

**REPORT OF CIVIL SOCIETY ORGANISATIONS ON
THE SITUATION OF ECONOMIC, SOCIAL,
CULTURAL AND ENVIRONMENTAL RIGHTS IN
MEXICO
(1997-2006)**

**ALTERNATIVE REPORT TO THE IV PERIODIC REPORT OF THE
MEXICAN STATE ON THE IMPLEMENTATION OF THE ICESCR**

*Presented to the United Nations Committee on Economic, Social
and Cultural Rights by the signatory Mexican
civil and social organisations*

*Adhered to by the Inter-American Platform on Human Rights,
Democracy and Development (PIDHDD)*

*Supported by the following organisations with
consultative status with ECOSOC:*

*Habitat International Coalition (HIC), Food First International Action
Network (FIAN International), Terre des Hommes- France, Insituto del
Tercer Mundo-Uruguay (secretariat of Social Watch), , Federación
Internacional de Derechos Humanos (FIDH)*

MEXICO, APRIL 2006

PRESENTATION

Several civil society organisations in Mexico, working both on development and human rights, began a coordinated effort in 1998 for the preparation and presentation of an Alternative Report to the Third Periodic Report of the Mexican State- whose synthesis is available on the web page of the Office of the UN High Commissioner for Human Rights (OHCHR) in the document E/C.12/1999/NGO/3-. Starting in 2000, apart from continuing our work on the promotion and defence of economic, social, cultural and environmental rights (ESCR) in the country, we divided up the task of providing follow-up and promoting the fulfilment of the Final Observations emitted by the Committee on Economic, Social and Cultural Rights (CESCR) to the Mexican State (E/C.12/1/Add.41).

According to the calendar of the Committee on ESCR, the Mexican government should have sent its IV Periodic Report on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to the Committee as of June 2002. Concerned by the evident delay, in April 2003, the organisations of the Coordination Group on ESCR (*Espacio de Coordinación sobre DESC- Espacio DESC*) and the coordination of the Social Policy Area of *Convergencia de Organismos Civiles por la Democracia* called for the creation of a group to promote the elaboration of the Alternative Report on ESCER. Directly or indirectly, diverse civil and social organisations and networks in the country began to join this process in a collective effort consisting not only of research and analysis in order to have an updated assessment to present to the Committee on ESCR, but also a broad process of awareness raising, education, dissemination and advocacy on these rights.¹

The Mexican government sent its Report to the Committee in December 2004 (E/C.12/4/Add.16) and the pre-sessional working group of November-December 2005 prepared a list of issues for Mexico. On this occasion, the organisations of the promotion group sent a pre-sessional document presenting to the Committee some sources of concern and proposals for questions, in accordance with the guidelines for the participation of non-governmental organisations in the activities of the Committee on ESCR (E/C.12/2000/6).

We, as the signatory civil society organisations, present this Alternative Report² to the Committee on ESCR in March 2006 to be considered on the occasion of the examination of the Report on Mexico as a State party to the ICESCR during its 36th session in May 2006.³ The Report includes a synthesis of the information that assesses the situation of each of the ESCER in the country; the sources of concern due to the limitations of the legal framework, public policies or access to justice; a selection of cases of violations of ESCER; the results of an analysis of some of the governmental and legislative measures adopted during the period of the Report; and an appraisal on several sections of the IV Periodic Report. Likewise, we propose specific recommendations for the rights and issues.⁴

¹ Contact Information: informedesca@yahoo.com.mx (Likewise, the coordinating organisation of the promotion group for the Alternative Report can also be contacted: DECA Equipo Pueblo A.C.: arelisandoval@equipopueblo.org.mx)

² The translation into English of this Alternative Report was possible thanks to the Social Watch subregional project supported by Novib-Oxfam The Netherlands.

³ The present version (April 7, 2006) is the final edition of the Alternative Report including the last endorsements received.

⁴ For more information, the civil organisations that are specialised in each issue can be contacted according to the information included in the first footnote of each section.

The declaration- of 2000 words- that we sent to the Committee on 15 March 2006 and which is available on the web page of the OHCHR on the section regarding the 36th session of the Committee on ESCR, is included in the first part of the Report. The sections 2 and 3 are dedicated to offering information on the economic and social context of the country, for which first issues regarding economic policy are covered and subsequently, social policy and the situation of poverty. Next the sections discussing each right according to the following articles of the ICESCR are included:

- Right to self-determination (article 1)
- The equal right of men and women to the enjoyment of ESCR (article 3)
- Right to work (article 6)
- Right to the enjoyment of just and favourable conditions of work (article 7)
- Trade union rights (article 8)
- Right to social security (article 9)
- Right to protection and assistance accorded to the family with emphasis on the rights of children (article 10, paragraphs 1 and 3)
- Right to protection and assistance accorded to the family with emphasis on the protection of maternity (article 10 paragraph 2)
- Right to food (article 11)
- Right to housing (article 11 paragraph 1)
- Right to health (article 12)
- Right to a healthy environment (article 12, paragraph 2, section b)
- Right to education (articles 13 y 14)
- Cultural rights (article 15)

Subsequently, three sections on issues of particular interest to the Committee are presented: the situation of ESCER in Chiapas, the Public Budget, and the situation of the rights of migrants. Due to its importance, we have also included a section on the assessment that we as civil organisations have done on the component on ESCER of the process and content of the Diagnosis on the Human Rights Situation in Mexico and the National Human Rights Programme, which were elaborated during the second phase of the Technical Cooperation Agreement between the OHCHR and the Mexican government.

Finally, there is a section that shows a selection of recommendations included in the Alternative Report to facilitate their access.

SIGNATORY ORGANISATIONS AND NETWORKS THAT SUBMIT THE REPORT

- 1) Academia Mexicana de Derechos Humanos
- 2) Alianza Mexicana por la Autodeterminación de los Pueblos (AMAP)
- 3) Campo de Política Social de Convergencia de Organismos Civiles por la Democracia
- 4) Casa y Ciudad de la Coalición Hábitat México
- 5) Cátedra UNESCO de Derechos Humanos de la Universidad Nacional Autónoma de México
- 6) Centro de Capacitación en Ecología y Salud para Campesinos-Defensoría del Derecho a la Salud (CCESC-DDS)
- 7) Centro de Derechos Humanos Fray Bartolomé de las Casas
- 8) Centro de Derechos Humanos Fray Francisco de Vitoria OP
- 9) Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro PRODH)
- 10) Centro de Derechos Humanos Tepeyac del Istmo de Tehuantepec (CDHTT)
- 11) Centro de Estudios Ecuménicos (CEE)
- 12) Centro de Estudios para el Desarrollo Rural (CESDER)

- 13) Centro de Estudios Sociales y Culturales Antonio de Montesinos (CAM)
- 14) Centro de Formación e Investigación Municipal (CEFIMAC)
- 15) Centro Fray Julián Garcés de Derechos Humanos y Desarrollo Local
- 16) Centro de Reflexión y Acción Laboral de Fomento Cultural y Educativo (CEREAL)
- 17) Centro Mexicano de Derecho Ambiental (CEMDA)
- 18) Comisión Ciudadana de Derechos Humanos del Noroeste
- 19) Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH)
- 20) Comité de América Latina y El Caribe para la Defensa de los Derechos de la Mujer-México (CLADEM México)
- 21) Comité de Superación de Jóvenes de Tabasco
- 22) Consejo de Ejidos y Comunidades Opositores a la Presa la Parota (CECOP)
- 23) Consorcio para el Diálogo Parlamentario y la Equidad
- 24) Convergencia de Organismos Civiles por la Democracia
- 25) Coordinadora Comunitaria Miravalle (COCOMI)
- 26) DECA Equipo Pueblo (punto focal de Social Watch en México)
- 27) El Barzón Movimiento Jurídico Nacional
- 28) Elige-Red de Jóvenes por los Derechos Sexuales y Reproductivos (ELIGE)
- 29) Enlace, Comunicación y Capacitación (Enlace-Chiapas)
- 30) Espacio de Coordinación de Organizaciones Civiles sobre DESC (Espacio DESC-capítulo mexicano de la Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo)
- 31) FIAN Sección México
- 32) Foro para el Desarrollo Sustentable - Chiapas
- 33) FUNDAR-Centro de Análisis e Investigación (FUNDAR)
- 34) Iniciativas para la Identidad y la Inclusión (INICIA)
- 35) Instituto Mexicano para el Desarrollo Comunitario (IMDEC)
- 36) Liga Mexicana de Defensa de los Derechos Humanos (LIMEDDH)
- 37) Movimiento Ciudadano por la Democracia (MCD)
- 38) Oficina para América Latina de la Coalición Internacional para el Hábitat (HIC-AL)
- 39) Podemos
- 40) Promoción y Capacitación en los Derechos Económicos y Sociales de las Mujeres (PROCADESC)
- 41) Radar – Colectivo de Estudios Alternativos en Derecho
- 42) Red Mexicana de Acción frente al Libre Comercio (RMALC)
- 43) Red Mexicana de Investigadores sobre Sociedad Civil (REMISOC)
- 44) Red por los Derechos de la Infancia en México
- 45) Red Puentes Sociales
- 46) Salud Integral para la Mujer (SIPAM)
- 47) Servicios para una Educación Alternativa (EDUCA)
- 48) Sin Fronteras
- 49) Unión Campesina Emiliano Zapata Vive (UCEZ VIVE)

ADHERING ORGANISATIONS AND NETWORKS

- 50) Agrupación de Derechos Humanos Xochitlpetetl
- 51) Antena Civil en La Selva
- 52) Asociación Internacional de Educadores para la Paz
- 53) Asociación Nacional de Abogados Democráticos (ANAD)
- 54) Capacitación, Medio Ambiente y Defensoría del Derecho a la Salud (CAMADDS)
- 55) Católicas por el Derecho a Decidir (México)
- 56) CAUCE, Sinergia Cívica
- 57) Centro de Apoyo al Trabajador (CAT, Puebla)

- 58) Centro de Apoyo Comunitario Trabajando Unidos (CACTUS)
- 59) Centro de Comunicación Social (CENCOS)
- 60) Centro de Defensa de los Derechos Humanos Bartolomé Carrasco Briceño
- 61) Centro de Derechos Humanos y Laborales del Valle de Tehuacan (CDHyLVT)
- 62) Centro de Educación en Apoyo a la Producción y el Medio Ambiente A.C. CEP-Parras
- 63) Centro de Investigaciones Económicas y Políticas (CIEPAC)
- 64) Centro Michoacano de Investigación y Formación "Vasco de Quiroga" (CEMIF)
- 65) Centro de Promoción y Asesoría Comunitaria (CEPACOM)
- 66) Centro de Reflexión y Acción Laboral –Guadalajara (CEREAL Guadalajara)
- 67) Centro de Servicios Municipales "Heriberto Jara" (CESEM)
- 68) Comité de América Latina y El Caribe para la Defensa de los Derechos de la Mujer (CLADEM Regional)
- 69) Comité de Defensa Popular de Zaragoza-Veracruz (CDPZ-V)
- 70) Consorcio para el Diálogo Parlamentario y la Equidad-Oaxaca
- 71) Corporación Corazón (COCOAC)
- 72) Crecer
- 73) Desarrollo Comunitario del Nazas
- 74) Desarrollo Integral Autogestionario – Equipo Pueblo Morelos
- 75) Dignity International
- 76) Enlace Rural Regional
- 77) Food First International Action Network (FIAN Internacional)
- 78) Frente Auténtico del Trabajo (FAT)
- 79) Fundación Ciudadana para las Américas
- 80) Fundación para la Justicia y Defensa de los Derechos Humanos (Funjudeh, Guatemala)
- 81) Frente Democrático Campesino de Chihuahua
- 82) Grupo Cultural Nivi Nuu
- 83) Habitat Internacional Coalition (HIC)
- 84) Hombres Nuevos de Coahuila
- 85) Instituto del Tercer Mundo-Uruguay (secretariado de Social Watch internacional)
- 86) Marcha Mundial de las Mujeres en México
- 87) Mazahui
- 88) Movimiento Agrario Indígena Zapatista Veracruz (MAIZ-Ver)
- 89) Mujeres para el Diálogo
- 90) Observatorio Interamericano de los Derechos de los Migrantes (OCIM)
- 91) Pastoral Obrera de la Diócesis de Ciudad Juárez
- 92) Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo (PIDHDD)
- 93) Red de la Asociación Internacional de Educadores para la Paz de América Latina
- 94) Red de Profesores e Investigadores de Derechos Humanos de México
- 95) Red Nacional Género y Economía (REDGE)
- 96) Revista Guillotina
- 97) Seminario de Derechos Emergentes y Nuevas Tecnologías de la EMISE-Instituto Politécnico Nacional
- 98) Seminario de Desarrollo Regional y Derechos Humanos de la Universidad Autónoma de Guerrero
- 99) Seminario de Formación Docente en Derechos Humanos de la Universidad de Occidente
- 100) Social Watch Internacional
- 101) Taller de Desarrollo Comunitario (TADECO)
- 102) Terre des Hommes- Francia
- 103) Unión de Colonos de San Miguel Teotongo

- 104) Unión de Mujeres Indígenas Campesinas de Querétaro (UMICQ)
- 105) Voces Nahuas de la Sierra Negra

**Committee on Economic, Social and Cultural Rights
36th Session**

**Declaration of the Mexican civil and social organisations who present the
Alternative Report to the IV Periodic Report of the Mexican State⁵**

- This declaration is presented with the support of Habitat International Coalition, an international organisation with consultative status with ECOSOC, and the Miguel Agustín Pro Juárez Human Rights Centre, a Mexican organisation with Roster consultative status with ECOSOC -

1. Concerned about the situation of the economic, social, cultural and environmental rights (ESCER) of millions of Mexicans, the civil society organisations who are signatories to the Alternative Report to the IV Periodic Report of the Mexican State present this declaration to the Committee on ESCR on the occasion of its 36th session.
 2. The Mexican government is presenting its IV Periodic Report (E/C.12/3/Add.16) with a delay of almost three years. The Committee should request that henceforth, the Mexican State punctually comply with this obligation, in order to provide timely attention to its observations and recommendations and to highlight those that can be feasibly fulfilled before the change of the government in December 2006.
- A. Unfavourable environment and structural obstacles
3. The federal elections of 2000 ended 71 years of government by the Revolutionary Institutional Party (PRI), undoubtedly a fundamental step in our country's transition to democracy. Nevertheless, we call the Committee's attention to the fact that the political opening, without the revision or in-depth debates on the model of economic and social development being applied in our country for over twenty years, is not enough to achieve an improvement of the population's living conditions and to guarantee the realisation of human rights.
 4. The necessary measures have not been adopted to generate a favourable environment for the realisation of ESCER or to overcome some of the structural obstacles denounced by civil society organisations and identified previously by the Committee. As we expressed to the Pre-Sessional Working Group (November 2005), the model of opening the economy to external markets and the promotion of foreign investment in Mexico has not been socially responsible. The conditions applied to the credits of the international financial institutions, along with the trade and investment agreements, continue to determine economic policies and programmes, the deregulation of sectors and subsequent commercialisation of basic services associated with access to ESCER, and negatively impact the levels of inequality and income concentration.
 5. As was recognised in the *Diagnosis on the Human Rights Situation in Mexico*, elaborated by the representation of the OHCHR in Mexico in 2003 (page 74), twenty years of dismantling the State, privatising public companies, opening the market, inflation control, balanced budgets, an insufficient availability and volatility of credit, disloyal competition for national producers, the elimination of

⁵ Due to space, the organisations that subscribe to this document are not listed. For more information contact: informedesca@yahoo.com.mx

subsidies, salary contention and the deregulation of markets, among the most outstanding economic policies, have determined changes in the productive structure of the country that have had serious repercussions on the standards of living and on the ESCER of persons and their families.

B. Civil society- government dialogue processes

6. We as civil society organisations have promoted the opening of spaces in the design of public policies and legislation; fruit of this effort was the opening in 2001 of a Group on ESCR within the Dialogue Mechanism of the Inter-ministerial Commission to attend to Mexico's international commitments in the area of human rights.
7. Likewise, we proposed reforming the decree that created the Inter-ministerial Commission to incorporate the social and economic Ministries of the cabinet due to their importance regarding ESCER. However, while the current Commission of Government Policy on Human Rights includes the Ministries of Development, Education, Health, and the Environment, it only considers the Ministries of the Economy, Finance and Work as invitees, with voice but no vote.
8. In regards to the elaboration process of the IV Periodic Report, the Ministry of Foreign Relations (SRE) sent in August 2004, the first draft of the report elaborated by a consultant contracted for this purpose, to the organisations of the Subcommittee on ESCR of said Inter-ministerial Commission, calling for an analysis meeting only two days later, because of this we were not able to submit comments. Regarding the second draft that was subsequently sent, 35 organisations sent a letter expressing our concern for the lack of information on substantial issues, the lack of a qualitative assessment of the government's actions and their impacts, the insufficient identification of problems and obstacles for the access to and enjoyment of diverse rights, among others. Our comments were cited in the paragraphs 1240 and 1241 of the IV Report, making it understood that the government received feedback from each organisation. We would like to point out that this is not exactly the case and that we also do not share the assertion of paragraph 1239 that the necessary opportunities were provided for the comments of civil society organisations in order to obtain feedback.
9. Several civil society organisations also participated in the framework of the Technical Cooperation Agreement between the OHCHR and the Mexican government in the elaboration of the Diagnosis, and we provided proposals for the National Programme on Human Rights (PNDH). In regards to the Diagnosis, we are concerned that it does not adequately contemplate the problem of the lack of union democracy, while the government maintains its reserve to article 8 of the ICESCR, nor the seriousness of forced evictions when the Committee and the Special Rapporteur on the right to housing have made specific recommendations on this matter. The PNDH reflects the lack of understanding of the State's obligations in regards to ESCER given that it does not propose new lines of action in order to advance on several rights, but rather the continuity of social programmes that were not designed from a human rights perspective.

C. Principal causes for concern

10. Reducing the inequality gap is one of the main challenges that Mexico's faces to access ESCER. The Mexican government's Progress Report 2005 on the Millennium Development Goals recognises that merely disaggregating the information by geography, sex or ethnic group is enough to enable one to

obtain not only distinct levels of progress but also very distant results between them. Because of this, many of the achievements gained are not equitable for all of the population, demonstrating that inequality and gaps persist as substantial problems for Mexico's development.

11. The Human Development Report for Mexico 2004, elaborated by the UNDP, explains that the national inequality in the levels of the Human Development Index (HDI) is due to differences between as well as within the states. Those that present the lowest HDI are: Chiapas, Oaxaca, Guerrero, Michoacán, Veracruz, Hidalgo, Zacatecas, Puebla, Tlaxcala, Nayarit, Guanajuato, Tabasco and San Luis Potosí, areas with a high concentration of a peasant and/or indigenous population, who also expel labour to the United States; men, women and children- internal or external migrants- who suffer discrimination and other human rights violations.
12. The situation in Chiapas and other states continues to be concerning, and the government's measures inefficient and inappropriate. The government highlights the Opportunities Programme directed at the population in extreme poverty, while external studies and evaluations have demonstrated that focalised programmes have serious errors in including beneficiaries and adverse effects on social relations (divisions and the disintegration of social networks). Likewise, the military and paramilitary presence in Chiapas continues to be of concern.
13. In spite of numerous social programmes of the *Contigo* ("With You") Strategy described by the government, as long as the political will does not exist to revise and redirect economic and social policies with a focus based on human rights, poverty, inequality and exclusion will continue to represent systematic denials of ESCER for more than half of the Mexican population, which lives in these conditions.
14. In regards to the content of the IV Report, we are concerned by the omission of information on the right to self-determination in regards to its internal dimension, recognised by the Committee on ESCR (Informative Pamphlet No. 16 Rev. 1) and on the right to a healthy environment (art. 12.2.b of the ICESCR), as many rural and indigenous communities' rights to freely use their natural resources and to not be denied their own means of subsistence are being affected, and the State does not fulfil its obligation to respect and protect the rights. The Alternative Report contains concrete cases of the violation of these and other ESCER, and warns of the social and environmental impacts of some large-scale development projects, as well as the lack of adequate control and regulation by the State of the activities of private national and transnational corporations.
15. Access to justice in regards to ESCER is also very limited. A true process of harmonisation of internal law with international human rights law is fundamental. For more than 10 years, civil society organisations have demanded that the human right to food be elevated to the constitutional level and that diverse ILO Conventions be ratified. An appropriate legal framework would favour the design and application of adequate and effective public policies. Likewise, it is urgent that the State guarantees the appropriate legal resources for the justiciability of all human rights.
16. We also denounce a series of retrogressive measures that violate several dispositions of the Covenant and on which the government omits information for the Committee. For example, the cuts in social security spending and legislative reforms in this regard have generated: a reduction in the number of wage workers who have social security, limitations to the access to this right for wage and non-wage workers, and a deficiency in the services provided by public institutions, while favouring the Administrators of Retirement Funds

(AFORES) who charge commissions for the opening and management of the accounts for each of the workers registered in the privatised pension system.

17. On budget matters, the government has increasingly designated fewer resources for education, for example between 2002-2005, bilingual education and multicultural education suffered drastic cuts. Likewise, the under-spending of the budget approved for social issues is constant, with the Opportunities Programme standing out, which, during the period 2001-2004, did not spend close to 2 billion pesos. In contrast, the Ministries of Finance and Public Credit, National Defence, Foreign Relations and the Interior have over-spent their resources. Therefore, the constant reference by the government to the scarcity of resources, and its incompleteness of the obligation to take steps to the maximum of its available resources in favour of the rights of the ICESCR, is not justified.

D. Conclusions

18. We consider that the IV Periodic Report of Mexico does not provide the Committee with all of the information on obstacles and setbacks. To mainly focus on the progress made is a serious omission that also does not take advantage of the opportunity for advising offered through a constructive dialogue with the Committee on ESCR.
19. We do not share the government's appraisal on the section on the fulfilment of the Committee's recommendations (paragraphs 935 to 1242). For example, the protection of women working in *maquiladoras*, the physical and economic access to adequate housing (and the oversight of private construction, an arena of corruption), the decrease in female mortality due to illegal abortions, and the due attention to children living on the street, remain pending issues.
20. It is concerning that in spite of the time that has passed, the Mexican State has not satisfactorily attended to all of the observations and recommendations of 1999 (E/C.12.1/Add.41), including some which were issued for the first time in 1993 (E/C.12/1993/16).
21. Finally, we respectfully call on the Committee on ESCR to take into consideration the information, causes for concern, and recommendations that we present in the Alternative Report and to insist to the Mexican State that it adequately attend to its obligations in the area of economic, social, cultural and environmental rights. In a significant matter, the life and well being of millions of people in our country depend on it.

ECONOMIC POLICY IN MEXICO AND ITS IMPACT ON HUMAN RIGHTS⁶

1. Effects of structural adjustment policies on the enjoyment of ESCER

Since the presentation of the Alternative Report on the Situation of Economic, Social and Cultural Rights (ESCR) in Mexico to the UN Committee on ESCR in 1999, Mexican civil and social organisations and networks have denounced the negative impacts on the living conditions of several sectors of the population caused by the structural adjustment policies (SAPs)⁷ applied in the country since the 1980s. We note that the priorities of said policies are, among others, the stability of the macroeconomic indicators even at the cost of wage restrictions, the shrinking of the State (privatisations) and the liberalisation of trade and investment, which has deepened the economic and social inequalities in the population.⁸

Four years later, in 2003, the economic policy's impact on economic, social, cultural and environmental rights (ESCER) were recognised by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the *Diagnosis on the Human Rights Situation in Mexico* (hereafter National Diagnosis) within chapter 4 on ESCER, sections 4.1.1 on the context of globalisation and 4.2.5 on structural obstacles for the enjoyment of the right to an adequate standard of living.⁹

The National Diagnosis describes how the model of economic globalisation has been promoted through the conditionalities established in the agreements of the developing countries throughout the world with the international financial institutions and in free trade agreements; conditionalities that have demanded the elimination of production subsidies and the privatisation of state companies- including strategies for development. Reforms to reduce the social ownership of land and natural resources were promoted in order to incorporate them into the markets. The paradigm change in Mexico meant the transformation of an economy directed towards the internal market-whose main motor of growth was investment and public savings- to an open economy through a *maquilador* (export-orientated factory) model directed towards exportation, with an emphasis on private national and foreign investment and the substantial reduction of the State's intervention in the economy. The result of this indiscriminate opening was the destruction of the internal chains of production due to their inability to compete, and the deepening of Mexico's historic external dependence.

As a consequence of the privatisation of State companies, "the public sector workers' average income was reduced, the presence of precarious work relations increased [...] and a fundamental modification in the behaviour of labour authorities was produced... they began to play a role of containing the [workers'] demands and tolerated the violations of human labour rights. They controlled in an authoritarian manner the

6 This section on economic policy was elaborated by Domitille Delaplace- responsible for multilateral banks and human rights-, Norma Castañeda- responsible for free trade and human rights- and Areli Sandoval- coordinator and responsible for economic, social, cultural and environmental rights- of the Citizen Diplomacy Programme of DECA Equipo Pueblo, AC.
www.equipopueblo.org.mx

7 SAPs are a set of economic, monetary, financial and trade measures tending towards bringing about a profound restructuring of the developing economies towards free trade.

8 For more information on said report, consult E/C.12/1999/NGO/3 en www.ohchr.org. Likewise, it is important to point out the effects of the economic policies on the enjoyment of ESCER in the context of globalisation which have been discussed in pronouncements, declarations and resolutions emitted by the universal system for the protection of human rights regarding structural adjustment policies, external debt, investment and free trade (see the following documents: E/C.12/1999/9; E/CN.4/Sub.2/2000/13; E/CN.4/Sub.2/2003/9; E/CN.4/2002/54, on the web page www.ohchr.org)

9 OHCHR in Mexico. *Diagnosis on the Human Rights Situation in Mexico* (Diagnóstico sobre la Situación de los Derechos Humanos en México). Mundi-Prensa Mexico, 2003, pp. 62-64 y 73-74. For more information on the Diagnosis and the participation of civil and social organisations in this process, see the special section on the Diagnosis and the National Human Rights Programme of this Alternative Report.

increase in direct wages, they limited the right to strike and protected and encouraged trade union control exercised by the traditional centres and confederations of workers.”¹⁰

In regards to the obstacles recognised in the OHCHR’s Diagnosis, the following stand out:

- The model of opening the economy to the external market and the promotion of foreign direct investment unleashed in 1985 has not fulfilled the goals to reactivate sustained economic growth in the country and its application has not been socially responsible.
- A sustained dismantling of the institutions that supported the production and consumption of grains and oleaginous produced by the small peasant producers, as well as the opening for the entry of massive imports of these products, creates a dangerous food dependency and accentuates rural poverty.
- The conditions that have been accepted by the Mexican government in the agreements with international financial institutions and in the free trade agreements and treaties, limit the Mexican government’s margins of action for an autonomous definition of economic and social policies, as well as subordinating social policies and programs to free trade agreements.
- Twenty years of dismantling the State, of privatising public companies, of opening markets, of inflationary control, of balanced budgets, of insufficient availability and volatility of credit, of disloyal competition to national producers, of eliminating subsidies, of salary contention and market deregulation, among the most notable economic policies, have brought about changes in the productive structure of the country that have had profound repercussions on the standard of living and the economic, social and cultural rights of people and their families.

In spite of the seriousness of the social impacts of this type of policies, President Vicente Fox’s government (2000-2006) has continued with them, intensifying the model of economic opening without considering its profound repercussions on the living conditions and human rights of persons and their families.

2. International recommendations to the Mexican State to protect human rights in the economic context

As a result of the Committee on ESCR’s examination of the Third Periodic Report of Mexico (E/1994/104/Add.41) its consideration of the Alternative Report, the Committee called the State’s attention to the problems derived from the economic policies, highlighting the following subjects of concern in its Final Observations of 1999 (E/C.12/1/Add.41):

The Committee regrets that despite the positive growth of macroeconomic indicators in Mexico, especially the sharp decrease in the level of inflation, the National Minimum Wage Commission has not adjusted the minimum wage level upwards [...] (paragraph 20)

The Committee is concerned about the privatisation of the social security system, which may exclude from certain benefits those not in a position to contribute to an

¹⁰ OHCHR, Op. Cit. p. 64

individual pension account, such as the unemployed, underemployed, lower-paid workers and those employed in the informal sector. (paragraph 24)

The recommendations on economic policy issues were the following:

The Committee calls upon the State party, when negotiating with international financial institutions and implementing structural adjustment programmes and macroeconomic policies affecting foreign debt servicing, integration into the global free market economy, etc., to take into account their effect on the enjoyment of economic, social and cultural rights, in particular for the most vulnerable groups of society. (paragraph 34)

35. The Committee recommends that the State party continue to strengthen its efforts to alleviate any negative effects that the implementation of NAFTA might have on certain vulnerable sectors of the population. (paragraph 35)

It is important to remember that since 1994, in the Committee's Final Observations to Mexico (E/C.12/1993/16) with the motive of the Second Periodic Report of the Mexican State, the experts recommended that the State take energetic steps to mitigate any negative impact that the North American Free Trade Agreement (NAFTA) between Canada, the United States and Mexico might have on the enjoyment of the rights set out in the Covenant (paragraph 11). Likewise, the Committee indicated the need to ensure that structural adjustment programmes are so formulated and implemented as to provide adequate safety nets for the vulnerable sectors of society in order to avoid a deterioration of the enjoyment of the economic, social and cultural rights for which the Covenant provides protection (paragraph 16).

For its part, the OHCHR Diagnosis establishes several proposals in the area of ESCR, which include:¹¹

- The need, through legislation, for each international treaty or agreement that requires [the State] to undertake a series of actions on economic, political or social matters, or that permits the access of third parties to resources and the Mexican market, be subject to detailed examinations and criticism by a panel of experts and members of civil society, to avoid the violation of the population's human rights. As is the case, compensatory measures for the damage caused to the affected groups or activities will be required, always and when the final purpose of the treaty or agreement produces a longer-lasting benefit to a larger number of persons than those who will be immediately affected by the treaty or agreement.
- That legislation be enacted which requires the realisation of social impact studies on the following terms and aspects: the projects of the Budget Law, with an analysis of their effects on distribution and social equity; the proposal on tax reform, large-scale projects, the signing, extension or change in trade agreements or treaties and of agreements or treaties of any other type with international financial and trade bodies.
- The revision of economic and social policies to adjust them to the fulfilment of the State's obligations in the area of economic, social and cultural rights, and the development of efficient mechanisms and systems of coordination between social and economic authorities, to promote development with a social meaning

¹¹ OHCHR. Op. Cit. Section 4.1.5 general proposals on ESCR, p. 67.

that favours and conserves employment, increases income levels and improves the distribution of the same.

- Develop integrated frameworks of policies (between economic and social policy, within social policy and between macro and meso economic and social policies) and make private agents responsible for the effects their economic actions have on other spheres of society.
- Carry out legislative, institutional and administrative reforms that allow for the progressive increase in the State's income, so that it assumes its obligation to provide a basic level of universal protection in the area of economic, social and cultural rights. Establish in the legislature the obligation of progressivity and the correlated prohibition of retrogression, represents an obstacle to carry out cuts in social spending, as is foreseen in the Law on Social Development approved by the Senate of the Republic.

Likewise, the Diagnosis proposed to the Mexican government a series of measures for progress, particularly on the right to an adequate standard of living, for example:¹²

- That it develop the regulating capacity of the State and extend its legal attributions to avoid the concentration of wealth and income due to failures in the market or in the financial systems. At the same time, that it define and develop policies against the concentration of income and wealth.
- That it modify the legislation and cancel all public action that contributes to a regressive distribution of income and wealth, be it through granting concessions, licenses or permits; the transfer of company properties or the subrogation of State services; bank and financial recovery; discretionary tax exemptions; public guarantees to private projects and debts; etcetera.
- That it recover the policy of promoting and supporting productive development in order to dissemination within the country the impacts of exports through the creation of efficient chains of production.

The National Diagnosis even proposes to the Mexican government that it promote an international social agenda that requires, among other things, the promotion of the creation of a binding and obligatory code of conduct for multinational corporations regarding their social responsibilities; and to promote the international financial institutions' adoption of programmes and policies to compensate for the effects of the financial markets, through adequate regulation and offering more levels of freedom for those countries that adopt the appropriate policies.

Among the 31 general recommendations to the Mexican government formulated by the National Diagnosis, the following stands out regarding economic policy and its relation with economic, social and cultural rights: "Integrate, in an effective and verifiable manner, social objectives for the economic policies and decisions, so as to adjust them to the fulfilment of the State's obligations in the area of economic, social, cultural and environmental rights. Open up economic policy to discussion and social participation."¹³

3. Impacts of trade and investment liberalisation

¹² OHCHR. Op. Cit. Section 4.2.6 Proposals, pp. 74-76

¹³ General recommendation number 22. OHCHR. Op. Cit., page VIII.

In its IV Periodic Report to the Committee on ESCR, the Mexican State affirms that it has undertaken responsibility to “follow an economic policy which will permit permanent improvement in the living standards and quality of life of the population, not only in terms of food, health, education and housing, but also in those cultural and recreational aspects which together permit the complete and equitable development of the individual.”¹⁴ However, by continuing the policies that have demonstrated their ineffectiveness,¹⁵ and their serious consequences on ESCR, this commitment does not seem to be true.

Between 2002 and 2005, the Gross Domestic Product (GDP) grew on average 2.6%, very much below the 5.2% of the period 1996-1999¹⁶ and the growth observed during the seventies where the average rates reached up to 6.5%. According to the Bank of Mexico – the central bank- in 2003 the growth was 1.3%, much lower than what had been estimated.¹⁷ The economic policy has not translated into a better performance of the Mexican economy and it also has not achieved a recovery of employment; it is sufficient enough to mention what the Bank of Mexico itself said on this matter: “there is a reduction in the labour scheme in the formal sector of the economy as a reflection of the modest performance demonstrated by the economic activity and, in particular, by the annual contraction presented by the manufacturing activities.”¹⁸

In the last decade, liberalisation in trade and investment experienced a constant increase, favoured by the signing of bilateral or multilateral free trade agreements and the negotiations within the World Trade Organisation (WTO), that establish the framework of rules and principles to “regulate” the liberalisation and expansion of world trade and investment, favouring the rights of investors while forcing the State Parties to eliminate any trade restriction. Mexico has been a promoter of this strategy, in particular with the North American Free Trade Agreement (NAFTA),¹⁹ the Free Trade Agreement between the European Union and Mexico (FTA EU-Mexico), the negotiations of the Free Trade Area of the Americas (FTAA) and more recently, the new Security and Prosperity Partnership for North America (SPP), this, in spite of the persistent trade deficit, the disarticulation of the productive scheme, and the loss of food sovereignty and security in the country.²⁰

The processes of economic integration currently present several obstacles for the realisation of human rights, as was presented by several organisations from Colombia, Venezuela, Canada, Peru and Mexico before the Inter-American Commission on Human Rights (IACHR) in the hearing on this issue celebrated in October 2004.²¹

14 IV Periodic Report of Mexico on the implementation of the ICESCR (E/C.12/4/Add.16) 25 February 2005, paragraph 1134.

15 Annual Report Summary 2003 of the Bank of Mexico, available at:

<http://www.banxico.org.mx/fBoletines/Boletines/FSBoletines.html>. This report indicates, among other issues, that the economic policy has not fulfilled the goals of reactivating sustained economic growth in the country.

16 Presidency of the Republic, Fifth Report of the Government of President Vicente Fox, 2005, Annexes of Statistics, p. 193.

17 Annual Report Summary 2003 of the Bank of Mexico. Op. Cit.

18 Annual Report Summary 2003 of the Bank of Mexico. Op. Cit.

19 It is not accidental that the same day that this trade agreement went into force, 1 January 1994, the Zapatista National Liberation Army (EZLN) first appeared in public in Chiapas. Their 11 main demands appealed against the lack of access and enjoyment of economic, social and cultural rights and gave to Mexico and the world a clear message that questioned the outrageous economic model that makes false promises of development. Thirteen years after NAFTA entered into force, its results have not been as positive as what the government indicates. (Taken from: “Los Tratados Comerciales como instrumento de las políticas de Ajuste Estructural y su impacto en los Derechos Económicos, Sociales, Culturales y Ambientales”, presentation elaborated by Norma Castañeda and Areli Sandoval of the Citizen Diplomacy Programme of DECA Equipo Pueblo, A.C., for the Seminar on free trade and ESCR organised by PROVEA-Venezuela, 30 June 2004

20 In this regard, the massive imports of grains and oleaginous have created a danger of external dependency, apart from accentuating the impoverishment of the majority of the residents of the countryside. See the section on the right to food of this Alternative Report for the impacts of free trade on food sovereignty and security.

21 Report on human rights in the processes of economic integration in the Americas presented in the Hearing celebrated in the Inter-American Commission on Human Rights in October 2004, elaborated by the Centro de Derechos Humanos Miguel Agustín Pro Juárez (México) in collaboration with el Centro de Investigación y Educación Popular -CINEP- (Colombia), la Coordinadora

Previously, many of the processes of economic integration were focused on international trade, but the agenda has broadened and now it covers trade in services, government purchases and contracts, investment, and intellectual property rights, which is reflected in the free trade agreements that have been negotiated in the region since the 1990s as well as in the WTO agreements. Generally it is argued that the results of the processes of economic integration will be: more choices, cheaper services and goods, and an increase in economic growth, contributing to mediating the economic inequalities between and within the State parties.²² However, in the current context there are controversies over whether economic integration, particularly in regards to trade and investment, really contributes to improving the population's standard of living, given the increase in inequality among and within the countries,²³ as well as the limitations on the States' capacities to fulfill their human rights obligations.

The Report before the IACHR highlights that although human rights law and international trade law arose in a simultaneous manner during the post-war period, their paths have completely diverted, for which, in 2002 the High Commissioner elaborated a report titled "Liberalisation of trade in services and human rights" that analyses the consequences for human rights of the liberalisation of trade in services in the framework of the General Agreement on Trade in Services (GATS).²⁴ International human rights law emphasizes its primacy but in practice, trade law begins to prevail over human rights, among other reasons because the free trade agreements include almost exclusively the rights of companies and investors and as opposed to the human rights treaties, they have very effective international mechanisms to enforce their fulfilment. In light of this situation, the limitations on the justiciability of human rights, particularly economic, social, cultural and environmental rights is concerning. Lastly, the Report asks, if the States are guarantors and those responsible for the application of human rights, is limiting their capacities to regulate the economy the best way to promote the applicability of human rights?

Moving to the concrete results of trade opening in Mexico, we have that between 2000 and 2004 the trade deficit remained at a very high level, rising an average of 8 billion USD annually,²⁵ which increased the current account deficit and the level of foreign debt. Trade liberalisation resulted in a greater increase of imports than exports, causing the displacement and/or failure of national companies who do not have the capacity to compete with the foreign products in the international market, in particular given the lack of an industrial policy and of adequate credits to promote the activities of Mexican companies, especially small to medium sized enterprises (SMEs) which represent approximately 98% of the total enterprises.²⁶ In regards to exports, the myth of Mexico as a growing country for exports collapsed when it was shown that the majority of the inputs for manufacturing are imported, while only 15% of the exports (petroleum and agricultural products) have a high level of national content.²⁷ Therefore, the export

Peruana de Derechos Humanos de Perú, Derechos y Democracia (Canadá), el Programa Venezolano de Educación-Acción en Derechos Humanos de Venezuela (PROVEA), and el Centro por la Justicia y el Derecho Internacional (CEJIL).

22 David Dollar & Aart Kraay, Trade, Growth and Poverty, Development Research Group, The World Bank, June 2001; cited in: Report on human rights in the processes of economic integration in the Americas. Op. Cit.

23 Joel R. Paul, "Do International Trade Institutions Contribute to Economic Growth and Development?"; cited in: Report on human rights in the processes of economic integration in the Americas. Op. Cit.

24 UN, Commission on Human Rights; "The liberalisation of trade in services and human rights. Report of the High Commissioner"; E/CN.4/Sub.2/2002/9; 25 June 2002.

25 Presidency of the Republic, Fifth Report of the Government of President Vicente Fox, 2005, Annexes of Statistics, p. 336.

26 European Commission. National Strategy Report, 2000-2006, section 3.2.2.

27 SAPRIN (Structural Adjustment Participatory Review Initiative Network). "Ajuste estructural – Informe SAPRIN", Intermon Oxfam, Spain, 2005, p. 71.

activities have not caused a chain reaction that would permit an increase in national production and raise the levels of employment and income of the population.²⁸

Moreover, the promotion of private investment, particularly foreign direct investment (FDI) constitutes the *leitmotiv* of the current government. While this tendency allows for access to foreign currency - FDI represents the third source of foreign currency after petroleum exports and remittances²⁹- this increasing flow of foreign investment translates into the shifting of the national production sector and of the extractive activities of strategic resources, particularly natural resources, towards foreign companies and transnational corporations. In the export sector, foreign corporations are the owners of around 70% of the export companies.³⁰ Likewise, FDI is directed towards investment projects in strategic areas of the country without the State acting to prevent or impede the social and environmental costs of the foreign investment projects, such as the case of the projects financed within the Plan Puebla Panama (PPP)³¹ and other regional development projects.

The Mexican government reports that it has looked for the “fostering of a macroeconomic environment which encourages and gives certainty to investment decisions by private agents”,³² but the incentives to attract foreign investment are not limited to “prudence and discipline in the handling of public finances” as mentioned by the government, but rather that it has granted a series of tax and labour incentives. Policies for salary contention, the flexibilisation of work, and the discretionary and partial exercise of labour justice stand out, all with the aim of maintaining a cheap workforce as a comparative advantage, without taking into account that with this the labour human rights of the Mexican workers are violated.

The OHCHR Diagnosis on Mexico clearly summarises this situation: “The Mexican State has operated with a double standard: liberation and total and unrestricted support for foreign investment and the large Mexican business groups, and contention and restrictions on the exercise of their freedoms and respect for their human rights for millions of wage workers and small to medium size producers.”³³

Women are those who have most lost out in this new labour situation; a large part of the workers who make up the *maquila* sector are women and they put up with the treatment and conditions that are imposed on them by the transnational corporations given their need to maintain their households. An increase in informal activities has also been observed, with a growing number of women working in this sector since there is an increase in the demand for work caused by the impoverishment of the households and because access to stable employment in equitable and satisfactory conditions is very limited.³⁴

28 For information on the impacts of NAFTA on Mexico, we recommend consulting the web page of the Mexican Action Network on Free Trade (RMALC) whose researchers have carried out assessments on three, five, and ten years of the entry into force of the Agreement: www.rmalc.org.mx

29 Mexico continues to be extremely dependent on its petroleum income- petroleum exports were the largest source of income for the country- representing 28 billion dollars. Family remittances today equal 2.49% of the GDP (20 billion 35 million dollars in 2005). FDIs represented 18 billion 244 million at the end of 2004. Taken from: Saldaña, Ivette. “IED, la tercera fuente de divisas para México.” *El Financiero*, national newspaper, 20 February 2006, p16

30 SAPRIN (Structural Adjustment Participatory Review Initiative Network). “Ajuste estructural – Informe SAPRIN”, Intermon Oxfam, Spain, 2005, p. 71. .

31 There is more information on the PPP and its impact on ESCER in the section on the right to self-determination of this Alternative Report.

32 IV Periodic Report of Mexico on the implementation of the ICESCR. Op. Cit., paragraph 1135.

33 OHCHR. Op. Cit. p. 73.

34 See also in this Alternative Report the section on the equal right of men and women to the enjoyment of all ESCR

The banking sector is another sector that has benefited from the economic liberalisation; in particular since NAFTA and its chapter XIV on financial services. According to the 2005 report of the Latin American Bank Federation (FELABAN), the activities of private banks in Mexico, mostly foreign owned, are the most profitable in the world; in particular, foreign banks serve the interests of their home office and they do not support the key sectors for the country's economic growth.³⁵ Likewise, an analysis based on information from the National Commission for the Protection and Defence of Financial Services Users (CONDUSEF) revealed that the commissions charged by the banks in our country are between three to ten times more than those charged by these same institutions for account holders in other countries.³⁶

It is evident that the promotion of free trade and unrestricted foreign investment has served the interests of the large private foreign groups in detriment to national interests. Because of this and more, on trade and private investment matters it is essential to appeal to the State's obligation to protect human rights from the actions of non-state parties, which implies that the State should supervise and guarantee that entities such as private companies (national and foreign) respect human rights and, to the contrary, the State should plan for mechanisms and recourses for their defence.

4. Fiscal policy with regressive tendencies

On fiscal matters, in its IV Periodic Report, the Mexican government makes reference to its "commitment gradually to reduce public deficits to arrive at a balanced budget [...] These mechanisms have shown their effectiveness for the attainment of fiscal targets while at the same time maintaining priority expenditure in areas which are strategic for national development such as education, health, equality of opportunities, rural development and infrastructure."³⁷ What the government does not tell the Committee on ESCR is that the so-called locks on the federal budget to avoid cuts in social spending in case the public income is less than what was anticipated, were promoted by legislators from opposition parties in response to great social pressure. In previous years, the federal government has cut its social spending and on energy, every time the prices for petroleum dropped.³⁸

In 2001 as well as in 2003, the Federal Executive presented to Congress proposals for fiscal reform as part of a finance reform, whose proposal to burden with a value added tax (VAT) the purchase of medicines, food, transportation, school fees and house rents was clearly retrogressive in terms of human rights.³⁹ The opposition political forces in Congress, particularly from the left, as well as social pressure, were able to put a stop to these measures, illustrating the government's lack of an integral human rights perspective as well as clear lack of knowledge or disdain for its legal obligations acquired through the ICESCR. Paradoxically, the Federal Executive accused the legislators of the left of not wanting to approve a reform that supposedly would have benefited the poorest.

35 González Amador, Roberto. "En México los bancos obtienen las mayores ganancias del mundo". La Jornada, national newspaper, Mexico, 21 November 2005, p. 31, available at: www.jornada.unam.mx

36 Rodríguez, Israel. "Cobran bancos intereses por crédito 5 veces mayores a los de sus países." La Jornada, national newspaper, Mexico, 17 January 2006, available at: www.jornada.unam.mx

37 IV Periodic Report of Mexico on the implementation of the ICESCR. Op. Cit., paragraph 1136.

38 In its Final Observations to Mexico in 1999, the Committee on ESCR identified among the factors and difficulties impeding the implementation of the Covenant that the economic crisis experienced by Mexico in 1995 has had negative effects on the enjoyment of ESCR by its population, "in particular the most vulnerable sectors, which are still being experienced in Mexico as a significant amount of public funds is being invested in overcoming the effects of the crisis." (paragraph 12)

39 Based on the pronouncements of the Group of Civil Organisations on ESCR in light of said proposals by the Executive (mimeograph 2001 and 2003) cited in: Regional Report on Economic, Social and Cultural Rights (ESCR) of the Inter-American Platform on Human Rights, Democracy and Development (PIDHDD), chapter on Mexico, Coordination and compilation: Domitille Delaplace and Areli Sandoval, DECA Equipo Pueblo, A.C., April 2004.

In its Economic Study of Mexico 2000, the Organisation for Economic Cooperation and Development (OECD) recognises that the goals of the fiscal policy were all fulfilled through, for example, “drastic cuts in spending as occurred in 1998...” the OECD concludes that: “this reduction in public spending has not been free, given that it has implied postponing or cutting programmes that could have produced high benefits...”⁴⁰

We do not attempt to deny the importance and need of a reform of financial matters in the country, however this should not imply any measure that violates ESCER to resolve other problems. We are also very concerned that the OHCHR Diagnosis- one of the documents that served as the basis for the National Human Rights Programme- does not duly alert to this type of retrogressive proposals and, to the contrary, constantly alludes to the shortage of resources, affirming with this that the Mexican State will not be in conditions to fulfil its obligations derived from the ICESCR until a fiscal reform is achieved that generates additional resources. The central criticism is not just that it did not assess the type of tax reform that is needed, but rather that it reproduced the argument from the Ministry of Finance and Public Credit (SHCP) in terms of the lack of resources to attend to the country’s social problems.⁴¹ However, the problem lies in the definition of priorities; in this sense, the so-called “bank recovery” through FOBAPROA is very illustrative.

As we indicated in the previous Alternative Report of 1999, the Banking Fund for the Protection of Savings (FOBAPROA) was created by the federal government in 1997 to cover with public resources the eminent bankruptcy and insolvency of the private banks, a product of an enormous amount of overdue loans from the financial crisis of 1995, frauds and corruption of the bank owners, some politicians and public officials, and the scarce regulation of the financial system. According to the Supreme Auditors of the Federation (ASF), up to January 2005, the bank recovery had a total cost of one trillion 260 billion pesos⁴² since the government proposed in 1995 the conversion of the cost of the bank recovery into public debt, raising its proportion regarding the GDP from 27.9% to 42.2%.⁴³ The Diagnosis identifies among the structural obstacles for the realisation of the right to adequate housing: “impunity in economic crimes, that affect or redirect large sums of public resources (FOBAPROA, overdue loan recovery) committed by large businessmen, bankers, and public officials who got rich and benefited from the privatisation policies.”⁴⁴

5. External debt and ESCER

The Mexican government reports in its IV Periodic Report that in regards to public debt policy “we shall continue to take advantage of the favourable financing terms and conditions offered by the international financial organizations, giving priority to the promotion of investment projects and programmes of reforms which will stimulate the economic and social development of the country.”⁴⁵ This affirmation disregards the serious economic, social and environmental impacts that the policies and loans of the international financial organisations have had on the country, particularly since the 1980s.

40 OECD. Economic Study on Mexico 2000.

41 DECA Equipo Pueblo, A.C. Document of observations on the Diagnosis on the Human Rights Situation in Mexico, elaborated by the Office of the UN High Commissioner for Human Rights in 2003, February 2004.

42 Garduño, Roberto. “ASF, por revisar el rescate bancario; cuesta \$1 billón 260 mil millones”. La Jornada, national newspaper of Mexico, 21 January 2006, available at: www.jornada.unam.mx

43 Newspaper El Financiero, 3 May 1998, cited in the Social Watch Report 1999 (more information www.socialwatch.org)

44 OHCHR. Op. Cit. p. 73.

45 IV Periodic Report on the implementation of the ICESCR. Op. Cit., paragraph 1139.

For the government of President Vicente Fox Quesada, the issue of the external debt burden on the Mexican economy is, apparently, a problem that has been overcome. According to its financial advisors, the government explains that the foreign debt burden has been reduced by two means: first, in a direct way, through a reduction of the nominal value of the public external debt, carried out through restructurings in the past six years. The second way to reduce debt has been through directly paying it, even in advance. The combination of these two means has resulted in a substantial reduction of the public external debt burden, which according to said analysis represented 12% of the GDP (78 billion 425 million dollars) in 2003, an amount notably lower than the 60% in the 1980s.⁴⁶

However, for the Committee for the Cancellation of Third World Debt (CADTM) to talk about the problem being overcome is a myth: "the main problem with Mexico's high level of indebtedness, both internal and external, is that its service largely limits spending on investments and job creation, as well as social spending and the resources necessary to install true programmes to combat poverty. Likewise, in the framework of globalisation, the attraction of external resources requires the application of restrictive monetary and fiscal policies that impede a high and lasting growth of the economy."⁴⁷ More than twenty years after the start of the external debt crisis, the problem of the over-indebtedness of the Mexican economy continues to be true: "the difference now is that a massive and growing internal debt is added to the to external debt..."⁴⁸ for example, in 2003 the external debt⁴⁹ represented 25.9% of the GDP, while in 1981, before the beginning of the external debt crisis, it reached 31%; however, as compared to then, the current level of internal debt is much higher and although it does not require foreign currencies for its payment, the payment of its service does add up to an enormous amount of State resources."⁵⁰

Between 1990 and 2002, according to SHCP and the Bank of Mexico, the federal government designated 81 billion 905.8 million dollars exclusively to attend to the interest payments of the external public debt. This amount is 8 percent more than the sum of the total public external debt, which in December 2002, reached 75 billion 934.8 million dollars, according to the Ministry of Finance. This means that in 12 years a sum superior to the amount of the debt has been paid in interest payments, without taking into account the repayments carried out.⁵¹ For 31 December 2002, the total external debt of Mexico reached 138.3 billion dollars, equivalent to 21.7% of the GDP. With this, the country reached the position of the fifth most important debtor in the world, after Brazil, China, Russia and Argentina.⁵²

6. Conclusions

The conditions that have been accepted in agreements and treaties with the international financial institutions and in the free trade agreements and treaties,

46 González Amado, Roberto. "La deuda interna oficial no entraña riesgos. Representa el 14% del PIB; aún es moderada según analistas." *La Jornada*, 17 April 2003; cited in: Sandoval Terán, Areli. "EL OBSTÁCULO DE LA DEUDA EXTERNA Y SU IMPACTO SOBRE LOS DERECHOS ECONÓMICOS, SOCIALES Y CULTURALES: EL CASO DE MÉXICO", presentation presented in the II FORO INTERNACIONAL SOBRE DERECHOS HUMANOS organised by Observatori DESC in Barcelona, Spain, 17 - 20 November 2003.

47 Indicated by Arturo Guillén, professor-researcher of the Universidad Autónoma Metropolitana (UAM) who participated in the seminar organised by CADTM: cited in "Los intereses pagados en 12 años superan el monto de la deuda externa mexicana", on-line document by Roberto González Amador (ATTAC México Proyecto) published in: www.attacmadrid.org
48 *Ibid.*

49 Contracted internationally by the government, companies and private banks.

50 Indication of Arturo Guillén. *Op. Cit.*

51 "Los intereses pagados en 12 años superan el monto de la deuda externa mexicana", on-line document by Roberto González Amador (ATTAC México Proyecto) published in: www.attacmadrid.org

52 Electronic Bulletin of IIEC of UNAM, *Momento Económico*, Vol. 9 issue 6, June 2003 (www.iiec.unam)

frequently in a way this is accelerated, and not very participative nor transparent, limit the government's margins of action for an autonomous definition of political and social policies and subordinate the social programmes and policies to free market economic agreements.⁵³

The Structural Adjustment Policies, the change in the direction of cooperation for development and the Trade Agreements have not contributed to resolving the main demands of the population which are for health, education, work, dignified wages, to housing, and food. On the contrary, what has been seen is a reduction in social spending, the destruction of the national industry, very little stimulation for local production, an increase in inflation and a concentration in income, and a lack of protection for key sectors of the national economy.⁵⁴

The privatisations of basic services- strongly linked to access to ESCER-, are occurring in a gradual and quite manner; for example: in the area of health, the modalities of this privatisation are: 1) payment for public services; 2) the subrogation of auxiliary services; 3) managerial forms of administration and financing; 4) the sale of assets or services.⁵⁵ Of this, the most important modality in our country is medical attention supported by private insurance whose main objective is to resolve health problems in a radical manner ("individualised solution") offering to private initiative a "profitable and guaranteed" market while it loses capital and therefore, deteriorates the social security system of our country.⁵⁶ This scheme which appeals to individualised solutions and based on people's purchasing power has also been extending itself to the areas of education and housing.

Finally, Fox's government must fulfil its obligations in the area of ESCER, assigning mainly to the social policies the available resources. Although Mexico requires additional internal and external resources, social development and the respect, protection and promotion of ESCR cannot be conditioned on obtaining new resources, when what is being assured with the resources that exist is bank recovery and the punctual payment of external debt.

53 Segundo Foro Nacional, Ajuste y empobrecimiento: 20 años de crisis en México; published by the Senate of the Republic, LVIII Legislature and [Ciudadan@s](#) frente al Ajuste Estructural, 2001; cited in : "Los Tratados Comerciales como instrumento de las políticas de Ajuste Estructural y su impacto en los Derechos Económicos, Sociales, Culturales y Ambientales", presentation elaborated by Norma Castañeda and Areli Sandoval. Op. Cit.

54 See Román Morales, Luis Ignacio, ¿Qué es el ajuste estructural?, ITESO-SIMORELOS, 2000. cited in: "Los Tratados Comerciales como instrumento de las políticas de Ajuste Estructural y su impacto en los Derechos Económicos, Sociales, Culturales y Ambientales", presentation elaborated by Norma Castañeda and Areli Sandoval. Op. Cit.

55 www.unam.mx/prolap/maingmex.html (synthesis by Thais Maingón and Cristina Torres of the case study by Asa Cristina Laurell and María Elena Ortega requested by the Pan-American Health Organisation in 1991)

56 Taken from: Sandoval Terán, Areli, "Ahora la responsabilidad recae en los individuos", chapter on Mexico of the Social Watch Report 2003, pp. 148-149

POVERTY AND SOCIAL POLICY IN MEXICO⁵⁷

1. The situation of poverty in Mexico

To analyse the situation of poverty in Mexico we part from the multidimensional focus subscribed by the UN Committee on Economic Social and Cultural Rights (Committee on ESCR) in its document on Poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10), through which poverty can be defined as “a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights ... poverty constitutes a denial of human rights.”⁵⁸

In its General Comment No. 3 on the nature of the State Parties' obligations, the UN Committee of ESCR considers that “the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.”⁵⁹ This is the case of our country, where more than half of the population lives in conditions of poverty.

The official measurement of poverty in Mexico is based on the *Lines of Poverty* methodology, adopted by the federal government from the recommendations and criteria of the Technical Committee to Measure Poverty, which joins together experts from the academic and governmental realms. In the research document *Evolución y características de la pobreza en México en la última década del siglo XX*, published in 2002 by the Ministry of Social Development (SEDESOL) three lines of poverty are explained. These lines measure: 1) food poverty, 2) capacity poverty and 3) patrimony poverty.⁶⁰

In the first line on food poverty, households whose income that is insufficient to cover minimum food needs are considered; these are households whose income per person is 15.4 pesos per day in rural areas and 20.9 pesos in urban areas (at 2000 prices).

In the second line on capacity poverty, there are households with an insufficient income to cover both food needs and to cover minimum expenses on health and education, these are households that daily receive per person 18.9 pesos in rural areas and 24.7 in urban areas (at 2000 prices).

In the third line on patrimony poverty are the households classified with having insufficient incomes to cover needs of food, health, clothing, shoes, housing and public transportation, that is households that receive 28.1 per person in rural areas and 41.8 pesos in urban areas (at 2000 prices).

⁵⁷ This section on poverty and social policy in Mexico was elaborated by the Citizen Diplomacy Programme of DESC Equipo Pueblo, A.C. and the *Centro de Estudios Sociales y Culturales Antonio de Montesinos (CAM)* while also considering contributions from FUNDAR *Centro de Análisis e Investigación*.

⁵⁸ Committee on Economic, Social and Cultural Rights. Document on Poverty and the International Covenant on Economic, Social and Cultural Rights, paragraphs 1 and 8. Adopted by the Committee during its 25 session in May 2001. E/C.12/2001/10 (10 May 2001) The document is on the web page of the UN High Commissioner for Human Rights (www.unhchr.ch)

⁵⁹ General Comment N° 3 (E/1991/23), paragraph 10 (www.unhchr.ch)

⁶⁰ Ministry of Social Development and the Technical Committee to Measure Poverty. *Evolución y características de la pobreza en México en la última década del siglo XX*. August 2002, 31 pp. (www.sedesol.gob.mx)

According to the measurements of the Technical Committee established by the SEDESOL in 2000:

- 18.6% of households were in food poverty; this equalled 24.2% of the population, 23, 595, 000 people.⁶¹
- 25.3% of households lived in capacity poverty, which represented 31.9% of the total population,⁶² that is, 31, 102, 500 people.
- 45.9% of households representing 53.7% of the total population⁶³ (52, 375, 500 people) lived in the alarming situation of patrimony poverty.

