



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER V

RIGHT TO JUSTICE

351. One of the key issues in the situation of human rights, which was subject to the Commission's special attention during its on-site visit to Mexico, concerns the right to justice. The Commission has received numerous complaints about impunity that highlighted the shortcomings of the Office of the Public Prosecutor, the Judicial Police and the judicial branch itself. According to the complaints received, situations arising from the politicization of the judicial system and the widespread lack of trust in the administration of justice system show just how complex the problem is. The attribution of police functions to the Armed Forces through legislative amendments is also a cause of concern. Finally, the existence of numerous cases of impunity and the frequent complaints about the excesses committed by State officials require the Commission to examine this issue with particular attention.

I. LEGAL FRAMEWORK FOR THE ADMINISTRATION OF JUSTICE IN MEXICO

A. International law

352. Article 8 of the American Convention on Human Rights enshrines the right to a fair trial. It provides for the right of every person to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law. It also establishes the right of an accused person to be presumed innocent and minimum guarantees for every accused person and for the criminal proceeding itself.

353. Article 25 of the same Convention enshrines the right to judicial protection. It states that everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights. It also provides that States Parties should undertake to ensure that the competent authority shall determine the rights of any such person, develop the possibilities of judicial remedy and ensure that the competent authorities enforced such remedies when granted.

B. National law

354. The right to a fair trial in Mexican law is protected through the personal rights enshrined in articles 13, 14, 16, 17, 19 and 20 of the national Constitution.

355. Article 13 thus provides that no one may be tried under special laws or by special courts. Article 14 provides the guarantee of a hearing before previously established courts where the formalities of due process are observed and in accordance with laws that have been previously passed. In criminal cases, no penalty shall be imposed which is not provided for in laws that are exactly applicable to the crime in question. Article 16 provides for the right of any person not to be arrested except pursuant to an arrest warrant issued by the competent judicial authority and provided that there has been a previous complaint, accusation or dispute concerning a given act which the law deems to be a crime punishable by at least a term of imprisonment or, in the case of a person caught *in flagrante delicto*. The right to appear before a competent, independent and impartial court is enshrined in article 17 of the Constitution. Article 19 provides that detention by a judicial authority may not be for a period of more than seventy-two hours after the accused has been placed at the disposal of the above mentioned authority, without a formal arrest

warrant being issued and provided that there is sufficient evidence about the act allegedly committed by the accused to justify the characterization of the act as a crime and to suggest that the accused person is the author.

356. Article 20 provides for the judicial guarantees of conditional release on bail, the right to refuse to make a statement, the right not to be held incommunicado, not to be intimidated or tortured, to be informed within forty-eight hours of the arrest of the name of the accuser and the nature and reason for the accusation, to introduce witnesses and other evidence which the accused might have, to be tried in a public hearing by a judge or jury of citizens who know how to read and write, to provide the accused with all the information which he may request for his defense and which are required for the proceedings, to be tried within four months in the case of crimes whose maximum penalty is not more than two years in prison and within one year if the penalty exceeds two years, except where the accused requests a longer period of time to prepare his defense, and to be informed of his rights from the outset of the proceedings.

II. IMPUNITY

357. During the on-site visit made by the Commission to Mexico, one of the main problems, which it identified in relation to the right to a fair trial, was that of impunity. In the communiqué issued at the conclusion of its visit, the Commission stated that:

...based on the information received, it has concluded that impunity was still a serious problem, despite the fact that in a number of cases some of the officials who had violated human rights had been prosecuted and removed from office. The investigation of the murders of Monsignor Posadas, Luis Donaldo Colosio and Ruiz Massieu, which have had a major impact on both national and international public opinion, have yet to yield conclusive results. The Commission will continue to insist on the vital importance of the fight against impunity as an essential requirement for the security of citizens and as an internationally recognized obligation under article 1 of the American Convention on Human Rights.

