

REPORT N° 14/93
CASE 10.956
MEXICO
October 7, 1993

BACKGROUND

1. FILING AND PROCESSING WITH THE COMMISSION

On May 6, 1991, the Inter-American Commission on Human Rights received a communication wherein Mr. Luis Felipe Bravo Mena of the Partido Acción Nacional (National Action Party - PAN) denounced numerous irregularities in the elections held in the State of Mexico between March and November 1990, which violated the political rights of the citizens of the State in general and of the Municipality of Naucalpan de Juárez in particular. This petition was forwarded to the Government of Mexico on October 17, 1991.

On February 14, 1992, the Government of Mexico replied to the Commission stating, in brief, that the IACHR did not have competence to take cognizance of the complaint, requesting that the Commission find it inadmissible on the grounds that internal remedies had not been exhausted and pointing out that the facts in the case did not constitute violations of the Inter-American Convention on Human Rights. The pertinent part of this reply were forwarded to the petitioner on March 2, 1992.

On April 27, 1992, after having been given an extension for purposes of presenting observations, the petitioner sent an analysis of the Government's reply and his assessment of its content; he basically reiterated the arguments put forward when the petition was first presented.

The petitioner's observations were forwarded to the Government on June 5, 1992, and the latter's reply was received on August 4, 1992. There, it presented its final observations and confirmed the position that it had taken in its original note.

On March 12, 1993, during its 83rd session, the Inter-American Commission on Human Rights carefully examined this case and decided to adopt Report No. 7/93 on a provisional basis. Said report was sent to the Government of Mexico, which was given 90 days in which to respond.

In that report, in application of the provisions of Article 41.b of the American Convention and in consideration of the provisions of Articles 1.1 and 2 thereof, the Commission stated that:

The Inter-American Commission on Human Rights reminds the Government of Mexico of its duty to adopt the internal measures, in accordance with its Constitution and laws, to ensure full exercise of political rights, particularly

in relation to the effectiveness and suitability of the remedies established under domestic law, so that the citizens of that country may have simple, prompt and effective recourse, free of needless formalities that weaken their efficacy, to protect all the rights recognized in the American Convention on Human Rights, without distinction.

Concerning the configuration of the electoral bodies, the Commission must underscore how important it is for representative democracies that the general conditions under which elections are held guarantee that all groups that participate in the election process do so on equal terms".

The Commission also asked the Government of Mexico to "adopt the necessary measures" and offered to cooperate with the Government in any measures necessary to accomplish the objectives of full observance of political rights in that country.

On June 3, 1993, the Government of Mexico sent its observations on the Report adopted by the Commission and asked that the IACHR:

- Order that the case be closed, since the grounds for the petition no longer obtain.
- Declare the petition inadmissible based on the evidence cited and the information subsequently reported; or
- Consider the matter settled, in light of the measures taken within the framework of domestic law and referred to at (...) of this document.

In its reply, the Government of Mexico commented on the contents of the Commission's report, stating that "the Commission has a number of observations that can be easily acted upon; in fact, Mexico had introduced them into its laws even before the confidential report in question was approved (...). Other suggestions will require gradual measures that will be viable to the extent that the legal system is applied (...). But other observations go further than the petition and overstep the legal framework of the system agreed upon in San José (...)."

The Commission will begin by addressing the analysis of the case itself and, before making its final observations, will consider the arguments brought by the Government of Mexico in its brief.

2. THE ISSUES RAISED

2.1 Background to the communications:

In the State of Mexico, a State Party constituted as a Federal State of the United Mexican States, elections were held in 1990 to elect new members to the local congress and officials of the 121 local governments in the state.

The election process began in March and ended the first week in December, when the State Election Commission declared the results of the elections held on November 11, 1990, final.

2.2 Summary of the arguments of the petitioner (communications of May 6, 1991, and April 27, 1992):

The petitioner describes a variety of irregularities that occurred during the election days and that, in his judgment, create a reasonable doubt as to the validity, authenticity and legality of the voting; his chief arguments are that there was no clear distinction between election officials, government officials and members of the Partido Revolucionario Institucional (Institutional Revolutionary Party - PRI); official election-related documents, such as ballots and the records of poll openings, ballot counting, and poll closings were distributed and delivered in vehicles bearing PRI campaign advertising; public funds were used for electioneering purposes, building public works and providing services with political strings attached.

The petitioner stated, in particular, that there were serious anomalies in the elections held on November 11, 1990: 80% of the individuals selected to serve as poll officials were deliberately replaced; at the last minute, over 20% of the polls were relocated away from their officially designated sites; the guarantees that enable voters to cast their votes freely and in private were lacking; the proper furnishings for voting were lacking; the political parties' poll watchers were prevented from overseeing and monitoring activities there by being required to stand five or six meters away; in "Operation Carousel", hundreds of repeat voters were mobilized and transported from one polling place to another, via collective means of transportation, to vote as many times as possible, and were supplied with the voter credentials needed to do so; finally, ballot boxes were stolen once the polls closed.

2.3 Arguments made by the Government of Mexico (notes of February 14, and August 4, 1992):

For its part, the Government of Mexico replied at length to each point alleged by the petitioner, using three main arguments: the Commission's alleged lack of competence; the failure to exhaust internal remedies, and the assertion that the facts denounced were not violations of the American Convention on Human Rights. The Government of Mexico described the structure of the electoral bodies, how their members are appointed and what their functions are; it also cited from all existing laws on the subject.

The submissions by the Government of Mexico and the petitioner's allegations will be examined in the Commission's observations on the case.

OBSERVATIONS

1. FORMAL REQUIREMENTS AS TO ADMISSIBILITY

The petition satisfies the formal requirements for admissibility under the American Convention and the Commission's Regulations because as the case is not pending in another international proceeding for settlement and is not a duplication of any other case the Commission has already considered. Moreover, that phase of the proceedings wherein the positions of the government and the petitioner are presented has now been completed.

2. COMPETENCE OF THE COMMISSION

The analysis must be founded upon the relevant articles of the American Convention on Human Rights, as they are the legal framework by which the Commission examines the cases submitted to it. Therefore, it must begin by determining what issues the case raises, then the scope of political rights according to the Convention and the Commission's practice; it must also examine the issue of the Commission's competence based on the authority that the Convention invests in it.

2.1 The election process: preliminaries leading up to the elections and the actual elections in the instant case

In the instant case, 10,956, the following issues were raised by the petitioner and refuted by the Government of Mexico:

The petitioner claimed that official election-related documents, such as ballots and records of poll openings, ballot counts and poll closings were transported and delivered in vehicles bearing PRI campaign advertising.

The Government replied by stating that these were unsubstantiated claims, as no reliable evidence was offered to show, firstly, that the facts described actually occurred, and secondly, where and when the alleged violations occurred, the identity of the individuals involved, and other relevant circumstances. It said that the election materials were distributed in a fleet of vehicles that the Municipal Election Commission had assigned for that purpose.

The petitioner also stated that public funds were used to buy votes, building works and providing services with political strings attached. He added that the Federal

Government has a program called the National Solidarity Program (PRONASOL) whose purpose was to deal with extreme poverty in rural and urban areas. Attempts were made to use that program for the PRI's political electioneering.