SEDESOL has not provided annual calculations on the situation regarding poverty. Therefore it will be difficult for the Committee to carry out a complete evaluation on the period of the report. However, at least there is the 2004 calculation on poverty of the Technical Committee and a new estimate for poverty for 2002 that permits time comparisons to be done.⁶⁴ This information calls our attention to the composition of poverty by zones, since in the 2000 – 2004 period, the concentration of poverty in rural areas diminished but increased proportionally in urban areas. The Committee on ESCR should request that the Mexican government provide an explanation for this.

- In 2000, 68.40% of food poverty was concentrated in rural areas and 31.60% in urban areas; in 2004 this proportion changed and only 59.90% of food poverty was concentrated in the rural areas while in the urban areas it increased to 40.10%.
- With respect to capacity poverty, in 2000 it was also concentrated mainly in rural areas (61.32%) and to a lesser share in the urban areas (38.68%). In 2004 the concentration in rural areas decreased (54.60%) and increased in the urban areas (45.40%).
- Finally, in 2000, 50.42% of patrimony poverty was concentrated in the rural areas and 49.58% in the urban areas. By 2004, the concentration patrimony poverty in rural areas diminished to 45.40% and the urban concentration increased to 54.60%.

The following includes the development of percentages of households and people living in conditions of poverty between 2000 and 2004, and the development of monthly income by poverty lines in the same period:

⁶¹ Ministry of Social Development and the Technical Committee to Measure Poverty. Op. cit. pp.9 and 15.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Technical Committee to Measure Poverty in Mexico. Presentation on the Measurement of Poverty 2002-2004, by the following academic members: Fernando Cortes (Colmex), Rodolfo De la Torre (UIA), Luis Felipe López Calva (ITESM), Graciela Teruel (UIA), Luis Rubalcava (CIDE), Enrique Hernández Laos (UAM), John Scott (CIDE). Mexico, June 14, 2005. Available on the web page of the Ministry of Social Development www.sedesol.gob.mx.

Table: Portion of the poor population in Mexico (2000-2004)⁶⁵

Type of poverty	Sphere	% of households (2000)	% of people (2000)	% of households (2002)	% of people (2002)	% of households (2004)	% of people (2004)
Line 1: Food poverty	Urban	9.8	12.6	8.5	11.4	8.7	11.0
	Rural	34.1	42.4	28.5	34.8	22.3	27.6
	National	18.6	24.2	15.8	20.83	13.7	17.3
Line 2: Capacity poverty	Urban	16.2	20.2	13.3	17.4	14.2	17.8
	Rural	41.4	50.0	36.6	43.9	29.4	35.7
	National	25.3	31.9	21.8	27.4	19.8	24.6
Line 3: Patrimony poverty	Urban	37.4	43.8	34.9	41.5	34.2	41.0
	Rural	60.7	69.3	57.2	65.4	48.2	56.9
	National	45.9	53.7	43.0	50.6	39.6	47.0

Source: Own elaboration based on information from SEDESOL (www.sedesol.gob.mx)

Table: Monthly per capita income for Lines of Poverty 2000-2004⁶⁶

Type of Poverty	Sphere	Monthly per capita income* 2000	Monthly per capita income* 2002	Monthly per capita income* 2004
Line 1: Food poverty	Urban	626.0	672.27	739.60
	Rural	492.90	494.77	548.17
Line 2: Capacity poverty	Urban	769.98	826.90	909.71
	Rural	586.06	588.29	651.77
Line 3: Patrimony poverty	Urban	1258.89	1351.94	1487.34
	Rural	899.54	902.96	1000.41

* Monthly per capita income in pesos at the price of August of each year

Source: Own elaboration based on information from SEDESOL (www.sedesol.gob.mx)

2. The challenge of inequality

Mexico, a middle-income country situated in the most unequal region in the world, competes with other Latin American countries for the first places on economic, social and gender inequality.⁶⁷ In the 2005 Progress Report of the Mexican government on the Millennium Development Goals it is recognised that “it is enough to simply disaggregate the follow-up information on the MDGs by geography, gender or ethnic groups to obtain not only different levels of progress, but very distant results. Hence, many of the achievements obtained are not yet equitable for all of the population, which shows that inequality and delays persist.”⁶⁸

⁶⁵ Own elaboration based on the presentation of the Technical Committee to Measure Poverty, Op. Cit.

⁶⁶ Ibid.

⁶⁷ Economic Commission for Latin America and the Caribbean (ECLAC)/ United Nations Development Programme (UNDP)/ Instituto de Pesquisa Económica Aplicada. *Hacia el objetivo del Milenio de reducir la pobreza en América Latina y el Caribe*, 2003.

⁶⁸ Government of the Republic. Cabinet on Human and Social Development. *The Millennium Development Goals in Mexico: Progress Report 2005*. (Elaborated in collaboration with the United Nations System in Mexico) cited in the Social Watch Report

The UNDP Human Development Report for Mexico explains that national inequality, measured by the Human Development Index (HDI), is due to differences among and between federal entities. While the HDI in the Federal District is higher than that of the Mexico's 31 federal states and the national average (0.891 as compared to 0.802)⁶⁹ there are several states that present very low HDI such as: Chiapas, Oaxaca, Guerrero, Michoacan, Veracruz, Hidalgo, Zacatecas, Puebla, Tlaxcala, Nayarit, Guanajuato, Tabasco and San Luis Potosi. These are zones with a high concentration of indigenous and/or peasant population, which expel workers to the United States; men, women and childrens –external and internal migrants- that suffer discrimination and other violations to their human rights.

Poverty affects particularly women, from girls to elderly women, due to their gender roles; for example, they daily experiment the triple working day in order to satisfy their diverse needs, which range from nourishment issues to taking care of the ill, the elderly or handicapped persons, in a context of economic adversity and reduced access to public services, for example on family protection and assistance.

3. Social Policy under Vicente Fox's administration (2001-2006).

In order to analyse programmes and policies in the fight against poverty, first they must be situated in the wider context of public policies that jointly promote a specific development model. To understand the limitations of social policy, from its design to its execution, it is necessary to analyse the context and economic policies described in the section on economic policy of this report.

The present federal government has given continuity to a social policy that has been designed from the guidelines and recommendations of multilateral financial institutions like the World Bank and the Inter-American Development Bank. Structural adjustment policies have fostered the reduction of the role of the State, for example on social matters.⁷⁰ With respect to social development programmes, focalisation strategies on extreme poverty are privileged instead of universal care strategies that, given the high levels of poverty in the country, should be applied in a complementary manner. This has implied the continuity of a policy consisting of channelling resources for survival and of an assistentialist nature, which are defined by numeric factors, instead of establishing broader policies based on social rights.

The government also proposes privatising the health care system and that the State establishes a fund to support the most impoverished sectors of the population. It also aims to privatise basic services like water or trash collection; to continue with the schemes of transferring economic resources to the poor; as well as to eliminate payments for dismissals, collective bargaining, and the distribution of benefits, and favour temporary contracts and requisites for promotion in employment based on seniority, that is, to flexibilise the labour market in detriment of labour rights.

The Committee of ESCR is conscious of the structural obstacles for the eradication of poverty in developing countries. Therefore it is imperative to take urgent actions to

2005. *Murmurs and whispers: Gender and Poverty: more promises than action*, chapter on Mexico, available at www.socialwatch.org

⁶⁹ UNDP. Human Development Report on Mexico 2002 and Human Development Report on Mexico 2004.

⁷⁰ As has been expressed in the sections on the right to food, to health, to social security and to education, subsidies have been eliminated or reduced, the social protection system has been fragmented and dismantled, and public resources have been reduced.

eliminate the unsustainable external debt, the increasing gap between the rich and the poor, and the absence of a fair multilateral trade, investment and financial system. If this is not the case, the anti-poverty strategies of some countries will have few chances to succeed. In our opinion, Mexico would be among these cases, and hence we affirm that without a transformation of economic policies, there will not be truly effective social and anti-poverty policies.

Consequently, it is urgent to elaborate integral public policies that succeed in overcoming the contradictory and disappointing effects of the policies that have been implemented to date, as well as the lack of coordination and coherence among them. Above all, addressing the relation between economic and social policy, emphasising that these two cannot act separately, is necessary. Unfortunately, the federal government does not recognise this problem and on the contrary, as it affirms that in its "With You" (*Contigo*) strategy, social and economic policies go hand in hand. This is based on the false idea that social development depends on economic growth. Although it is true that economic development is an important factor for the social development of a country, it is more important to have economic and social policies that improve the redistribution of income and wealth. In this way, the population in a situation of poverty would be attended to whereas currently they are subjects whose economic, social and cultural rights, which are essential factors in the eradication of poverty, are denied.

Parting from the government's recognition that the situation of social disadvantages and the innumerable scarcities of some groups of the population –that suffer diverse forms of social vulnerability, defencelessness, insecurity, exclusion and great limitations to influence the decisions that affect their lives- the federal government has defined a vision of Mexico's social development for the year 2025, as a guide to "establish a long term commitment with the Mexican society".⁷¹ According to this vision, the government aspires that Mexicans, *through their own effort and initiative* achieve sustainable and dignified standards of living, and that Mexico has its own mechanisms and policies that ensure the consistent creation of prosperity and equity through the development of opportunities and capacities with the participation of the society as a whole.

The National Programme for Social Development 2001-2006 *Overcoming Poverty, a task with you*, formulated by SEDESOL, establishes the objectives, guidelines, strategies, activities, tasks, and goals to overcome poverty.

Among the multiple social programmes promoted by the federal government, the Human Development Opportunities Programme stands out. This was started in 2002 and originated from the transformation of the Education, Health and Food Programme (PROGRESA), which was the main governmental programme for fighting extreme poverty created in 1997 during the previous administration. According to the government, the of lines for change in the programme are "more and better education, health and food; strengthening the family economy; growth in cities; more transparency and external supervision; and a greater participation of local governments... The aim of this wider vision, by means of coordinated cross-sector actions on education, health, food and social development, is that people's capacities are translated in greater options for families in extreme poverty. This integrated effort seeks to break the vicious circle of the transmission of poverty across generations".⁷²

⁷¹ SEDESOL. National Programme for Social Development 2001-2006. Executive Summary. Mexico, 2001, p. 11 (www.sedesol.gob.mx)

⁷² Ministry of Social Development and Transparency Mexico. Citizen Manual, *SEDESOL a los ojos de todos*. Mexico, June 2002, p. 71

Opportunities is mainly a compensatory programme of the impacts of the economic policy, and while it has improved many of the aspects that made PROGRESA an even more limited programme, it is not yet a programme based on ESCR, but on the guidelines of multilateral development banks on financing human capital. Apparently, WB and IADB policies take into account human rights, which appear frequently in the objectives of their policies. However, they are only a part of their discourse and not the basis and real objective of their policies and programmes.

According to the *Report of the Seminar of Experts on human rights and extreme poverty*,⁷³ this vision is complementary to idea of eradicating poverty on development grounds. While the criteria based on rights are grounded on rights that can be exercised, the criteria based on development are grounded on capacities. According to the experts, investing solely in human capital, that is, on some human capacities, as promoted by the IADB and World Bank, is an incomplete strategy for combating poverty; “both criteria are complementary and being both sides of the same coin, they have to be promoted jointly”.⁷⁴

The Committee on ESCR also indicates that, “anti-poverty policies are more likely to be effective, sustainable, inclusive, equitable and meaningful to those living in poverty if they are based upon international human rights. For this to occur, human rights need to be taken into account in all relevant policy-making processes. Thus, there is a need for appropriately trained officials operating good processes that are informed by reliable, disaggregated data.”⁷⁵

However, the human rights focus is not in the basis of the federal government’s Human and Social Development Strategy “Contigo”. None of the programmes for combating poverty within this strategy were designed from a human rights perspective, which is the cause of part of its limitations. For example, the “Opportunities” Programme emphasises the strengthening of human capital (widening capacities) in some aspects related to health, education and nourishment. This focus - coming from the multilateral banks- has proven to be inefficient in resolving the vicious circle of poverty.⁷⁶

If the Opportunities Programme had been created from a social policy with a human rights perspective, there would not be contradictions between different governmental measures on the issue. That is, the government could not say that the right to health is promoted while social expenditure on this area is cut, with the ensuing shortages of medicines in hospitals and medical centres. The government would also not work exclusively on strengthening human capital but rather invest in infrastructure and equipment, above all in regards to the right to health and right to education.

Notwithstanding the importance of the Opportunities Programme for many families that would otherwise receive no governmental support, we must state that it includes a

⁷³ Economic, social and cultural rights. Report on the Seminar of experts on human rights and extreme poverty, celebrated on 7 to 9 February 2001 (E/CN.4/2001/54/Add.1, available at www.unhchr.ch)

⁷⁴ Ibid.

⁷⁵ Committee on Economic, Social and Cultural Rights. Document on Poverty and the International Covenant on Economic, Social and Cultural Rights. Op cit.

⁷⁶ Sandoval Terán, Areli. Study on poverty reduction strategies in México, DECA Equipo Pueblo, A.C.; Red Regional de Social Watch. Pobreza y Sociedad Civil. *Análisis y Desafíos desde la perspectiva de la Sociedad Civil en Centro América y México*. El Salvador: Asociación Intersectorial para el Desarrollo Económico y el Progreso, 2004, pp. 108-129.

series of limitations in its design and execution.⁷⁷ The Programme's National Coordination itself has recognised the following problems:⁷⁸

- Scarcities in the health and education services
- Abuses and uncalled-for charges
- Passivity and lack of response to the interventions
- Errors in coverage (inclusion and exclusion)
- Electoral and partisan clientelism
- Simulation and relaxation of norms

Also, other programmes have been promoted, for example on micro credit that aims for people in situations of poverty to initiate or develop a personal or family business with the objective of self employment. However, these projects are rarely technically viable due to a lack of training and are unsustainable in the long-term. Also, projects that plan for immediate impacts are privileged, leaving aside projects that propose community strengthening processes. A micro credit policy with this orientation tends to foster the informal economy in the long-term and widen the technology gap with international corporations that are active in the country.

4. Social Spending in Mexico

If the federal government promoted a social policy based on human rights, the budget and the expenditure would be coherent with Article 2 of the ICESCR, which calls for each State to take steps to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognised in the covenant. While it is true that the official report recognises that social spending is the main instrument to combat poverty, and that the resources for social programmes have increased, it is necessary to highlight two key aspects. First, the analysis of the Federal Public Treasury Account reveals a tendency to disfavour social expenditure by not exercising the assigned resources. In contrast, an overspending is seen on resources in programmes or entities outside of social spending, such as the Ministries of Finance and Public Credit, National Defence, Foreign Relations and the Interior.⁷⁹

For example, the area of the *Contigo* Strategy in charge of "generating employment and income opportunities in the marginalized zones and regions of the country" exercised 4% less than the resources assigned to it in 2003, which were 22.3% less than those used in 2002.⁸⁰ This area is of the ones with the largest amount of unspent resources, and its budget has suffered cuts since the start of the actual administration. The Temporal Employment programme is one of those that have suffered more reductions in the resources granted. During 2003, it used 94% of the total of approved resources, but this amount is 54% less than the resources granted in 2002. In 2003, the amount of jobs created by the programme diminished in the same proportion.

With respect to the area on patrimony development, the Savings, Subsidy and Credit Programme for Progressive Housing "Your House" (*Tu Casa*) has not received an increase of resources since 2002 and it has experimented a tendency to decrease. The explanation given by the government in 2003 is that the bodies that execute the funds

⁷⁷ A concrete example can be found in the special section on Chiapas of this Alternative Report.

⁷⁸ Presentation and material distributed at the Seminar for Consultation and Feedback organised by the National Coordinator for the Human Development Programme Opportunities, 7 to 8 November 2002. (CD titled "Presentaciones")

⁷⁹ The analysis on the budget and social spending used in this report was elaborated by researchers from FUNDAR (www.fundar.org.mx).

⁸⁰ Ministry of Finance and Public Credit. Account of the Federal Public Treasury 2003, General Results, Social and Human Development. p. 205.

did not present a request for more resources or they were not interested in participating in the programme. This is a grave statement considering that the population views housing as being the main patrimony of the family and that many families lack housing.

In Mexico, social policy has gone from being a State imperative or its *raison d'être* to a humanist philanthropic idea, given that a selection of beneficiaries of almost every social programme is carried out, creating lists of those deserving and not deserving [assistance] in which the first are considered unable to maintain themselves and are therefore the candidates to receive charity from the State.⁸¹ This selection – focalisation is presented with the argument of obtaining more efficiency and effectiveness in making the most of public resources, but in reality is a façade that conceals the continuous reduction of social spending in Mexico in the latest decades.

Upon focusing on the analysis of social spending in Mexico, it is important to observe the evolution of the Gross Domestic Product destined to “Social Development Functions” during recent years. Even if the amount of resources invested in Social Development has increased in absolute terms during the last decade, the percentage of the GDP invested in Social Development has stagnated during the last five years.

As shown in the following table, during the last years of president Zedillo’s administration, said percentage increased 8.7 to 9.5 between 1997 and 2000. However, between 2001 and 2005, corresponding to president Fox’s present administration, the percentage of the GDP invested in Social Development remained stagnated between 10.0 and 10.1%

Expenditure on Social Development as a percentage of GDP, 1997-2004.

	1997	1998	1999	2000	2001	2002	2003	2004	2005
GDP (Millions of current pesos)	3,174,275	3,846,350	4,594,724	5,491,708	5,809,688	6,263,137	6,891,434	7,634,926	8,074,121
Expenditure in social development functions (Millions of pesos) *	274,756.5	347,511.0	433,375.1	519,239.9	580,502.0	642,629.7	695,595.2	773,600.2	815,443.1
% of GDP granted to social development	8.7	9.0	9.4	9.5	10.0	10.3	10.1	10.1	10.1

* According to the classification provided in the Fifth Report of the Government 2005, in the section “Social development functions” the expenditure granted for Education, Health, Social Security, Work, Supply and Social Assistance, and Regional and Urban Development is included.

Source: Fifth Report of the Government 2005, p. 193, 277-273.

⁸¹Moreno Pedro, Ortiz Claudia, *Veinticinco años de políticas de desarrollo social en México*. Mimeograph, Mexico, 2003.

According to the present administration, social spending must confront priority needs such as:

- Resolve the setbacks in health contained in the new General Law on Health, and in particular those public resources designated to People's Health Insurance.
- Increase the resources to be channelled through the Opportunities Programme.
- Increase the amounts designated for education, tending to reach the objective of spending 8% of the GDP for this area in 2006, according to what is established by the Congress of the Union.
- Grant economic support for an integral rural development both through existing programmes, mainly PROCAMPO, and through new programmes designated to reducing differences in this sector.
- Face a series of accumulated setbacks with respect to infrastructure.

It is considered that in 2004 social spending had a real increase of 1.0% in comparison to 2003, that is, a little more than 696 billion pesos, 59.7% of the total budget for that year. However, this increase is insufficient in order to fulfill the government's objectives on social policy and even less so to alleviate the effects of the market economy that our society is immersed in, or to reduce the gap in income distribution.

5. Recommendations of the Committee on ESCR to Mexico

Among the subjects for concern and the recommendations made by the ESCR Committee to Mexico in 1999 (E/C 12/1/Add.41), the majority are relevant in terms of social policy, particularly the following:⁸²

"The Committee is also concerned about the unbalanced approach of the State party to addressing various regional economic and social problems that prevail in the neglected and vulnerable sectors of Mexican society."

"The Committee regrets that despite the positive growth of macroeconomic indicators in Mexico, especially the sharp decrease in the level of inflation, the National Minimum Wage Commission has not adjusted the minimum wage level upwards. At present, about five minimum wages are needed to obtain the officially set basic food basket (canasta básica constitucional), in violation of article 7 (a) (ii) of the Covenant and as reflected in national legislation (article 123.VI of the Constitution)."

"The Committee is concerned about the privatisation of the social security system, which may exclude from certain benefits those not in a position to contribute to an individual pension account, such as the unemployed, underemployed, lower-paid workers and those employed in the informal sector."

"The Committee recommends that the State party identify benchmarks to assist it in monitoring the progress made in combating poverty. The Committee would appreciate an evaluation by the State party, in its fourth periodic report, of the progress made in improving the enjoyment of economic, social and cultural rights by the Mexican population, using the identified benchmarks as reference points, complemented by statistical information."

⁸² Committee on Economic, Social and Cultural Rights. Final observations to the Mexican State (E/C.12/1/Add.41), paragraphs 17, 20, 24, 30, 31, 33 (available at: www.unhcr.ch)

“The Committee urges the State party to address the structural causes of poverty in Mexico and to adjust the social programmes accordingly. Furthermore, the Committee invites the State party to involve closely the civil society in general, and the target groups in particular, in the planning, implementation and evaluation of these programmes.”

“The Committee recommends that the allocation of development resources by the State party be conducted in an equitable manner, irrespective of geographic location and the populations concerned.”

6. Conclusions

People living under conditions of poverty suffer violations to their economic, social, cultural, environmental, civil and political rights. The respect, protection, promotion and realization of human rights are indispensable to truly eradicate poverty. In this sense, the ICESCR provides principles and norms of conduct that should be taken into account in the entire cycle of public policies. Likewise, the government should not forget that ESCER are rights of all the population and not only of the poorest. Therefore policies of a universal nature must not be substituted, but only complemented with focalised policies.

Civil, political, economic, social, cultural human rights, and the right to development provide a framework a framework of norms or rules upon which detailed global, national and community-level poverty eradication policies can be constructed, ensuring that essential elements of anti-poverty strategies, such as non-discrimination, equality, participation and accountability, receive the sustained attention they deserve.⁸³

It is necessary to recommend to the Mexican State that it design in a participative manner, social and anti-poverty policies that are truly grounded on a human rights perspective, congruent with the provisions of the ICESCR.

⁸³ Committee on Economic, Social and Cultural Rights. Document on Poverty and the International Covenant on Economic, Social and Cultural Rights. Op cit, paragraph 9.

RIGHT TO SELF-DETERMINATION⁸⁴ **(Article 1 of the ICESCR)**

1. Importance of the internal dimensions of the right to self-determination

The right to self-determination is a fundamental piece of the international justice system and one of the main concerns of the international community regarding issues such as independence, non-interference, and democracy.⁸⁵ The right of persons to self-determination is vitally important for the enjoyment of other human rights.⁸⁶ This right has both internal and external dimensions, and we coincide with the Committee on ESCR in noting that in recent years there are increasingly more groups established within countries that vindicate these rights, as compared to former colonies and the occupied territories.⁸⁷ Undoubtedly these vindications have increased in the context of economic globalisation.⁸⁸ We are aware that discussing in this way the internal dimensions of the right to self-determination may give rise to disagreements, therefore it is urgent to have in the short-term a broader analysis by the Committee on ESCR that clarifies for the States their obligations on this matter, particularly developing the obligation to protect. This section hopes to be an initial contribution in this regard.

Meanwhile we cannot ignore the growing demands that we as organisations who work on development and human rights receive from communities who are suffering limitations, obstacles, or violations of their right to freely dispose of their natural wealth and resources and to not be deprived of their own means of subsistence. The cases that we document at the end of this section are just an example of the diversity of situations that have as a constant the violation of fundamental rights due to a large-scale development project or other public and/or private investment projects (national and foreign), in areas where the population highly depends on the environment, due to its agricultural activities or because it involves communities that live in biodiverse areas. These projects are usually imposed on them without any information or timely and appropriate consultation, which end up affecting the living conditions of the rural and/or indigenous communities.⁸⁹

2. The right to self-determination in the IV Periodic Report of Mexico

In reporting on how it fulfils its commitment to the right to self-determination in Mexico, the IV Periodic Report (E/C.12/4/Add.16) emphasises that it ratifies its commitment to

⁸⁴ This section on the right to self-determination was elaborated by the Citizen Diplomacy Program of DECA Equipo Pueblo, A.C. with information and contributions from the following organisations: DECA Equipo Pueblo, A.C., Centro de Derechos Humanos Miguel Agustín Pro Juárez (Prodh), Red Mexicana de Acción Frente al Libre Comercio (RMALC), Unión Campesina Emiliano Zapata Vive (UCEZ VIVE), Alianza Mexicana por la Autodeterminación de los Pueblos (AMAP), Centro de Derechos Humanos Tepeyac, CIEPAC in Chiapas, and organisations from the Coordination Group on ESCR (Espacio DESC) in the documentation of the case of La Parota (particularly Habitat International Coalition for Habitat-Regional Office for America and the Caribbean; FIAN México Section, Radar-colectivo de estudios alternativos en derecho, Centro de Estudios Sociales y Culturales Antonio de Montesinos, Equipo Pueblo and Prodh)

⁸⁵ This is established with the same redaction in article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

⁸⁶ For example, the Declaration on the Right to Development (1986) bases the right to development on the peoples' right to self-determination, which implies the right of all peoples to exercise their full and complete sovereignty on all of their natural resources and wealth. One part of the articles of the International Labour Organisation Convention 169 on indigenous and tribal peoples also covers several aspects of the right to self-determination.

⁸⁷ Informative Pamphlet No. 16 (Rev. 1) Committee on Economic, Social and Cultural Rights (www.ohchr.org)

⁸⁸ For contextual information see the section on economic policy of this Alternative Report.

⁸⁹ A very concerning case in this regard is in the Montes Azules Biosphere Reserve (RIMBA) in Chiapas, where the government's policies (agrarian, environmental and social) regarding the Natural Protected Areas have not respected the rights to self-determination and to an adequate environment for the indigenous peoples who live in these areas. For more information see in annexe: Miguel Arnulfo Ruiz Acosta. Montes azules: libre determinación y medio ambiente adecuado en las áreas naturales protegidas. Enlace Comunicación y Capacitación, A.C.. Comitán Chiapas, mimeo, marzo de 2005.

the principle of self-determination of peoples as a fundamental principle of international relations, aimed at achieving peace and international cooperation, which it has incorporated into the Mexican Constitution in Articles 2 and Article 89, section X.⁹⁰

The Mexican government does not consider the internal dimensions of this right in a broad manner, rather it only refers to article 2 of the Constitution, which establishes that the Mexican Nation has a multicultural composition and the right of the indigenous peoples to self-determination, indicating that consequently, it recognises their autonomy to decide on their social, economic, political, juridical and cultural organisation.⁹¹ However, from the point of view of the indigenous peoples that have been promoting for years a law on indigenous rights and cultures, this right is still not properly guaranteed. The government's reports does not include information on the demands for the full recognition of indigenous autonomy⁹² or the process of constitutional controversies that were caused by the partial incorporation of this right in the Mexican Constitution in 2001.

Since the government's report emphasises the external dimensions of the right to self-determination, we feel that the Mexican State needs to provide more information to the Committee to locate the existing obstacles and limitations for the enjoyment of this right in our country and to be able to identify appropriate solutions.

From the point of view of the organisations that subscribe to this Alternative Report, a more in-depth reflection on the right to self-determination recognised in the ICESCR is urgent in the context of economic globalisation, due to the pressures that this puts on the definitions of domestic policies within countries.

In Mexico, there have been structural reforms that modify the internal legal framework to generate more attractive and favourable conditions for national and foreign private investment, particularly in strategic areas that at some point were protected by national legislation as activities reserved exclusively for the State and/or nationals of a country. These reforms have negatively impacted all peoples' right to freely dispose of their natural wealth and resources and that in no case may they be deprived of their own means of subsistence.

3. Limitations of the constitutional reform on the issue of indigenous rights and culture

The constitutional reform on the issue of indigenous rights and culture, which refers to sustainability and the right to use and enjoy the natural resources on their lands and territories, except those whose direct dominion corresponds to the Nation, was reduced in paragraph B, section VII of Article 2 of the Constitution to the action of the State that will establish the institutions to "... Support the productive and sustainable development activities of the indigenous communities [...]". Said paragraph limits their rights to assure promotion and integral development; participation in development plans; their culture and identity; means of communication, as well as protection for indigenous

⁹⁰ IV Periodic Report of the Mexican State to the Committee on ESCR on the application of the ICESCR (E/C.12/4/Add.16), paragraphs 18 and 19.

⁹¹ Op. Cit. Paragraph 20.

⁹² Autonomy is understood as the capacity of the indigenous peoples to provide themselves with their own norms of life, being written down or not. The autonomy demanded by the indigenous peoples of Mexico looks for the internal self-determination of the peoples, as well as the recognition of the different levels of autonomy lived by different indigenous peoples and communities in the country. The indigenous peoples want to exercise their right to autonomy in the framework of the National Mexican State, without being in detriment to national sovereignty; this would imply recognising the indigenous peoples as subjects of law. See: Centro de Derechos Humanos Miguel Agustín Pro Juárez, AC, Red de Derechos Humanos Todos los Derechos para Todos, Universidad Iberoamericana Cd. de México; Instituto Tecnológico de Estudios Superiores de Occidente, *La Propuesta de la COCOPA, presentada como Iniciativa del Presidente Fox, debe ser aprobada*, Mexico, Federal District, July 2001, pp. 3 y 4.

migrants. In fact, through the modifications of the Constitution on this issue, the indigenous peoples are not considered subjects and they cannot exercise their right to self-determination and autonomy.

Among the main questioning of this constitutional reform are: 1) in the approved text, the recognition of the indigenous peoples and communities is not consecrated as a constitutional guarantee but rather it is left to the decision of the state legislatures; 2) the indigenous peoples' right to their territories and the natural resources in them is not established; 3) the right of the communities and municipalities to free association to create autonomous territories is not recognised; and 4) instead of recognizing the indigenous communities as bodies of public law (subjects) there are simply recognises as bodies of public interest.

The process of the constitutional controversies discussed not so much the content of the reform but rather the lack of consultation with the indigenous peoples during the legislative process. At the end of the process, this lack of consultation resulted in the constitutional reform not obtaining wide social support and, on the contrary, it received much criticism because it was not in accordance with ILO Convention 169, nor the COCOPA Law and the San Andrés Accords.⁹³ This accusation of a lack of consultation was made in as much as the approved content truly implied a setback in the recognition of the rights of the indigenous peoples.⁹⁴

By ending the constitutional reform process, the legislators as well as President Fox blatantly violated the indigenous peoples rights recognised in ILO Convention 169, the American Convention on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Vienna Convention on the Law of Treaties, all instruments that have been ratified by Mexico.

The main arguments for the unconstitutionality of the reform are: the violation of the Mexican Constitution in its articles 115 (invasion of the jurisdiction of municipalities); 4, 12,16, and 133 of the ILO Convention 169 (by affecting rights of the indigenous peoples that are already recognised in the Mexican Constitution and Convention 169, without prior consent nor possibilities of defence); 87 and 128 (to remove the President's and legislator's obligation to fulfill and ensure fulfilment of the Constitution).

In light of the above, the establishment of General Recommendation 21 of the Diagnosis on the Human Rights Situation in Mexico elaborated by the Office of the UN High Commissioner for Human Rights (OHCHR) gains importance: "That the Congress of the Union re-open the debate on the constitutional reform on indigenous issues, with the aim of clearly establishing the fundamental rights of the indigenous peoples in accordance with the current international legislation and in line with the principles signed in the San Andrés Accords. ILO Convention 169 should be applied in all legislation and bodies that are related to the rights of the indigenous peoples. The preservation and protection of the indigenous communities and peoples' lands, territories and resources, should have priority over all other interests in the solution of agrarian conflicts."⁹⁵

⁹³ The law proposal of the Commission of Concordance and Peace (COCOPA) elaborated in December 1996 is based on the San Andrés Accords signed between the federal government and the Zapatista National Liberation Army (EZLN) in February of this same year. Likewise, said law proposal does have the support of the National Indigenous Congress, as compared to the constitutional reform that was finally approved in 2001.

⁹⁴ This is shown in a comparative study carried out by the Miguel Agustín Pro Juárez Human Rights Centre between the dictum of constitutional reform approved by the legislature, the Convention 169 and the COCOPA Law Proposal; as well as between Convention 169, the San Andrés Accords, and the law proposals of COCOPA and several political parties.

⁹⁵ OHCHR in Mexico. Diagnosis on the Human Rights Situation in Mexico. Mundi-Prensa Mexico, 2003, p. VIII

4. Regional Development and the Plan Puebla Panama⁹⁶

Although the Committee on ESCR does not explicitly mention the right to self-determination in its Final Observations to Mexico in 1993 (E/C.12/1993/16) nor in 1999 (E/C.12/1/Add.41), both documents refer to relevant situations and issues for this right. Such is the case with that referring to the situation of the indigenous peoples, in particular in the states of the south and southeast (Chiapas, Guerrero, Veracruz and Oaxaca) as well as the impacts of the North American Free Trade Agreement (NAFTA) and the structural adjustment programmes of the Multilateral Banks in our country. For example, in regards to the indigenous peoples, the Committee's recommendations on forced displacement are particularly important in light of the right to self-determination as the cases of displaced communities who are deprived of their means of subsistence should be revised.

Although the negative impacts of NAFTA are discussed in more detail in the section on economic policy⁹⁷, it should be stated that the regional unbalances increased as of the Agreement's entry into force.⁹⁸ This forms part of the considerations of the Mexican government in the IV Periodic Report upon responding to what it has done to attend to the Committee on ESCR's recommendations regarding continuing to strengthen its efforts to alleviate any negative effects that the implementation of NAFTA might have on certain vulnerable sectors of the population.⁹⁹ The government states that the actions that it has implemented consist of "...the framing of comprehensive territorial development policies focusing on the combat against poverty and inequality";¹⁰⁰ and it highlights the Plan Puebla Panama as part of the "other territorial development initiatives seeking to stimulate regional development."¹⁰¹ What the government does not report is the broad social movement that opposes the PPP, not only in Mexico but also throughout the Mesoamerican region, due to the adverse effects of the projects of this Plan on the human rights of the communities of the region.

The Plan Puebla Panama is a supranational regional development plan between the South-Southeast region of Mexico (made up of the states of Puebla, Guerrero, Oaxaca, Chiapas, Veracruz, Tabasco, Campeche, Yucatán and Quintana Roo) and the seven Central American countries (Belice, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama) which was proposed by President Vicente Fox Quesada (2000-2006) and approved by the Heads of Government of the Central American region on 15 June 2001. This Plan is composed of eight initiatives that are structure in three strategic areas:

(1) Strategic area on productive integration, trade exchange and competitiveness, which encompasses the following 5 initiatives: Facilitation of Trade Exchanges, Promotion of Tourism, Energy Connections, Highway Integration and Integration of the Telecommunications Services;

⁹⁶ This section is based on information from DECA Equipo Pueblo, A.C and Alianza Mexicana para la Autodeterminación de los Pueblos (AMAP), synthesized by Domitille Delaplace of DECA Equipo Pueblo.

⁹⁷ A layout by state of the Human Development Index (HDI) of the United Nations Development Programme (UNDP) provides us with an indicator of this, which shows strong contrasts between the northeast region (the states of Coahuila, Chihuahua, Durango, Nuevo León and Tamaulipas) and the states of the south and southeast (the states of Campeche, Chiapas, Guerrero, Oaxaca, Quintana Roo, Tabasco, Veracruz and Yucatán) which present the lowest rates for life expectancy, education and GDP in the country. United Nations Development Programme. Human Development Report on Mexico 2002. Mundi-Prensa Mexico, 2003, Table 1.3. "HDI of the regions of Mexico."

⁹⁸ United Nations Development Programme. Human Development Report on Mexico 2002. *Op. Cit.*, p 77.

⁹⁹ Paragraph 35 of the Final Observations of the Committee on ESCR to Mexico (E/C.12/1/Add.41)

¹⁰⁰ IV Periodic Report, *Op.Cit.* , paragraph 1140.

¹⁰¹ *Op. Cit.*, paragraph 1142.

- (2) *Strategic area on Human Development*
(3) *Strategic area for Institutional Strengthening.*

The analysis of the federal budget assigned between 2001 and 2004 for the PPP and the development of the South-Southeast region illustrates that the majority of the public resources that have been invested, around 95%,¹⁰² have been assigned to the first strategic area, that is, to finance large-scale infrastructure projects that cover the construction of extensive highways, the modernisation of port and airport installations, the construction of hydroelectric dams, energy connections and tourism complexes, etc. In contrast, the human development component has had a very reduced budget (around 3%).¹⁰³

The Inter-American Development Bank (IADB), which is part of the High Level Commission for Financing the Projects of the PPP, has been in charge of coordinating the management of financing for the implementation of the projects agreed on in the framework of this Plan. Apart from directing its own funds in this direction, it looks to promote the leadership of the private sector as an alternative for financing (with fiscal effects on the federal government- contracting debt). However, this tendency of the “privatisation” of financing for development generates a series of questions and concerns, since it contributes to shifting from the public to the private sphere the space for the definition of development priorities and the transfer of the principle of national sovereignty to the economic interests of large investors, who pay little attention to granting financial facilities in advantageous conditions for small to medium size enterprises (SMEs), the promotion of sectors of higher risk, the promotion of non-renewable energies, the fight against poverty, and financing for development projects in areas where the communities have been previously consulted.

The PPP and in general the regional development policies and plans were designed by the authorities without the populations participation and they were based on a logic that seeks to promote the activities of national or foreign economic groups more than being from a perspective of promoting projects agreed upon with the communities of the region, based on their needs and aspirations. Neither the definition nor the approval of the regional development strategy included in the PPP were based on a wide public discussion. On the contrary, the projects have been imposed, often through the use of public force, without prior consultation and without having achieved the consent of the affected population. In this way, the Mexican government violates the right to self-determination, given that all of the people have the right to freely determine their political status and freely pursue their economic, social and cultural development.¹⁰⁴

Since the south and south-eastern region of Mexico has a high indigenous population, the government is required, as is stipulated in ILO Convention 169, to involve all of the indigenous peoples “in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”¹⁰⁵ This Convention also recognises the right of the indigenous peoples to be consulted, specifying that “The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the

¹⁰² Estimate based on information from the Federal Budget for the PPP and the “Development of the South-South-Eastern Region” (2001-2004) provided by José Alberto García Ponce, Advisor to the Social Security Commission, Chamber of Deputies, LIX Legislature and UCEZVIVE, based on a revision of the Expenditure Budget of the Federation 2001-2004, cited in Alianza Mexicana por la Autodeterminación de los Pueblos (AMAP). “Violación a los Derechos Económicos, Sociales, Culturales y Ambientales (DESCA) por el Plan Puebla-Panamá”, by Martín Velázquez (UCEZ VIVE /AMAP), Rosa María Balderas (Centro Tepeyac), Ulises Chávez Flores (UCEZ-VIVE), Gabriela Rancel Faz (RMALC) mimeo, 2004.

¹⁰³ Ibid.

¹⁰⁴ ICESCR, art. 1, paragraph 1.

¹⁰⁵ ILO Convention 169, article 7, paragraph 1.

objective of achieving agreement or consent to the proposed measures.”¹⁰⁶ In contrast, the peoples of the south and southeast have not been consulted in the definition of the strategy, nor were they duly informed and consulted with regarding the social, environmental and cultural implications of the projects that were implemented. Moreover, the projects that have already been carried out have meant a retrogression in the enjoyment of ESCER of the population of the south and southeast, for example: the common denominator in several cases have been the plunder of lands, the destruction of cultural patrimony and ecosystems, as well as the expropriation of natural resources (water, forests, biodiversity, etc.).

5. Cases of the violation of the right to self-determination¹⁰⁷

The cases we document in this section reflect the interdependence of the right to self-determination with economic, social, cultural and environmental rights (ESCER) and other human rights such as the right to information, to be consulted, to participation and to development. Likewise, they illustrate the effects of economic policy and the current model of development on the enjoyment of these rights.

➤ The case of the Millennium Plan- State of Puebla¹⁰⁸

The “Millennium Plan”, promoted by the government of the state of Puebla since 1999, is a clear example of the imposition, through threats, intimidations and even the criminalization of human rights defenders, for a large-scale investment project that contemplates the construction of highways, industrial zones, and tourism activities, in the territories of rural and indigenous communities in the country. This involves a proposal for urban and industrial development that will affect the lands of 8 municipalities, where more than 4 thousand producers are of the *nahuatl* indigenous group.¹⁰⁹ As of October 2000, and without providing information nor promoting consultations with the potentially affected population, officials of the Ministry of Communications and Transportation (SCT) went to the communities of San Pablo Actipan and San Nicolás Zoyapetlayoca of the Tepeaca Municipality, the neighbourhood José María Pino Suárez of the Tecamachalco Municipality and to San Jerónimo Almoloya, in an attempt to purchase the lands at a ridiculous price.¹¹⁰

The peasants of these areas sold their lands under intimidations and threats. In November 2001, members of the affected communities organised themselves in the *Unión Campesina Emiliano Zapata Vive* (UCEZ VIVE) in order to defend their right to land and demand the cancellation of the Millennium Plan. The Deputy Teodoro Lozano (a founder of the UCEZ) died in this struggle, the colleague Concepción Colotla was kidnapped, and detention orders were issued against the movement’s leaders. Social pressure forced the state governor, Mr. Melquiades Morales, to announce the suspension of the Millennium Plan. However, to date the authorities have not returned the land titles. Therefore, more than improving the living conditions, the Millennium Plan meant for many families the dispossession of their lands and with this, their means of subsistence, violating their right to self-determination (ICESR, article 1,

¹⁰⁶ ILO Convention 169, article 6, paragraph 2.

¹⁰⁷ This section is based on information from DECA Equipo Pueblo, A.C and Alianza Mexicana para la Autodeterminación de los Pueblos (AMAP), synthesized by Domitille Delaplace of DECA Equipo Pueblo

¹⁰⁸ Case summary. For more information see the document “Violación a los Derechos Económicos, Sociales, Culturales y Ambientales (DESCA) por el Plan Puebla-Panamá”, AMAP, Op.cit.

¹⁰⁹ Declaration of the *Unión Campesina Emiliano Zapata Vive* (UCEZ VIVE) *La Jornada*, national newspaper, 15 September 2001 (www.jornada.unam.mx)

¹¹⁰ From 1.50 to 3.00 pesos (respectively 0.14 and 0.28 USD) per square metres for seasonal lands; and 9.00 pesos (equal to 0.85 USD) in the case of irrigated lands.

paragraph 2) as well as their right to food and legal security in land tenure (ICESR article 11).

➤ **The case of the Superhighway Oaxaca-Istmo-Huatulco – State of Oaxaca**¹¹¹

In the beginning of March 2002, Celestino Alonso Alvarez, head of the Planning Committee for the Development of the State (COPLADE), made public the construction plans for the Superhighway Oaxaca-Istmo-Huatulco. In 2003, teams from the Ministry of Communications and Transportation (SCT) began work in the communities of Guiechiquero and Cerro Chivo, which belong to the Communal Lands of Santa Maria Jalapa del Marques Tehuantepec. In January 2004, the engineers arrived to begin construction on the section of kilometre 186 to 198 of the superhighway. The affected communities had not been informed nor consulted with, and with the support of the Centre Tepeyac, they sent a document to the President of the Republic and other authorities¹¹² demanding that they respect the right to information and to consultation consecrated in ILO Convention 169, however, they did not receive a response. In a General Assembly celebrated in February 2004, the communities decided to reject the construction of the superhighway. However, the SCT continued with the construction under the pretext that it had obtained the consent of the communities because the members of the Commissary of Communal Lands signed an agreement with them (they were granted \$505,572 pesos as an indemnification for the affected area). This procedure goes against the Agrarian Law that stipulates that the consent should be granted within the framework of the General Assembly announced in strict accordance with the current agrarian norms. Likewise, the authorities violated the provisions of ILO Convention 169 by not promoting a consultation carried out “in good faith and in a form appropriate to the circumstances”.¹¹³

This large-scale project has resulted in a series of violations of ESCER of the peasants and indigenous who live in the Communal Lands of Santa Maria Jalapa. The construction of this highway network meant the dispossession of peasant lands used for cultivation and to date, almost a year after signing the agreement with SCT, they have not been indemnified. Since the highway crosses the communal lands, it hinders the free transport of the peasants to their homes and parcels, complicating the realisation of productive and cattle activities, and therefore, community development. Furthermore, the construction of the Superhighway Oaxaca-Istmo-Huatulco is a threat to the cultural life of the indigenous peoples of the region, as occurred in the Guelaguichi-Tehuantepec section, which affected the important archaeological sites of Dainzu and El Carrizal. In light of this, the *mixes*, *zapotecos*, *mixtecos*, *zoques*, *chinantecos*, *chontales* and *kunats* or *huaves* indigenous peoples of the Isthmus of Tehuantepec in Oaxaca have mobilised to express their rejection, but the authorities have ignored this resistance.

➤ **The case of the Hydroelectric Station La Parota – State of Guerrero**¹¹⁴

The “La Parota” hydroelectric dam that the Mexican government, through the Federal Electricity Commission (CFE), plans to construct in the riverbed of the Papagayo

¹¹¹ Case summary. For more information see the document: “Violación a los Derechos Económicos, Sociales, Culturales y Ambientales (DESCA) por el Plan Puebla-Panamá”, AMAP, Op.cit. which recovers the documentation of this case by the *Centro de Derechos Humanos Tepeyac*.

¹¹² Communications of 29 September 2003, directed at Lic. Vicente Fox Quesada, President of the Republic, Arq. Pedro Cerisola y Weber, Minister of Communications and Transportation, and Ing. Xóchitl Gálvez, Director of CONADEPI.

¹¹³ ILO Convention 169 OIT, article 6, paragraph 2.

¹¹⁴ Case summary. For more information see the document: “Violación a los Derechos Económicos, Sociales, Culturales y Ambientales (DESCA) por el Plan Puebla-Panamá”, AMAP, Op.cit. / Espacio DESC. “Informe sobre los acontecimientos y las violaciones a los derechos humanos relacionados con el Proyecto Hidroeléctrico “La Parota”, estado de Guerrero,” Mexico, photocopy, February 2006, 17 pp. and in annexe various documents on this case.

River, is linked with the Energy Connections Initiative of the PPP.¹¹⁵ This large-scale project will imply the flooding of 17,000 hectares, including cultivation lands, highways and bridges. There are 21 communities in this area (four communal lands, 16 *ejidos* and a private property) located in the municipalities of Acapulco, Juan R. Escudero, San Marcos, Chilpancingo and Tecuanapan, of which around 25,000 people will be displaced. Likewise, the dam will indirectly affect more than 75 thousand people who live in the lower part of the river. This project will impact the daily lives and income of thousands of people, since there are numerous *comunero* families, *ejidatarios* and residents who live from what they cultivate (corn, *jamaica* flowers, papaya, cantaloupe, limes, among other agricultural products) as well as raising animals. Furthermore it will have serious environmental impacts, and in particular it will cause irreversible damage to the ecosystem and the extinction of an endemic species (the papagayo frog), as well as possible harm to public health as has occurred in the case of other dams. All of this represents serious potential violations of the economic, social, cultural and environmental rights of the *comuneros*- consecrated in the ICESCR and other international instruments ratified by Mexico- such as the right to housing, to health, to work, to food, to a healthy and protected environment, and sustainable development, among others.

The construction of the “La Parota” dam has been rejected by a wide group of *comuneros* and *ejidatarios* of the area, who consider that this project does not represent a sustainable development option for them, but rather a threat to community life given its high ecological, social and economic costs. Nevertheless, the municipal, state and federal governments have ignored their opinions and developed an authoritarian and antidemocratic strategy to impose this project at any cost, characterised by: a) the deceptive offering of works, services and productive projects, as well as vote buying, which have divided and confronted families and communities, breaking the social fabric; b) the lack of opportune, true and objective information and of an adequate consultation with those who will be affected by the work, violating their fundamental rights to information and participation in projects that will directly affect them; c) the announcement and realisation of communal assemblies that go against the agrarian law and the rule of law; d) the disproportionate use of public security corps in watching over said assemblies; e) the criminalisation of those who have opposed the project through issuing detention warrants and subjecting to legal processes the leaders of the opposition for supposed crimes that are never proven and f) death threats that some of the people who oppose the project have received.

By imposing this project without obtaining public acceptance- violating national and international norms in the area of the right to information, participation and consultation, and putting at risk the right to life, personal integrity and security of the affected population- the Mexican government is not fulfilling its international obligation to respect the right to self-determination of the people affected, denying them their right to decide on their economic, social and cultural development. Likewise, if the dam is constructed, the Mexican government will not fulfill its international obligation to respect the right of the peasants to freely dispose of their natural wealth and resources and to not be deprived of their own means of subsistence.

All of this has resulted in serious violations of the current legal methods and procedures in the country and the human rights recognised in national and international norms, in particular the International Covenant on Civil and Political Rights and the ICESCR itself- both ratified by the Mexican State in 1981. Faced with this situation, the people who oppose the project that are organised in the *Consejo de*

¹¹⁵ The hydroelectric dam is included within the projects of the “Promotion of Regional Hydroelectric and Geothermic Stations” in: The Presidency of the Republic. Core document for the Plan Puebla Panama, March 2001.

Ejidors y Comunidades Opositores a la Presa la Parota (CECOP) with the support of Mexican civil organisations, distributed information on this case to the UN human rights bodies, international human rights organisations and the media. Likewise, they initiated a series of legal and administrative actions before the Unitary Agrarian Court, the Ministry of the Environment and Natural Resources (SEMARNAT), the Federal Attorney General's Office and the National Human Rights Commission.

On 19 January 2006, the Unitary Agrarian Court of the 41st circuit, based in Acapulco, Guerrero, declared null one of the assemblies, held on 23 August 2005, which had the aim of submitting for the authorisation of the *comuneros* the expropriation process of the lands to be used for the construction of the dam. This resolution is very important as it demonstrates that the Mexican government and the CFE have not acted in accordance with the law, and that they violated the agrarian rights of the *comuneros* by imposing a project that did not have the consent of the population of the area.

Likewise, the case of *La Parota* was considered during the First Public Hearing of the Latin American Water Tribunal (TLA)¹¹⁶ that was held on 13-20 March 2006 in Mexico City. The case was presented by the CECOP against the CFE, the government of the state of Guerrero, SEMARNAT and the Agrarian Attorney's Office. In its verdict, the TLC considered, among other questions, that the environmental impact report and its corresponding authorisation did not consider the damages to public health nor to the population's quality of life due to the construction of the dam, which exposes it to more risks of epidemics and water-borne illnesses, violating the Mexican Constitution, the General Law for Ecological Equilibrium and Environmental Protection (LGEEPA), the National Waters Law, and the General Law on Health.

Likewise, the damage to the fundamental rights of the threatened communities is one of the social costs of the project, emphasising that this goes against article 27 of the Constitution that recognises the legal character of the *ejidal* and communal centres and protects their ownership of the land for human settlement as well as for productive activities. The expropriation of communal and *ejidal* lands goes against the principles of this constitutional law, since the residents of the area do not benefit from the project and it does not contribute to their development. In reality, it contributes to raising the levels of poverty since the residents' land is expropriated.

Given the previous acts and considerations, the Latin American Water Tribunal resolved to declare that:¹¹⁷

- The agrarian rights of the affected communities and the control of the territory and its natural resources should be guaranteed as is established in article 27 of the Constitution. Likewise the cultural diversity, the existence of indigenous communities, agrarian rights, forms of government, and usages and customs in their territories should be respected, as is specified in article 2 of the Constitution. As a result, the hydroelectric project *La Parota* should be cancelled, since it does not demonstrate benefits for the local population nor its contribution to regional development nor the protection of the environment and natural resources.
- That the rule of law in the region should be respected. Specifically the national legal provisions and international commitments of Mexico regarding the following should be fulfilled: A) The right to information so that the citizens can

¹¹⁶ The TLA is an international, autonomous and independent body for environmental justice that was created with the purpose of contributing to solving conflicts related to the hydric systems of Latin America. This ethical tribunal has held sessions in Central America in 2000 and 2004 and it developed its first hearing in Latin America in March 2006. For more information consult: www.tragua.com

¹¹⁷ Publicly made known in Mexico, Federal District on 20 March 2006.

act with full and true knowledge on any issue that they are obliged to provide an opinion on. B) The right to consultation and participation, so that the basic legal conditions are provided for the population to participate in the decision-making on projects that affect them. C) Right to self-determination regarding the peoples right to establish their right to freely determine their political status and freely pursue their economic, social and cultural development; and to freely dispose of their natural wealth and resources and not be deprived of their own means of subsistence. D) The right to housing to guarantee the functioning and reproduction of family and community relations. E) The right to food in the idea that the population depends on its lands for its subsistence and makes use of the waters of the river for fishing. F) The right to water as a basic condition so that it is enjoyed in adequate quality and quantity for the population. G) The right to land in the perspective that the control of land and natural resources contributes to preserving their land and constructing community identity. I) The right to development is indispensable to guarantee better living conditions for the local population.

In its verdict, the TLA also resolved that large-scale projects with multiple objectives such as the case of the hydroelectric dam *La Parota* should not be carried out, as their objective is not directed at the production of renewable energy and its high social and environmental costs are absorbed by the original residents of the territories and financed with public resources. And finally, it urged the federal, state and municipal bodies to remedy the acts that violate the human rights and the procedural rights of the persons affected.

6. Conclusions and recommendations

The government's strategy for "regional development" for the south-south-eastern part of the country has serious limitations. It is not based on an integral vision of the right to development conceived as a progressive realisation of the population's fundamental rights. Economic, social, cultural and environmental rights are neither a priority nor a guide for government policies. Therefore it does not seem feasible that this strategy will be able to revert the negative impacts of NAFTA and improve the local populations standard of living as is affirmed by the government.

A true development will not be promoted in any of the projects analysed as they bypass human rights, including the right to self-determination. It is urgent that the Mexican government provide follow-up to the proposals of the OHCHR National Diagnosis in this regard.¹¹⁸

- Promote social participation and the construction of consensus in the definition of public policies for development.
- Legislate so that the federal, state and municipal governments consider and respect the opinions of the local populations and communities, particularly indigenous peoples, respecting their usages and customs, in regards to those investment and development programmes and projects that have a concrete impact on the territory where they live.

The development process of the region has been exclusionary, authoritarian, hardly participative and incapable of including the demands of the communities and peoples. The dispossession of lands, the lack of a fair indemnification and dignified alternatives, the destruction of the environment, the appropriation of natural resources, and the

¹¹⁸ OHCHR in Mexico. Diagnosis on the Human Rights Situation in Mexico. Mundi-Prensa Mexico, 2003, pp. 74-76

process of extinction of the cultural patrimony, constitute serious violations of the rights established in the ICESCR, in particular the right to self-determination, the right to a healthy environment, to adequate housing, and cultural rights. By not taking into consideration the principles and obligations contemplated in said Convention nor in ILO Convention 169 and in the general comments and specific recommendations issued by the Committee on ESCR, the State has failed to respect its international obligations in the area of human rights. Therefore, we request that the Committee on ESCR recommend to the Mexican State the following:

- 1) The Mexican State should assure that the regional development policies, plans and programmes are based on and respect human rights, in particular the ESCR of the population.
- 2) The Mexican State should provide opportune information, carry out appropriate public consultation processes in accordance with national and international norms, and guarantee a broad participation of the affected population and the organisations interested in all of the phases of the development projects (design, approval, planning, execution and evaluation).
- 3) The Mexican State should cancel all regional development programmes and projects that do not have the consent of the affected population and which imply human rights violations.
- 4) The Mexican State should respect the right to self-determination of the communities and peoples, in particular respecting the right to freely dispose of their natural wealth and resources, to pursue their economic, social and cultural development, and to not be deprived of their own means of subsistence.

EQUALITY OF RIGHTS FOR MEN AND WOMEN¹¹⁹
(Article 3 of the International Covenant on Economic, Social and Cultural Rights)

1. General panorama of the situation of women in Mexico

There are 103.1 million inhabitants of Mexico, of which 53.0 million are women and 50.1 million are men.¹²⁰ Twenty-six million women and 46.3 percent of female-headed households are poor. With regard to the violence women suffer in México, one of every three women has suffered violence from a partner at some point in her life and 12 women die every day as a consequence of violence.¹²¹

Although the 4th Periodic Report from the Mexican State (E/C.12/4/Add.16) recounts some of the activities, programs, agreements, linkages and legislation that exist regarding employment and gender equity, women in general face many obstacles to realizing rights equal to those of men. This is especially true of girls, older women, indigenous women, poor women, women who work in *maquila* factories, women migrants, and others. In Mexico, discriminatory traditional cultural patterns still prevail, affecting the participation of women in economic activities. Inequality remains in salaries and in the distribution of household responsibilities.

2. The economic participation of women

From 1984 to 2002, Mexico went through a series of structural reforms¹²² which had a great impact on poverty and income distribution; moreover, other factors such as fertility's drop¹²³, the postponement of the age of marriage, the increase of divorce or separations and the rise of education levels have brought about a higher involvement of women in the economy. The rate of female economic participation has increased. During the second half of 1991, 31.5 of every 100 women aged 12 and older were economically active. By 2004 the rate had grown six points, with 37.5 of every 100 women economically active.¹²⁴

The 4th Periodic Report recognizes that factors that have influenced the increase in economic participation by women is their need to supplement their families' incomes (paragraph 243), and that women continue to face significant limitations, such as occupational segregation and sexual harassment in the workplace (paragraphs 245 and 246). A variety of studies have shown how women incorporate themselves into economic activity and how they remain economically active, despite the housework and childcare for which they are responsible, situations that demonstrate gender inequality.

¹¹⁹ This section on the inequality of rights was written by Elizabeth C. Plácido from the Comité de América Latina y el Caribe (CLADEM- México), which used information generated by ALOP/Equipo Pueblo in its publication, "Estudio Género y DESC en México 2005", written by Areli Sandoval and Laura Becerra; the publication, "Informe Sobre la discriminación de las mujeres en México, cuatro años después: avances y retrocesos 1998-2000", written by Teresa Columba Ulloa Zúñiga, National Coordinator for the campaign "Los derechos de las mujeres no son opcionales"; documents derived from "Espacio feminista de articulación mexicana y mujeres feministas"; as well as official sources.

¹²⁰ INEGI, Resultados Preliminares del II Censo de Población y Vivienda 2005, Aguascalientes, Ags., Publication No. 024/06, February 13, 2006., p.2

¹²¹ www.indesol.gob.mx

¹²² Reforms can be analyzed through a general reform index, which is obtained with the average of five indexes: job reform, financial liberalisation, commercial liberalisation, privatisation and tax reform.

¹²³ According to the National Population Council ("Consejo Nacional de Población"-CONAPO), the fertility rate decreased from 2.41 children per woman in 2000 to 2.16 in 2004.

¹²⁴ Gabinete de Desarrollo Humano y Social, Los Objetivos de Desarrollo del Milenio en México: Informe de Avance 2005. Mexico, 2005, p. 54.

Women have had to care for their families while also working outside the home without the help, many times, of the institutional and employment supports needed to coordinate both realms or to incorporate men into their workloads. An example of this is the proportion of time dedicated to unpaid work spent by men and women.

