



Distr.: General

17 May 2010

English

Original: Spanish

International Covenant on Civil and Political Rights**Human Rights Committee****Ninety-eighth session**

New York, 8–26 March 2010

Concluding observations of the Human Rights Committee**Consideration of reports submitted by States Parties under article 40 of the Covenant****Mexico**

1. The Human Rights Committee considered the fifth periodic report of Mexico (CCPR/C/MEX/5) at its 2686th to 2688th meetings, held on 8 and 9 March 2010 (CCPR/C/SR.2686 to 2688). At its 2708th meeting, held on 23 March 2010 (CCPR/C/SR.2708), it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's fifth periodic report, which gives detailed information on measures adopted by the State party to further the implementation of the Covenant, while observing that the report was submitted late and does not contain clear reference to the implementation of the Committee's previous concluding observations (CCPR/CO/79/Add.109). It also welcomes the dialogue with the delegation, the detailed written replies (CCPR/C/MEX/Q/5/Add.1) submitted in response to the Committee's list of issues, and the additional information and clarifications provided orally.

B. Positive aspects

3. The Committee welcomes the following legislative and other measures adopted since the examination of the State party's previous periodic report:

- (a) The adoption in 2007 of the General Law on access by women to a life without violence;
- (b) The adoption in 2003 of the Federal law to prevent and eliminate discrimination;
- (c) The adoption in 2003 of the Federal law on the promotion of activities of civil society organizations;

(d) The ratification of the Second Optional Protocol to the Covenant, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Rome Statute of the International Criminal Court, and the Convention for the Protection of All Persons from Enforced Disappearance;

- (e) The adoption of the National Programme for Human Rights 2008–2012.

C. Principal subjects of concern and recommendations

4. The Committee is concerned at the lack of significant progress in the implementation of its previous recommendations, including those relating to violence against women, the deployment of the armed forces for ensuring public security, and the lack of protection of human rights defenders and journalists, and regrets that many subjects of concern still remain (article 2 of the Covenant).

The State party should take all necessary measures to give full effect to all recommendations adopted by the Committee.

5. The Committee is concerned that the application of the State party's obligations under the Covenant in all parts of its territory may be hampered by the federal structure of the State party. It reminds the State party that, under article 50 of the Covenant, the provisions of the Covenant "shall extend to all parts of federal States without any limitations or exceptions" (article 2 of the Covenant).

The State party should take measures to ensure that the authorities, including courts, in all states, are aware of the

rights set out in the Covenant and of their duty to ensure their effective implementation, and that legislation at both federal and state level is brought into line with the Covenant.

6. The Committee regrets the inability of the delegation to indicate a specific time frame within which the proposals for reforming the State party's Constitution will be finalized. Furthermore, it regrets the lack of clarification regarding the status of the Covenant in the domestic legal order in the light of the current constitutional reform, and, in particular, the manner in which conflicts between national laws and international human rights obligations may be resolved (articles 2 and 26 of the Covenant).

In the light of the Committee's general comment No. 31, adopted in 2004, on the nature of the general legal obligation imposed on States parties by the Covenant, the State party should bring the draft constitution into line with international human rights standards, in particular with the Covenant. Furthermore, a procedure should be established whereby the compatibility of national laws with international human rights obligations may be challenged. The State party should also finalize the constitutional reform within a reasonable time frame.

7. The Committee is concerned that, despite some progress achieved in respect of gender equality in recent years, inequalities between women and men still persist in many areas of life, including in political life. It also remains concerned at discrimination experienced by women when seeking employment in the so-called "maquiladora" industry in the northern border regions of the State party, where intrusive personal questioning and pregnancy tests continue to be required of female job seekers (articles 2, 3 and 26 of the Covenant).

The State party should increase its measures to ensure equality between women and men in all spheres, including the representation of women in political life, by means, inter alia, of awareness-raising campaigns and temporary special measures. Furthermore, it should combat discrimination against women, in particular in the workforce, and ensure the abolition of pregnancy tests as a requirement for access to employment. Failure to respect the prohibition on pregnancy tests should be effectively sanctioned and victims provided with reparation. The State party should strengthen the mandate of labour inspectorates with a view to enabling them to monitor working conditions of women and to ensuring that their rights are respected.