As for this complaint, the Mexican Government denied that there were any political strings being attached to the Government's public works projects. It pointed out that the public works projects were part of pre-established plans and described, specifically, the nature and functions of PRONASOL. The Government concluded by stating that "political parties, therefore, have nothing to do with the program; the direct participants are indigenous peoples, peasant communities and urban low-income neighborhoods (...)". The Government's final observation on this point was that since PRONASOL's establishment, investments have been made in every municipality in the Mexican Republic governed by the opposition, and they have received their fair share of the program's resources.

In a communication dated April 27, 1992, the petitioner sent press clippings as proof of his allegations in this connection. The Government rejected them as purely circumstantial evidence.

The petitioner also alleged the deliberate replacement of 80% of those designated by the Naucalpan Election Commission to serve as polling place officials after their names had been drawn in a procedure in which the Commission's members, including the political parties' representatives, took part; these designees, however, were not notified of the civic duty they were called upon to discharge and therefore did not appear on election day; thus, the ballots were received by persons other than those officially authorized to do so.

The Government points out that the petitioner provides no evidence to substantiate his claim, and does not provide any information or clues as to the identity of the individuals replaced or of the polls where those changes were made. It added that had any such substitution been made, it should have been recorded in the corresponding poll report, and there was no such record. The Government cited the laws that applied to this situation and gave an account of the meetings that the Municipal Election Commission held on the subject of polling places and the officials designated to monitor them. Finally, it stated that if the individuals designated failed to appear, the law provided that they were to be replaced immediately, though any such substitution was to appear in the record and there was no record of any substitution.

The petitioner also reported that at the last minute, over 20% of the polling places were relocated, away from their officially designated sites, which caused confusion among the voters.

The Government stated that this claim was unsubstantiated, "since it is untrue that polling places were relocated, much less the percentage of polling places that the petitioner incorrectly cites".

In response to the petitioner's complaints as presented thus far, in general the Government of Mexico stated that "the petitioner did not provide sufficient evidence to substantiate his claim." It added that in the report prepared by the Municipal Election Commission on the occasion of the permanent session of November 11, 1990, the Commission member representing the National Action Party said "absolutely nothing concerning these alleged irregularities." It concluded by stating that it found it strange that the PAN representative "should expressly concur by signing the report attesting to the fact that the polling places were installed and their officials appointed routinely and in accordance with the law."

In response to the Government's assertion that the PAN delegate's signing of the report indicate concurrence, the petitioner pointed out that "the signature did not signify concurrence, but rather his presence at the session. The disagreement was such that within the legal time periods the appropriate challenges were filed."

The petitioner alleged that the right to cast one's vote freely and in private was not guaranteed, that the proper furnishings to enable voters to vote in private were lacking, which made it easy for PRI-Government agents to exert pressure on citizens, especially in poor areas, where voters were told that they would get PRONASOL support for public works and services and food stamps for milk and tortillas if they voted the PRI ticket.

The Government's reply recounted the laws in effect concerning the State Registry of Voters and its responsibilities in that regard. It asserted that it acted in accordance with those laws. As for the polling places' furnishings and ballot boxes, the Government pointed out that they had been approved by the State Election Commission and emphasized the fact that the National Action Party participated in that process. From there it deduced that the petitioner's claims were false.

According to the petition, the oversight and monitoring activities of the political parties' poll watchers were obstructed because they were required to stand five or six meters away, which prevented them from performing their functions. They were held back by individuals claiming to be Commission Aides.

In its notes to the Commission, the Government stated that these were "subjective opinions that, being utterly unsubstantiated and unfounded, offered nothing to refute, because no evidence is offered as to the identity of the persons, election aides, polling places, etc.; the unsubstantiated charges *per se*, therefore, cannot

be said to involve a violation of human rights." It added that the representatives of the political parties were always free to file an objection with the poll officials, who were obliged to document any such objections.

The petitioner complained that there were brigades of repeat voters in something called "Operation Carousel", where hundreds of people were transported from one polling place to another, via collective means of transportation, so that they could vote as many times as possible; they were supplied with the voter credentials needed to cast their vote.

To this point, the Government stated that "this is not possible" because indelible ink is put on the right thumb of citizens when they cast their vote.

Finally, the petitioner complained that ballot boxes were stolen when the polls closed; at 6:00 p.m. at countless polling places, officials were not allowed to count the ballots or to discharge their duty of delivering the voting packets to the Municipal Election Commission of Naucalpan.

The Government stated that this assertion was completely refuted by the minutes of the meeting held by the Municipal Election Commission on November 15, 1990, which showed that all election packets were delivered on time, to the place previously designated by the election officials. It further stated that the Public Prosecutor's Office had received no reports of stolen ballot boxes.

2.2 HOW FAR DOES THE IACHR'S JURISDICTION GO; WHAT ARE POLITICAL RIGHTS?

Under the American Convention, the political rights are those recognized in articles 1, 23 and 28 thereof.

The Commission's practice.

Article 23 of the American Convention on Human Rights recognizes the following political rights:¹

¹ These same political rights are contained in Article XX of the American Declaration of the Rights and Duties of Man; Article 21 of the Universal Declaration of Human Rights, and Article 25 of the International Covenant on Civil and Political Rights.

1. Every citizen shall enjoy the following rights and opportunities:
 - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c. to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

The Government of Mexico contends that the facts denounced do not constitute violations of the American Convention on Human Rights, and cites Article 23 of the Convention, which it believes the petitioner has misinterpreted. It states that "while this article enumerates the three basic prerogatives that citizens enjoy where participation in government is concerned -namely, the right to take part in the conduct of public affairs, the right to vote and be elected in free and periodic elections, and the right to have access to public service-, it does not prescribe a prototype or model for either the election process, how the election is to be set up or who the election authorities are to be. This is the sovereign right of each country to decide." The Government added that "neither the Constitution nor the Election Law of the State of Mexico infringes those rights, as it will now be shown that the creation and structure of the election authorities and tribunals are neither subject to any political party's authority nor biased in its favor." The Government's analysis of the facts alleged by the petitioner begins with this statement and ends by stating that "a careful review of everything this Government has reported above is unmistakable proof that the election process and the elections themselves were conducted in accordance with the law."

In light of the provisions of Articles 1 and 2 of the American Convention on Human Rights² which concern the obligations to investigate, safeguard and take domestic

² **Article 1. Obligation to Respect Rights** 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

measures to ensure full exercise of human rights and in order to avoid any narrow interpretations of the Commission's competence, it will cite the finding of the Inter-American Court of Human Rights when examining these articles:

The obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation -- it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights.³

When the scope of Article 23 was examined in the past,⁴ the Commission explained, in detail, that if Article 23 was to be fully respected elections had to be authentic, universal, periodic, and by secret ballot or some other means that enabled voters to express their will freely. Laws alone will not suffice; the attitude must be one there encourages proper implementation, and must be consistent with generally recognized principles that govern a representative democracy. The IACHR is being asked to examine whether citizens who participated in a political process did so as equals, whether those political processes guaranteed the free and authentic will of the electorate and, therefore, whether the facts alleged constitute violations of political rights.

The Commission is competent to examine the instant case because it concerns the right to participate in government (Article 23) and the right to judicial protection (Article 25) protected under the American Convention on Human Rights, and the generic obligations contained in articles 1 and 2. Mexico is a State Party to the Convention, having ratified it on April 3, 1982.

The Government of Mexico argues that while the Commission is competent to defend the political rights protected under Article 23 of the Convention, no article of the Convention gives it the competence to rule on the States Parties' internal political

Article 2. Domestic Legal Effects Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

³ Inter-American Court of Human Rights. Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 167.