According to the National Survey on the Use of Time (*Encuesta Nacional sobre el Uso del Tiempo*), housework and childcare continue to be women's work. In 2002 the percentage of total hours women spent on these two activities was 28.4 percent, versus 6.5 percent for men. These percentages rise as the educational levels of women decrease. Women without schooling spent 33.7 percent of their week on housework and childcare, while men with similar educational levels dedicated 5.8 percent.¹²⁵ As far as women with higher education are concerned, the rate drops to 17.2% weekly and increases 5.8% for men. However, despite the education level, children's care remains a women's task: 4.4% of their weekly time against 2.0% for men with the same level of studies.¹²⁶ This situation is echoed in a loss of free time for women and an decrease in their well-being, in addition to women being the ones who guarantee necessary services for society that are not counted in Gross National Product (GNP).

Although the results of the 4th Report look encouraging with regard to the decrease in the gendered pay gap -46.2% of wage earning women earn up to two minimum wages, against 32.9% of men earning the same wage (paragraph 231), on closer examination some results are not as favorable, including the exclusion of women from "masculine" activities and the underemployment of women noted in the last decade. Inequality between men and women in terms of pay continues, at the same time that there is inequality between men and women in access to jobs. For example, in 2004, 41.6 million people were working, of which 27.1 million (65.2 percent) were men and 14.5 million (34.8 percent) were women. In addition, the average female unemployment rate in the last ten years has been 2.9 percent, compared to 2.4 percent for men (paragraphs 56 and 57 of the 4th Periodic Report).

Evidently, men receive a higher income compared to women and this gap increases with the age factor, as inequalities rise between younger and older people. In 2002, 59.6% of the population without an income are women aged between 15 to 24 years old, against 41.7% of men. However, among the group aged 60 years old on, 44.4% are women and men 14.1%¹²⁷. Given this, the State violates the principle of non-discrimination which prohibits a differential treatment of people according to their specific situation, such as sex or age¹²⁸.

Women's wages are not comparable to men's. Inequalities between men and women's wages prevail. In 1996, the proportion of the economically active population that received more than five minimum wages amounted to 8.4% in men and 4.7% in women. These figures increased to 12.5% and 7.6% respectively in 2003, which highlights the fact that the gender gap deepened—against the interests of women— from 3.7 to 4.9 percentage points¹²⁹.

¹²⁵ INEGI and UNIFEM. National Survey on the Use of Time 2002. Tabulados básicos definitivos, INEGI, 2005, p 29.

¹²⁶ INEGI, UNIFEM, Nacional Poll on the Use of Time 2002 (*"Encuesta Nacional sobre Uso del Tiempo 2002. Tabulados básicos definitivos"*), INEGI, 2005, p 29.

¹²⁷ INEGI, INMUJERES, Nacional Poll on Incomes and Spending in households (*"Encuesta Nacional de Ingresos y Gastos de los Hogares"*), 2002.

¹²⁸ Paragraph 10 of General Comment 16, Committee on Economic, Social and Cultural Rights, 34th period of sessions, Geneva, April 25 to May 3, 2005.

¹²⁹ CONAPO, Press release (*"Comunicado de prensa 34/04"*), México, 26 de junio de 2004.

This gender gap can also be highlighted when men and women hold similar jobs. According to the Millennium Development Goals in Mexico: Progress Report 2005 (*Los objetivos de desarrollo del milenio en México: Informe de avance 2005*), for example, in 2004, if women working as technicians or artists are compared with men in the same occupation, 30.6 percent of women were earning five times the minimum wage, compared to 41.5 percent of men in the same occupation.¹³⁰ Additionally, the income earned by women out of salaries and wages¹³¹ according to their level of studies cannot be compared to the men's. Women who have the lower level of studies are matched with the lowest income rates compared to men: in the case of women with a 6 to 9 years training, the difference will amount from 61.2 to 63.1 compared to the male income. However, in the case of women with 13 to 16 years training (similar to university training), the average income gets closer to the male one, with a variation from 80.4% to 88.6%. In addition, women with fewer years of schooling demonstrate the lowest percentages of income compared to men. Nonetheless, disadvantages for women increase after 17 years of studies, as the income rate difference between women and men amounts from 78% to 74.1%¹³².

Not having more and better income affects the autonomy of women, placing them in situations vulnerable to changes in marriages, separations, divorces and widowhood, situations in which women often are affected economically, placing them at risk for poverty.¹³³

The income gap is also caused by the prevalent work segregation that women who hold jobs considered "masculine" are facing as well as the concentration of women in other tasks considered typically "feminine" –related to the traditional role usually attributed to women- such as domestic work, children care and teaching. In 2004, among the economically active male population, 21% are farmers or craftsmen, compared to 20.9% women among the economically active female population who are merchants and sellers; 13.9% who are craftswomen and workers; 12.9% who are clerks; 10.8% domestic workers out of their household and 9.7% employees. The percentage of economically active women holding a position of machine operator, farming administrator, farming forewoman or transport operator does not even reach 1% and there is no register of the first profession alone¹³⁴.

However, professions which register a higher number of women are: domestic work (88.9%), teaching (60.4%), all considered "typically feminine". On the other hand, professions mainly held by men are: farming machines operators (100%), transport operators (99.4%), security (93.7%), farming administrators (89.9%) and farming foremen (89.1%). Professions with a higher balance between sexes are clerks and street sellers, where the proportion amounts to one man for one woman. The previous figures show how women's exclusion from professional activities considered "masculine" actually strengthen gender stereotypes that are socially built and impede equal access to the right to work.

On the other hand, if in 2004 there was a slight increase in the economic participation of women in comparison to earlier years, of the economically active population 64.6

¹³⁰ Human and Social Development Cabinet. *Los Objetivos de Desarrollo del Milenio en México: Informe de Avance 2005*. Mexico, 2005, p. 54.

¹³¹ Wage is the direct income received by a worker, excluding social benefits.

¹³² Human and Social Development Cabinet (¡Gabinete de Desarrollo Humano y Social!), *Los Objetivos de Desarrollo del Milenio en México: Informe de Avance 2005*, México, 2005, p. 54

¹³³ *Ibid.*, p. 56.

¹³⁴ INEGI, INMUJERES, *Women and men in Mexico 2005 ("Mujeres y hombres en México 2005")*, Aguascalientes, Ags., México, 2005, p. 138.

percent are men and just 35.4 percent are women.¹³⁵ A significant portion of the female population is found working in the non-structured economy, in poor quality jobs, with irregular or occasional subcontracts, jobs in others' homes, small businesses, or jobs with neither contracts nor social security, among others.

Because of this, the increase in women's participation in economic activities is not a guarantee of economic equality, nor does it guarantee equal access to work. Women have served as reserve labor that complements or regulates the restructuring necessary in the economy.¹³⁶ Employment discrimination¹³⁷, wage inequalities, and the importance of women having a greater income all interfere with women's access to work. The Mexican State is not fulfilling its obligations to protect women in the labor force, as established by the International Covenant on Economic, Social and Cultural Rights, and described in paragraphs 19, 20 and 21 of the General Observation No. 16 of the Committee.

3. Limitations on equality under the law

It is undeniable that in the last 15 years the country has lived through important political, institutional and legal changes, for example, the law establishing the National Women's Institute ("Instituto Nacional de las Mujeres"). The Mexican government has worked to promote and defend human rights with respect to gender through the National Institute of Women (*Instituto Nacional de las Mujeres*, INMUJERES), with the objective of encouraging a legislative agenda that guarantees equality and non-discrimination (paragraph 34 and 35). However, there are still gender inequalities in internal legislation derived from, among other things: an inadequate accounting of norms; the lack of norms to protect the rights of women; the remaining cultural patterns affecting the interpretation of norms and the delivery of justice; the autonomy that any state jurisdiction holds from the other 32 in the Mexican Republic, in terms of common law and even some federal norms, such as the International Covenants; finally as the Mexican government mentions in paragraph 137, there is a lack of political agreement between the main actors that prevents several legislative reforms from being approved in order to guarantee gender equality.

There are several investigations about women's legal situation that pinpoint a persistent gender inequality. For instance, the 32 Mexican Republic states' civil codes do not recognize the economical value of domestic work; some 25 states do not grant similar responsibilities to the members of the married couple; eight of them demand the husband's consent so that the wife can work; seven request the woman to live where the husband chooses to settle; all of them request the mother to register the children born out of wedlock and the proofs requested to someone wishing to exercise his paternity are extremely hard to provide¹³⁸.

The principle established by CEDAW according to which local legislations must recognize equality between men and women, the freedom to choose a place of residence and a profession as well as other rights and freedoms deriving from marriage

¹³⁵ Ibid., p. 117.

¹³⁶ Human and Social Development Cabinet. Los Objetivos de Desarrollo del Milenio en México: Informe de Avance 2005. Mexico, 2005, p.54.

¹³⁷ This refers specifically to differences in the economic compensation given the same work done by a man or a woman in which the woman receives a lower salary without the use of productivity criteria (www.inmujeres.gob.mx).

¹³⁸ Becerra Pozos Laura y Sandoval Terán Areli, *Estudio Género y DESC en México*, DECA Equipo Pueblo, ALOP, México 2005, p.8

and family relations, has not been taken into account yet in secondary laws, contrarily to the content of the Convention and the Mexican Constitution¹³⁹.

With respect to including the highest standards of protection in state legislations related to sexual and reproductive rights, with the issue of legal abortion, for instance, from the year 2000 on, there has been a tendency to censor issues dealing with sexuality and abortion. Indeed, the governing party and some civic organizations have been trying to block the development of sexual and reproductive rights through the promotion of campaigns in favour of abstinence¹⁴⁰. Specifically, they have tried to reduce the range of causes recognized by the State for an abortion to be considered legal¹⁴¹. In 31 states and the Federal District¹⁴², abortion is considered legal when pregnancy is caused by rape; in 28 states, when pregnancy puts the mother's life at risk; with regards to congenital malformation, social and economical conditions or artificial insemination without prior consent, states legislations vary.

In the field of domestic violence, some civil and penal codes have been modified; however, there is no adequate proceeding that presently enables the authorities to resolve the problem through the specific punishment of the crimes. For instance, the judge does not automatically decide preventive measures such as expelling the violent man from his house or prohibiting he gets physically close to the victim, because the proceeding codes do not determine with details when and how to operate in such cases. A similar situation occurs as regards to legalized abortion for a pregnancy provoked out of rape: as we previously mentioned, every local code recognizes the right to abort, but according to different causes and there is no proceeding providing information on abortion in case of rape¹⁴³.

4. Questions

The government has taken a series of actions in order to guarantee gender equity and the fulfilment of women's rights. What measures has the State taken in order to ensure that these changes will prevail in the next government?

Additionally to organizing campaigns and promoting international human rights protection instruments in favor of women, what innovative strategies does the Mexican government plan to implement in order to ensure that domestic work shall be better appreciated by Mexican society? How does it plan to guarantee equality of tasks in domestic work between man and women?

Although we are very aware that there are no legal criteria that establish a higher income for men than for women, how does the Mexican government plan to counteract the present situation in order to establish a higher income for women?

As regards to the required adaptation of local legislation to the highest standards of protection, how will the government ensure continuity in the process initiated by INMUJERES? What proposals will it launch in order to speed up legislative processes?

¹³⁹ *Ibid.*, p.7

¹⁴⁰ In May 2001, Ana Cristina Fox, daughter of President Vicente Fox, launched a campaign designed to promote sexual abstinence among youngsters in order to prevent unplanned pregnancies, with the support of the DIF, the National System for Integral Development ("Sistema para el Desarrollo Integral de la Familia").

¹⁴¹ In March, 2003, a scandal involving Member of Parliament Luis Pasos in a fund detour broke out. Some 30 million pesos (3 million dollars) which were supposed to support the AIDS cause were granted to the conservative civic organisation PROVIDA's "women's support centers" where the promotion of abstinence and the deterrence of legal abortion is practiced.

¹⁴² Mexico City, note of the translator.

¹⁴³ Pérez Cervera, Julia, *Balance sobre la violencia doméstica. México 2003*, Documento de investigación del Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM).

5. Recommendations

- Guarantee equal access to economic, social, cultural and environmental rights, conducting research and qualitative analyses that note the significant impact of governmental decisions on women's daily lives.
- Guarantee the continuity of the coordination process for on-going topics such as abortion and violence.
- Promote and guarantee cultural change to value and equitably distribute housework.
- Guarantee that domestic work shall be recognized economically, expand the number of public day care centres and adapt school timetables to working hours
- Guarantee the unrestricted respect of the lay State as an important framework for the diversification of ideas and for respect for individual guarantees.

RIGHT TO WORK¹⁴⁴
(Article 6 of the ICESCR)

1. Definition of the right

The right to work has been defined as “the set of norms involving the relations that are directly derived from the free, subordinate and remunerated provision of personal services and whose function is to produce an equilibrium of the issues at stake through the realization of social justice”.¹⁴⁵

Stable employment entails the possibility to freely elect the work, obtain employment without discrimination, and receive adequate and opportune training to carry it out. There should be a guarantee of stability while the working material and job exits, protection against unemployment, indemnification for unjustified dismissal, and promotions based on seniority.¹⁴⁶

2. Recognition of the right to work in international legislation

The right to work is recognised in article 6 of the International Covenant on Economic, Social and Cultural Rights, as well as in other international instruments such as the Universal Declaration of Human Rights (article 23), and 78 conventions celebrated with the International Labour Organisation, of which 67 are in force.

3. Recommendations of the Committee on Economic, Social and Cultural Rights on labour issues.

In 1999, the Committee on Economic, Social and Cultural Rights established its concern for the insufficient efforts taken by the Mexican State to comply with the observations that were made regarding the fulfilment of and respect for labour rights as well as for the fact that the observations and recommendations adopted in 1993 were pointed out without them being implemented by the Mexican government.¹⁴⁷

4. Employment situation in Mexico.

The employment problem in Mexico began to become visible from the 1980s when the neoliberal model was adopted as the economic policy in the country.

In regards to labour, this model is translated into a constant reduction of the workers' rights and benefits, flexibilising as much as possible the contracts, both individual and collective, with a tendency towards greater protection of the business sector.

From this moment onward, the government's policy has been clearly defined by prioritising the fulfilment of macroeconomic goals and commitments with the

¹⁴⁴ This section on the Right to Work was elaborated by the *Centro de Reflexión y Acción Laboral de Fomento Cultural y Educativo, A.C*

¹⁴⁵ De Buen Lozano, Néstor. *Derecho del Trabajo*. Volume I, general concepts. Editorial Porrúa, Mexico 1974. p. 131.

¹⁴⁶ Centro de Reflexión y Acción Laboral. *Derechos Humanos Laborales. Experiencia teórico-práctica para una estrategia integral de promoción y defensa*. Editorial Friedrich Ebert/Fomento Cultural y Educativo.

¹⁴⁷ The Committee also expressed its concern regarding the people who live in poverty and extreme poverty. It considered that “unless the structural causes of poverty are properly addressed, a more equitable distribution of wealth between the various sectors of society, between states and between rural and urban areas will not be achieved”. In this regard, in the last two six-year presidential terms there has not been a substantial improvement in regards to poverty. According to data from CEPAL, in 2001 the percentage registered for poverty in the country reached 46.9% of the population.

international financial institutions (World Bank, International Monetary Fund), which so far has meant the State's infringement of its role as guarantor of labour human rights,¹⁴⁸ placing less priority on the social and economic problems that arise with the increasing precariousness of employment and its low growth.

According to data from the National Institute of Statistics, Geography and Information (*Instituto Nacional de Estadística, Geografía e Informática*, INEGI), in 1991 the economically active population (EAP) was 31 million 229 thousand 48, of which 66% enjoyed a salary and social benefits, 56% earned up to two minimum wages and 22% was in critical conditions of employment.

In 1997, an EAP of 38 million 344 thousand 700 was registered, with an unemployment rate of 3.7%. Of this population, between 40 and 50% were in the informal sector, 51.9% earned up to two minimum wages and 30% were in critical conditions of employment.

The years 2001 and 2002 are considered to be a two-year period due to the low job creation that was registered. According to data from INEGI, in 2001 an EAP of 40 million 72 thousand and 856 people was registered, the open unemployment rate was 2.4% in relation to this population. Likewise, it was registered that 53.7% of the EAP was involuntarily unemployed and 58.7% spent one to four weeks in this situation. The employed population that was registered in 2001 was 39 million 385 thousand 505 people, of which 46% received up to two minimum wages, with an average income of 17.7 pesos per hour of work. The critical conditions of employment rate was at 18.47% in regards to the employed population.

During 2002, the EAP was 41 million 85 thousand 736 people, the open unemployment rate was 2.7%, 55.7% were involuntarily unemployed and 55.5% spent one to four weeks in this situation.¹⁴⁹

The open unemployment rate registered in July 2002 was 2.94%, considered up to that date as the highest during the current government. However, this does not compare to the rate registered in 2004 where, according to INEGI, it was 3.78% in regards to the economically active population, thus being at a level 72% higher than that which existed at the beginning of President Vicente Fox's government.

In this same year, the critical conditions of employment rate was at 8.06%, which translated into 3 million 304 thousand people, while the number of street vendors increased to one million 203 thousand.¹⁵⁰

The employed population was 40 million 301 thousand 994 people, of which 16.73% were part of the critical conditions of employment rate and 41.4% received up to two minimum wages, with an average income of 18.6 pesos per hour worked.

The open unemployment rate registered in 2003 was approximately 3.24%, equalling close to one million 220 thousand people,¹⁵¹ resulting in an increase in informal

¹⁴⁸ Centro de Reflexión y Acción Laboral. Derechos Humanos Laborales en México: entre la imagen protectora y una política de represión. Report on Violations of Labour Human Rights in Mexico during 1997.

¹⁴⁹ It should be pointed out that the population in open unemployment and that spent nine or more weeks in this situation increased in 2002 to 25.9% in relation to that registered in 2001, which was 22.7%.

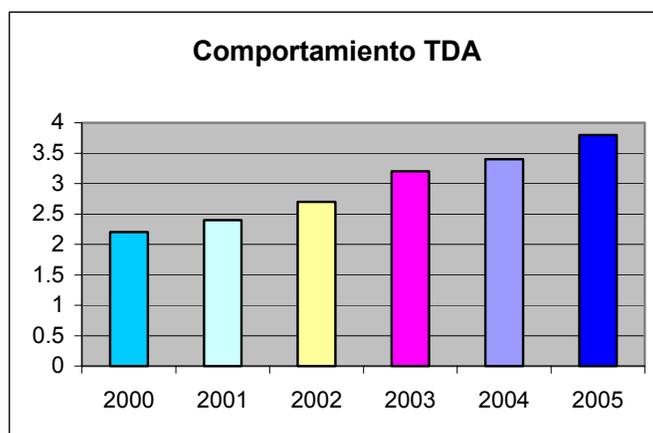
¹⁵⁰ The total of Mexicans in open unemployment or underemployment for 2001 was 4 million 404 thousand. Centro de Reflexión y Acción Laboral. Trabajando entre amenazas... Los defensores de derechos humanos laborales. Report on Violations of Labour Human Rights in Mexico During 2002. page 10.

¹⁵¹ The EAP registered for 2003 was 41 million 515 thousand 673 people. Of these, approximately 54.94% were involuntarily unemployed.

activities and as a consequence, a “null generation of employment” in the formal sector. This was such that the amount of people employed in informal activities during 2003 rose to 19.5 million, which represents 63.3% of the population in urban areas of the country. In this way, the proportion of informal work in regards to formal increased, given that in the third trimester of 2000 this relation was 1.59 times (informal to formal) and in the same time period for 2003, the relation rose to 1.77.¹⁵²

For the month of June 2004, INEGI had registered an open unemployment rate of 3.78%, meaning that in this month 56 thousand 520 people became unemployed. During the first semester of 2004, the average open unemployment rate of urban areas was 3.76%, while in this same period of 2003 it was 2.87%.

In the last trimester of 2005, the EAP was 43.9 million people, in the third trimester of this same year, the open unemployment rate was approximately 3.87%, while the underemployed population¹⁵³ in the period of October-December was 6.1% of the economically active population, that is, 2.7 million people.



The Tendencies of the Open Unemployment Rate. Own elaboration with data from the Instituto Nacional de Estadística, Geografía e Informática (INEGI).

In an attempt to combat the growing unemployment, the National Job Programme was created which has eleven projects, including providing scholarships to the unemployed, migrations to Canada, opening up spaces, formal employment searchers, support for agricultural workers, productive projects, job fairs, *Chambanet* (this is a web site that provides information on job openings and manages a database with the candidates' profiles), *Chambatel* (this is through telephone calls to register possible candidates in a database), and *Chambapar* (this consists of the evaluation of people with different disabilities and older adults). However, these mechanisms have not been enough to provide employment to the 221 thousand 833 candidates registered in *Chambanet*, as only 15 thousand 940 have obtained employment.¹⁵⁴

The resources designated for employment issues have been very limited, as during the month of July 2003 only 100 million pesos were designated for the emerging job programme, which was used to finance around 20 thousand training scholarships throughout the country.

¹⁵² Centro de Reflexión y Acción Laboral. *Diagnóstico de la ONU: Al rescate de los Derechos Humanos Laborales*. Report on Violations of Labour Human Rights in Mexico during 2003. page 8.

¹⁵³ INEGI considers the underemployed population to be those people who state the need and willingness to provide more hours of work than those granted in their current job.

¹⁵⁴ idem. p. 15

Another mechanism implemented by the government has been the creation and financing of “*changarros*” as an alternative form of employment, an alternative that arises out of the impossibility of creating jobs that satisfy the growing demand for employment.¹⁵⁵ This has resulted in the growth of the self-employed population (generally established in the informal market or the unstructured economy), with 28.5% of the employed population situated in this sector, which provides 12.7% of the national GDP. In absolute numbers, this proportion is equal to 663 billion 104 million pesos, three times what is jointly produced by agricultural activities, apart from providing employment to 25.7% of the total employed population at the end of 2001.¹⁵⁶

This economic growth is in detriment to the rights of the population since it does not guarantee job stability, it diminishes standards of living and it does not guarantee access to social security, let alone adequate wages. However, the growth in informal sector does increase the number of illegal activities such as the selling of pirated goods, pornography, drugs and narcotics; the trafficking of poor quality and cheaper products from other countries; the trafficking of people and organs; child prostitution; tax evasion and growth in the levels of organised crime.

5. National Programme on Human Rights

Although in principle the National Programme on Human Rights, presented by the Federal government on 10 December 2004, aimed to translate the recommendations from the *Diagnosis on the Human Rights Situation in Mexico*, elaborated by the Office of the United Nations High Commissioner in Mexico, into concrete actions, as well as to consolidate a policy for the defence and promotion of human rights, which would include the different branches of the government and civil society, it falls far short of this objective.

For labour human rights, the government only presents the following as issues for action: “to revise the legitimacy of the existence of a labour regime of exception, which limits fundamental rights, as is anticipated in section B of article 123 of the Constitution,” and “to make transparent the implementation of labour justice, analysing the convenience of its independence from the Executive Branch on the local as well as federal level, with the participation of the Judicial Branch.” This means that the commitments for the government are only in the areas of studying and analysing the situation, without this implying that things will change after this revision; in other words, what the text of the Programme establishes is the faculty for the government to decide if everything remains as it is.

The programme does not include the possibility of forming unions and it limits labour justice to the well being of the workers and their families, without addressing the fact that the basis for this well being is a just salary that guarantees coverage for basic needs and that in light of the loss of purchasing power, this well being is difficult to reach and even more so, to guarantee. It also does not cover that related to job stability, nor that one way to violate this right is through the lack of job creation and the

* Translator's note: A *changarro* is Mexican term to describe a self-owned shop or other micro-enterprise.

¹⁵⁵ Contrary to the creation of jobs is the phenomena of the expulsion of workers, the disappearance of small to medium size businesses that are the main job creators, added to the fact that the public sector is seen as an important creator of unemployment since by applying administrative efficiency and budget savings programmes (voluntary retirement), 37 thousand jobs have been eliminated. *Evidencias* magazine, number 873. p. 5, 22 December 2003.

¹⁵⁶ Apart from these programmes, on 3 March 2004, the Federal government along with the Ministry of Labour and Social Welfare implemented the Labour Observatory, which in reality does not solve the unemployment problem. The objective of its creation was to monitor the behaviour of the labour market in different technical careers or at the Bachelor's level, attempting in this way to influence the study plans and programmes of different universities, as well as the students' choice of the professions that they want to study.

increase in informal work. The programme does not consider labour rights as human rights, making it difficult to consider the integrality of these rights, in which, if one right is violated, one or more additional rights are also affected. In regards to collective rights, the programme does not mention the right to collective contracts nor the need for this to be guaranteed so that workers can have better working conditions, it also does not mention the right to strike, nor the way in which this is guaranteed.

If the tendency of the current government is to guarantee the enjoyment and respect for these rights, the programme also should have mentioned the need to reform article 122, section B, of the Constitution in order to grant the National Human Rights Commission the faculty to address labour issues; the removal of the reserve that currently exists on article 8 of the International Covenant on Economic, Social and Cultural Rights, regarding the right to form trade unions; as well as indicating the importance of ratifying the conventions of the International Labour Organisation that are pending. In order to guarantee an effective access to justice, the need to give independence to the Conciliation Boards, at the local and federal levels of the Executive Branch, and in this way have a reliable administration of justice, should also have been included.

It should be pointed out that the Programme cannot be applied beyond the current administration, which will imply a regression in the area of human rights since the validity of and respect for human rights should not be limited to a six-year presidential term, on the contrary, these should have a continuity of permanent respect and observance. Additionally, in most of the areas of action, the Programme does not define an organisational structure responsible for their execution and nor guarantee the budgetary resources necessary to carry them out.

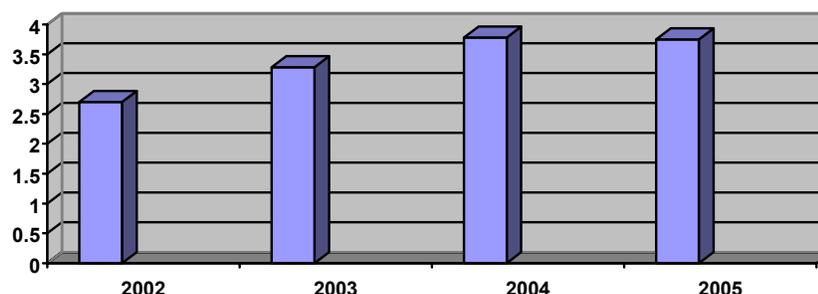
In this way it can be concluded that the National Programme on Human Rights has no other aim than to present before the international community a government concerned for the validity and respect for human rights, an image and discourse which contrasts with the reality within the country, where the violation of labour human rights has increased.

6. Official report on ESCR

The official report on the situation of economic, social and cultural rights presented before the Committee in October 2004, in relation to article 6 of the ICESCR, amounts to explaining the current situation of this right through graphics, without an objective analysis of the current situation of the right to work, which would explain the social results of the loss of formal employment.

An example of this is looking at the graphic regarding the national open unemployment rate (page 12 of the official report), which indicates that in the fourth trimester of 2003 the rate was 2.5%, when INEGI indicates that it was 3.28%.

Open Unemployment Rate



Own elaboration with data from the *Instituto Nacional de Estadística, Geografía e Informática* (INEGI).

In the official report, the Ministry of Foreign Relations describes the programmes created by the current administration to link workers with companies, indicating that the time and expenses for job seekers has been reduced. However, it does not specify the quality of the jobs created nor the time that workers remain in them. In this regard, it is important to mention that the majority of these jobs are characterised by low salaries and a lack of benefits, as well as for being temporary.

7. Employment in indigenous areas

According to information from the National Indigenous Institute, there are 52 indigenous groups in Mexico, whose population reached 10 million people in 2000.

The situation of indigenous employment is framed within a generalised panorama of precariousness in the labour market, worsened even more by being mainly in the most struggling sector, that of agriculture.¹⁵⁷

According to the results of the National Survey of Employment in Indigenous Areas carried out in 1997,¹⁵⁸ the employed indigenous population rose to 1,484,885 people, of which 1,029,905 were men and 445,980 were women. Of these, 991,430 workers were dedicated to agricultural activities, of which 774,891 were men and 216,539 were women, with labour or handicrafts activities following in importance. One number that should be highlighted is that of this population, 500 thousand workers are unpaid.

97% of the indigenous minors between 6 and 11 years old are unpaid workers. Close to 1% are self-employed workers and 1.5% are contracted workers. Of minors who are between 12 and 14 years old, there is a larger portion of contracted workers, 8%; however, unpaid workers continue to dominate the category at 90%, while those who are self-employed constitute 2%.¹⁵⁹

The economic benefit that the indigenous people who work in the countryside can gain is very limited because this depends on many factors including the budget that they

¹⁵⁷ Pedrero Nieto, Mercedes. *Empleo en zonas indígenas*. P. 5.

¹⁵⁸ Survey carried out to obtain information on the characteristics of indigenous employment. The survey comprised predominantly indigenous areas covering 39.5% of the national indigenous population and it was carried out mainly in the states of Oaxaca, Chihuahua, Durango, Jalisco, Nayarit, Puebla, Hidalgo, Veracruz, San Luis Potosí, Guerrero, Chiapas, Campeche and Yucatán. *Idem*.

¹⁵⁹ *Ibidem*.

have in order to invest and obtain a good harvest, a lack of technology, and soil deterioration. These situations have pushed many of these workers to migrate to areas where they receive a salary to carry out the same type of work.

8. Migrant workers

The migration problem is not exclusive to the indigenous people, it is also experienced by *mestizos*, however, indigenous people also suffer the consequences of social exclusion, which is translated into discrimination, exploitation, poverty and abandonment.

The common characteristic of agricultural workers is the precariousness and insecurity in the work. Most workers do not have job security; they do not have a contractual framework that regulates their labour relations, because of which they are always exposed to unemployment and the violation of their rights. Their stay depends on the type of crop and on the fluctuations in the market, for which, the average employment continuity is 180 days a year, forcing them to constantly change agricultural regions and employers in order to be able to work as a day labourer other days throughout the year.¹⁶⁰

In regards to the situation for migrant workers, the *Diagnosis on the Human Rights Situation in Mexico* indicates that agricultural workers (migrants and locals) are the centres of the greatest rural poverty. The working conditions they experience imply long work hours, low remuneration, insecurity and exclusion from the protection of social security, unhealthy and risky conditions, both in the activities they carry out as well as in the places that they live, overcrowding, poor food quality and malnutrition, and the lack of access to health and education services.¹⁶¹

The Agricultural Workers Programme created by the Ministry of Social Development (SEDESOL), attempted to improve the agricultural workers' situation, both in regards to the work as well as their lives, however, as can be seen above, the situation experienced by these workers, which includes the indigenous peoples, has not improved and they still suffer from violations of the human right to job stability.

9. Child labour

The fact that children have to work in order to satisfy their basic needs is already an ethical and moral question that needs to be addressed by the States. In Mexico, child labour is permitted at the age of 14 (article 123, section III of the Constitution).¹⁶² This is characterised by the exploitation of people under 18 years old who receive a salary below that which is received by adults for their work, many times they lack social security, and although they can be part of a trade union it is not allowed for them to occupy positions. Likewise, minors suffer from the greatest job instability, given that they can be fired the moment in which the employer decides to do so. In spite of the multiple recommendations at the international level that have been emitted to abolish this type of work, it is still a practice that occurs in our country.

In 1998, the Ministry of Labour and Social Welfare presented the report titled "Child Labour in Mexico", which indicated that there existed, at this time, a little more than 3.5 million people working who were between 12 and 17 years old. In this period, the

¹⁶⁰ Arroyo Sepúlveda, Ramito, et al. *Zonas Rurales de Migración Indígena y Trabajo Jomalero*. p. 51

¹⁶¹ *Diagnóstico Sobre la Situación de los Derechos Humanos en México*. P.84.

¹⁶² Article 123, section III.- The use of labour of minors under fourteen years of age is prohibited. Persons above that age and less than sixteen shall have a maximum work day of six hours.

agricultural sector absorbed 42% of these workers, commercial and service activities 23 and 17% respectively, while manufacturing and construction absorbed 14 and 4%.

In this year, around 13 thousand 200 children are registered as carrying out economic activities catalogued as being for survival (prostitution, begging, sorting trash, carrying goods, moving cargo, mason assistants, among others). At the same time, in the agricultural sector the National Peasant Conference indicated that more than one million between 6 and 14 years old work in the countryside.¹⁶³

In 2002, the Director for the ILO in Mexico and the Caribbean indicated that in our country there were approximately 120 thousand workers who were children, mainly in the countryside, in markets, in small factories and workshops.

For its part, UNICEF in Mexico, according to statistics from INEGI, indicates that there are 3.3 million children between 6 and 14 years old who work. They also indicate that child labour is an expression of the poverty, vulnerability and social exclusion of a large number of families in Mexico.¹⁶⁴

10. The situation of women in work

Although the incorporation of women into paid work has been constant, notable differences with men still exist. As such, according to data of the percentage of the employed population provided by INEGI, while in 1991 of a total population of 30 million 534 thousand 083, 21 million 256 thousand 913 were men and 9 million 277 thousand 170 were women. In 2003, of the total population of 40 million 633 thousand 197, 26 million 716 thousand 673 were men and 13 million 916 thousand 524 were women, demonstrating that the growth in women's employment is minimal as compared to the growth registered by men. Likewise, the same period registered that the percentage of unpaid women is higher than that of men, in such a way that in 1991, 17.4% of women did not receive payment, as compared to 11.1% of men. In 2003, 12.1% of women and 6.6% of men were unpaid.

From 1991 to 2000, the employment rate for women with a higher education has registered a loss of 0.8%, given that in 1991, 98.1% was registered and for 2000 it was 97.3%, with 1995 being the year with the lowest percentage, as it was 93.7%. However, the constant in these percentages is that in this period women have registered a lower percentage than men, illustrating the inequality that still exists in employment opportunities.

It is important to indicate that the largest index of discrimination is suffered by women who work in *maquilas*, who are dismissed for being pregnant or are required to present a non-pregnancy certificate in order to be hired, a situation which violates the right to job stability and demonstrates the State's lack of observance of the recommendations issued by the Committee on ESCR.¹⁶⁵

¹⁶³ Op. Cit. Centro de Reflexión y Acción Laboral. Precarización e inestabilidad en el empleo ¿Nueva cultura laboral?. P. 34

¹⁶⁴ These child workers do not voluntarily chose to enter into the labour market. For them and their family members, child labour is a form of survival. Trapped in a vicious cycle of poverty and excluded from education, child workers are condemned to be on the margins of society throughout their lives. Diagnóstico Sobre la Situación de los Derechos Humanos en México. page 166.

¹⁶⁵ See CEREAL's report. Diagnóstico de la ONU: Al Rescate de los Derechos Humanos Laborales. 2003, as well as Cafod's Report on the labour conditions in the electronics sector of the *maquiladora* industry.

11. Recommendations

To the Executive Power

- To veto regressive legislative measures on labor issues
- To design and implement an employment policy and a national employment program.
- To look for ILO technical assistance on employment policies and the implementation of conventions (including Convention 169 on Indigenous and Tribal Peoples)

To the Legislative Power

- Ratify ILO Convention 44 concerning Unemployment to ensure benefit or allowances to the involuntarily unemployed.
- Ratify ILO Convention 138 concerning Minimum Age for Admission to Employment
- Ratify ILO Convention 158 concerning Termination of Employment at the Initiative of the Employer

To Judicial Power

- To Guarantee access to justice in work conflicts, especially those concerning to massive lost of jobs.

THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK¹⁶⁶ (Article 7 of the ICESCR)

1. Definition of the right

Just and favourable conditions of work encompass working hours and sufficient rest to recover lost energy; a work environment free from sexual and moral harassment; safe and healthy work conditions as well as indemnification for risks at work.¹⁶⁷

1.1 Adequate Salary: This consists of a fair and satisfactory remuneration which grants the worker a decent existence, complemented, when necessary, by other measures of social protection, by receiving equal pay for equal work and guaranteeing workers their survival when they retire through a pensions system.¹⁶⁸

2. Recognition of the right in international legislation.

The right to just and favourable conditions of work is recognised as a human right by article 23 of the Universal Declaration of Human Rights.

In a more detailed manner, article 7 of the ICESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

In this same regard, article 7 of the Protocol of San Salvador recognises the right to work under just, equitable and satisfactory conditions.

Likewise, Mexico has signed 78 ILO conventions, with the aim of improving the work conditions of Mexican workers; 67 of these conventions are in force.

3. Recommendations of the Committee on ESCR

In 1994, the Committee found it disturbing that a particularly large number of persons lived in extreme poverty. In this connection it noted with concern the decline in the purchasing power of the minimum wage since it is no longer adequate to enable people to live above the poverty line.

¹⁶⁶ This section on the right to just and favourable conditions of work was elaborated by the *Centro de Reflexión y Acción Laboral (CEREAL) de Fomento Cultural y Educativo, A.C.*

¹⁶⁷ *Idem.*, p. 27.

¹⁶⁸ Centro de Reflexión y Acción Laboral (CEREAL). *Derechos Humanos Laborales. Experiencia Teórico Práctica para una estrategia integral de Promoción y Defensa*. p. 27.

Again in 1999, the Committee on ESCR regretted that despite the positive growth of macroeconomic indicators in Mexico, especially the sharp decrease in the level of inflation, the National Minimum Wage Commission had not adjusted the minimum wage level upwards. It stated that at the time, about five minimum wages were needed to obtain the officially set basic food basket (*canasta básica constitucional*), in violation of article 7 (a) (ii) of the Covenant and as reflected in national legislation (article 123.VI of the Constitution).

In this regard, the Committee recommended that the Mexican State take measures to prevent the continued deterioration of the purchasing power of the minimum wage and to reassign budgetary resources in favour of the most vulnerable groups of society, calling upon the State to adopt effective measures to guarantee compliance with article 7 (a) (ii) of the International Covenant on Economic, Social and Cultural Rights, which is reflected in article 123.VI of the Mexican Constitution, in relation to the officially set basic food basket.

4. Situation of the right to just and favourable conditions of work in Mexico.

In Mexico, the lack of the creation of stable and dignified jobs, combined with the increase in informal work, cause precariousness in the conditions of work. Job precariousness is not new and it has increased since the 1980s. Currently, job flexibility is imposed by the organisational structure within the centres of work, increasing the work day, the practices of harassment or labour discrimination, the loss of the purchasing power of wages, as well as the loss of social benefits.

In regards to the loss of the purchasing power of wages, in order for a worker to access the Basic Food Basket for Workers (*Canasta Obrero Indispensable*, COI)¹⁶⁹ in 2004, whose cost was 263.89 pesos, it was necessary to work 43.50 hours a day, receiving a daily salary of 45 pesos. This meant that a worker had to work 39.31 hours more in comparison with the hours worked in 1976, which was an average of 4.19 hours to access the COI whose price was 50.61 pesos, earning a daily salary of 96.70 pesos.

The increase in wages approved by the National Minimum Wage Commission for 2006 is 4%, that is 1.87 pesos.¹⁷⁰ This increase does not assure that all workers can access the Basic Food Basket for Workers, since products like milk have an average cost of 10 pesos, a kilogram of beef is between 60 and 65 pesos, and a kilogram of tortillas costs 5.5 pesos, not counting other foods such as fruits and vegetables and transportation costs, which run between two and four pesos per trip.

Given the poverty that has been generated from the low increase in wages, the Technical Committee to Measure Poverty (*Comité Técnico para la Medición de la Pobreza*), after analysing the tendencies of the different poverty indicators throughout

¹⁶⁹The Centre of Multidisciplinary Analysis (*Centro de Análisis Multidisciplinario*) of the Economics Department of the UNAM began this study on the Basic Food Basket for Workers and the minimum wage in 1978. The Basic Food Basket for Workers is a Current Basic Food Basket made up of 35 goods and services: 27 foods, 3 personal hygiene and household cleaning products, transportation, electricity and gas for household use. This is calculated for the daily use and consumption for a family made up of five people, two adults, a young adult and two children. The Basic Food Basket for Workers does not include rent for housing, nor expenses for education, health, clothing and shoes, recreation and cultural activities.

¹⁷⁰ According to the economic areas the country is divided into, the minimum wage was calculated as the following: 48 pesos and 67 cents in geographic area A; 47.16 for area B, and 45 pesos with 81 cents for area C.

the 1990s, presented as results for 2000 that: 18.6% of the households and 24.2% of the entire population had an insufficient income to cover food needs (food poverty). 25.3% of the households and 31.9% of the country's total population received an income that impeded them from covering their food needs and the basic standards in the areas of expenses on education and health (poverty of capabilities). Furthermore, 45.9% of the households and 53.7% of all of the population had an income below that needed to cover the aims of social policy (poverty of patrimony).¹⁷¹

In regards to favourable conditions of work, these have been characterised by their continued precariousness as a result of labour flexibilisation. In practice, this flexibilisation has been imposed illegally and it has resulted in the unilateral increase in the workday, the mobility of workers at the decision of the employer, as well as an increase in temporary contracts and protection contracts, decreasing the possibility to obtain better working conditions through collective bargaining.

To justify the implementation of labour flexibility, it has been said that the models of collective contracting are very rigid and *grant too many concessions to the workers, while elevating the costs of the contracting*, which puts the employer at a disadvantage in dealing with competition in the international market. Therefore, through flexibilisation, the employers seek the elimination of the obstacles that impede the free modification of variables such as wages and other benefits, which are to date, recognised and protected by the Federal Labour Law.¹⁷²

In this regard and according to the report done by the Centre of Multidisciplinary Analysis of the Economics Department of the UNAM, we can see that in November 2005, 26 million 468 thousand workers were working without benefits. This is apart from the fact that of the approximately 105 million Mexicans in the country, only 43 million have a job and of these only 15 million have benefits, while 90% have signed with *white unions*^{*} which impedes them from the revision of wages and contracts, receiving each year what the supposed union leaders negotiate alone with the employers.¹⁷³

The *maquiladora* industry in electronic products in Mexico (computers, printers, televisions, cellular phones, among others) is one of the highest growing industrial sectors in the country. Its intensive use of labour, its almost exclusive orientation towards exportation, and its precarious working conditions make it one of the production sectors denominated "of the future", that is, a globalised industry. The main places where the *maquiladora* industry is located are: Tijuana, known as "the television capital of the world", Guadalajara, which is called "Mexico's silicon valley", and Chihuahua, the main employer of the *maquiladora* industry for all of Mexico.

This sector is the clearest example of the labour flexibilisation that is experienced in the country. The main centre of *maquiladoras* for electronics is located in Ciudad Juárez. According to the Maquiladoras Association, there are 220 thousand employees in the *maquiladora* industry, that is 20.75% of all of the jobs generated by the *maquila* at the national level.¹⁷⁴ The labour conditions in this city are characterised by being

¹⁷¹ Diagnóstico sobre la Situación de los Derechos Humanos en México. p. 69

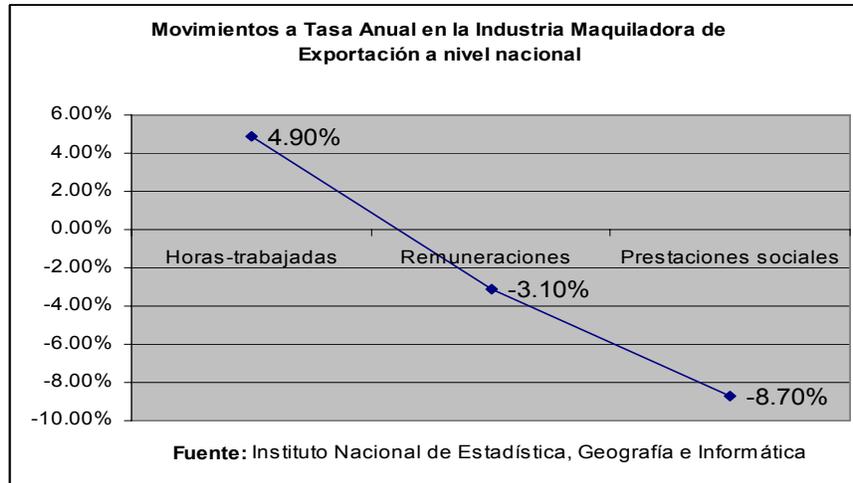
¹⁷² Centro de Reflexión y Acción Laboral. VIII Report on Violations of Labour Human Rights in Mexico during 2004 "Dicen que en este gobierno no pasa nada... y tienen razón". pp.13

* Translator's note: White unions or *sindicatos blancos* in Spanish refers to non-independent, company unions in Mexico.

¹⁷³ Muñoz Ríos, Patricia, *Boom de contrataciones al margen de la Ley*, La Jornada, 14 November 2005.

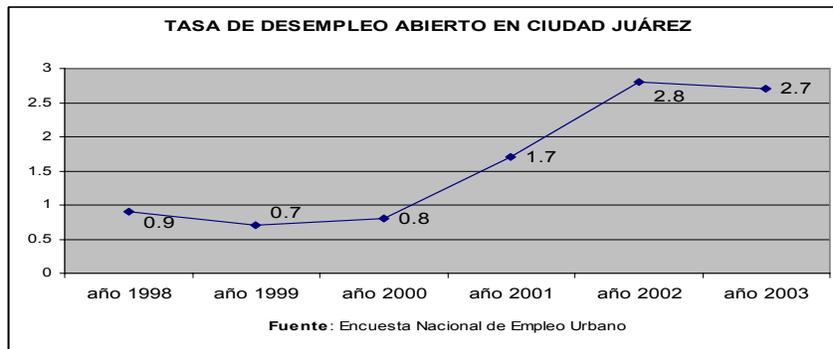
¹⁷⁴ Centro de Reflexión y Acción Laboral. VIII Report on Violations of Labour Human Rights in Mexico during 2004, op. cit. p. 30.

precarious. Temporary contracting and being subject to a trial period is common, as is the dismissal of workers who are later contracted again by the same company but with a lower wage, less benefits, a longer work day and under a temporary contract that is arranged through intermediaries (outsourcing).¹⁷⁵



Movements of the annual rate in the Maquiladora industry for exportation at the national level. The items, from left to right are: hours worked, remunerations, social benefits. Source: Instituto Nacional de Estadística, Geografía e Informática (INEGI).

In general, during the six-year presidential term of Vicente Fox, the work situation in Ciudad Juárez has been characterized by high levels of unemployment, a growth in the informal economy, a reduction of social benefits, an increase in the working day, and the impossibility of creating unions, among other violations of labour human rights.



Rate of Open Unemployment in Ciudad Juárez (by year)
Source: National Survey of Urban Employment

Outsourcing is also used in Guadalajara, Jalisco, in contracts for the maquila and it is considered to be the main cause of labour human rights violations. There are 60 agencies to place personnel and most of them use methods of selection, recruiting and

¹⁷⁵ This type of contracting is known as outsourcing, which consists of an intermediary company who contracts the workers under a temporary plan. This plan does not give certainty as to who is or are the employers, which leaves the workers in a state of an absolute lack of definition in terms of being able to claim their wages or the fulfilment of their benefits. Outsourcing has been extended to 80% of the maquiladora companies in this city (252 of the existing 315). Idem.

administration for personnel that go against most of the labour rights consecrated in national and international legislation. Among the violations are discriminatory practices, inhumane treatment and exposure to chemical substances.¹⁷⁶

In the middle of 2005, the Solectron plant in Guadalajara introduced the working method known as lean manufacturing, permitting it to increase its productivity and reduce operation times. The operators work standing during 12 hours in work cells in the form of a “U”, to increase their dynamism, they rotate from one line to another, depending on the demand of the company’s clients. For this, the personnel is constantly trained and certified according to the lean manufacturing system.¹⁷⁷

5. The situation in indigenous areas

The working conditions in indigenous areas are alarming, particularly considering the ages in which they begin to carry out economic activities as well as the age in which they stop working.

In these areas there is a high proportion of unpaid family members (a third of the total of workers for both sexes); of these women represent 53%, while men only represent a fourth. 97% of the minors between 6 and 11 years old are unpaid workers; those who are self-employed represent 1%, and those who are contracted, 1.5%. The percentage of children between 12 and 14 years old who are unpaid is 90%, while those who are contracted represent 8%.¹⁷⁸

The percentage of the population that develops its work in a precarious location represents 80%; this work is almost always done on plots of land, in the street or at home, and only 10% work in formal establishments. 92.7% of the employed population has no benefits, while 7.2% of the workers with some type of benefit have social security along with another benefit such as paid vacations or a bonus.¹⁷⁹

In regards to the income received for their work by the residents of indigenous areas, 34% of the employed do not receive salaries, women exceed this at 53%, while men who are unpaid only represent a fourth. 81% of the employed population earns one minimum wage, where men represent 79% of this population and women represent 88%.

In the presentation of the National Programme for the Indigenous Peoples 2001-2006, President Vicente Fox recognised that: “The ancestral conditions of poverty, marginalisation and inequality that the indigenous peoples experience and the commitment expressed in the National Development Plan 2001-2006 to achieve equity and equal opportunities for each and every Mexican, force my government to work more intensely and to reopen the policies, strategies and programmes that, to date, have been implemented regarding indigenous issues...compensating the indigenous

¹⁷⁶ Information provided by CEREAL, Guadalajara

¹⁷⁷ idem

¹⁷⁸ Pedrero Nieto, Mercedes. Empleo en Zonas Indígenas. p. 33.

¹⁷⁹ The non-indigenous population that does not have benefits is 66.2%, as compared to the indigenous population were 94.4% do not have benefits. Idem. p.38

peoples for the ancestral neglect, discrimination, poverty and marginalization is not only something my government should do, but it is also an unavoidable act of justice.”

However, the indigenous communities are still far from being free from discrimination or neglect, or from having equal opportunities in the same way as the rest of the population. On the contrary, given the lack of employment, just wages, or technical and economic support, the owners of small pieces of land in these areas, along with the poor quality of life, have experienced more intensely the migration phenomena, altering the location of the different groups as well as the roles established in the families.

6. Migrant workers

Migrant workers, mostly indigenous, apart from experiencing work instability, exploitation and discrimination, also face difficult conditions of work.

In 1998, according to numbers from the National Programme of Agricultural Workers (Programa Nacional con Jornaleros Agrícolas, PRONJAG 1994, 1998-1999), the population of indigenous workers stated that they received an average daily salary of \$48.18 pesos, while mestizo workers earned \$60.26 pesos. This is in spite of the fact that both groups worked practically the same amount, that is, six days a week.¹⁸⁰

Additionally, in the activities they carry out, which are usually agricultural, the indigenous workers lack security measures and training for the work. This is because there are very few agricultural companies that address these issues; in fact, in the moment that the workers are carrying out their activities, agrochemicals are applied without warning which directly affect the workers.¹⁸¹

According to the Report of the Work of the State Coordination of PRONJAG-SEDESOL (1997-1998), 108 work accidents have been registered and publicly recognised in the agricultural fields of Sinaloa (a reduced number if one considers that not all of the cases are denounced). 52.5% of these cases were bruises and fractures that occurred while transporting the workers to the fields, or at the moment of putting the harvest buckets into the collecting truck; 20% of the accidents were caused due to a lack of adequate protection equipment for the job, and the remaining 20% were due to intoxication by agrochemicals. Of these accidents, 51% were suffered by workers who were under 19 years of age and the majority of the intoxications by agrochemicals were workers who were between the ages of 15 and 19.¹⁸²

7. Conditions of work for women.

Article 1 of the Mexican Constitution recognises men and women as being equal and having the same rights and obligations. Likewise, on the international level this equality is also recognised, as is stated in article 2 of the Universal Declaration of Human Rights.

The UN Committee on the Elimination of Discrimination Against Women has emitted observations for Mexico regarding the poor quality of the work of Mexican women, particularly in regards to wage discrimination, vertical and horizontal segregation and social benefits, as well as the demands made by the employers on women in the *maquiladora* industry to present non-pregnancy certificates to be able to be hired or to

¹⁸⁰ Arroyo Sepúlveda, Ramito, et al. *Zonas Rurales de Migración Indígena y Trabajo Jornalero*, p. 53

¹⁸¹ Idem.

¹⁸² Idem.

avoid being dismissed. In virtue of this, the Committee has recommended the adoption of reforms of the Labour Law to include the prohibition of discrimination against women in order to guarantee their participation in the labour market on a level of true equality with men.

The Committee on the Elimination of Discrimination Against Women has not been the only body to emit recommendations for non-discrimination in our country, the ILO has also indicated that it is necessary to eliminate all forms of discrimination against women.

The situation of women in the *maquiladora* industry is a clear example of violations of labour human rights. Their contracts as well as job stability are conditioned on the presentation of a non-pregnancy certificate, they lack benefits and in many cases also do not have social security.

In the report presented by CAFOD in 2003 on the situation of *maquila* workers in Guadalajara, it was indicated that although the wages in the electronics industry are higher than in the domestic market, they are still low, typically between 50 to 100 US dollars per week in companies such as IBM and Jabil, and less in other factories. A worker must work excessive extra hours to earn close to 100 dollars. Paying for the basic food basket, rent, transportation and clothing costs close to five minimum wages.¹⁸³

This report also indicates that the majority of the workers in the electronics sector are women between the ages of 18 to 24, with scarce economic resources and many of them are single mothers. Employment agencies who place these women in the industry use questionnaires that are degrading, with intrusive personal questions, such as How many boyfriends have you had? When did you last have sex? How often do you have sex?, among other similar questions.¹⁸⁴

In 2002, the Office of the Federal Attorney for Labour Defence reported that they attended to 106 cases of sexual harassment against women, 370 dismissals for pregnancy, 107 for violence in the work place and 391 cases of unjustified dismissal. For its part, the Ministry of Social Development carried out a study in 2003 regarding the wage gap between men and women indicating that women receive between 15 and 30% less pay than men for the same work. In this way, they indicated, the average women receive for their work is equal to only 75% of the income received by men.¹⁸⁵

In 2003, of 13 million 864 thousand working women, 5 million 870 thousand worked without benefits, while one million 755 thousand 292 worked without pay.¹⁸⁶

8. Working conditions of child workers

Child labour is present in our country and it was formally recognised by the Federal government in 1998, shortly before the arrival of the Global March Against Child Labour, for this, it was stated that:

¹⁸³ CAFOD, just one world. Clean Up Your Computer. Working conditions in the electronics sector. p. 24.

¹⁸⁴ See the CAFOD report, p. 26.

¹⁸⁵ For more information see www.cimacnoticias.com

¹⁸⁶ Information from the *Universidad Obrera de México* (UOM).

In Mexico, many children perform different economic activities in search of remuneration. They are incorporated into the labour sector in spite of the constitutional provisions and the labour laws in force...¹⁸⁷

Child labour has not disappeared in our country, child workers are among the most vulnerable groups in labour relations, they are cheap labour that can easily be exploited and that represents low costs for the employers, given that they lack fair wages and in many occasions do not even receive a wage, apart from not having benefits

The ILO has stated that there are approximately 120 thousand child workers in the country, data that differs from that of the Worker University of Mexico (*Universidad Obrera de México*, UOM), which states that there are 10 million child workers in Mexico who work in silica sand mills, in the metal mechanics industry and in export *maquiladoras*, where they are exposed to chemical agents, powders, and high temperatures; carrying heavy sacks and working long days. The UOM also indicates that, according to numbers from UNICEF, there are 5 million children who work in Mexico, of which more than one million are day workers and another 150 thousand work on the street. On the contrary, in 1998 INGEI only recognised one million 871 thousand 335 child workers in Mexico.¹⁸⁸

9. Recommendations

To the Executive Power

- To stop economic policies that restrict the minimum wage and to accomplish the previous Committee's recommendation to adjust minimum wage to obtain the officially set basic food basket according to article 123 of the Mexican Constitution and article 7 (a) (ii) of the Covenant.

To the Legislative Power

- To legislate against discrimination at work
- To harmonize national laws with the international human rights law in order to guarantee the access to a dignified wage.

¹⁸⁷ Barreiro García, Norma. *El Trabajo Infantil, un concepto de difícil consenso*. UAM-UNICEF. p. 14.

¹⁸⁸ During the inauguration of the international seminar "Childhood in an exploitative situation: the denial of their rights", the senator Miguel Sadot Sánchez, president of the Commission on Human Rights of the Senate, indicated that in Mexico, of the 52 million Mexicans who live in poverty, 24.7 million are children, according to data from the UN Office of the High Commissioner for Children in Mexico (sic). Likewise he recognized that 16 thousand children work in prostitution, 80% of these are between 10 and 14 years old, and that 3 million children work whose ages fluctuate between 6 and 14 years old. La Jornada, 6 July 2004.

TRADE UNION RIGHTS IN MEXICO¹⁸⁹
(Article 8 of the ICESCR)

1. Ratification of the ICESCR with a reservation to article 8

When Mexico ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) it establish an interpretive reservation to it, through which article 8 of the Covenant would be applied in Mexico with the modalities and in accordance with the procedures established in the applicable provisions of the Political Constitution and its implementing laws.

In Committee on ESCR's final observations for Mexico in 1999, the following are established as some sources of concern:

15. The Committee expresses concern about the insufficient efforts taken by the State party to comply with the concluding observations and specific recommendations adopted after the examination of its previous report.

And in a more specific manner regarding Trade Union Rights:

23. The Committee also regrets the absence of plans to withdraw the State party's reservation to article 8 of the Covenant, although the right to form trade unions and the right to strike are enshrined in the Mexican Constitution and in the corresponding regulatory laws. The Committee regrets in particular the fact that trade unionism in the public sector is not pluralistic, and that trade union officials are not elected by direct vote.

As a consequence, a very clear recommendation was issued:

39. The Committee calls upon the State party to comply with its obligations under article 8 of the Covenant and to withdraw its reservation made under that article.

In spite of having emitted this recommendation in 1999, seven years later the Mexican State still has not taken any measures to comply with it, nor has it expressed any intention of adopting this recommendation in the near future. In reality, the Mexican government does not have the intention of withdrawing this reservation, as is illustrated in the IV Periodic Report presented by the Mexican State to the Committee. In effect, in response to the Committee's concern expressed in the cited paragraph 23 of the final observations, the government does not state any intention of withdrawing the reservation and moreover, it ratifies its text and meaning (E/C.12/4/Add.16, par. 1039).

2. Normative situation of the right

In its IV Periodic Report, the Mexican State extensively describes the legal framework of trade union rights in Mexico (E/C.12/4/Add.16, par. 271-280; 283; 290; 299-300; 303-315) however it is important to emphasise that in the legal framework itself there are serious restrictions to the rights established in article 8 of the Covenant:

In the Political Constitution of the United Mexican States

¹⁸⁹ This section on trade union rights was elaborated by the *Centro de Reflexión y Acción Laboral (CEREAL) de Fomento Cultural y Educativo, A.C.*

- The Public Human Rights Commissions (both the national as well as state commissions) are not authorised to intervene on any labour-related human rights violations (art. 102, section b). This means that the Constitution does not recognise trade union rights as human rights.