358. Recognition must be given to the important work being done by certain institutions of the Mexican State in the fight against impunity. In this connection, the Commission wishes to acknowledge the work done by the National Human Rights Commission in its more than 7 years of existence. The National Commission is a body that, through its recommendations, publications and workshops, has waged a battle against impunity. It should be noted that, during the period from 1990 to 1995, 2,035 Federal, state and municipal civil servants were punished as a result of the work done by this institution. In spite of this, the Commission has been informed that the CNDH lacks the necessary efficiency to defeat impunity:

In seven years (1990-1997) it has received 58,777 complaints, issued 1,250 "recommendations", 855 of which were deemed to be "totally complied with", 359 "on the way to compliance" and 36 "pending acceptance". However, the label "totally complied with" comes from an administrative agreement between the CNDH and the competent authority, but it does not necessarily mean that justice has been done for the victim or that the damage has been repaired. It must also be noted that the mandate of the CNDH and that of the state human rights commissions does not allow for real autonomy; that they are not competent to analyze violations of rights of a political, labor or jurisdictional nature; and that its recommendations are not binding.[\(99\)](#)

359. The first problem is to ensure that the alleged perpetrators of crimes voluntarily appear or are brought before a judge to be tried, and that if found guilty they are punished. The figures provided by non-governmental human rights organizations show that in 1995, the Attorney General of the Federal District received reports of 218,599 crimes. During that same year, 5,479 alleged perpetrators were brought before criminal courts, which represents 2.5 per cent of the total number of crimes reported. In other words, for every one thousand crimes, 25 were solved and 975 remained unsolved. In 975 out of every thousand crimes, the perpetrators remained unpunished. It was further reported that that situation has been the norm during this decade and that in 1996 the trend was the same as in previous years. It is important to remember that these figures refer exclusively to crimes which have been reported to the authorities and which

remain unpunished. It should also be noted, however, that those crimes which are not detected or in respect of which no complaints have been lodged go unpunished. This represents the "unofficial crime rate", though responsibility cannot in principle be laid at the door of authorities for taking no action in respect of acts of which they are unaware, when that is indeed the case. [\(100\)](#)

360. On 16 January 1996, the Human Rights Commission of the Federal District also submitted a report on delays in the enforcement of arrest warrants and reviewed 14 such cases. One of the cases reviewed in the report indicates that on 12 September 1992, preliminary investigations were begun against three judicial police officers accused of the crimes of illegal deprivation of freedom, rape and theft committed against Guadalupe Carolina Ramírez Romero. On 25 March 1993, the Judge of Criminal Court No. 26, in case No. 8/93, ordered the arrest of Mario Camaras Hernández, one of her attackers. The order has not been carried out.

361. Also, on 9 September 1994, Silverio Cesar Alonso Ugalde, who had urinated in the street, was violently beaten to death by the crime prevention police. The investigation was assigned to the 32nd Criminal Court under case No. 124/94, to which case No. 129/94 was added. The judge ordered the arrest of 11 policemen for crimes of homicide and abuse of authority. To date only 5 of the 11 accused have been arrested. [\(101\)](#)

362. In 1992, Juan Sánchez Ramírez lodged a complaint against the crime prevention police for crimes of robbery, injury, and abuse of authority. The investigation was assigned to the 15th Criminal Court. The judge ordered the arrest of Ignacio Daniel Padilla Pérez, Juan Herrera Falcón and Jorge Pineda Gómora, who have not yet been taken in. [\(102\)](#)

363. The report in question shows the lack of will on the part of the judicial authorities and their staff to apprehend those responsible for crimes and states in this regard that:

The fourteen cases reviewed involved, at the time the complaints were brought, 26 arrest warrants that had not been carried out. Of these, only two were carried out during the processing of the complaints...

Of the remaining 24, one remained without effect because the alleged perpetrator had voluntarily appeared before the court. Another, issued against the alleged author of a homicide, was withdrawn following the granting of *amparo*; two against alleged looters were rescinded following the end of criminal proceedings upon expiration of the statute of limitations, and another, against the alleged perpetrator of theft, battery, and abuse of authority, was suspended through the provisional granting of *amparo*.

Of the 19 remaining warrants of arrest, which are still in effect, 12 are for the arrest of alleged murderers and 2 for the arrest of persons accused of rape. Three of the alleged perpetrators, one of alleged rape, another of attempted murder, sexual abuse and breaking and entering, and the third of murder, committed the crimes when they were, respectively, members of the judicial, crime prevention and judicial police force of the Federal District...

The cases mentioned in the above paragraph include that of the crime prevention police officers Eladio Sampayo Jardines and Valente Aguilar de Jesús, the alleged perpetrators of attempted murder, sexual abuse and housebreaking ... both continued to be on active duty at least up to 19 June 1995 ... In other words, the two members of the crime prevention police continued to work for more than two years, despite the warrant which had been issued for their arrest.

The unjustified failure to execute any arrest warrant, independently of the crime of which the alleged authors are accused, is unacceptable. But if the crimes in question are serious crimes, such as murder or rape, or if the alleged authors committed the crime when they were public servants, and, more specifically, law enforcement officers, the unjustified failure to execute the warrants is scandalous. If, moreover, the alleged perpetrators did not go into hiding but continued to live their normal lives, that is to say, if it was easy to locate and apprehend them, then the fact that

they were not arrested is also scandalous.

