

INTERNATIONAL
CONVENTION
ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATION



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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
27-second session

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CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Third periodic reports of States Parties due in 1980

Addendum
MEXICO 1/

[16 May 1980]

Pursuant to article 9 (1) of the Convention, it should be emphasized that Mexico does not face any problem that can be regarded as directly related to the matters covered by the International Convention, since the guiding principle of the equality of all persons before the law is incorporated into the 1917 Political Constitution of the United Mexican States.

Mexico's second report, submitted in 1978, not only indicated the legislative and judicial measures adopted but underlined the intention of achieving effective implementation of the provisions of the Convention; it also contained extremely detailed information on Mexico's indigenous populations.

The present document, which constitutes Mexico's third periodic report, will be specifically directed towards clarifying the points queried by the Committee during its consideration of the second report and, in accordance with its wishes, providing the fuller information requested. Reference will consequently be made to all those measures which are connected principally with articles 4, 5 and 6, as the members of the Committee expressed satisfaction with the detailed information presented in the second report in connexion with article 7.

With regard to article 3 of the International Convention, which specifically condemns racial segregation and apartheid, Mexico's position is very well known; the information already given on this subject, it is relevant to add that Mexico ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid in 1980.

1/ For the previous reports submitted by the Government of Mexico and the summary records of the meetings of the Committee at which they were considered, see:

- (1) Initial report - CERD/C/R.85/Add.2 (CERD/C/SR.303);
- (2) Second periodic report - CERD/C/16/Add.1 (CERD/C/SR.411-412).

It should be pointed out that, in accordance with article 133 of the Political Constitution of the United Mexican States, that Convention, upon ratification, acquired the status of Supreme Law of the entire Union. The article in question states:

"This Constitution, the laws of the Congress of the Union enacted thereunder, and all treaties in accordance therewith already entered into or which, in the future, may be entered into by the President of the Republic, with the approval of the Senate, shall be the Supreme Law of the entire Union. The judges of every State shall be bound by this Constitution and by these laws and treaties, notwithstanding any conflicting provisions in the Constitutions or laws of the States."

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination

With regard to article 5 of the Convention, referring to the obligation of States Parties to incorporate into their respective laws the general content of the rights embodied in the Universal Declaration of Human Rights, as has already been stated, this has been done by including various provisions in different laws.

However, the basis of compliance with this requirement is the 1917 Political Constitution of the United Mexican States, title 1, chapter I of which, entitled "Individual Guarantees", incorporates in the first 29 articles of the Constitution the scope of the individual public rights generally provided for in the United Nations Declaration of 1945. (A copy of the Political Constitution of the United Mexican States is attached as an annex.)

On the basis of the full equality of the inhabitants of the Republic before the law, article 5 of the Constitution guarantees freedom of work. The first paragraph states as follows:

"No one shall be prevented from engaging in the profession, industrial or commercial pursuit or occupation of his choice, provided it is lawful. The exercise of this freedom shall be forbidden only by judicial decision, when the rights of third parties are infringed, or by administrative order, issued in the manner provided for by law, when the rights of society are violated. No one shall be deprived of the fruits of his labour except by judicial decision."

Further on, the article provides that the State cannot permit the execution of any agreement or covenant having as its object any restriction, loss or irrevocable sacrifice for the individual. It also states that a contract of employment shall only oblige the worker to render the services agreed upon for the time set by law, such period never to exceed one year to the detriment of the worker, and shall in no case entail the waiver, loss or restriction of any civil rights.

The general constitutional framework for labour having been established, attention is drawn to article 123 of the Constitution, establishing labour policy.

In the present case, and having regard to the equality provided for in article 1, particular mention should be made of article 123, section VII, establishing equal pay for equal work; without regard to sex or nationality. Non-discrimination among all inhabitants of the national territory is thus established at the constitutional level.

The law regulating article 123 of the Constitution, which has been in force since 1970, also establishes as a general principle that any distinction between workers on grounds of race, sex, age, religious or political belief or social status shall be prohibited.

It will be seen from the foregoing that, as far as labour relations are concerned, every individual has the same rights and obligations and that in no circumstances and for no reason may he be deprived of rights which he enjoys.