8. The Committee welcomes the creation of the Office of the Special Prosecutor for violent crimes against women and human trafficking, the establishment of a pilot project to improve women's access to justice (*casas de justicia*), as well as the State party's commitment to tailor its measures to protect women from violence to the cultural and social characteristics of the respective regions. Nevertheless, the Committee notes with concern the continued prevalence of violence against women, including torture and ill-treatment, rape and other forms of sexual violence, and domestic violence, and the low number of sentences handed down in this regard. It is also concerned that the legislation of some states has not been completely harmonized with the General Law on Access by Women to a Life without Violence, since at state level no provision has been made for the establishment of a gender violence alert mechanism or the prohibition of sexual harassment (articles 3, 7 and 24 of the Covenant).

The State party should further intensify its efforts to combat violence against women, including by addressing the root causes of this problem. In particular, it should:

(a) **Take steps to ensure that the legislation of all states is fully harmonized with the General Law on Access by Women to a Life without Violence, in particular the provisions concerning the establishment of a database with information on cases of violence against women, the creation of a gender violence alert mechanism, and the prohibition of sexual harassment;**

(b) **Establish the specific crime of femicide in the legislation, including at state level; provide the Office of the Special Prosecutor for Violent Crimes against Women and Human Trafficking with the necessary authority to address acts of violence committed by state and federal officials;**

(c) **Conduct prompt and effective investigations and punish the perpetrators of acts of violence against women, including by ensuring efficient cooperation between state and federal authorities;**

(d) **Provide effective remedies, including psychological rehabilitation, and establish shelters for women victims of violence;**

(e) **Continue implementing training courses on human rights and gender for law enforcement officials and military personnel;**

(f) **Take preventive and awareness-raising measures and launch educational campaigns to change the perception of women's role in society.**

9. While welcoming the measures adopted by the State party to address the frequent acts of violence against women in Ciudad Juárez, such as the establishment of the Office of a Special Prosecutor to handle crimes of femicide in Ciudad Juárez, as well as a Commission for the prevention and eradication of violence against women in the municipality, the Committee remains concerned at the prevailing impunity in many cases of disappearance and homicide of women and at the continuing occurrence of such acts in Ciudad Juárez as well as other municipalities. It also regrets the paucity of information on the strategy to combat violence against women in Ciudad Juárez (articles 3, 6, 7, and 14 of the Covenant).

The institutions established to address violence against women in Ciudad Juárez should be equipped with sufficient authority and human and financial resources to fulfil their mandate effectively. The State party should also significantly strengthen its efforts to prosecute and sanction the perpetrators of acts of violence against women in Ciudad Juárez and to facilitate victims' access to justice.

10. The Committee is concerned that, despite Federal Norm 046 (NOM-046), issued by the Ministry of Health, and the Supreme Court's ruling on the constitutionality of the decriminalization of abortion in 2008, abortion is still illegal in all circumstances under the constitutions of many states (articles 2, 3, 6 and 26 of the Covenant).

The State party should bring the abortion laws in all states into line with the Covenant and ensure the application of Federal Norm 046 (NOM-046) throughout its territory. It should also take measures to help women avoid unwanted pregnancies so that they do not have to resort to illegal or unsafe abortions that could put their lives at risk (article 6 of the Covenant).

11. The Committee notes the State party's affirmation that no state of emergency has been declared on its territory. It remains concerned, however, at reports that in some regions, certain rights have been subject to derogations in the context of the fight against organized crime. Furthermore, the Committee remains concerned at the role of the armed forces in securing public order and the increasingly frequent reports of human rights violations which appear to be perpetrated by the military. Despite the State party's clarification regarding the proposed amendments to the Law on National Security, the Committee is also concerned that these amendments may have negative effects on the implementation of rights recognized in article 4 of the Covenant, insofar as they broaden the powers of the armed forces to ensure public safety (articles 2 and 4 of the Covenant).

The State party should ensure that its provisions concerning states of exception are compatible with article 4 of the Covenant, as well as article 29 of the State party's Constitution. In this regard, the Committee draws the attention of the State party to its general comment No. 29, adopted in 2001, on derogations during a state of emergency. The State party should take all necessary steps to ensure that public security is, to the maximum extent possible, upheld by civilian rather than military security forces. It should also ensure that all allegations of human rights violations committed by armed forces are duly investigated and prosecuted by civil authorities.