⁴ Report 01/90 on cases 9768, 9780 and 9828 (Mexico); Annual Report of the IACHR 1990-1991, Chapter V, Section III, "Human rights, political rights, and representative democracy in the Inter-American system".

processes, as the latter are conducted in the exercise of the people's right to self-determination and their sovereign right to decide for the political system that best suits them; declaring elections valid or invalid is the exclusive competence of the internal organs lawfully established under a given State's constitutional system.

In its arguments alleging that the Commission does not have jurisdiction, the Government acknowledges that the Commission may receive petitions or communications on alleged human rights violations which concern that Government; at the same time, however, it contends that the American Convention does not give the Commission the authority to decide whether elections are valid or to rule on the conduct of the authorities where elections are concerned.

As for the Government's allegations concerning sovereignty and nonintervention in a State's internal affairs as arguments for denying or limiting the Commission's competence, it might be well to recall what the Commission has said in this regard on previous occasions.⁵

Indeed, the premise must be that the principle of nonintervention is a rule of conduct governing the actions of States or groups of States, as stipulated in the Charter of the Organization (Article 18); this principle has been linked to the peoples' right to self-determination and independence, "with absolute respect for human rights and fundamental freedoms."⁶

The most fundamental level at which these basic principles have taken on the force of law is Article 16 of the Charter of the Organization, where the counterpart of a State's right to develop itself freely is its obligation to respect the rights of the individual. In the Inter-American system, it is the American Convention on Human Rights that recognizes these rights and contains provisions on the mechanisms and organs that are their means of protection.

The Commission -one of those organs of protection- is, according to its governing instruments:

⁵ Annual Report of the Inter-American Commission on Human Rights, 1990-1991, Chapter V, Section III, "Human rights, political rights and representative democracy in the Inter-American system."

⁶ Resolution adopted by the General Assembly at its second regular session, titled "Strengthening of the principles of nonintervention and the self-determination of peoples and measures to guarantee their observance."

... empowered to examine and evaluate the degree to which the internal legislation of the State party guarantees or protects the rights stipulated in the Convention and their adequate exercise and, obviously, among these, political rights. The IACHR is also empowered to verify, with respect to these rights, if the holding of periodic, authentic elections, with universal, equal, and secret suffrage takes place, within the framework of the necessary guarantees so that the results represent the popular will, including the possibility that the voters could, if necessary, effectively appeal against an electoral process that they consider fraudulent, defective, and irregular or that ignores the `right to have access, under general conditions of equality, to the public service of his country'.⁷

As noted earlier, in Article 23 the American Convention speaks of "genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters." The exercise of these rights is so essential if societies are to function normally that Article 27 of the Convention prohibits their suspension, regardless of the circumstance.

The close relationship between representative democracy as a form of government and the exercise of the political rights so defined, also presupposes the exercise of other fundamental rights: "... the concept of representative democracy is based on the principle that it is the people who are the nominal holders of political sovereignty and that, in the exercise of that sovereignty, elects its representatives--in indirect democracies--so that they may exercise political power. These representatives, moreover, are elected by the citizens to apply certain political measures, which at the same time implies the prior existence of an ample political debate on the nature of policies to be applied--freedom of expression--between organized political groups--freedom of association--that have had the opportunity to express themselves and meet publicly--freedom of assembly. At the same time, if these rights and freedoms are to be exercised, there must be a juridical and institutional systems in which laws outweigh the will of leaders and in which some institutions exercise control over others for the sake of guaranteeing the integrity of the expression of the people's will--the rule of law."⁸

In the Commission's view, ratification of the American Convention creates more than an obligation to respect the exercise of the rights recognized therein; it also creates an obligation to guarantee the existence and exercise of all those rights, without distinction, because they constitute a whole and are mutually interdependent. It would therefore be

⁷ Report 01/90, op. cit., paragraph 95.

⁸ Report 01/91 on cases 9768, 9780 and 9828 (Mexico), paragraphs 41 and 42; Annual Report of the Inter-American Commission. 1989-1990, p. 107.

senseless and even a breach of Article 29 of the Convention⁹ to draw some distinctions or establish categories where there are none, or to give them the kind of literal interpretation that narrows their scope. As the Commission stated in Report 01/90, "Indeed, any mention of the right to vote and to be elected would be mere rhetoric if unaccompanied by a precisely described set of characteristics that the elections are required to meet." (Report 01/90, paragraph 88).

From the foregoing it follows that States are, as Article 2 of the Convention states, to adopt the legislative and other measures necessary to give effect to the rights and freedoms recognized in the Convention.

Finally, the Government contends that the electoral process being challenged was conducted in the exercise of the sovereign powers of the local executive and legislative branches of the State of Mexico. Under Mexico's federal system, these powers are reserved to the federated units of the United Mexican States and they alone have exclusive power to legislate, organize and regulate the exercise of the political rights of their citizenry. The Government ends by stating that the authorities charged with organizing, conducting and monitoring the election process being challenged, enjoy sovereign and exclusive governmental powers, because as their function is to see to it that the political rights, privileges and opportunities to which Article 41 of the Constitution refers materialize and are exercised.

The Commission must point out that under the 1969 Vienna Convention on the Law of Treaties, the American Convention is self-executing throughout the territory of the United Mexican States, because "Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory." At the time it ratified the Convention, Mexico stipulated no reservations or amendments, which means that the provisions of Article 28, subparagraphs 1 and 2, are fully self-executing:

Article 28. Federal Clause.

⁹ Article 29. Restrictions Regarding Interpretation. No provision of this Convention shall be interpreted as: **a.** permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein; **b.** restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; **c.** precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or **d.** excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.
2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.

Summing up the points made by the Commission thus far, one can conclude that Mexico, upon ratifying the American Convention on Human Rights, not only recognized the competence of the Inter-American Commission on Human Rights to state its opinion and conclusions, but also undertook to respect and guarantee the exercise of the political rights contemplated in Article 23 of the Convention. The latter includes the right to vote in elections, which shall have the minimum requirements needed to ensure that these rights are exercised fully. Under Article 2 of the Convention, Mexico also undertook to adopt the legislative measures needed to give effect to those rights.

3. DOMESTIC REMEDIES AGAINST ELECTION DECISIONS:

3.1 THE DOMESTIC REMEDIES IN THE INSTANT CASE

A. Remedies filed with election officials:

The petitioner's position

In accordance with the Law on Political Organizations and Elections of the State of Mexico (LOPPEEM), the National Action Party filed a protest with the Municipal Election Commission of Naucalpan de Juárez, involving 163 polls of the 358 set up in the municipality. That protest was heard and denied, because as the Election Commission found it to be "frivolous and incitive." Under the law, the Municipal Election Commission was not empowered to examine the merits of the case. It was obliged by law to refrain from qualifying the case, since it is, in fact, the basis of the remedy of complaint.

Under the provisions of that election law, the PAN filed a complaint with the Naucalpan Election Commission, attaching the evidence that it was able to compile in the short period of time that the law allowed. It was the duty of the Municipal

Election Commission to convey the complaint and all its attachments to the State Tribunal for Election Disputes for a ruling. The complaint sought nullification of the elections on the grounds that more than 40% of the municipal polling places were invalid because of the way in which the election had been conducted. The Tribunal dismissed the case for lack of evidence.