It should also be emphasized that the Federal Labour Law, on the subject of pay, regulates the constitutional principle of equal pay for equal work, job performance, length of working day and efficiency also being equal.

Freedom of work is regulated by article 4 of the Federal Law, under which no one may be prevented from working or from engaging in any profession or industrial or commercial pursuit of his choice, provided it is lawful.

Under article 123 of the Constitution, in connexion with article 6 of the Federal Labour Law, the 56 conventions of the International Labour Organisation ratified by Mexico form part of federal labour legislation. Particularly noteworthy, for the purposes of this report, are Convention No. 19 concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents, which entered into force for Mexico on 21 May 1934, and Convention No. 118 concerning Equality of Treatment of Nationals and Non-Nationals in Social Security, which has been in force for Mexico since 6 January 1979.

Likewise, in the field of education, the Constitution establishes the equality of races as a fundamental principle to be observed. Its article 3 provides as follows:

"The education to be imparted by the State - Federation, States or Municipalities - shall serve to develop harmoniously all the abilities of the individual and at the same time shall foster in him a love of his country and an awareness of international solidarity, in a spirit of independence and justice.

I. Freedom of belief being guaranteed by article 24, the approach governing such education shall be completely detached from any religious doctrine and, based on the results of scientific progress, shall combat ignorance and its effects, oppression, fanaticism and prejudice.

...

(c) It shall serve to improve human relations, not only by its contribution to instilling in the pupil, together with an appreciation of personal dignity and family integrity, an awareness of the general interest of society, but also by careful promotion of the ideals of the brotherhood and equality of rights of all men, to the exclusion of privileges for any particular race, sect, group, sex or individual."

Equality is thus established as an individual guarantee incorporated into our fundamental Law, with no discrimination whatsoever.

Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination

In connexion with the obligations specified in article 6 of the International Convention, the Political Constitution states as follows:

Article 1. "Everyone in the United Mexican States shall enjoy the guarantees granted by this Constitution, which shall not be restricted or suspended except in such cases and under such conditions as are herein provided."

Article 2. "Slavery is forbidden in the United Mexican States. Slaves who enter the national territory from abroad shall, ipso facto, gain their freedom and enjoy the protection afforded by the laws."

Article 12. "No titles of nobility, prerogatives or hereditary honours shall be granted in the United Mexican States, nor shall any effect be given to those granted by any other country."

Article 16. "No one shall be subjected to interference with his person, family, domicile, papers or possessions except by virtue of a written order of the competent authority stating the legal grounds and justification for the action taken. No order of arrest or detention shall be issued against any person other than by a judicial authority, and unless the same is preceded by a charge, accusation or complaint in respect of a specific act punishable by imprisonment, supported by a statement under oath by a reliable person or by other information indicating the probable guilt of the accused, except in cases of flagrante delicto, where anyone may apprehend the offender and his accessories, turning them over forthwith to the nearest authority. Only in urgent cases, when there is no judicial authority in situ and offences which are automatically subject to prosecution are involved, may the administrative authorities, acting on their own strict responsibility, order the detention of the accused, turning him over immediately to the judicial authority. Search warrants may be issued only by the judicial authority, must be in writing and shall specify the place to be searched, the person or persons to be arrested and the objects sought, the proceedings to be limited thereto, on the conclusion of which a detailed statement shall be drawn up in the presence of two witnesses proposed by the occupant of the place searched or, in case of the absence or refusal of the latter, by the official carrying out the search.

Administrative officials may enter private houses only for the purpose of ensuring that health and police regulations have been complied with and may demand to be shown the books and documents required to prove compliance with tax regulations, in which cases they must abide by the provisions of the relevant laws and the prescribed search procedures."

Article 17. "No one may be imprisoned for debts of a purely civil nature. No one may take the law into his own hands or resort to violence in the enforcement of his rights. The courts shall administer justice promptly, within such time-limits and on such conditions as may be established by law; their services shall be free of charge and all judicial costs are, accordingly, prohibited."

