



General Assembly

Distr.: General
16 July 2024
English
Original: Spanish

Human Rights Council

Fifty-seventh session

9 September–9 October 2024

Agenda item 3

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Visit to Mexico

Report of the Working Group on Arbitrary Detention^{*}, ^{**}

Summary

At the invitation of the Government, the Working Group on Arbitrary Detention visited Mexico from 18 to 29 September 2023. The Working Group identified positive developments, including the 2011 constitutional amendments that placed human rights at the heart of the Constitution, the transition since 2008 to an adversarial criminal justice model, the extension of the remedy of *amparo* to internationally recognized human rights, the 2016 National Criminal Enforcement Act, the introduction of a national register of arrests and detentions, the 2014 legislative amendments to limit the administration of justice by military courts, the National Human Rights Commission and state human rights commissions, which have their legal basis in the Constitution, and the creation of the National Mechanism for the Prevention of Torture.

At the same time, the Working Group noted that arbitrary detention continues to be a widespread practice in Mexico and that there are shortcomings in the criminal justice system, such as the use of preventive custody (*arraigo*) and mandatory pretrial detention, which violate the right to liberty, the militarization of public security, which has led to an increase in human rights violations, the excessive use of force during arrests, broad interpretations of *flagrante delicto*, lack of access to qualified legal assistance, attacks on judicial independence, a punitive approach to drug policy, and inadequate detention conditions. It also noted that arbitrary detention particularly affects members of Indigenous Peoples. Regarding juvenile justice, it noted cases of violence during arrests and a lack of qualified legal assistance. With respect to migration, the Working Group is concerned by the frequent use of detention, which should only be used as a last resort and for the shortest possible time. It is also seriously concerned about the *de facto* detention of migrant children. Lastly, it observed the absence of procedural safeguards for persons with psychosocial disabilities declared exempt from criminal liability and the imposition of detention measures that may

* The summary of the report is being circulated in all official languages. The report itself is contained in the annex and is being circulated in the language of submission and English only.

** The appendix was not formally edited and is being circulated in the language of submission only.



exceed those that would be imposed in criminal proceedings. In addition, involuntary confinement continues to be a recurrent practice. Among its recommendations, the Working Group encourages Mexico to undertake reforms to eliminate the use of preventive custody and mandatory pretrial detention and to adopt specific practices that provide greater protection against arbitrary detention.

Annex

Report of the Working Group on Arbitrary Detention on its visit to Mexico

I. Introduction

1. At the invitation of the Government, the Working Group on Arbitrary Detention conducted an official visit to Mexico from 18 to 29 September 2023. The Working Group was represented by Matthew Gillett (New Zealand), Ganna Yudkivska (Ukraine) and Miriam Estrada Castillo (Ecuador), and accompanied by staff from the Office of the United Nations High Commissioner for Human Rights.

2. The Working Group first visited Mexico in 2002, approximately 20 years before this second visit. The Working Group would like to express its gratitude to the Government of Mexico for accepting its request to conduct a country visit and for its cooperation. During the visit, the Working Group met with officials from the following federal authorities: the Ministry of the Interior, the Ministry of Foreign Affairs, the Ministry of Health, the Ministry of Public Security and Citizen Protection, the Ministry of Defence, the Ministry of Naval Affairs, the Office of the Attorney General of the Republic, the Supreme Court, the Council of the Federal Judiciary, the Federal Public Defender Institute, Congress, the Autonomous Agency for Prevention and Social Rehabilitation, the National Institute of Migration, the National System for the Protection of Children and Adolescents, the National Commission for the Prevention and Elimination of Violence against Women, the National Institute of Indigenous Peoples, the Commission for Dialogue with the Indigenous Peoples of Mexico and the National Human Rights Commission, as well as authorities from the States of Mexico City, Chiapas and Nuevo León.

3. The Working Group would like to thank the Office of the United Nations High Commissioner for Human Rights in Mexico, the United Nations country team and the resident coordinator for supporting the visit. The Working Group acknowledges the contributions of civil society and the individuals it interviewed.

4. The Working Group visited 4 federal and 11 state and municipal facilities, including social rehabilitation centres (for both men and women at the federal and state levels), police stations, migrant detention centres, specialized centres for adolescents, child protection shelters, mental health hospitals and prosecutor's office holding cells. It conducted confidential interviews with 173 persons deprived of their liberty. The Working Group had full and unimpeded access to all the sites it intended to visit and expresses its gratitude to the federal and state governments for their cooperation.

5. The Working Group intends to continue the constructive dialogue with the Government on the issues presented in this report.

II. Overview of the institutional and legal framework

A. International human rights obligations

6. Mexico is a party to numerous human rights instruments, including the International Covenant on Civil and Political Rights and its two Optional Protocols, the Convention relating to the Status of Refugees and its Optional Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, the Convention on the Rights of the Child and its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights. It is also a party to the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and

Members of Their Families and the International Convention on the Elimination of All Forms of Racial Discrimination, and has accepted their individual communications procedures.

7. Mexico is not a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights or the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

8. Mexico has participated in four cycles of the universal periodic review – in 2009, 2013, 2018 and 2024.

B. Constitutional framework

9. The Political Constitution of the United Mexican States recognizes a set of individual rights and guarantees, and the 2011 amendments placed human rights at the heart of the Constitution. The main features of the constitutional reform included establishing the constitutional hierarchy of international human rights treaties and the obligation of the State to promote, respect, protect and guarantee human rights.

10. The Constitution guarantees the rights to life, privacy, freedom of opinion and expression, freedom of association and peaceful assembly, the right to due process, the prohibition of torture and the right to non-discrimination, among others. Article 16, establishing the right to personal liberty, was amended in 2008 to incorporate the concept of preventive custody. Preventive custody allows the authorities to detain a person for up to 80 days for criminal investigation purposes in matters related to organized crime without having charged that person with an offence.

11. Article 19 of the Constitution establishes mandatory pretrial detention for several categories of crimes. Although pretrial detention should be considered an exceptional measure to ensure the availability of the accused during criminal proceedings, article 19 establishes a list of serious crimes that trigger mandatory pretrial detention. In 2019, mandatory pretrial detention was extended to 16 categories of crimes that are vaguely defined and may be extended to an indefinite range of offences. In 2021, mandatory pretrial detention was extended to crimes such as femicide and sexual violence against minors.