The complaint filed with the Election Commission was accompanied by various pieces of evidence. However, the Commission did not forward that evidence to the State Tribunal for Election Disputes. The Tribunal should have refrained from hearing the case until the case file was complete, with all the appendices that had accompanied it. However, the Tribunal handed down a decision based on that incomplete case file, leaving the petitioner with no means of defense.

Once the complaint was found to be inadmissible and since there was no higher court of review, the State Election Commission declared the Naucalpan election valid. There was no lawful means to challenge that decision.

The Government's Position:

The Government described the procedure established in the Law on Political Organizations and Elections of the State of Mexico (LOPPEEM), Title Six, articles 195 to 228, for challenging the proceedings and resolutions of electoral bodies. Under the law in question, these remedies are as follows: protest; objection; complaint; review, and appeal.

As to the petitioner's allegations to the effect that the file sent to the Tribunal was incomplete, the Government stated that "pursuant to the second paragraph of Article 201 of the LOPPEEM, within 24 hours of receiving the complaint the Naucalpan Municipal Election Commission sent said complaint to the State Tribunal for Election Disputes (...) along with the case file." To substantiate this, the Government said that the complaint would not have been admitted by the Tribunal had it not met the requirements stipulated under articles 201 and 204 of the law in question; that operative paragraph 1 of the ruling that the Tribunal handed down on November 23, 1990, reads as follows: "On November 19 of this year, Mr. Antonio Vélez Torres, Technical Secretary of the Election Commission, sent to this Tribunal the complaint (...), and attached the following documents: three lists of aides in the various districts, signed and sealed by the Municipal Commission of Naucalpan de Juárez, Mexico; three press clippings..."

As to the fact that the Tribunal should have refrained from taking up the case until the file was complete, the Government cited excerpts from a decision of the Tribunal wherein it requests the Naucalpan Municipal Commission to forward

certain documents. The Government concludes that the case file was obviously complete.

It added one remedy not mentioned by the petitioner: from the date on which the location and number of polling places were published the petitioner had five days in which to file an objection with the corresponding Municipal or District Election Commission. The Government argued that the petitioner had allowed that time period to expire and could not, therefore, avail himself of a remedy in respect of acts that predated election day.

It pointed out that had there been irregularities in setting up of polling places, the National Action Party, through its member on the National Election Commission, "should have so stated for the record and promptly exercised its right to report any irregularity and have it entered in the corresponding minutes."

The Government argued that the petitioner was wrong when he asserted that the Municipal Commission was not authorized to rule on the merits of the protest: "Article 201 of the aforementioned Election Law states exactly the opposite: "Municipal or district election commissions shall forward to the State Tribunal for Election Disputes, within 24 hours of their presentation, any complaint filed with them in the corresponding brief, as well as the protest and the ruling; a report on the matter; the evidence provided; and all other documents deemed necessary to settle the matter."

It stated that there was no reliable evidence to show that the petitioner had filed 163 protests concerning 163 polling places since, according to the Government, the State Tribunal received only 19 challenges.

B. National Human Rights Commission (CNDH):

The petitioner's position

On November 22 and 23, 1990, before the State Tribunal issued its decision and before the State Election Commission declared the results of the election final, the leaders of the National Action Party in the State of Mexico turned to the National Human Rights Commission (CNDH) asking that it intercede with the State Election Commission. The CNDH decided that it did not have the competence to use its good offices since it was only empowered to intervene in election-related matters when, in the course of elections, there had been a violation of the individual rights

recognized in the Constitution; it had to do so before the competent bodies declared the results final.

The Government's position:

The Government stated that by law, the National Human Rights Commission does not have competence to take cognizance of election-related matters, except in cases where the individual rights recognized in the Federal Constitution have been violated. It transcribed the provisions of the law and of the Constitution that are the basis for the Commission.

3.2 ACTION FOR AMPARO:

A. Legal framework

- Constitution of the United Mexican States

Article 103:

The courts of the Federation shall settle any dispute that may arise:

1. By virtue of laws or the actions of any authority that violate individual rights;
2. By virtue of laws or the actions of the federal authority that breach or abridge the sovereignty of the states, and
3. By virtue of laws or actions of state authorities that trespass federal authority.

Article 107:

All disputes that fall under Article 103 shall be subject to the legal procedures and forms prescribed by law, based on the following:

- I. The action for *amparo* must always be instituted by the aggrieved party;
- II. The ruling shall always concern private individuals and confine itself to aiding and protecting said individuals in respect of the specific case that the complaint concerns, and shall make no general statements as to the law or action that prompted the action for

amparo.

In the action for *amparo* any defect in the complaint shall be remedied in accordance with the provisions of the Statute governing articles 103 and 107 of this Constitution.(...)

Amparo Law

Article 1:

In the United Mexican States every individual shall enjoy the rights and freedoms that this Constitution accords, which may be neither restricted nor suspended except in those cases and under the circumstances established herein.

Chapter VII: Inadmissibility

Article 73:

An action for *amparo* is inadmissible:

(...)

- V. Against acts that do not adversely affect the complainant's legal interests.
- VI. Against laws, treaties and regulations whose mere existence is not prejudicial to the complainant, but some subsequent execution thereof instead.
- VII. Against decisions or declarations of electoral bodies and election authorities.
- VIII. Against decisions or declarations of the Federal Congress or its chambers, the State Legislatures or their respective permanent commissions or deputations, to elect, suspend or remove officials, in those cases that the Federal or State Constitution, as the case may be, gives them the sovereign or discretionary power to settle (...)

Article 192:

The jurisprudence of the Supreme Court -either the full Court or its chambers- is binding; the jurisprudence of the full Court is binding upon its chambers and upon circuit courts -those composed of one judge and those composed of several judges-, district courts, military tribunals, ordinary criminal courts in the state and federal districts, and administrative and labor courts, be they local or federal.

Its rulings shall become jurisprudence once the principles contained therein have served as the basis of five consecutive rulings, uninterrupted by any contrary ruling; in the case of jurisprudence of the full court, the rulings must be supported by at least fourteen justices; jurisprudence of the chambers must involve rulings supported by at least four justices.

Rulings that reconcile opposing arguments of collegiate chambers and courts shall also constitute jurisprudence.

- Jurisprudence on the Action for *Amparo* for Political Rights:

"Violation of political rights shall not constitute grounds for an action for *amparo* since individual rights are not involved."¹⁰

"No action for *amparo* can be instituted for a violation of these rights since actions for *amparo* are instituted strictly to guarantee the exercise of the individual rights and freedoms recognized in the first 29 articles of the Constitution; actions for *amparo* may not be used to protect the political rights accorded only to Mexican citizens."¹¹

"In accordance with paragraph 1 of Article 103 of the Constitution, the courts of the Federation shall settle any dispute that arises by virtue of laws or actions of the authorities that violate individual rights; an action for *amparo* is inadmissible except in cases that concern those individual rights; this would be the case, for example, when the action is filed to challenge an order to suspend the complainant as a member of some local government, since it is the complainant's right to serve in public office that has been affected, which is a political right."¹²

"Under paragraph 1 of Article 103 of the Constitution, the action for *amparo* is admissible only in cases of violations of individual rights, which shall be understood as those that concern the individual and not those that concern the citizen; it follows that any violation of a political right may not be remedied by an action for *amparo* since no individual right has been violated."¹³

"Even when political rights are involved, if the act against which the action is brought might also involve a violation of individual rights, a fact that cannot be established *a priori*, then the action for *amparo* must be admitted and processed to establish the

¹⁰ Thesis 87 - Quinta Epoca: Tomo III, p. 1311, Villa García. N.N. vecinos de; Tomo IV, p. 862, Heredia Marcelino; Tomo IV, p. 1135, Guerra Alvarado José y Coags.; Tomo IV, p. 463, Orihuela Manuel y Coags; Tomo VII, p. 941, Ayuntamiento de Acayucan.