12. The Committee appreciates the State party's efforts to investigate cases of violations of the right to life and enforced disappearances, including by the establishment of the Office of the Special Prosecutor for Past Social and Political Movements in 2001. However, it is concerned that this Office was closed in 2007. The Committee is also concerned that the Criminal Codes of some states lack a specific provision punishing the crime of enforced disappearance, while the definition of enforced disappearance contained in the Criminal Codes of other states is not in line with international human rights standards (articles 2, 6, 7 and 9 of the Covenant).

The State party should take immediate steps to ensure that all cases of serious human rights violations, including those committed during the so-called Dirty War, continue to be investigated, that those responsible are brought to justice and, where appropriate, punished, and that the victims or their relatives receive fair and adequate reparation. To this end, it should re-establish the Office of the Special Prosecutor to deal with such human rights violations. The State party should amend the Criminal Code at both federal and state level with a view to including the crime of enforced disappearance as defined in international human rights instruments.

13. The Committee notes with concern the continued occurrence of torture and ill-treatment by law enforcement authorities, the limited number of convictions of those responsible, and the low sanctions imposed on the perpetrators. It also remains concerned that the definition of torture contained in the legislation of all states does not cover all forms of torture. While taking note of the initiative to establish a more systematic medical-psychological documentation of torture and ill-treatment in line with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), the Committee is concerned that only some states have agreed to implement such a system. It is also concerned that only a small number of victims of torture have been granted reparation following judicial proceedings (article 7 of the Covenant).

The State party should bring the definition of torture in legislation at all levels in line with international and regional standards, with a view to covering all forms of torture. An investigation should be opened into each case of alleged torture. The State party should reinforce its measures to put an end to torture and ill-treatment, to monitor, investigate and, where appropriate, prosecute and punish the perpetrators of acts of ill-treatment and compensate the victims. It should also systematize the audio-visual recording of interrogations in all police stations and places of detention and make sure that the specialized medical-psychological examination of alleged cases of ill-treatment is carried out in line with the Istanbul Protocol.

14. The Committee takes note of the currently proposed reforms of the State party's criminal justice system, which inter alia aims to establish an accusatory system and enshrines the principle of the presumption of innocence. However, it notes that this reform has not yet been fully implemented. Furthermore, the Committee expresses concern that under the current law, great evidentiary value is attached to the first confessions made before a police officer or prosecutor and that the burden of proof that statements were not made as a result of torture or cruel, inhuman or degrading treatment is not placed on the prosecution (articles 7 and 14 of the Covenant).

The State party should take steps to accelerate the implementation of the reform of the criminal justice system. It should also adopt immediate measures to ensure that only confessions made or confirmed before a judicial authority are admitted as evidence against a defendant and that the burden of proof in torture cases does not rest on the alleged victims.

15. The Committee expresses its concern regarding the legality of the use of "arraigo penal" (short-term detention) in the context of combating organized crime, which allows the possibility of holding an individual without charge for up to 80 days, without bringing him before a judge and without the necessary legal safeguards as prescribed by article 14 of the Covenant. It regrets the lack of clarification regarding the level of evidence needed for an "arraigo" order. The Committee underscores that persons detained under "arraigo" are exposed to ill-treatment (articles 9 and 14 of the Covenant).

In the light of the 2005 decision of the Supreme Court regarding the unconstitutionality of “arraigo penal” and its classification as arbitrary detention by the Working Group on Arbitrary Detention, the State party should take all necessary measures to remove “arraigo” detention from legislation and practice at both federal and state levels.

16. While acknowledging the measures taken by the State party to improve conditions of detention, such as the construction of new facilities, the Committee is concerned by the high levels of overcrowding and the poor conditions prevalent in places of detention, as acknowledged by the State party. It also notes the high incarceration rate in the State party. The Committee is further concerned at reports that in some prisons male and female inmates are detained in so-called “mixed prisons” and that violence against women in detention is widespread (articles 3 and 10 of the Covenant).

The State party should harmonize the prison legislation of all states and expedite the establishment of a single database for all penitentiaries throughout its territory with a view to ensuring a more even distribution of the prison population. Moreover, it should ensure that courts apply alternative forms of punishment. The State party should step up its efforts to improve conditions for all detainees, in compliance with the Standard Minimum Rules for the Treatment of Prisoners. As a matter of priority, it should tackle overcrowding, as well as the separation of female and male inmates, and adopt specific regulations to protect the rights of women in detention.