In the Federal Labour Law:

- Unions must be formed by at least 20 workers in active service (article 364).
- Unions shall be registered with the Ministry of Labour and Social Welfare in cases of federal jurisdiction, and with Conciliation and Arbitration Boards in cases of local jurisdiction (article 365). This disposition, linked to article 692, section IV, which will be mentioned below, makes nugatory the right to organise unions without previous authorisation recognised in article 357.
- Registration may be denied when the documents are not presented, which goes beyond the necessary limitations in a democratic society... (article 366, section III).
- Workers less than 16 years of age may not form part of the management of unions (article 372).
- A collective labour agreement may establish an exclusionary clause (article 395). In this clause, the employer shall only hire workers who are members of the contracting union, forcing the employer to dismiss those workers who resign or are expelled from the contracting union. In this way, by not joining or resigning from a union, the worker's right to association is restricted, given the risk of losing his/her job.
- The union representatives will accredit their legal status with the certification granted by the Ministry of Labour and Social Welfare, or the Conciliation and Arbitration Boards, if the board of officials the union is registered. (art. 692, section IV) In this way, registration before the authority passes from being merely administrative to being established through prior authorisation, since without the registry the legal personality to function cannot be accredited.

In the Federal Law for State Workers

- The definition of union restricts the workers to belonging to the same agency. There cannot be unions who join together workers from different state agencies (article 67).
- A state agency shall have only one trade union (article 68).
- Once a worker joins a union of his/her state agency, they have no right to leave the union, unless they are expelled (article 69).
- The workers holding responsibilities on behalf of the employer may not join a trade union (article 70).
- To form a union, twenty or more workers are required, and there can be no other union grouping within the agency with a larger number of members (article 71).
- The unions will be registered before the Federal Conciliation and Arbitration Board. The Federal Conciliation and Arbitration Board will prove "by the means that it deems most appropriate and effective" that there is no other union association within the agency in question and that the petitioner includes the majority of the workers of this agency, to proceed, as is the case, with the registry (article 72).
- A trade union's registration shall be cancelled if a different trade union group with more members is registered (article 73).
- The workers who are expelled from a trade union will lose through this act all of the union rights granted to them by law (article 74).

- Trade unions may join the Federation of Unions of State Workers, the only trade union federation recognised by the State (article 78).
- Trade unions are prohibited from joining worker's organisations or federations (article 79, section V), and if this is violated, the Federal Conciliation and Arbitration Board will determine the cancellation of the registration of the union officials or of the trade union, as is the case (article 83).
- The head of the respective state agency will establish the General Conditions of Work, taking into consideration the opinion of the trade union in question (article 87). That is, there is no true bilateralism.
- Workers may only make use of the right to strike if they demonstrate a "general and systematic" violation of the rights consecrated in article 123 part B of the Constitution (article 94).
- The workers cannot carry out any movement with "strike characteristics" outside of the national territory (article 98).
- If the Board establishes that the strike is illegal, the workers who suspended their work will be fired by this mere act, without any responsibility for the employer (article 105).

All of this illustrates that, contrary to what the government states in paragraph 276 of its report, the implementing laws on labour issues do not comply with what is established in article 2 of the ILO Convention 87, as has been indicated on several occasions by the ILO Committee of Experts on the Application of Conventions.

3. Principle true obstacles

The *Diagnosis on the Human Rights Situation in Mexico*, elaborated by the Office of the UN High Commissioner for Human Rights in Mexico, covers in chapter 4 on Economic, Social and Cultural Rights (especially in the chapter's introduction and in the development of the subchapter 4.3 on Labour Human Rights) certain structural obstacles for the full operation of Trade Union Rights and it proposes several recommendations for overcoming these obstacles.

The Diagnosis mainly highlights the existence of the social pact called **trade union corporativism**, in which *"the Mexican State, in dialogue with the leaders of the large trade unions and confederations and with the employer representations, in a tripartite scheme that excluded other social groups, agreed on the services and benefits that were to be granted to the workers and their families. The Federal Executive Branch assumed an important part of the costs in the provision of public education, health, housing, consumer credit and social security by means of social wages. The employers were responsible for creating jobs, paying wages and granting benefits according to the law and to contributing to covering social security, in which they delegated several responsibilities. The trade union leaders were in charge of maintaining peace in the labour relations and controlling the workers, in exchange for gaining better working conditions, while they also assured their permanence in the leadership positions and the privileges that went with this."*¹⁹⁰

Trade union corporativism described in this way and reinforced by the legal labour framework in the country constitutes a structural obstacle to the exercise of freedom of association. This is expressed through the control of the workers by the traditional

¹⁹⁰ *Diagnosis on the Human Rights Situation in Mexico*. Office of the UN High Commission for Human Rights in Mexico, 2003, pgs. 63-65.

trade union leaders, as well as the tolerance and complicity of the labour authorities, as the Diagnosis indicates by affirming that:

“By tradition and without any change in the present administration, the human right to freedom of association is systematically violated, the elections of the leaders of the organisations are carried out without respecting the free and secret vote, and the right to strike is also permanently affected. The labour authorities maintain strict control over the trade union organisations through the registry. Subordination to the old worker leaders continues on all levels of the workers’ organisations, and these leaders maintain relations with the authorities responsible for applying labour justice, which they use to punish dissident workers.”¹⁹¹

As a consequence, the Diagnosis contains several recommendations focused particularly on the Legislative Branch, so that the workers have a legal framework that guarantees the right to freedom of association:

- Eliminate the legal, institutional and political restrictions to the right to freedom of association for workers in the private as well as the public sectors.
- Lift the reservation on article 8 of the International Covenant on Economic, Social and Cultural Rights, and in the framework of the Labour Reform, adjust Mexican legislation so that it fully observes the International Labour Organisation’s Convention 87 on freedom of association and protection of the right to organise, ratified by Mexico in 1950.
- Promote the ratification of the main ILO Conventions that are pending, particularly number 98 on union activists and recognising them as human rights defenders.
- Establish democratic guarantees for union life in the legislation.
- Emit directives to regulate intra-union conflicts and citizen observation of the union processes.
- Create an institute with its own legal personality and patrimony, with the independence and autonomy to carry out the registration of trade union organisations and collective contracts.
- Prohibit the corporatist affiliation to political parties.
- Promote, in collaboration with workers organisations, the formation of women leaders.
- Legislate so that there is transparency and accountability in the trade unions’ accounts of their resources and assets and in the management of the quotas.

Unfortunately, none of these recommendations has been considered in the diverse initiatives for legal reforms that President Vicente Fox has presented since the Diagnosis was issued. In regards to the National Human Rights Programme (PNDR) that was created to attend to the Diagnosis’ recommendations, in the area of trade union rights only one recommendation is included which concerns the autonomy of the body that has the trade union registry: *To avoid arbitrariness in the registry process, work on the project for the autonomy of the registration of associations and the applicable norms.*¹⁹²

This Line of Action was transferred to the Work Plan of the Associations’ Registry Office, however autonomy is no longer considered, but rather only to “digitalise the registry process” and to “facilitate the procedures”. It is particularly concerning that this

¹⁹¹ Idem, Pg. 83

¹⁹² National Human Rights Programme, p 164., available at: <http://www.derechoshumanos.gob.mx/>

work plan expressly excludes the participation of civil society organisations.¹⁹³ Even more symptomatic of the Mexican government's attitude regarding trade union rights is the matrix for follow-up to the recommendations of the Diagnosis, which recognises that there is no progress in the area of trade union rights by the institutions involved.¹⁹⁴

4. Principle issues for concern

In light of the above, some of the main issues for concern for the exercise of trade union rights in Mexico are:

- 1.- The corporate affiliation to political parties, which means that all of the unionised workers automatically belong to the party that the trade union in question joins.
- 2.- Discretion and a lack of access to information in the granting or denial of the registration of trade union organisations, which facilitates State control over the unions; in the positive cases indicated by the government in its report (paragraph 1042), it fails to mention that these organisations have received their registry after a long and complicated legal battle in light of the original refusal of the government to register them.
- 3.- Discretion and a lack of access to information in the registration of collective contracts. Taking into consideration the scarce information on the number of contracts that are effectively revised and updated, it is calculated that 63% of the collective work contracts correspond to protection contracts.¹⁹⁵
- 4.- Discretion and a lack of access to information in the registration of the trade union officials, which facilitates a lack of democracy in the trade unions.
- 5.- The existence and applicability of truly anti-democratic statutes, such as those of the Trade Union of Petroleum Workers of Mexico, where the worker must write the number of his work position and include his signature in the voting ballots.
- 6.- The lack of compliance with the statutory procedures in the election of representatives, with the endorsement of the Ministry of Labour.
- 7.- The lack of compliance with the statutes in the areas of the rights of the members and accountability.

Each of these situations has been widely documented, both in the Annual Reports published by the *Centro de Reflexión y Acción Laboral*, as well as by trade unions and labour rights lawyers, and this is extensively detailed in the broader version of the Alternative Report that we present to the Committee.

¹⁹³ Work plan for the registration of associations, available at:

http://www.derechoshumanos.gob.mx/index.php?option=com_docman&task=doc_download&gid=19&Itemid=74&mode=view

¹⁹⁴ Follow-up matrix, available at:

http://www.derechoshumanos.gob.mx/index.php?option=com_content&task=view&id=287&Itemid=67

¹⁹⁵ A protection contract is a contract where a trade union, without real representation by the workers, without an internal democratic life, and without making an effort to improve working conditions, offers "protection" to the employer against the presence of authentic trade unions in the company.

THE RIGHT TO SOCIAL SECURITY¹⁹⁶ (Article 9 of the ICESCR)

1. Definition of the right

Social security is defined by the International Labour Organisation as “the protection which society provides for its members through a series of public measures against social and economic want that, if this is not the case, will cause the stoppage or substantial reduction in earnings resulting from sickness, maternity, employment injury or illness, unemployment, disability, old age and death; as well as protection through medical assistance and help to families with children. It is an inalienable right of man and therefore there cannot be peace nor progress as long as all of humanity does not have full social security.”¹⁹⁷

This right is recognised in article 123 of the Mexican Constitution, which establishes the Social Security Law as contributing to public utility, which will regulate all insurances covering disabilities, workers’ aging, non-consent retirement, sickness and accidents, child care services, as well as any other kind of insurance directed to protect the workers’ welfare, rural workers working without a contract and other social workers and their families.¹⁹⁸ Likewise, part XI of section B of said article establishes the social security regime for State workers.¹⁹⁹

2. Recognition of the right in international instruments.

Social security is recognised as a human right according to article 22 of the Universal Declaration of Human Rights, as well as article 9 of the ICESCR, where the State Parties recognise the right of each person to social security, including social insurance.

In this regard, Mexico has signed and ratified before the ILO the Conventions: 12 on workmen’s compensation for accidents (agriculture), 17 on workmen’s compensation for accidents, 19 on equality of treatment (accident compensation), 42 on workmen’s compensation (occupational disease) (revised), 56 on sickness insurance (sea), 102 on social security (minimum standards), 118 on equality of treatment (social security), 155 on occupational safety and health, 164 on health protection and medical care (seafarers) and 167 on safety and health in construction.

In light of the reforms of the Social Security Law in 1995, the Committee has expressed its concern about the privatisation of the social security system, which may exclude from certain benefits those not in a position to contribute to an individual pension account, such as the unemployed, underemployed, lower-paid workers and those employed in the informal sector. This observation, as with the others, has been disregarded by the Mexican State, increasing the lack of prestige of the rights acquired by the workers in this area. In this way, apart from having gained the privatisation of the pension funds from social insurance, the State seeks the privatisation of the

¹⁹⁶ This section on the right to social security was elaborated by the *Centro de Reflexión Laboral (CEREAL) de Fomento Cultural y Educativo, A.C*

¹⁹⁷ Báez Martínez, Roberto. *Lecciones de Seguridad Social*. Editorial Pac. Mexico 1994, p. 40

¹⁹⁸ Article 123-A, section XXIX, Political Constitution of the United Mexican States.

¹⁹⁹ In 1943, the Social Security Law was issued, statutory of section A of the cited article, while the Law of the Social Security and Services Institute for State Workers (ISSSTE) was issued in 1959, statutory of section B of the same article of the Constitution.

pensions from the Social Security and Services Institute for State Workers (ISSSTE), to then continue with the other social security systems in force in our country. All of this is detrimental to the workers' capital and benefits the owners of the financial institutions in charge of administering and investing these funds.

3. Current situation on the right to social security.

The reform of the social security systems is one of the main objectives of the structural reforms, not only regarding the Mexican Social Security Institute (IMSS) and the ISSSTE, but also reforms of the systems of Mexican Petroleum (PEMEX), the Federal Electricity Commission (CFE), the Central Electricity and Power Company, etc.

The social security problem began twenty years ago as the result of budget cuts in the area of social security. However, that concerning the pension system worsened through the reform of the Social Security Law and the ISSSTE Law in 1992, with which the Savings for Retirement Scheme (SAR) entered into force. In this, the funds of the worker-employer contributions are no longer under the administration of the institutes but rather are managed by bank institutions.

Expenditure in Social Security Period 1994-2003

Expenditure in social security	Social spending	% Social spending	GDP	%GDP	Six-year Presidential Term
59694	463329.1	11%	1420159.5	4%	Salinas
57611.6	396523.8	13%	1837019.1	3%	Zedillo
63539.4	414363.2	13%	3174275.2	2%	
87418.1	455971.3	16%	3846349.9	2%	
91106.8	499883.5	15%	3846349.9	2%	
118586	540887.5	18%	4593685.2	3%	
137535.7	578863.9	19%	5491372.8	2%	
136133	613010.1	18%	5828590.6	2%	Fox
149677	641657.1	19%	6152828.8	2%	

(Millions of pesos in constant pesos of 2002)

Source: Own elaboration based on the Public Federal Finance Account and Budget of the Federation 2002. This can be seen at: *Centro de Estudios de las Finanzas Públicas*, Chamber of Deputies, Historical Series 1990-2002.

In 1995, the Social Security Law was once again modified, so that the system of solidarity distribution will slowly disappear and be substituted by the system of individualised contributions of IMSS workers as well as those that are affiliated to the Institute. This reform entered into force in 1997.

In the alternative report presented by civil society organisations in 1999, the seriousness of changing the social security system was discussed, since by linking its development to the interest of private capital and reforming its fundamental nature of solidarity in favour of a commercial focus, it put at risk the system itself. In said report, it was stated to the Committee that, according to the numbers from the National Population Council (CONAPO), for 1994 only around 40% of the population was covered by the social security system and of this percentage, 83.3% was primarily made up of urban workers, while the workers in rural areas represented 16.7%; 2% of

the population was covered by private health insurance companies.²⁰⁰ This report also mentioned that during the 1992-1996 period not only did the coverage of social security not grow, it actually decreased due to the economic crisis resulting from the application of measures against the well-being of the majority of Mexicans. According to data from IMSS, the number of insured decreased by 1.1% between 1991 and 1994 and it dropped almost 10% in 1995.²⁰¹

According to the numbers emitted by the Population and Housing Census, during 2000 the population was registered at 97.5 million inhabitants, of which 49.3 million people were part of the Economically Active Population (EAP) and 39.5 million were considered to be part of the employed population. However, in this same year, only 12 million 732 thousand 430 were insured as workers with IMSS, while in ISSSTE, 2 million 337 thousand 732 were registered. This means that only 38.14% of the employed population was insured by these institutions. Therefore, since the last revision of Mexico by the Committee on ESCR, the tendency has been a decrease in the population who has access to social security.

In relation to the above, it is important to mention that the effectiveness of the social security systems in a solidarity distribution system is achieved through the contributions of the workers, employers, and the State. In Mexico, the modification of the Social Security Law in 1995 contributed to wearing down the functioning of IMSS. If we add to this the fact that not enough jobs were created, that the employers do not register their workers and if they do it is with salaries that are lower than what they actually earn, along with the withdraw of the State in regards to the budget assigned to the Institute, the result is the current financial crisis experienced by IMSS.

Likewise, IMSS has pardoned debts of worker- employer contributions²⁰² of up to 100% for companies such as the National Railways of Mexico (Ferroviales), Executive Air Transport (TAESA), Volkswagen of Mexico, Bimbo, Telephones of Mexico (TELMEX), Banamex, Chrysler of Mexico, Notimex, Bridgestone Firestone, Mexican Aviation, Gigante and ICA, who as a whole owe approximately 3 billion 895 million pesos.²⁰³

For its part, the Administrators of Retirement Funds (AFORES) continue to register high earnings from charging commissions for managing the accounts and interests obtained by the investment of pension funds through the Investment Societies Specialised in Retirement Funds (SIEFORES), which range from 1.52% to 3.91%, establishing 2.78% as an average on the resources saved in the account of each workers. The AFORES have particularly benefited large transnational corporations, financing their productive projects more than social projects. In this way we have that

²⁰⁰ *The situation of the Economic, Social and Cultural Rights in Mexico.* Alternative report from Mexican civil and social organizations and networks to the Third Periodic report of the Mexican government before the UN Committee on Economic, Social and Cultural Rights. Mexico, 1999, p. 57.

²⁰¹ *Idem.* p. 57.

²⁰² It should be pointed out that the workers' registry with IMSS and the payment of the worker-employer contribution is an obligation of the employers that is foreseen in the Social Security Law in its article 15, sections I, II and III and they have the nature of tax obligations (article 287), the failure to complete this will be put on the same level as the crime of tax fraud (article 305) and it will be sanctioned with the same penalties established in the Federal Tax Code. In this regard, article 108 of said Code indicates that the person who commits the crime of tax fraud is one who uses deception or takes advantage of mistakes, who totally or partially fails to pay any contribution or obtains an undue benefit in detriment to the federal treasury and will be sanctioned by the following penalties: I. Three months to two years of imprisonment, when the amount of the fraud does not exceed \$500,000.00; II. Two to five years of imprisonment when the amount of the fraud exceeds \$500,000.00 but is less than \$750,000.00; III. Three to nine years of imprisonment when the amount of the fraud exceeds \$750,000.00.

²⁰³ Méndez, Enrique. Firms como Banamex, Mexicana y Telmex adeudan millones al IMSS. *La Jornada*, 11 January 2006. <http://www.jornada.unam.mx/2006/01/11/038n1soc.php>

during 2005: the parastatal company PEMEX obtained 78 billion 808 million pesos by diverse investments of stock certificates, the Federal Mortgage Society (SHF) benefited with 13 billion 627 million, while the parastatal company CFE registered investments of 9 billion 379 millions, totalling among the three 101 billion 859 million pesos in financing of the SIEFORES through the emission of stock certificates.²⁰⁴

Likewise, private groups such as the National Bank of Mexico (*Banco Nacional de México*, BANAMEX), a member of Citigroup, was able to place a debt of 28 billion 960 million; Mexican Cement (CEMEX) registered a balance of 12 billion 705 million in long-term stock certificates and more than 3 billion 507 million in short-term certificates and America Movil, better known as Telcel, 13 billion. For its part, the multinational Ford placed 9 billion 556 million in long-term bonds and one billion in additional short-term bonds. Another Mexican multinational, whose registry, KOF, corresponds to Coca-Cola Femsa, is also on the list and it has financed itself with 10 billion pesos.

Other companies, such as GMAC Mexicana, financier for General Motors of Mexico and Banorte, benefited with one billion 555 million and 45 billion 940 million long-term stock certificates, respectively. Others who have taken advantage of the retirement resources in their financing, although to a lesser degree are: Telmex, Televisa, Bimbo, Kimberly Clark, IMSA, Cigarrera La Moderna and even the Mexico-Toluca highway and the international airport of Mexico City, according to registries of the National Commission for the Retirement Savings Scheme (CONSAR).²⁰⁵

During AFORES' six years of existence, it has not been possible to show a change that has been beneficial for the workers as in spite of the fact that the creation of these institutions was with the aim that, based on competition, the commissions charged for opening and managing the accounts would be minimal, in 2003 CONSAR registered a difference of up to 151% between the most expensive and the cheapest AFORE. It also indicated that 5 of the 12 AFORES that to date had been registered in the country charged commissions above 1%.²⁰⁶ This situation demonstrates that far from the workers benefiting, in reality the Financial Institutions in charge of managing the AFORES are the ones who benefit from the high commissions that they charge, while the workers witness how their capital is being consumed through the payment of these commissions.

The last modification of the AFORES system entered into force in January 2005, with the reform of the Savings for Retirement Scheme Law, through which two investment funds were created. The management of each fund will be determined by the age of each worker, as well as the risk of the investment.

- Fund 1. This is designed for workers closer to retirement, who are older than 55, and whose capital will be invested in national financial instruments (government and solid company bonds), as well as in international assets (government and solid company bonds from developed countries).
- Fund 2. This is designed for workers under 55 whose capital will be invested in national financial instruments (government and solid company bonds), international assets (government and solid company bonds from developed

²⁰⁴ Cardoso, Víctor. Grandes corporativos del país se financian con recursos del SAR. *La Jornada*, 07 June 2005.

²⁰⁵ Idem.

²⁰⁶ Centro de Reflexión y Acción Laboral (CEREAL). Diagnóstico de la ONU: Al Rescate de los Derechos Humanos Laborales. Report on violations of Labour Human Rights in Mexico during 2003. p. 71

countries) and investment instruments with capital protected to maturity linked to stock market indexes, both national and international.

With this modification, the risk of losing the workers' capital managed by the AFORES increases, a risk that is sustained by the youngest workers, who are the ones who will be paying for more time before receiving their retirement pension, this is more interest-yielding for the financial institutions who will benefit from the earnings received from these risky investments, which were prohibited in the previous law.

With this reform the resources of approximately 25 million workers are invested in higher risk instruments, of which up to 15 % can be invested in assets in custody, in stocks of variable interest and up to 20% in international government assets. Carlos Ramírez, the representative of CONSAR, stated that approximately 11 million individual accounts are going to Fund One, with a value of 50 billion pesos. Around 22 million accounts with a total of 420 billion pesos will go to Fund Two.²⁰⁷

4. The social insurance situation 2004-2005.

In the middle of 2004, the Federal Government as well as the board of directors of IMSS implemented a campaign to discredit the Institute's workers, making them appear to be "privileged" with respect to the rest of the workers affiliated with IMSS. The discourse used indicated that the financial problems of IMSS were the result of the Retirement and Pensions Regime (RJP).

This campaign was just the forerunner to what culminated legislatively, the reform of the Social Security Law which was approved on 4 August 2004,²⁰⁸ passing over the unionised workers right to collective bargaining and violating the Collective Work Contract through the imposition of a legislative reform, as it can only be reformed through a bilateral negotiation between the union and the Institute's board of directors.

The Social Security Law was modified in its articles 277 D and 286 K. The text of the first article gives the technical council the faculty to be in charge of creating, substituting or contracting jobs, according to production, efficiency and service quality criteria (terms of the "new labour culture"). Likewise, in this article the workers have the obligation to deposit the necessary resources to cover the future costs derived from the RJP in the so-called Fund for the Fulfilment of Labour Obligations of a Legal or Contractual Character.

With the modifications to article 286 K, the Institute becomes the mere administrator of the Fund for the Fulfilment of Labour Obligations of a Legal or Contractual Character, leaving in the hands of the technical council and the general director the elaboration and approbation of the rules of said fund. The most serious aspect of the modification of this article is that the Institute, in its character as employer, as well as the State, cannot designate resources to the Retirement and Pensions Fund, but rather this will be covered through budgetary resources approved by the Chamber of Deputies. Likewise, the unionised workers will have to give more contributions so that they are the ones financing their own pensions.

²⁰⁷ Rodríguez, Israel. Luz verde a inversión de fondos para el retiro en instrumentos de riesgo. *La Jornada*, 16 January 2005.

²⁰⁸ 141 deputies from the Revolutionary Institutional Party (PRI), 130 from the National Action Party (PAN), 14 from the Green Party of Mexico (PVEM), 1 from the Party of the Democratic Revolution (PRD) and 1 from the Convergence for Democracy Party (PCD) approved the reforms to the Social Security Law. In the Senate, 41 senators from the PAN, 37 from the PRI and 4 from the Green Party ratified it.

5. The situation of ISSSTE

Currently the justification of the transfer of the resources of the State workers is sought based on the supposed financial crisis being experienced by ISSSTE. According to official data, in November 2003 the payroll of retirees and pensioners reached 30 billion pesos, of which 37% was covered by income from dues and contributions, requiring a government subsidy of 20 billion pesos.²⁰⁹ However, it should be pointed out that, if this reform is approved, an investment of 815 billion pesos will be needed in order to transfer the workers' resources to individual accounts, 795 billion more than that which is required as a subsidy.

To support the consolidation of this reform, the Inter-American Development Bank (IADB) will designate 275 million dollars, while the government of Japan will support with 750 thousand dollars. In this way, the World Bank will achieve its objective of modifying the current retirement system, which continues to be in force through the ISSSTE Law. The project proposed by the IADB attempts to broaden the participation of the private sector as a supplier, which is the same as substituting the services provided up until now by the Institute in support of the State workers, including adjusting the current number of workers.²¹⁰

This project also complies with the recommendations made by the Organisation for Economic Cooperation and Development (OECD), which suggests to its member countries, including Mexico, the reduction of the public expenditure designated for health, as well as analysing the possibility of the users "sharing" the costs of medical services, designing social security policies that moderate the growth of this expense in the budget, controlling the payments, prices and services of the institutions; apart from prohibiting that complementary medical insurances totally cover the amount that the patient should pay, preventing services that are considered by the OECD to be a "luxury" to be paid for by public funds.²¹¹ Through this, the rights acquired by Mexican workers are considerably reduced, converting the health services granted to the social security scheme into minimums of attention, and ceasing to cover other aspects such as major surgeries, hospitalisation services, and even the treatment of chronic degenerative illnesses.

The reform of ISSSTE's pension system will not solve the economic situation that this institute is experiencing, as the problem goes well beyond the pension system. We are faced with a problem of a lack of interest in social issues by the federal government, where the budgetary cuts in the area designated for social security have caused a great impact; this has also reduced the resources assigned for each social security institution.

Voluntary retirement, job cuts and freezes are other motives that worsen the situation of ISSSTE, added to the large salaries received by the high level officials in the current administration who, apart from being affiliates of the Institute, also have private medical insurance for major expenses. This was the motive for a bidding process called for by the Ministry of Finance and Public Credit (bidding process basis of 27 October 2004), that anticipates that four of the largest private companies dedicated to this type of service will compete: Metlife, Nacional Provincial, Comercial América and Seguros Imbursa. This is applicable from 1 January 2005 to 30 June 2006, representing an expenditure of close to one billion 125 million pesos of the treasury, which is one billion

²⁰⁹ Camacho, Víctor. El ISSSTE descapitalizado. Magazine *En Pleno*, year 2, number 26, 11 November 2003.

²¹⁰ Information from Víctor Cardoso and Juan Antonio Zúñiga, *La Jornada*, 25 August 2004.

²¹¹ Zúñiga, David. Reducir el gasto público en salud, recomienda la OCDE, *La Jornada*, 26 July 2004, p. 22.

105 million more than what would have to be given as a subsidy so that ISSSTE could continue to function, this is also almost equivalent to the budget that the Ministry of Tourism received during the last year, which was one billion 230 million pesos.

6. Official report on the situation of economic, social and cultural rights in Mexico

In its IV Periodic Report, the Mexican State only describes the existing social security system, as well as the insurance received by eligible persons from IMSS and ISSSTE. However, it does not indicate that due to a cut in the resources designated for social security spending, the services of these institutions are deficient. Furthermore, it does not analyse why the number of salaried workers with social security has been reduced, or why a good number of these people have not been enrolled in any social security institute.

Percentage of salaried workers with social benefits, according to sex, 1991-2004

Year	Total	Men	Women
1991	66.2	62.5	73.6
1993	63.1	60.4	68.9
1995	60.1	57.0	66.4
1996	59.6	56.2	66.4
1997	58.4	56.2	62.6
1998	60.4	57.6	65.9
1999	59.7	57.0	65.1
2000	60.6	57.7	66.2
2001	61.2	58.0	67.4
2002	59.2	56.0	65.3
2003	58.8	55.5	65.1
2004	59.3	56.6	64.1

NOTE In order to offer a broad and comparable annual series, this table only presents information from the second trimester of each year. The data from the other trimesters, including the most recent ones, can be consulted in the information available from this survey.

Source: **INEGI-STPS**. *National Employment Survey*.

Likewise, in the government's report, responding to the question of whether the official social security plans of the country are complemented by unofficial agreements (private), it only mentions in a general manner the Savings for Retirement Scheme (SAR), without specifying what AFORES are, who benefits from the commissions charged for opening and managing the accounts of the workers subscribed to this system²¹² and that they signify the privatisation of the pension systems.

²¹² In this regard, the National Joint Committee for Salary Protection (Conampros), in a study carried out called "Afores, sus ahorros para el retiro" (Afores, your retirement savings), indicates that from July 2003 to June 2004, Afores charged a commission of around 929 pesos while the financial yields or interests obtained by the Afores for the workers, in said period of time, emitted an average percentage of 5.28%, on the basis of the average funds administered in investment by all of the administrators, which means an average income of one thousand 470 pesos. Source: Notimex.

Percentage of commissions charged by the AFORES

Afore	Annual percentage over the balance
Actiniver	0.52
Azteca	0.53
Invercap	0.57
Banamex	0.62
Inbursa	0.62
Metlife	0.65
Ixe	0.66
Siglo XXI	0.66
ING	0.69
Bancomer	0.71
Santander mexicano	0.72
Principal	0.74
HSBC	0.84
Banorte Generali	0.93
Profuturo	0.99
Average	0.70

Numbers from 31 March 2005.

Source. National Commission of the Savings for Retirement Scheme.

Similarly, it was requested that the Mexican State indicate the changes introduced in national legislation that affect the right to social security, and to this, the government only refers to the modification of article 24 of the ISSSTE Law, without mentioning the modifications in 2004 to the Social Security Law nor the repercussions of the modifications to the law in 1995, which have been mentioned previously.

In conclusion, the IV Periodic Report of the Mexican State omits important information on the reforms to the Social Security Law and its social consequences. This is concerning as it impedes the Committee from having sufficient information to carry out an adequate evaluation of the governmental measures put into effect and which have marked a serious regression in the right to social security.

7. National Human Rights Programme (PNDH)

It is concerning that the PNDH does not have a specific chapter that covers the social security problem in our country, nor does it indicate the lines of action in general or by office to guarantee the full enjoyment of this right.

The issue is covered indirectly in the section on the right to enjoy the highest level of physical, mental and social health, but it only focuses on health issues, leaving aside the integral nature of social security.

8. Recommendations

To the Executive Power

- To carry out a critical analysis of the viability of the ongoing Afore's system and its correspondence with the right to social security.

To the Legislative Power

- To strengthen the social security system with public budget.
- To avoid the adoption of regressive legislative measures.
- To harmonize national laws with the international human rights law in order to guarantee the right to social security.

**THE RIGHT TO PROTECTION AND ASSISTANCE TO THE FAMILY:
PROTECTION OF ALL CHILDREN AND YOUNG PERSONS**²¹³
(Article 10, paragraphs 1 and 3 of the ICESCR)

1. Family environment and another type of guiding

1.1. Right to the Family and to receive integral protection

1.1.1. Childs Internment: what is their will

The article 25 of the Convention on the Rights of the Child recognizes the children's right that has been interned in an establishment by the competent authorities for attention, protection or treatment of his physical or mental health, to a periodic exam from the treatment to which is subjected and of all the circumstances characteristic of his internment.

To this respect the effective legislation in Mexico as regards social attendance was reformed in the year of 2004 and although it presents advances to the previous juridical mark, it presents even severe deficiencies that affect girls and boys that live in institutions of private or public attendance mainly.

In their article 4°, the Law of Social Attendance establishes to those subjected to social attendance as the individuals and families that for their physical, mental, juridical, or social conditions, require of specialized services for their protection and their full integration to the well-being. In the case of girls, boys and adolescents are mentioned to those who are in situation of risk or affected by diverse circumstances: from those who suffer malnutrition and even those who are victims of armed conflicts, passing by the ones who live in the street or those who are migrant and repatriated, among others.

However, in the law they are not defined minimum parameters on which boys, girls or adolescents considered as beneficiaries can be or not considered to establish internment measures and in the best of the cases reference is made to the effective norms in the matter. This situation keeps open the possibility that girls and boys can be considered subject of interment and separated from their family in an assistance institution, either public or private, simply for its condition of poverty, mainly in those states that don't have a law of protection of the rights of girls and boys that don't have dispositions in the matter or that the same ones are contrary to the Childs best interest. The lack of parameters for the attention in interment centers also facilitates that it doesn't exist the necessary separation between boy's differentiated profiles and girls, of ages and of development processes; practice that continues being common in the country up to now.

The article 52 of this law establishes that the private institutions of attendance should observe in all moment the effective norms and to respect the right and the dignity of people. This way the principles and norms of the CDN are not present with stability for what is possible to leave the door open to practical assistance and even infringing of the rights of the childhood, when not being defined appropriate mechanisms of supervision. The DIF establishes as the organism in charge of the supervision of the application of this law and even of the certification of the private institutions of

²¹³ This section on the Right to protection and assistance to the family: protection of all children and young persons was prepared by Red por los Derechos de la Infancia en México (Children's Rights Network in Mexico) and take in to consideration the section on ESCR of the Report: "Infancias mexicanas: rostros de la desigualdad" also submitted to the Committee on the Rights of the Child in 2006.

attendance, but for this it has to be adjusted to the effective norms, aspect that is also faulty.

For example, in 1999 the Mexican Official Norm went into effect for the Benefit of Services of Social Attendance (NOM-167-SSA1-1997), emitted by the Secretary of Health that norm to all the institutions that develop services of social attendance for older adults and children in the country: you Home house, temporary and permanent Housings, centers of special attention to children (as it can be for the rehabilitation of the addictions), nurseries, boarding schools, among others.

This NOM has not modified although the laws of social attendance and of protection of the rights of girls, boys and adolescents are after the same one.

This NOM is a result of an initiative that one worked in the core of the National DIF at the end of the nineties and in the one that participated the federal government's diverse entities, but in the one that practically were absent the private and social organizations. It looks for to unify principles, approaches and politicians for the benefit of services and development of activities as regards social attendance to children and girls and older adults, for what it contemplates a great quantity of measures to observe on the part of the institutions. However the Norm centre great part of her rules in the physical conditions and materials that should prevail in the diverse types of institutions and in lower measure in the procedures and processes that would guarantee an attention of quality, aspect that, on the other hand, is not enunciated inside the approaches and principles of the same one.

Still in the aspects related to the services and the human resources a quantitative vision prevails on the qualitative²¹⁴. The administrative procedures are plentiful for the different cases and situations as regards health, education, social work, etc.; aspects that, although they are necessary for a norm of this type they are not the fundamental ones to guarantee the appropriate impact of the services.

It seemed then, inside this NOM that the infrastructure is synonymous of quality. Since for example one of the little present aspects is the minimum indicators of impact of the services and programs or, what is fundamental, a mark of human development that establishes useful parameters for the institutions, so that these can guarantee a maximum well-being and unfolding of the capacities of the boys and girls, still in the situations in those that it is not possible to have the optimal infrastructure.

The previous aspect is important since the Norm doesn't establish any obligation on behalf of the local or federal governments to strengthen as much the infrastructure as the methodological technical aspects of the institutions. This way the responsibility of being adapted the NOM is to the whole responsibility of the technical possibilities and materials of each institution. Neither it contemplates evaluation mechanisms and supervision in those in which these organizations participate in a corresponsable, way, which gives entrance to unilateral acts and authoritarianism of those in charge of the supervision.

This places in a disadvantage situation of the social organizations in comparison to those of the government, because it is more feasible that these last ones have the public budget to adapt their facilities while the private and social organizations will be subject to what their administration capacity allows them. Since although the law of social attendance establishes the obligation on the part of the Secretary of Health and

²¹⁴This can see it, for example in the topic 5.4. that, without mentioning the size and characteristic of the centre type, it settles down as minimum personnel to a doctor, a nurse, a social worker, an intendand and a watchman the 24 hours of the day.

of the DIF of offering technical attendance and the conducive supports to the private institutions of attendance, they are not defined neither the sum, nor a clear budget is guaranteed for it, as neither the minimum bases to consent in transparent form. This is a present deficiency in other laws like the one of Development to the Organizations of the Civil Society, also approved in 2004 and that neither guarantees resources of quality for the programs and activities of these organizations.

In the reality a dominant situation prevails during decades as regards institutions of attendance for girls and boys: the legislation and the effective norms are not applied by the responsible organisms, when they exist, like a form in which the State avoids a faulty offer on the part of the private and social organizations that assist this infantile population or they are only applied before cases that reach alarm in the massive means of communication when it is unavoidable the closing of the institution. Everything leaves it in a state of practical without-protection of the rights of girls and boys in private and public centers and institutions of placement when they are separated from their families.

Gaze for attention:

- The rights of the childhood are not the base of the laws and administrative norms that regulate the centers and institutions of girls' internment and boys separated from their families and the processes for the internment they still violate principles of the convention.
- They continue registering alarming cases of violations of girls' rights and boys in institutions of attendance in the country, before the lack of efficient mechanisms of supervision.
- The Mexican State is not fulfilling its obligation of dedicating enough resources to strengthen the quality of the programs of attendance and of protection of the rights of the childhood, neither to generate more institutions that assist the specially discriminated ones against population.

Gaze for action:

- The lack of legal, administrative and judicial measures for:
 - To define to the authorities that are considered competent for the objectives of the children's internment.
 - Establish the circumstances that are taken into account to decide the boy's internment for their attention, protection or treatment.
 - To establish the frequency of periodic exams of the internment and applied treatment.
 - To respect the dispositions and principles of the Convention, in particular the non discrimination, the children best interest and the respect to the boy's opinion.
- The lack of formal legal or administrative measures each boy's periodic exam that has been placed for the objectives of care and protection in institutions or substitute families to assure welcome. Neither the adaptation of the internment or the progress of the treatment given to the boy or girl is examined, neither guarantees establishment against eventual abuses
- The lack of stimuli for the capacity building and an increase of institutions that take the children off their family environment.

2. Adoption and custody

The Mexican State has not registered significant advances to give execution to the article 27 of the Law for the Protection of the Rights of Girls, boys and Adolescents to guarantee the right to the full adoption and to regulate the international adoption.

The National Program of Action in Favor of the Childhood 2002-2010 makes a brief mention to the problems related with the adoptions in Mexico (PAFI, p. 159):

- It is necessary that in the whole country the full adoption and the international one are regulated
- The pros and cons of a specific way are studied for the controversies of the family order where the jurisdictional organ has very extensive abilities to act.”

However, this mention is not summed up in strategies, action lines or specific commitments in this matter on the part of the federal government.

The adoption procedures in Mexico face worrying deficiencies to guarantee that the child best interest prevails:

- Preference to give in adoption boys and girls to rich families, mainly from other countries, without considering alternative options as the extended family, the adoptions on the part of families of their origin community. This way the State avoids investment in resources to support to adoptive families of less privileged groups and in the administrative expenses required to evaluate the adoption process, before, during and after this happens.
- Lack of police investigation to know with accuracy of the existence of criminal nets, middlemen and participants of illegal adoptions, although in reports and journalistic means of evidences in this respect are offered.
- Lack of juridical marks and mechanisms to avoid the existence of organisms promote the adoption with commercial objectives and to regulate and to strengthen those that make it to guarantee the right to the full adoption. In this respect instances and international agreements don't exist for the monitoring of the adoptions of boys and Mexican girls in other countries.
- Legal lagoons of procedure that allow the existence of adoptions to the margin of the juridical marks and without the knowledge of the competent authorities.
- Lack of an official politics that defends the boy's permanency actively with their biological family and of support for such an effect. Neither politician exists to promote the national adoption. It is worrying the campaigns of conservative groups in particular to avoid the women to miscarry, to give to their children or girls in adoption through centers of help, without existing mechanisms to evaluate procedures and these boys' and girls' destination.
- Pursuit mechanisms don't exist for the international adoption, neither an integral registration on the adoptions.

Regarding this last the Civil Code for the Distrito Federal in common matter and for the whole Republic in Federal matter omits the regulation or at least mention of the international adoptions. To stand out that one of the main countries to those that boys and girls are given in adoption is the United States which fits that, on the other hand, the Convention on the Rights of the Child hasn't ratified yet.

An important part of the problem is that in Mexico a centralized registration of the international adoptions doesn't exist, since although the DIF is the competent instance to value and, in its case to authorize the adoptions, in the facts, the information is broken into fragments and it disperses in the diverse state and municipal instances; besides exist evidences of the duplicity of functions exist among instances that have

relationship with the adoption processes and of the existence of adoptions to the margin of this organism.

Gaze for attention:

- Girls and Mexican boys without-protection in cases of illegal international adoptions.
- The times, procedures and resources dedicated to guarantee the adoption harm the rights of the childhood.

Gaze for action:

- The promotion of public policies to avoid that poverty be a reason to give in adoption a boy or a girl to promote the national adoption and generate professional structures to determine the social and legal measures for the protection of girls and boys subject of adoption
- The legislation lack that regulates the international adoptions and to the organizations dedicated to promote it.

3. Protection to children against all type of violence (Article 19)

Mexico is not fulfilling in an enough way the derived commitment of the article 19 of the Convention of providing information on all the abuse forms, included the violence, the abuse and the negligence against the childhood. An appropriate system that allows to know the levels of violence and abuse against the infantile population, neither the quantity of girls and on children to disposition of the authorities in the whole country, doesn't exist one that allows to identify and to concentrate the different reports generated in this respect from diverse government instances in the municipal, state and federal environments, since each one gathers its own information, when it elaborates it, in different ways and under different approaches.

The scarce available information, on some modalities of violence and infantile abuse at national level comes from analysis elaborated by the INEGI. These data show the higher the age, the bigger the risk of dying from aggression since aggressions (homicides) are in the 4^a cause of death in people from 5 to 14 years of age and they stayed constant in this place of 2000 at 2002. When it is girls and boys of age pre-school (1 to 4 years of age) these aggressions went from the 8^o place in causes of death in the year 2000 to the 9^o in 2002. For the case of people younger than one year this modality has occupied the place number 18 in 2000 and 2002, although it increased at the 17.

The states of Mexico, San Luis Potosí, Guerrero, Morelos and Oaxaca, are those that register bigger number of deaths for homicide in children from 0 to 19 years of age.

The 5 States with more deaths for homicide in the 2002 for age range. (from higher to lower)

0 to 4 years of age	5 to 9 years of age	10 to 14 years of age	15 to 19 years of age
Estado de México	San Luis Potosí	San Luis Potosí	Chihuahua
Quintana Roo	Michoacán	Estado de México	Estado de México
Colima	Guerrero	Querétaro	Morelos
Morelos	Sinaloa	Oaxaca	Guerrero
San Luis Potosí	Oaxaca	Guerrero	Baja California

Source: Own Elaboration. Processed of base of mortality SSA-INEGI, 2000

The negligence, in many cases is linked to the infantile abuse. Without seeking to generalize the information the data it has more than enough cases of negligence, they show us indications of the prevalence of the infantile abuse in Mexico:

- The death for drowning and accidental submergence stayed as the third cause for the case of boys and girls in school age (of 5 to 14 years of age) of the 2000 at the 2002.
- In the case of girls and boys from 1 to 4 years of age the previous one was the 6^a cause of death in 2000, the 5^a in 2001 and it was the sixth in the following year again.

In the signal data they also register deaths for accidental falls that could suggest some type of negligence, but that it would be necessary to confirm, fluctuating in the place number 12 for girls and boys of school age, and in the place number 13 for children from 0 to 4 years. Although exclusive data are not available about the violence against the childhood in the family environment, results are available of violence toward the women in this environment. The National Survey on the Dynamics of the Relationships in the Homes 2003, indicates that the women's 46.6% suffered an incident of family violence at least in the 12 previous months to the interview. The data reveal that when the women have children according to percentage at national level it is even bigger, reaching 46.9%. Therefore, although it is not a measure directed to children that suffer violence, it is indicative that in Mexico a family atmosphere prevails where the violence is daily. On the other hand, the same survey reveals that when the woman has been victim of at least an incident of violence, higher tendency exists that she has violent behaviors toward her children.

Women for condition of violence toward their children on her part, according to condition of violence toward the woman on the part of her couple and types of violence

Condition of violence toward the children on the part of the woman	Total	Without incidents of violence 1	With incidents of violence 2
Total	19,471,972	10,182,467	9,064,458
with violence toward the children	35.0%	26.7%	44.6%
without violence toward the children	29.0%	31.8%	25.8%
she doesn't have children or they are already grown up	34.5%	40.0%	28.1%
not specified no specification	1.5%	1.4%	1.5%
Total	100.0%	100.0%	100.0%
Condition of emotional violence toward the children	Total	Without incidents of violence	With incidents of violence
with violence toward the children	13.9%	9.3%	19.1%
without violence toward the children	50.2%	49.4%	51.3%
he/she doesn't have children or they are already grown up	34.5%	40.0%	28.1%
not specified	1.4%	1.4%	1.4%
Total	100.0%	100.0%	100.0%

Condition of physical violence toward the children	Total	Without incidents of violence	With incidents of violence
with violence toward the children	30.3%	23.0%	38.8%
without violence toward the children	34.0%	36.0%	32.0%
she doesn't have children or they are already grown up	34.5%	40.0%	28.1%
not specified	1.1%	1.1%	1.1%
Total	100.0%	100.0%	100.0%

Notices; refers to the 15 year-old women and more with couple living in the home.

1 Those that declared not to have suffered any class of violence, of any type, during the 12 months previous to the interview.

2 Those that declared to have suffered a class of violence at least, of any type, during the 12 months previous to the interview.

Source: National survey on the Dynamics of the relationships in the Homes 2003, ENDIREH, Institute National and Statistical Geography and Computer science (INEGI) National Institute of the Women, Mexico, and "United Nations Development Fund for Women", UNIFEM.

Women for children's number according to condition of violence toward them on the part of their couple and types of violence

Condition of violence toward the children on the part of the woman	% with incidents of violence
Total	46.6%
Without children	41.3%
1 to 2 children	48.2%
3 to 4 children	49.0%
5 and more children	41.7%
Not specified	46.8%
Without children	41.3%
With 1 or more	46.9%

Source: National on the Dynamics of the relationships in the Homes 2003, ENDIREH, Institute National and Statistical Geography and Computer science (INEGI) National Institute of the Women, Mexico, and "United Nations Development Fund for Women", UNIFEM.

On the other hand this same survey indicates that 56 percent of the youths of between the 15 and 19 years they are you kill of violent acts and that they constitute the age group with more incidence in all the forms of violence except for the sexual one.

	15-19 years	Subtract ages
Emotional violence	43.92%	38.21%
Economic violence	34.99%	29.14%
Physical violence	13.29%	9.19%
Sexual violence	7.24%	7.86%

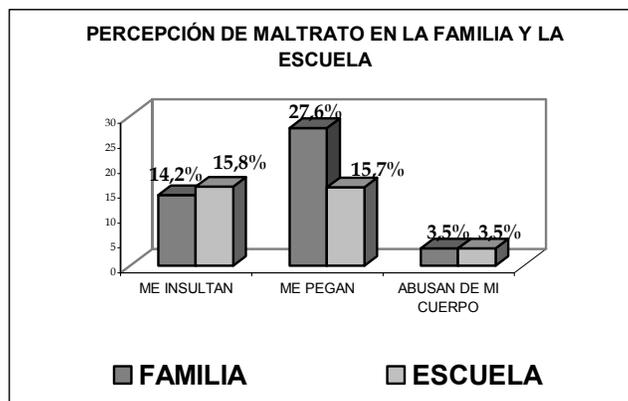
Additionally it should be considered that the infantile abuse reproduces in diverse environments, especially in the schools where the abuse is seen as a discipline form.

According to the Infantile and Juvenile Consultation 2003²¹⁵ for the group of boys and girls of 6–9 years, the insults and blows are part of the daily experience, in significant percentages: the participants' 28% in the consultation expressed that they are object of blows in their family, while 16% says that they hit them in the school, mention separated deserves the almost 4% of boys and girls that express that they abuse of their body as much in the family as in the school. Only for the school cycle 2004-2005,

²¹⁵ IFE. Consults Infantile and Juvenile 2003. Mexico 2003

130 complaints were registered for teachers' violence against students in Mexico City²¹⁶.

On the other hand according to the Civic Observatory of the Education, from 1990 to part of 2005²¹⁷ the National Commission of the human rights had received 2 thousand 933 complaints for violations of the students' of basic education human rights, of which 90 percent corresponds to public schools. The entities where the state commissions of human rights have emitted recommendations for teachers' abuse to students they are: Oaxaca (16), state of Mexico (10) and Tamaulipas (8). These facts reaffirm the lack of juridical mechanisms that guarantee the respect to a life without violence for the boys, girls and adolescents in Mexico.



Source: IFE. Infante and juvenile consults 2003. Mexico 2003

The child abuse that is more presented is insults, blows and abuse, and from them the one that is presented in the family is increased in Guerrero, Oaxaca, Michoacán, Chiapas, Durango and Nayarit. In the case of the school, the states where girls and boys report abuse are Guerrero, Oaxaca, Chiapas, Guanajuato and Durango.

**Entities with higher percentages of abuse in the family and the school
IFE. Infante and juvenile consults 2003. Mexico 2003**

Family	States	Percentage	School	State	Percentage
They insult me National Average 13.8 %	Guerrero	22.2	They insult me National Average 15.9	Guerrero	22.5
	Oaxaca	19.9		Chiapas	21.1
	Michoacán	19.2		Oaxaca	20.2
	Chiapas	18.9		Michoacán	19.9
	Durango	18.2		Aguascalientes	19.9
Family			School		
They hit me National Average 28.0	Warrior	40.4	They hit me National Average 16.1	Oaxaca	26.9
	Colima	39.7		Guerrero	23.6
	Oaxaca	36.2		Durango	20.2
	Nayarit	34.6		Zacatecas	18.7
	Michoacán	34.3		Guanajuato	18.0
Family			School		
They abuses of my body National Average	Chiapas	6.4	They abuse of my body National Average	Chiapas	7.3
	Durango	5.8		Durango	6.2
	Oaxaca	5.5		Oaxaca	5.9
	Guerrero	5.0		Guerrero	5.2

²¹⁶ El Universal. 05 jul 2005

²¹⁷ Civic observatory of the Education. School violence. Article published in Internet, available in <http://www.observatorio.org>. Mexico 2005

3.4	Nayarit	5.0	3.4	Guanajuato	4.6
-----	---------	-----	-----	------------	-----

On the other hand the System of Integral Development of the Family (DIF), registered between 1999 and 2004 147,153 accusations, of those which only in 59% of the cases were proven the abuse, of the rest of the cases there is lack of information. The type of more frequent abuse is the physique, representing 30 percent of the cases on the average in the revised period. They continue, in order of frequency, the omission of cares and the emotional aggression. The percentage of the attacked minor varies according to the age group to which he belongs, during this period we have that 19% was smaller than three years, 12% of 3-5 year and the group that receives bigger abuses is of the one from 6 to 12 years with 40%. More than half of the abuses come from the progenitors.

In what refers to the accusations, for the 2002 of the Program of Prevention to the Infantile Abuse (PRENAM), it only these reports, investigations that point to a sub-registration in the real number of cases of infantile abuse in the number of accusations presented before the corresponding instances exist anyway. Advance of the investigation on the International Consultation about the Infantile Violence in charge by the ONU in 17 countries of Latin America estimate that 8 out of ten children in Mexico suffer intra-family violence, and that at least 2 million boys and girls are hit by their parents and/or teachers.

There are several factors that block an appropriate registration of the infantile abuse, among those that we can identify:

- The lack of the boy's credibility that is hit or mistreated
- An educational culture that tolerates practices of abuse with the purpose of educating the children.
- Complicated mechanisms of procurement of justice
- The exhausting time in which happens the accusation process
- lack of qualified personnel for the attention to victims

From another viewpoint in the laws an expressed prohibition doesn't exist to the use of the torture and cruel and degrading treatments (as the physical punishments) like education forms and upbringing to the children, neither measures to protect them against the exhibition of harmful information and places them especially in vulnerability. The laws against the intra-family violence are in a differentiated way this matter, in the Case of the Distrito Federal "it clarifies that the education or the minor formation won't be in any case considered form justification some of abuse"²¹⁸ in other cases the laws of intra-family violence "²¹⁹coexist with this type others that constitute recurrent forms of intra-family violence." In terms of the juridical mark related with the abuse and the violence, inside the PAFI some elements of concern are offered:

- 14 of the 32 entities of the Mexican Republic still don't have laws about intra-family violence.
Only in 16 states it is defined the intra-family violence like a behavior penalty sanctioned. In three entities they acquit the light injuries made in the process of the correction right. In 21 states one or more crimes constituted by sexual aggressions fewer punished still exist that the rustling.
- In 25 entities the kidnapping is acquitted and in 21 the violation by means of the criminal's marriage with the offended one.

²¹⁸ Saline, Berinstain Laura. Right, Gender and Childhood. Women, girls, children and adolescents in the Penal Codes of Latin America and the Hispanic Caribbean. P. 129

²¹⁹ Ibid. 130.

Gazes for attention:

It doesn't exist national information, product of systematic studies, that show the tendencies, modalities and dimensions of the violence and the infantile abuse, so much in the environment of the home like in the school that are the two main environments of the boys and girls.

The estimates point to that 8 of each 10 boys and girls suffer intra-family violence.

The adolescents between 15 and 19 years of age are the age group in women that are victims of violence in different modalities, reaching to almost six from each ten.

Gaze for action:

- To favor the creation of appropriate environments for the upbringing and education without violence through, among other things, the attention to the structural factors that generate the violence: poverty, exclusion, discrimination for age reasons and gender.
- To promote legal measures to prohibit all type of violence toward the children (including the physical punishment and another type of inhuman or degrading treatment.
- To elaborate efficient policies to prevent the abuse and mistreatment to the children, as well as the appropriate rehabilitation of the victims.
- To enlarge and to diversify campaigns to modify the rules and practical cultural that favors the violence toward the childhood.
- To establish multidisciplinary treatment programs and rehabilitation, to avoid and to combat the abuse and mistreatment of the childhood inside the school, family and general society.
- To reinforce the procedures and appropriate mechanisms to process the accusations of children's abuse with object of giving to these an express and appropriate access to the justice.
- To enlarge and to strengthen programs of appropriate and expedite attendance for family, teachers and other adults that can be potential abusive, mainly in areas of difficult access for their social or economic conditions.
- To stimulate participation of the civil society in the development of programs to prevent and to assist the violence starting from appropriate methodologies.

4. In Mexico faulty justifiability for Girls and Children victims

The actions contemplated in the implementation of the article 19 of the CDN have turned in three items: the prevention, the justifiability and the attention. That is to say, how you collaborate with those responsible for the boy's care to avoid the violence, how you intervenes judicially to stop the violence against the boy and how it is assisted the recovery and integration from the boy to an environment of life free of violence.

Mexico, although it has had important advances mainly through some actions in the environment of the prevention, it has not been able to establish efficient mechanisms to guarantee the boy victim's protection.

In the present exhibition we will encircle our comments to the protection state with relationship to the justifiability for the boy victim.

4.1 When a right exists: The justifiability of the right to the protection

The justifiability of the rights is an essential element so that these they can become a daily reality in the life of a boy. The justifiability in a forced way implies to the state institutions foreseen for the protection and the delivery of justice.

4.2 The classification of the crimes against the childhood

In the diverse approach levels to a state of respect to the right to the protection of the children against the violence a first action degree lies in the classification of the abuse or violence made against the childhood like a crime. Mexico counts, in a general way, with penal and civil classification that contemplates the violence against the childhood like punishable actions. Mainly referring to the physical violence. The federal penal and civil legislation standardized the abuse, however, the even strongly ingrained tradition of the physical punishment as an acceptable educational option, and the lack of specificity in the definition of the crime, make that the abuse is only valued by the judging when injures exist. In such way, the most common abuse inside family and institutional contexts that consists on blows without leaving physical print is for the most part unpunished. In this level, the psychological abuse is even more difficult of checking.

In most of the legislations the violation, compared violation and sexual abuse are appropriately classified contemplating as added difficulties the boy's age and the custody relationship or filiations of the murderer with the same one. However, the forensic practice shows difficulties for the valuation of the violation existence if physical prints of the same one don't exist. It is excessively common however that the abuses made against the childhood through sexual erotic actions still don't leave physical print when some penetration has existed. Also, legislations that don't contemplate the abuse without purpose of arriving to the sexual intercourse still last and don't imply penetration like abuse. A clear example is the State of Mexico that frames this type of violence against the childhood like libidinous acts. This last classification bears a smaller pain and it contains acts that can generate serious consequences in the boy victim together with lewd acts that miss the public morals but that are not exercised directly against the person's psycho-sexual development.

The holes in question of classification of the crime, are even more evident with relationship to the commercial sexual exploitation in the one that we find several states of the Republic that still don't contemplate in their penal legislation the prostitution of boys and girls like crime. Some, as the Baja California state don't give space to act against those that hire the sexual services of people younger than 18 years, neither those that promote them, except for framed inside the crime of corruption of minors. It is the common trial of the judging, in these entities that a youngster has been prostituted is already corrupt and therefore it is not possible to establish the act of corruption.

Undoubtedly, a tendency exists in the country toward the penal reformation in favor of the rights of the childhood against the abuse and the sexual exploitation. However, it is even a lot the work that needs to be done.

4.3 The procedural adaptation

A following approach level to a state of effective respect for the right to the protection of the children implies procedural reformations. While the procedural legislation doesn't

contemplate adaptation for the condition and characteristic of the childhood, the justifiability of the protection rights remains as dead letter. It doesn't care how guessed right or it specifies is the classification of the crimes made against the childhood; if the process excludes the boy's rights they are not guardianship.

Mexico still doesn't have procedural reformations that contemplate the boy's participation inside a penal process as victim of the crime. Except for the remarkable exceptions of the scarce articles reformed in the code of penal procedures of the Distrito Federal that contemplate aspects like to exempt the boy of temporary precision in their declarations so that these have approbatory value, the penal procedures in Mexico are applied to children victims indistinctly (of any age) and adults.

There are multiple situations in those that the process of administration of justice under these conditions constitutes a violation of the rights of the children, as long as it is incomprehensible, intimidate and doubly-victim.

Gaze for attention:

The Mexican procedural legislation at the moment doesn't contemplate any of the requirements or necessary adaptations to process the accusations of children's abuse with object of giving to these a quick access to the justice, even in the judicial procedures they are returned to victimize.

Gaze for action:

Due to the facto lacks that the childhood suffers of mechanisms for justicialise their rights that is one of the indispensable elements for the keeping of the rights set in the article 19 of the Convention. Legal reformations and office workers should be carried out to guarantee this right.

RIGHT TO PROTECTION AND ASSISTANCE TO THE FAMILY:
PROTECTION OF MATERNITY²²⁰
(Article 10, paragraph 2 of the ICESCR)

1. The serious problem of maternal mortality in Mexico

The ICESCR as well as other international agreements particularly emphasise the need to assure a risk-free motherhood. Apart from its obligations under article 10, paragraph 2 of the ICESCR, the Mexican State also has the obligation to protect and promote the right to the protection of maternity in the framework of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Article 12 of the ICESCR).