But the most serious consequence of the failure to execute judicial arrest warrants is impunity, which is a genuine social cancer that further erodes the rapidly diminishing public confidence in the authorities and effectively promotes criminality.

In the reports which we have received from agents of the Judicial Police or from their superiors about the reasons why some of the warrants have not been executed, there is not one single case where such failure is genuinely justified."

364. In this connection, the Chairman of the Human Rights Commission of the Federal District has stated that "failure to execute arrest warrants constitutes a violation of the three cardinal principles of the right to justice, legal guarantees and the common good".[\(103\)](#)

365. The President of Mexico Ernesto Zedillo has expressed preoccupation for this serious situation. In his Fourth government report to the Nation, the President stated:

We are living the consequences of permissive and insufficient laws; of years of negligence, lack of planning and corruption in the justice administration institutions; of the application of penalties that, rather than punish criminals, foster impunity and repeat offenses.

Last year [1997] close to one million 500 thousand crimes were reported. Many more were never reported. More than 150 thousand arrest warrants were issued but only 85 thousand were carried out, which amount to only 6 percent of the total crimes reported. This means that many criminals are able to evade the law and to stay on the streets performing their deeds. [\(104\)](#)

A. Office of the Public Prosecutor

366. In attempting to determine the origin of the impunity problem, efforts must first focus on the Office of the Public Prosecutor, a body that, together with the Judicial Police, is responsible for the prosecution of crimes.[\(105\)](#) The aim of course is to look at the work of those authorities whose actions precede the trial phase of the proceeding.

367. The actions of the Office of the Public Prosecutor have not helped in any meaningful way to increase the number of crimes that are punished. It should be remembered in that connection that, in Mexico, the Office of the Public Prosecutor is really an office within the executive branch and under the President's (or Governor's) authority, and that it has exclusive monopoly over the conduct of criminal proceedings. This has led to abuses and manipulations for which solutions have not been found through jurisdictional methods, since it was only at the time of the constitutional reform of 31 December 1994 that provision was made for the possibility of recourse against decisions by the Office of the Public Prosecutor not to pursue or to abandon criminal proceedings.

368. Despite the foregoing, the Commission reiterates what it has already expressed in previous reports on individual cases in which it has had to address matters concerning article 21 of the Constitution, namely, that "to date that article has not been provided with a regulatory framework for its implementation and this has created a climate of legal uncertainty as a result of which the courts have advanced different interpretations on the matter. This only produces greater confusion and has reduced the chances of achieving the genuine legal certainty that is being sought".[\(106\)](#) The Commission also stated that, as a result, "article 21 does not currently offer the advantages of simplicity, promptness and effectiveness as called for in article 25 of the American Convention."[\(107\)](#)

369. The communiqué issued by the IACHR at the conclusion of its on-site visit to Mexico stated moreover that:

In cases in which the Office of the Public Prosecutor fails to institute criminal proceedings, the IACHR has observed a situation of legal uncertainty with respect to the use of article 21 of the Constitution to obtain jurisdictional remedy for the failure

to take action. In establishing effective responsibility, it is essential that there should be clarity as regards the scope of article 21 of the Constitution and the possibility of its effective application in practice.

370. The Mexican author and former member of the Inter-American Court of Human Rights, Héctor Fix Zamudio, as well as professor Sergio García Ramírez, currently a judge of the above-mentioned Court, have stated in this regard that the decisions of the Office of the Public Prosecutor (refusal to take action, abandonment of an action and decision not to press charges) cannot be challenged in a court of law.⁽¹⁰⁸⁾ This has led the Office of the Public Prosecutor to use with considerable frequency its discretionary power to decide whether or not to prosecute a case (principio de oportunidad), despite the fact that this power is formally regulated by the different principle of legality (principio de legalidad).⁽¹⁰⁹⁾

371. The Commission observes that, in the State's response to reports on individual cases in which it was recommended that it enact a law to regulate Article 21 of the Constitution, the State referred to judgment CLXVI/97 handed down by the Supreme Court on November 11, 1997, by virtue of which that Court determined that *amparo* proceedings are admissible against decisions pertaining to failure to bring or to discontinuance of criminal action, whenever violations of individual guarantees are involved.⁽¹¹⁰⁾ The Commission views this initiative as a positive step, and as a measure of compliance with the recommendations made to the Mexican State. However, for reasons of security, efficiency, and legal certainty, the Commission maintains that Article 21 of the Mexican Constitution must also be regulated by law.