As far as the Law of Amparo is concerned and in response to the concerns expressed by the Committee in document A/34/18, it must be pointed out that amparo, rather than a remedy, is a separate proceeding whose principles are established in articles 103 and 107 of the Constitution and are regulated by the Law of Amparo, proceeding which amounts to a check on any violation of the Constitution by the authorities. Those articles provide as follows:

Article 103. "The Federal Courts shall settle any dispute which may arise as a result of:

- I. Laws or acts of the authorities that violate individual guarantees;
- II. Laws or acts of the federal authorities impairing or restricting the sovereignty of the States;
- III. Laws or acts of States' authorities encroaching upon the sphere of federal authority."

Article 107. "All disputes referred to in article 103 shall be subject to the juridical formalities and procedures prescribed by law, on the following bases:

- I. Amparo proceedings shall always be conducted at the instance of the injured party.
- II. The judgement shall always be such as to relate solely to private individuals, being limited to affording them redress and protection in the particular case to which the complaint refers, without making any general statement regarding the law or act on which the complaint is based.

A defect in the complaint may be amended, when the act complained of is based on laws declared unconstitutional by previous decisions of the Supreme Court of Justice.

A defect in the complaint may be amended in the case of amparo proceedings in respect of acts affecting the rights of minors or of the legally incapacitated, in accordance with the provisions of the law regulating articles 103 and 107 herein.

A defect in the complaint may also be amended in criminal matters and on behalf of workers in labour matters, when it is found that there has been a manifest violation of the law against the injured party who is left without defence, and in criminal matters, likewise, when the trial has been based on a law not precisely applicable to the case.

In the case of amparo proceedings involving a complaint against acts that result or could result in depriving ejidos or settlements having de facto or de jure communal status, or members of an ejido or communal holders, from ownership or possession and enjoyment of their lands, water, pastures and woodlands, a defect in the complaint shall be amended as provided for in the law regulating articles 103 and 107 herein. In no circumstances shall the proceedings lapse or be stopped due to inactivity; nor shall there be any waiver where the rights of ejidos or communal settlements are affected.

III. In the case of complaints against acts of judicial, administrative or labour courts, an application for amparo shall be admissible only:

(a) In respect of final judgements or awards against which there is no ordinary remedy available whereby such judgements or awards can be modified or amended, whether the violation of the law is committed in the judgements or awards or is committed in the course of the proceedings and prejudices the petitioner's defence to the extent of affecting the judgement, provided that, in civil matters, the violation was contested in the course of the proceedings by means of the ordinary remedy provided for by the law and that, if committed in first instance, it was urged in second instance as a grievance. These conditions shall not be required in the case of applications for amparo in respect of judgements rendered in disputes concerning actions relating to marital status or affecting the order and stability of the family;

(b) In respect of acts during the proceedings, the performance of which would not permit of any reparation, or outside or following the conclusion of the proceedings, all appropriate remedies having first been exhausted;

(c) In respect of acts affecting persons unconnected with the proceedings.

IV. In administrative matters, an application for amparo shall also be admissible in respect of decisions causing injury that cannot be remedied through any legal recourse, proceeding or defence. It shall not be necessary to exhaust these remedies when the law establishing them, in order to authorize the suspension of the act complained of, demands requirements exceeding those prescribed in the Law regulating Amparo Proceedings as a condition for ordering such suspension.

V. Application for amparo in respect of final judgements or awards shall be made directly to the Supreme Court of Justice whether the violation was committed during the proceedings or in the judgement itself.

(a) In criminal matters, against final decisions issued by Federal Courts of Justice, including the military courts; where the ordinary judicial authorities are involved, when the judgements giving rise to the application for amparo impose the death penalty or entail a penalty deprivative of liberty for a period exceeding that indicated in article 20, section I, herein for release on bail.

(b) In administrative matters, in the case of complaints by private individuals against final judgements rendered by the Federal or Administrative Courts or Courts of Justice, which are not rectifiable through any recourse, action or ordinary means of legal defence, with the limitations set by the implementing statute in matters of competence.