¹¹ Quinta Epoca: Tomo LXIX, p. 4731; Tomo LXXI, p. 5301.

¹² Quinta Epoca: Tomo XL, p. 2187.

¹³ Quinta Epoca: Tomo CIX, p. 1190; Tomo C, p. 1026.

propositions upon which the final ruling rests."¹⁴

"While the jurisprudence of the Court is that an action for *amparo* is inadmissible in the case of violations of political rights because individual rights are not involved, it is also true that court rulings have been handed down in cases that involve the actions of an authority performing political functions and that relate directly and exclusively to the exercise of political rights; even so, when the complaint concerns not just violations of a political right, but violations of individual rights as well, the Court's jurisprudence in the point in question does not apply (thesis 87, cited earlier)."¹⁵

"While it has been established that *amparo* is inadmissible for violations of political rights, if individual political rights are also transgressed ... then *amparo* should be granted."¹⁶

"Although the jurisprudence is that *amparo* is inadmissible when the case concerns a violation of political rights, if there is any possibility that constitutional rights and freedoms may also be involved or if the terms of the suit do not provide grounds for inadmissibility, then the action [for *amparo*] should be admitted."¹⁷

B. Observations made by the Government of Mexico in respect of the action for *amparo* for political rights

In the instant case, as in all those where the issue of *amparo* is in dispute, the position repeatedly taken has been that the action for *amparo* is inadmissible in the case of political rights, except when there has also been a violation of individual rights. The Government reasons, therefore, that the petitioner should have filed for *amparo*, "since only the competent court authority will determine whether or not *amparo* is admissible."

The argument that the inadmissibility of *amparo* for political rights engenders a violation of Article 25 of the American Convention is, according to the Government, both

¹⁴ Thesis 88; Quinta Epoca: Tomo XIV, p. 1109 - Aragón Raymundo y Coags.; Tomo XIV, p. 1802 - Alcocer Antonio y Coags.; Tomo XVI, p. 92.- Aguirre Esquivel José y Coags.; Tomo XVII, p. 148. - Peniche Morales Diego y Coags.; Tomo XVII, p. 1509.- Guerra Alvarado José.

¹⁵ Tomo XVII, p. 1509.- Guerra Alvarado, José.

¹⁶ Quinta Epoca: Tomo XIX, p. 293.- Chávez J. Manuel y Coags.

¹⁷ Tomo XIV, p. 1802.- Alcocer Antonio y Coags.

incomplete and incorrect. It cites court rulings (transcribed above), some of which state that filing for *amparo* is a condition *sine qua non* for determining whether *amparo* is admissible in a given case or situation.

Elaborating upon the distinction that Mexican law makes between individual rights and political rights -as recognized in Article 23 of the Convention-, the Government again argued that freedom of association and expression are political rights and, under the Mexican Constitution, are protected by *amparo*. It stated that "under our General Constitution (Articles 6 and 9) these two are individual rights; hence, it would be unfair to say, without qualification, that in Mexico political rights do not enjoy the same rank as individual rights and therefore have no means of constitutional protection."

The Government states that *amparo* is admissible insofar as it concerns the formal rights to a hearing and due process of law. While it is true that there is a substantial difference between subjective political rights and other subjective rights as the former are materially distinct from the latter, it is also true that they are all protected by the guarantees of legal certainty, which are not material but formal guarantees; in other words, they can be exercised to protect any subjective right.

3.3 NATURE OF THE REMEDIES: THE IMPORTANCE OF A SIMPLE, PROMPT AND EFFECTIVE RECOURSE

- The system for taking and weighing evidence

According to the petitioner, under Mexico's legal system, in civil matters the maxim is that the judge shall rule on the basis of legal truth. Legal truth may not be the same as real truth, which is the maxim in criminal law. Under the maxim of legal truth, the judge rules on the basis of what the parties tell him, prove and state under oath; should the judge have any doubts to be resolved before settling the issue, he may ask the parties to provide additional elements and may even indicate something specific. In the case of election-related matters, the execution of electoral laws takes on a social quality and virtually becomes a social right, (...) so that the State Tribunal for Election Disputes ought not to have dismissed the petition on the explicitly stated grounds that no proof was offered; instead, it should have compiled that evidence.

The Government, for its part, asserted that the Tribunal dismissed the action filed by the PAN as unfounded because none of the facts or irregularities that the complainant was challenging were proven since the evidence offered in support of the complaint did not have the force in law to prove the facts. It concluded that since the evidence offered did not constitute proof, the Tribunal did not have the means to issue a finding based on the evidence.

As for the issues raised in respect of the evidentiary system, the Government stated

that "they have no bearing upon the subject of the alleged violation in this dispute." It insisted that the maxim of the law was that "the burden of proof rests with the accuser" and ended by stating "the party to which the petitioner belongs is solely to blame because it did not submit the proof at the time the complaint was filed with the State Tribunal for Election Disputes."

- The Commission's comments

According to the petition, the impartiality needed to guarantee due process in election-related actions is lacking, thereby creating the situation provided for in Article 46.2.a of the Convention, which states that exhaustion of the remedies under domestic law shall not be required if the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated.

Essentially, the argument on the use of the remedies under domestic law hinges on two points: first (both in general and vis-a-vis election authorities in particular), the issue of whether all the evidence has been compiled and weighed, the issue of the content of the case file sent to the State Tribunal and all the implications this has for the issue of proof, which in turn ties in with the issue of whether or not a simple, prompt and effective recourse is available; and second, the configuration of the bodies charged with monitoring to make certain that elections are conducted properly. The Commission will address these issues now, based on the provisions of articles 2, 8 and 25 of the American Convention on Human Rights.

Firstly, concerning the system of proof and the very efficacy of remedies given the concept of proof and how evidence is weighed, the Commission considers that the system for processing challenges, under the election laws currently in effect and applicable in the instant case, and the line of argument used by the Government of Mexico in regard thereto, are formalistic in the extreme. Where procedure counts for more than merit, the system may fail to produce results and the facts as alleged may never be investigated.

Indeed, while laws stipulating the procedural rules are important and necessary, it is no less important that these rules produce results, so that remedies may be adequate and effective. Otherwise, they would be vitiated and the objective they were created to achieve would not be accomplished.

It is important to recall -particular in light of what this Commission said concerning *amparo* for political rights¹⁸- what the Inter-American Court's findings were concerning what constitutes adequate domestic remedies:

¹⁸ Report N° 08/91, Case 10180, February 22, 1991. Published in the Annual Report of the Inter-American Commission on Human Rights 1990-1991.