372. The first chapter of this report contains references to the organization and scope of authority of the Office of the Public Prosecutor at both the federal and state levels. Here, the focus shall be mainly on the need to increase the independence, autonomy and impartiality which the Office of the Public Prosecutor must have in Mexico, particularly in light of the special character which the Office has in that country, given its monopoly over the conduct of criminal proceedings and its position as a branch of either the State Attorney General's Office or the Office of the Attorney General of the Republic, which are organs of the state and Federal executive branches, respectively. As far back as in the Second Latin American Colloquium and First Mexican Congress on Procedural Law, which were held in Mexico City in February 1960, a proposition was adopted by acclamation to the effect that: "The Office of the Public Prosecutor must be an organ independent of the executive branch and must have the attributes of irremovability and other constitutional guarantees afforded to members of the judicial branch." Héctor Fix Zamudio himself has described this independence of the Office of the Public Prosecutor as being "indispensable".⁽¹¹¹⁾

373. In this regard, the IACHR notes with concern certain matters relating to the consequences of the establishment on 30 April 1994, by means of a decree by the then President Carlos Salinas de Gortari published in the Official Gazette of the Federation on 26 April 1994, of the so-called Office for the Coordination of Public Security in the Nation, as a department within the Office of the President of the Republic.

374. The decree creating this Unit was abrogated by the General Law Establishing the Bases for Coordination of the Public Security System, which was published in the Official Gazette of the Federation on December 11, 1995.

375. Under this law, the competent authorities of the Federation, the states, the Federal District and the municipalities are required to coordinate efforts to establish a Public Security System, through the National Council for Public Security.

376. Article 3 of the law requires authorities to pursue the objective of public security by preventing, prosecuting, and punishing infractions and criminal offenses, and through the social rehabilitation of criminals and minors who commit crimes.

377. Article 13 of the law provides as follows:

In order to be kept informed of the various matters for coordination referred to in this law, the National System for Public Security shall be apprised of actions taken in the areas of prevention, social readaptation, criminal prosecution and municipal

participation. The System may also establish such commissions as may be needed in the different areas, including, committees for the specialized study of crime statistics. Any offices and agencies of the Federal Government, states, Federal District and municipalities whose areas of competence are related to those of the National System may participate in these commissions.

Experts, academic research institutions and groups from concerned social and private sectors will also be invited to participate.

378. Professor Ignacio Burgoa Orihuela argues that as a result of the creation of the Unit for the Coordination of National Public Security,

the legal nature of the institution of the Office of the Public Prosecutor has been affected by the presidential system, since, far from maintaining the autonomy of that Office, in practice it has become an office under the public administration, contrary to the provisions of the Mexican Constitution itself.

379. Also, it must be pointed out that the Office of the Public Prosecutor is an autonomous public institution and not an administrative office coordinated by the Executive. The appointment of the officers in the Office cannot be discretionary, but rather must be in accordance with the relevant law, i.e. the rules approved by the Congress. Besides, it is the Attorney General and not the Executive who presides over the Office of the Public Prosecutor.

380. Article 1 of the Organic Law of the Public Administration does not include the Office of the Attorney General among the branches of the Federal Executive and the Office of the Attorney General even has its own constitutive statute. Further, the Executive has at its command all of the Armed Forces for internal security and national defense (Article 89 of the Constitution). While Secretaries of State answer directly to the Executive, the jurisdiction of the Office of the Attorney General of the Nation, and of the Offices of local Attorneys-General are founded on the principles of the Federation and, consequently, the Federal Executive has no power to intervene to secure justice in the states of the Mexican Republic.

381. The IACHR deems it advisable to revise the General Law that established the basis for the coordination of the System of Public Security, since it seems to clash with the principles which inspire and which should guide the institution of Public Prosecutor, since there is a clear violation of the autonomy which that organ should have. Moreover, in a country in which the Office of the Public Prosecutor has a monopoly over criminal actions, a unit of this nature endangers the spirit, aim and *raison d'être* of the institution, since for the proper exercise of its functions it must have autonomy and independence from the other branches of government.

382. The IACHR also considers it important to highlight the series of reforms in which the Office of the Public Prosecutor appears to have been granted a range of powers that exceed the functions of an investigative organ and in which that representative of society plays the role of official, party and judge, thereby weakening the defense and subjecting the court to the rhythm and requirements of the prosecutorial side.

