedom of expression, she asked whether the legislative amendments adopted at the federal level were also in force in the federative entities. It would also be useful to learn whether honour killings continued to occur. If defamation was

no longer considered an offence under the Federal Penal Code, why did it continue to be listed as a crime in Mexico's written reply to question 22 on the list of issues (CCPR/C/MEX/Q/5/A, para. 244)? The situation of human rights defenders was of great concern to the Committee. As programmes aimed at merely reducing the risk of being attacked had proved insufficient, the reporting State should instead consider personal protection measures, such as providing journalists with bodyguards. It was puzzling to read in Mexico's report that although the activities of the Office of the Special Prosecutor for Crimes against Journalists had intensified, very few of the serious complaints brought by journalists had led to the institution of criminal proceedings, much less to convictions. She would like to know what steps Mexico planned to take to deal more effectively with the issue of journalists' safety. Lastly, she would welcome details on the budget, the functions and the jurisdiction assigned to the Office of the Special Prosecutor for Crimes against Journalists.

19. **Ms. Motoc** said that according to information received by the Committee, defamation was still treated as a crime in 19 states; she would like to know how the federal Government of Mexico planned to ensure that state legislation adequately reflected the abolishment of that offence. Turning to the issue of indigenous peoples, she asked what measures had been taken to implement the United Nations Declaration on the Rights of Indigenous Peoples. It would be useful to learn whether projects involving land belonging to indigenous peoples required their free and informed consent. Additional information on the situation of indigenous peoples in prison and of indigenous children would also be welcome.

20. **Mr. Pérez Sánchez-Cerro** expressed concern that detainees were not guaranteed the right to defend themselves under the *arraigo* process: indeed, not only did an *arraigo* order impose detention before an investigation and not vice versa, but it could also be issued for up to 80 days, without the accused necessarily being brought before the judge prior to issuance of the order, and entail solitary confinement. Given the potentially arbitrary nature of *arraigo*, it was considered incompatible with the Covenant; he therefore urged the reporting State to eliminate the practice. Turning to the issue of military justice, he stressed that violations of human rights committed by military personnel should always be heard by the ordinary, and not military, courts, as military crimes

should be limited to offences relating to the military function.

21. He reiterated the concerns expressed previously regarding the journalists whose recent murders had not been sufficiently investigated, as well as those regarding the continued treatment of defamation as an offence, which undoubtedly stymied freedom of expression. The reformed Federal Penal Code did not give the federal authorities the power to investigate crimes such as the murders of journalists, but rather left such responsibilities to state authorities; in fact, neither the federal nor the state authorities appeared to have the resources necessary to implement the law. It was nonetheless the responsibility of States parties to ensure implementation of the Covenant regardless of their administrative and legal structure; Mexico must therefore take steps to ensure the incorporation of federal law into state law.

22. **Mr. Gómez Sánchez** (Mexico) said that under no circumstances could a judge consider evidence that had been obtained through torture, nor could he accept testimony that had not been given in the presence of legal counsel, the public prosecutor or a judge. Reiterating that the burden of proof was not placed on the accused in cases of torture, he said that, in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), judges were authorized to take any steps necessary to ascertain the facts in allegations of torture.

23. Furthermore, under no circumstances were judges to issue *arraigo* orders solely on the basis of an anonymous denunciation. *Arraigo* was a preventive measure applied mainly in situations in which the accused was believed to pose a significant threat if allowed to remain free pending trial. Although an *arraigo* order could be issued in the absence of the accused, he or she had recourse to legal measures to have the order lifted. The evidence required by judges under the *arraigo* process was in no way arbitrary, as an order was issued only when sufficient proof was given that the accused was probably responsible for the crime.

24. The basic rights of detainees under the *arraigo* process were guaranteed by law: detainees were never held in hidden locations and were always ensured comfortable accommodation and access to medical

professionals. They were never held incommunicado and could, at any time, request the lifting of the *arraigo* order or request an action for *amparo*. The obligations imposed on the Office of the Public Prosecutor in respect of detainees' rights reduced the risk of abuse to a minimum. If abuses did occur, steps were taken immediately to investigate the events and to take administrative and/or criminal sanctions against those individuals responsible.

25. **Mr. Pérez** (Mexico) said that the so-called "control points" or roadblocks were not used as detention centres; their main function was to prevent crime, especially arms and drug trafficking. Under the Constitution, the need for such measures must be demonstrated and, once adopted, they must be carried out within a stringent legal framework. The Supreme Court of Justice had ruled that control points did not violate the right to liberty of movement provided for under article 11 of the Constitution, because, among other things, they did not involve such restrictive measures as safe-conduct papers. Control point officers were required to comply with specific protocols; any abuse was subject to investigation by the National Human Rights Commission and the courts. In an effort to prevent human rights violations, the Government of Mexico had signed an agreement with the International Committee of the Red Cross to train control point officers in the use of force and firearms. Participation of the armed forces in the maintenance of public security was limited to combating organized crime. Ordinary crime and situations such as demonstrations were handled by the civilian police.