Access to medical care and quality medical services, as well as the enjoyment of scientific progress and its benefits (Article 15.1.b of the ICESCR) are among the fundamental conditions to protect maternity. This is translated into access to the widest range of methods for family planning; as well as, in the cases where it is legal, safe abortion services and the treatment of its complications. Only in this way can women exercise a voluntary, satisfactory and risk-free motherhood by being opportunely attended to, with quality services.

However, maternal mortality is recognised by the Mexican State as being a serious public health problem, identifying it as “one of the most relevant indicators of social injustice and gender inequality, that mainly affects the states with less socio-economic development, rural communities, and the indigenous populations.”²²¹

The official numbers on maternal deaths differ among diverse governmental bodies. According to numbers from the National Institute of Geography, Statistics and Information Technology (INEGI), the maternal mortality rate (rate of 10 thousand live births registered) has had a very small tendency to decrease in the last decade: from a rate of 5.40 in 1990 to 5.06 in 1999, and 4.68 in 2000.²²² According to the National Population Council (CONAPO), around four women die each day from causes associated with maternity,²²³ due to, in most cases, conditions of poverty, marginalisation and poor care.

The health authorities recognise the existence of an under-registry of maternal mortality from between 30 and 40%.²²⁴ This under-registry is the case particularly in marginalized areas or with an indigenous population, where maternal mortality triples the national mean.²²⁵ Added to this is that for each maternal death, there are 30 more women reported with health problems- physical or psychological- that are also related to pregnancy, abortion, childbirth or puerperium (maternal morbidity).

Some analyses based on information from international organisations consider Mexico to have numbers closer to those registered in Asia or Africa and even below the

²²⁰ This section on the protection of maternity was elaborated by *Salud Integral para la Mujer (SIPAM)*, and it is also mentioned in the chapter on the right to health of this Alternative Report.

²²¹ “Equal Start in Life” Action Programme. Undersecretary for the Prevention and Promotion of Health. Ministry of Health, Mexico, 2002. p.14

²²² “Equal Start in Life” Action Programme. Undersecretary for the Prevention and Promotion of Health. Ministry of Health, Mexico, 2002. p.21

²²³ Presidency of the Republic, Annex to the Third Report of the Government. Human and Social Development. Health, 2003, p. 76

²²⁴ Presentation of the Undersecretary on Innovation and Quality. General Office of Information on Health. Rafael Lozano. *III Conferencia Nacional sobre Maternidad sin riesgos en México*. 21-23 July 2003.

²²⁵ FUNDAR. *La Mortalidad Materna: Un problema sin resolver*. Mexico, 2002, p.2

average in Latin America.²²⁶ They indicate that the risk of dying for reasons associated with maternity in the so-called developed countries is 1 in 4 thousand, while in Mexico the risk of dying from pregnancy is 1 in 220. Likewise, the percentage of Mexican women who have medical service during pregnancy is 71% and only 69% of Mexican women have access to specialised attention during childbirth and afterwards.

2. Risks and death from clandestine abortions

The federal government recognises that abortion is the fourth cause of maternal deaths in the country.²²⁷ The Ministry of Health, through the Equal Start in Life Programme indicates that “the main causes of maternal death are: pre-eclampsia- eclampsia, obstetric haemorrhage, puerperal sepsis, and complications from abortion, which together represent 68% of all of the maternal deaths.”²²⁸ Likewise, the National Programme for the Equality of Opportunities and Non-Discrimination against Women (PROEQUIDAD) indicates deaths from abortion as the fourth cause of maternal deaths and one of the main indicators of the health of women.²²⁹

Several factors make having specific data on the deaths from abortion difficult. This is hindered by legal, cultural and religious factors; however, it is fundamental to confront these difficulties in order to reduce maternal mortality. Some researchers indicate that in Mexico “of the 4.2 million pregnancies that occur each year, 60% of these are completed; that is, 1.7 million pregnancies are interrupted in their early stages; according to conservative calculations, half of these losses are induced abortions.”²³⁰ These numbers contrast with those from CONAPO, which indicates that around 200 thousand abortions are practiced each year: 100 thousand induced abortions and 100 thousand spontaneous abortions.²³¹ However, CONAPO recognises that “there is evidence of a under-registry of maternal mortality and an incorrect determination of some causes of death, in particular of abortion.”²³²

Notwithstanding the seriousness of the problems associated with the practice of abortions in unsafe conditions, the current family planning policies of the health sector are not implementing enough measures to reduce undesired pregnancies and clandestine abortions. This delays even more the reduction of maternal mortality and limits the constitutional right of persons to decide whether or not to have children, their number, and spacing.

In spite of the federal government’s recognition that maternal mortality is a strategic indicator that illustrates the development of a country, an integral State policy designed from a rights perspective and directed at the reduction and eradication of maternal mortality due to foreseeable causes does not exist.

²²⁶ *Comunicación e Información de la Mujer* (CIMAC) Cristina Martín. “Tienen México y África cifras similares en muerte materna”. 9-15 September 2003. Available at: www.cimac.org.mx

²²⁷ *México: Informe de Ejecución del Programa de Acción de la Conferencia Internacional sobre la Población y el Desarrollo, 1994-2003*. Technical Committee for the Revision of Progress. Ministry of the Interior, Ministry of Foreign Relations, National Population Council, Senate of the Republic LIX Legislature and the Chamber of Deputies LIX Legislature, Mexico, March 2004. P. 225

²²⁸ Equal Start in Life Programme. *Impacto APV*, p.21

²²⁹ National Institute for Women: www.inmujeres.gob.mx/pprincipal/ En “Indicadores”.

²³⁰ Blanco Muñoz, Julia. “El Aborto Inducido: ¿Un problema legal o de salud?”. Centro de Salud Pública Poblacional del Instituto Nacional de Salud Pública en www.insp.mx/salvia/9712/sal97121

²³¹ This was affirmed by the General Secretary of CONAPO, Elena Zúñiga in the article in *La Jornada*, 23 April 2003

²³² In “Aborto. Las Cifras Disponibles en México” GIRE. August 2003. www.gire.org.mx/aborto

3. Adolescent pregnancies and abortion²³³

In Mexico, around 500 thousand adolescents get pregnant each year,²³⁴ equalling 25% of the total pregnancies registered in the country. As the following numbers from 2000 illustrate, the highest fecundity rates of adolescents are within the most marginalized population. In some rural areas, of every thousand births, 222 are of young mothers with no or very little schooling; when young women finish their basic education, only 26 births for every thousand are registered.²³⁵

According to CONAPO, nine out of ten young women had their first sexual relations without protection, that is, the use of means to regulate fertility in the early stages of their sex life is almost non-existent.²³⁶

An investigator from the *Centro Regional de Investigaciones Multidisciplinarias* (CRIM) of the UNAM asserts that the majority of pregnancies in young women end in abortion and many of them are carried out under unsafe conditions.²³⁷ It has been demonstrated that adolescents turn to abortion in advanced stages of the pregnancy, which increases the risk to the woman's reproductive health.

Pregnancies at an early age are a public health problem given that many of them are due to a lack of information, sexual education, and access to sexual and reproductive health services. Around 65% of the population between ages 12 and 14 do not have access to health services.²³⁸

4. Legal framework on abortion

According to article 4 of the Constitution, family planning is a right of all Mexicans: "Every person has a right to decide in a free, mature and informed way, the number and spacing of their children."

In spite of this, induced abortion is criminalized in Mexico.²³⁹ The Criminal Codes in Mexico together establish seven causes where abortion is not considered a crime; but only a) when the pregnancy is the result of rape, is it permitted in every state of the country. The additional six causes are b) when the abortion is accidentally caused (applicable in 29 states); c) the pregnancy puts at risk the life of the mother (in 27 states); d) the foetus has genetic deformations (in 13 states); e) continuing with the pregnancy would serious harm the mother's health (in 9 states); f) the pregnancy is the result of an undesired artificial insemination (in 8 states) and g) when the women has

²³³ See more information on sexual and reproductive rights of young people in Mexico in the section on the right to health (article 12 of the ICESCR) in this Alternative Report.

²³⁴ Article from CIMAC, Silvia Magalli, 8 May 2002.

²³⁵ *El Universal*, national newspaper, 12 August. Nación, p.12

²³⁶ Cited in the article from CIMAC, Silvia Magalli, 8 May 2002.

²³⁷ Catherine Menkes of the *Centro Regional de Investigaciones Multidisciplinarias*(CRIM) of the UNAM, cited in the article from CIMAC, by Silvia Magalli, 8 May 2002.

²³⁸ *Ibidem*

²³⁹ In the debate on abortion, terms such as "decriminalise" and "legalise" are usually used as synonyms, but there is an important difference. Decriminalise means that abortion would no longer be a crime, that is, that the law would cease to contemplate a punishment for the woman that practices it and those who collaborate with her. Legalising abortion means modifying the necessary laws so that abortion is considered part of the right to the protection of health, and therefore offers a safe medical service within the public and private healthcare services.

For more extensive information on abortion see:

- "Miradas sobre el aborto", GIRE, 2000
- "Los Hombres y el aborto", Temas para el debate N°1, GIRE, 2001
- "Paulina en el nombre de la ley", Temas para el debate N°2, GIRE, 2000
- "Trazos de una polémica. El aborto en 1998", Temas para el debate N°3, GIRE, 2001

economic reasons to interrupt the pregnancy and she is the mother of three children (only in one state).

Although all of the Criminal Codes in the states of the country permit a women to legally abort when she has become pregnant as the result of a rape, the majority of the Criminal Procedure Codes do not have clear rules nor detailed procedures in order to exercise this right.

It is the responsibility of the Ministry of Health, as the leader of the policies on the matter, to promote the fulfilment of the legal dispositions so as to provide attention to the cases of abortion that are not criminalized. It is widely known that for the causes where it is permitted, the majority of the states do not have a clear definition of the procedures to access this service, which has allowed officials and service providers to violate women's right to interrupt an undesired pregnancy.

Civil organisations that work on this issue have documented several cases of women that have been raped who wanted to interrupt their pregnancy and this right was denied to them. Because of this we urge the Committee on ESCR to recommend to the Mexican State that it take serious measures to guarantee to women access to safe and legal abortion services in the cases of rape and other causes foreseen in the states laws.

According to numbers from the National Population Council (CONAPO), the events associated with pregnancy, delivery and puerperium are an important cause of death among young women, representing 5.3% of the deaths of women between 15 and 19 years old and 9.4% of the 20 to 24 year olds, which means the fifth and second causes of death in these age groups.²⁴⁰ Data from 1995 highlights that prenatal care reached 90%, however, attention during delivery was lower, reaching only 81.3%, with very marked differences between rural and urban areas (in prenatal care the difference is almost 10% while in attention during delivery, it is close to 28%) and 70% in the puerperium (a percentage that is reduced to 50% in small communities.)

In light of this situation, the government has promoted certain actions to reverse this inequality, such as the Equal Start in Life Programme (PAPV) that seeks to guarantee a safe delivery and a puerperium free of complications for all Mexican women. However, at the end of 2003, this programme was only operating in 17 states and its results estimated that the prenatal control consultations grew on an average of 8% in this year. The panorama on the sexual and reproductive health of the young Mexican population illustrates that, while progress has been made, it is clear that the full enjoyment of this right is still not guaranteed by the State and that in fact, the omissions as well as deficiencies in practice indicate a violation of the rights of young people.

5. Recommendations of the Committee on ESCR

In its Final observations of 1999, the Committee on ESCR expressed to the Mexican State its concern on female mortality caused by a lack legal abortion services:²⁴¹

The Committee is also concerned to learn that the fourth highest cause of death among women in Mexico is illegal abortion (paragraph 29).

²⁴⁰ *Situación actual de las y los jóvenes en México. Diagnóstico sociodemográfico*, Chapter VII "La salud de las y los jóvenes", Chapter VIII "Juventud y reproducción", Mexico, CONAPO, 2000, pp. 44-63

²⁴¹ Concluding Observations/Comments of the Committee on Economic, Social and Cultural Rights: Mexico. 08/12/99. E/C.12/1/Add.41. (paragraphs 29 and 43)

The Committee calls upon the State party to monitor closely the female mortality rate and to take steps to reduce the incidence of death caused by illegal abortion. In particular, the Committee recommends that the State party intensify its educational campaign regarding women's sexual and reproductive health, and include such subjects in school curricula (paragraph 43).

The federal government recognises in its Report to the Committee that "As regards maternal mortality in Mexico, the fourth cause of death is complications arising from abortion; this category includes not only induced abortions but all types, including spontaneous abortions. It is impossible to calculate exactly the numbers of abortions which are illegal, since no register of these exists." (Paragraph 1066 of the IV Periodic Report to the CESCR).²⁴²

In spite of this, the federal institutions have not undertaken comprehensive measures to attend to this problem. Some of the central aspects that gave rise to the Committee on ESCR's concern in the area of protection for maternity still remain. On the one hand, the process of privatising social security brings with it a lack of access to health services by large groups in society, in the context of an accelerated increase in poverty and extreme poverty and of the extension of an unjust and inequitable distribution of wealth.

On the other hand, it is widely recognised that maternal death is strongly related to the lack of women's decision-making power. In spite of this, the absence of policies to transform the cultural patterns that impede the "full enjoyment by women of their rights under the Covenant"²⁴³ prevails. In this sense, moving towards the exercise of voluntary and responsible paternity and maternity is essential.

Likewise, it is urgent and necessary that all of the states advance towards extending the causes for legal abortion in the view of homologation in all of the country, given that in the current situation "the right and access to legal abortion is only recognised for some Mexicans. Only in this way will the constitutional guarantee that all people are equal before the law be a reality."²⁴⁴ The Mexican State, laic and democratic, has the obligation to promote a legislative policy, congruent with its characteristics, based on objective factors to attend to the health of women that decide to interrupt an unwanted pregnancy, who are put at risk through the clandestine conditions that abortion is currently practised in.

The promotion of sexual rights and of reproductive rights as an integral part of the right to health and the right to the promotion and assistance to the family is an absent issue in public policy. Sexual education in the framework of human rights is essential for the exercise of these rights and to contribute to the transformation of cultural patterns that reproduce inequality and discrimination towards women. Universal access to doctors, timely care, and quality services are priority conditions that should be attended to in order to bring to a halt the death of women from being pregnant.

²⁴² As the government explains in its report, abortion is the fourth cause of maternal death, which is distinguished from female mortality in general.

²⁴³ Concluding Observations/Comments of the Committee on Economic, Social and Cultural Rights: Mexico. 08/12/99. E/C.12/1/Add.41. In "Factors and difficulties impeding the implementation of the Covenant", paragraph 14.

²⁴⁴ See *Grupo de Información en Reproducción Elegida (GIRE)* "Leyes sobre el Aborto. Los avances en la Ciudad de México" Informative Sheet. March 2004.

RIGHT TO FOOD²⁴⁵
(Article 11 of the ICESCR)

1. Limitations of Mexican legislation in the area of the right to food

In spite of the wide recognition of the right to food in several international instruments,²⁴⁶ this human right has not been adequately legislated in Mexico. The right to food is not explicitly consecrated in the Political Constitution and this has contributed to the lack of a legal framework for the public policies on this issue, which would provide legal certainty to the population of our country. The people or groups whose human right to food is affected in Mexico cannot obtain justice so that the damages are adequately repaired, and indemnification, compensation, or the guarantee of non-repetition is granted.

The Constitution includes a few indirect references to this right, but they have some limitations:

- Article 4 of the Constitution, paragraph 6: “Children’s need to nourishment, health, education, recreation and integral development shall be fulfilled”

Likewise, the parents’ obligation which establishes their obligation of providing food for their children, is ratified and specified in civil legislation. This right, with children as holders, is a dead letter, given that it leaves in the hands of civil law, and sometimes criminal law, the means for the control and defence of the right. The State does not assume any specific obligation and it even expressly rejects this, as the Constitution indicates that the State’s intervention, in the case it occurs, will consist of the supports established by the law.

- Article 123 A, section VI, paragraph 2: “Minimum wages’ amounts should be enough to fulfil normal family needs from a material, social and cultural point of view, as well as to provide for the compulsory education of children. Furthermore, minimum wages for professionals shall be established by taking into account the specific conditions affecting each economic activity.”

It is evident that food is precisely one of the primary material needs, which is why it can be deemed that although the right to food is not expressly consecrated in the Constitution, it is implicitly established in the conceptualisation of the right to a minimum wage. The current minimum wage (2006) is 48 pesos 67 cents per day- the equivalent of 4.70 USD- for geographic area A; 47.16 pesos - equivalent to 4.50 USD per day- for zone B-, and 45.81 pesos - equivalent to 4.40 USD per day- for zone C, which is the zone of states such as Chiapas. On average “it is enough to buy only 700 grams of normal quality beef and one kilo 300 grams of chicken, that is, it only allows for the purchase of one or two basic products per day, no more.”²⁴⁷

As can be seen in the following section, the evolution of the minimum wage in the period of the report does not comply with the requisite to cover the basic food basket, in spite of the fact that this has been specifically recommended by the Committee on ESCR since 1999.

²⁴⁵ This section on the right to food was elaborated by the Mexican Section of FIAN, FIAN International, FUNDAR *Centro de Análisis e Investigación*, and DECA *Equipo Pueblo*.

²⁴⁶ See: www.fian.org

²⁴⁷ Muñoz, Patricia. “El salario mínimo de México, el más deteriorado de AL: expertos” in *La Jornada*, a national newspaper, 2 January 2006 (available at: <http://www.jornada.unam.mx/2006/01/02/032n1soc.php>)

- Another constitutional disposition that is closely linked to the human right to food is section XXIX-E of article 73, which grants the Congress the powers to “legislate for the programming, promotion, coordination and undertaking of economic activities, particularly those related to food provisioning and others aimed to generate sufficient and permanent production of commodities and services which are considered as a basic from both from a social and national point of view.”

Here Congress’ power to legislate regarding supply is established, but the guidelines that should orientate this legislation are not indicated, likewise it does not require Congress to issue such norms, therefore this legislation can or cannot be carried out.
248

1.1 State of the initiative to recognise the right to food in the Constitution

The right to food has been reduced to “pragmatic norms” included in general laws that the legislators develop according to their feasibility and political interests as well as budget allocations; for example, the right is included in a programmatic manner in the General Law on Social Development and the General Law on Health.

During the last 15 years, several civil society organisations have repeatedly demanded that the Mexican State recognise and guarantee this fundamental human right. The answer to date has been negative. Guaranteeing Mexicans the human right to food that is good and adequate in quality, quantity and in dignity, is the starting point for the exercise and enjoyment of other human rights already recognised in the Constitution.

The proposal and demand to raise to the constitutional level the human right to food has passed through a long road of efforts and social struggles in our country: In 1992, the *Frente por el Derecho a la Alimentación*, civil and non-governmental organisations, presented to the LV Legislature of the Chamber of Deputies a proposal to legislate the right to food for all Mexicans. Five parliamentarian sections and independent legislators supported the presentation of the initiative before the full Chamber of Deputies for the LV Legislature, in a session carried out on 13 July 1994. Subsequently and to date, different deputies who represent the political parties that are part of the legislature have presented other initiatives. The reforms carried out in 2001 only incorporate into the Constitution the right to food for children.

It was not until December 2003 that the Senate and subsequently the Chamber of Deputies approved and sent a legal proposal to modify article 4 and 27 of the Political Constitution of the United Mexican States in order to guarantee all Mexicans the human right to food, considered a fundamental human right. The deputies of Congress revised the said legal proposal and some changes were made, however more than two years later this proposal has yet to be discussed by the legislators for their final approval and subsequent regulatory processing.

It is urgent to have a food strategy and consistent public policies based on the human right to food that arise from the principle of the universality of human rights and their interdependence.

²⁴⁸ Elaborated based on “*El derecho humano a alimentarse en México*”, the presentation of FIAN-Mexican Section before the Chamber of Deputies for World Food Day, on 14 October 2003.

2. Insufficient salary to cover the basic food basket²⁴⁹

In their previous Final observations to Mexico (E/C.12.1/Add.41), the Committee on ESCR expressed its concern for the poverty in the country, and more specifically, it regretted that: "...despite the positive growth of macroeconomic indicators in Mexico, especially the sharp decrease in the level of inflation, the National Minimum Wage Commission has not adjusted the minimum wage level upwards. At present, about five minimum wages are needed to obtain the officially set basic food basket (*canasta básica constitucional*), in violation of article 7 (a) (ii) of the Covenant and as reflected in national legislation (article 123.VI of the Constitution)."²⁵⁰ Therefore, it recommended that the Mexican State "...adopt effective measures to guarantee compliance with article 7 (a) (ii) of the International Covenant on Economic, Social and Cultural Rights, which is reflected in article 123.VI of the Mexican Constitution, in relation to the officially set basic food basket."²⁵¹

"The minimum wage that entered into force this 1 January 2006 is only enough to obtain 16 percent of what a worker could buy two decades ago with the same salary; it is the remuneration that has suffered the largest, most serious and drastic deterioration in all of Latin America and it was condemned even by workers organisations such as the CTM, CROC and the *Congreso de Trabajo*, who for years supported this formula to fix limits in increases to other wages [...] Several studies by the *Centro de Análisis Multidisciplinario* of the National Autonomous University of Mexico (UNAM), of the Worker University of Mexico (UOM), of the *Centro de Reflexión y Acción Laboral* (CEREAL), and of the Mexican Electricians Union (SME) agree that this salary totally fails the constitutional purpose for which it was created and disclose that the purchasing power of the minimum wage has dropped so much that at this rate it will take 30 years to recover the purchasing power that it had in the 1970s."²⁵²

The analysts Luis Lozano Arredondo, Hugo Rincón, Javier Lozano Tovar and Beatriz Aguirre Chaires, of the *Centro de Análisis Multidisciplinario* of the UNAM, state that in December 2000, 21.8 percent of the basic food basket could be obtained with one minimum wage, and that this percentage was reduced to 16.9 percent at the end of 2005. They add that, contrary to what the Ministry of Labour and the National Minimum Wage Commission (CNSM) state in regards to the small amount of people who receive this wage, the workers who earn the precarious minimum wage in the country represent 26.6% of the national total, that is, one out of four. In this sense, organisations like CEREAL question what can be purchased with this wage, if the prices for products of the basic food basket, such as milk, cost 10 pesos on average, a kilo of beef is between 60 and 65 pesos, a kilo of tortillas 5.5 pesos, without including other foods such as fruits and vegetables and transportation, which costs between two to four pesos per trip.²⁵³

²⁴⁹ Also see information on the section on the right to just and favourable conditions of work in this Alternative Report.

²⁵⁰ *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Mexico* (E/C.12/1/Add.41), paragraph 20; document available on: www.ohchr.org

²⁵¹ (E/C.12/1/Add.41), paragraph 36.

²⁵² Muñoz, Patricia. "El salario mínimo de México, el más deteriorado de AL: expertos" in *La Jornada*, Op. Cit.

²⁵³ *Ibid.*

Evolution of the minimum wage- general average 1999-2005

January 1999	31.91 pesos per day
January 2000	35.12 pesos per day
January 2001	37.57 pesos per day
January 2002	39.74 pesos per day
January 2003	41.53 pesos per day
January 2004	43.30 pesos per day
January 2005	45.24 pesos per day

Source: Own elaboration with information from the *Centro de Estudios de las Finanzas Públicas* of the Mexican government: <http://www.cefp.gob.mx/intr/e-stadisticas/esta43.xls>

The Ministry of Social Development indicates that 18.6% of all households and 24.2% of the total population did not have enough income in 2000 to cover their minimum food needs (the so-called food poverty) and in the rural areas, the panorama is even more distressing, with 42.4% of the population in this situation.²⁵⁴

In sum, the minimum wage in Mexico is merely an economic indicator, an instrument for anti-inflationary policies, and it does not comply with that indicated in the country's Constitution.

3. Nutritional situation of the Mexican population

Malnutrition continues to be an important public health problem in Mexico. According to the National Nutrition Survey 1999, carried out by the Salvador Zubirán National Institute for Nutrition, the nutritional situation of the most vulnerable and at risk population is the following:

- 18% of the population under age five has a height deficit (*desmedro*), that is, it presents a severe delay in growth, the result of inadequate food and health, and 27.2% have anaemia. The highest prevalence of height deficit occurs in the second year of life and it stays at high levels after this period. Between the first and second year of life there is a growth delay deficit that is not made up for later on. These results illustrate the importance of the first two years of life in the genesis of malnutrition.
- The difference in the prevalence of height deficit in regions and between urban and rural strata is notable, with the occurrence of height deficit being 28.9% in the southern region and only 7.3% in the northern region. Likewise, while the prevalence of height deficit is 31.7% in rural areas, it is 11.6% in urban areas. These differences in the prevalence of height deficit reflect the polarisation of the living conditions among regions and between urban and rural areas.
- Given its magnitude, another important problem is anaemia. The prevalence at the national level is 27.2%. As opposed to height deficit and low weight, whose prevalence varies greatly between regions and urban and rural areas, there is a relatively uniform behaviour regarding anaemia among said regions and areas. This suggests that there may be factors, apart from those directly related to poverty, which play an important role in the causes of anaemia. The conclusions on diet suggest that iron deficiency is possibly an important factor in the etiology of anaemia. These indicate that there is a consumption pattern associated with socio-economic development and urbanisation. The regions

²⁵⁴ Ministry of Social Development (SEDESOL) and the Technical Committee to Measure Poverty, "Evolución y características de la pobreza en México en la última década del siglo XX". Op. Cit. pp.9 and 15.

with higher levels of development (Mexico City and the northern part of the country), present higher consumption levels for most nutrients. The national results suggest an energy deficit, very low consumption levels of zinc, iron, vitamin C and A, and consumption levels higher than those recommended for proteins and folic acid. As an aggravating factor, the low bioavailability of zinc and iron in wide groups of the population who have diets high in corn and beans and other fibre rich foods, should be added to the low consumption levels of zinc and iron themselves.

If we assess the tendencies during the period of the report, only a slight improvement can be observed. According to the Second National Nutrition Survey made known by the Ministry of Health in March 2002: calorie-protein malnutrition affects approximately one-fifth of the rural population (around five million people), while in the urban areas it affects seven percent of the habitants. The 2002 Survey also points towards the main health problem as being obesity (in the last 11 years this has increased by almost 50 percent). For example, a family with children can be low in weight, malnourished, and with overweight parents because they may not know how to eat healthy.

The main problems of children's nutrition in Mexico are the following: one in three children has malnutrition problems, 35% suffer from problems of being overweight, and 53.7% have growth deficiencies, a product of poor nourishment. According to numbers from INEGI, more than half of the children in rural areas are malnourished. It is estimated that malnutrition in non-indigenous communities varies between 35% and 50% for children under age five. In indigenous areas the problem affects 70% to 80% of the children.²⁵⁵

According to the Periodic Report to the Committee on ESCR, malnutrition among children has decreased at the national level and in some states. However there is still a high level of child and maternal malnutrition, which is added to the public health problem caused by alarming levels of obesity in children in urban areas due to: consuming industrialised foods with little nutritional value, extreme sedentarism, and the lack of an integral nutrition and health strategy that contemplates educational aspects regarding nutrition, the lack of control over mass media food propaganda that does not promote good nutrition. The growing number of overweight people is the other face of the inadequate nutrition of the urban poor.

It is concluded that there is a high prevalence of height deficit in Mexico, with large differences between urban and rural areas. In spite of the decrease in the prevalence observed in the last decade, the current levels continue to be unsatisfactory. There are also high levels of anaemia in all of the regions and urban and rural areas, and therefore anaemia should be considered a public health problem.

4. Food policy: analysis of the federal budget on food programmes (2001-2004)²⁵⁶

According to the definition of the Ministry of Social Development (SEDESOL), the food poor belong to those families whose income per person is less than that necessary to cover the food needs that correspond to the requirements established in the basic food basket from INEGI and the Economic Commission for Latin America and the Caribbean

²⁵⁵ Centro de Derechos Humanos "Fray Francisco de Vitoria OP" and the Centro Universitario Cultural. *Informe sobre la situación de los derechos económicos, sociales y culturales*, Op.cit., p.22

²⁵⁶ Analysis elaborated by FUNDAR Centro de Análisis e Investigación: www.fundar.org.mx

(ECLAC). According to the data from SEDESOL published in 2002, there are 23 million 590 thousand 986 people who live in food poverty in Mexico.²⁵⁷

There are four existing food programmes to combat this level of poverty: 1) the Multiple Contributions- Social Assistance Fund and the National System for the Integral Development of the Family (FAM/DIF) that includes school breakfasts and food assistance; 2) Liconsa, which provides a milk subsidy;²⁵⁸ 3) Rural Supply, in charge of the Diconsa company (community stores, warehouses, and a fleet of cargo trucks); and 4) a group of programmes called “others” for which disaggregated information is not provided.

In analysing the approved and spent budget (based on the Public Account) between 2001 and 2004 the following performance of each of the four mentioned programmes is observed:

The FAM/DIF programmes represent the most important percentage of the budget for food programmes. In general terms it can be said that FAM/DIF’s resources for both areas were rather constant during 2001-2003. In fact, it can be observed in the case of School Breakfasts that each year the approved budget increased, but that for 2003 it shows an under-spending that represents 7.2 million pesos. The decrease in its participation in the total budget can be attributed to this. The under-spending of such necessary resources is concerning.

The budget tendency for the Diconsa programme was erratic from 2001-2004. It is generally observed that the resources spent are always greater than its assigned budget, which until 2003 tended to decrease. However, upon comparing the numbers with the Budget 2004, it is observed that this tendency is significantly reversed so that the assigned amount not only is higher than that spent the previous year, but also and in an important way, the budgeted amounts of earlier years.

Nonetheless, it is contradictory that in terms of benefits in 2002 as well as in 2003, the number of supply stores decreased, going from 22 thousand 516 in 2002 to 21 thousand 983 in 2003. Likewise, attention to Priority Areas decreased from 14 thousand 471 to 12 thousand 617. This does not concur with the increase in budget spending of 168 million pesos from 2002 to 2003. The margin of savings for the beneficiaries also showed a negative tendency since this decreased from 5.9 in 2002 to 5.5 in 2003.

In regards to the milk subsidy, the motive for the yearly decrease in the government’s budget for Liconsa is not explained. The budget tendency for Liconsa is negative, where each year less funds are assigned and an amount less than the budget is spent. This tendency is stabilised in regards to spending for 2003 and the budget 2004; however it is not greater than previous years. The numbers from the Public Accounts 2001-2003 show that the list of beneficiaries has increased: Liconsa milk has gone from covering 19.3 percent of all food poor in 2001 to 21.9 percent in 2003. It is possible to conclude that Liconsa is a company that does not totally depend on governmental resources, but even so, it could be strengthened and benefit a larger number of persons if the government’s contribution were greater since, as the numbers mentioned previously denote, it does not even cover 25% of the food poor.

²⁵⁷ Sedesol, La Medición de la Pobreza en México al año 2000, Mexico, 2002. www.sedesol.gob.mx

²⁵⁸ The expenditure budget 2004 in section 20 assigns Liconsa’s entire budget to milk and it does not mention an amount for tortilla. Moreover, the programme’s objectives have changed to concentrate solely on providing milk at subsidised prices to persons who live in poverty. At the same time, it is explained that those people who no longer receive the benefit of the tortilla subsidy by Liconsa will be incorporated (if they meet the requirements) into the list of beneficiaries of the Opportunities Programme, also managed by the Ministry of Social Development.

Likewise, it is not possible to find disaggregated information on the programmes located in the already mentioned section “others” in the Public Account of 2001 to 2003, nor the documents on the expense budget. This means that what these programmes are, who manages them, how they operate, and the beneficiary population is not reported. This undoubtedly represents a very significant problem of transparency, particularly if one considers that yearly their relevance in budgetary terms increases.²⁵⁹ This pattern of a lack of transparency in the information provided has been repeating itself each year. In 2003, for example, it was impossible to know what 1 billion 958.2 million pesos had been designated for. This means that the budget documents continue to be a black box where millions of pesos are lost because clear and transparent accounts are not provided.

5. Trade liberalisation, loss of food sovereignty, and violation of the human right to food²⁶⁰

The North American Free Trade Agreement (NAFTA) undermined the food sovereignty of the peasant and urban populations, primarily migrants from the countryside to the city, by granting a privileged treatment to multinational agro-industrial corporations above the rights of peasants and consumers. Swamped by dumping from agro-industrial cartels and the importation of an avalanche of agricultural products, particularly corn and beans, the peasant-agriculture economy of Mexico is on a path towards disappearing.

NAFTA favoured a centralised system of agro-industrial production as opposed to a decentralised system of peasant production. The rural economies and food supply are being threatened along with the right of everyone to be free from hunger and to satisfy the human right to food. Many university and independent researchers have studied these consequences, demonstrating the effects of NAFTA and the diverse stages of structural adjustment in terms of the creation of poverty.

Food policy has ceased to be based on programmes directed at the production, supply and protection of access to adequate food, to become a policy to fight against poverty, as a palliative to the crisis in the countryside. The government’s serious omissions on the one hand, in regards to a struggle based on the structural causes of poverty, and on the other, a lack of a human rights perspective in the government’s actions, have profoundly co-existed in this economic model based on the free market that increases production with less input and privatises natural resources and their management through the market, as well as worsening peasants and indigenous peoples’ lack of access to land, water, and productive resources and measures.²⁶¹

The World Bank itself recognised in a study that the “benefits” of NAFTA did not reach the rural areas, and that the states of the south have not benefited from the Agreement. On the contrary, a fourth of the 28 million habitants who live in extreme poverty are in the states of Guerrero, Oaxaca and Chiapas, and inequality is increasing. While the World Bank establishes that this is in part due to the fact that these states were not prepared to face the economic opening, it also recognises that the level of the Mexican

²⁵⁹ These amounts place them in the second most important group of food programmes after those of FAM/DIF.

²⁶⁰ Regional Report on Economic, Social and Cultural Rights of the Inter-American Platform on Human Rights, Democracy and Development (PIDHDD) section on the right to food of the chapter on Mexico, coordination and compilation, Domitille Delaplace and Areli Sandoval, *DECA Equipo Pueblo*, A.C., April 2004.

²⁶¹ Miguel Agustín Pro Juárez Human Rights Centre (Centre PRODH). “*Pensar el campo desde los derechos humanos*”, Chapter on the Right to Food, May 2003.

government's social spending assigned to them is relatively low regarding their level of economic development and that fiscally this could be increased.²⁶²

Since NAFTA entered into force, Mexico has increased its agricultural imports, losing through this food sovereignty and security, and imposing an obstacle for the human security of millions, firstly and directly impacting thousands of producers in the countryside. Some of the most important numbers on this are:²⁶³

- NAFTA has meant an increase in agricultural food imports. In 1995, Mexico imported from the United States 3 billion 254 million dollars of these products and we exported 3 billion 835 million. In 2001, our imports shot upward to 7 billion 415 million dollars and our exports rose to 5 billion 267 million. From being a surplus of 581 million dollars in 1995, our agricultural food balance with the United States became a deficit of 2 billion 148 million.
- In 1990, the average importation to Mexico of the ten basic products (corn, beans, wheat, sorghum, rice, etc.) was 8.7 million tons. By 2000, this reached 18.5 million tons, a 112% increase. With corn, the most we imported before the Agreement was 2.5 million tons, and in 2001 we already were importing 6 million 148 thousand tons.
- As a consequence of the unfair competition of foreign exports, the real value of products from the countryside has collapsed. Between 1985 and 1999, corn lost 64% of its value and beans, 46%, without this meaning in any way that food for consumers was cheaper, since between 1994 and 2002 the basic food basket has increased 257 percent.
- Poverty pushes the peasant population towards the cities and the United States. According to SEDESOL, an average of 600 peasants leave their land every day. The countryside has lost one million 780 employees since NAFTA entered into force.
- The subsidies the government of the United States grants to its producers is on average 21 thousand dollars per producer, in Mexico, it is 700 dollars. After the approval of the US Farm Bill, the subsidies to farmers in the United States will increase by 80% in the next ten years.

Starting in November 2002 and in light of the eminent lifting of the tariffs on almost all agricultural imports from the United States within the framework of NAFTA, twelve national and regional peasant organisations began a movement called "The Countryside Cannot Stand Any More" (*El Campo No Aguanta Más*). Their basic demands were: renegotiating the agricultural chapter of NAFTA, the structural reform of governmental policies for the countryside based on an emerging programme and medium to long term planning by a State Commission; a significant and sustained increase in the budget for rural development, with the demand that this be multi-annual; a system of rural financing at the service of small to medium sized producers; healthy food, that is ours and sufficient for all Mexicans; full compliance with the San Andrés Accords in the area of the rights and culture of the indigenous peoples, and an end to

²⁶² World Bank. "Estrategia de Desarrollo de los Estados del Sur", Vol. I; www.bancomundial.org.mx

²⁶³ CIEPAC. "Datos sobre la situación del campo en México. Algunos resultados del Tratado de Libre Comercio de América del Norte (TLCAN) en agricultura y alimentación". (www.ciepac.org/analysis/sitcampmex.htm) And Centro de Estudios para el Cambio en el Campo Mexicano (CECCAM): Tania Molina Ramirez. "Recuento de un desastre. El campo en cifras". Bulletin N° 264, 12 January 2003 (www.ceccam.org.mx).

the social and legal setbacks on agrarian matters as well as a revision of the agrarian legal framework.²⁶⁴

6. Right to water

In diverse regions of the country, both rural and urban, there are serious problems with the availability, accessibility, and quality of water because of pollution²⁶⁵, discrimination²⁶⁶, overexploitation and privatization²⁶⁷, among other reasons, as described in other sections of this Alternative Report. Among the measures that could help to solve these problems, we identify the following, using the General Observation Number 15 of the ESCR Committee, and we recommend that the Mexican State:

Recognising the right to water in the Constitution

To harmonize national legislation regarding water, in particular the Law of National Waters (*Ley de Aguas Nacionales*), according to international human rights standards (ICESCR, General Observation Number 15, etc); and stop the privatization process, which in some regions of the country has already caused human rights violations by denying access to water to some people because of the rising prices of the water services associated with privatization.

Fulfill the obligation to guarantee access to potable water to the most vulnerable people.

7. Conclusions and recommendations

As we have seen, the agricultural food policies are incompatible with the legal obligations assumed by the States in the area of the right to adequate food within international law. They are not all linked to the content of the right to food regarding assuring the peasants access to productive resources, and even less so with policies of support to the agricultural sector that could offer an integral vision to design adequate policies to fight poverty and hunger, trying to guarantee, above all, food security and sovereignty.

The harmful effects can be summed up as: the effective impossibility to access productive resources, the reduction in direct support from the State for production; the displacement of rural Mexican towards the urban unemployment lines and migration, the acceptance of any type of conditions of work, the prioritisation of imports, the directing of agrarian policy under criteria of profit and competitiveness (distant to their cultural meaning), the indiscriminate use of water, and ecological degradation.²⁶⁸

At a minimum, improving the situation of the right to food in Mexico requires:²⁶⁹

²⁶⁴ "Documento de Postura del Frente Democrático Campesino de Chihuahua" photocopy, 24 Abril 2003.

²⁶⁵ See the case of pollution of the Santiago River in the state of Jalisco (section on the right to health).

²⁶⁶ For example, in various neighborhoods in the eastern Iztapalapa borough (*delegación*) of Mexico City, water is available to families just once every two weeks for a few hours at a time. Meanwhile, in some areas of the city inhabitants use more than 350 liters of water per day.

²⁶⁷ For example, the price increase for water distribution in Saltillo, Coahuila, by Aguas de Barcelona.

²⁶⁸ Miguel Agustín Pro Juárez Human Rights Centre (Centre PRODH). "Pensar el campo desde los derechos humanos", Chapter on the Right to Food, May 2003.

²⁶⁹ Regional Report on Economic, Social and Cultural Rights of the Inter-American Platform on Human Rights, Democracy and Development (PIDHDD), Op. Cit.

- Recognising the right to food in the Constitution, for which we request that the Deputies and Senators ratify in a short time period the legal initiative approved in the Senate on 28 December 2003. If this is done, the application and regulation of the approved constitutional article is recommended.
- That the human right to food be the basis for the realisation of all food policies that truly propose to solve this problem, which impedes millions of Mexicans from having a dignified life, free from hunger.
- Likewise, to guarantee the right to adequate food, it is essential to guarantee food security and sovereignty, and the indigenous and peasant communities' control over their lands and access to their productive resources: land, water, and seeds.
- An integral agrarian reform that guarantees access to land for peasants, indigenous peoples, and rural workers and the application of adequate policies based on human rights. These processes should take into account the participation of the communities.
- Stop the privatisation of water and its contamination by public and private companies and promote a sustainable access to it.

RIGHT TO ADEQUATE HOUSING²⁷⁰ **(Article 11, paragraph 1 of the ICESCR)**

1. The relation between international and Mexican legislation

Although Mexico is part of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the current national legislation in the area of housing does not require the fulfilment of the right to housing. The Mexican Constitution, which recognises the right, confers the realisation of housing on other, lesser laws; today commerce laws regulate the relationship between individuals for acquiring and selling mortgage credits. That is, gaining access to housing depends on each person's ability to pay.

2. Human rights and the right to housing in Mexico.

Human rights are included in a deficient manner in Mexico's Constitution, and most secondary laws have dispositions that go against the text of the Constitution itself, or they ignore the guarantees that it contains. One symptomatic case of this is the legal framework regarding the right to housing.

In this regard, constitutionalists sustain that the text of the Constitution²⁷¹ has a series of errors. In the first place, it assigns the fundamental right to the family and not to all individuals; secondly, what it guarantees is the enjoyment of housing, but not its attainment, apart from not specifying what should be understood by appropriate housing. In spite of this, the Political Constitution of the United Mexican States entails a mandate to the legislature so that it develop the legislation necessary to make this right a reality; it also entails a mandate for the Executive Branch in regards to implementing public policies to promote housing²⁷².

However, housing in Mexico is considered in the government's plans²⁷³ as a commodity and its production as an industry; therefore, only those who have the possibility to pay for it can access housing.

3. The legal framework in force.

From the set of norms that exist in the text of the Constitution, but that are not translated into public policies, also comes a series of secondary provisions, known as the regulatory framework on housing, which includes laws, plans, programmes, regulations and rules that operate on the federal as well as state and municipal levels.

In regards to General Comment No. 3 of the Committee on ESCR, and the State's obligation to not enact deliberately retrogressive measures, such as legal norms, it turns out that the legal framework in force is a gem concerning retrogressive measures: unfreezing rents, reducing tenant as well as commercial (commercial executives) procedural guarantees; the application of subsidies such as in the case of the Institute

²⁷⁰ This section on the right to adequate housing was elaborated by *Casa y Ciudad* of the *Coalición Hábitat México* and HIC (Georgina Sandoval, responsible for the collection of information and data; elaboration and content; Oscar Cabrera responsible for the revision of the legal framework).

²⁷¹ Article 4. "... Every family has a right to a dignified and decent household. The law shall establish all regulations and incentives deemed to be necessary to achieve such a goal." *Political Constitution of the United Mexican States*.

²⁷² *El Derecho a una Vivienda Digna y Decorosa en la Constitución Mexicana*. Miguel Carbonell. The University Journal. Vol. III No. 1. Spring 2002. Law School. Universidad Anáhuac del Sur. Mexico, Federal District.

²⁷³ Sectorial Housing Programme 2001-2006. Ministry of Social Development. First Edition, November 2001.

of the National Housing Fund for Workers (INFONAVIT) to grant credit to beneficiaries with high salaries in detriment to the majority of the Institute's affiliates; all that concerns the so-called Miscellaneous Regulations on Credit Guarantees; the Sectoral Programme on Housing 2001-2006 (PSV) itself, and the policies of many of the State Housing Bodies, that consider the beneficiaries of the programmes to be "clients".

All of this means a true setback in the perspective of the fulfilment of the right to housing, since it cancels out the possibilities of promoting the participation of organised social groups in housing production.

Another line of the government's planning is based on the National Urban Development and Territorial Planning Programme 2001-2006, which in a congruent manner follows the same direction of the PSV. Among its specific policies and programmes are the "Policy on Land and Territorial Reserves" and the respective "Land-Territorial Reserves Programme"²⁷⁴ that even indicates "strategic issues" which plan for the design of financial and technical mechanisms to acquire and develop territorial reserves for urban development and housing. However, it does not specify the implementation of actions, nor commit the Federal Government's actions to quantifiable and specific national or regional goals²⁷⁵.

The Mexican government does not establish or commit itself to goals and specific actions and the public policies are defined from a sectorial vision since they remain at the level of general declarations, proposals and purposes, with the additional problem of excluding social sectors from being active subjects, they are not even mentioned as the passive subjects of the processes concerning the land for housing.

4. The Financial System.

The Federal Government carries out propaganda regarding the amount of housing credits granted. The key issue in the implementation of the real estate market is *bursatilización* (securitisation) a situation that arises as part of the North American Free Trade Agreement (NAFTA). During 2004, the first exercises of the securitisation of the mortgage portfolio took place in Mexico. To achieve this, national and local laws have been altered: "... in support for the securitisation of mortgages, 27 of the 32 states of the country have adopted legal reforms to expedite the implementation of guarantees and in 22 states to allow for the transfer of mortgages to trust funds without first notifying the borrower. The use of the Special Housing Credit and Subsidies Programme (PROSAVI) has served to convince the Mexican states to modify their laws at the state level, making the civil procedures shorter and allowing for the exchange of creditors without the need to go to the Public Property Registry since this situation complicates the securitisation and makes it more expensive"²⁷⁶. In Latin America, the term *bursatilización* is more known as securitisation.

Point 5 in the PSV Strategy 1, states as a requirement: "Increase the amount of federal resources designated to support the acquisition and improvement of housing, broadening its social coverage". (Page 81). For this, it will "Promote the subsidies granted by the Federal Government, currently through the Ministry of Social Development (SEDESOL) in the Savings and Subsidies for Housing Programme (*Programa VIVAH*) for the Operations and Banking Finance for Housing Fund (FOVI), and those granted by the National Trusteeship Fund for People's Housing

²⁷⁴ For more detail see Jesús Verver: *Cumplimiento del Derecho a la Vivienda en México, una perspectiva desde los instrumentos jurídicos*; Casa y Ciudad; 2004.

²⁷⁵ SEDESOL: National Urban Development and Territorial Planning Programme 2001-2006; December 2001.

²⁷⁶ ECLAC, EL CRÉDITO HIPOTECARIO Y EL ACCESO A LA VIVIENDA PARA LOS HOGARES DE MENORES INGRESOS EN AMÉRICA LATINA_ Pg. 86; United Nations, September 2002.

(FONHAPO), so that they are homogenous, designed based on the socio-economic characteristics of the beneficiary, and linked to savings programmes. For 2004, some of these instances, bodies, mechanisms, programmes and rules of operation have disappeared or were substituted by others without there being evaluations or justifications for this.

5. Public policy on housing.

The National Housing Development Commission (CONAFOVI) understands housing needs as the number of units that, as a result of the demographic increase and natural deterioration of the existing inventory, are required to avoid an increase in the delay of housing construction. For 2004, the total housing needs were calculated as 1,088,214, of these 707,273 are new houses and 380,941 are improvement activities²⁷⁷, in a country where in this same year, according to the National Population Council (CONAPO), there were more than 105 million inhabitants.

In speaking of housing production, the following scenario exists: 1. The private sector produces housing for a “market niche” whose income should be at least four minimum salaries. 2. For its part, the federal government implements useful investment to distribute some subsidies to “the poorest”. 3. The intermediary population- between being poor and without a subsidy and earning less than four minimum salaries- in its organised and unorganised sectors- does not have any support or instrument (legal, financial, economic or technical) to facilitate their access to housing and land. In some cases they may depend on the political will of some State Housing Body (OREVIS), as is the case in the Federal District.

The possibilities of access to information and its use correspond to a small group of people with power. In the framework of the new Federal Transparency and Access to Public Governmental Information Law and making use of the web page, a question was asked: What is the amount of public resources designated for housing? The answer received was: this “information is not available”.

6. 2004 Budget.

For 2004, CONAFOVI estimated the implementation of 500,500 housing “actions”; according to the preliminary numbers from the Fourth Annual Report of the Government²⁷⁸, 459,573 new housing actions were realized as well as 40,927 initial housing actions. This activity required 112,050 million pesos (programmed number), an amount that represented 1.6% of the GDP and of which the federal government contributed with 2 billion pesos (without including the Habitat Programme), this is also 1.78% of the total investment in housing.

7. The National Housing Agencies (ONAVIS)

In the last few years, the results of the Fox administration present diverse and contradictory data, depending on its source.

- According to CONAFOVI, for 2001 the VIVAH programme would give “economic support” to 17,655 families; in November 2002, it would give 21,491 subsidies.
- According to the National Industry Chamber for the Development and Promotion of Housing (CANADEVI), whose source is CONAFOVI, in 2002, FONHAPO granted

²⁷⁷ CONAFOVI. _NECESIDADES DE VIVIENDA_. s/f

²⁷⁸ Mexican Presidency _FOURTH REPORT OF THE GOVERNMENT- Statistics Annex; September 2004.

133,580 housing credits; FONHAPO's progress in August 2003 was 732 credits granted²⁷⁹.

- According to FONHAPO, in 2002, 20,768 credits²⁸⁰ were granted. For 2003, it granted 707 subsidies for its programme "Your House" ("*Tu Casa*"), while requiring the economic participation of the state government.

The intervention of the Federal Government in housing is reduced to "economic support" or subsidies through FONHAPO- FONAEVI (National Fund for Economic Support to Housing), or the Programme "Your House" and the VIVHA Programme, which is no longer in force.

To operate the subsidies, the credit of an OREVI as a prior saving is required; in 2004, granting 45 thousand subsidies was proposed. According to numbers from the Financing Committee of the National Housing Council, FONHAPO had assigned 228 subsidies by the third week of June 2004.

The Habitat Programme, which is coordinated by SEDESOL, has been implemented during the current federal administration; on the other hand, the Housing Programme is coordinated with the presence of CONAFOVI. Both bodies have not demonstrated their own coordination. At the same time, "the growth in housing of types of informal housing, in regards to the total amount of habitants of each city, has been important in the last few decades in Latin American cities; in Mexico it represents 40%"²⁸¹.

A distinction must be made of the real estate and mortgage intermediation of the construction industry, which plays an important role in the country's economy. The construction of housing captures 46% of the total investment destined to the construction sector. According to numbers from CONAFOVI, during 2004, the National Housing Agencies (ONAVIS) programmed the granting of 500,500 credits, where INFONAVIT would participate with 305,000 (more than 60%).

However, what has not been pointed out is that the Agency is a source for positioning private production. On the other hand, according to data from the Financing Committee of the National Housing Council of CONAFOVI, for June 2004, the supply-demand situation for housing in INFONAVIT reported an over supply of 42,452 houses.

The credit and financing of housing in Mexico continues to be a commercial instrument that violates the economic, social and cultural rights of the users and favours their impoverishment.

8. Forced evictions.

In regards to the legal situation of evictions in Mexico, there is no formal official body that covers the issue and is in charge of restoring the right to a place to live. The treatment of "evictions" is seen in a very general and confused manner, without making a distinction between the different types of evictions that were indicated in the "*Diagnosis on the Human Rights Situation in Mexico.*" In May 2004, within the Sub-Commission on ESCR of the Commission of Governmental Policy in the area of Human Rights of the Ministry of the Interior, a working group was installed for the analysis of and attention to evictions.

²⁷⁹CANADEVÍ. _VIVIENDA: PATRIMONIO DE LOS MEXICANOS_. Electronic bulletin of CANADEVÍ, the voice of housing, year 1, No. 11; p. 14; December 2003.

²⁸⁰ FONHAPO web page: Table "Créditos ejercidos por año".

²⁸¹ CLICHEVSKY. _INFORMALIDAD Y SEGREGACIÓN URBANA EN AMÉRICA LATINA, UNA APROXIMACIÓN_ p.16; ECLAC; October 2000.

From the newspaper systematisation carried out on evictions by *Casa y Ciudad* between 1999 and 2003, it was found that through the written press only spectacular news is covered; however, the stories are close to reality and because of this, distinguishing the evictions based on their causes is proposed:

- a) Tenant, mortgages and other judgements
- b) Agrarian conflicts, real estate developments and others
- c) Natural disasters (earthquakes, floods, hurricanes, etc.)
- d) Narco-trafficking, guerrillas and refugees.

In regards to evictions due to mortgage verdicts, *El Barzón-Movimiento Jurídico Nacional*, has documented and attended to several cases of families whose right to housing is threaten because of their overdue loan debt (*cartera vencida*), and they face a deficient justice system in Mexico. The problem documented by El Barzón is that the overdue loan debt has been sold to financial companies who earn excessive profits from this, currently acquiring these debts at prices that vary from between \$1,500 to \$40,000 pesos, which they intend to offer again in the market at a price that yields the estimate of the guarantee. The current laws do not allow debtors to participate in the recovery of their credits, denying them the right to have the power to preferentially acquire this. It is important to mention that a large part of the overdue debt is a result of the financial crisis of 1994-1995 in Mexico, which tripled or even quadrupled debts in the banks.

9. The Habitat Programme.

In the IV Periodic Report of the government of the Mexico, with the motive of the application of the International Covenant on Economic, Social and Cultural Rights, the Habitat Programme is presented as a programme directed at resolving the housing problem in Mexico, in particular the in poorest centres of the population. In reality, Habitat is not a housing programme, but rather an action derived from the National Urban Development and Territorial Planning Programme 2001-2006 that lacks adequate implementation instruments and has a limited and focalised reach, leaving out the population centres with less than 50 thousand habitants, which is where the greatest poverty and marginalization is concentrated.

Likewise, the designated financial resources are insufficient, on average five thousand pesos per family as the maximum ceiling for the combined realisation of any of the programme's five modalities. Moreover, the references to the Habitat Programme are given as evasive answers to the Committee on ESCR's questioning of the Mexican government.

10. Follow-up to the recommendations of the Committee on ESCR and the Special Rapporteur.

In their previous final observations (E/C.12/1/Add.41) the Committee: "urges the State party to increase its efforts to provide adequate housing at affordable prices, particularly to the poorest segments of society. The Committee wishes to receive more detailed information on the number of forced evictions and the manner in which these are carried out. The Committee recommends that the State party establish mechanisms that record evictions and their follow-up, take immediate remedial action against forced evictions, and report back on this issue to the Committee."

What are the elements, parameters, indicators or basic information that would allow one to consider that this right is receding, in fulfilment, or progressing, in regards to the

assessment done in 1999? Concretely, for 2004, what are the options to access adequate housing for the families whose incomes are under four minimum salaries? Given that the Official Report does not include any type of reference, can the government provide information regarding tenant evictions, evictions due to mortgage debt, displacement, and attention as a result of environmental disasters?

As a result of his visit to Mexico, the UN Special Rapporteur on the right to adequate housing, Miloon Kothari, considered that an approach that takes into account the indivisibility of human rights is necessary for addressing the housing situation in Mexico.²⁸² Among the recommendations made by Miloon Kothari, the following stand out: that the legislators incorporate Mexico's international obligations concerning the right to adequate housing and other relevant human rights in its draft housing law, such as on security of tenure of housing and land, self-built housing, and measures against forced evictions and displacements.

11. Main causes for concern and questions.

For 2005, there is no report on the different proposals to modify the housing law. How will the government guarantee that the legislative modifications in the area of housing incorporate the international obligations signed by Mexico in the ICESCR?

In the realization of housing in Mexico there is a broad participation from the private sector. Can the Mexican government inform on this sector's participation? At the same time, what are the social responsibilities of the private sector regarding housing?

Mexico's IV Report indicates the actions in the area of housing in the Habitat Programme, however this does not considered the realization of housing, with the only action linked to this being the purchasing of land. Can the government report on the existing relationship between the designated budget and the results of the Rural Housing Programme; the "Your House" Programme (before Vivha); the modality of the Purchasing of Land of the Habitat Programme and the National Trusteeship Fund for People's Housing (FONHAPO)?

As a result of the tendency developed during the last 10 years regarding the housing issue, the financial and credit system for housing does not need any updating in the area of federal housing legislation as it has received all of the normative and administrative facilities necessary to operate. The sector is specialised in a market niche for the population that has income between 4 and 10 minimum wages.

According to reports, during 2004 the housing sector reported an over production. What role is established from the public administration, for the planning and guidance of the private sector?

The participation of the financial sector in the promotion and sale of housing has presently generated activity and reaction: for 2004 the first stock market activities were carried out in the housing sector and which are sold to INFONAVIT; while the banking sector (Bancomer and Scotiabank), who were not interested in the mortgage business, throughout the year have bought Financial Societies of Limited Purpose (SOFOLÉS) which are specialised in the mortgage market.

²⁸² Kothari, Miloon, "Adequate housing as a component of the right to an adequate standard of living, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari; Visit to Mexico, E/CN.4/2003/5/A dd.3; March 27, 2003; Original; English.

The securitisation of the mortgage market has implied modifications to state legislatures. How does the government have planned so that the stock market sector will not commit abuses and violations of individual's and families' right to housing?

In light of the abuses caused by the mortgage sector, the National Bank and Stock Commission has created a space for arbitration among individuals named the National Commission for the Protection and Defence of Financial Services Users (CONDUSEF) that in its web page²⁸³ presents a simulator to access mortgage credits. Given society's insistence for the transparency of information, the Federal Institute of Access to Public Information (IFAI) also has a link to the national bodies of housing on its web page. At the same time, the Federal Consumers Agency reports complaints of the purchasers of housing. Can the government provide information on the circumstances considered "abuses" of the mortgage sector? Why aren't the complaints presented before the state-level or national Human Rights Commissions?

Public participation on housing remits to a budget on housing matters congruent with its own policies of "focalisation" through subsidies. What is the public budget assigned for the 1997-2004 period in constant pesos? What is the public budget's relation with respect to all of the investment on housing issues? Why don't public resources consider the option of credit?

Other forms of housing production or social participation to access the right to housing are not recognised, leaving out sectors of the population who have an income of less than three minimum wages and whose purchasing power does not allow them to acquire housing. According to information from the official Report on Mexico, almost 70% of the employed population cannot access housing in the housing market. What facilities, what instruments, and what resources do these sectors of the population have to organise themselves and construct their housing?

²⁸³ See the web page www.condusef.gob.mx

RIGHT TO HEALTH²⁸⁴
(Article 12 of the ICESCR)

1. Relevant data on inequality and the right to health in Mexico

Given that the problem of inequality is one of the biggest challenges faced by Mexico in the area of development, it is very important to assess in their proper place the “average numbers” that are established at the national level and through which the improvement of the health of the population is argued in the IV Periodic Report of the Mexican State.

Although it is difficult to have precise information to be able to compare the inequalities in health that are revealed through contrasting different regions of the country, the Human Development Index (HDI) calculated by the UNDP for the Federal District and 31 states of the country allows one to have an important approximation of this. According to the Human Development Report for Mexico 2004, the country faces dynamics of inequality in education, health and access to resources that are reflected at the regional and local levels.