383. It should be mentioned that, with the new reforms, the Office of the Public Prosecutor has been granted the power to order and carry out all acts aimed at ascertaining whether a criminal act has been committed as well as the probable guilt of the accused. It also has a duty to consider the danger to which the legally protected good has been exposed, the way in which the accused has acted and the fraudulence or blameworthiness of the act or failure to act. It must also ascertain, among other things, the manner, time, place, applicable law, subjective elements and such other circumstances as the law may require to be ascertained.[\(112\)](#)

384. The IACHR wishes to draw attention to the fact that the Office of the Public Prosecutor, in accordance with article 102 of the Constitution, comes under the Executive Branch. Its function is administrative in nature and it has no powers other than those that are consistent with its administrative function. It thus lacks the power to initiate legal proceedings, in other words, coercive power over persons for purposes of instituting legal proceedings which, as provided for in article 20 of the Constitution, resides only with the judicial authority from which the Office of the Public Prosecutor is separated by the constitutional principle of the separation of powers.

385. Another of the criticisms leveled at the Office of the Public Prosecutor of Mexico concerns the characteristics of its personnel and their conditions of work. In this connection, it has been pointed out that:

...despite the criteria which officials must fulfil to be appointed to their posts, it is clear that their training is not adequate. Generally speaking, the combination of a lack of deep knowledge of the existing legal order and idleness at work makes it impossible for them to perform satisfactorily. Because of the absence of an adequate system of supervision, matters are resolved on the basis of a sort of practical knowledge, automatically, without considering the particular characteristics of each case, which leads to the bureaucratizing of the task. This bureaucratization is closely linked to the heavy volume of work, which prevents agents from getting too deeply involved in the cases before them and consequently limits their interest in investigating.(113)

386. Despite the foregoing, certain advances have also been noted in a number of areas, and these should be highlighted. Certain institutional progress achieved recently in the PGR, as well as the Attorney-General of the Federal District has been a source of satisfaction in that a substantial reduction has been achieved in the time taken to conduct preliminary investigations, comprehensive training workshops have been held for staff, support has been provided for investigating the cases of persons who have been the victims of threats or harassment, and the remuneration of staff has been improved. The IACHR is of the view that examples such as this help to improve the system which, while it cannot be changed overnight, can be gradually improved until it earns at least a minimum of confidence on the part of the community, which will no doubt ensure a reduction in the level of impunity that exists in the country.

B. The Judicial Police

387. As mentioned before, in accordance with article 21 of the Political Constitution of Mexico, the Judicial Police together with the Office of the Public Prosecutor are the organs responsible for the investigation and prosecution of crimes. We should therefore review the functions and practices of these organs in order to identify the factors that contribute to the high incidence of crimes that go unpunished in Mexico.

388. During its on-site visit to Mexico, the IACHR received extremely serious and alarming reports of instances of corruption, abuse and assaults committed in various police posts in the country. The IACHR found striking the numerous statements given by Mexican citizens in which they expressed their mistrust of the judicial police, whom they described in very negative terms. This attitude was not in the least bit surprising to some officials authorities who were consulted during the Commission's visit and who, on the contrary, confirmed these reports. The complaints received by the IACHR on this subject during its visit are clearly consistent with the trend noted in those cases that have been reported to the Commission in recent years.

389. President Ernesto Zedillo addressed this critical problem in the following terms:

It is profoundly indignating that judicial police agents, instead of preventing, investigating, fighting crime and protecting the population, are actually more cruel and dangerous criminals because of the impunity that follows their actions. In all honesty, ladies and gentlemen, we must admit that when it comes to public safety, the three Powers of the Union and the three levels of Government have failed the citizens of our country.(114)

390. In the opinion of the IACHR, a good part of the problem lies in the highly inadequate training received by agents of the judicial police. Many of them never completed the preparatory phase of their training, which is generally superficial and bears little relation to what should be their primary function: the investigation and prosecution of crimes. The lack of proper training means that not only do they not have a clear idea of the importance of the law but also makes it difficult for them to operate within its framework. The habit of operating in a certain way, without any accountability for the abuses that they may commit, has created a pattern of behavior that is difficult to eradicate.(115)

391. The physical conditions under which they work are also not good, and some other aspects of their working conditions are deplorable. Salaries are also very low. Taking as a reference the table of salaries established for 1995, we have in the Judicial Police an agent earning N\$1,632.58, a unit chief N\$1,818.85, a section chief N\$1,948.18 and a head of group N\$2,150.90.(116) The lack of adequate physical resources and the low salaries result in glaring inefficiencies and create incentives for corruption to take place in the day-to-day tasks performed by the agents and to become the rule rather than the exception.