26. To address the issue of overcrowding in prisons, the Government of Mexico continued not only to build new establishments, but also to promote alternatives to serving full prison sentences, such as probation, conditional discharge and community service. Recognizing the importance of implementing strategies to prevent and combat crime, a number of ministries had developed initiatives as part of a comprehensive strategy launched under President Calderón. Foremost among such initiatives was a new police work model proposed by the Ministry of Public Security on the basis of scientific studies on crime, which promoted strict standards of professionalism and regular inspections throughout the careers of police officers.

27. **Mr. Durán Ortigón** (Mexico) said that a number of reforms on indigenous peoples' rights had already been adopted and implemented at the federal level. The

process of harmonizing federal, state and local laws was ongoing: 23 local constitutions contained provisions regarding the rights of indigenous peoples, of which 15, having been adopted after 2001, were in conformity with article 2 of the Constitution of Mexico, amended that same year. The Congress of the Union was planning to establish a committee on legislative harmonization and to organize a technical round table with the National Commission for the Development of Indigenous Communities.

28. Ensuring indigenous peoples' right to consultation at all levels of government was an established priority in Mexico. A number of initiatives had been launched, including a pilot project to assist indigenous communities with the development of projects on their land. Communities had consistently been consulted on projects through the National Commission for the Development of Indigenous Communities; furthermore, a Consultation of Indigenous Communities Act was being drafted that would ensure the rights of indigenous peoples at the highest level. The Government had taken steps to widely disseminate the United Nations Declaration on the Rights of Indigenous Peoples, including through the Indigenous Cultural Broadcasting System. More than 200 workshops had been held and a brochure on the Declaration had been published in 18 indigenous languages. Some 7,000 copies of the brochure had already been distributed to organizations involved in the programme to promote agreements in the area of justice and the National Commission for the Development of Indigenous Communities was working with the United Nations Development Programme to expand distribution.

29. Resources devoted to improving the situation of indigenous peoples in Mexico had seen a significant increase since President Calderón had assumed office and virtually all Government institutions had developed related programmes. The Ministry of Social Development had created a programme specifically for indigenous children which provided vocational training, scholarships, food assistance and health. Other major initiatives included the maintenance of indigenous boarding schools, a large number of which had been renovated recently; the operation of mobile medical clinics; and the construction of a hospital specializing in the use of alternative medicines. The Government promoted a development policy that took into account indigenous identity: rather than imposing

a single model on communities, it allowed them to develop their own projects and merely provided the resources and guidance necessary to make them a reality.

30. **Mr. Chávez García** (Mexico) said that military service in Mexico had evolved significantly since its establishment in 1942 during the Second World War, from strictly military activities to primarily community service activities. While the right to conscientious objection was not recognized in Mexico, the law did establish exceptions for which individuals could be exempted from service. He reiterated the fact that to date there had not been a single case of conscientious objection; however, those individuals required to do service could always opt for purely community service.

31. **Mr. Guevara Bermúdez** (Mexico) said that freedom of expression was a basic requirement for effective rule of law and democracy. The Government of Mexico condemned all attacks against the life and integrity of journalists and was working towards establishing mechanisms to protect their rights more effectively. Mexico's federated structure made it difficult to ensure the adequate investigation of alleged crimes against journalists in all the states and the incorporation of federal amendments, such as the abolishment of defamation and calumny as crimes, into state legislation. That said, the Government recognized its obligations under the Covenant and would seek to convey the importance of such matters to the federative entities. On the issue of the draft decree on constitutional amendments regarding human rights, he said that while it would be premature to provide details, due process during deportation hearings would undoubtedly be guaranteed in the legislation.

32. **Ms. de la Madrid** said that if an individual undergoing the *arraigo* process claimed to have been tortured, the medical expert in the case was obliged to inform the Office of the Public Prosecutor, which in turn was bound by law to institute a separate hearing for the alleged torture case. The physicians and psychologists who had developed the training material on adapting the Istanbul Protocol to the national context in Mexico had expert qualifications, as they had been involved in the drafting of the Protocol itself. As for the cases of alleged torture by police officers in Tijuana referred to the Inter-American Commission on Human Rights, she said that a meeting would be held shortly regarding the implementation of preventive measures requested by the Commission.

33. In order for a crime to be referred to the Office of the Special Prosecutor for Crimes against Journalists, a number of conditions had to be met: the person against whom the crime was committed must be a qualified journalist; the crime must constitute a violation of the right to information or the freedom of press; and the crime must be defined as such under the Federal Penal Code. The Office of the Special Prosecutor for Crimes against Journalists was not competent to handle cases of organized crime and transferred any such cases to the Office of the Deputy Public Prosecutor for Investigation of Organization Crime. Nor did it prosecute criminal cases involving ordinary offences; however, the Public Prosecutor's Office closely monitored such cases and assisted with their investigation.

34. A number of proposals had been made in recent years to reform the legislation in order to expand the rather limited competence of the Office of the Special Prosecutor. In addition, efforts were under way to comply with recommendations made by the Inter-American Court of Human Rights and the principles set out by the Inter-American Commission on Human Rights for States on defending representatives of the press and to guarantee the effective enjoyment of the right to information, the freedom of expression and the freedom of the press. The Office of the Special Prosecutor had adopted measures to protect the personal safety of journalists whenever necessary and was working with civil society to develop a protocol for the protection of journalists at risk. Lastly, the Federal Law on Transparency and Access to Public Government Information, which provided public access to Government information, had been adopted in 2002.