12. The institutional mechanism for the protection of individual rights, including the protection of the rights to life, integrity and liberty (*habeas corpus*) is the remedy of *amparo*. *Amparo* proceedings come under the federal justice system, which means that individuals can have access to such protection throughout the national territory. The *amparo* process has undergone several modifications. In 2011, protection safeguards were expanded, and the process was made more agile and effective. Subsequently, in 2013, the Amparo Act entered into force, expanding the rights that can be defended through this mechanism to include the human rights established in the international treaties to which Mexico is a party.

13. The Working Group welcomes the constitutional, legal and regulatory reforms introduced in Mexico since its visit in 2002. However, it also recalls that States must harmonize their Constitution and laws with international human rights law, and that a State's domestic normative framework cannot be invoked as justification for violating its obligations under international law.¹ In several respects, Mexican laws still contain provisions that make arbitrary detention very likely, such as those on mandatory pretrial detention and preventive custody (see section IV).

III. Good practices and positive developments

A. Amendments to consolidate an adversarial and human rights-centred criminal justice model

14. The Working Group commends the transition by Mexico to an adversarial model of criminal justice in 2008, which has led to a significant reduction in the number of practices

¹ Vienna Convention on the Law of Treaties, art. 27.

that violate human rights. According to article 20 of the Constitution, oral adversarial criminal proceedings are based on adversarial, consolidated, single and direct public proceedings. The presumption of innocence, now established as a guiding principle in the Constitution, is fundamental in avoiding arbitrary detention. The new legal framework establishes that accused persons have the right to appear before a judge and has strengthened the rights of victims.

15. The Working Group notes the improvements made pursuant to the 2016 National Criminal Enforcement Act, including the catalogue of rights of persons deprived of liberty, and recognizes the increased use of conciliation boards to facilitate early release, as is the case in Chiapas, for example.

B. Introduction of the national register of arrests and detentions

16. The Working Group welcomes the 2019 constitutional reform that established the obligation for the authorities to maintain a national register of arrests and detentions and the adoption of the National Act on the Register of Arrests and Detentions, which is in line with the Working Group's previous recommendation that a proper registration book is essential for preventing disappearances.² The Ministry of Security and Citizen Protection administers the register. Approximately 2 million searches of the database have been made by the public and approximately 30 per cent of those searches revealed that the person in question was in detention. Arrests and detentions must be recorded in the register within five hours of deprivation of liberty.

17. However, not all forms of detention are recorded in the national register of arrests and detentions. Administrative detention of migrants and persons with psychosocial disabilities is not included, thereby creating an information gap that reduces the authorities' capacity to prevent and remedy arbitrary detention of migrants and other persons in vulnerable situations. Although the Supreme Court found that military personnel, including those working for the National Guard, must record detentions in the register, several exceptions to this requirement persist.³ The Working Group emphasizes that all civilian and military officials who carry out arrests or placements in detention of any kind should be obliged to register them in the national register of arrests and detentions and should be aware of this responsibility.

C. Restriction of the administration of justice by military courts

18. In its 2002 report on its visit to Mexico, the Working Group warned that military courts should not be used to try military personnel accused of offences normally tried before civilian courts, such as drug trafficking and enforced disappearance. In 2014, Mexico amended its laws to require military personnel who commit crimes against civilians to be tried before civilian courts. The Working Group considers that this is a positive way of reducing the risk of impunity for crimes such as enforced disappearance and arbitrary detention. However, it joins the call made by the Human Rights Committee that all human rights abuses committed by military personnel must be tried before the ordinary courts.⁴

D. National Human Rights Commission, state human rights commissions and non-governmental human rights organizations

19. The Working Group met with the National Human Rights Commission and some state human rights agencies, as well as with a number of non-governmental human rights organizations. It recalls that the National Human Rights Commission and the state human rights commissions must perform their functions autonomously and independently.

² A/HRC/7/4, para. 69; and principle 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

³ National Human Rights Commission, application for constitutional review No. 63/2019.

⁴ CCPR/C/MEX/CO/6.

20. The Working Group commends the fact that the National Human Rights Commission has been given its legal mandate under article 102 of the Constitution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). However, it is concerned to learn that there is no systematic follow-up after visits to persons deprived of their liberty by members of the National Human Rights Commission and state commissions to inform them of the measures taken to remedy their complaints.

21. In 2007, the National Mechanism for the Prevention of Torture was created as part of the National Human Rights Commission. The system of regular and independent monitoring of all places of deprivation of liberty required under the Optional Protocol to the Convention against Torture is not only a crucial tool for preventing torture and ill-treatment, but also for combating arbitrary deprivation of liberty.

22. The Working Group is concerned about cases of human rights defenders who have been subjected to reprisals by State authorities, including threats that charges would be fabricated against them. Among them were members of civil society who defend the rights of LGBTI+ people and Indigenous and Afro-Mexican persons. Such reprisals are a violation, inter alia, of article 12 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

IV. Main findings concerning the right to personal liberty

23. In determining whether the information provided, including by persons interviewed during the visit, raised issues regarding the arbitrary deprivation of liberty, the Working Group referred to the five categories of arbitrary deprivation of liberty outlined in its methods of work.⁵

A. Detention in the context of the criminal justice system

1. Mandatory pretrial detention

24. The Working Group was informed that, in 2022, of the approximately 90,000 persons who were awaiting a judgment in their case, about 50 per cent were subject to mandatory pretrial detention.⁶ Many of these individuals had been subjected to prolonged mandatory pretrial detention, some of them for more than five years. It is worrying that excessively prolonged pretrial detention is common among all detained persons – the total prison population of Mexico stood at approximately 230,000 in July 2023 – and not only among those in mandatory pretrial detention.