The UNDP generally uses information on life expectancy at birth as an indicator to calculate the health component of the HDI; however in the HDI for municipalities the infant survival rate was used as a complement to the infant mortality rate, which is a statistic available for the country’s municipalities. The Report indicates that according to the health index, 68.2% of the Mexican municipalities have medium human development and around 31.8% high human development. The differences in the health index between states are 6.5%, but among the municipalities the differences reach 95.05%, with the state of Guerrero presenting the largest differences between its localities, and the Federal District with the lowest level of internal differences. The case of Nayarit can be used to illustrate the disparities in the health index between municipalities of the same state, where one municipality (Tepic) has a health index comparable to Costa Rica and another (Del Nayar) comparable to Ghana. Veracruz, Puebla, Oaxaca, Guerrero and Chiapas are the five states that concentrate 39.7% of the national inequality in the health index.²⁸⁵

2. Fragmentation of the health system in Mexico

The performance of the Health System in Mexico during the last few years can be characterised through two central and joined together processes: the fragmentation and deterioration of the quality of its services caused by the systematic and progressive reduction in public spending on this matter.

- a. The fragmentation of the health system and progressive minimisation of the services granted to the “open population”. An example of this type of measure is the so-called “Basic Package” (*Paquete Básico*) which reduces the right to health to 13 minimal health actions and, more recently, the “Health for Everyone Programme” (known as People’s Health Insurance), which needs to be analysed due to the budgetary investment in the programme and because it is presented as an alternative for medical attention for more than 50% of the

²⁸⁴ This section was elaborated by Alejandro Cerda García of the *Coordinadora Comunitaria Miravalle (COCOMI)* and the *Centro Antonio de Montesinos (CAM)*, with contributions from *ELIGE Red de Jóvenes por los derechos sexuales y reproductivos*, and *FUNDAR Centro de Análisis e Investigación*.

²⁸⁵ United Nations Development Programme. *Human Development Report for Mexico 2004. The challenge of local development*. Mundi-Prensa, Mexico, 2005, pgs. 53-58, 75. [The calculations are based on official data from 2002].

Mexican population who does not have social security. Another example of the fragmentation and inequality of public spending designated for the health of the part of the population who has formal work, in contrast to those who do not, is the existing difference between the resources per habitant assigned for each of the current sub-systems, where 1,741 pesos are spent annually for each insured habitant, and only 1,144 pesos per year for someone who is uninsured.²⁸⁶

- b. The reduction in the quality of the services as a result of the budget cuts and under the logic of commercialisation, which is a situation used as a neo-liberal argument to suggest privatisation in light of the “inefficiency” of the public services. On one hand, this situation is expressed in the high number of complaints presented in the last few years to the National Human Rights Commission (CNDH) against public health institutions, which is in one of the highest in relation to complaints against other public institutions.²⁸⁷ On the other hand, there is a progressive reduction, at least as of 1995 to date, of the number of doctors and beds per one thousand habitants.²⁸⁸

3. Population lacking guaranteed attention

There is no precise and up-to-date information regarding the population that does not have access to health services since in a systematic manner the government’s reports refer to the “potential coverage” of the services, that is, the users that under an unknown calculation could hypothetically make use of these services, cancelling out the possibility of having a precise number of the people without health services. With these provisos, it is possible to locate the official data that, for example, in 1996, 10 million people did not have access to any form of health services.²⁸⁹

In relation to the population with social security, it is observed that this population reached its highest point in 1990, where according to official numbers, 56% of the Mexicans benefited from this type of service. After this date, the percentage of the population with social security began to decline, dropping to 47% in 1995²⁹⁰, while in 2001 this indicator was at approximately 50%.²⁹¹

4. Economic indicators and public expenditures in health

The following table, elaborated with information from the IV Periodic Report of Mexico, reflects the decrease in public expenditure for health care, a tendency that appears more conclusive if the inflationary process that the country has experienced in the last few years is considered.

²⁸⁶ Office of the UN High Commissioner for Human Rights (OHCHR) in Mexico, *Diagnosis on the Human Rights Situation in Mexico*. Op. Cit, 2003.

²⁸⁷ Centro de Derechos Humanos F. F. de Vitoria. *Informe sobre la situación de los DESC*. Mexico, 2003.

²⁸⁸ OHCHR Op. Cit.

²⁸⁹ Federal Executive Branch, 1996. Cited by Laurell, Asa Cristina. *Mexicanos en Defensa de la Salud y la Seguridad Social*. Editorial Planeta Mexicana, Mexico, 2001.

²⁹⁰ Federal Executive Branch, 1994 and 1999. Cited by Laurell, Asa Cristina. *Los mexicanos en defensa de la salud...* Op. Cit. 2001.

²⁹¹ Official Journal of the Federation. *Reglas de operación del Seguro Popular*, Mexico, 15 March 2002.

Table 1: Investment in health care in Mexico, 1997 – 2002

Year	% of GDP, including public and private expenditure, devoted to health care	% of public expenditure devoted to health care*	Public expenditure in health care as a % of GDP**	% of private expenditure on health care*	Private expenditure in health care as % of GDP**
1997	5.5	45.3	2.49	54.7	3.00
2002	5.8	42.1	2.44	57.9	3.35

* Numbers taken directly from the IV Report of the Mexican State to the Committee on ESCR

** Calculation elaborated based on official numbers.

Source: Own elaboration based on the data included in the IV Periodic Report submitted by the government of the United Mexican States in fulfilment of its obligations in the ICESCR.

Even before of the application of structural adjustment policies in Mexico, little importance was given to expenditures in health care during the last few decades, a situation that can be considered even more serious if Mexico is compared with other Latin American countries. In Mexico, “public expenditure in health care reached only 2% of the GDP, an expenditure less than that assigned by other countries with the same level of development, which is between 3 and 5%, and of developed countries, which is around 9%”.²⁹² The Diagnosis of the OHCHR in Mexico comes to similar conclusions: “In fact, the ratio of public expenditure in health care as a percentage of total public expenditure represents almost a third of what is exercised in Colombia and less than half of that exercised in Chile. Since the decline of this ratio beginning in 1999, this situation has worsened, placing itself in levels similar to those of 1994”.²⁹³

The budget decrease is confirmed in the public health institutions for the insured population as well as in the services provided to the so-called open population (those who do not have benefits from the Mexican Social Security Institute –IMSS- or the Social Security and Services Institute for State Workers -ISSSTE). Among the most relevant data that supports this tendency we find, for example, the progressive reduction of IMSS’ budget during the last two decades²⁹⁴ and the reduction of the budget for the Programme IMSS-Opportunities of between 30 and 50% during the period 2000-2003.²⁹⁵

The expenditure on health care per habitant for 2002 registered a decrease of 16 % in real terms with respect to 2001 for the insured population, and for the uninsured population it remained practically stagnant between 1999 and 2002.²⁹⁶ This process of reducing public expenditure on health care has a counterpart in the implementation of mechanisms for the *selective privatisation* of health services, given that the alternative of leaving health services in the hands of private actors is mainly focused on those services that are more profitable because of their intrinsic cost or the purchasing power of the target population. In contrast, the services that are not very profitable and that are intended for the population with scarce resources, which in most cases forms part of the informal sector, continue to be considered a responsibility of the State, but with a

²⁹²Laurell, Asa Cristina. *Mexicanos en defensa de la Salud...* Op. Cit. 2001, p. 72.

²⁹³ UN Office of the High Commissioner for Human Rights in Mexico (OHCHR), *Diagnosis on the Human Rights Situation in Mexico*. Op. Cit, 2003, p. 94

²⁹⁴ Laurell, Asa Cristina. *La contrarreforma en salud...* Op. Cit. 2001

²⁹⁵ OHCHR Op. Cit.

²⁹⁶ OHCHR Op. Cit.

tendency to progressively and markedly restrict the resources assigned to them and the services they include.

4.1 HIV/AIDS and the federal budget²⁹⁷

The Mexican government's Progress Report 2005 on the Millennium Development Goals (MDGs) affirms that combating HIV/AIDS is a national priority and that to achieve this, part of the policies will focus on prevention. It states that from 2000-2004, the resources designated to the action programme for the prevention and control of HIV/AIDS increased by more than 14 times, recognising that basically the increase was due to the purchase of antiretroviral medicine (ARVs). It is precisely the disparity of the resources between treatment (basically ARVs) and prevention, which causes the current strategy to be inconsistent with the discourse and priority that is sought to be granted to HIV/AIDS. In state government expenditures as well as the federal government's expenditures in the area of prevention, examples exist that show that this increase has not been proportional. The resources that are being invested in the prevention of HIV continue to be insufficient.

According to numbers from the National Centre for the Prevention and Control of HIV/AIDS (CENSIDA), from 1999 to 2002, the state governments increased the expenditure for ARVs as well as for condoms. However, the proportion of the increase in both areas is very unequal: for ARVs, the expenditure in 2002 represented 43 times more than that designated in 1999; while for condoms, in 2002 it was only 4.6 times more than what had been spent in 1999.

The former Executive Coordinator of the Regional Initiative on AIDS for Latin America and the Caribbean,²⁹⁸ stated that the scarce resources for prevention need to be focused on the most vulnerable groups to ensure that the epidemic does not get out of control- passing from an epidemic concentrated in men who have sex with men to a generalised epidemic. The studies of national accounts on HIV/AIDS illustrate that in Mexico only 13% of what is spent on prevention is focused on at risk populations, calculating that of the expenditure for condoms, only 10% is directed at men who have sex with men.²⁹⁹

Regarding CENSIDA's expenditure since 2002, for the first two years (2002 and 2003), it should be mentioned that prevention is by far the most punished component of federal spending, accounting for only 7 and 2.5% of the total resources exercised by CENSIDA in 2002 and 2003, respectively.

If the prevention efforts are not increased, particularly in regards to the sexual transmission of the epidemic, focused especially on the most at risk groups, Mexico will irremediably move close to a point where there are not enough resources to provide treatment and medicine to the persons who live with AIDS. One cannot attempt to continue to indefinitely increase the resources necessary to cover the demand for ARVs without carrying out serious efforts to contain the epidemic.

²⁹⁷ Information provided by *FUNDAR Centro de Análisis e Investigación* for the chapter on Mexico of the Social Watch Report 2005 "Roars and Whispers: Gender and poverty: promises vs. action" available at: www.socialwatch.org

²⁹⁸ A. Brito, "La decisión del gasto en prevención, discriminatoria" interview with José Antonio Izáola, *Suplemento Letra S in La Jornada*, 6 November 2003, p.9.

²⁹⁹ José A. Izáola, Ed., *Sistemas de información de respuestas nacionales contra el SIDA: Indicadores financieros. Flujos de financiamiento y gasto en VIH/SIDA. Cuentas Nacionales en VIH/SIDA. México 1999-2000*, Funsalud, Mexico, 2002, pp. 9 y 26.

5. Sexual and reproductive health

The right to the protection of motherhood is directly related to the situation of reproductive rights in Mexico. The protection of mothers continues to be a right denied to thousands of Mexican women. The public policies directed at the respect, protection and promotion of reproductive rights and towards the respect, promotion and protection of maternity in Mexico have been limited and report little substantial advancement.

Due to its importance and the Committee's special interest in the problem of abortion as the fourth cause of female mortality in Mexico, a section of this Alternative Report, under Article 10 of the ICESCR on the right to protection and assistance to the family, paragraph 2: protection to mothers, covers this issue.

5.1 The sexual and reproductive rights of the young people in Mexico³⁰⁰

According to numbers from the National Population Council (CONAPO), the events associated with pregnancy, delivery and puerperium are an important cause of death among young women, representing 5.3% of the deaths of women between 15 and 19 years old and 9.4% of the 20 to 24 year olds, which means the fifth and second causes of death in these age groups.³⁰¹ Data from 1995 highlights that prenatal care reached 90%, however, attention during delivery was lower, reaching only 81.3%, with very marked differences between rural and urban areas (in prenatal care the difference is almost 10% while in attention during delivery, it is close to 28%) and 70% in the puerperium (a percentage that is reduced to 50% in small communities.)

In light of this situation, the government has promoted certain actions to reverse this inequality, such as the Equal Start in Life Programme (PAPV)³⁰² that seeks to guarantee a safe delivery and a puerperium free of complications for all Mexican women. However, at the end of 2003, this programme was only operating in 17 states and its results estimated that the prenatal control consultations grew on an average of 8% in this year. The panorama on the sexual and reproductive health of the young Mexican population illustrates that, while progress has been made, it is clear that the full enjoyment of this right is still not guaranteed by the State and that in fact, the omissions as well as deficiencies in practice indicate a violation of the rights of young people.

5.2 Limitations of the Equal Start in Life Programme

The government of president Fox designed the Equal Start in Life Programme (PAPV) to reduce maternal mortality rates, and it is one of the significant strategies of the Federal Government's National Health Programme 2000-2006.

There are serious limitations in this programme. On the one hand, the formation of said programme lacks a human rights focus. It is designed without taking into account the diversity of the socio-cultural aspects of the women that it is directed at; with a total absence of the issue of abortion, a problem deeply related to maternal deaths. Another serious and related deficiency of the programme is that it leaves out the issue of whether each pregnancy and each birth are desired, that is, it does not promote the

³⁰⁰ Information provided by *Elige, red de jóvenes por los derechos sexuales y reproductivos*.

³⁰¹ *Situación actual de las y los jóvenes en México. Diagnóstico sociodemográfico*, Chapter VII "La salud de las y los jóvenes", Chapter VIII "Juventud y reproducción", Mexico, CONAPO, 2000, pp. 44-63

³⁰² A critical analysis on the functioning of PAPV can be found in the section of this Alternative Report on Art. 10 of the ICESCR, in regards to maternity.

right to a freely decided maternity with quality care. These are fundamental aspects for the exercise of reproductive rights.³⁰³

On the other hand, the designated resources are insufficient and a pattern of inequality in the designation of resources to the states of the Republic prevails. For example, in 2003 the state of Chiapas, which has a maternal mortality rate of 9.32, was assigned 926 thousand pesos, while Nuevo Leon, with a rate of 2.8, received close to 24 million, representing 26 more times than that designated to Chiapas.³⁰⁴

More recently, the health authorities emitted an Agreement where they establish common and permanent strategies throughout the country for epidemiological vigilance of maternal deaths in the framework of the Equal Start in Life Programme, as well as the elaboration and application of preventative and corrective measures.³⁰⁵

6. The right to health in the IV Periodic Report

In a revision of the IV Report of Mexico to the Committee on Economic, Social and Cultural Rights on the measures adopted in the period 1997-2004, three particularly relevant aspects to evaluate the evolution of the right to health during said period can be identified: 1) the percentage of the Gross Domestic Product (GDP) devoted to healthcare; 2) the differences between the incidence rates of illnesses associated with poverty in distinct regions of the country; 3) the creation of the Social Health Protection System, implemented through the so-called "People's Health Insurance".

6.1 Percentage of the GDP devoted to healthcare

The answer provided by the Mexican State to the request to indicate "the percentage of the country's GDP, as well as of its national and/or regional budgets, devoted to healthcare... Compare this situation with that which existed five and ten years ago"³⁰⁶, causes confusion by considering the total percentage that includes private and public expenditures on healthcare. Through said calculation, it is reported that the percentage of the GDP increased from 5.5% in 1997 to 5.8% in 2002. However, a more detailed examination of the data³⁰⁷ upon comparing 1997-2002 shows that in reality there was a reduction in *public expenditure* in healthcare. This is because, as the IV Periodic Report indicates, "In 2002, Mexico devoted 5.8 per cent of its gross domestic product (GDP) to health care. This figure includes both public expenditure (42.1%) and private expenditure (57.9%). In 1997 health expenditure amounted to 5.5 per cent of GDP, with private expenditure accounting for 54.7 per cent of the total and public expenditure 45.3 per cent."

6.2 Differences between the incidence rates of illnesses associated with poverty in the different regions of the country

In relation to the request to report "... if they are available, the indicators defined by the WHO regarding the following issues: a) Infant mortality rates (apart from the national rate, please indicate the rate by sex, urban and rural areas and also, if possible, by

³⁰³ FUNDAR. *La Mortalidad Materna: Un problema sin resolver*. Mexico, 2002. And, Foro Nacional de Mujeres y Políticas de Población. *Morbimortalidad Materna: Monitoreo y Elaboración de Propuestas para Políticas Públicas en México*. October, 2002

³⁰⁴ FUNDAR, Centro de Análisis e Investigación, A. C. "Presupuesto Público y Mortalidad Materna: Seguimiento al programa *Arranque parejo en la Vida*". Mexico, 2003.

³⁰⁵ This Agreement establishes the obligatory application by the public and private institutions of the National Health System of the substantive and strategic components of the Equal Start in Life Programme and the active epidemiological vigilance of maternal deaths. Published on 1 November 2004, in the Official Journal of the Federation, pgs. 70-74.

³⁰⁶ *IV Periodic Report of Mexico to the Committee on Economic, Social and Cultural Rights*, (E/C.12/4/Add.16).

³⁰⁷ See table 1 of this section.

socio-economic and ethnic groups and geographical areas...)", the Report of the Mexican States commits the error of providing this data in absolute numbers³⁰⁸ and in some cases, it indicates the percentages.³⁰⁹ As the data is not provided in terms of "rates", it is impossible to elaborate comparisons both in terms of time (1997-2004) as well as regarding different states or municipalities in the country.

In spite of the lack of information on this section in the IV Report, there is official data that demonstrates, for example, large differences in the number of doctors per 100 thousand habitants in different states of the country. According to the numbers presented in Table 2 below, poor states such as Chiapas, Guerrero and Oaxaca have remained, even in 2005, in a situation that places them well below the national mean. In the state of Chiapas, a decrease in the number of doctors per 100 thousand habitants is registered, while in the state of Oaxaca, in spite of an increase in said indicator, the situation continues to be below the national average.

Table 2: Number of doctors per 100 thousand habitants in select states, 2000-2005

	2000	2005*	% increase
National	114.5	133.2	16.3
Federal District	268	329	22.7
Nuevo León	125	134	7.2
Chiapas	92	90	- 3.2
Guerrero	100	115	15
Oaxaca	86	113	31.3

Source: Presidency of the Republic, Fifth Report of the Government 2005, p. 106-110.

* Estimated numbers.

6.3 The Social Health Protection System and "People's Health Insurance"

The Report of the Mexican State indicates that in January 2004 "a universal social security scheme, known as the Social Health Protection System, came into force. The aim of this system is to offer equal opportunities to all Mexicans with respect to participation in public health insurance."³¹⁰ The People's Health Insurance scheme constitutes the operational arm of the system, which will regulate the sources of financing between IMSS³¹¹, el ISSSTE³¹² and National Insurance through shifting from "an emphasis on supply to the subsidizing of demand" with the aim to "reduce inequalities between states and social groups."³¹³

In spite of the fact that the Mexican State conceives People's Health Insurance as an instrument that will provide health services to 50% of the Mexicans who do not have

³⁰⁸ See the Tables on the deaths of children less than one year of age and deaths of children between ages one and four in the section on the right to health in the IV Periodic Report of Mexico to the CESCR.

³⁰⁹ See the table on Access to attention by trained personnel and the beneficiary population of health services, Causes of general deaths, etc. in the section on the right to health in the IV Periodic Report of Mexico to the CESCR.

³¹⁰ *IV Periodic Report of Mexico to the Committee on Economic, Social and Cultural Rights*, E/C.12/4/Add.16, 2005, paragraph 519, page 121.

³¹¹ The Mexican Social Security Institute is a governmental institute that provides healthcare services and social security to workers in the private companies and institutions that are registered and pay into this institute.

³¹² The Social Security and Services Institute for State Workers is a governmental institute that provides healthcare services and social security to workers in the public sector.

³¹³ *IV Periodic Report of Mexico to the Committee on Economic, Social and Cultural Rights*, E/C.12/4/Add.16, 2005, paragraph 528.

social security, different social sectors³¹⁴ and academics³¹⁵ in Mexico have expressed their rejection of the implementation of said programme because they consider it to be an instrument that institutionalises a regression in the area of the right to health in Mexico, through violating the principles of being universal and free as recognised in the Constitution.

A quick comparison of the services received by a worker who is affiliated with IMSS with those of a person or family who is registered with People's Health Insurance³¹⁶ allows us to observe that in the case of the latter the components of social security are restricted, as healthcare and medicines are constrained; apart from limiting the number and type of services, as well as access to medicines:

- a. In regards to the programme's design, it can be observed that it is based on a principle through which social security (medical attention, housing, maternity insurance, disability, retirement, old age, pension) is limited to financial security-making a pre-payment that avoids spending at the moment in which the illness occurs- which is focused on providing health services with restrictions. In this way, a great expectation is created for the population who is not enrolled in a social security system, but this is not supported by a true growth in the infrastructure, personnel, and services in accordance with the demand that is generated.
- b. The provision of services and access to medicines is limited to those ailments included in a very limited list (this list initially included treatment for 78 illnesses,³¹⁷ and subsequently this was increased to 154 ailments³¹⁸), as compared to IMSS, which offers integral attention.³¹⁹ In spite of the fact that People's Health Insurance is proposed as an alternative for close to 50% of the Mexicans who do not have access to IMSS or ISSSTE, it only includes 11 of the multiple ailments that require hospitalisation, giving rise to a fragmentation of the National Health System and the creation of discriminatory mechanisms by establishing different types of services for citizens in different socio-economic and labour situations.

The criteria to include/exclude a determined type of service or medicines is purely financial, so that ailments especially linked to the possibility of violations of the right to health, such as attention to persons with HIV/AIDS, are excluded.³²⁰ Likewise, through People's Health Insurance there is no possibility of having legal abortion services, a situation associated with high female mortality rates, which was the grounds for a specific recommendation of the Committee on ESCR in 1999.³²¹ This omission is particularly serious since it does not recognise the causes for abortion that have been legally approved in

³¹⁴ Centro de Derechos Humanos Fray Francisco de Vitoria. *Informe sobre la situación de los DESC*. Mexico, 2003.

³¹⁵ Laurell, Asa Cristina. *Mexicanos en Defensa de la Salud...* Op Cit.

³¹⁶ Official Journal of the Federation. *Reglas de operación del Seguro Popular*, Mexico, 15 March 2002.

³¹⁷ Official Journal of the Federation. *Reglas de operación del Seguro Popular*, Mexico, 15 March 2002.

³¹⁸ This information is available at: Ministry of Health. www.salud.gob.mx. Internet consultation, 21 March 2006.

³¹⁹ People's Health Insurance does not include particularly important ailments such as complications in delivery, complications for newborns, and hospital attention for persons with HIV/AIDS, among others.

³²⁰ This serious omission can be confirmed at: Ministry of Health. www.salud.gob.mx / Seguro popular / Beneficios. Internet consultation, 21 March 2006.

³²¹ People's Health Insurance only includes the medical services for performing "uncomplicated" abortions or those that, according to medical terminology, are classified as being "in development." This means that medical services are not provided for "complicated" abortions, which are clearly those that are mostly related to female mortality and which also require more hospitalisation expenses. Likewise, medical services for abortion are not included in those cases where the pregnancy is not yet evident, that is, those that could be explicitly requested by women who do not yet present symptoms but who have decided to have an abortion based on the grounds currently permitted by law. The information on attention to abortion in People's Health Insurance can be seen at: Ministry of Health. *Seguro popular / Beneficios*. Internet consultation, 21 March 2006.

several states in Mexico, such as cases where the pregnancy is the result of rape.

- c. One of the mechanisms to finance the programme is the “pre-payment” modality that suspends the service when the contracted period ends.³²² Likewise, the People’s Health Insurance Programme is in a very vulnerable situation and it is subject to the possibility of being modified and having its resources reduced or eliminated, since the resources come from the section of the public budget destined for “subsidies”. The programme does not have enough institutionalism to allow it to have its own annual budget. This is more difficult to implement in the services provided by IMSS or ISSSTE.

The operation of this programme has made evident the multiple limitations faced in the financial sphere. According to the criteria of the Law, 5 billion 541 million pesos will be assigned in the 2004-2010 period, which is enough money to build 11 general hospitals.³²³ Therefore, if one considers the real health needs of the population that is not enrolled in a social security system and that would eventually agree to this programme, it is evident that an unviable financial mechanism is being proposed.

Likewise, the Programme does not plan for mechanisms that contribute to reduce the limitations in the infrastructure and services. By implementing proportional mechanisms to assign the federal budget to the resources designated for each state, inequality among the states is favoured as the poorest states will have less opportunity to contribute state resources and therefore, they will receive less federal funds.

Apart from substituting the notion of a social right for one of a service that is exchanged for monetary resources, the “pre-payment” mechanism, which is one of the central axes of People’s Health Insurance, represents a step backward in the area of the right to health since if the designated quotas are not covered, the service is not given.³²⁴ Under this mechanism, the citizens and their families who have contracted a chronic disease or an illness that lasts beyond the time covered by their quota, no longer receive medical attention. This situation signifies a regression in the health services that the State previously was providing, with an additional difficulty if it involves persons with a particularly urgent need for attention. The pilot implementation of this programme has meant that some states have the possibility to increase their expenditure in health. At the same time, it has generated the opposition of the health service providers who directly face the demand the programme generates.

³²² As can be seen in the Rules of Operation of People’s Health Insurance, Op. Cit. and in the web page of the Ministry of Health (www.salud.gob.mx), access to benefits is contracted for one year through a “pre-payment” whose amount is set according to the “decile of income distribution” that the person is in: “As in any insurance scheme, the Ministry of Health offered a series of explicit benefits which the insured had access to in the case of suffering from any event that harmed his/her health, always and when said event was included in the coverage granted and his/her rights to those services were in effect.” Internet consultation, 21 March 2006.

³²³ Based on information from *FUNDAR Centro de Análisis e Investigación*. www.fundar.org.mx

³²⁴ While the Rules of Operation of People’s Health Insurance exclude from payment the families that are in the two lowest “deciles of income”, the families who are in the four following deciles, which are considered the beneficiaries of People’s Health Insurance, are required to pay a “pre-payment” fee and eventually, if they do not pay the respective fees in advance, that is, at the beginning of the year for which they are contracting access to the Programme, they may no longer receive the benefits of the Programme. In this same sense, see footnote number 39 of this chapter.

7. Health and the environment: the case of the contamination of the Santiago River in the state of Jalisco³²⁵

The serious environmental deterioration in the municipalities of El Salto and Juanacatlán in the state of Jalisco, in particular of the Santiago River (which crosses both municipalities), has been caused by the large concentrations of pollutants that are a product of the industry that surrounds these municipalities, and of the residual municipal waters that come from the metropolitan area of the city of Guadalajara. The lack of an effective enforcement of the Mexican environmental laws by environmental authorities, as well as the lack of awareness by businesspeople and citizens in general, affects the environment and has a serious impact on the health of the population of the riverside area. The municipalities of Juanacatlán and El Salto together have 150,000 inhabitants; and El Salto has one of the most important industrial corridors of the state of Jalisco.

The Environmental Study of Sulfhydic Acid as an air pollutant in the communities of Juanacatlán and El Salto, Jalisco, carried out in 2004-2005, found evidence that in a radius of 1.5 kilometres around the El Salto de Juanacatlán waterfall, particularly public areas such as: parks, recreational areas and schools (kindergartens, and primary and secondary schools), the average concentration of sulfyhdric acid in the air was 2ppm (particles per millimetre), approximately 10% of the registers ranged between 4 and 6 ppm; and in the test taken on the bridge of the waterfall, 7 ppm.

Said study concludes that:

1. More than a third of the population of these municipalities suffers from respiratory problems.
2. The generation and emission of sulfhydic acid in the atmosphere can be considered to be from a fixed source, which makes the federal authority responsible for its control.
3. There is a health emergency in the municipalities of Juanacatlán and El Salto seen in the cases of cancer and serious respiratory illnesses (among the most important) that are caused by direct contact with the subterranean and superficial hydric sources that pass through the area. Because of this, there is a systematic violation of the human right to health.
4. The concentration levels of sulfhydic acid in the air of the area that intersects the above mentioned municipalities is beyond the parameters for human inhalation; likewise it is necessary to undertake an in-depth study by the sanitarian authorities regarding the health consequences of said acid and the ways in which the damages it produces can be reversed.

Recommendation: The State, in its three levels of government, should take urgent and immediate precautionary measures directed at the sanitary and environmental restoration of the municipalities of El Salto and Juanacatlán, given the evidence of serious and irreversible damage to health and the environment.

8. Questions for the Mexican government

- A. What was the reason for reducing the public resources designated for health in the period 1997-2002, as is illustrated in Table 1?

³²⁵ The content of this section has been taken from the: Instituto Mexicano para el Desarrollo Comunitario, A.C. *Mártires del Río Santiago. Informe sobre violaciones al derecho a la salud y al medio ambiente en las poblaciones de Juanacatlán y El Salto, Jalisco*. Photocopy. Mexico, 2006.

- B. What is the reason for not providing data on the “rates” of infant mortality and maternal mortality separated by states and municipalities, which would illustrate the persistent and accentuated inequalities in the country?
- C. Why does the government consider that an initiative of the Federal Government of the size and importance of “People’s Health Insurance” should not be directed towards guaranteeing the “right to protect health” but rather to “provide financial protection to the population who does not have social health security by incorporating it into an insurance scheme”?
- D. According to statistics, the poorest states of the country are also those that have less healthcare infrastructure and a larger percentage of the population who earns less than two minimum wages. Does the mechanism to designate resources according to the number of persons who register with People’s Health Insurance and the established capacity to provide the services contribute to deepening even more the inequality in the access to health services?
- E. In light of the existence of the Social Security System (IMSS and ISSSTE) and of the services provided by the Ministry of Health, does the creation of a new mechanism that provides services and medicine in a differentiated way such as those that are now offered to the users of People’s Health Insurance, contribute to offering “different types and magnitudes of services” for “different populations according to their labour condition and income” and promote in this way discriminatory attention?
- F. Recognising the financial limitations coming from the budgetary allocations for healthcare expenditures in Mexico, why doesn’t the People’s Health Insurance offer to its affiliates attention to ailments of an increasing occurrence or of transcendental importance such as the treatment of HIV/AIDS, the practice of abortion in the cases permitted by the current legislation (particularly resulting from rape) and in the cases of “complicated abortions” (associated in an important way with maternal mortality) , the different forms of cancer or compound fractures, among others, while this is foreseen for the affiliates of IMSS and ISSSTE?
- G. What are the measures that have been adopted by the Mexican State regarding the case of the contamination of the Santiago River in the state of Jalisco and its effects on the health of the area’s residents?

RIGHT TO A HEALTHY ENVIRONMENT ³²⁶
(Article 12.2.b of the ICESCR)

1. Definition of the right

There is no general definition as to what is understood by the right to a healthy environment, however, if we take ideas from some of the main international instruments that have regulated this issue, as well as Mexico's environmental law,³²⁷ we can provide the following definition:

The right to a healthy environment is the right of each person, in equal conditions, to live in a healthy environment that provides them with natural and artificial elements, or those produced by humans, in order to make possible his/her existence and development, as well as that of the other living organisms that interact in determined spaces and time. This right should necessarily be satisfied through the right to participation, information and access to environmental justice.

2. Limitations in the institutional framework

The institutional and legal framework in the area of environmental management has increasingly been strengthened, not only by the consolidation of new institutions but also through the publication of laws and regulations on this issue.

However, one of the institutional problems faced is the lack of human, technical and financial resources to properly implement the public policies and legal ordinances. For example, the number of inspectors in the Attorney General's Office for the Protection of the Environment (*Procuraduría Federal de Protección al Ambiente*, PROFEPA) is very small in comparison with the challenge presented by environmental inspection and observation throughout the country. SEMARNAT's state delegations as well as its decentralized and distributed offices do not have the personnel necessary to confront the environmental challenges; the same occurs within the natural protected areas, which do not have the personnel necessary for their adequate administration.

In regards to the technical problems, the federal government does not have the programmes to provide the technical training necessary for its administrative staff in charge of environmental management. Likewise, financial problems exist since the budget granted for environmental issues at the federal level is not sufficient enough to accomplish long-term objectives, objectives assumed not only through national environmental legislation but also through the different international agreements that Mexico is part of.

3. Access to environmental justice

In spite of the existence of protection mechanisms to enforce the right to a healthy environment, at the legal, administrative, penal and civil levels, as well as through non-contentious mechanisms such as a complaint before the National Human Rights Commission, certain obstacles exist to enforce their due protection.

³²⁶ This section on the right to a healthy environment was elaborated by the *Centro Mexicano de Derecho Ambiental* (CEMDA)

³²⁷ General Law on Ecological Equilibrium and Environmental Protection.

The principle problems presented are: in the judicial sphere, the lack of interest of individuals in legal matters in light of the violation of a third generation or collective right. In administrative aspects, the lack of obligation of the recommendations issued to the authorities responsible for administrative failures by PROFEPA through the citizen complaint mechanism, as well as the lack of technical, human and financial resources for an adequate management of administrative justice. In the civil sphere, the lack of adequate mechanisms for an effective regulation of civil responsibility for environmental damage and finally, in penal matters, a serious lack of knowledge by criminal judges and the Public Ministry regarding crimes against the environment.

In general terms we can affirm that conceptually, environmental responsibility does not exist in our current legal system and it is distributed among different administrative, civil or penal ordinances that are disconnected and are inefficient in resolving the problems of repairing environmental damage. This is because these cases involve widespread or nameless damages where it is often difficult to identify who caused and who suffers from the damages, as well as the cause and effect relation between the act that damages the environment and the damages caused.

4. Situation of the right to information on environmental issues.

In the area of the right of access to information, based on the Federal Transparency and Access to Public Governmental Information Law, all citizens have the right to information that covers two main aspects: on the one hand the dissemination of information as a State obligation to inform citizens on relevant issues and on the other, the right of access to information, as a citizen right to receive the governmental information they request.

In regards to the first aspect, even when the environmental law contemplates the National System of Environmental Information on Natural Resources, to date only isolated systems have been developed for the analysis, creation, execution and evaluation of environmental policies. These systems operate independently, without there being, in general, plans for compatibility and integration that would permit information to be shared, processed, analysed, transmitted and disseminated. Added to this is that the system can only be accessed through the Internet, complicating its use by communities who do not have this technology.

In regards to the right to request information that is held by the authorities, it should be pointed out that since the creation of the Federal Institute of Access to Public Information, as well as the installation of the "Information Request System", significant progress has been made. However, as with the implementation of any new system, it is necessary to strengthen its functioning given that currently there are several institutions whose liaison offices are not trained in attending to citizens' requests and the information is not always provided in an effective and opportune manner. Nevertheless, it should be noted that the Ministry of the Environment and Natural Resources (SEMARNAT) has placed much emphasis on training its public officials on this issue.

5. Social participation in environmental issues.

Different social participation mechanisms exist within the General Law on Ecological Equilibrium and Environmental Protection (LGEEPA), as well as the sector specific

laws, however in most cases, these are announced in a general manner and therefore they do not plan for the mechanisms necessary for the adequate creation, execution, evaluation and monitoring of social participation.

In regards to Environmental Impact Assessments, although social participation is planned for within the LGEEPA and its regulation on environmental assessment, in practice there are many limitations and obstacles for an effective social participation, particularly derived from gaps in the law that transform some provisions into being discretionary.

Guaranteeing that the authorities make available to the public the environmental impact statements is needed, given that for a variety of reasons there is no publication of the reports that have been presented. Among the reasons for this are that the authority publishes the information at the wrong time, there are constant electronic problems on the web page, and not all that is designated by the law to be published is published, such as the comments from the public consultations on the environmental impact statements.

In regards to natural protected areas, the LGEEPA as well as the Regulation on Natural Protected Areas includes the obligation of the Ministry to personally notify the landowners or people affected by the proposal of the Natural Protected Areas, so that they can submit their comments on the matter. In spite of this, in practice there have been various cases in which the decree of a natural protected area is issued without the active participation of the communities that live in the area to be protected. This has significant impacts on the economic situation of the community members who in most cases must interrupt various activities that they had been carrying out until the decree was issued. (See the annexed report on "*Montes Azules: Libre determinación y medio ambiente adecuado en las Áreas Naturales Protegidas*").

6. Environmental education.

One of the main causes of environmental degradation is the Mexican population's lack of environmental education and awareness. However, adequate educational programmes do not exist that would educate people to be aware of their environment and the need to protect their surroundings.

7. Indigenous communities.

The indigenous communities have a very close relation to nature as they depend on it for their livelihood and development. Although Mexico has signed various international agreements that protect the relation of the communities with their natural environment, such as ILO Convention 169, at the national level there is no law that integrally protects them. Several cases exist where we have seen the illegal appropriation of traditional knowledge by transnational corporations, or cases where the indigenous have been dispossessed of their lands by the development of large scale projects that do not benefit them.³²⁸

8. Comments on the IV Periodic Report of the Mexican Government.

³²⁸ See in annexe: Miguel Arnulfo Ruiz Acosta. Montes azules: libre determinación y medio ambiente adecuado en las áreas naturales protegidas. Enlace Comunicación y Capacitación, A.C.. Comitán Chiapas, mimeo, marzo de 2005.

The report does not contemplate a specific section on the situation of the right to a healthy environment, nor does it develop the relation of the other economic, social and cultural rights with the environment. Rather, there is only some mention regarding the conditions of security, hygiene and the environment in work, housing and health.

9. Recommendations regarding the problems identified.

a) An increase in the budget of the offices in charge of environmental management is needed, particularly within SEMARNAT and its decentralised and distributed offices. Mainly there is a need to increase the resources of the Attorney General's Office for the Protection of the Environment, which is in charge of the inspection and observation of environmental legislation, since having a broad legal framework is useless unless the resources exist to carry out an adequate enforcement of the law.

Likewise, implementing training programmes for public officials in charge of environmental management is needed so that they perform better in their jobs. Lastly, granting a larger budget will result in the need to increase the personnel at SEMARNAT and its offices, in this, emphasis should be placed on increasing the number of inspectors within PROFEPA and its state delegations.

b) A legal reform of the different applicable instruments is necessary in order to effectively execute the protection of the right to a healthy environment. This would start with an integral reform of article 4 of the Constitution, followed by reforms to the Civil Code so that its provisions anticipate the legal hypotheses necessary to adequately assign responsibility for environmental damage, a reform of the Penal Code so that it envisages the guarantees necessary for environmental protection, and finally a reform of the General Law on Ecological Equilibrium and Environmental Protection and the associated regulating laws, such as the Fishing Law, the General Law of Wildlife, the Water Law, the Sustainable Forestry Law, in order to foresee administrative mechanisms that are sufficiently developed to be able to enforce access to administrative justice. Likewise, it is also necessary to adjust the internal legislation of the National Human Rights Commission so that the right to a healthy environment can be included as a right within the faculty of the Commission as a first recourse, and that it be provided with the same importance and treatment as the other rights that are within the competence of the Commission.

c) Continuing with the training efforts for the offices in charge of providing information is necessary in order to generate a new culture in the labour environment. Likewise, the authorities' obligation to conserve information in order to make it available to the public should be insisted upon, without the change of the name of the office being used to excuse the authority from the obligation of conserving the information. SEMARNAT needs to integrate, strengthen and organise the National System of Environmental Information and Natural Resources so that, as is established in the LGEEPA, it registers, organises, updates, and disseminates environmental information, not only the information the system and the decentralised offices have, but also that which comes from the other ministries, and the states and municipalities, in order to have compatibility and integration plans.

Within the information request system, the installation of training programmes for the personnel of the liaison committees of each office is necessary so that they fulfil their work with efficiency and quality. Likewise, it is necessary for the main municipal heads to have computers and Internet access so that the communities have the possibility of using the information request system. Additionally, it is necessary for the Federal Institute of Access to Public Information to promote more training workshops on the use of the national system of environmental information.

d) In regards to social participation, even though the environmental law and the sector-specific laws contemplate different spaces for participation, as well as bodies for carrying this out, adequate rules for its effective regulation are necessary. Likewise, issuing the internal rules for the different consultation bodies that have been create to date is needed in order to promote social participation in the creation, execution, evaluation and monitoring of environmental policy. Said rules should include procedures and mechanisms that ensure the effectiveness of the recommendations and proposals of its members.

In the same sense, establishing clear norms to avoid discretionally by the authorities in considering the proposals and observations derived from a public participation process is needed; this could be observations regarding a law, an official Mexican norm, a public consultation on environmental impact assessment, etc.

In the specific case of the Environmental Impact Assessment, implementing modifications to the LGEEPA and its rule on environmental impact issues is necessary so that public will is guaranteed in the environmental impact statements, as well as to remedy the discretionary faculty of the authority to decide whether or not to implement a public consultation, and to establish an obligation so that the proposals and observations within this consultation process have a significant weight and that the authority is responsible for taking them into consideration.

e) In regards to natural protected areas, establishing decrees that provide certainty on the purpose, limitations and modalities of the property, as well as the work and activities that are being carried out or could be carried out within a natural protected area is necessary, given that currently in many cases the communities who belong to the area in question are affected not only by the decree creating the area but also by the modalities contained in the management program. In light of this, it is also necessary to establish viable development plans that would allow for the identification of natural protected areas as productive areas and which guarantee in the long-term an adequate use of the natural resources.

Added to this, and with the aim of preventing internal conflicts, as occurs in many natural protected areas of the country, principally in the southeast areas, implementing land ownership regularisation programmes in the protected areas is necessary in order to provide legal security to the owners and holders of the plots within the area.

f) Given that education is the mechanism through which we can form a society aware of the importance of conservation and the sustainable use of natural resources, strengthening educational programmes is important so that the issue of environmental education is given a fundamental role. Even though the issue has become more relevant in the last few years, strengthening several areas is necessary, given that in general the level of awareness on environmental matters is very low. Because of this, it is necessary to incorporate the criteria that environmental education should be subject to; these criteria should be established by the federal government.

g) In regards to indigenous law, promoting the development of legislation that contemplates environmental protection as a basic support of the indigenous communities, as well as the protection of traditional knowledge and the equitable distribution of the benefits derived from the use of wildlife is necessary. In particular, it is necessary to comply with article 8 J of the Convention on Biological Diversity.

RIGHT TO EDUCATION³²⁹ **(Article 13 to the ICESCR)**

1. Situation of the right to education in Mexico

The right to education constitutes a vital element for the development of human capacities, to obtain the necessary tools to avoid economic and social marginalisation, to fight poverty and to reach a full participation within society. It is therefore an indispensable means of realising other human rights.

Article 3 of the Mexican Constitution establishes the basis for education in Mexico. It points out that, among others, education is a human right and imposes on the State the obligation to educate. Nevertheless, the right to education continues to face several obstacles in achieving its effective implementation. According to the numbers provided by eleven human rights governmental bodies (federal and state ombudsman offices) - amounting to a third of these offices in the country, including the National Human Rights Commission and the state commissions of Chihuahua, State of Mexico, Jalisco, Oaxaca, Puebla, Quintana Roo, Sinaloa, Tabasco, Veracruz and Mexico City³³⁰ - there have still been several reports of human rights violations of the right to education denounced before these offices.

For example, in 2003, the figures demonstrate that human rights violations on education are 50% higher than in 2002. Also, during 2002 and 2003, the main complaints on this issue referred to religious intolerance, ill-treatment to minors, abuses, denial to grant the right to education and expulsions. It is concerning that, for example, in the state of Oaxaca, the institutions most frequently indicated as violators of this human right were the local Attorney General's Office and the local Institute for Public Education in Oaxaca (IEEPO)³³¹.

According to the Diagnosis on the Human Rights Situation in Mexico by the Office of the UN High Commissioner on Human Rights (OHCHR), Mexico represents, together with Brazil, the centrepiece of backwardness on education within the region³³². There are between 33 and 36 million uneducated young people and adults. If the current tendencies continue, at the end of President Fox's administration these figures will reach 37 million people³³³. Furthermore, although there has been progress in the reduction of the index of children leaving school before the legal age at the primary and secondary levels, and almost all students finish primary school, a considerable number of students do not conclude their secondary education. The result is a reduced access to mid-level and higher education³³⁴.

³²⁹ This part on the right to education was elaborated by the Mexican Academy of Human Rights and the *Cátedra UNESCO* on Human Rights from the National Autonomous University of Mexico (UNAM for its Spanish abbreviation), with the cooperation of *Fundar* Analysis and Investigation Centre.

³³⁰ For example see the National Human Rights Commission's web page: www.cndh.go.mx and the web page of the Human Rights Commission of the Federal District: www.cdhdh.org.mx.

³³¹ Gloria Ramírez and H.A. García, "Las violaciones a los derechos humanos en el espacio educativo y el papel de los organismos públicos de derechos humanos", (this article is part of the project of Citizen's observatory on Mexican public human rights bodies, carried out by *Fundar* Analysis and Investigation Centre, and the *Cátedra UNESCO* on Human Rights from the UNAM, see the site: <http://catedradh.unesco.unam.mx/webobservatorio>).

³³² Interview with Carlos Zarco, Executive Secretary of the Latin American Council for Adult Education (CEAAL), July 2003, quoted in: UNHCHR Assessment on the Human Rights Situation in México, section 4.9 on the right to education, Grupo Mundi Prensa, 2003, p. 128.

³³³ Aziz Nassif, Alberto, Alejandro Canales, María de Ibarrola, Pablo Latapié and others, "El rezago educativo", in *Comunicado 44*, México, Observatorio Ciudadano de la Educación, 2000, quoted in UNHCHR. Op. Cit.

³³⁴ Instituto Nacional de Evaluación Educativa, "Resumen Ejecutivo 2005", www.inee.org.mx.

This Diagnosis also highlights that the Mexican education system reproduces the inequality, exclusion and authoritarianism of the current political and cultural system, mainly in the poorest regions inhabited by indigenous people. This situation affects the children of agricultural workers, street children and the disabled³³⁵. It is even worse for the indigenous and particularly for indigenous women³³⁶ in the states with lower levels of economic development: Chiapas, Guerrero, Veracruz, Oaxaca, Hidalgo and Puebla³³⁷.

Poverty and exclusion are also obstacles for the enjoyment of the right to education³³⁸. These particularly affect the indigenous communities since they “represent the largest number of people who do not access the education system, and among them there is also a higher level of lack of education and overage students, in addition to ineffectiveness at finishing school, which is above the national mean”³³⁹. In many cases, the indigenous children also suffer discrimination and they receive an education that lacks linkages with the cultural elements of their society³⁴⁰.

The IV Report of Mexico mentions specialised programmes for vulnerable groups in rural zones, indigenous communities, migrant populations and special education, such as the “Multi-grade Project”, the “Programme for Primary Education for Migrant Children”, “Specific Programmes for Education in Indigenous Populations”, and the “National Programme for Strengthening Special Education and of Educational Integration”, but in these the designated budget it is not detailed. However, the Report does not specify if there are personnel who are adequate, trained and specialised in all of the schools where this is required for teaching in vulnerable sectors, particularly in indigenous communities and for special education. It also does not mention if there are sufficient special educational materials in all of these schools where these programmes are imparted or which mechanisms exist to evaluate the impact of these programmes.

2. Budget in the area of education.

Taking into account the situation of poverty and marginalisation faced by the indigenous population, it is worrying that according to information disclosed by the Liaison Office of the Ministry of Public Education, the budget designated to the General Coordination of Intercultural and Bilingual Education (CGElyB) has consistently and, we can even say drastically, diminished from 2002-2005: In 2002 the assigned budget was \$83,592,600; in 2003 it dropped to \$60,334,337; in 2004 it dropped to \$38,474,339.00 and finally in 2005 to a total amount of \$36,052,207. This is contrary to the government’s commitment to strengthen bilingual and bicultural education.

The former illustrates that the intercultural bilingual education system through the General Coordination for Intercultural and Bilingual Education of SEP has not been granted the resources necessary to strengthen intercultural education and on the contrary, the amounts of personal expenses of the personnel of the Coordination (CGElyB) rose during this time period. This had repercussions on the incompleteness of

³³⁵ Thematic meeting on Work and the Right to Education with academics and experts (Rafael Reygadas, Hugo Aboites y Lesvia Rosas), August 2003, quoted in UNHCHR Op. Cit.

³³⁶ Censo General de Población y Vivienda 2000. INEGI, quoted in UNHCHR. Op. Cit..

³³⁷ Only four out of every 10 children that enter primary school, finish higher education, two get their degrees and one takes on a post graduate degree. Source: Censo General de Población y Vivienda 2000. INEGI, quoted in UNHCHR. Op. Cit.

³³⁸ See section on the social policy in the Alternative Report.

³³⁹ UNHCHR. Op. Cit. 129

³⁴⁰ Idem. In addition to this, it is recommended to see in annexe the following report: Larrea Villacián, Cristina. El derecho a la educación de los pueblos indígenas 1999-2004. Enlace Comunicación y Capacitación, A.C.. Comitán Chiapas, mimeo, agosto de 2004.

the objectives planned by the CGElyB itself to improve bilingual and multicultural education

The drastic budget cuts that this institution has experienced since 2002 reflect the lack of a real commitment of the Mexican State, not only regarding the Executive branch but also the Legislative branch who authorises the amount of money for the budget items of the different bodies of the Federal Public Administration.

Public investment for the education sector is still insufficient to cover basic needs and finish projects. According to data from the Organisation for Economic Co-operation and Development (OECD), the education expense in Mexico is 5.9% of the GDP. The increase in education in 2004 was lower than in 2003. No information is provided in relation to the criteria for the distribution of educational resources³⁴¹.

According to the *Ley General de Educación* (General Law on Education) and in accordance with the obligation to designate the highest amount of resources available, derived from article 2 of the ICESCR, the Mexican government should gradually increase the resources available for education until reaching in 2006 a proportion of 8% of the GDP. According to Katarina Tomasevski, former UN Rapporteur on the Right to Education, the Mexican government has included the private budget within its goals to reach the 8% of the GDP. This is disastrous from a human rights perspective, because the private budget and the commercialisation of education –buying and selling- get mixed up with public investment –a government responsibility. Including the private budget is not valid because the right to education must be regulated as a public responsibility³⁴².

Main indicators for the evolution of education³⁴³
Education Expenditures/ GDP (percentage)³⁴⁴³⁴⁵

Concept	2000	2001	2002	2003	2004	2005 ³⁴⁶
<i>National</i>	6.42	6.79	6.91	7.17	6.97	7.33
Public	5.03	5.36	5.51	5.60	5.43	5.64
- Federal	4.06	4.32	4.41	4.46	4.29	4.44
- State	0.95	1.03	1.09	1.13	1.13	1.20
- Municipal	0.008	0.009	0.009	0.011	0.011	0.011
Private	1.39	1.44	1.40	1.57	1.55	1.69

³⁴¹ Centro de Derechos Humanos "Fray Francisco de Vitoria, P.P." A. C. "Informe anual sobre la situación de los Derechos Económicos, Sociales, Culturales y Ambientales", Nov. 2003-Nov. 2004, p. 173.

³⁴² Interview with Katarina Tomasevski, former UN special rapporteur, "Mercantilizar la educación, tendencia del gobierno foxista", *La Jornada*, July 29, 2002.

³⁴³ Source, the Ministry of Education. <http://www.sep.gov.mx> The numbers refer to the school cycle that begins in the year in question, that is, for 1980, it refers to 1980-1980 and so forth. The numbers for expenditures refer to natural years January-December.

³⁴⁴ The numbers may differ regarding that reported in the 2004 Report of the Government due to updates to the GDP, as well as the updating of the states and individual statistics and expenditures. The sum of the partials may not coincide with the total given the rounding of the numbers.

³⁴⁵ As of 2000, the data does not include the proportional estimate for SEP, regarding the Programme for Supporting Federal Bodies (PAFEF).

³⁴⁶ Estimated numbers.

Millions of Pesos of 2000

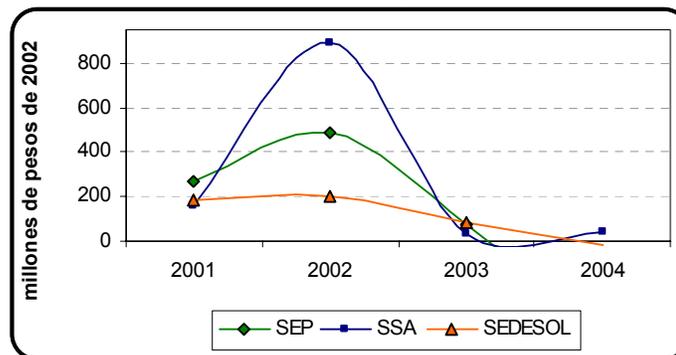
	PEF 2004 (spent)	PEF 2005	Percentage Variation 2005/2004
Line11			
Basic Education	21,285	17,602	-17.30%
Middle-higher	22,677	20,062	-11.53%
Higher	31,488	26,327	-16.39%
Line 25 Basic Education for the Federal District			
Basic Education	13,127	22,156	68.78%
Line 33 Decentralised Expenditure			
FAEBN	125,787	121,781	-3.18%
FAETA (middle-higher)	1,488	1,466	-1.49%
FAM (higher)	1,030	1,136	10.31%
Line 38 Science and Technology			
CONACYT	5,661	4,757	-15.96%

Source: Own elaboration with data from the Federal Public Finance Account for 2004 and the 2005 Federal Expenditures Budget

In regards to the use of public expenditures, although the performance of the Opportunities Programme has shown a tendency to rise during the current administration, there has also been annual under spending, which upon entering them into the accounts represents an important amount of support not granted. It should be highlighted that the programme consists of a very important education component, with the granting of educational scholarships.

In the 2001-2004 period, almost 2 million pesos were not spent, which independently of the reasons that may exist, represents resources that could have been designated for other programmes or social spending. The largest unspent amounts were presented in 2002; these diminished in 2003 in the three ministries. For 2004 the unspent amounts are low, however for a country with urgent needs, not having spent the amount designated represents an important determining factor for the families living in poverty who represent half of Mexico's population.

Graphic: Unspent expenditure by item of Opportunities from 2001-2004
Millions of 2002 pesos



Source: Own elaboration with data from the Federal Public Finance Account for the years 2001 to 2004.

The IV Report of Mexico should have given information on the budget designated for each of the adopted measures and programmes on the area of education so that the Committee on ESCR would be able to judge adequately the importance given by the government to these measures and programmes. However, the government does not offer enough information and neither does it explain the reasons behind the under spending, where the money has ended up, and what has been done to avoid this situation.

3. Human Rights Education

As a response to the proposal from civil society organisations, the Human Rights Education discussion table within the Dialogue Mechanism of the Inter-Ministerial Commission to attend to Mexico's international commitments in the area of human rights was created in 2002. Subsequently, a Sub-commission on the same theme was consolidated within the Commission of Government Policy on Human Rights. Civil society organisations were able to bring the issue of the National Programme on Human Rights Education to a national debate, but there were difficulties in the construction and respect for consensus between the civil society organisations and the governmental offices.

As it is known, education is an indispensable element to develop and consolidate a culture of respect for human rights, which would permit preventive actions in contrast to defensive ones, and it would favour democracy, the fight against impunity, and the rule of law. The educational function of public bodies, such as the National Commission on Human Rights, is difficult to value because although its budget items invest substantial human and finance resources on this issue, the reports on training only show a number of activities which cannot be used to measure their impact. There is no follow-up on their training activities, and they do not provide elements to carry out serious work of assessment, analysis, evaluation and even less so, a strategic planning on the issue³⁴⁷.

4. Recommendations

- 1) To adopt measures to strengthen the incorporation, access and permanence of indigenous children and adolescents in basic education.
- 2) To support the elaboration of schooling programmes for migrant children and agricultural under age workers.
- 3) To guarantee basic education in the penitentiary system.
- 4) To encourage an adequate infrastructure at school centres.
- 5) To improve labour conditions for teachers and re-value their teaching activities.
- 6) To intensify the programmes for school retention.
- 7) To incorporate in the General Law on Education the international and constitutional principles on multi-ethnicity.

³⁴⁷ Fundar Analysis and Investigation Centre, and the Cátedra UNESCO on Human Rights from the UNAM, "La educación en derechos humanos en la CNDH: una asignatura pendiente".

- 8) To adopt an indicators system which would be receptive to populations in indigenous communities, those living rural areas, those living in extreme poverty and the disabled.
- 9) The State must promote administrative and curricular de-centralisation processes
- 10) To adopt measures to avoid labour union conflicts from affecting the provision of education services.
- 11) To increase the number of students at public and autonomous universities, either by increasing the registration number of students in existing universities or by establishing more public universities.
- 12) To keep the number of students in rural teaching training colleges and to respect the students' rights
- 13) To respect the teachers' labour human rights.
- 14) Education, as a fundamental tool to reduce poverty, is incompatible with the concept of charging for the right to enrol, which prevents poor children's from accessing education because they lack resources, which at the same time, impedes them from getting out of poverty.

CULTURAL RIGHTS³⁴⁸ **(Article 15 of the ICESCR)**

1. Limitations of the legal framework

Apart from article 2 reformed in 2001 in the area of the rights and culture of the indigenous peoples,³⁴⁹ the Mexican Constitution, does not widely protect cultural rights in agreement with the ICESCR. As is stated in the Diagnosis on the Human Rights Situation in Mexico, elaborated by the Office of the UN High Commissioner for Human rights (OHCHR), the Constitution does not establish the general principle of access, participation and enjoyment of cultural goods and services, nor does it explicitly take into account the intangible patrimony. The interventions on cultural matters are isolated amongst themselves and in regards to the other public policies of the Mexican State. Likewise, participation in the use, promotion, commercialisation and the distribution of the benefits of culture is not planned for. A product of the economic opening, the entry of large capital into the cultural sphere has resulted in distorting the characteristics of this sector in the country, through mass commercialisation and the imposition of foreign models, as has occurred in the majority of the countries in the world. The promotion of an adequate legislation would enable the establishment of a better framework for action for the management, rationalization, and giving potential to cultural resources.³⁵⁰

The demands for legislation on cultural matters date back more than ten years. In September 2005, the Federal Executive sent to Congress the Initiative for the Promotion and Diffusion of Culture Law,³⁵¹ which was well received by the legislators of the National Action Party (PAN) and the Revolutionary Institutional Party (PRI), but questioned by the parliamentary fraction of the Party of the Democratic Revolution (PRD), who announced that it would vote against the initiative so as to not make “the same mistakes as when it endorsed the criticised legislations regarding indigenous rights and genetically modified organisms.”³⁵² According to the anthropologist and jurist Bolfo Cottom, the objective of the initiative and of the parliamentary fractions that supported it is to “continue privatising the cultural patrimony and strengthen the National Council for Culture and Arts (CONACULTA) in spite of its inherent vices such as the duplicity of tasks and the failure of its policies.”³⁵³ Cottom has questioned the institutional deficiencies and incapacities of the Council since it was founded in 1988 to substitute the Under-secretariat of Culture within the Ministry of Public Education.

Within the cultural sector, one of the most recurring questionings of president Fox's proposed law on culture is the lack of an assessment on culture in Mexico. Likewise, the one-sidedness of the initiative is questioned, as it is not based on an adequate consultation with the cultural community in Mexico. For their part, the legislators who oppose the initiative consider it to be anti-constitutional, with several normative conflicts, as among other issues, it proposes than a decentralised body such as CONACULTA coordinate other decentralised bodies such as the national institutes of

³⁴⁸ This section on cultural rights is based on the OHCHR Diagnosis, newspaper information, and testimonies of workers of the cultural sector in Mexico collected by *Centro de Derechos Humanos Fray Francisco de Vitoria* and *DECA Equipo Pueblo A.C.*

³⁴⁹ See the section on the right to self-determination of this Alternative Report for information on the law on indigenous' rights and culture.