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effects or lead to a result that is manifestly absurd or unreasonable. (...) ¹⁹

A remedy must also be effective that is, capable of producing the result for which it was designed. ²⁰

It is the Commission's belief, therefore, that the State's duty to investigate amounts to more than any symbolic formalities that the case entails; instead, it implies active behavior in ordering and conducting the inquiries to ascertain the facts denounced. In effect, inasmuch as election laws are part of public law, the State has autonomous investigatory authorities. By virtue of those authorities it is empowered not only to require that the parties submit evidence, but also to take the initiative in obtaining it. The Inter-American Court had the following to say in this regard:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention (...) ²¹

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, with an effective search for the truth by the government. ²²

Article 25 of the American Convention, which establishes the right to a simple,

¹⁹ Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988. Series C, No. 4, paragraph 64.

²⁰ Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988. Series C, No. 4, paragraph 64.

²¹ Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, paragraph 176.

²² Inter-American Court of Human Rights, Velásquez Rodríguez Case, July 29, 1988, paragraph 177.

prompt and effective recourse against acts that violate one's fundamental rights, also makes it incumbent upon States to guarantee the effectiveness and exercise of the existing remedies. The article reads as follows:

Article 25. Right to judicial protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b. to develop the possibilities of judicial remedy; and
 - c. to ensure that the competent authorities shall enforce such remedies when granted.

It is important that both the proper remedies in the electoral jurisdiction and the action for *amparo* constitute genuine guarantees for the individuals, since this is what the Convention requires. By ratifying it, Mexico "committed itself to provide an effective remedy for those who believe that right has been affected, under Article 25 of the Convention, and to guarantee the right of every person to be heard by a competent, independent, and impartial judge or tribunal for the determination of rights and obligations."²³

The Commission observes that the action for *amparo* may well be a suitable instrument to protect political rights, but its admissibility would have to be spelled out clearly and unequivocally; it would also have to be made clear that a ruling handed down in an action for *amparo* could have effects *erga omnes*, and not just in favor of the party that instituted the action. Nevertheless, this may not be the simple, prompt and effective recourse required, so that in furtherance of the obligations that Mexico undertook when it ratified the Convention and in keeping with its domestic laws, the decision to adapt its rules to the exigencies imposed by the country's binding international commitments is the responsibility of the Mexican authorities.

²³ Report 01/90, paragraph 98.

4. THE CONFIGURATION OF THE ELECTORAL BODIES

4.1 Membership of the electoral bodies in case 10,956:

The petitioner asserted that there was no clear separation between election officials, government officials (regardless of their level) and members of the Institutional Revolutionary Party; even the most elementary dividing line between the various levels of the government and parties collapsed, which automatically converted them into judge of and party to the case; the petitioner cited the case of Mr. Humberto Lira Mora who is Secretary General of Government of the State of Mexico, Chairman of the State Election Commission and Chief of the "Naucalpan Headquarters" in a work program implemented by the State Government to focus new government-funded public works in areas that the PRI lost in the 1988 federal elections and thereby win votes. He is also a prominent member of the PRI.

The petitioner further asserted that the Constitution of the State of Mexico and the LOPPEEM made it possible to establish a system of election officials and tribunals that was totally accountable to and biased in favor of the PRI. The "L" Legislature of the Congress that voted in the amendments to the local state constitution and to the LOPPEEM was almost entirely composed of PRI deputies, who voted as a block and without giving even the most perfunctory consideration to the recommendations from the opposition deputies. All the appointments of election officials, from the Chairman of the State Electoral Commission to the last poll chairman and secretary and the magistrates on the Tribunal for Election Disputes, went to persons selected according to a one-sided standard. The system wiped out any semblance of impartiality on the part of the election authorities and bodies and their independence from the government and its party, while ensuring that the PRI's interests would be served, making the PRI both judge of and party to the entire election process.

On this point, the Government of Mexico replied that "it is strange that the petitioner is unaware that in any democracy it is the practice for members of the political parties that win the elections to hold the highest positions in government." This principle would apply in the case of Mr. Humberto Lira Mora, according to the Government. The fact that the majority in the Congress of the State of Mexico should be members of the PRI, it added, was decided by the will of the Mexican people exercising their right to vote, and was not something for which the Government could be held accountable. It concluded its comments on this point by stating that the petitioner's other value judgments about this issue prove nothing and are meaningless precisely because they are value judgments. It cited local

constitutional provisions to show that legislative and election officials are elected and appointed democratically.

The Government's final observation on this point was that it was obvious that the election authorities of the State of Mexico gave the various social groups in the State and its political parties the opportunity to participate. It added that "there is no way that the method used to put together the electoral bodies and tribunal -which the petitioner alleges, without any basis or logical argument, is biased- could be construed as being in violation of the Convention."

When the petitioner made observations on the Government's reply to this point, the petitioner noted that "while it is indeed true that the Government has the authority and the responsibility to take charge of election matters and while it is also true that every government is represented in the membership of the electoral bodies, its representation must not upset the balance within those bodies and thereby make them biased, as is happening with the mechanisms that the law of the State of Mexico establishes. For example, under Article 58 of the LOPPEEM nine of the members of the State Election Commission are part of the formal structure of government (except for the notary public, who is appointed by the Commission, which is chaired by the Government Secretary who, *inter alia*, is empowered to give the "fiat" to serve as notary public); the others are representatives of the political parties. In the 1990 elections, there were eight that had the right to vote, which shows that even if all eight political parties (among them the Institutional Revolutionary Party) voted in favor of a given course of action, the Government could not be forced to act on that decision, since it has nine of the 17 votes on the State Commission."

As for the State Tribunal for Election Disputes, its members are also nominated by the State's Chief Executive and approved by the State Legislature. The petitioner stated that while it is the Government's authority and duty to take charge of election-related matters and that every government is represented in the electoral bodies, that representation must not upset the balance that such bodies must have and thereby make them biased, which is what is happening with the mechanisms established by the laws of the State of Mexico.

In its reply, the Government reiterated that all the political parties have the same rights to voice and vote in the various electoral bodies; that all are represented equally, and that the respective state powers coordinate their

participation. It reasserted the legitimacy of the electoral bodies, duly constituted in accordance with the laws in effect in the State of Mexico, thanks to which its members are impartial.

4.2 The Commission's comments

The Commission must reassert that the State's authority to decide what the electoral bodies will be and how they will be structured implies that the genuine independence and impartiality that these electoral bodies exercise both within themselves and in relation to the system in which they discharge their functions, will guarantee the exercise of political rights. This will only be possible if all sectors of Mexican political life are guaranteed fair participation, which means they must enjoy real, balanced representation on an equal footing with the government representatives serving on those bodies.

The Commission must point out that obviously the method used to select the members of the electoral bodies is not in itself a violation of the American Convention. Nevertheless, if the representation on such bodies is not balanced in a way that ensures their independence and impartiality, one can hardly say that the laws are being properly enforced or that the various situations put to them for consideration are being examined objectively. This is the kind of adjustments that have to be made to electoral bodies; while each State's preferences as to form or the models that it wants to use are its prerogative, certain guidelines of fairness -based on principles of representative democracy- have to be observed to enable all sectors involved in the political life of nations to participate.

ADDITIONAL OBSERVATIONS FROM THE GOVERNMENT OF MEXICO IN REPLY TO REPORT 7/93. THE COMMISSION'S OBSERVATIONS:

In its observations on Report 7/93, the Government of Mexico states that the petition specifically concerns the elections held in 1990 in the State of Mexico, whose electoral system, it adds, was changed "to make it more effective and transparent." It is evident to both the Commission and the Government that the case can be traced to those elections, though this does not prevent the Commission from performing its functions and exercising its authority to make recommendations "to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights" (Article 41.b of the American Convention on Human Rights).