25. The Working Group is cognizant that mandatory pretrial detention has been identified as a violation of the right to personal liberty and can potentially undermine other rights, such as the presumption of innocence, personal integrity, judicial independence and equality before the law. Mandatory pretrial detention has been considered a violation of human rights in several opinions issued by the Working Group, including in connection with Mexico,⁷ and was declared to be a violation of the obligations of Mexico by the Inter-American Court of Human Rights. The Court ordered Mexico to bring its laws into line with international standards.⁸

26. The Working Group was informed of a new legislative initiative that seeks to amend article 19 of the Constitution and expand the types of offences subject to mandatory trial detention to include, among others, drug dealing and other offences related to synthetic

⁵ A/HRC/36/38, para. 8.

⁶ See <https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2023/CNSIPEE-F/CNSIPEE-F2023.pdf>.

⁷ Opinion No. 32/2023.

⁸ *García Rodríguez et al. v. Mexico*, judgment of 25 January 2023.

drugs.⁹ The Working Group is of the view that the adoption of this initiative would be a breach of the obligations of Mexico under international human rights law, including multiple treaties to which it is a party, such as the International Covenant on Civil and Political Rights.

27. The Working Group urges Mexico to bring its approach to pretrial detention into line with international human rights law by repealing the provision on mandatory pretrial detention from the Constitution and establishing that it can only be applied based on an individualized assessment demonstrating risk of flight, interference with evidence or recurrence of the crime.

2. Preventive custody (pretrial detention without criminal charges)

28. The use of preventive custody (*arraigo*) increased significantly between 2009 and 2012, but it has decreased since 2013 and is rarely used these days. In 2022, it was used in 25 cases. In 2019, a draft decree seeking to repeal the constitutional provision on preventive custody was presented to the Senate and, in 2023, motions were entered calling for action to conclude the legislative process.

29. The Inter-American Court of Human Rights¹⁰ and other international bodies have called on Mexico to end the use of preventive custody,¹¹ as it violates the right to personal liberty and due process. Although the authorities explained that preventive custody is currently used primarily to protect witnesses in organized crime cases, the Working Group notes that its existence gives rise to the risk of arbitrary detention. The authorities are encouraged to remove the provision on preventive custody from the Constitution and end its use.

3. Militarization of public security

30. In Mexico, military forces are frequently used to carry out public policing activities at the federal, state and municipal levels. Currently, more than 100,000 soldiers are reported to be performing police and public security tasks, as well as immigration control. This has been closely linked to the increase in violence against arrested persons, disappearances and homicides. Persons detained by military personnel are often subjected to severe violence and torture.

31. The establishment of the National Guard in 2019 is a symptom of the extensive use of military personnel in police functions. In accordance with article 21 of the Constitution, the National Guard reports to the Ministry of Security and Citizen Protection. In 2020, pursuant to a presidential agreement, the Mexican Armed Forces were ordered to temporarily take a subordinate and complementary role in policing activities alongside the National Guard only in extraordinary and regulated cases, subject to oversight. This agreement was due to expire in 2024, but, through a constitutional amendment in 2022 it was extended to 2028.

32. Although the National Guard took on the functions of the Federal Police, its personnel predominantly have a military background. Of its 128,000 members, about 48 per cent come from the Army or the Navy. While members of the National Guard are trained in human rights and evidence collection, the Working Group notes that there are consistent reports of violence during arbitrary arrests and detentions carried out by military personnel. Although it was reported that arbitrary detentions committed by personnel of the Ministry of Defence and Naval Affairs had decreased, 60 of the 240 complaints of arbitrary detention between 2018 and 2023 remain unresolved.

33. The Working Group received information on a new proposal for a constitutional reform of the National Guard that seeks to convert it into a permanent armed force, of military origin and training, attached to the Ministry of Defence. The proposal also seeks to grant the National Guard constitutional authority to participate in the investigation of crimes, under the leadership and command of the Public Prosecutor's Office. The Working Group expresses

⁹ Federal Executive legislative initiative No. 6457-5.

¹⁰ *Tzompaxtle Tecpile et al. v. Mexico*, judgment of 7 November 2022; and *García Rodríguez et al. v. Mexico*.

¹¹ [CCPR/C/MEX/CO/6](#).

its concern that the adoption of this proposal could exacerbate human rights violations related to the National Guard.

4. Excessive use of force during arrests

34. The Working Group learned that a significant number of detained persons suffered severe and excessive violence during their arrest. International human rights mechanisms, including the opinions of the Working Group, have also referred to ill-treatment and torture committed by security forces in Mexico.

35. Beatings and torture are often inflicted to extract confessions. Detained persons are sometimes forced to give information about other suspects or possible evidence, and ill-treatment is also used as a form of humiliation and punishment. The Working Group notes that the use of evidence obtained by torture in any subsequent trial would render the proceedings unfair and violate international human rights law. Information was received that, Indigenous persons are, for example, sometimes beaten to force them to accept responsibility and are called “Indians” during arrests. A woman who informed officers that she was pregnant at the time of the arrest was punched in the stomach and then transported for hours by the police to various locations to search for evidence incriminating her boyfriend. Others were “taken for a ride,” during which the officers or military personnel did not promptly turn them over to the nearest civilian authority, prosecutor or judge, but instead took them to remote locations and subjected them to violence to force them to provide incriminating evidence.

36. These risks are aggravated by the practice whereby the 48-hour period within which the arrested person must appear before a judge is counted only from the time he or she is brought before the Public Prosecution Service. This means that time spent in police custody (or in the custody of another security force) is not included in the 48-hour period. Given that the initial period after arrest is a critical time when the arrested person is at the greatest risk of undue self-incrimination or prejudice to his or her rights, it is essential that the 48 hours be counted from the initial moment of physical deprivation of liberty, rather than from some later point. The Working Group is concerned that the 48-hour period is sometimes doubled to 96 hours in organized crime cases. In addition, the Working Group found shortcomings in the recording of arrests, with a variety of books, spreadsheets and other lists used in various institutions and no consistent methodology being applied. In terms of accountability, although the authorities referred to cases in which security agents were investigated for violence against arrested persons, they did not provide details of any significant number of convictions.

5. Abuse of the concept of flagrante delicto

37. Many arrests are carried out without a pre-existing warrant, on the basis of so-called flagrante delicto. Since 2016, the adversarial criminal process has required that persons arrested in flagrante delicto without an arrest warrant appear before a judge to verify the legality of their detention. However, the Working Group notes with concern that flagrante delicto continues to be interpreted broadly.