392. In conclusion, the IACHR expresses its concern over the unsatisfactory performance of the various judicial police forces in the country and the lack of proper attention to the matter by the State, since an honest judicial police force that is professional in its approach, well trained and efficient is essential for gaining the confidence of citizens. As long as skepticism makes people reluctant to lodge complaints about criminal acts because they consider the judicial police to be ill-equipped as an organization to conduct the necessary investigations, serious cases of taking justice into private hands will increase and, with them, impunity. In order to combat this problem, the Commission recommends that better training be given to agents of the judicial police, with strict criteria established for their selection and courses being organized for them in police techniques and human rights. They should also be given the material resources, which they need to carry out their duties, and fair salaries that lend dignity to their work and serve to attract suitable and adequately trained personnel to the service. Agents should be punished for the excesses of which they are guilty and the judicial police forces should be purified.

III. FUNCTIONAL WEAKNESSES OF THE JUDICIAL BRANCH

393. Numerous complaints about corruption, lack of independence and impartiality have made the judicial branch in Mexico one of the organs that enjoys the least public prestige. This mistrust is most pronounced with respect to the judicial branch at the state level, because of the influence which some individuals or groups exercise over the bodies responsible for the appointment of judges.

394. The very constitutional structure of the courts casts doubt on whether they are genuinely independent vis-à-vis the Executive Branch. Indeed, the only members who cannot be removed from office in the entire judicial branch are the justices of the Supreme Court. The fact that circuit magistrates and district judges are subject to transfer until appointed to a new position undermines the principle of genuine unremovability, which is an essential requirement for an independent judicial branch. Moreover, the fact that lower court judges are not unremovable at all, together with the absence of anything that could be called a genuine legal career, gives cause for real concern.(117)

395. A report published by a non-governmental human rights organization(118) has cited the view of a federal judge that the lack of independence of the Judicial Branch takes two different forms. One is objective in nature, and the example was given of the power of the Executive Branch to appoint judges; the other is subjective, namely, the existence of a tendency among certain judges to serve the interests of the State with the hope of being appointed to some other position in the magistracy.

396. The protracted nature of criminal proceedings has been another of the aspects most criticized in the administration of justice system in Mexico. According to data compiled by the National Human Rights Commission, the average time taken for an accused person to be sentenced in a court of first instance is one year and 10 months. The fact that the State cannot guarantee prompt and timely justice has caused an unfortunate reaction among the population that leads citizens to mete out justice for themselves, which, when it happens, undermines the very essence of the rule of law.

397. In conclusion, the IACHR is of the view that officials of the judicial branch should be given greater independence and autonomy and allocated more human and material resources, thereby guaranteeing the job stability of judges through the development of a genuine judicial career. The 1994 constitutional reform, which created the Federal Judiciary Council, provided for this career in Mexico. Article 100 of the Constitution states as follows:

The law shall lay the foundations for the training and refresher training of public

officials, which shall be governed by the principles of excellence, objectivity, impartiality, professionalism, and independence.

398. The Mexican State observed that "this constitutional provision has already produced results, as a number of competitive qualifying events have been held for appointments of circuit judges at federal level." The Commission has taken due note of the reported advances, and it trusts that they will be further pursued so that a judicial career may be in full effect within a short period of time. The IACHR also believes that the judicial career will be strengthened by establishing rigorous selection criteria for designating public officials to these posts, which should be done on the basis of competitive examinations evaluated by professionals with high moral authority and recognized expertise in the area.

IV. MILITARY INTERVENTION IN PUBLIC SECURITY MATTERS

399. During its *on-site* visit to Mexico, the IACHR received information on the exercise of police functions by officials of the Armed Forces. The obvious result is the militarization of the leaders of the organizations in charge of ensuring the security of citizens. In this regard, the Commission had the following to say in Press Release No. 14/96, issued on July 24, 1996:

...based on its experience, it wishes to draw attention to the consequences of the use of the Armed Forces in functions involving the security of citizens, since this could lead to serious violations of human rights because of the military nature and the training received by the Armed Forces.

400. The IACHR considers that the proper objective of the Armed Forces in a democratic society is to assure the security and defense of the country. Its function is to oppose attempts at invasion or disruptions that threaten the internal and external security and independence of the State of Mexico.