35. **Sir Nigel Rodley** said that he would appreciate additional information on the nature of the evidence required to sustain an *arraigo* order, which was presumably less than that necessary to sustain a formal criminal charge. While it was reassuring to receive confirmation that detainees were not held in secret detention, further information on the types of informal locations they could be held in, including military barracks, if applicable, would be appreciated. As for alleged abuses during the *arraigo* process, details on cases of abuse in which those responsible had in fact been tried and punished would be welcome. In particular, he would be grateful for a response to his query about the holding of individuals for up to five

days before an *arraigo* order was sought. Assuming that such action constituted illegal detention, it would be useful to learn what measures had been taken against those responsible. In that connection, he wondered how civilian judges were able to ensure that appropriate sanctions were taken against military personnel who committed such abuses, in light of the special military jurisdiction.

36. **Ms. Motoc** requested additional information on the consultation of indigenous people in respect of development projects on their land. In particular, it would be useful to learn whether any opposition from the indigenous communities was taken into account and whether consensus was needed to proceed with the project.

37. **Mr. Lallah** said that the fact that Mexico had developed a number of programmes relating to the risks facing journalists and human rights defenders did not necessarily allay the Committee's concern for their safety, as such persons continued to be killed on a regular basis. He therefore wished to know what specific measures, whether part of or separate from the previously described programmes, were being implemented to ensure their safety.

38. With regard to the community service activities of the military, the State party should indicate whether such fusion of military and civilian authorities was compatible with articles 2 and 14 of the Covenant. Was the military under military or civilian jurisdiction when carrying out non-military activities? He would like to know whether civilian victims could seek remedy if the military, while carrying out such activities, committed human rights violations, and if so, whether it was from the military or the civilian courts. He would also welcome additional information on whether the procedure for appointing military judges differed from that of appointing civilian judges, and on how their independence from the appointing authorities was ensured. He hoped that, in its subsequent report, the reporting State would provide more specific information on the division between military and civilian in relation to articles 2 and 14 of the Covenant.

39. **Mr. Gómez Sánchez** (Mexico) said that judges were extremely demanding with regard to the evidence required for an *arraigo* order. The evidence must show with a very high level of certainty that the accused was probably responsible for the crime in question. While the vast majority of detainees under the *arraigo*

process were held in the Federal Investigations Centre located in the Federal District, they could, for reasons relating to their health or safety, be held in other establishments, such as hospitals. Ensuring detainees' human rights was a major priority; in the event of an alleged violation of those rights, the detainee's complaint was closely investigated, as was the compliance of the Public Prosecutor's Office with all the conditions necessary to ensure the protection of the detainee's rights. He would supply in written form statistics on persons having undergone the *arraigo* process so that the Committee might have a more comprehensive understanding of the practice and, it was hoped, its effectiveness.

40. **Ms. de la Madrid** (Mexico) said that in the few cases in which a detainee under an *arraigo* order was held in a facility other than the Federal Investigations Centre, it was usually for a short time, pending his or her transfer to the Centre. In those cases, the security and logistics of the facility must not be inferior to those of the Federal Investigations Centre, conditions that were closely examined by the judge issuing the *arraigo* order. The personnel who supervised the detainees at the Centre were held to the strictest standards, including with regard to the protection of human rights, and the Centre itself boasted cutting-edge technology and facilities which guaranteed high-level security and the safety of the detainees.

41. **Mr. Durán Ortegón** (Mexico) said that the National Commission for the Development of Indigenous Communities required that communities be consulted before an outsider could proceed with any project on their land. However, because that was not always the case for other institutions, the Commission had actively promoted the drafting of the previously mentioned Consultation of Indigenous Communities Act. The Act proposed to set up a regulatory framework that respected the actions and rights of indigenous communities and to establish a policy of consultation of those communities.

42. **Mr. Chávez García** (Mexico) said that compulsory military service, in which community service was used to cultivate certain values in youth, should be distinguished from voluntary or professional military service that prepared adults for war situations. The individuals in the latter group were subject to special military jurisdiction, whereas the former were not. When professional soldiers committed crimes, they were subject to investigation, trial and sentence by

the military courts. The Minister of National Defence was responsible for appointing military judges. Their independence was ensured by a number of mechanisms under the Code of Military Justice, which characterized arbitrary or politically motivated decisions as serious offences.

43. **Mr. Guevara Bermúdez** (Mexico), while recognizing that the mechanisms currently in place to protect journalists and human rights defenders were imperfect, said that when the Government became aware of a threat to a journalist's life or well-being, the police were requested to assist with measures to ensure the journalist's protection. Possible measures included investigations, the use of surveillance cameras and walkie-talkies; the journalist decided together with the police which measures were most appropriate. Some 25 such measures were currently being implemented in Mexico.

*The discussion covered in the summary record ended at 5.45 p.m.*