38. The 2021 national survey of persons deprived of liberty indicated that 23 per cent of persons had been arrested on the street without an arrest warrant and that more than 40 per cent claimed to have been falsely accused of committing a crime. The Working Group recalls that, when an arrest warrant is not obtained in advance, the scope of judicial oversight over detention is limited to an ex post facto measure, by which time a violation of rights may already have occurred. There are circumstances, such as flagrante delicto or being “caught in the act,” in which it is not possible to obtain a warrant in advance. However, these circumstances should be interpreted restrictively to avoid undermining judicial oversight of detention.

39. The Working Group was concerned to learn that Mexico applies an expanded version of flagrante delicto, known as flagrante delicto by accusation,¹² whereby a person may be arrested without a warrant at a later time despite not having been caught in the act by an

¹² National Code of Criminal Procedure, art. 146.

officer with police powers, provided that a witness, who may be a private individual, reports having seen him or her commit a crime. Another expanded application of this concept involves the situation whereby a person who has allegedly committed a crime is not arrested immediately, but is followed for a certain period of time via street cameras and then arrested at a later stage. These broad interpretations of *flagrante delicto* are not in accordance with human rights¹³ and should be prohibited.

6. Deprivation of liberty under drug policy

40. Since 2006, Mexico has pursued a much more punitive approach to drug use and drug dealing. Drug possession is still criminalized and even possession of relatively small quantities may be sufficient to qualify as drug dealing. As a result, there has been an increase in the incarceration of drug users. The Working Group emphasizes the importance of seeking alternatives to detention in this context.¹⁴

41. Worryingly, the Working Group was informed of cases in which security forces fabricated charges against individuals by planting drugs in their homes, vehicles, bags or clothing. Apparently, this practice is still common among security forces. These allegations must be taken seriously and investigated thoroughly and the perpetrators punished where appropriate. If security forces were equipped with body cameras or recording devices, this could help reduce the possibility of such abuses of power. The Working Group was informed that people are often arrested on the pretext that they have committed certain crimes that are then modified once the person is already in detention, which can undermine their rights to liberty, freedom from self-incrimination and an effective defence.

42. The Amnesty Act of 2020 includes drug-related offences, provided that they fall under federal jurisdiction. It covers vulnerable people, such as those living in extreme poverty and Indigenous Peoples. However, the Working Group was informed that only 424 persons have been released under an amnesty, as the law has been interpreted restrictively and the Amnesty Commission has met only a few times in three years. The Working Group recalls that the detention of a person subject to an applicable amnesty law constitutes arbitrary detention. It encourages the Amnesty Commission to avoid an overly restrictive approach to the Act and to ensure that amnesty-based releases are carried out promptly.

43. The Working Group noted that photos of arrested persons posing in front of tables displaying drugs and weapons, sometimes with their names or other identifying information, often appear in the media. Such images have the potential to undermine the presumption of innocence in any criminal proceedings. Although the authorities have reportedly prohibited their own forces from disseminating such images, arrested persons and illicit materials cannot be presented for the purpose of taking photos without the arresting forces being complicit. While the freedom of the media must be respected, the Working Group implores the Government to ensure that its forces are not complicit in the dissemination of such images to the public.

7. Summary proceedings

44. In 2016, a summary trial procedure was introduced into legislation through the reform of the code of criminal procedure. Although intended to reduce the burden on the criminal justice system, the Working Group learned that detained persons were pressured, often by their own lawyers, who are frequently public defenders, to accept responsibility in order to avoid trial and the possibility of a harsher penalty. While it should always be possible to admit guilt, care should be taken to ensure that summary proceedings are not used as a means of dissuading detained persons from exercising their rights to a fair trial, to remain silent, to the presumption of innocence and to have adequate time and facilities for the preparation of their defence.

¹³ Opinion No. 78/2018, para. 70.

¹⁴ [A/HRC/47/40](#).

8. Bureaucratization of the judicial remedy of *amparo* (habeas corpus)

45. While the judicial remedy of *amparo* allows for the release of the detained person, the Working Group noted that this rarely occurs in practice. In Mexico City, only 16.5 per cent of the cases in which arbitrary detention is determined to have occurred result in the immediate release of the detained person. The Committee on Enforced Disappearances noted, following its visit to the country in 2021, that few judges make use of the *amparo buscador* mechanism.¹⁵ As a procedural matter, the Working Group was assured that judges may request additional information from the prosecutor's office or other authorities to handle *amparo* requests. However, the vast majority of the detained persons who exercised this right had their *amparo* request rejected without further inquiry. Others noted that their *amparo* applications remained unresolved for years, including in one case in which a person had been detained for nine years without trial. The few individuals who had a successful outcome through the remedy of *amparo* were not immediately released but remained in detention pending retrial or the reactivation of other charges that had been held in abeyance while they served their sentence.

46. The Working Group considers that the *amparo* procedure has considerable potential to ensure that human rights are respected and that individuals are released when violations have occurred. However, the judiciary must ensure that its judges vigorously exercise their powers under the *amparo* procedure and that they are not subjected to reprisals for doing so.

9. Judicial independence

47. An independent and impartial judiciary is essential to combat arbitrary detention, as reflected in article 14 (1) of the International Covenant on Civil and Political Rights. The Working Group welcomes the positive changes introduced in this regard through the reform of the criminal justice system. However, it is concerned that members of the executive branch have put pressure on judges, particularly when those judges have ruled that the executive's initiatives are contrary to the law. In some cases, members of the executive publicly mention specific judges who have issued decisions or rulings that find against government policies. The federal judiciary is facing severe budget cuts of up to 20 per cent. Such measures undermine the ability of the judiciary to carry out its work independently, without fear or favouritism. The Working Group is concerned that this has contributed to the persistence of a large number of cases of arbitrary detention at both the federal and state levels.

10. Right to legal assistance

48. The Working Group is pleased to note that approximately 95 per cent of persons charged with serious crimes are assigned public defenders to represent them free of charge. It also appreciates efforts to provide a wide range of legal services, including legal assistance to migrants. In addition, it notes that the transition to an adversarial system has placed public defenders on a more equal footing with the prosecution. However, public defenders have to deal with a large number of cases, which compromises the quality of the services they provide and is a significant burden on public defender offices with limited financial and human resources. Many detained persons receive poor-quality legal services.