(c) In civil matters, in the case of complaints against final judgements rendered in federal actions or in commercial actions, whether the authority pronouncing the judgement is federal or local, or in ordinary legal actions, subject to the limitations established by the implementing statute in matters of competence. Only the Supreme Court shall hear applications for amparo in respect of judgements rendered in disputes concerning actions involving marital status or which affect the order and stability of the family. In federal civil actions, judgements may be appealed against in amparo proceedings by any party, including the Federation in defence of its patrimonial interests, and

(d) In labour matters, in the case of complaints against awards made by the Central Conciliation and Arbitration Boards of the federative bodies, in disputes of a collective nature; by federal Conciliation and Arbitration authorities in any dispute, or by the workers' Federal Conciliation and Arbitration Court in the service of the State.

VI. Except in the cases referred to in the preceding section, application for amparo in respect of final judgements or awards shall be made directly to the Collegiate Circuit Court having within its jurisdiction the domicile of the authority which pronounced the judgement or award, whether the violation is committed during the proceedings or in the judgement itself. In the cases referred to by this and the preceding section, the Law regulating Amparo Proceedings shall indicate the procedure and time-limits to be observed by both the Supreme Court of Justice and the Collegiate Circuit Courts in rendering their respective decisions.

VII. Application for amparo in respect of acts during, outside or following the conclusion of the proceedings or affecting persons unconnected therewith or laws or acts of administrative authorities, shall be made to the district judge within whose jurisdiction the place of commission or attempted commission of the act complained of is situated. The procedure shall be limited to a report by the authority concerned and a hearing for which a summons shall be issued in the order for submission of the report and at which evidence presented by the interested parties shall be received and their pleadings heard, judgement being rendered at this same hearing.

VIII. Judgements rendered in amparo proceedings by district judges shall be subject to review. The Supreme Court of Justice shall conduct such a review:

- (a) When a law is challenged as being unconstitutional;
- (b) When any of the cases covered by article 103, sections II and III, herein is concerned;
- (c) When a complaint is lodged with the President of the Republic against federal regulations issued in accordance with article 89, section I, herein, on the grounds of their being unconstitutional;
- (d) When, in land matters, a complaint is lodged against acts by any authority which are detrimental to the collective rights of ejidos or communal settlements or to smallholdings;
- (e) When the responsible authority, in administrative amparo proceedings, is federal, subject to the limitations established by law in the matter of competence; and
- (f) When, in criminal matters, the complaint relates solely to the violation of article 22 herein.

In cases not provided for in the preceding subparagraphs and in amparo proceedings in respect of acts of the administrative authorities, constituted in accordance with article 73, section VI (1), herein, the review shall be conducted by the Collegiate Circuit Courts, whose decisions shall be final.

IX. Decisions in direct amparo proceedings rendered by the Collegiate Circuit Courts shall not be appealable, unless the decision relates to the unconstitutionality of a law or directly interprets a provision of the Constitution, in which case it may be appealed against to the Supreme Court of Justice, the appeal being limited exclusively to the resolution of actual constitutional issues.

A decision of a Collegiate Circuit Court shall not be appealable if it is based on a precedent established by the Supreme Court of Justice in relation to the constitutionality of a law or the direct interpretation of a provision of the Constitution.

X. Acts complained of may be subject to suspension in the cases and under the conditions and guarantees specified by law, for which purpose account shall be taken of the nature of the alleged violation, the difficulty of remedying the loss that might be sustained by the aggrieved party as a result of the performance of the act, and the loss that the suspension might cause to injured third parties and to the public interest.

Such suspension must be granted with respect to final judgements in criminal matters at the time when notice is given of the application for amparo, and in civil matters when security is deposited by the complainant to cover liability for loss occasioned by the suspension, but this is waived if the other party deposits security to ensure the restoration of the status quo ante if the application for amparo is granted and to pay resulting damages.

XI. The suspension shall be requested from the responsible authority, when an application for amparo is submitted directly to the Supreme Court of Justice or a Collegiate Circuit Court, in which case the aggrieved party shall notify the responsible authority, within the period fixed by law and under an oath of truthfulness, of the submission of the application for amparo, attaching two copies of the request, one for the file and the other for transmittal to the opposing party. In other cases, suspension shall be considered and decided upon by the district courts.