³⁵⁰ OHCHR. Diagnosis on the Human Rights Situation in Mexico, section 4.7 on cultural rights. Grupo Mundi Prensa, 2003, p. 115

³⁵¹ Known as the “Bermúdez law” given that it is based on several proposals from the head of the National Council for Culture and Arts (CONACULTA) Sari Bermúdez, which have generated discussion and debate within the cultural and academic sectors since the middle of 2004.

³⁵² Jiménez, Arturo. “Quieren PRI y PAN privatizar la riqueza cultural, dice Bolfo Cottom”. *La Jornada*, national newspaper, 28 October 2005, available at: www.jornada.unam.mx

³⁵³ *Ibid.*

Anthropology and History and Fine Arts (INAH and INBA), functions that would correspond to a Ministry of Culture, which to date is nonexistent.

At the beginning of this year, it was announced that the elaboration of a pre-report of a draft bill on the law on culture by a technical team was being carried out, based on six initiatives - including the controversial Bermúdez law³⁵⁴. Once it is completed, it will be presented to the presidents of the commissions on culture of the Chamber of Deputies and the Senate for their evaluation. During the presentation of the Mexican Government, the Committee on ESCR should ask about the current state of the legislative process and the measures it will adopt to address the growing demand of a consultation.

2. Insufficient and deficient cultural policies

On the institutional level, the OHCHR Diagnosis bring attention to the fact that “the Mexican cultural policy is discontinuous because it is not based on indicators that define, for each tangible and intangible sector, their productivity and the progress in technology, science and social welfare through their right to multiple expression. The institutions have a fundamental and priority role of defining the limits of the cultural policy and to elaborate their own indicators in order to illustrate the need to apply the programmes considered as a priority for economic and social development. Nevertheless, the greatest challenge of cultural policy is in carrying out the precise conceptualisation, in order to delimit its field so that the sector is not considered a superfluous expense area in light of other social priorities in the expenditure budget.”³⁵⁵

According to the interviews carried out with members of the cultural community, apart from the repeated questioning of the verticality and concentration of power in CONACULTA’s operations, it was indicated that: the lack of a normative and pragmatic framework permits the existence of corrupt practices, the deviation of funds, trafficking influences, discrimination, harassment, violations of labour rights, and the lack of investment in infrastructure for artistic education, among other problems.

3. Proposals and recommendations

Some members of the cultural community indicate the following as indispensable conditions to reform Mexican cultural legislation and the institutional framework on the matter:³⁵⁶

- Have an *integral proposal* to resolve the legislative shortcomings related to creation, the promotion of culture, and patrimony preservation.
- *The cultural institutions should be autonomous* and autonomy should not be confused with privatisation.
- *Cultural policies should be independently established.* The cultural institutions should be guided by the principle of the division of fields,

³⁵⁴ Alejandro Sandoval is in charge of the coordination of the new law proposal, in his position as the technical secretary of the meeting work of the Chamber of Deputies and the Senate. García Hernández, Arturo. “Legisladores preparan nuevo proyecto de ley sobre cultura” *La Jornada*, national newspaper, 23 January 2006, available at: www.jornada.unam.mx

³⁵⁵ OHCHR. Op. Cit. p. 116

³⁵⁶ *Centro de Derechos Humanos Fray Francisco de Vitoria*. O.P. Human rights lectures, session on cultural rights, Centro Universitario Cultural (CUC),. Synthesis of the proposals presented by Francisco Reyes Palma, José Luis Barrios, Marco Barrera, José Luis Krafft, Pilar García, Rodrigo Witker, Karen Cordero, Paco Ignacio Taibo II, Patricia Sloane, Renato González Mello, Carlos Brokmann, Yoshua Okon, Olivier Debrouse, Cuauhtémoc Medina, Jaime Cama Villafranca, Víctor Lerma, Mónica Mayer, Pilar Villela , Cecilia Delgado, Katnira Bello; mimeograph, August 2004

preventing political decisions from modifying those of a technical nature, or of interfering with the creation or promotion of culture.

- *The institutions should be professionalised.* The law should establish rigorous requirements for the directive posts of the cultural institutions.
- *The legislation should avoid a conflict of interest in the headquarters of the public offices.* Independent instances should exist to watch over, endorse, impede or sanction the practices and policies of the offices in charge of remodelling, research, restorations, excavations and exhibits.
- *The National Council on Culture and Arts should be reformed,* not so that it obtains the level of ministry or under-secretariat, but rather so that its executive capacity is not limited to those of a coordination office.
- *The cultural institutions require budget autonomy.* It is indispensable that the budget for cultural institutions is assigned based on a percentage of the Gross Domestic Product, as is established by UNESCO.
- *Private and social participation in the state cultural policies and programmes should be regulated.* This participation should be feasible and promoted, but not outside of the law, responsibility and accountability.
- *There should be mechanisms to evaluate the cultural institutions that support themselves* partially by external, collegiate and plural bodies, and base their work on reasoned criteria published beforehand.

Lastly, it is important that the Committee on ESCR request information from the Mexican government on the measures that it would adopt to fulfill the recommendations and proposals in the OHCHR Diagnosis on legislative, administrative, financial, labour, infrastructure and material resources, programming and education matters.³⁵⁷

³⁵⁷ OHCHR. Op. Cit. Pp.116-119.

SPECIAL SECTION ON CHIAPAS³⁵⁸
(Follow-up to the recommendations of the UN Committee on ESCR)

The coalition of civil organisations who participate in the elaboration of the Alternative Report decided to include a chapter on the situation in Chiapas in order to attend to the Committee on ESCR's special interest in the issue. In this sense, we express our recognition to the Committee for the clarity and force of its expressed concern in paragraph 25 and the recommendation of paragraph 44 within the final observations to Mexico in 1999 (E/C.12/1/Add.41). These decidedly played a role in reducing one of the mechanisms that largely contributed to the exclusion and hindrance of the enjoyment of the indigenous population's economic, social and cultural rights in the regions affected by the armed conflict in the state of Chiapas.

1. Poverty, malnutrition and governmental programmes without a human rights perspective

In light of the Committee on ESCR's concern regarding the limited access to health services, education, work, adequate nutrition and housing within the indigenous populations of the states of Chiapas, Guerrero, Veracruz, and Oaxaca, the Mexican government responds in its report that several social programmes are being implemented to attend to these areas, among which the Opportunities Programme stands out.³⁵⁹

In reality, the federal government's programmes have not been able to significantly improve the living conditions of the indigenous population in the country, in particular what is experienced in the state of Chiapas. The information generated by the Opportunities Programme itself recognises that the levels of malnutrition have not been reduced among children under age five who benefit from the programme. On the national level, officially it is reported that chronic malnutrition affects 17.7% of children under age five and that 27% suffer from anaemia.³⁶⁰ However, other recent studies have reported for Chiapas that 39%³⁶¹ of children under age five have a serious to moderate growth deficit. Additional numbers indicate that in the regions affected by the armed conflict, 54.7% of the indigenous population under age five suffers from chronic malnutrition.³⁶²

Through multi-sectoral actions, some of the state programmes with limited coverage have been able to reduce serious malnutrition in almost 50% of the areas with extreme poverty.³⁶³ However, budget limitations have impeded them from having a greater coverage.

³⁵⁸ This chapter was elaborated by the following civil organisations from Chiapas: *Centro de Derechos Humanos Fray Bartolomé de las Casas, ENLACE Comunicación y Capacitación, Foro Chiapas para el Desarrollo Sustentable, and el Centro de Capacitación en Ecología y Salud para Campesinos/Defensoría del Derecho a la Salud.*

³⁵⁹ This is a federal programme operated by the Ministry of Social Development (SEDESOL), whose objective is to "improve the education, health and nutrition conditions of the families in extreme poverty in the rural and urban areas, granting them educational scholarships, food supplements, medical services, and monetary support." SEDESOL and Transparencia Mexicana, A.C., *Manual Ciudadano 2003. Sedesol a los ojos de todos*, Mexico, Federal District, 2003

³⁶⁰ National Public Health Institute, National Nutrition Survey, 1999.

³⁶¹ Ministry of Social Development in Chiapas, *Diagnóstico nutricional en niños menores de 12 años de las zonas rurales del estado de Chiapas*. Tuxtla Gutiérrez, March 2003.

³⁶² Sánchez, Héctor Javier; Arana, Marcos; Yamin, Alicia; and Ford, Douglas, *Excluded People, Eroded Communities: Health, Conflict and Citizenship in Chiapas*, Ibid.

³⁶³ Government of Chiapas, *Programa Vida Mejor para las Mujeres, las niñas y los niños de Chiapas*. This is a multi-sectoral programme in 270 microregions with very high levels of marginality

The governmental programmes directed at combating malnutrition are almost exclusively based on assistance and not on supporting food security, therefore they do not contribute to guaranteeing the right to food, but rather promote dependency and discourage local production. The food products in this programme are not culturally adequate and because of this they are frequently resold in the markets or used to feed patio animals. The scarce continuity and lack of an environmentally and culturally adequate focus of the programmes to support agricultural production favour the persistence of malnutrition.

The Opportunities Programme is based on individual focalisation, where one- generally small- part of the community is excluded, frequently causing community differences and divisions. On the other hand, by lacking assessment criteria that considers gradual improvements, the beneficiary population of Opportunities has to demonstrate that they continue to live in conditions of extreme poverty in order to continue to receive the Programme's monetary support. That is, the population is forced to authenticate and demonstrate its level of extreme poverty in order to continue to be included in the list of beneficiaries. Given this condition, it is frequently observed that women and families who receive the benefits of this programme reject other programmes directed at the improvement of their living conditions.

In this way, the Opportunities Programme becomes a brake for reaching progressive improvements in the enjoyment of rights, as the imposed need of continuing to be and appearing to be poor represents an opposing force for material improvements at the community level, reproducing a scheme of dependency around governmental resources which, instead of promoting rights, grant subsidies.

2. PROCEDE violates the rights of the indigenous peoples

The right to consultation established in ILO Convention 169, which has been ratified by Mexico, has not been respected nor promoted to guarantee the indigenous peoples' participation and decision-making in the definition and application of development programmes in Mexico. Consultation has not been established as being obligatory and in the cases where it has been applied, it has been done in an arbitrary manner, that is, without criteria and adequate methodologies.

The right to information and to be consulted as a fundamental basis for the free decision of the indigenous peoples' communities and organisations is not adequately considered in the development of the government's programmes and projects. In this sense, it is important to refer to the Programme for the Certification of *Ejidal* and Land Ownership Titles (PROCEDE) whose objective is to provide legal security to the peasants and indigenous, giving them land certificates and rights to common lands of their *ejido*³⁶⁴ as well as titles to urban lots. PROCEDE began its activities in the beginning of 1993 as a direct consequence of reforms to Article 27 of the Mexican Constitution.³⁶⁵ Apart from PROCEDE, the Programme for the Certification of Communal Rights (PROCECOM) also exists, which is applied to the indigenous

³⁶⁴ An *ejido* is a communal form of rural land ownership, recognised by the Agrarian Reform Law derived from the 1917 Constitution.

³⁶⁵ For the peasants, these reforms meant the end of land distribution, the lifting of the legal prohibition for the sale or rent of *ejidal* or communal lands, as well as allowing for and promoting the participation of the *ejidos* and communities that possess valuable natural resources in commercial societies, "associating themselves" with companies or banks, where the peasants provide their lands or forests and mountains, which now can be seized, or mortgaged and transferred.

peoples with the characterisation of community.³⁶⁶ It should be pointed out that before the existence of the new Agrarian Law, the majority of the *ejidos* and communities already had documents that accredited their legal possession of the lands.

The application of PROCEDE has six stages, which can be accepted in their totality or partially through a process of providing information, consultation and decision-making in the *ejidal* or community assembly. In the last stage, the members of an *ejido* or community pass to the so-called “full dominion” regime, which is when the *ejidatarios* legally become individual private owners of their parcels of land and their urban land (before called a plot, (*solar*)). This results in the destruction of the indigenous peoples’ sense of community, putting an end to the value of the assembly and socially benefiting community work. Likewise, in the cases that reach the stage of full dominion, the common-use lands once again become government property, in the character of National Lands.

Chiapas is one of the three states with the lowest progress in the application of PROCEDE: only 43% of the total hectares in the hands of *ejidos* and communities are partially or totally incorporated, since the majority of the indigenous communities do not agree with modifying their traditional forms of land tenure.³⁶⁷ In the last few years there has been intense pressure by the federal and state authorities for the peasants to accept the programme. This pressure has included partial or biased information regarding PROCEDE, threats to cut governmental subsidies for those who reject it, such as the Programme of Direct Support for the Countryside (PROCAMPO) and Opportunities, as well as bribes to the *ejidal* and community authorities.

Concerned by this situation, several civil and social organisations of the state of Chiapas carried out a study at the end of 2005 on 35 *ejidos* and agrarian communities of several municipalities with a high indigenous presence, in order to analyse the forms in which the Mexican State, through their agrarian agencies, is implementing said programmes.

More than half of the communities surveyed (51%) received visits from officials of the federal government in order to promote PROCEDE/PROCECOM. The results of the survey indicate that diverse irregularities were registered. 44.4% of the communities that were visited were not told that this involved a voluntary programme. The six stages of implementation were not explained in 77.7% of the communities. In 83.3% of the case the members of the community were told that they would only be able to accredit that they are *ejidatarios* or *comuneros* through PROCEDE/PROCECOM; and that all of the documents of the Basic Folder (*Carpeta Básica*) would have no legal validity. 83.3% were told that by merely accepting the government’s programme, they would be granted productive projects and public works would be built. 94.4% we told that if they did not enter into PROCEDE, they would no longer receive the subsidy for agricultural production from PROCAMPO and 50% were told that if they did not enter the programme the women would no longer benefit from the assistentialist programme Opportunities. In 30% of the cases the amount of votes to accept the programme was less than the two thirds of the total of the *ejidatarios* or *comuneros* required by law, in 20%, the programme was improperly approved outside of the Assembly, and in 50% of the cases the rights of those who did not want to enter into the programme were not respected.

³⁶⁶ Communal lands are a rural property regime that assures collective property of the indigenous peoples whose position was recognised since colonial times.

³⁶⁷ Maderas del Pueblo del Sureste. “12 años después, el PROCEDE ... ¿procede?”, Chiapas, 2005.

The following conclusions are drawn from the results of this study and other analysis on PROCEDE:

- PROCEDE and PROCECOM are deeply affecting the traditional forms of land use, community social organisation, and access to natural resources that were traditionally considered to be of common use. These programmes go against the rights of the indigenous peoples because they are clearly focused on the privatisation of *ejidal* and communal property, favouring the economic interest of the national and foreign corporate sector.
- In 1992, with the reform of article 27 of the Constitution, land distribution ended and the *latifundio* was legalised, prohibited in Mexico since the 1917 Constitution (as a result of the Mexican Revolution) With the New Agrarian Law, the patrimony of the peasant, indigenous, and non-indigenous families is left to the will of the markets. Therefore, the law is the complete opposite of diverse international treaties signed by the Mexican State, especially ILO Convention 169 and the jurisprudence that the Inter-American System has emitted in favour of the indigenous peoples; representing a situation of retrogression in the economic, social and cultural rights of the most marginalized population.
- PROCEDE and PROCECOM, apart from putting at risk the patrimony and means of subsistence of the peasant families, are State programmes that culturally affect the indigenous communities, in particular through introducing individualist practices that go against ancestral practices grounded on the collective tenure of land and community work and coexistence. This has caused family, community and intercommunity disintegration and it has generated intergenerational conflicts within the communities, while also altering their institutions and traditional normative systems.
- PROCEDE and PROCECOM affect the access to the natural resources that have traditionally been for common use, converting them into individual property and affecting the access to water, forests and other indispensable natural resources for the lives of the families.
- Through their actions, PROCEDE and PROCECOM reproduce the practices of excluding women, as neither their voice and even less so their vote are taken into account in the Assemblies, they are denied their right to land possession and to decided about their lives. On the other hand, the entry of these governmental programmes eliminates the *ejidal* and communal obligation to grant a productive parcel to the women (Women's Agro-Industrial Units, UAIMs)
- The offices in charge of implementing PROCEDE/PROCECOM do this through deceit, the partial management or distortion of information, and threats and conditioning of other social programmes.

3. Migration and human rights violations in Chiapas

Up to ten years ago, Chiapas was a region that attracted migrants from Central America and other regions of the country. Currently, while there are still seasonal labour migrations of Guatemalan workers in the Soconusco region, Chiapas has become a region of demographic expulsion: one in three families of this state depend economically on the remittances sent by Chiapan migrants living in the United States

and at least 79% of those who decide to emigrate to this country never return. According to studies from the State Population Council,³⁶⁸ during the last few years, Chiapas took the place of the state of Zacatecas as the place of origin with more undocumented migrants who cross the northern border to the United States.

On the other hand, undocumented Central American transmigrants in Chiapas suffer from constant extortion and violence, both from the Mexican police and migration corps as well as from criminal groups called *maras*, groups of Central American and Mexican youths who have formed gangs that steal from, rape and murder migrants coming from Central American countries. The *maras* are a sub-product of the wars in Central America³⁶⁹ and the lack of governmental policies to provide economic options to these young men.

The delinquent behaviour of the *maras* has been taken advantage of and used as an instrument to discourage migration, as well as for the trafficking of persons, arms and narcotics. Its growth was propitiated by the impunity and permissiveness of the police and migration authorities. In spite of this, the seasonal flow of Guatemalan migrant workers continues to arrive in Chiapas. Approximately half of them are documented, while the other half suffers working conditions that are unfair and risky for their health.³⁷⁰

Conservative calculations indicate that 80 to 150 thousand temporary Guatemalan workers annually cross into Mexico to work on the cultivation of banana, coffee, soy, sugar cane and several types of fruit in the border state of Chiapas. Another 15 thousand go to the surrounding states of Tabasco, Quintana Roo, Campeche and Yucatán.³⁷¹

Since the first years after the entry into force of the North American Free Trade Agreement (NAFTA) in 1994, the Mexican government unjustifiably favoured the tariff free importation of products considered sensible in the agreement (basic grains such as corn), causing disloyal competition with national production. The complete liberalisation of corn and bean imports, agreed under NAFTA to be in 2008, with undoubtedly deepen this crisis and expel a larger number of peasants from the region.

4. Forced displacement, rupture of the social fabric and their impact on the enjoyment of ESCR

Intra and inter community conflicts are propitiated by the discriminatory and clientelist use of the government's social programmes, as they promote political and religious intolerance, which have been exacerbated- and encouraged-as a result of the armed conflict that began in 1994. The rupture of the social fabric constitutes an obstacle for the full exercise of ESCR in Chiapas.

The internal division of the communities has been the most tangible expression of the polarisation and it has favoured a serious phenomenon of fragmentation and demographic atomisation. Population growth, pressure for cultivatable land, and the

³⁶⁸ *La Jornada*, 24 December 2005.

³⁶⁹ *Grupo México Guatemala sobre Migración y Desarrollo*. Internal document, photocopy, 2004.

³⁷⁰ Inter-American Commission on Human Rights, *The rights of migrant workers and their families. Work of the Special Rapporteurship on Migrant Workers and Their Families*.

³⁷¹ IACHR Special Rapporteurship on Migrant Workers and Their Families and Jurisprudence of the Inter-American System, 2005 MENAMIG. 2001.

Rodolfo, Martha Vicente Castro and Claudio González Cartes. 1996. *Migrantes Centroamericanos en México. Un Análisis Global*. Facultad de Ciencias Sociales/Centro de Análisis de Políticas Públicas, Universidad de Chile, pp., 27-41.

dismantling of the peasant economy have all contributed to this process. The more than 16,000 localities that existed in 1990 increased to 19,453 in the census of 2000.³⁷² Currently, it is calculated that more than 22,000 localities exist.

The creation of new settlements implies, almost invariably, the arrival of families to more remote areas that are difficult to access. The amount of settlements, their enormous dispersion, and difficulties in accessing them are obstacles for providing basic services such as piped water, electricity, roads, schools and clinics, among others. In some regions this growth has been exceptional, given that cases have been observed where communities that were created due to divisions, subdivide once again.

The expulsions due to religious and political motives have been one of the most violent expressions of intolerance. Frequently, they are preceded by other aggressions, which have even included murder, rape and the burning of houses. The armed conflict that began in 1994 worsened the levels of political and religious intolerance in the state: in different moments there were displaced who left- and continue to be outside - their communities living in camps where they have had to depend on external help to survive, apart from living under a notion of being transitory that affects their mental well being and the exercise of their cultural rights. In different moments, the total number of displaced in Chiapas has reached 30,000 persons. Currently there are around 6,000 persons displaced.

Nevertheless, the most frequent situation of the deterioration of ESCR is in communities that, although there is no significant displacement, are divided for political or religious reasons, or both. The communities are characterised, among other things, by having more than one group of authorities and the existence among them of social tension not exempt from violent expressions. To illustrate the most serious affectation of ESCR in divided communities, one merely needs to examine the differentiated assessment on health among the communities that are divided and the ones that are not, elaborated by the *Defensoría del Derecho a la Salud* and *El Colegio de la Frontera Sur*, in collaboration with Physicians for Human Rights in three regions of Chiapas affected by the conflict (Jungle, Highlands and North), which demonstrates through statistically significant differences that the health conditions of the divided communities are comparatively worse.³⁷³

The indicators for general mortality, infant mortality, nutrition for children under age five, pulmonary tuberculosis, injuries, and illness demonstrate the same differences. A chronic malnutrition rate (low weight for height) in children under age five of 54.7% was observed. In the divided communities, this rate was 58.6%. A maternity mortality rate of 60.7 per 10,000 live births was found. The eight maternal deaths were found in divided communities. The complete vaccination schemes for the children in divided communities also had lower coverage.³⁷⁴

In this study all of the indicators were contrasted with united communities who had public services, or were in civil resistance. It is important to mention that there were no significant differences between the united communities who received government public services and those that were united but which, for political reasons, reject government subsidies. The main conclusions that can be drawn from this study indicate that in Chiapas, the capacity for an organised response and the communities'

³⁷² INEGI, *General Census on Population and Housing of 1990 and 2000*.

³⁷³ Sánchez, Héctor Javier; Arana, Marcos; Yamin, Alicia; and Ford, Douglas, *Excluded People, Eroded Communities: Health, Conflict and Citizenship in Chiapas, Mexico*. Physicians for Human Rights-Ecosur-CCESC, 2006 (in print). This involves a study on health from a human rights perspective carried out in three regions of Chiapas affected by the armed conflict (Highlands, Jungle and North) in 2,997 homes of 46 communities.

³⁷⁴ *Ibid.*

cohesion are more important in determining the health conditions of the residents than the presence of health services themselves. For example, when there is a gynaecological-obstetric emergency in a divided community, the relations for reciprocal support that favour a quick arrival to the hospital no longer exist. Ten suicide attempts were found, eight of which ended in death, and these were concentrated in the divided communities of the North region. This finding illustrates the serious tensions and emotional problems caused by the rupture of the social fabric as a consequence of the conflict.

Health is not the only problem accentuated by community divisions. During 2003 and 2004 there were multiple denouncements from the Chiapan Highlands of communities where the children of one political or religious group were not allowed to go to school.³⁷⁵

The indigenous communities were traditionally characterised by their cohesion. This was particularly notorious in the areas of the jungle, where strong organisational structures had been developed which allowed them to collectively respond to health problems and many other common needs.

The panorama that is currently lived in many regions is of powerless communities with an impoverished development capacity. In light of fundamental needs and rights such as access to water or to health, there is not capacity of gathering or of participation. The migration of young people towards the north that also diminishes the capacity for a collective response is added to the political and religious tensions.

5. Interference of the armed forces in development programmes

The interference of the armed forces in social programmes was one of the factors that had the most influence on the social polarisation process that has divided hundreds of indigenous communities who now suffer the material and emotional consequences of the rupture in the social fabric.

The interference of the armed forces and the conditional and clientelist application of social programmes were the distinct sign of the state and federal government during the period 1995 to 1999. During the governorship of Pablo Salazar Mendiguchía, the selective support of organisations and “regional blocks” that are political allies, in the detriment of other groups, has persisted, although in a subtler manner.

However, it is important to point out two factors that had a positive influence in reducing the exclusion policy that was part of the military interference. These factors were:

- The recommendations of the UN Committee on ESCR in 1999 regarding ending the interference of the armed forces in the social programmes and to supervise and regulate their role (including of paramilitary forces). These recommendations were broadly disseminated by civil society organisations and they were the central axis of citizen observation activities.³⁷⁶ The Committee’s observations and recommendations were transformed into instruments of social vigilance, whose results were broadly disseminated by the national press.

³⁷⁵ *Milenio* newspaper, 27 November 2005. *El Universal*, 18 March 2005.

³⁷⁶ 2nd National and International Civil Observation Mission for Peace, *Informe por la Paz en Chiapas*. 18 to 23 May and 25 August 2000.

- The fact that the state and federal governments agreed to carry out some actions that positively influenced the reduction of the military's interference in social programmes. One of the most notable actions was the dismantling of the Programme for the Development of the Las Cañadas Region, which was suspended by the government of Chiapas because of its counterinsurgency and discriminatory nature.

Nevertheless, the effects of the military interference have lasted for several years through the Social Work Programme of the Army and the military occupation of the Guadalupe Tepeyac Hospital. In spite of the positive actions indicated above, the lack of trust in public services persists.

The intercommunity divisions were also greatly accentuated by the discriminatory and exclusionary character that prevailed for several years with the participation of the armed forces. The roadblocks and posts that the army maintained in the indigenous regions for several years had similar effects.

6. Militarisation

In the area with the largest indigenous presence in the state of Chiapas, that coincides with the denominated "conflict zone", there are 84 military installations, according to data updated through September 2005. This number goes well beyond that which is acceptable for a democratic normality. There is a contradiction between the military policy in Chiapas and the reasons based on the law to justify their presence. In no moment of the conflict has a state of emergency been declared and the simple occupation of indigenous lands by the Mexican Army and Marines goes against that established in the Constitution and the dispositions of ILO Convention 169.

The Mexican government's lack of will for dialogue to attend to the agreements subscribed between the government and the Zapatista National Liberation Army (*Ejército Zapatista de Liberación Nacional, EZLN*), the so-called "San Andrés Accords" of 1996, makes the application of public policies and programmes necessarily result in a biased attention to the population and in a constant source of tension, confrontation and in more than a few cases, violence.

Despite the governmental denial of the existence of paramilitary groups, they still operate in some areas of Chiapas and continue to have political control over the municipalities, through which they distribute numerous resources designated to development and infrastructure programmes. In this, the way in which these resources have been channelled through prioritising the sympathizers of the paramilitary groups has been documented. There even exists evidence that some of these resources have been diverted to maintain the paramilitary groups themselves. These acts have been widely documented in the judgment for peculation and the improper use of public office against Carlos Torres López (criminal process 378/2002), the municipal president of Tila (1999-2001) and member of the *Paz y Justicia* paramilitary group.

The lack of an agreement between the federal government and the EZLN continues to be an important source of social tension and an obstacle for the implementation of a non-exclusionary social policy. The federal government insists that it has complied with the three demands established by the EZLN to reinstate the peace process: the release of prisoners, the approval of the Constitutional Reform on Indigenous Rights and Culture proposed by the Commission of Concordance and Peace (COCOPA),³⁷⁷

³⁷⁷ COCOPA is a body that was created through the Law for Dialogue, Conciliation and Dignified Peace in Chiapas on 9 March 1995. According to article 8 of this law, COCOPA is "integrated by the members of the Congress of the Union's Legislative

and the dismantling of the military posts in several points in the state. In reality, this last condition was the only one punctually complied with during the first weeks of the current administration. Zapatista prisoners still remain in Tabasco and other jails in the country³⁷⁸ and the largest point of confrontation with the government is due to the fact that the indigenous law that was approved in 2001 goes against COCOPA's original proposal that had already been accepted and promoted by the EZLN, and which had the support of the National Indigenous Congress. One of the main differences between this proposal and the approved law is that the latter limits indigenous autonomy by not considering the indigenous peoples as "subjects of public law" but rather as "subjects of public interest" for the priority application of attention programmes.³⁷⁹

As the proposal for the law that had been presented by COCOPA was not approved, the State did not fulfil the commitment that was signed and established in the San Andrés Accords. By sending to Congress a different initiative for the law, the Executive Branch, along with the Legislative Branch that approved it, closed the doors to dialogue. In this way the Mexican State permitted the perpetuation of the armed conflict in Chiapas.

In this context, the Federal Peace Commissioner has not undertaken any effective action to reinitiate a process of dialogue or distension. As of his appointment, he has not been able to establish any communication with the EZLN and has limited his activities to trying to reduce the position of civil resistance of isolated groups by offering them the benefits of social programmes. Several media outlets, civil society organisations and political parties have indicated that his role has been more in the logic of counterinsurgency than in a true search for peaceful and negotiable solutions to the conflict.

In this sense, some deputies of the Party of the Democratic Revolution (PRD) stated in June 2004 that: in light of the lack of results for dialogue with the EZLN, an attempt is being made to "reward" those who do not sympathise with the movement.³⁸⁰ Likewise members of COCOPA, such as Bernardino Ramos, have commented that "it is embarrassing and concerning that the current peace commissioner has as a role the delivery of steel sheets for the construction of housing, meetings with anti-zapatista groups and groups of a violent nature such as *Paz y Justicia*."³⁸¹ The motive for this denouncement is related to the fact that on June 1 of this same year, the commissioner went into the *La Realidad* community (one of the zapatista's political centres) to deliver money and support to families linked to the Revolutionary Institutional Party (PRI) of this and other neighbouring communities. Behind closed doors, the government representative carried out meetings with PRI families to arrange assistance from the federal authorities. Events such as this one form part of a strategy that has been repeated by the Commissioner in different points within the conflict zone.³⁸²

Commission for Dialogue and Conciliation for the state of Chiapas, as well as by a representative of the Executive Branch and another from the Legislative Branch of the state of Chiapas."

³⁷⁸ *La Jornada*, 27 January 2006.

³⁷⁹ A more detailed analysis of the indigenous law can be found in the section on article 1- right to self-determination.

³⁸⁰ *La Jornada*, 7 June 2004.

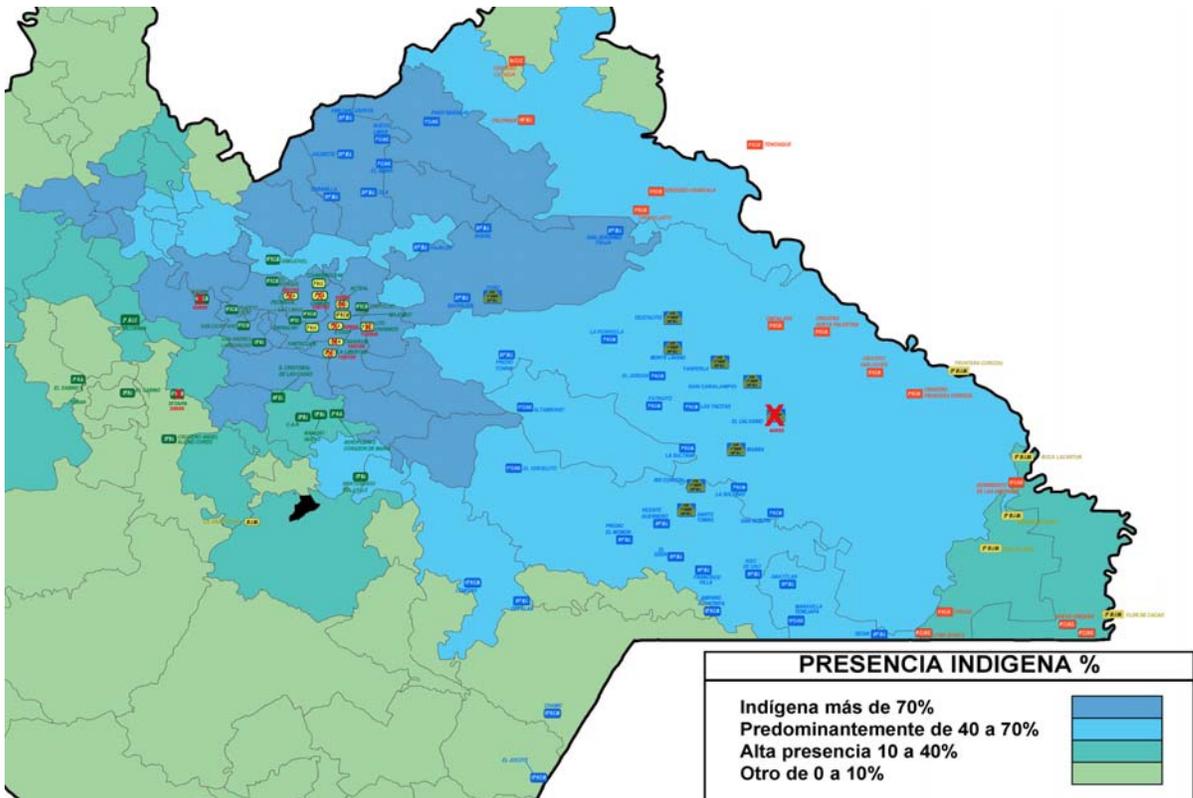
³⁸¹ Cited in *Ibidem*.

³⁸² *La Jornada*, 2 July 2004.

Map of the military presence in the indigenous territories of Chiapas³⁸³

% OF INDIGENOUS PRESENCE	
More than 70 % indigenous	BLUE*
Predominantly indigenous- 40 to 70%	LIGHT BLUE*
High presence- 10 to 40%	GREEN*
Other- 0 to 10 %	LIGHT GREEN*

* This indicates the color corresponding to the percentages that appears in the map.



7. Recommendations

Based on that expressed above, we request that the UN Committee on ESCR recommend to the Mexican State:

1. That it assure that the social programmes carried out in the rural communities, and particularly in the indigenous communities, strengthen the universality of human rights and mechanisms of community participation.

³⁸³ According to the study “*La Ocupación Militar en el Territorio Indígena de Chiapas: EL Dilema de Prisionero*” of the *Centro de Análisis Político e Investigaciones Sociales y Económicas AC*, February 2004, and updated by the *Centro de Derechos Humanos Fray Bartolomé de Las Casas AC*.

2. That it guarantee that the programmes and public resources are not used for political-party ends, particularly in electoral times, by preventing the conditioning of the provision of public services and access to programmes, among others.
3. That the social programmes directed at improving the living conditions of the indigenous population are focused on strengthening and developing local capacities, and avoid dependency.
4. That the social development programmes include mechanisms for the participation of the population in the design, monitoring, and evaluation of its application, as well as criteria for their cultural and seasonal appropriateness.
5. That the support be increased for the development of integral programmes that have a proven positive impact, allowing for a gradual improvement of the local capacities and community infrastructure.
6. That the Mexican State respect the right of the *ejidos* and communal property to decide if they will or will not join PROCEDE and PROCECOM and that it not establish any conditioning in order to continue to receive the benefits of the public services and programmes.
7. That the right of the indigenous communities to be consulted as established and accepted by the Mexican government upon ratifying the ILO Convention 169 be respected.
8. That the social programmes promote and actively support inclusion and tolerance and that they be designed and carried out in consultation with all of the community members, regardless of their political or religious affiliation. A social policy that jointly assists in the reconstruction of the social fabric is the best contribution to creating better opportunities for the enjoyment of ESCR.
9. That the community divisions be considered a risk factor and that the social programmes avoid a greater polarisation, actively promoting non-conditionality, non-discrimination and tolerance as conditions for their implementation, particularly in regions with high levels of social conflicts.
10. That the cases of human rights violations resulting from political and religious intolerance be investigated and punished and that intensive education campaigns on tolerance, respect for differences, and peaceful conflict resolution be implemented.

Finally we request that the Committee on ESCR continues to monitor, particularly in the conflict regions, the civil nature of those who are implementing the social policies.

SPECIAL SECTION ON BUDGET³⁸⁴

(State Obligation of undertaking steps to the maximum of its available resources)

1. The Latin American Index of Budget Transparency

The present recommendations are taken from a much more broad analysis known as the *Latin American Index of Budget Transparency*,³⁸⁵ which represents a civil society effort to measure, analyze and strengthen budget transparency in Latin America.

In 2001 eight organizations in five Latin American countries (Argentina, Brazil, Chile, Mexico and Peru) prepared the first edition of the Index of Budget Transparency in Latin America (*Índice de Transparencia Presupuestaria en América Latina – ITP.*) The project's main objective was to provide information that would enable evaluation of the transparency of budget practices in the five countries involved in the study.

In order to achieve this objective, a two-part study was designed, including:

- 1) A survey of perceptions to be completed by groups of experts in the participating countries.
- 2) Guidelines for analysis of the legal framework governing the budget process, to be completed by an expert in legal matters and public spending in each country.

In 2003, this measurement and evaluation tool was replicated in a total of ten countries. The inclusion of five additional countries made it possible to enrich the study by incorporating new experiences and increasing the possibilities for comparison between countries. Efforts were also made to improve the methodology applied in the study, ensuring that results obtained from the perceptions survey could be explained based not only on the legal framework governing public finance but also on budget practices.

Finally, the third edition of the Index was published in November 2005. Participants in this effort included non-governmental organizations, universities and study centers in eight Latin American countries. All editions were coordinated by FUNDAR Centro de Análisis e Investigación, in México City.³⁸⁶

2. Analysis for Mexican Case

The most important recommendation resulting from this study involves not only the conditions that affect the lowest ranking variables but all aspects of the budget process and the overall conditions of budget transparency in the country. In Mexico, integral reform of the legal framework of the budget process is necessary. Indeed, it is highly likely that significant reforms to the legal framework will be approved within the next two years, seeing that a broad variety of initiatives have been discussed and decided upon and there is a decision pending about the integral reform of the Budget and Public Accounts Commission. Since these reforms will continue to be discussed in the short term, the recommendations are: to incorporate into them the mechanisms necessary to ensure citizen participation; to promote more clearly the accountability of public officials; to strengthen the auditing institution's capacity to sanction; to create the foundation for a medium-term budget framework; and to encourage the integral evaluation of public spending, including not only oversight but actions to evaluate the

³⁸⁴ This special section on Budget was prepared by FUNDAR Centro de Análisis e Investigación and it is included in the Latin American Index of Budget Transparency Project. www.fundar.org.mx

³⁸⁵ <http://www.fundar.org.mx/indice2005/index.html>

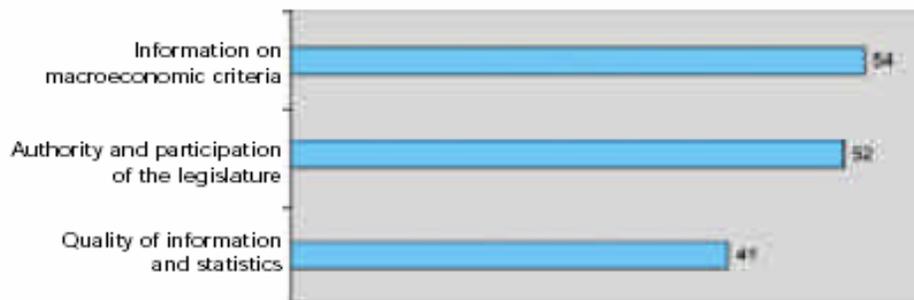
³⁸⁶ www.fundar.org.mx

performance of public functions and to assess the impact of public policies at the federal level and among local governments, which increasingly contribute a larger portion of resources.

The areas most positively evaluated in Mexico are:

- Information on macroeconomic criteria
- Authority and participation of the legislature
- Quality of information and statistics in general

Mexico: Best Evaluated Areas
(percentage of positive responses)



The critical areas for this country are:

- Citizen participation
- Control over public officials
- Timeliness of budget information

Mexico: Critical Areas
(percentage of positive responses)



3. Recommendations

3.1 Ensure Broad Citizen Participation in the Budget Process

The citizenry, civil society organizations and academic institutions must be incorporated not only into the planning, design and programming of public policies but also into legislative discussion and the evaluation of the impact of public spending. This broad notion of participation requires different mechanisms on three fronts:

- First, mechanisms for participation and discussion must be established that involve society directly with the entities responsible for sectoral planning and the design of public policy. Certain entities, such as the Secretariat of Health and the Secretariat of

Social Development, have already established mechanisms for participation. However, these must be extended and formally included as an integral part of the budget process.

- Second, the Congress must be opened. Mechanisms must be planned to link the efforts of civil society organizations and academic and educational institutions into the discussion and approval of the budget. This is particularly important the law is reformed to ensure the legislators' more effective and specialized participation in the budget. These mechanisms must be of two types: the first to stipulate in law the *obligation* disseminating and providing timely information about the place and agenda of sessions in which the budget is to be discussed, and particularly sessions in which offices of the executive render accounts and provide information to legislators. The second type of mechanism must establish and institutionalize specific instances for participation, in which legislators grant an audience to organizations and citizens interested in promoting aspects of public interest related to the budget.

- Third, civil society and academic institutions must be involved in budget evaluation. Although it is true that society's participation in oversight is necessarily limited, society still has an important two-part role to play in the control over spending in its areas of interest: direct oversight and the bringing to light of any use of public resources at the margin of their purported use. In this sense, the efforts being carried out under the protection of the law of access to public information stand out, along with the exemplary performance of the organizations in cases such as those involving the resources assigned to PROVIDA and resources allocated for bank rescue.³⁸⁷

In addition, it is important to promote the participation of these organizations in the evaluation of the impact of spending on society and in the design of new and better mechanisms to measure the effectiveness and efficiency of spending.

3.2 Accountability of Public Officials and Strengthening of the Capacity of the Auditing Institution to Sanction

One of the most severe limitations of Mexico's budget system has always been the incapacity of institutions to apply the law when irregularities occur. Only a few weeks ago the Superior Auditor of the Federation noted this office's lack of capacity to sanction the infractions committed by public officials.³⁸⁸ Irregularities are identified and documented, but then the entities responsible for issuing sanctions neither apply fines nor inhibit the officials responsible for the irregularities. In order to promote effective accountability, the legal framework must be reformed, taking the power to sanction away from the Ministry of the Treasury (which applies fines) and from the Public Office (which inhibits officials), and providing this power to the Office of the Superior Auditor

³⁸⁷ Based on the provisions of the Law of Access to Information, different organizations have initiated, on their own account, a detailed review of questionable or specious examples of spending. For example, FUNDAR participated with five other organizations in the review of the deviation and misappropriation of funds for health (30 million pesos) allocated to PROVIDA in 2003. For a summary of this case, see FUNDAR's institutional report for 2004 at: http://www.fundar.org.mx/quienessomos/informes_anuales/PDF/INFORME%20INSTITUCIONAL%202004.pdf (site last visited on October 13, 2004.) The topic of citizen participation in the oversight and analysis of bank rescue actions was discussed extensively during the Second Week of Transparency convoked by the Instituto de Acceso a la información. See a transcribed version of the discussion at: http://www.ifai.org.mx/eventos/2005/transparencia/Mesa1_270605.pdf (site last visited on October 13, 2004.)

³⁸⁸ See coverage of the Superior Auditor's appearance before commissions ("Hacienda y SFP toleran la impunidad de 'funcionarios corruptos': ASF") in *La Jornada*, September 29, 2005, at: <http://www.jornada.unam.mx/2005/09/29/003n1pol.php> (site last visited on October 13, 2004.)

under the Treasury. Otherwise, Mexico will continue to have a legal framework in which the executive branch is the ultimate and only entity in charge of sanctioning the executive branch in cases of corruption and administrative irregularity. If there is hesitation about transferring such power to the Office of the Superior Auditor, then the creation of a special prosecutor's office under the judicial branch should be considered, to take charge of cases of corruption or to establish new and more severe sanctions for officials who ignore their responsibility to sanction the misdeeds committed.

In any case, it is indispensable that these reforms establish and clearly delimit the functions in law, and clearly establish sanction mechanisms, so as to prevent delays and undue intervention by the judicial branch. In other words, a clear and duly founded reform to the legal framework is needed, establishing a sanctioning body (preferably not under the executive) with effective capacities to sanction and judicial entities for appeal.

Similarly, solutions to upcoming problems must be proposed, and mechanisms promoted to ensure the sanctioning of functionaries in federative entities by —or in coordination with— the Office of the Superior Auditor. This has not yet been a problem because oversight actions over the states have only recently begun based on individual agreements. However, it would be convenient to establish clearly in law the sanction mechanisms and the roles of the Superior Auditor and of local sanctioning bodies, as per each case.

3.3 Create a Medium-term Budget Framework

- One of the most poorly evaluated variables involves the timeliness of information. This is curious because, in fact, in Mexico information is presented within timeframes that are similar or comparable to those of other countries that were evaluated more positively, and international standards of good practices are fulfilled. However, this apparent contradiction may be due to the fact that, in general, the information is considered insufficient, as is the time available to wield influence on the budget in an informed and effective manner. In other words, there is a generalized feeling of lack of capacity with respect to the budget. Added to this is the fact that the entire budget process is carried out with respect to the short term; long-term information is not addressed, nor are long-term policies (and especially changes in public policy) discussed. For this reason, the provisions and obligations associated with a medium-term budget framework must clearly be established in law. According to these provisions:

- The executive would be obligated to present revenue and expenditure predictions for at least three years after the fiscal year of the budget being discussed, and to distinguish clearly in the budget document the cost and expected impact of any public policy reform, especially any significant new programs, with information that also provides forecasts covering at least three years.

- The legislature would be obligated to carry out medium-term forecasts for the reforms it makes to the budget each year, and to incorporate a medium-term budget impact analysis into any revenue and expenditure modifications.

The benefits of the medium-term budget framework are especially significant with respect to transparency. Programming and planning for the medium term clearly illuminates the priorities and social costs involved in the financing of different public policy alternatives. It enables legislators and other offices to gain a better understanding about the immediate and future impacts of spending changes and reforms. It can even foment negotiation by involving all parties that discuss the budget in the analysis of spending and the effects of different budget allocation alternatives. The medium term budget framework is indispensable to the creation of a budget and

exhaustive budget information. Without it, it is impossible to gain a clear perspective of the effects of spending and of the reforms made to the budget.

Lastly, it is essential to note that, in this sense, the reforms included in the initiative that is soon to be decided are insufficient. They include the obligation of the executive to provide multi-year forecasts, but they do not link these forecasts to a similar obligation for legislators, nor do they include the mechanisms necessary to ensure that all reforms are accompanied by this type of information. Without such mechanisms, the medium-term budget framework is limited to the incorporation of more forecasts by the executive that may or may not be followed and, consequently, are superfluous. They become forecasts that are removed from reality and are thus useful neither to inform nor to guide public spending and national priorities.

3.4 Promote the Integral Evaluation of Spending

Control over public spending involves two aspects: oversight, which seeks to guarantee that expenditures are made efficiently and in accordance with the law; and evaluation, which necessarily goes beyond oversight and assesses: the impact of spending on society, the performance of different programs, and their effectiveness in resolving problems or satisfying needs according to that planned. In Mexico, much remains to be done with respect to two areas of spending evaluation: from the perspective of internal government control, and from the perspective of involving legislators and society more actively in the evaluation of spending. These efforts are vital in order to ensure that resources are executed not only legally and efficiently but also effectively — that scarce available resources effectively cover the country's social and economic needs.

- **Internal control.** The design of government indicators and goals is discouraging in the best of cases and malicious in the worst. The Performance Evaluation System must be reformed with two objectives: performance indicators and goals must adequately reflect whether the government acts to the maximum of its capacity; and indicators must be incorporated to evaluate the impact of spending on the social and economic realities that are targeted by public policy actions. The current system not only totally omits the consideration of the impact of spending, but it also fails to evaluate the effectiveness of the entities that assign resources. If this were not enough, there is also a significant disconnect between the object of planning (the programs) and the evaluation (the responsible units), making it impossible to determine to any certain degree when there is inefficiency within the entities or when programs and actions are poorly designed. In this situation, performance evaluation, in practice, is a mockery — mere simulation.

- **External control.** Along with the reforms to create an effective performance evaluation system with indicators that actually measure the efficiency and effectiveness of spending, the legislators and society in general must be involved in this evaluation. For this, the medium term budget framework is first necessary, allowing for specific follow-up to public policies over prolonged periods. However, the following are also required:

- a) Legislators must be involved in the evaluation of public policy so that they can fully exercise their role as a counterbalance to the executive and, according to their mandate, guide the actions of public policy. Mechanisms that allow the legislative commissions to carry out indepth analyses of performance evaluation information and to state opinions regarding changes in programs and resource allocation must be established in law. Under the current system, all responsibility rests with the Budget Commission, which can address the requests of other commissions discretionally and

which lacks the technical and human resources necessary to analyze all of the information on public spending.

b) Society must become involved in the evaluation of spending, participating directly with government entities and with legislators. In order to ensure that this participation is effective, the legal mechanisms discussed in section a) above must be established.

SPECIAL SECTION ON HUMAN RIGHTS OF MIGRANTS³⁸⁹

During the last two decades, migration flows throughout Latin America, and particularly in Mexico, have intensified. Although we cannot measure migration movements exactly because of a lack of reliable data and their primarily undocumented nature, the United Nations and those who study migration have observed this tendency. In Mexico, migration flows have many facets because the country serves as an origination, transit and destination point for migration flows. The implications are varied for human rights in general and for economic, social, cultural and environmental rights in particular.

A. Migration originating in Mexico

1. Internal migration flows

It is important to mention the tendency toward a rural exodus (migration from the countryside to medium- and large-sized cities within the country), noted for decades. The exodus has increased because of the crisis in the Mexican countryside and the sharpening of poverty, inequality, abandonment and lack of opportunities in rural areas. According to data from the Secretariat of Social Development (*Secretaría de Desarrollo Social*, SEDESOL) from the year 2000, 42.4 percent of the rural population lacked sufficient earnings to cover their minimum nutrition needs (so-called poverty in terms of nourishment).³⁹⁰ Since the North American Free Trade Agreement (NAFTA) went into effect, the countryside has lost 1.78 million jobs; and according to SEDESOL, on average 600 farmers leave their land every day³⁹¹ and migrate towards the cities or abroad. The liberalization of corn and bean imports, agreed to in NAFTA and scheduled for 2008, undoubtedly will deepen this crisis and will drive away an even larger number of farmers from their places of origin.³⁹²

2. Migration toward the United States

The migration of Mexican workers toward the United States is characterized by its large size and its tendency toward growth. In 2000, according to data from the U.S. Office of the Census³⁹³, of the 32.8 million “Latinos” that live in that country, 66.1 percent of them are of Mexican descent (14.5 percent have roots in Central and South America). In 2000, it was estimated that 8.277 million people born in Mexico were living in the United States, of which more than half were “irregular” residents (4,808 million)³⁹⁴. In 2002, the National Population Council (*Consejo Nacional de Población*, CONAPO) registered 9.5 million people in this “irregular” situation.³⁹⁵ According to data from the Pew Hispanic Center, in 1980 approximately 40,000 Mexicans migrated to the United

³⁸⁹ Chapter written by the Citizen Diplomacy Program of DECA Equipo Pueblo, based on their own documents and on reports by Sin Fronteras and civil organizations in Chiapas (Pro DESCA Group).

³⁹⁰ Secretariat of Social Development (*Secretaría de Desarrollo Social*, SEDESOL) and Technical Committee for the Measurement of Poverty (*Comité Técnico para la Medición de la Pobreza*). “Evolución y características de la pobreza en México en la última década del siglo XX”. August 2002, pp. 9 and 15.

³⁹¹ Norma Castañeda. “Pobreza y libre mercado en México”. DECA Equipo Pueblo, A.C., mimeo, December 2003.

³⁹² For more information, see the special chapter on Chiapas in this Alternative Report.

³⁹³ Melissa Therrien, Roberto R. Ramirez, *The Hispanic Population in the United States*, March 2001, Current Population Reports, P20-535, U.S. Census Bureau, Washington, D.C.

³⁹⁴ http://www.migrationinformation.org/Global_Data/countrydata/data.cfm, INS Office of Policy and Planning, United States.

³⁹⁵ Sin Fronteras IAP. “La situación de los derechos humanos de los trabajadores migratorios y sus familias en la región”, document prepared by Sin Fronteras IAP for presentation at an audience before the Interamerican Commission for Human Rights, March 2004, paragraphs 39 and 52.

Status each year; by 2004, that figure had increased to 485,000 per year.³⁹⁶ This phenomenon is demonstrated by the four out of every ten Mexicans who claim to be inclined to emigrate and two of every ten would do it even if it were illegal.³⁹⁷

The factors that promote and shape the migration pattern of Mexicans toward the United States include: a) the demographic growth of the Mexican working age population; b) the ageing of the U.S. population; c) the inability of Mexico to guarantee dignified and well-paid work to important sectors of the population; d) the demand for manpower in the agricultural, industrial and service sectors of the United States; e) the salary differential between the two countries and the reduction of real salaries in Mexico; f) the tradition of migration throughout the 19th and 20th centuries; g) family reunification; and h) social networks.³⁹⁸

These migration flows are important, both at the national and international levels. The migration of Mexican workers to the United States constitutes an essential “safety valve” that relieves the social tension that could build as a result of the inability of the national economy to create the jobs that its population requires. At the same time, remittances serve to improve the living conditions of many Mexican families while financing the foreign account deficit.³⁹⁹ Thus, migration is both an individual and family response to the Mexican government’s inability to guarantee its citizens the right to an adequate standard of living. For the U.S. economy, workers of Mexican descent represent a substantial contribution to many sectors, at the same time that they help to raise the competitive ability of that country.⁴⁰⁰

3. Human rights violations

As has been emphasized in the framework of the Regional Conference on Migration, “population displacement can be a product of layered situations (such as natural disasters), but, in any case, its deepest roots are underlain by models of development that are generally asymmetrical, unequal and exclusionary for many sectors of their populations”.⁴⁰¹ In Mexico, migration, whether internal or external, is tightly linked to the failure of the neoliberal model – in effect for more than two decades – to fulfill promises to reinvigorate economic growth and to distribute national resources more fairly, resulting in the existence and persistence of alarming levels of poverty.

The majority of the Mexican population is deprived of the minimum means of subsistence required in order to be able to live a dignified life, thus stimulating and justifying the individual or family decision to migrate in favor of better living conditions. According to data from the Secretariat of Social Development, 24.2 percent of the total population suffers from *poverty in terms of nourishment* and 53.7 percent from *poverty*

³⁹⁶ DECA Equipo Pueblo. “Diálogo social para una Política de Estado en Materia de Política Exterior – Derechos Humanos”, mimeo, December 9, 2005, Mexico.

³⁹⁷ *Ibid.*

³⁹⁸ Sin Fronteras IAP. “La situación de los derechos humanos de los trabajadores migratorios y sus familias en la región”, Op. Cit., paragraph 52.

³⁹⁹ In 2005, the remittances sent by Mexicans abroad to their families equaled 2.49 percent of Gross National Product (US\$20.035 billion). This constitutes the second greatest source of foreign currency after petroleum exports, which represent US\$28 billion, and before Foreign Direct Investment, which reached US\$18.244 billion that same year. Taken from: Saldaña, Ivette. “IED, la tercera fuente de divisas para México.” *El Financiero* (national circulation newspaper), Monday, February 20, 2006, p. 16.

⁴⁰⁰ DECA Equipo Pueblo. “Diálogo social para una Política de Estado en Materia de Política Exterior – Derechos Humanos”, Op.Cit.

⁴⁰¹ Castillo, Manuel Ángel. “*La Conferencia Regional sobre Migración CRM): evolución y el contexto actual de seguridad, lucha contra el terrorismo y derechos humanos*”, text based on notes prepared for the XXIV Interamerican Course on International Migration, Mar del Plata, Argentina, March 2002. Cited in Sin Fronteras IAP. “La situación de los derechos humanos de los trabajadores migratorios y sus familias en la región”, Op.Cit, paragraph 21.

in terms of patrimony, that is, they lack sufficient income to cover their needs in terms of nutrition, education, health, clothing, shoes, housing and public transportation.⁴⁰²

Thus, the causes of migration are directly linked with the non-fulfillment by the Mexican State of its obligations as set forth in international instruments like the *American Convention on Human Rights* (Article 26), the *Protocol to the American Convention on Human Rights with regard to Economic, Social and Cultural Rights* (San Salvador Protocol), and the *International Pact on Economic, Social and Cultural Rights*. Of these obligations, those relating to the right to an adequate standard of living stand out the most, for they are linked to the continuous improvement of living conditions for all people, and to the right to work. The right to work is understood as the right of every person to have the opportunity to earn a living in a job freely chosen and accepted and with equitable and satisfactory working conditions that ensure adequate remuneration that, at the least, guarantees dignified living conditions for workers and their families. Though the commitment of the State with regard to economic, social, cultural and environmental rights is usually understood as a commitment to be accomplished according to its possibilities, it is necessary to reaffirm that the State has the obligation to adopt the maximum number of necessary measures allowed by their resources, with a view to achieving progressively the full realization of these rights.⁴⁰³ Human rights violations rely on the State *not* adopting these necessary measures, leading to the large number of people forced to leave the country because they are unable to satisfy their basic needs.⁴⁰⁴

The dynamic of migration has its origins in ever growing economic and social development differentials and the lack of well-paid jobs and opportunities for a life with dignity. At the same time, migration creates tremendous challenges economically and in terms of human rights. Within the United Nations, Mexico has subscribed to a broad array of resolutions that relate to the ties between international migration and development and, more specifically, to ties between the human rights of migrants and trade.⁴⁰⁵ However, even though the language of human rights appears in the government's speeches on migration and migrants, the focus on human rights has not permeated the public policy making.

Mexican authorities have given little attention to the phenomenon of migration as it reflects the lack of human development and the inequity derived from liberal trade systems. On the contrary, authorities have responded with police repressive-oriented measures and restrictive migration policies. Migration has been linked to security issues such as weapons trafficking; common crime in areas of high concentrations of migrants; the existence of gangs; organized crime, especially drug trafficking; influence peddling by cartels and money laundering organizations; crime, violence and corruption by public servants; impunity; and the trafficking of people. In other words, migration is linked to other forms of crime, without a clear distinction between them by the authorities. This focus continues to dominate migration policies, adding to the prevalence and continuation of police and military responses to migration issues.⁴⁰⁶

U.S. authorities, in coordination with the Mexican government, have responded to the growing migration flows into their territory by adopting border control measures

⁴⁰² Secretariat of Social Development (*Secretaría de Desarrollo Social*, SEDESOL) and the Technical Committee for the Measurement of Poverty (*Comité Técnico para la Medición de la Pobreza*). "Evolución y características de la pobreza en México en la última década del siglo XX". Op. Cit. pp. 9 and 15.

⁴⁰³ Article 1 of the San Salvador Protocol and Article 2 of the International Pact on Economic, Social and Cultural Rights.

⁴⁰⁴ Sin Fronteras IAP. "La situación de los derechos humanos de los trabajadores migratorios y sus familias en la región", Op.Cit, paragraphs 62 through 65.

⁴⁰⁵ Op. Cit., paragraph 53.

⁴⁰⁶ Op. Cit., paragraph 24.