49. The result is an increased risk of arbitrary detention, particularly for individuals who do not have the socioeconomic means to hire private legal assistance. Many arrested persons do not have regular access to a public defender once they are detained. They are unable to communicate with lawyers by telephone, as such telephone calls are reportedly generally not provided free of charge and public defenders often ignore calls coming from a detention centre. The Working Group reiterates its call to strengthen the Public Defender Service.¹⁶ It calls on the authorities to improve access to regular and timely legal assistance, particularly for persons in detention.

¹⁵ CED/C/MEX/VR/1 (Findings).

¹⁶ E/CN.4/2003/8/Add.3, para. 72 (d).

11. Conditions of detention

50. Safeguards for detained persons help prevent arbitrary detention. According to human rights law, prompt and continuous access to a defence lawyer, a post-arrest medical examination, communication with third parties, and visits by external monitoring mechanisms are among the safeguards that must be provided.

51. The Working Group learned that these safeguards vary from facility to facility and are often not fully provided by the authorities. Detained persons had difficulty in gaining access to a lawyer. Many detained persons were allowed only one 10-minute phone call every 8 days, which they could use to talk to their family or lawyer. Given that they generally chose to speak to family and that lawyers rarely visit detention centres – which are often located in remote areas – this limit on communications has considerable potential to impair the exercise of the right to a fair trial by persons in pretrial detention.

52. Likewise, ill-treatment and violence can affect a detained person's ability to exercise his or her rights, especially if he or she suffers injuries as a result. The Working Group was informed that, at the federal level, prison personnel generally do not use violence against inmates. That said, it also received information on cases of violence by prison guards, which indicates that this practice has not been completely eradicated. There is also corruption in some centres. In addition, persons in pretrial detention are often housed together with convicted prisoners. Several detained persons had serious injuries and illnesses and complained that they did not have access to effective medical treatment. The lack of available medicines was a frequent concern. Many could only get medicine if their families obtained it for them. The Working Group emphasizes that the authorities must ensure the necessary medical assistance for detained persons.

53. In some federal and state prisons, inmates are locked in their cells for most of the day and rarely leave the cell block in which they are housed. Prisons are affected by recurrent staff cuts, including in key positions such as security guards and medical personnel. This shortage affects their ability to get detainees out of their cells for exercise and activities. This was particularly noticeable in the federal men's facilities visited, where many inmates had spent months without leaving their cell block.

54. The Working Group noted that detained persons who had violated prison rules were often placed in deplorable cells, with no bedding and only concrete floors to sleep on. Such conditions are incompatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Similarly, solitary confinement for up to 15 days (or isolation in harsh conditions in small groups) was used as punishment for misconduct. The Working Group found that, in reality, isolation lasted more than 30 days in some cases. The Working Group recalls that, according to rule 45 of the Nelson Mandela Rules, solitary confinement must be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. Solitary confinement should be prohibited for prisoners with psychosocial or physical disabilities.

55. Prison registers constitute a systemic safeguard for inmates. The Working Group found that prison registers were ineffective, as they were not systematically used or updated by the authorities. Concerns were raised regarding poor Internet connectivity, obsolete equipment and lack of trained human resources to update the registers. These shortcomings must be addressed to ensure that prison records are available and effective.

56. While some prisons were below capacity, the Working Group is concerned about severe overcrowding in some men's prisons. In one prison, for example, 16 persons in pretrial detention are kept locked in small rooms. The Working Group calls on the authorities to establish minimum standards with respect to floor area and cubic content of air per inmate, including the right to adequate time and facilities to prepare a defence. It also reiterates the link between overcrowding and excessive length of pretrial detention, in violation of the International Covenant on Civil and Political Rights, and encourages the authorities to take alternative preventive measures.

57. LGBTI+ persons were generally housed together to isolate them from any possible bullying. According to reports, they are not subjected to any markedly different treatment

than other inmates or any other type of discrimination. However, prison staff noted that there are no specific protocols on how to address their particular needs. The Working Group believes that the authorities should undertake consultations to determine whether specific protocols beyond existing laws are required and to identify best practices that could be followed.

B. Juvenile justice

58. In Mexico, a special legal regime applies to the detention of adolescents between the ages of 12 and 17. Adolescents in detention are held in separate facilities from adults. While the facilities were largely clean and the Working Group was not made aware of staff violence or any other failings in the course of proceedings against adolescents or during their stays, opportunities for outside activities, such as visits to sporting and cultural events, were limited and only available to small groups of young people. Given the developmental stage they are at, it is important that all young persons in detention are able to participate in stimulating activities.¹⁷

59. Of even greater concern is the fact that many adolescents experience considerable violence during their arrests and are not notified of the reasons for their arrest. This is reflected in the results of a 2022 national survey that revealed that 65.9 per cent of the young people surveyed complained of having suffered some kind of psychological violence and 45.9 per cent of physical violence during their arrest (in 2017 the percentage was 68.8 per cent with respect to psychological violence and 50.2 per cent with respect to physical violence).¹⁸ Adolescents were sometimes beaten by the arresting forces, who placed bags over their heads and took them for walks while pressuring them to confess to having committed a crime. In addition, defence lawyers sometimes tell adolescents to plead guilty to avoid entering the adult criminal justice system. The Working Group emphasizes the need for adolescents to have access to effective legal representation, with properly trained lawyers rigorously defending their interests, given their vulnerable age and the detrimental impact that incarceration will generally have on their future lives and physical and psychological well-being.¹⁹

C. Detention of members of Indigenous Peoples

60. The Working Group heard of cases in which members of Indigenous Peoples suffered discrimination that led to their being arrested and subjected to considerable violence by security forces. In some of these cases, the Indigenous persons were defending the rights of their people, including in government facilities and projects that they considered to affect their territories, and were accused of invasions and damage to third-party property. In this regard, the Working Group stresses that individuals should not be arrested simply for exercising their rights. This is particularly important for Indigenous groups engaged in non-violent protest actions. The Working Group notes that many Indigenous persons advocate for environmental protection and therefore play a dual role in defence of both the rights of their peoples' members and of nature.²⁰ These activities should not be punishable by criminal penalties unless they involve serious offences that cannot be addressed by alternative means. At the same time, if Indigenous groups administer traditional justice that involves detention, it must be in accordance with the human rights obligations of Mexico, including the prohibition of arbitrary detention and the prohibition of torture and cruel, inhuman and degrading treatment.