XII. Complaints regarding violation of the guarantees set forth in article 16, in criminal matters, and in articles 19 and 20 shall be lodged with the court above the one which committed the violation, or with the appropriate district judge; in either case the decisions rendered shall be subject to appeal in accordance with the provisions of section VIII.

If the district judge does not reside in the same place as the responsible authority, the law shall specify the judge before whom the writ of amparo is to be presented, and that judge may provisionally suspend the act complained of, in the cases and under the terms established by the law.

XIII. Should the Collegiate Circuit Courts uphold conflicting opinions in amparo proceedings within their jurisdiction, the judges of the Supreme Court of Justice, the Attorney-General of the Republic, the courts themselves or the parties to the cases in which the opinions concerned were upheld may bring the said conflict to the notice of the appropriate Section, to decide which opinion shall prevail.

When the Sections of the Supreme Court of Justice uphold conflicting opinions in amparo proceedings within their jurisdiction, any such Section, the Attorney-General of the Republic or the parties to the cases in which the opinions concerned were upheld may bring the said conflict to the notice of the Supreme Court of Justice, which, sitting in full, shall decide which opinion shall prevail.

Decisions rendered by the Sections of the Supreme Court or by the full Supreme Court in the cases provided for in the two preceding paragraphs shall only have the effect of establishing jurisprudence and shall not affect specific legal situations deriving from judgements rendered in cases in which a conflict of opinion has occurred.

XIV. Except as provided for in the final paragraph of Section II of this article, the amparo proceedings shall be stopped or the application declared to have lapsed owing to the inactivity of the complainant or of the applicant respectively, when the act complained of is a civil or administrative one, in the cases and within the time-limits indicated by the regulatory law. Where the application lapses, the judgement which is the subject of the appeal shall be final.

XV. The Attorney-General of the Republic or an agent of the Department of the Federal Public Prosecutor appointed for the purpose, shall be a party in all actions for amparo, but they may refrain from intervening in such cases if, in their opinion, the matter in question lacks public interest.

XVI. If after amparo is granted, the responsible official persists in repeating the act complained of or attempts to evade the decision of the federal authority, he shall immediately be removed from office and brought before the appropriate District Judge.

XVII. The responsible official shall be brought before the appropriate authority if he fails to desist from the act complained of when required to do so or if he deposits security that is invalid or insufficient, in either of which latter cases the responsible official and the bondsman shall be jointly and severally liable.

XVIII. Governors and gaolers who do not receive an authorized copy of the decision for the committal of a detainee within the 72-hour period prescribed by article 19, reckoned from the time when the detainee is placed at the disposal of the judge, must notify the judge of this fact at the end of such period, and if the document concerned is not received within three hours, shall release the detainee.

Anyone violating the aforementioned article and the present provision shall immediately be brought before the competent authority.

Likewise, anyone who, after an arrest, fails to place the detainee at the disposal of a judge within 24 hours, shall be brought before such authority or the agent thereof.

If the arrest is effected at a place other than that in which the judge resides, sufficient time shall be added to the above period to cover the distance between the said place and the place of arrest."

(A copy of the Law of Amparo is attached as an annex.)

Finally, on the question whether article 107 of the Constitution can be invoked in the event of cases of racial discrimination, there is no doubt, as has been established in earlier sections, that discrimination does not exist and that all individuals are equal; accordingly, any discriminatory act which might be committed by an authority would entail the violation of an individual guarantee - that of equality - and amparo proceedings could therefore be instituted.

As to the remedies existing under Mexican legislation against violations committed by individuals, it should be noted that, if an individual commits a discriminatory act which is characterized as an offence in the Penal Code, it is for the Public Prosecutor's Department to bring a criminal action and not for an individual, who can do no more than report the facts to that Department.

Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination

With regard to article 4 (a) and (b) of the Convention, establishing as punishable, illegal and prohibited acts the dissemination of ideas and propaganda activities based on racial superiority or hatred which incite or promote racial discrimination, Mexican legislation provides as follows:

Article 1 of the Political Constitution of the United Mexican States:

"Everyone in the United Mexican States shall enjoy the guarantees granted by this Constitution, which shall not be restricted or suspended except in such cases and under such conditions as are herein provided."