(budgetary and administrative reinforcements of border control measures, such as increased monitoring by the Border Patrol, walls and wire fencing, rubber bullets, and now toleration of vigilante minutemen).⁴⁰⁷ This policy of containment, like border fortification and militarization programs, has not reduced the undocumented immigration of Mexicans. On the contrary, the policies have caused: a) an increase in the risks faced by migrants, with deaths and accidents along the border growing approximately 25 percent per year; almost 5,000 deaths occurred in the year 2000;⁴⁰⁸ b) the growth and strengthening of networks that traffic people;⁴⁰⁹ c) more violence in the border zone; d) the conversion of a circular migrant flow into one that is more permanent; and e) the growth of labor abuses.⁴¹⁰ The migration policy of the United States is incongruent with reality, criminalizing and stigmatizing migrants and their families in addition to being a source of grave human rights violations.

All of this creates enormous challenges for the protection and defense of migrants' human rights, not only in the most visible and dramatic aspects, such as the cruel trade by *polleros* (people who smuggle migrants across the border) and the increase in migrant deaths as they attempt to enter the United States by ever more dangerous routes, but also in terms of migrants' vulnerability⁴¹¹ as they try to make their rights worth something. One cannot forget the failures of the U.S. Supreme Court as it endorses the limitation of human and labor rights for the sake of national security or because of migrants' irregular or "illegal" migration situations. The example of those people condemned to death in the United States without consular assistance illustrates clearly the vulnerability of migrants. With regard to this problem, the Mexican government requested a Consultative Opinion from the Interamerican Court of Human Rights, which resolved that "nobody can be discriminated against in their fundamental rights because of their migration status". Of course, this Opinion lacks linkages. However, it does have moral and political force, reinforced by the clarity with which rights are defined in the opinion: the right to equality and to not suffer discrimination, the right to access justice and to due process, the right to the protection of fundamental rights, and the governmental obligation to grant that protection and recognition to fundamental labor rights. It also recognizes the right of states to make decisions relating to migration policies and laws in a sovereign manner, but not by infringing on fundamental rights.⁴¹²

⁴⁰⁷ DECA Equipo Pueblo. "Diálogo social para una Política de Estado en Materia de Política Exterior – Derechos Humanos", Op.Cit.

⁴⁰⁸ In contrast, it is important to note the lack of data and concern about documentation and registration of accidents and deaths of migrants transiting through Mexico, especially in the south. This lack of concern and registration reveals a discriminatory attitude, both by the Mexican authorities and by the authorities of Central American migrants' countries of origin in terms of the "value" places on the life and integrity of the migrants.

⁴⁰⁹ At the beginning of the 1990s, only 15 percent of undocumented migrants sought the assistance of *polleros* (migrant smugglers); now 41% of undocumented migrants do. *Polleros'* rates have increased, from US\$143 in the early nineties, to US\$490 in 1995, and now to almost US\$2,500. DECA Equipo Pueblo. "Diálogo social para una Política de Estado en Materia de Política Exterior – Derechos Humanos", Op.Cit.

⁴¹⁰ Sin Fronteras IAP. "La situación de los derechos humanos de los trabajadores migratorios y sus familias en la región", Op.Cit, paragraph 53.

⁴¹¹ The vulnerability of migrants results, first of all, from their undocumented status, though one should not forget the difficulties associated with achieving legal status. For example, those migrants originating in Mexico have the right to 7 percent of the visas granted by the U.S. government; however, they make up 60 percent of the visa requests. Fully legal status requires an average of 13 years.

⁴¹² DECA Equipo Pueblo. "Diálogo social para una Política de Estado en Materia de Política Exterior – Derechos Humanos", Op.Cit.

B. Mexico, both a destination and transit country for migrants

1. The situation of foreign migrants within Mexico

In the last ten years, the state of Chiapas⁴¹³ has become a region that sends its population towards other states and countries. According to studies conducted by the State Population Council (*Consejo Estatal de Población*)⁴¹⁴ over the last few years, Chiapas replaced the state of Zacatecas as the place of origin for the most undocumented migrants crossing the northern border into the United States. Chiapas is also an important zone for trade and an area that sees great movements by citizens from Guatemala, Honduras and El Salvador, and, to a lesser degree, from countries in South America (Colombia, Ecuador, Peru) and other continents (Asia, Africa and Europe). In particular, conservative calculations indicate that every year between 80,000 and 150,000 temporary workers from Guatemala cross into Mexico to work on banana, coffee, soy, sugarcane and other harvests in the border state of Chiapas. Another 15,000 go to neighboring Mexican states such as Tabasco, Quintana Roo, Campeche and Yucatan.⁴¹⁵ Approximately half the migrants have documentation.⁴¹⁶ In addition, because it has a border with the United States, our country experiences growing migration flows “in transit” toward the U.S. or Canada.

2. Violations of the human rights of migrants in Mexico⁴¹⁷

➤ Violations of civil rights

Article 1 of the Mexican Constitution establishes that: “In the United Mexican States every individual will enjoy the guarantees granted by this Constitution, which will not be restricted nor suspended, except in cases and under the conditions that it establishes.” It does not distinguish between nationals and foreigners. Article 33 of the Constitution expressly establishes that foreigners have the “right to the guarantees that Chapter 1 of this Constitution grants”.⁴¹⁸ From a legal point of view there are few constitutional provisions that establish a difference between foreigners and nationals with respect to the exercise of their rights. However, migrants face a series of violations of their fundamental rights, in particular the right to due legal process and to judicial protection, to consular protection, the right to not be discriminated against, to the protection of their families, as well as other economic and social rights.

⁴¹³ Based on the special section on Chiapas in this Alternative Report.

⁴¹⁴ *La Jornada*, December 24, 2005.

⁴¹⁵ Special Rapporteur for Migrant Workers and Members of their Families, from the Interamerican Commission for Human Rights and Jurisprudence of the Interamerican System, 2005 MENAMIG. 2001 / Rodolfo, Martha Vicente Castro y Claudio González Cartes. 1996. *Migrantes Centroamericanos en México. Un Análisis Global*. Facultad de Ciencias Sociales/Centro de Análisis de Políticas Públicas, Universidad de Chile, pp., 27-41.

⁴¹⁶ Interamerican Commission for Human Rights. *The rights of migrant workers and their families. Work by the Special Rapporteur for the Rights of Migrants and Members of their Families*.

⁴¹⁷ Taken from: Sin Fronteras. “La situación de los derechos humanos de los trabajadores migratorios y sus familias en la región”, Op.Cit, paragraphs 210 through 271.

⁴¹⁸ The legislation most relevant to migration is the following: Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*), Law of Nationality (*Ley de Nacionalidad*) [DO January 23, 1998]; General Population Law (*Ley General de Población*) [DO January 7, 1974]; Regulations of the General Population Law (*Reglamento de la Ley General de Población*) [DO April 14, 2000]; Internal Regulations of the Secretariat of the Interior (*Reglamento Interior de la Secretaría de Gobernación*) [DO August 31, 1998]; decree with which the National Migration Institute was created as a technical entity, part of the Secretariat of the Interior [DO October 19, 1993]; agreement issuing the Norms of Operation of Migration Stations of the National Migration Institute (*Normas para la Operación de las Estaciones Migratorias del Instituto Nacional de Migración*) [November 2001].

With respect to the constitutional provisions, two points are especially worrisome: Article 11, which restricts the right to transit, and Article 22, which establishes that “foreigners have the right to guarantees granted by Chapter 1 of this Constitution; but the Executive of the Union will have the exclusive power to force any foreigner whose presence is judged inconvenient to leave the national territory, immediately and without the need for prior reason”.⁴¹⁹ The Special Rapporteur for the Rights of Migrants, of the U.N. Human Rights Commission, in a report following her visit to Mexico, expressed her concern about these reservations, saying that she “is afraid that the contents of Article 33 of the Constitution, combined with Article 125 of the General Population Law and the reservations mentioned above, leaves a margin of discretion that could arbitrarily become harmful to the full realization of the human rights of migrants”.⁴²⁰

The reservations made by Mexico, particularly those concerning the exclusion of due process in the case of expulsion by a representative of the Executive, far from satisfies international standards, either legal or de facto. In particular, having ratified the American Convention on Human Rights,⁴²¹ the Mexican State committed itself to respecting the right every person has to be heard, with the due guarantees and within a reasonable time frame, by a judge or competent tribunal, independent and impartial, for the determination of his rights and obligations for civil, labor, fiscal or other order. Nevertheless, the reality is very different. It is common for detained migrants to be unaware of the reasons for their detention; some are even detained when they have valid migration documents (a violation of legal principles). Those detained do not know how long with they will be detained and are not familiar with procedural regulations. Migration authorities do not respect the right of the detained to be informed in their own language about the process to which they are being subjected, nor are they informed of their rights, making it common that migrants do not know the reasons for their detention or how long it will last.

The right to an adequate defense disappears when the migrant does not even have a copy of his declaration. The State does not ensure the migrant access to legal representation. In some detention centers, not even civil organizations have access to the detained population. The handling of files, when they exist, is done in places physically distant from the location of the detained person. The timeframe in which expulsions or deportations of Central Americans occurs, usually within 24 hours, does not guarantee migrants the right to an audience, nor does it give them the opportunity to defend themselves and to present evidence. Likewise, large scale expulsions of these migrants are common, denying them individual processing. Both in the Migration Station in Mexico City (*Estación Migratoria*) and at Mexico’s southern border, the process has been limited to registering basic data and a declaration by the migrant. This does not cover the minimum requirements needed to determine if the expulsion is individual, and has meant that some Mexicans are confused because they do not carry identification.

⁴¹⁹ In accordance with the General Population Law (*Ley General de Población*), the Secretariat of the Interior (*Gobernación*) enjoys discretionary powers that permit him: a) to authorize or refuse to foreigners their stay in the country when he judges it convenient for national public interests; b) to authorize, refuse or review to foreigners their stay in the country as immigrants or nonimmigrants, in agreement with what the Secretariat itself considers convenient for the public interests of the country; c) to authorize or refuse to foreigners a definitive stay in the country as immigrants, as he deems appropriate for the public interests of the nation; d) in general, to subject foreigners’ entry, exit, internal transit and stay in the country to the conditions and requirements that the Secretariat itself deems convenient for public national interests. The General Population Law does not establish what is defined as public interest, but instead leaves the definition up to the Secretary of the Interior (*Secretaría de Gobernación*, SEGOB), who determines whether the entry, exit, transit and stay of foreigners within national territory is convenient or necessary for public interest.

⁴²⁰ E/CN.4/2003/85/Add.2 October 2002

⁴²¹ We refer here to the American Convention on Human Rights just as an example of the possibilities for protection and as a declaration that states have made voluntarily obligating themselves to protect those rights described here, though this should not be seen as the only means of protection applicable in the region’s countries.

Migrants face serious risks to their security and personal freedom when they travel. Authorities are agents of the National Migration Institute (*Instituto Nacional de Migración*), and various police forces and the military. Among the most commonly reported violations are corruption/extortion, robbery, physical aggression, intimidation/threats, sexual abuse, confiscation or destruction of documents, and detention in jail.⁴²² They also suffer incessant extortion and violence by criminal groups that rob, rape and murder migrants from Central America. These gangs and their criminal conduct have taken advantage of and repurposed migration to include the trafficking of people, weapons and narcotics.⁴²³

In contrast with the seriousness of the risks the migrants face during their transit through Mexico, data are extremely limited; the lack of reporting of accidents, illnesses and deaths caused by migration at the southern border is alarming. Official figures⁴²⁴ only report one maiming in 2002⁴²⁵ and 176 deaths in the last two years (only on the Mexican side of the southern border), which demonstrates a lack of interest in the human cost of migration on the part of Mexican authorities and consular authorities from migrants' countries of origin.⁴²⁶

➤ **Violations of human rights established in International Covenant on Economic, Social and Cultural Rights (ICESCR)**

Both temporary migrants and those in transit suffer a series of violations of their economic, social and cultural rights, in particular their rights to health (Article 12 of ICESCR), to social security (Article 9 of ICESCR), to education (Articles 13 and 14 of ICESCR), to work (Article 6 of ICESCR), to equitable and satisfactory work conditions (Article 7 of ICESCR), to found and join unions and to union freedom and the right to strike (Article 8 of ICESCR), and to the protection of and assistance for their families (Article 10 of ICESCR).

In Mexico those people who manage to enter the formal economy may join institutions such as the Mexican Social Security Institute (*Instituto Mexicano de Seguridad Social*, IMSS) or the Security and Services Institute for State Workers (*Instituto de Seguridad y Servicios para Trabajadores del Estado*, ISSSTE) in order to have free access to health services. However, this right has been restricted for temporary workers by a reform of the Mexican Social Security Institute Law (*Ley del Instituto Mexicano del Seguro Social*), which failed to include provisions that consider their special situation, forcing employers to pay rates equal to those paid for full time workers. Starting with this reform, many coffee cultivators, for example, have rebelled, refusing to pay the fees, leaving their workers without medical coverage. Another example of health-related restrictions includes the National Vaccination Card (*Cartilla Nacional de Vacunación*), which is not issued to child migrants until their legal status in the country is determined.

With respect to the right to education established in Articles 13 and 14 of the PIDESC, Article 3 of the Constitution establishes the right to receive free preschool, elementary

⁴²² Sin Fronteras IAP. "La situación de los derechos humanos de los trabajadores migratorios y sus familias en la región", Op.Cit, paragraph 59.

⁴²³ See the special section on Chiapas.

⁴²⁴ Source: Migration Statistics, Volume IX, No.1, January 2003, Planning and Research Coordination, National Migration Institute.

⁴²⁵ It is known that the number of maimed migrants is much higher, to the point that in Tapachula a shelter was opened recently dedicated especially to their care.

⁴²⁶ Sin Fronteras IAP. "La situación de los derechos humanos de los trabajadores migratorios y sus familias en la región", Op.Cit, paragraph 60.

and secondary schooling. This guarantee is extended to both documented and undocumented migrants. As part of the Convention on the Rights of the Child, Mexico has the obligation to guarantee basic education, independent of the migration status of the person. The General Population Law (*Ley General de Población*) requires authorization for migrants to study only at the higher levels of education. Despite these guarantees, in practice, children and adolescents are forced to present documentation of their legal status in order to enroll in any school. This proof, which they do not always carry with them, is another obstacle for migrant girls and boys hoping to start or restart their schooling.

In order to receive permission to work, the General Population Law requires that the migrant request previous authorization from the National Migration Institute. The person must fulfill various requirements, such as demonstrating technical abilities, presenting an official letter from a company, and proof that the company is fulfilling its fiscal obligations. Migration authorities may deny the request if it is considered “harmful to the economic interests of nationals” (Article 37, IV of the General Population Law). In practice, the migrant worker is vulnerable because his authorization is “tied” to an employer that can rescind the employment contract or report him to the migration authorities for expulsion. Employers fear the fines associated with hiring a person without the required authorization. Frequently employers do not fulfill their fiscal obligations and are afraid to present the requested documents to the National Migration Institute. The delay for authorization (between one and five months) is another factor that discourages the hiring of migrant workers. Other problems include ignorance of the rights of migrant workers and the lack of accessible legal representation.

In 1999, the National Migration Institute began the Program for Agricultural Visitors (*Programa para Visitantes Agrícolas*) in the state of Chiapas, allowing migrants to work during coffee, mango, banana, sugarcane and other harvests. These migrants’ migration status restricts their labor activities to a specific employer and restricts their location to the state of Chiapas; it is valid for one year. This program has been studied by researchers at the Colegio de la Frontera Sur (College of the Southern Border) and by human rights organizations in Chiapas, who have identified several migration and labor irregularities. One of the basic problems related to migrant workers’ labor rights is that the hiring is too restrictive and does not guarantee workers’ access to the system protecting workers, which is in itself weak.

Although migrant workers can participate in unions (their participation is only prohibited from the boards of directors), Mexican unions continue to demonstrate little autonomy or sensitivity to the issue of migration. The National Migration Institute has tried to strengthen migrant workers’ labor protection along the southern border by establishing the Agricultural Visitor Migration Form (*Forma Migratoria de Visitante Agrícola*, FMVA), but this, though valuable, is insufficient. The lack of will is notorious on the part of the Mexican labor authorities, the Conciliation and Arbitration Boards (*Juntas de Conciliación y Arbitraje*), to monitor the fulfillment of the labor rights of day laborers and to intervene to resolve conflicts. For example, in 2002 a group of day laborers working at the Prusia Farm in Chiapas was fired without being paid what the workers were owed for several months’ work. Another discriminatory practice, aimed against women, is the lack of an efficient system for the protection of domestic workers’ rights, made worse in the case of Guatemalan workers in border cities.⁴²⁷

Although Mexico is part of the Convention on the Rights of the Child, in terms of migration the country does not have a system or mechanism for children and adolescents. Civil organizations have reported that the State and consular

⁴²⁷ Op. Cit., paragraphs 58 and 59.

representatives in Mexico neglect to watch for the best interest of child migrants, especially those who are unaccompanied. Mexico has neither practices nor norms that prioritize attention for migrant children. In addition, there exists a norm of non-protection of male children and adolescents once they have reached 12 or 13 years old, because they are no longer considered children and thus no longer fall under the government's protection. Nor does a mechanism exist that guarantees family unification for migrants who are detained, either when they are expelled or deported. Recently, in the facilities of the Migration Station in Mexico City there have been "family cells" set aside. Nevertheless, when a family includes male children older than 13 years old, these children are sent to the male section of the Migration Station. In addition, family visits between members of the opposite sex are made difficult.

The principle of family unity, though legally established as a guide for migration authorities, in practice is not part of authorities' decisions. There have been documented cases of migrant women with Mexican children who are detained for long periods of time and without the ability to see their children. With regard to the issue of children's rights, there exist local bilateral agreements between the Mexican government and the U.S. government that regulate the deportation schedules of women and unaccompanied children migrants, meant to avoid deporting them in the middle of the night, when they may be exposed further to violence and abuse. The states of Baja California (Mexico) and California (U.S.) signed an agreement on December 17, 1998, for the safe and orderly repatriation of Mexican nationals, in which repatriation locations and schedules are established. Sadly, these agreements go unfulfilled and are violated, causing a step backward in terms of migrant protection.

C. Conclusions and Recommendations

The Mexican State continues to maintain a migration policy essentially oriented toward the control of migration flows, providing solutions that only partially address the migration problem and that tend to be coercive for the vulnerable population.⁴²⁸ The migration policy criminalizes and stigmatizes migrants and their families. Migration authorities do not protect migrants' human rights, especially those related to personal freedom, judicial guarantees and access to justice. These policies have been insufficient for confronting the structural causes of migration, including migration's relationship with the economic and social development of the country, and have allowed serious human rights violations against migrants.

Especially worrisome are⁴²⁹:

- The condition of women migrants who work as domestic employees.
- The conditions of detention, expulsion and reception of child and adolescent migrants, especially the discrimination suffered by adolescent migrants by State institutions charged with their care and protection.
- The applicability of legislation, especially with regard to the economic, social and cultural rights of migrant workers.

For the reasons stated earlier, we ask the Committee on Economic, Social and Cultural Rights to recommend that the Mexican State:

- a. Define and adopt a State policy with regard to migration that includes an integrated concept of the processes of migration within

⁴²⁸ Op. Cit., paragraphs 26 and 27.

⁴²⁹ Op. Cit, paragraph 277.

the current framework of globalization and free trade, and that this policy incorporate as an organizing principal respect for human rights. The migration policy should have an international perspective and should include specific actions at the local, national, bilateral, regional and international levels. Important characteristics of this migration policy would include cooperation between origin, destination and transit countries, and better linkages between Mexican authorities and civil organizations promoting migrants' human and labor rights.

- b. Push for the adoption of a migration agreement with the United States that permits the regularization of established undocumented migrants working in the United States, along with the channeling of future migration flows through legal routes. Temporary guest worker programs could play a role only if they fulfill, at the least, the following criteria: enforceable labor rights equal to those of domestic workers; mobility between jobs (i.e., the portability of visas); access by workers to professional training; access to social and health protection; respect for family unity; access to education; and mechanisms to access permanent residency.⁴³⁰
- c. At the same time, it is necessary to work to reduce migratory pressures by focusing on economic and social development policies that respect economic, social, cultural and environmental rights in the communities where migration originates. This work must be done with bilateral cooperation in order to combat criminal organizations that traffic people, and to prevent and avoid dangerous border crossings (which is achieved through the opening of legal routes for immigration).⁴³¹
- d. Full respect for fundamental human rights by the Mexican State, not only for Mexican citizens, but also for other countries' citizens that, for a variety of reasons, find themselves in legally and economically vulnerable positions within Mexican national territory.
- e. It is essential to develop mechanisms to guarantee access to justice for those migrants who have been subjected to human rights violations, so that they can be present and can participate in investigations and administrative and judicial processes meant to guarantee them effective protection. This will prevent states from continuing the practice of expelling migrants because they complain about being victims of human rights abuses.
- f. The state must establish programs and assign resources for the protection of migrants who have suffered human rights violations, which should include at a minimum: legal residency and the right to work, means to guarantee the personal security of migrants and their families, psycho-social support, and temporary shelter.

⁴³⁰ Op. Cit., paragraph 55.

⁴³¹ Op. Cit., paragraph 56.

NATIONAL DIAGNOSIS AND THE NATIONAL HUMAN RIGHTS PROGRAM⁴³²

During the period covered by the IV Periodic Report of the Mexican State to the ESCR Committee, the Technical Cooperation Agreement (TCA) between the United Nations High Commission for Human Rights (UNHCHR) and the Mexican Government was signed and the first two phases of this agreement implemented⁴³³. This chapter offers a general evaluation of the results of the second phase, concerning economic, social, cultural and environmental rights (ESCER), considered in the Diagnosis of the Human Rights Situation in Mexico (in future, the National Diagnosis), and the National Human Rights Program (NHRP)⁴³⁴.

It is noted that a wide diversity of civil and social organizations collaborated with the UNHCHR in undertaking and disseminating the Diagnosis, and although the NHRP had an alternative methodology and development process, some civil organizations presented concrete proposals during the design phase. Both the Diagnosis and the Program have strengths and weaknesses, the latter being most concerning given the grave situation of human rights in the country.

1. The Diagnosis with regard to questions of ESCER

The National Diagnosis was achieved through a participative exercise, even though limited resources and time inhibited the contribution of a greater number of social sectors. Nevertheless, organizations from various parts of the country were visited and consulted by experts from the UNHCHR.

The organizations from Espacio DESC⁴³⁵ (ESCR Space), together with other organizations that participated in the Alternative ESCER Report, held meetings with the experts⁴³⁶ responsible for the preparation of the chapters in the Diagnosis regarding these rights. In one of the first meetings, suggestions regarding essential points that should be considered in the diagnosis were presented. These were as follows: That it...

1. Reflect the integrated nature and inter-dependence of all human rights, from a perspective of the right to development.
2. Include cases of violations of the various economic, social, cultural and environmental rights.

⁴³² This chapter regarding the evaluation of the National Diagnosis and the NHRP was done by DECA Equipo Pueblo, taking into account contributions from Espacio DESC.

⁴³³ The TCA was signed on the 2 December 2000. The first phase, with a focus on torture, took place in 2001. The second phase involved the establishment of a HCHR office in Mexico, with the task of undertaking a national diagnosis (2003) and a national human rights program (2004).

⁴³⁴ Available in: www.derechoshumanos.gob.mx

⁴³⁵ The Civil Organizations Coordination Space for ESCR (Espacio DESC) is a meeting space for civil organizations working in human rights and the promotion of development with a long history in the promotion and defense of economic, social, cultural and environmental rights (ESCER) in Mexico and that has work in an articulated manner since 1998. It is comprised of the following organizations: Casa y Ciudad de Coalición Hábitat México, Cátedra UNESCO de Derechos Humanos from the National Autonomous University of Mexico, Centro de Estudios Sociales y Culturales Antonio de Montesinos (CAM), Centro de Derechos Humanos Miguel Agustín Pro Juárez (PRODH), Centro de Reflexión y Acción Laboral (CEREAL) de Fomento Cultural y Educativo, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), DECA Equipo Pueblo, Defensoría del Derecho a la Salud, FIAN Sección México, Liga Mexicana de Defensa de Derechos Humanos (LIMEDDH), the Regional Office for Latin America and the Caribbean of Coalición Internacional del Hábitat, and RADAR, a collective for alternative law studies. Espacio DESC is the Mexican chapter of the Interamerican Platform for the Defense of Human Rights, Democracy and Development (PIDHDD), and a reference group for networks such as: Social Watch, FIAN International, HIC and the International ESCR Network.

⁴³⁶ Particularity with Mr. Isidro Cisneros and Ms. Clara Jusidman

3. Analyze the role of the three powers (executive, legislative and judicial) with respect to the State's fulfillment of its obligations and, if possible, incorporate the three levels of government: federal, state and municipal.
4. Emphasize the regional disparities that exist in the country, with regard to access and enjoyment of ESCER.
5. Examine the degree to which ESCER have been incorporated into the existing legal framework, as not all are contained in the Constitution and limitations exist for secondary laws. (It was also suggested that the Law for Social Development be evaluated).
6. Evaluate the degree to which international standards regarding ESCER have been incorporated into public policy and sectorial programs.
7. Note the insufficiency and deficiency of mechanisms and legal resources for the protection and defense of ESCER, as well as the high degree of impunity and corruption, the obstacles to accessing justice in Mexico and the lack of recognition by judges of international law regarding human rights.
8. Examine the limitations to mechanisms and non legal resources in matters relating to ESCER, such as the limited capacity of public human rights commissions, amongst others.
9. Consider the negative impacts of the regressive legislative modifications on the full respect of ESCER.
10. Revise the recommendations made by the ESCER Committee to Mexico that have not been implemented by the State, both those of 1993 as well from 1999.
11. Analyze the more structural themes, such as:
 - a) The public budget from the perspective of article 2 of IESCRP, revising the percentages of social spending of the Programmable Public Expenditure and with respect to the Total Net Expenditure, as well as comparing it with other items of the Programmable and Non Programmable Expenditure; the evolution of spending in health, education, social security, housing etc. and the social impact of budget cuts.
 - b) The economic policy resulting from the application of structural adjustment policies of the Multilateral Bank and the impact of commercial and investment liberalization, privatizations, regressive constitutional reforms, the tendencies of the fiscal reform, etc.
 - c) The social policy and the model of focusing on extreme poverty to the detriment of policies with universal coverage.
 - d) The tendency to privatize basic services in order to draw attention to its potential impact on the full access and enjoyment of ESCER, particularly for the high percentage of the population that live in poverty.

Civil organizations also made proposals to the UNHCHR with regard to the methodology to be used. With regard to the objective, it was proposed that not only should the state of human rights in Mexico be investigated and analyzed, but also public policies and the legal framework, given that the objective provides the basis for the National Human Rights Program. In terms of the diagnosis, it was proposed that: the timeframe be extended so as to allow sufficient time for consultation and documentation; the process be participative and inclusive; the experts be supported by an interdisciplinary team; with regard to the processing of information, reference be made to the general observations of the ESCR Committee that contribute to the adequate interpretation of the IESCRP with regard to the State's obligations and the implications of each right; the progression or regression in the implementation of ESCER be reviewed; the regional disparities be reflected, given that the national averages (statistical measures), are more meaningful when used in comparative terms; both qualitative and quantitative indicators be used; the contribution of state and

municipal governments be guaranteed; disaggregated information be used with regard to sex, age and ethnic group; the UNHCHR establish clear criteria to guide and facilitate the presentation and selection of contributions from social and civil organizations; with regard to violations of ESCER, information be gained from both governmental as well as civil society sources⁴³⁷.

It is important to note that with regard to the content of economic, social, cultural and environmental rights, the National Diagnosis has many strengths, but also presents various weaknesses, both in terms of omission as well as due to the lack of understanding of fundamental issues, such as, despite the fact that thoroughly documented contributions were made and close work with the UNHCHR was undertaken regarding the right to adequate housing, the Diagnosis does not reflect the central concerns and recommendations of specialized organizations, presenting, instead, a partial panorama of the problem.

With regard to its strengths, it is significant that the Diagnosis reflects the contributions made by various organization in terms of the impact of the economic policy on the enjoyment of ESCER. The social and civil organization that have been monitoring and evaluating the structural adjustment policies (STP) applied in the past 20 years in Mexico have documented and publicly denounced their economic, social, cultural and environmental impacts and demanded that the Federal Executive and Legislative Powers end these policies as they result in the deterioration of life conditions of the people. The policies are considered to be a systematic violation of human rights and as such, an assault against the security of millions of people in the country⁴³⁸.

In this regard, the National Diagnosis recognizes the following structural problems in Mexico⁴³⁹:

- The model of economic opening to the external market and the promotion of foreign investment as a means of growth, since 1995, has not fulfilled the aim of reactivating sustainable economic growth for the country nor has its application in Mexico been socially responsible.
- The conditions that have been accepted in agreements and conventions with international finance organisms and the free trade agreements and treaties, frequently undertaken in an rapid manner and with little participation and transparency, have limited the capacity of the Mexican government to autonomously define social and economic policies and have subordinated social programs and policies to the free market economic agreements.
- Twenty years of State dismantling, privatization of public enterprises, opening up of markets, inflation control, balanced budgets, insufficient and volatile credit availability, disloyal competition to national producers, elimination of subsidies, salary control and market de-regularization, amongst the more notable economic policies, have resulted in changes in the productive structure of the country and have had profound repercussions on the standard of life and the economic, social and cultural rights of people and families.

⁴³⁷ Based on: "Methodological Proposals for the undertaking of the National Human Rights Diagnosis in Mexico, considered in the second phase of the Technical Cooperation Agreement", by Areli Sandoval and Domitille Delaplace (Equipo Pueblo) and Pilar Berrios (CAM), representing Espacio DESC, Mexico, mimeograph, October 2002.

⁴³⁸ For more information, see Report of the Citizen's Evaluation of Structural Adjustment/ CASAA-SAPRIN (www.equipopueblo.org.mx). Information in this regard is also contained in the document of pre-session questions send to the ESCR Committee in November 2005 to be considered by the Working Group prior to the period of sessions that prepared the list of questions for Mexico.

⁴³⁹ UNHCHR, Diagnosis regarding the Human Rights Situation in Mexico. Mundi-Prensa Mexico, 2003, pp 73-74.

On the other hand, the constant reference to the scarcity of resources in the National Diagnosis is extremely concerning, as it conditions the fulfillment of the State's obligations on the increase in resources through fiscal reform. While such a reform is considered to be necessary, this is not a pre-condition for the Mexican State to begin fulfilling its obligations with regard to the International Economic, Social and Cultural Rights Pact (IESCRP).

The IESCRP is very clear on the State's obligation to designate the maximum funds possible for the progressive accomplishment of the rights contained in the Pact and the General Observation No. 3 of the ESCR Committee regarding the nature of the State's obligations, establishes that the scarcity of resources and the clause regarding the implementation or progressive effect of ESCR does not mean that the State can indefinitely put off its efforts in the matter, or wait until it has reached a determined level of economic development. On the contrary, it demands that the State acts as rapidly as possible for the full respect of these rights. Similarly, the scarcity of resources does not exempt the State from certain minimum essential obligations in matters of economic, social and cultural rights. The clause regarding progressive effect, under no circumstance, justifies the lack of expedite, constant and effective action on the part of the State. In addition, States have obligations of immediate effect, such as:

- (a) Obligation for non-discrimination
- (b) Obligation to adjust the legal framework (legal harmonization)
- (c) Obligation to produce and publish information
- (d) Obligation to provide legal resources and other effective resources
- (e) Obligation to guarantee essential levels of rights, independently of the availability of resources in the country concerned or other factors or difficulties
- (f) Obligation for the progression of rights and the corresponding prohibition of regression
- (g) The training of functionaries and public servants, as well as public awareness campaigns and the promotion of a human rights culture in the country

Each of these obligations of immediate effect should translate into recommendations within the National Diagnosis, so that these can be taken up as priority within the NHRP. However, the experts that undertook the National Diagnosis ignored the previous dispositions and, in this way, favored the arguments given by the Finance and Public Credit Secretary regarding the insufficiency of resources and the inability to invest more in social development. As shown in the chapter regarding economic policy and the public budget of the Alternative Report, the problem in Mexico is more one of priorities and the adequate distribution of resources.

In general, the Diagnosis also does not refer much to the lack of access to justice and efficient legal resources on a national level in matters of ESCER. It also does not make reference to the problems of impunity and the lack of adequate compensation, in the form of restitution, rehabilitation and satisfaction or guarantee of non-repetition.

It has also been noted that the National Diagnosis does not contain explicit references to the obligations of the Mexican State with regard to the IESCRP. Had the proposals and recommendations been grounded in a human rights perspective, they would have carried more weight and been more effective with regard to the National Human Rights Program.

2. The NHRP with regard to ESCER

It is emphasized, to begin with, that with the development of the NHRP, the Mexican government finally complied, in 2004, with a recommendation that dates from 1993 when the World Human Rights Conference in Vienna urged countries to develop a national plan.

As part of the process of developing the NHRP, civil organizations participated primarily through the Sub-commissions of the Governmental Policy Commission in Matters of Human Rights, although participation mechanisms through the internet and regional forums were also established. Nevertheless, these mechanisms were insufficient to generate adequate social participation⁴⁴⁰.

With respect to access to documents, some of the drafts were made available through the Sub-commissions, and comments and concrete proposals could be made. While some of these were considered, others were not. It is worth mentioning that in some cases, the reason why the proposals had not been included was not known, while in others, explanations were given. This was the case of the NHRP working group of the Sub-commission for Economic, Social and Cultural Rights (Sub-commission ESCR) of the Governmental Policy Commission in Matters of Human Rights, where it was argued that the proposals had been left out given the refusal of the Finance and Public Credit Secretary to accept the inclusion of any action that would imply the expenditure of resources.

The Technical Cooperation Agreement notes that one of the main contributions to the development of the NHRP was the Diagnosis of the Human Rights Situation in Mexico. However, the text of the NHRP does not allude to all the recommendations of the Diagnosis. The NHRP should recognize the structural deficiencies that result in the violation of human rights in the country as a basis for the necessary action to combat them. Unfortunately, these do not appear in the chapter *Where are we?* and, as a result, neither are structural reforms reflected in the rest of the program. With regard to the lines of action, it is lamentable that in many cases, these are established without any effectiveness and fail to reflect a true commitment. This can be seen through the frequent use of verbs such as, “promote”, “foment”, “monitor”, etc. as opposed to the less used “guarantee”, “assure”, “assume” and “implement”. In addition, the lines of action in many cases are very broad and, in general, do not assign responsibility nor provide mechanisms for executing them. These should have been presented in such a way as to facilitate their execution, evaluation and measurement of fulfillment⁴⁴¹.

With regard to the content of the NHRP, it is noteworthy that, based on proposals from civil organizations, allusion is made to the importance of social and economic policies in matters related to economic, social, cultural and environmental rights. However, the main proposal presented by the organizations of the Sub-commission ESCR: to recommend and order the review of social and economic policy programs in the light of the principles and obligations of the State in matters of ESCER, is not reflected. Including the evaluation of implemented programs or reform initiatives that would allow for an appraisal of whether to continue with or modify them, would have been fundamental in order to demonstrate the political will to change.

⁴⁴⁰ As a result of methodological obstacles and the difficulty in communication with government, various civil organizations considered that there had not been optimum conditions for participation and advocacy and prepared a citizens' proposal regarding what a national human rights program should consider.

⁴⁴¹ These commentaries were made public in a press bulletin of 11 December 2004, expressing the position of civil organizations with regard to the NHRP.

For the civil organizations involved in the Alternative Report, the revision and reorientation of existing policies and programs by government entities is crucial, given that these were not designed from a human rights perspective. This revision would permit the evaluation of whether current government actions respect, protect and promote human rights, and if not, facilitate the correction of the negative effects that they may be producing, such as discrimination. Similarly, it would favor the reorientation of policies, including the redesign of programs where necessary, in order to meet the general objectives of the NHRP, and in particular, the specific objective 1.3 that refers to the introduction of a human rights perspective in the design, implementation and monitoring of public policies of the Federal Public Administration.

It is also considered that there was insufficient understanding of the State's obligations with regard to ESCER, as well as insufficient political will on the part of some government dependencies when they made their proposals for lines of actions to the Interior Secretary, responsible for the integration of the NHRP. This meant that in the chapters that make reference to ESCER, there is no commitment to review, and where necessary adjust or re-orientate, existing policies nor prioritize the assigning of resources.

Of particular concern is the exclusion, in the section dedicated to lines of action with regard to economic, social and cultural rights, of many of the recommendations made by the National Diagnosis, which could be considered highly pertinent and viable and that in addition, correspond to recommendations made by international organisms, including the Committee for Economic, Social and Cultural Rights. In this sense, it is important to question the Mexican government as to what will happen to all the recommendations not considered by the NHRP, with the understanding that the necessity to prioritize some of the recommendations in order to implement the Program, should not mean the failure to attend to others.

As part of the monitoring of the NHRP, the strategic line regarding the fulfillment of the recommendations of international organisms in matters of human rights could be complemented with the commitment to periodically analyze the fulfillment of recommendations not included in the NHRP, by dependencies of the Federal Public Administration. Sight should not be lost of the fact that the rest of the objectives and lines of action of the Program are also directly related to the international obligations of the Mexican State in matters of human rights. Although this may appear to be obvious, in practice, many government entities, both from the federal public administration as well as from the federal entities (state and municipal governments) do not appear to understand, consider or accept that they too have a role to play in the fulfillment of these legal obligations.

SELECTION OF RECOMMENDATIONS INCLUDED IN THE ALTERNATIVE REPORT ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS

Access to Justice

Habeas corpus, the most important procedure used to defend rights, has been limited to civil and political rights. Non-judicial procedures, such as the Public Human Rights Commissions, have limited jurisdiction (for example, with regard to labor rights) and their recommendations are not binding.

This lack of jurisdictional resources and appropriate procedures forces many people and movements that fight to defend rights to resort to resistance and other defense strategies. These strategies, not anticipated by existing institutional structures, are used by State actors to pursue and criminalize those citizens who fight to expand democratic margins.

To the Executive, Legislative and Judicial Powers

- Concerned about the inadequate legal procedures in Mexico permitting citizens to defend before tribunals the rights outlined by the ICESCR, we ask the Economic, Social and Cultural Rights Committee to recommend that the Mexican State fulfill its obligation to adapt its national legislation to match ICESCR and to design better procedural mechanisms for the defense of economic, social and cultural rights via legal routes.

Economic policy

To the Executive and Legislative Powers

- Fulfill its obligations in the area of ESCER, assigning mainly to the social policies the available resources. Although Mexico requires additional internal and external resources, social development and the respect, protection and promotion of ESCR cannot be conditioned on obtaining new resources, when what is being assured with the resources that exist is bank recovery and the punctual payment of external debt.
- To respect the primacy of the international human rights law established in the UN Charter before any other treaty (about trade, investment, etcetera)

Social policy and poverty

To the Executive Power

- Design in a participative manner, social and anti-poverty policies that are truly grounded on a human rights perspective, congruent with the provisions of the ICESCR.
- Not forget that ESCER are rights of all the population and not only of the poorest. Therefore policies of a universal nature must not be substituted, but only complemented with focalised policies.

Right to self-determination

To the Executive Power

- Promote social participation and the construction of consensus in the definition of public policies for development.
- Assure that the regional development policies, plans and programmes are based on and respect human rights, in particular the ESCER of the population.
- Provide opportune information, carry out appropriate public consultation processes in accordance with national and international norms, and guarantee a broad participation of the affected population and the organisations interested in all of the phases of the development projects (design, approval, planning, execution and evaluation).
- Cancel all regional development programmes and projects that do not have the consent of the affected population and which imply human rights violations.
- Respect the right to self-determination of the communities and peoples, in particular respecting the right to freely dispose of their natural wealth and resources, to pursue their economic, social and cultural development, and to not be deprived of their own means of subsistence.

To the Legislative Power

- Legislate so that the federal, state and municipal governments consider and respect the opinions of the local populations and communities, particularly indigenous peoples, respecting their usages and customs, in regards to those investment and development programmes and projects that have a concrete impact on the territory where they live.

Equality of rights for men and women

To the Executive Power

- Guarantee equal access to economic, social, cultural and environmental rights, conducting research and qualitative analyses that note the significant impact of governmental decisions on women's daily lives.
- Promote cultural change to value and equitably distribute housework and guarantee its economic recognition, to build government-run childcare options, and to coordinate school hours with those of work hours.
- Guarantee the unrestricted respect of the lay State as an important framework for the diversification of ideas and for respect for individual guarantees.

To the Legislative Power

- Guarantee the continuity of the coordination process for on-going topics such as abortion and violence.

Right to work

To the Executive Power

- To veto regressive legislative measures on labor issues
- To design and implement an employment policy and a national employment program.

- To look for ILO technical assistance on employment policies and the implementation of conventions (including Convention 169 on Indigenous and Tribal Peoples)

To the Legislative Power

- Ratify ILO Convention 44 concerning Unemployment to ensure benefit or allowances to the involuntarily unemployed.
- Ratify ILO Convention 138 concerning Minimum Age for Admission to Employment
- Ratify ILO Convention 158 concerning Termination of Employment at the Initiative of the Employer

To the Judicial Power

- To Guarantee access to justice in work conflicts, especially those concerning to massive lost of jobs.

Right to just and favourable conditions of work

To the Executive Power

- To stop economic policies that restrict the minimum wage and to accomplish the previous Committee's recommendation to adjust minimum wage to obtain the officially set basic food basket according to article 123 of the Mexican Constitution and article 7 (a) (ii) of the Covenant.

To the Legislative Power

- To legislate against discrimination at work
- To harmonize national laws with the international human rights law in order to guarantee the access to a dignified wage.

Right to social security

To the Executive Power

- To carry out a critical analysis of the viability of the ongoing Afore's system and its correspondence with the right to social security.

To the Legislative Power

- To strengthen the social security system with public budget.
- To avoid the adoption of regressive legislative measures.
- To harmonize national laws with the international human rights law in order to guarantee the right to social security.

The right to protection and assistance to the family: protection of all children and young persons

1) Childs Internment

To the Executive, Legislative and Judicial Powers

- Adopt legal, administrative and judicial measures for:
 - To define to the authorities that are considered competent for the objectives of the children's internment.
 - Establish the circumstances that are taken into account to decide the boy's internment for their attention, protection or treatment.
 - To establish the frequency of periodic exams of the internment and

- applied treatment.
 - To respect the dispositions and principles of the Convention, in particular the non discrimination, the children best interest and the respect to the boy's opinion.
- The lack of formal legal or administrative measures each boy's periodic exam that has been placed for the objectives of care and protection in institutions or substitute families to assure welcome. To examine the adaptation of the internment or the progress of the treatment given to the boy or girl, and to establish guarantees against eventual abuses.

2) Adoption and custody

To the Executive Power

- The promotion of public policies to avoid that poverty be a reason to give in adoption a boy or a girl to promote the national adoption and generate professional structures to determine the social and legal measures for the protection of girls and boys subject of adoption

To the Legislative Power

- The legislation lack that regulates the international adoptions and to the organizations dedicated to promote it.

3) Protection to children against all type of violence

To the Executive Power

- To favor the creation of appropriate environments for the upbringing and education without violence through, among other things, the attention to the structural factors that generate the violence: poverty, exclusion, discrimination for age reasons and gender.
- To elaborate efficient policies to prevent the abuse and mistreatment to the children, as well as the appropriate rehabilitation of the victims.
- To enlarge and to diversify campaigns to modify the rules and practical cultural that favors the violence toward the childhood.
- To establish multidisciplinary treatment programs and rehabilitation, to avoid and to combat the abuse and mistreatment of the childhood inside the school, family and general society.
- To enlarge and to strengthen programs of appropriate and expedite attendance for family, teachers and other adults that can be potential abusive, mainly in areas of difficult access for their social or economic conditions.
- To stimulate participation of the civil society in the development of programs to prevent and to assist the violence starting from appropriate methodologies.

To the Executive and Legislative Powers

- To promote legal measures to prohibit all type of violence toward the children (including the physical punishment and another type of inhuman or degrading treatment.

To Judicial Power

- To reinforce the procedures and appropriate mechanisms to process the accusations of children's abuse with object of giving to these an express and appropriate access to the justice.

4) Justifiability for Girls and Children victims

- Due to the facto lacks that the childhood suffers of mechanisms for justicialise the rights of Girls and Children victims that is one of the indispensable elements

for the keeping of the rights set in the article 19 of the Convention. Legal reformations and office workers should be carried out to guarantee this right.

Right to protection and assistance to the family: protection of maternity

To the Executive, Legislative and Judicial Power

- it is urgent and necessary that all of the states advance towards extending the causes for legal abortion in the view of homologation in all of the country
- The Mexican State, laic and democratic, has the obligation to promote a legislative policy, congruent with its characteristics, based on objective factors to attend to the health of women that decide to interrupt an unwanted pregnancy, who are put at risk through the clandestine conditions that abortion is currently practised in.

To the Executive Power

- The promotion of sexual rights and of reproductive rights as an integral part of the right to health and the right to the promotion and assistance to the family is an absent issue in public policy. Sexual education in the framework of human rights is essential for the exercise of these rights and to contribute to the transformation of cultural patterns
- Promote universal access to doctors, timely care, and quality services as priority conditions that should be attended to in order to bring to a halt the death of women from being pregnant.

Right to food

To the Legislative Power

- Recognising the right to food in the Constitution, for which we request that the Deputies and Senators ratify in a short time period the legal initiative approved in the Senate on 28 December 2003. If this is done, the application and regulation of the approved constitutional article is recommended.

To the Executive Power

- That the human right to food be the basis for the realisation of all food policies that truly propose to solve this problem, which impedes millions of Mexicans from having a dignified life, free from hunger.
- Likewise, to guarantee the right to adequate food, it is essential to guarantee food security and sovereignty, and the indigenous and peasant communities' control over their lands and access to their productive resources: land, water, and seeds.
- An integral agrarian reform that guarantees access to land for peasants, indigenous peoples, and rural workers and the application of adequate policies based on human rights. These processes should take into account the participation of the communities.
- Stop the privatisation of water and its contamination by public and private companies and promote a sustainable access to it.

Right to Water

To the Executive and Legislative Power

- Recognising the right to water in the Constitution

- To harmonize national legislation regarding water, in particular the Law of National Waters (*Ley de Aguas Nacionales*), according to international human rights standards (ICESCR, General Observation Number 15, etc); and stop the privatization process, which in some regions of the country has already caused human rights violations by denying access to water to some people because of the rising prices of the water services associated with privatization.

To the Executive Power

- Fulfill the obligation to guarantee access to potable water to the most vulnerable people.

Right to adequate housing

To the Executive, Legislative and Judicial Power

- To accomplish the UN Special Rapporteur Miloon Kothari recommendations to the Mexican State, especially: that the legislators incorporate Mexico's international obligations concerning the international human rights law (security of tenure of housing and land, self-built housing, and measures against forced evictions and displacements)
- To accomplish ESCR Committee's previous recommendations on housing policy and forced evictions.
- To monitor and control the role of private sector in housing production at the light of the human rights international law.

Right to health

To de Executive and Legislative Power

- To stop progressive minimisation of the services granted to the “open population”
- To meet the urgent needs of sufficient and adequate supplies (materials, equipment) and medicines in public hospitals and centres for health attention.
- To guarantee enough public resources oriented to the public health system to stop deterioration of the quality of its services and to increase the availability of infrastructure.
- To increase the prevention efforts, particularly in regards to the sexual transmission of the HIV/AIDS epidemic, focused especially on the most at risk groups to avoid moving close to a point where there will not be enough resources to provide treatment and medicine to the persons who live with AIDS
- To guarantee access to information and adequate public services to young people, especially on sexual and reproductive health matters.
- To review and reorient the People’s Health Insurance or “Seguro Popular” at the light of international human rights law to guarantee that it is not an instrument that institutionalises regression in the right to health in Mexico through violating the principles of being universal and free as recognised in the Mexican Constitution, and generating mechanisms and infrastructure to offer attention on HIV/AIDS treatment abortion in the cases permitted by the current legislation (particularly resulting from rape) the different forms of cancer or compound fractures, among others.

Right to a healthy environment

To the Executive and Legislative Power

- Increase the budget of the offices in charge of environmental management, particularly within SEMARNAT and its decentralised and distributed offices. Mainly there is a need to increase the resources of the Attorney General's Office for the Protection of the Environment.

To the Executive Power

- To implement training programmes for public officials in charge of environmental management.
- Continuing with the training efforts for the offices in charge of providing information is necessary in order to generate a new culture in the labour environment. Likewise, the authorities' obligation to conserve information in order to make it available to the public should be insisted upon.
- SEMARNAT needs to integrate, strengthen and organise the National System of Environmental Information and Natural Resources so that, as is established in the LGEEPA, it registers, organises, updates, and disseminates environmental information, not only the information the system and the decentralised offices have, but also that which comes from the other ministries, and the states and municipalities, in order to have compatibility and integration plans.
- Within the information request system, the installation of training programmes for the personnel of the liaison committees of each office is necessary so that they fulfil their work with efficiency and quality. Likewise, it is necessary for the main municipal heads to have computers and Internet access so that the communities have the possibility of using the information request system. Additionally, it is necessary for the Federal Institute of Access to Public Information to promote more training workshops on the use of the national system of environmental information.
- To Implement land ownership regularisation programmes in the protected areas is necessary in order to provide legal security to the owners and holders of the plots within the area.
- Strengthening educational programmes is important so that the issue of environmental education is given a fundamental role. It is necessary to incorporate the criteria that environmental education should be subject to; these criteria should be established by the federal government.

To the Legislative Power

- A legal reform of the different applicable instruments is necessary in order to effectively execute the protection of the right to a healthy environment. This would start with an integral reform of article 4 of the Constitution, followed by reforms to the Civil Code so that its provisions anticipate the legal hypotheses necessary to adequately assign responsibility for environmental damage, a reform of the Penal Code so that it envisages the guarantees necessary for environmental protection, and finally a reform of the General Law on Ecological Equilibrium and Environmental Protection and the associated regulating laws, such as the Fishing Law, the General Law of Wildlife, the Water Law, the Sustainable Forestry Law, in order to foresee administrative mechanisms that are sufficiently developed to be able to enforce access to administrative justice. Likewise, it is also necessary to adjust the internal legislation of the National Human Rights Commission so that the right to a healthy environment can be included as a right within the faculty of the Commission as a first recourse, and that it be provided with the same importance and treatment as the other rights that are within the competence of the Commission.

- In regards to social participation, even though the environmental law and the sector-specific laws contemplate different spaces for participation, as well as bodies for carrying this out, adequate rules for its effective regulation are necessary. Likewise, issuing the internal rules for the different consultation bodies that have been create to date is needed in order to promote social participation in the creation, execution, evaluation and monitoring of environmental policy. Said rules should include procedures and mechanisms that ensure the effectiveness of the recommendations and proposals of its members.
- Establishing clear norms to avoid discretionally by the authorities in considering the proposals and observations derived from a public participation process is needed; this could be observations regarding a law, an official Mexican norm, a public consultation on environmental impact assessment, etc.
- In the specific case of the Environmental Impact Assessment, implementing modifications to the LGEEPA and its rule on environmental impact issues is necessary so that public will is guaranteed in the environmental impact statements, as well as to remedy the discretionary faculty of the authority to decide whether or not to implement a public consultation, and to establish an obligation so that the proposals and observations within this consultation process have a significant weight and that the authority is responsible for taking them into consideration.
- In regards to natural protected areas, establishing decrees that provide certainty on the purpose, limitations and modalities of the property, as well as the work and activities that are being carried out or could be carried out within a natural protected area is necessary, given that currently in many cases the communities who belong to the area in question are affected not only by the decree creating the area but also by the modalities contained in the management program. In light of this, it is also necessary to establish viable development plans that would allow for the identification of natural protected areas as productive areas and which guarantee in the long-term an adequate use of the natural resources.
- In regards to indigenous law, promoting the development of legislation that contemplates environmental protection as a basic support of the indigenous communities, as well as the protection of traditional knowledge and the equitable distribution of the benefits derived from the use of wildlife is necessary. In particular, it is necessary to comply with article 8 J of the Convention on Biological Diversity.

Right to education

To the Executive Power

- To adopt measures to strengthen the incorporation, access and permanence of indigenous children and adolescents in basic education.
- To support the elaboration of schooling programmes for migrant children and agricultural under age workers.
- To guarantee basic education in the penitentiary system.
- To encourage an adequate infrastructure at school centres.
- To improve labour conditions for teachers and re-value their teaching activities.
- To intensify the programmes for school retention.
- To adopt an indicators system which would be receptive to populations in indigenous communities, those living rural areas, those living in extreme poverty and the disabled.

- The State must promote administrative and curricular de-centralisation processes
- To adopt measures to avoid labour union conflicts from affecting the provision of education services.
- To increase the number of students at public and autonomous universities, either by increasing the registration number of students in existing universities or by establishing more public universities.
- To keep the number of students in rural teaching training colleges and to respect the students' rights
- To respect the teachers' labour human rights.
- Education, as a fundamental tool to reduce poverty, is incompatible with the concept of charging for the right to enrol, which prevents poor children's from accessing education because they lack resources, which at the same time, impedes them from getting out of poverty.

To the Legislative Power

- To incorporate in the General Law on Education the international and constitutional principles on multi-ethnicity.

Cultural rights

To the Executive and Legislative Power

- Have an *integral proposal* to resolve the legislative shortcomings related to creation, the promotion of culture, and patrimony preservation.
- *The cultural institutions should be autonomous* and autonomy should not be confused with privatisation.
- *Cultural policies should be independently established.* The cultural institutions should be guided by the principle of the division of fields, preventing political decisions from modifying those of a technical nature, or of interfering with the creation or promotion of culture.
- *The institutions should be professionalised.* The law should establish rigorous requirements for the directive posts of the cultural institutions.
- *The legislation should avoid a conflict of interest in the headquarters of the public offices.* Independent instances should exist to watch over, endorse, impede or sanction the practices and policies of the offices in charge of remodelling, research, restorations, excavations and exhibits.
- *The National Council on Culture and Arts should be reformed*, not so that it obtains the level of ministry or under-secretariat, but rather so that its executive capacity is not limited to those of a coordination office.
- *The cultural institutions require budget autonomy.* It is indispensable that the budget for cultural institutions is assigned based on a percentage of the Gross Domestic Product, as is established by UNESCO.
- *Private and social participation in the state cultural policies and programmes should be regulated.* This participation should be feasible and promoted, but not outside of the law, responsibility and accountability.
- *There should be mechanisms to evaluate the cultural institutions that support themselves* partially by external, collegiate and plural bodies, and base their work on reasoned criteria published beforehand.

Special section on Chiapas

We request that the UN Committee on ESCR recommend to the Mexican State:

- That it assure that the social programmes carried out in the rural communities, and particularly in the indigenous communities, strengthen the universality of human rights and mechanisms of community participation.
- That it guarantee that the programmes and public resources are not used for political-party ends, particularly in electoral times, by preventing the conditioning of the provision of public services and access to programmes, among others.
- That the social programmes directed at improving the living conditions of the indigenous population are focused on strengthening and developing local capacities, and avoid dependency.
- That the social development programmes include mechanisms for the participation of the population in the design, monitoring, and evaluation of its application, as well as criteria for their cultural and seasonal appropriateness.
- That the support be increased for the development of integral programmes that have a proven positive impact, allowing for a gradual improvement of the local capacities and community infrastructure.
- That the Mexican State respect the right of the *ejidos* and communal property to decide if they will or will not join PROCEDE and PROCECOM and that it not establish any conditioning in order to continue to receive the benefits of the public services and programmes.
- That the right of the indigenous communities to be consulted as established and accepted by the Mexican government upon ratifying the ILO Convention 169 be respected.
- That the social programmes promote and actively support inclusion and tolerance and that they be designed and carried out in consultation with all of the community members, regardless of their political or religious affiliation. A social policy that jointly assists in the reconstruction of the social fabric is the best contribution to creating better opportunities for the enjoyment of ESCR.
- That the community divisions be considered a risk factor and that the social programmes avoid a greater polarisation, actively promoting non-conditionality, non-discrimination and tolerance as conditions for their implementation, particularly in regions with high levels of social conflicts.
- That the cases of human rights violations resulting from political and religious intolerance be investigated and punished and that intensive education campaigns on tolerance, respect for differences, and peaceful conflict resolution be implemented.

Public Budget

To the Executive and Legislative Power

- To take measures to avoid the under-spending of the budget approved for social issues and the over-spent in other areas.
- To ensure broad citizen participation in the Budget Process, particularly in the legislative discussion of the budget and the evaluation of the impact of public spending in the realization of ESCR.
- To guarantee accountability of Public Officials and Strengthening the Capacity of the Auditing Institution to Sanction
- To clearly establishes in law the provisions and obligations associated with a medium-term budget framework, and according to it the executive would be obligated to present revenue and expenditure predictions for at least three years after the fiscal year of the budget being discussed, and to distinguish clearly in the budget document the cost and expected impact of any public

policy reform, especially any significant new programs, with information that also provides forecasts covering at least three years.

- To reform the Performance Evaluation System with two objectives: performance indicators and goals must adequately reflect whether the government acts to the maximum of its capacity; and indicators must be incorporated to evaluate the impact of spending on the social and economic realities that are targeted by public policy actions
- Along with the reforms to create an effective performance evaluation system with indicators that actually measure the efficiency and effectiveness of spending, the legislators and society in general must be involved in this evaluation. For this, the medium term budget framework is first necessary, allowing for specific follow-up to public policies over prolonged periods.

Human rights of migrants

To the Executive Power

- Define and adopt a State policy with regard to migration that includes an integrated concept of the processes of migration within the current framework of globalization and free trade, and that this policy incorporate as an organizing principal respect for human rights. The migration policy should have an international perspective and should include specific actions at the local, national, bilateral, regional and international levels. Important characteristics of this migration policy would include cooperation between origin, destination and transit countries, and better linkages between Mexican authorities and civil organizations promoting migrants' human and labor rights.
- Push for the adoption of a migration agreement with the United States that permits the regularization of established undocumented migrants working in the United States, along with the channeling of future migration flows through legal routes. Temporary guest worker programs could play a role only if they fulfill, at the least, the following criteria: enforceable labor rights equal to those of domestic workers; mobility between jobs (i.e., the portability of visas); access by workers to professional training; access to social and health protection; respect for family unity; access to education; and mechanisms to access permanent residency.
- At the same time, it is necessary to work to reduce migratory pressures by focusing on economic and social development policies that respect economic, social, cultural and environmental rights in the communities where migration originates. This work must be done with bilateral cooperation in order to combat criminal organizations that traffic people, and to prevent and avoid dangerous border crossings (which is achieved through the opening of legal routes for immigration)
- Full respect for fundamental human rights by the Mexican State, not only for Mexican citizens, but also for other countries' citizens that, for a variety of reasons, find themselves in legally and economically vulnerable positions within Mexican national territory.
- the state must establish programs and assign resources for the protection of migrants who have suffered human rights violations, which should include at a minimum: legal residency and the right to work, means to guarantee the personal security of migrants and their families, psycho-social support, and temporary shelter.

To the Executive, Legislative and Judicial Powers

- It is essential to develop mechanisms to guarantee access to justice for those migrants who have been subjected to human rights violations, so that they can be present and can participate in investigations and administrative and judicial processes meant to guarantee them effective protection. This will prevent states from continuing the practice of expelling migrants because they complain about being victims of human rights abuses.