61. The Working Group was informed that for Indigenous persons in detention, who make up a significant proportion of all inmates, particularly in Chiapas, culturally appropriate food

¹⁷ Committee on the Rights of the Child, general comment No. 24 (2019), para. 95; and United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

¹⁸ See

<https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2023/ENASJUP/ENASJUP2022.pdf>.

¹⁹ Committee on the Rights of the Child, general comment No. 24 (2019), para. 51.

²⁰ [A/HRC/54/51](#).

was not always available and they were not always able to observe their traditional practices. When it comes to language, the Working Group notes the efforts of the National Institute of Indigenous Peoples, which assisted over 500,000 people in 2022 and a growing number in 2023. This is important from the outset of detention, when the risk of their rights being violated is greatest. The Working Group encourages the authorities to be proactive in training prosecutors, judges and other officials on the needs of Indigenous persons in detention, which go beyond language and also include socioeconomic challenges, remoteness and alienation from their peoples.

D. Detention in the context of migration

62. The Working Group notes that Mexico is a transit point for migrants seeking to enter the United States of America from Central and South America and an increasing number of other States. Many of these people are asylum-seekers. In recent years, the situation in Central America, Ecuador and the Bolivarian Republic of Venezuela has led to a dramatic increase in the number of migrants passing through Mexico or, in some cases, using it as a destination country. Triggered by United States immigration policies, the situation has resulted in migrants often being subjected to conditions that contravene the human rights commitments of Mexico.

63. A large number of migrants and asylum-seekers – more than 240,000 in the first half of 2023 – are detained in Mexico. Under the Constitution, such administrative detentions must be limited to 36 hours, and the Mexican Supreme Court has held that the detention of migrants for 15 to 60 days under the Migration Act is unconstitutional.²¹ However, the Working Group found that a significant number of detained migrants are held beyond the 36-hour limit, which increases the risk of arbitrary detention. The Working Group received information that when migrants detained for criminal offences seek to exercise their rights, such as applying for *amparo*, they are often told that if they do so, they will be held for months rather than being released within 36 hours. People must be able to exercise their rights without reprisals, particularly in the context of migration.

64. A large number of children are detained in the context of migration. In 2022 alone, more than 126,000 minors were sent to centres administered by the National System for the Comprehensive Development of the Family. According to article 99 of the Migration Act, minors are not allowed to be kept in migration detention. However, the Working Group found that, in practice, migrant children are often detained either in shelters exclusively for unaccompanied minors administered by the System or in facilities shared with migrant holding centres under the authority of the National Institute of Migration of the Ministry of the Interior.

65. Having visited minors detained under the authority of the National System for the Comprehensive Development of the Family, the Working Group noted that, although they are given food and shelter, it is important that the Mexican authorities provide them with opportunities to ensure that their development is not impaired and that such detention is exceptional, when alternatives to detention are manifestly unfeasible, and is limited in time.

66. Similarly, during visits to children deprived of liberty with their families in facilities shared with migrant detention centres, the Working Group was concerned about the conditions in which they were being held. The minors and their families were sleeping in yards outside the buildings and facilities, exposed to the heat. In addition, while the detention of migrant minors has apparently been prohibited pursuant to legal reforms, the Working Group saw children who were obviously under the age of 18 (and, in some cases, clearly under the age of 10) deprived of their liberty in these areas. The Working Group recalls its Deliberation No. 5,²² in which it establishes that detaining children because of the immigration status of their parents will in all cases violate the principle of the best interests of the child and constitutes a violation of the rights of the child. Children must not be separated from their parents and/or legal guardians. The detention of children whose parents

²¹ Supreme Court, amparo review No. 388/2022.

²² A/HRC/39/45, annex.

are detained should not be justified on the basis of maintaining the family unit, and alternatives to detention must be applied to the entire family instead.

67. Detained persons were not free to move around inside the buildings of the migrant holding centre itself. Worryingly, the Working Group saw that there were locked metal gates separating the rooms in which migrants were housed from exits to outdoor courtyards and that guards were stopping migrants from freely having access to these outdoor areas. This also prevented migrants from having access to the complaint boxes of the human rights commissions. In light of the fire at the Ciudad Juárez facility in March 2023, in which 40 people died and many were injured, the Working Group emphasizes that migrants should not be locked up and should have access to the outside.

68. In addition, Mexican officials, often from the security forces, frequently subject migrants to extortion and bribery. As a result, those who cannot pay are detained, while those who can pay are allowed to continue on their way. The spread of this type of extortion risks creating a clandestine economy, which may become entrenched if the security forces become accustomed to extracting additional income illegally. Any extortion of this kind must be prohibited and eradicated in law and in practice.

E. Detention in the context of psychosocial disability

69. According to the Ministry of Health, approximately 24 million people in Mexico have a psychosocial disability, of which 3.5 million have chronic symptoms that have a severe impact on their lives. Many of these people face detention.

70. In Mexico, persons considered exempt from criminal liability may be subject to a penalty known as “security measures”, which may consist of residential treatment, generally involving incarceration in a penitentiary centre with persons who have been tried and convicted. In addition, persons with psychosocial disabilities have frequently been the subject of declarations of exemption from criminal liability in the context of criminal proceedings without procedural safeguards. The Working Group emphasizes that if a person has a psychological disorder so severe that he or she is unable to defend him- or herself against criminal charges, he or she should not be convicted of that crime, either *de facto* or *de jure*.