17. The Committee is concerned that article 33 of the current constitutional reform proposal consolidates the exclusive right of the executive branch to expel any foreigner whose stay is deemed inappropriate, with immediate effect and without the possibility of appeal (articles 2 and 13 of the Covenant).

The State party should ensure that the reform of article 33 of the Constitution does not deprive non-nationals of the right to challenge an expulsion decision, for example through the remedy of “amparo”, in line with the case law of the Mexican Supreme Court.

18. The Committee notes with concern that the State party’s military courts have jurisdiction to try cases of human rights violations committed by military personnel in cases where the victim is a civilian. It is also concerned that victims or relatives of victims do not have access to a remedy, including “amparo”, in such cases (articles 2, 14 and 26 of the Covenant).

The State party should amend its Code of Military Justice so as to ensure that the jurisdiction of military courts does not extend to cases of human rights violations. In no event may military courts judge cases where the victims are civilians. Victims of human rights violations perpetrated by military officials should have access to effective remedies.

19. The Committee continues to be concerned that the State party does not have a law recognizing the right of conscientious objection to military service and does not intend to adopt one (article 18 of the Covenant).

The State party should adopt legislation recognizing the right of conscientious objection to military service, ensuring that conscientious objectors are not subject to discrimination or punishment.

20. The Committee welcomes the establishment of a Special Prosecutor’s Office for Crimes against Journalists, but regrets the lack of effective measures taken by the State party to protect their right to life and security and to sanction the perpetrators of such violations. It also welcomes the decriminalization of slander and libel at the federal level, but remains concerned at the lack of such decriminalization in many states (articles 6, 7, and 19 of the Covenant).

The State party should guarantee the right of journalists and human rights defenders to freedom of expression in the conduct of their activities. It should also:

(a) **Take immediate steps to provide effective protection to journalists and human rights defenders whose lives and security are under threat due to their professional activities, including by the timely adoption of the bill on crimes committed against freedom of expression exercised through the practice of journalism;**

(b) **Ensure the prompt, effective, and impartial investigation of threats, violent attacks and assassinations perpetrated against journalists and human rights defenders and, where appropriate, prosecute and institute proceedings against the perpetrators of such acts;**

(c) **Provide the Committee with detailed information on all cases of criminal prosecutions relating to threats, violent attacks and assassinations perpetrated against journalists and human rights defenders in the State party in its next periodic report;**

(d) **Take steps to decriminalize defamation in all states.**

21. The Committee notes with concern reports of acts of violence against lesbian, gay, bisexual and transgender (LGBT) persons. Moreover, while noting that the legal prohibition of discrimination covers discrimination based on sexual orientation, the Committee is concerned at reports of discrimination against individuals on the basis of their sexual orientation in the State party, including in the educational system (article 26 of the Covenant).

The State party should adopt immediate steps to effectively investigate all reports of violence against LGBT persons. It should also strengthen its efforts to provide effective protection against violence and discrimination based on sexual orientation, including in the educational system, and launch a campaign to raise awareness amongst the general public with a view to combating social prejudice.

22. While acknowledging the measures adopted by the State party, such as the Programme for the development of indigenous peoples 2009–2010 and the 2001 constitutional reforms aimed at guaranteeing indigenous rights, the Committee remains concerned

that indigenous peoples are not sufficiently consulted in the decision-making process with respect to issues affecting their rights, such as during the constitutional reform discussions in 2001 (articles 2 and 25 to 27 of the Covenant).

The State party should consider reviewing the relevant provisions of the Constitution reformed in 2001, in consultation with indigenous peoples. It should also take all necessary steps to ensure the effective consultation of indigenous peoples for decision-making in all areas that have an impact on their rights, in accordance with article 1, paragraph 2, and article 27 of the Covenant.

23. The State party should widely disseminate the text of its fifth periodic report to the Committee, the written replies it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations, as well as among the general public. Copies of those documents should be circulated to universities, public libraries, the parliamentary library and other relevant recipients.

24. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 8, 9, 15 and 20.

25. The Committee requests the State party to provide in its sixth periodic report, due to be submitted by 30 March 2014, specific, up-to-date information on all its recommendations and on its compliance with the Covenant as a whole. The Committee also recommends that the State party, when preparing its sixth periodic report, consult civil society and non-governmental organizations operating in the country.