401. When faced with a situation that genuinely threatens the internal or external security of the Federation, the Armed Forces should take such necessary military measures as are within the framework of internationally accepted standards, while respecting the personal rights provided for in the Constitution, which can only be suspended in the extreme cases provided for in Article 27 of the American Convention and in the Constitution itself.

402. In this regard, the Armed Forces must respect the limits which the Constitution imposes on their legal authority, particularly in article 29 thereof, which provides that: "In times of peace, no military authority may exercise functions other than those directly related to military matters".

403. The Commission has been informed that, under the pretext of the increase in crime in the country and society's demand for greater public security, the State has made a series of changes in the law permitting the Armed Forces to intervene in areas that are the responsibility of the civil authorities, such as public security and the prosecution of certain crimes. This permission, according to the same source, was granted because of a confusion between the concepts of public security and national security, when there is no doubt that the level of ordinary crime, however high this may be, does not constitute a military threat to the sovereignty of the State. [\(119\)](#)

404. Indeed, the promulgation of the Law on the National System of Public Security placed all crime prevention and judicial police in the country under a single command structure. As part of this restructuring, the National Council on Public Security, an organ which makes policy in this area and determines the criteria for initiating police and military action, was integrated with the army and the Navy, thereby ensuring that ultimate command remains in the hands of the Armed Forces.

405. During the Commission's on-site visit to Mexico, it received a number of complaints that the Armed Forces were responsible for arbitrary detentions, the interrogation of alleged criminals and searches without court order. In this connection, it should be pointed out that article 21 of the Constitution provides that it is the exclusive responsibility of the Office of the Public Prosecutor and the Judicial Police to prosecute crimes.

406. During its visit, the Commission also observed that the situation in the state of Guerrero had become quite serious, particularly, as residents reported, when the self-proclaimed "People's Revolutionary Army" (EPR) made its appearance on 28 June 1996. According to the information received, that development triggered a wave of persecution by the Armed Forces against community leaders in the region. It was reported that, under the pretext of pursuing armed groups, the population was subjected to constant searches by the Armed Forces.

407. The Commission also noted that members of the Mexican Army carried out many of the arrests of alleged members of the EPR and that some of them were tortured uninterruptedly to extract confessions of guilt. The Commission visited the Detention Center of the city of Acapulco, where it interviewed and examined 8 alleged EPR members and was able to confirm the above reports.

408. The Commission also received information concerning the increase in the presence of the military in other areas of the country, mainly in the states of Veracruz, Oaxaca, Chiapas and Hidalgo, and particularly in rural areas, in indigenous communities and in other places where social protest is more widespread. On this subject, the Commission would refer to the highly relevant assessment of the situation in Chiapas given by the head of the United Nations Office of the High Commissioner for Human Rights, Mary Robinson, on June 12, 1998:

A reduction in the military presence in the region would represent an important first step towards restoring confidence in the possibility of finding a peaceful solution. It would also help improve the present climate of fear.

409. In this regard, the IACHR would like to highlight the importance of having the Mexican Armed Forces devote themselves exclusively to military work as assigned to them by the Constitution, under the strict control of the civil authority whose powers are determined by the Supreme Law of Mexico.

V. RECOMMENDATIONS

410. In light of the situation reviewed above, the IACHR makes the following recommendations to the Mexican State:

411. To continue adopting the necessary measures for the implementation of article 21 of the Mexican Constitution, with a view to making effective the right to a fair trial and the guarantees of legal protection provided for in articles 8 and 25 of the American Convention.

412. To take the necessary measures to execute, as soon as possible, those warrants of arrest which have not yet been carried out in criminal proceedings.

413. To strengthen the autonomy and independence of the Office of the Public Prosecutor.

414. To review the legal attributes and competence of the Unit for the Coordination of Public Security in the Nation.

415. To limit the authority of the Office of the Public Prosecutor to those functions which are consistent with its mandate.

416. To improve the working conditions, training and remuneration of employees of the Office of the Public Prosecutor and the Judicial Police.

417. To establish strict criteria for the recruitment of personnel for the Office of the Public Prosecutor and the Judicial Police, utilizing to that effect the current rules for the selection of magistrates and judicial employees; and to provide them with courses in technical matters, as well as in human rights.

418. To strengthen the impartiality, independence and autonomy of the judicial branch, providing it with the necessary material and budgetary resources; to implement the necessary reforms to guarantee the stability of judges in Mexico, establishing by law a system of discipline for the judiciary.

419. To take the necessary steps to guarantee prompt, timely and expeditious justice.

420. To reform the Law on the National System of Public Security with a view to restricting the National Armed Forces to the role for which they were created, namely, the security and defense of the Federation against outside attack, in accordance with relevant international law, specifically Article 27 of the American Convention.