71. The Working Group received information indicating that, once treatment is completed, the competent authority releases the individual to his or her family members, but if the person has no family network, detention may be indefinite. The Working Group, like the Committee on the Rights of Persons with Disabilities, urges the Government to ensure that all procedural safeguards for persons with disabilities are respected in processes that may lead to deprivation of liberty and provide procedural accommodation, adjustments, counselling and personal assistance in such proceedings.²³

72. The Working Group noted that although persons with psychosocial disabilities were sometimes housed in separate prison blocks, they were otherwise subject to the same conditions as the general prison population. Treatment was only available for mild psychosocial disabilities and there were no psychiatrists among the prison medical staff.

73. Another form of disability-based deprivation of liberty due is involuntary committal in a hospital or public or private social assistance centre. This type of committal is called “institutionalization”. In addition to psychiatric hospitals, persons with disabilities are deprived of their liberty in social assistance centres. In 2022, the General Health Act was amended to prohibit involuntary treatment and hospitalization on the premise that all interventions must be performed based on informed consent. Despite these changes, the Working Group received information that involuntary hospitalization continues to be a recurrent practice.

74. The Working Group notes that all persons in detention, including persons exempt from criminal liability detained under the “safeguard” mechanism and persons detained for mental health reasons, should be systematically registered in the national register of arrests and

²³ CRPD/C/MEX/CO/2-3; *Medina Vela v. Mexico* (CRPD/C/22/D/32/2015).

detentions, with appropriate attention being paid to protecting their personal data and health-related information.

V. Implementation of the Working Group's opinions

75. The Working Group met with a number of individuals who had been released from prison because it had issued an opinion in respect of their case. This development demonstrates the authorities' commitment to improving the protection of rights. However, other persons whom the Working Group considers to have been arbitrarily detained remain in detention. The Working Group urges the authorities to systematically implement all of the opinions in which it determines that arbitrary detention has occurred. It further encourages them to close accountability gaps by investigating cases of arbitrary detention and paying compensation to victims, as well as implementing other recommendations set forth in its opinions.

VI. Conclusions

76. The Working Group appreciates and commends the Government's willingness to submit itself to scrutiny through the visit and considers that the findings of this report provide an opportunity to assist the Government in addressing situations of arbitrary deprivation of liberty.

77. The Working Group believes that positive changes are being made in Mexico in relation to deprivation of liberty, in particular the 2011 amendments that placed human rights at the heart of the Constitution, the transition since 2008 to an adversarial criminal justice model, the 2016 National Criminal Enforcement Act and the use of conciliation boards to facilitate early release, the introduction of a national register of arrests and detentions, the amendment of laws in 2014 to impose restrictions on the administration of justice by military courts, the National Human Rights Commission and state human rights commissions that have their legal basis in the Constitution, and the creation of the National Mechanism for the Prevention of Torture.

78. However, the Working Group noted that arbitrary detention continues to be a widespread practice in Mexico due to a variety of causes and aggravating factors, both in the regulatory framework and in its implementation.

79. The Working Group identified several challenges within the criminal justice system that place accused persons at risk of arbitrary detention, namely:

(a) The Constitution provides for preventive custody and mandatory pretrial detention, which have previously been considered a violation of human rights in several of the opinions of the Working Group and also by the Inter-American Court of Human Rights;

(b) The militarization of public security has been closely linked to the increase in serious human rights violations, such as increased violence against detained persons, including torture, disappearances and homicides;

(c) The time frame for bringing persons deprived of liberty through arrest or detention before the judicial authorities is not counted from the moment of arrest but from when the individual is presented to the Public Prosecution Service, which means that the 48-hour time limit is exceeded. This violates the right of arrested or detained persons to be brought promptly before a judge under article 9 (3) of the International Covenant on Civil and Political Rights and has a negative impact on the right of persons deprived of their liberty to take proceedings before a court, in order that the court may decide without delay on the lawfulness of detention, in accordance with article 9 (4) of the Covenant;

(d) The broad interpretation of *in flagrante delicto*, as well as the concept of *in flagrante delicto* by accusation, lend themselves to arbitrariness, in violation of article 9 (1) of the Covenant;

(e) There continues to be a punitive approach to drug use and drug dealing. Although there have been positive initiatives, such as the Amnesty Act, there are also other constitutional reform proposals to extend mandatory pretrial detention to drug dealing and other offences related to synthetic drugs. This approach has led to an increase in violations of the right to liberty and due process guarantees;

(f) The right to legal assistance is limited in that many people receive poor-quality legal services, public defender's offices are understaffed and underfunded, and prison calls from inmates to their lawyers are not provided free of charge. In addition, cases have been reported of people who are pressured by their public defenders to accept responsibility and follow the summary procedure. This is contrary to article 14 (2) and (3) (b) and (g) of the Covenant;

(g) There have been reports of cases in which members of the executive branch have put pressure on judges, particularly when those judges have ruled that the executive's actions or initiatives are contrary to the law. In addition, the federal judiciary is facing severe budget cuts;

(h) Although it has great potential to ensure respect for human rights, the judicial remedy of *amparo* (habeas corpus) has its shortcomings, meaning that it is not an effective remedy against arbitrary detention in accordance with articles 2 (3) and 9 (3) and (4) of the Covenant;

(i) Safeguards and conditions of detention vary from one facility to another. Convicted persons are reportedly often housed with persons in pretrial detention, in violation of article 10 of the Covenant. In addition, corruption was reported in several of the facilities visited, and detention conditions are not consistent with international standards, in particular rules 12, 14, 19, 22, 23, 24 and 45 of the Nelson Mandela Rules, regarding isolation, overcrowding and access to health services, among others. No information was obtained on the existence of specific protocols to address the needs of vulnerable populations, such as LGBTI+ persons;

(j) The discrimination suffered by several Indigenous persons has led to their being arrested and subjected to violence by the security forces. In many cases they are detained for exercising and defending their rights, which could potentially contravene articles 2 (1) and 26 of the Covenant.

80. In relation to detention in the context of migration, the Working Group notes the following shortcomings:

(a) The detention of migrants is not the exception, and a significant number of detained migrants are held beyond the 36-hour limit, which increases the risk of arbitrary detention;

(b) Although the detention of children in the context of migration is not permitted under national law, in practice they are deprived of their liberty, either in shelters exclusively for unaccompanied minors administered by the National System for the Comprehensive Development of the Family or in facilities shared with migrant holding centres;

(c) Migrants are subjected to extortion and bribery by officials in order to be allowed to continue on their way.