The Government seems to have misconstrued this aspect of the concept of political rights, perhaps because of the way Mexico's legal system classifies them. But in its most recent advisory opinion, the Inter-American Court of Human Rights clarified this point once

and for all when it stated that "The Court finds no reason (...) to make any distinction between the rights in question (Article 23 -the right to participate in government-, Article 24 -the right to equal protection-, and 25 -the right to judicial protection-) and the other rights recognized in the Convention. The Convention does not organize the rights it protects into some kind of hierarchy."²⁴

The Government devotes much of its reply to detailed discussions of the additions and amendments made to the electoral system of the State of Mexico, published on February 4, 1993. The Government reasons that because of those additions and amendments, "the grounds for the petition no longer obtain" since they were designed "precisely to make elections more authentic, equal and transparent". The reforms to which the Government of Mexico alludes concern the following: electoral bodies, election financing and voter registers, ballot boxes, voting districts and poll hours, and examining challenges.

The Inter-American Commission on Human Rights hopes that the amendment of the Electoral Law of the State of Mexico will, as the Mexican authorities assert, make present and future elections "more authentic, equal and transparent" and that the recommendations the Commission has been making to the Mexican Government for some time will be embodied, in both letter and spirit, in these reforms. However, none of this prevents the Commission's continuing to examine the instant case, since the violation of the rights upheld in the Convention predates the law now on the books and is not necessarily solely attributable to the previous law. Hence, although the Inter-American Commission is pleased that the law has been amended, it will still issue its final conclusions. The Inter-American Court explained the Commission's competence to rule on domestic laws²⁵ as follows: "For individual communications to be processed, some violation of the Convention by a State must be alleged. This is a prerequisite for admissibility (Article 47.b) and the Commission has the authority to determine that said violation exists. Accordingly, it has the authority to determine whether or not laws are in violation of the Convention. In effect, international bodies that apply the Convention must treat a domestic law as they would a mere fact. The responsibility of the State when one of its domestic laws is in violation of the Convention is the same as when, under general international law, its domestic laws violate other international obligations."

As for the question of admissibility, in its observations the Government of Mexico states that it does not agree with the Commission's practice, present in this case, of

²⁴ Inter-American Court of Human Rights, Advisory Opinion OC-13/93, July 16, 1993. "Certain authorities of the Inter-American Commission on Human Rights (Articles 41, 42, 46, 47, 50 and 51 of the American Convention on Human Rights)", requested by the Governments of Argentina and Uruguay, paragraph 22. (unofficial translation)

²⁵ Inter-American Court of Human Rights, Opinion OC 13/93. Paragraph 34.

merging *ipso facto* its examination of the petition's admissibility and its merits without first notifying both interested parties.

The Commission is not certain what the Government means by the expression "merge *ipso facto*", but the text seems to suggest that its concern stems from the fact that the interested parties were not notified in advance. If that is the case, then the Commission feels compelled to remind the Government that Government and petitioner alike know of the processing of this case, which began on October 17, 1991; there is a large case file on record containing both parties' assessments of the merits of the case and of its admissibility from the strictly formal standpoint. One need only look at the extensive documentation and arguments that contend that the Commission does not have competence in this matter, that the facts alleged do not constitute violations of the Convention, etc., documents and arguments that are discussed through the present report and upon which it is based. There is nothing new in this report that could violate either party's right to self-defense or to due process. Indeed, the Government itself made observations on the confidential version of this report. The Inter-American Court cited its own jurisprudence to clarify when a formal expression of admissibility is required, as follows: "The Convention determines what requirements a petition or communication must meet in order to be admitted by the Commission (Article 46); it also states the conditions under which the Commission is to declare a petition or communication inadmissible (Article 47) and that the Commission may find a petition or communication to be inadmissible after processing has already commenced (Article 48.1.c). As to how the Commission must declare the inadmissibility, the Court has already found that a formal act is required, though no formal act is required for purposes of admissibility (Velásquez Rodríguez case, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, paragraph 40; Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987, Series C No. 2, paragraph 45, and the Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987, Series C No. 3, paragraph 43).²⁶

In its observations on Report 7/93, the Government of Mexico contends that the report "is more like an unsolicited advisory opinion than a report on an individual case." In reference to the Commission's competence, the Government adds that the former's "authority is circumscribed within a very precise legal framework and is neither omnimodal nor absolute, and does not extend to the collective right of the peoples to free political-electoral choice." In response, the Commission would like to cite some of the more relevant excerpts from Advisory Opinion OC 13/93, issued by the Inter-American Court of Human Rights in July of 1993: "There are many ways a State can violate an international treaty. In the specific case of the Convention, for example, the State can violate it by failing to enact the laws that it is obliged to enact under Article 2. Of course, it can also violate the Convention by enacting provisions that are contrary to what its obligations under the Convention require of it, which would make the question of whether such

²⁶ Inter-American Court of Human Rights, Advisory Opinion OC 13-93, paragraph 40.

provisions were enacted in accordance with or contrary to domestic law irrelevant." The Court further states that "There must be no doubt that under such circumstances the Commission has the same authorities as it would have vis-a-vis any other type of violation, and may avail itself of the same opportunities to state its findings that it has in the other cases. In other words, the fact that these are 'domestic laws' adopted 'in accordance with the provisions of the Constitution' means nothing if they are the means through which protected rights and freedoms are violated. The authority of the Commission is in no way constrained by the manner in which the Convention is violated."²⁷

The Commission, therefore, feels it is unnecessary to dwell on these points further, as they have already been examined here and on previous occasions and do not warrant reconsideration. The position of the Inter-American Commission on Human Rights on this point is clear, and the Convention is the legal framework in which it has been operating and will continue to operate. Its functions go beyond the particular interests of any one State. Because of the nature, purpose and characteristics of international human rights law, it will continue to discharge its function of protecting, promoting and defending the fundamental guarantees of persons, inspired by the principles that govern it.

The Government of Mexico, which argues for the inadmissibility of the petition that was the source of this case, draws a number of conclusions concerning the exhaustion of internal remedies, to the following effect:

1) According to the Government, the following are "generally recognized principles of international law relative to the exhaustion of domestic remedies":

- As a general rule, the domestic courts are presumed to be independent and impartial;
- If the domestic law is open to interpretation, all possible remedies must be exhausted;
- Justice has not been denied when the petitioner is to blame for the lack of any immediate results;
- The petitioner must use all the arguments and evidence essential to his/her case;
- The effectiveness and efficacy of an internal remedy concern its ability to redress the rights of the petitioner, but not its affects vis-a-vis third parties; and
- The decision as to whether a remedy is admissible is the exclusive purview of the competent national courts under the domestic legal system."

The assertions put forward by the Government of Mexico, which it labels

²⁷ Inter-American Court of Human Rights, Advisory Opinion OC 13/93, paragraphs 26 and 27.

"principles", are perfectly valid, although not necessarily applicable or causally linked to the present case or to the observations made by the Commission when ruling on it. The Commission has analyzed the nature of political rights and the remedies provided under Mexican law. Its conclusions will not be changed by arguments that treat political rights as individual rights when they are not, or that resort to interesting discourses in comparative law to demonstrate the similarities between the Mexican system and those of other countries in this hemisphere. In fact some of the points raised by the Government are not even at issue, precisely because they have no direct bearing on the purpose of this report.