421. To review the procedures adopted by the National Armed Forces in those states in which they have been deployed to put down the activities of armed groups of dissidents, in accordance with relevant international law, specifically Article 27 of the American Convention.

422. To review the procedures adopted by the National Armed Forces in those states in which they have been deployed to put down the activities of armed groups of dissidents.

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99. Mexican Committee for the Defense and Promotion of Human Rights, Los derechos humanos en México, report presented to the IACHR, Document Series No. 11, April 1998, p. 9.

100. Impunity and police efficiency, Mexican Commission for the Defence and Promotion of Human Rights, June 1996.

101. Idem at 3.

102. Idem at 4. In one of the investigations conducted with a view to apprehending them, it was reported that:

The alleged perpetrators of the crime, Juan Herrera Falcon, Ignacio Daniel Padilla Pérez, Jorge Pineda Gómora and Adrian López Reyes, were attached to Sector 6 of the General Secretariat for Protection and Highway Safety, in Iztapalapa. They were providing security and custodial service in the Penitentiary of the Federal District and in the Cartago Base. It has not been possible to arrest them owing to the tight secrecy being observed by their authorities ...

103. Luis de la Barreda Solórzano, "Una Conquista Irrenunciable" (An irreversible conquest), in the files of the Commission.

104. Avances y retos de la Nación, [Advances and challenges of the Nation], President Ernesto Zedillo's message at the presentation of his IV Government Report to the Nation, September 1st, 1998, p. 7.

105. Article 21 of the Political Constitution of Mexico.

106. Report No. 42/96 issued by the Inter-American Human Rights Commission.

107. Report No. 25/96 issued by the Inter-American Human Rights Commission.

108. Héctor Fiz Zamudio, "Present and future of the judicial organ and the Office of the Public Prosecutor in the constitutions of Mexico and Spain", in Experiences of the evolution of the political constitutions of Mexico and Spain, UNAM, Mexico, 1989; Sergio García Ramírez, "Action in criminal proceedings", in Review of the Faculty of Law of Mexico, 1967.

109. See statement and quotes , in Héctor Fiz Zamudio, *op.cit.*, p. 378.

110. In referring to this point of jurisprudence in the final reports on the cases involving the Aguas Blancas massacre, and the case involving the Morelia Ejido, the IACHR concluded that this case law "represents a step forward towards the full exercise of the rights enshrined in Articles 8 and 25 of the American Convention." However, the IACHR noted that such case law has not been applied in the cases mentioned, by virtue of Article 197-A of the amparo law in that country, and so the recommendation was reiterated. See IACHR, 19997 Annual Report, reports 48/97 and 49/97, paras. 113 y 114, pages 679 and 680; and, paras. 134 and 135, page 710, respectively.

111. *Op.cit.* p.377.

112. Articles 168 of the Federal Penal Code and 122 of the Code of Criminal Procedure for the Federal District.

113. Human Rights Commission of the Federal District, "Proposals for reform of the Office of the Public Prosecutor", Mexico, p. 17.

114. Presidential Message cited above, page 6.

115. *Op. cit.*, p. 19. In the message cited *supra*, the President of México stressed that during 1998 the Government had invested in public security 12 times as much as in 1996, and that the program in that area "includes actions aimed at forming good police forces. These forces would be clean, qualified, with a dignified career and adequate pay. Forces with honest and efficient policemen".

116. In 1995, the exchange rate for the New Mexican Peso against the dollar was approximately N\$6 to US\$1.

117. Mr. Jorge Luis Rodríguez Losa, President of the High Court of Justice of the state of Yucatán, in October 1992, acknowledged the existence of corruption in the jurisdictional organ of the state and added that a case may be dragged out for 7 or 8 years. In November 1992, Mr. Evaristo Morales Huerta, President of the National Federation of Colleges of Lawyers, noted the need to restore the prestige of the Supreme Court of Justice and drew attention to the fact that its decisions are more political than legal, since members were appointed from the political arena, a trend which must be stopped. This position is consistent with the complaint lodged by members of the High Court of Justice of the Federal District, who also claimed that innocent persons were sentenced to avoid the suspicion of corruption (Criminal Proceedings Review No. 854, of 15 March 1993).

118. Human Rights and Judicial Power in Mexico. Minnesota Advocates for Human Rights, February 1995.

119. Mexican Commission for the Defence and Promotion of Human Rights in Mexico. Report on the human rights situation in Mexico. July 1996.