81. In relation to juvenile justice, a significant number of cases were reported in which adolescents experienced considerable violence during their arrests and did not have access to appropriately qualified legal assistance in accordance with article 40 (2) of the Convention on the Rights of the Child.

82. With regard to the detention of persons with psychosocial disabilities, it is of concern that not all procedural safeguards are respected in proceedings that may result in custodial sentences and that involuntary institutionalization continues to be a recurrent practice.

VII. Recommendations

83. The Working Group recommends the following measures to address arbitrary deprivation of liberty:

- (a) Ensure that all officials who carry out arrests of any nature (criminal or administrative) are obliged to register such arrests in the national register of arrests and detentions and that all civilian and military officials are aware of this responsibility;
- (b) Further close internal accountability gaps by effectively investigating cases of arbitrary detention, providing reparations to victims – including the payment of compensation – and implementing other recommendations set forth in the Working Group’s opinions;
- (c) Conduct public outreach campaigns to raise awareness of human rights, including the prohibition of arbitrary detention.

84. The Working Group recommends that the Government take the following measures in relation to the criminal justice system:

- (a) Repeal the provision on mandatory pretrial detention from the Constitution and bring the use of pretrial detention into line with international human rights law, establishing that it can only be applied based on an individualized assessment in which the risk of the accused absconding, committing a serious repeat offence or tampering with evidence or witnesses is demonstrated;
- (b) Eliminate the provision on preventive custody (*arraigo*) from the Constitution and end its use as a basis for detention;
- (c) Ensure the progressive demilitarization of public security activities and guarantee that the intervention of the Armed Forces in these functions is only in extraordinary cases and that they take a subordinate and complementary role alongside the civilian authorities;
- (d) Adopt measures to prevent, investigate and eliminate all forms of excessive use of force during arrests;
- (e) Harmonize domestic regulations on *flagrante delicto* by accusation with human rights law and do not expand the interpretation of *flagrante delicto*;
- (f) Ensure that arrested persons are brought before a judge within 48 hours of arrest and that any further delay is exceptional and justified by the circumstances;
- (g) Strengthen the Public Defender Service, assigning it the material and human resources necessary for it to adequately fulfil its functions;
- (h) Ensure the allocation of the human, financial and material resources necessary for the federal judiciary, local judicial authorities and public defender’s offices to appropriately handle proceedings in which people’s freedom is at stake;
- (i) Make a political commitment once again to guarantee judicial independence, including it as a principle in the actions of all State authorities;
- (j) Guarantee that *amparo* proceedings provide an effective remedy based on international standards on the right of access to justice;
- (k) Adopt measures to end prison overcrowding and ensure that detained persons can exercise their right to a defence and have adequate time and facilities for the preparation of their defence;
- (l) Conduct consultations to establish specific protocols for LGBTI+ persons deprived of liberty;
- (m) Step up measures to eradicate corruption in prisons;
- (n) Consider abandoning the punitive approach to drug use and drug dealing and seek alternatives to detention in this context.

85. The Working Group recommends that the Government ensure that adolescents held in pretrial detention centres have access to educational and stimulating activities and are guaranteed qualified legal assistance.

86. The Working Group recommends that the Government take the following measures with respect to the detention of Indigenous persons:

(a) Redouble efforts to ensure that Indigenous persons subject to criminal proceedings are assisted by interpreters, translators and defenders with knowledge of their language and culture. Implement care protocols for Indigenous persons in prisons;

(b) Strengthen the necessary measures so that leaders and defenders of Indigenous Peoples can carry out their work without fear of criminal penalties.

87. The Working Group recommends that the Government take the following measures in relation to detention in the context of migration:

(a) Ensure that detention during migration is used on an exceptional basis and for the shortest possible time;

(b) Revise the Migration Act so that it clearly specifies the maximum duration of policy custody (36 hours), at the end of which persons must be unconditionally released, in accordance with the ruling (amparo review No. 388/2022) of the Supreme Court;

(c) Immediately remedy the unsatisfactory prison-like detention conditions for migrants in accordance with international norms and standards and ensure access to outdoor areas;

(d) Take all necessary measures to put an end to the administrative detention of migrant children;

(e) Adopt immediate measures to put an end to extortion and bribery of migrants by Mexican officials.

88. The Working Group recommends that the Government take the following measures in relation to detention of persons with psychosocial disabilities:

(a) Make the necessary amendments to the criminal legislation in relation to exemption from criminal liability and the special procedure for persons exempt from criminal liability to ensure respect for the guarantees of due process for persons with disabilities and in line with the right to personal liberty;

(b) Adopt all necessary legislative, administrative and judicial measures to prevent and provide redress for involuntary or disability-based institutionalization. All health and support services, including all mental health-care services, must be provided on the basis of the free and informed consent of the person concerned.

Appendix

Centros de detención visitados

1. CEFERESO 16, CPS Femenil Morelos
 2. CEPEFE 18, CPS Coahuila
 3. Estación Migratoria “Guadalupe”, Nuevo León
 4. Estación Migratoria Tuxtla Gutiérrez, Chiapas
 5. Centro Femenil de Reinserción Social “Santa Martha Acatitla”, CDMX
 6. Centro Especializado para Adolescentes “San Fernando”, CDMX
 7. Centro de Asistencia e Integración Social Atlampa, CDMX
 8. CERESO I Norte, Apodaca, Nuevo León
 9. CERESO II, Apodaca, Nuevo León
 10. Estación de Policía Zona Nore de la Secretaría de Seguridad del Estado, Monterrey, Nuevo León
 11. DIF, Albergue Fabriles, Nuevo León
 12. Hospital de Especialidades en Salud Mental, Escobedo, Nuevo León
 13. CERSS 05, San Cristóbal de las Casas, Chiapas
 14. Centro de Asistencia Social para Niñas, Niños, Adolescentes y Familias Migrantes (Berriozábal I), Chiapas
 15. Fiscalía General del Estado de Chiapas, Tuxtla, Chiapas
Oficina Centrales – separos preventivos de la Fiscalía General del Estado de Chiapas
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