Article 7 of the Political Constitution of the United Mexican States:

"The freedom to write and publish writings on any subject is inviolable. No law or authority may establish censorship, require security from authors or printers, or restrict freedom of the press, which shall be limited only by respect for privacy, morality and public order. Under no circumstances may a printing press be seized as the corpus delicti."

"The basic laws shall lay down whatever provisions are necessary to prevent the imprisonment under pretext of a complaint regarding press offences of vendors, newsboys, workmen and other employees of the establishment publishing the work complained of unless their responsibility has been previously established."

Article 9 of the Political Constitution of the United Mexican States:

"The right to associate or to assemble peacefully for any lawful purpose cannot be restricted; however, only citizens of the Republic may do so, in order to take part in the political affairs of the country. No armed assembly shall have the right to deliberate."

Article 164 of the Penal Code for the Federal District (ordinary Jurisdiction) and for the Republic as a whole (Federal Jurisdiction):

"Anyone who participates in an association or group of three or more persons, organized for the purpose of committing an offence, shall incur a prison sentence of six months to six years and a fine of 50 to 500 pesos by the mere fact of being a member of the association, irrespective of the penalty appropriate to the offence which he might commit or has committed."

Article 209 of the same legal instrument (Instigation of the commission of an offence and defence of such offence or other misconduct):

"Anyone publicly instigating the commission of an offence, or defending such offence or other misconduct, shall incur a prison sentence of three days to six months and a fine of 5 to 50 pesos, if the offence has not been committed. If the offence has been committed, the instigator shall incur the appropriate penalty for his participation therein."

Article 364 of the same legal instrument (Deprivation of liberty and other guarantees):

Section II. "Anyone who in any way whatsoever violates, to the detriment of another, the rights and guarantees established by the General Constitution of the Republic for the benefit of individuals."

Article 1 of the Press Law: the following constitute attacks on privacy:

Section I. "Any malicious manifestation or expression, made either verbally or by signs, in the presence of one or more persons, or in the form of a handwritten or printed paper, drawing, lithograph, photograph or in any other manner which, exhibited or circulating in public, or transmitted by post, telegraph, telephone, radio, or by message or by any other means, exposes a person to hatred, contempt or ridicule, or may be detrimental to his reputation or his interests."

Section IV. "When, in a publication expressly prohibited by law, the dignity or esteem of a person is compromised by exposing him to hatred, contempt or ridicule, or his reputation or interests, whether personal or financial, are harmed."

Article 3 of the Press Law: the following constitutes an attack on order or public peace:

Section IV. "Any publication prohibited by law or by the authorities in the public interest or issued before the law permits its release."

Article 4 of the Federal Radio and Television Law:

"Radio and television are activities in the public interest, and consequently the State must protect them and ensure their social function is duly fulfilled."

Article 5 of the Federal Radio and Television Law:

"Radio and television have the social function of contributing to the strengthening of national integration and the improvement of forms of human coexistence. To that end, through their broadcasts, they shall endeavour:

Section I. "To promote respect for the principles of social morality, human dignity and family ties."

Article 63 of the Federal Radio and Television Law:

"All broadcasts causing corruption of the language or offending against morality, either through the use of invidious expressions, indecent words or pictures, ambiguous expressions and scenes, or through the defence of violence or crime are prohibited; anything which is in any way degrading or offensive to the memory of national heroes and religious beliefs or involves racial discrimination is also prohibited; the use of low humour and offensive sounds is likewise prohibited."

Article 101 of the Federal Radio and Television Law: The following constitute violations of this Act:

Section XII. "Disregard for any of the prohibitions established under Article 63 of this Law for correct programming."

Article 36 of the Regulations giving effect to the Federal Radio and Television Law and the Cinematograph Industry Law, relating to the content of broadcasts:

"Concessionaires, official agents, announcers, reporters, commentators, artistes, advertisers, advertising agencies, publicists and others participating in the preparation or showing of programmes and commercial advertising for radio and television are subject to the following prohibitions:

Section II. "Anything which is in any way degrading or offensive to the memory of national heroes or religious beliefs, and anything which, directly or indirectly, involves discrimination against any race."