2) The Government contends that the duty to investigate violations of political rights "has been fully set in motion, both in the criminal as well as electoral jurisdictions" in Mexico. It adds that "the conduct of the competent electoral agencies in this regard is above reproach, having been given full and autonomous probative authority." The Commission is pleased to acknowledge this very positive development and is confident that in the light of recommendations made by the Commission both now and in the past, the evolution of Mexico's election laws will continue on course.

3) The Government reiterates that the petitioner failed to comply fully with his obligation "to file the remedies available in the electoral jurisdiction, with the competent organs and within the statutory time periods". The Government cites (1) the ombudsmen in the federal and local jurisdictions, impeachment proceedings in the Federal Legislature and other instruments that it claims "the petitioner either failed to use or used improperly". The Government goes on to note that while the ombudsmen are not empowered to determine whether elections are valid, they have heard cases involving violations of the constitutional guarantees, including violations of the guarantees of legal certainty committed during elections". It argues that (2) "impeachment proceedings are in order, *inter alia*, in cases of attacks on democratic institutions; on the republican, representative and federal form of government; on freedom of suffrage and for grave and systematic violations of constitutional guarantees." (3) "Protection of political rights" -states the Government- "through the so-called petition to challenge legality" (...) and the various legal questions that such proceedings involve, including that of the Convention's federal supremacy in actual cases, have not been definitively settled by the Mexican courts; the petitioner also failed to use other domestic remedies available to him such as (4) the concurrent civil or criminal avenue to monitor treaties or the (5) "sovereignty protection" designed to ensure that the state and federal jurisdictions are respected." Finally, the Government contends that (6) "a petition to challenge legality in the area of political rights need not be just a symbolic proceeding; instead, it has a very reasonable chance of success since the Supreme Court has ruled that the 'petition should be granted' under such circumstances."

As to these "instruments" and the need to exhaust them as remedies under domestic law, the Commission would again cite the Inter-American Court of Human Rights

for its definition of what should be regarded as "adequate" remedies.

4) The Government states that the IACHR report "overlooks the fact that Mexico's *amparo* is the simple, brief and effective remedy expressly provided for in the respective provisions of the American Declaration and the American Convention on human rights, as can be established from the travaux préparatoires, from inter-American jurisprudence and from the legal doctrine and constitutional philosophy of the hemisphere." It refutes the Commission's assertions by stating that in Mexico, the *amparo* petition is "simple and brief because the allegedly aggrieved party may immediately seek the suspension of the act in question, or the courts may order said suspension as a precautionary measure (...); any authority who disregards the suspension while the proceedings are underway shall be subject to the severest penalties." The Government argues that *amparo* proceedings are "effective by the standards of generally accepted principles of international law concerning the efficacy and suitability of domestic remedies and reparations for damages, since the ruling that grants the petition of *amparo* is intended to restore to the aggrieved party his full rights."

No one is questioning either the validity or the value of the assertions that the Government of Mexico has made in this respect. However, the Government seems to forget that what is at issue here is not the nature of *amparo* or of any other remedy in respect of individual claims seeking restitution, suspension of acts and so on. The issue here is the need for Mexico's legal system to provide some effective remedy in the face of a violation of political rights, which are collective in nature. These are a people's rights and are recognized in both the American Declaration and the Convention.

6) Continuing with the subject of *amparo*, the Government states that "the question of granting *amparo* -or any other remedy- the kind of far-reaching scope that the Commission suggests is a matter of optional preferences and not within the scope of the Convention." It goes on to say that "this issue is unrelated to either the effectiveness or appropriateness of domestic remedies; instead, it concerns the constitutional separation of powers." The "optional preferences" of which the Government speaks and the "constitutional separation of powers" are indeed aspects of the political reality of a country that have little to do with the central issue raised by the Commission when it states that the competent domestic authorities need to establish the existence of a simple, brief and effective remedy to protect the political rights of their citizens.

To avoid needless repetition, one need only cite the opinion of the Inter-American Court, which found that "In the international sphere what needs to be established is whether a law violates a State's international obligations under some treaty. The Commission can and must do this when examining the communications and petitions presented to it in which violations of human rights and freedoms protected by the

Convention are alleged".²⁸

CONCLUSIONS

On the basis of the foregoing considerations, the Inter-American Commission on Human Rights issues its final conclusions, bearing in mind preliminary report 7/93 and the reply provided by the Government of Mexico with respect to its recommendations.

In adopting its Report 7/93, the Commission examined in detail and drew up recommendations on the suitability of domestic remedies in terms of elections; the need for an evidentiary system that will allow citizens to enjoy simple, expeditious, and effective remedies in connection with political rights; and the composition of electoral bodies.

According to the Government of Mexico's statement to the Inter-American Commission on Human Rights, progress has been made at the legislative level, a fact which is important to note, and which is reflected in the amendments made to the Ley de Organizaciones Políticas y Procesos Electorales del Estado de México²⁹ (law on political organizations and electoral processes of the Mexican state); some of the new provisions are in response to the recommendations issued by the Commission, and some others, independently of those recommendations, further the aim of ensuring free and genuine elections.

The amendments mentioned by the Government of Mexico have to do with the following topics: electoral organizations, financing of elections, voter rolls, ballot boxes, stages of the electoral process, election days, and remedy proceedings. Specifically, the legislative changes which the IACHR feels it is important to emphasize, because they represent progress, refer, where appropriate, to establishment of the concept of "citizen commissioners" as members of the State Electoral Commission and of the District and Municipal Electoral Commissions; to publicity concerning the actions of electoral authorities in the mass media; and to the adoption of measures to improve logistics on election days, such as the placement of ballot boxes, mainly.

Additionally, the Government states, in response to the IACHR recommendations, that the responsibility to officially investigate situations that violate human rights "has been fully established, in terms of both criminal process and the electoral area". In this

²⁸ Inter-American Court of Human Rights, Advisory Opinion OC 13/93, paragraph 30; see also paragraph 34.

²⁹ Published in Government Gazette No. 24, section four, February 4, 1993. In force on February 5, 1993.

connection, it cites important jurisprudence of the Federal Electoral Tribunal³⁰ according to which "a local council has the authority to obtain all the admissible evidence it needs in order to issue its decisions objectively and impartially in strict adherence to law (...)". The Commission understands that this legal opinion shall be applied uniformly in electoral matters in the cases submitted to the pertinent bodies for consideration, to further the effectiveness of the challenge procedures themselves.

The Committee recognizes this progress with satisfaction and trusts that all of its recommendations to the authorities in that country shall be implemented through continuation of this legislative development process aimed at fully and effectively guaranteeing the political rights of Mexican citizens as recognized in the American Convention.

The Inter-American Commission on Human Rights hopes that, as it was told by the authorities of that country, these amendments will effectively allow greater "authenticity, equality, and transparency" in current and future electoral processes, and trusts that the recommendations this Commission has been making for some time to the Mexican authorities will be carried out in legislatively and operationally by the competent authorities.

The Inter-American Commission on Human Rights has decided to transmit this report to the Government of Mexico and to the complainant, and to publish it as part of its Annual Report to the General Assembly of the Organization.

³⁰ Unanimous opinion SX-III-RA-003/91 Institutional Revolutionary Party (PRI), 7/31/91; and unanimous opinion SX-III-002/91 Institutional Revolutionary Party (PRI), *ibid*, p. 241.