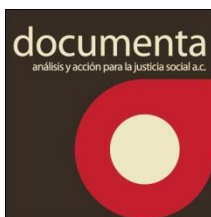


Joint Submission to the UN Human Rights Committee

On the List of Issues for the Report of Mexico



Asistencia Legal por los Derechos Humanos



Documenta, Acción y Análisis para la Justicia Social

April, 2014.

1. About this Submission

This submission has been prepared in cooperation with 2 non-governmental organizations:

Asistencia Legal por los Derechos Humanos, is a nongovernmental organization that works to defend, promote and expand the human rights of groups in situations of vulnerability with special emphasis in women, indigenous people, and LGBT persons deprived of liberty in the Penitentiary System.

Documenta Acción y Análisis para la Justicia Social, is a nonprofit organization founded in January 2010 by an interdisciplinary team of lawyers, social researchers and documentary filmmakers interested in strengthening and enforcing the respect of human rights in Mexico to guarantee equal access to justice for all individuals. Our principal areas of work are: the rights of persons deprived of their liberty and penitentiary reform and the intersection between disability and criminal justice system. In both areas we utilize three institutional strategies: i) Research and advocacy; ii) strategic litigation; and iii) audiovisual documentary. The goal of this collaboration is to blend these disciplines into a structure of mutual support of Documenta's legal, social, cultural and political strategies. The social science research and film making is used to support strategic litigation; documentary films are used to advocate for public policy and cultural change strategies that will be enforced by research and strategic litigation; the research informs Documenta's advocacy choices and strengthens its litigation and policy advocacy.

This report outlines the current situation found in the penitentiary system in Mexico, and tackles the main problems identified which concern criminal reform, with specific reference to living conditions, the use of human, violence, and overcrowding.

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

NATIONAL PRISON SYSTEM

A. REFORM TO THE PRISON SYSTEM

As of June 2011, the constitutional reform of the criminal justice system took effect with the aim of creating a new national prison system. The reform also create a sentencing implementation judge who is to determine when a prisoner has fulfilled the terms of his or her sentence and to monitor processes of restorative justice. From such reform, each state has the responsibility of, in no more than three years, promulgating secondary legislation that enacts the new reintegration system as well as a new framework for the modification of sentencing.

2

Currently, all states have passed their respective legislation; nevertheless, there are serious flaws in these state laws due to the haste with which they were written. Some flaws are forcing new judges¹ to prioritize, in their resolutions, discretionary criteria of a technical and medical nature issued by prison authorities (a file of individualized and progressive technical data), thus infringing intangible rights, such as the assumption of normalcy, and undermining the responsibility that has been constitutionally reassigned to judges, namely the determination of the length of a custodial sentence. Therefore, the actual length of such criminal penalties would continue to be subject to the penal administration and its technical staff.

Another serious flaw is that local laws have prevented judges from examining prison living conditions. It has also impeded them from investigating whether the punishment experienced by the inmate is disproportionate compared to the penalty imposed due to living conditions that are deleterious to human dignity. In this way, the length and the nature of the penalty depend on the prison administration and the judgments it makes.

Background:

By January 2014, the national prison system comprised 389 detention centers in total, with 16 federal prisons², 281 local prisons³, 81 municipal⁴ prisons and 11 prisons on the Federal District⁵ (Mexico City).

The total national number of inmates is 248,487; placing Mexico in seventh place worldwide⁶⁷ on prison population totals, with a nationwide overpopulation rate of 25.5%. Currently, the prison system can house, in total, 197,993 people, meaning that there are no places for 50,494 current inmates.

¹ The Criminal Enforcement Judge is a judicial organ with deciding and consultative oversight powers, charged with the enforcement of both criminal sentencing and security measures, and the ruling on the length and type of criminal sentence. This work is carried out in accordance with the principle of legality and control over penal activity, guaranteeing the inmates' human rights and correcting whatever abuses and deviations that may emanate from the Penal Administration.

² With an operational housing capacity of 28,708 inmates.

³ With an operational housing capacity of 142,988 inmates.

⁴ With an operational housing capacity of 3,773 inmates.

⁵ With an operational housing capacity of 22,524 inmates. With a population of 40,798 inmates.

⁶ Prison System Statistics January, 2014. See:

<http://www.ssp.gob.mx//portalWebApp/ShowBinary?nodeId=/BEA%20Repository/1332037//archivo>

⁷ World Prison Brief by the International Centre of Prison Studies,

See: http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_poptotal.

The prison population rate is 209 inmates per 100,000 of national population. According to federal prison system statistics 48, 879 (19.67%) inmates had been tried under federal jurisdiction and 199,608 (80.33%) inmates are under state jurisdiction.

In recent years, because of case backlog, inefficiencies on the judicial system and high rates of incarceration the prison population has increased excessively.

YEAR	NATIONAL POPULATION TOTAL	PRE TRIAL DETAINEES
1995	93,574	45,272 (48.38%)
2000	154,765	63,724 (41.7%)
2005	205,821	87,844 (42.67%)
2010	219,754	91,297 (41.54%)
2011	230,943	99,730 (43.18%)
2012	239,089	98,414 (41.16%)
2013	246,334	103,589 (42.05%)
2014 ⁸	248,487	104,763 (42.16%)

Table 1. National population totals⁹

This dramatic increase in the prison population has several causes¹⁰ such as the war on drugs, the federal government taking a more active role in crime policy, harsher penalties for criminal activities, changes to laws that make new actions illegal and the dysfunction in the judicial system. In Mexico, 60% of sentences are related to misdemeanors and only 12% are connected to crimes such as murder, rape and violent robbery. This means that a huge proportion of state resources dedicated to the justice and prison systems are spent on dealing with misdemeanors. By January 2014 the highest overpopulation rates were reported in the State of Mexico 97.82%, Nayarit 128.74% and Federal District with 81.13%. Also, 54.49% of prison centers are overpopulated.

The Committee it also notes the high incarceration rate in the State party.
2010 Concluding Observations

The overpopulation generates serious problems in the management of prison facilities. Also, has created conditions for the commission of routinely and systematic acts of corruption, in which prisoners must pay for receiving basic and necessary goods and even for the access to educational and working programs and other resources that should be normally provided freely by the State.¹¹

In 2013 the National Human Rights Commission received a total of 1380 complaints of mistreatment from inmates living in federal prisons. The complaints reported beatings, sexual assault and torture. The number of complaints at federal level increased almost 50%. since 2010 were 603 complaints were received.¹²

In Mexico 42.3 % of inmates are waiting in prison for a final verdict. Pretrial detainees are frequently mixed with the general prison population and in many instance their cases are not adjudicated for exceedingly long periods of time. According to the Superior Audit Office report in 2012 on the National Penitentiary System at federal level 33.4% of federal prisons failure to separate inmates by categories.¹³

⁸ January 2014.

⁹ First Governance Report 2012-2013) Statistical appendix.

See: http://d5d3d27e1f3d539a162fa00104427ebc661a8d17f062b85c9f9a.r74.cf2.rackcdn.com/1_IG_ANEXO_ESTADISTICO.pdf

¹⁰ The expansion of the catalogue of serious felonies, and the lack of criteria for the implementation of preventative measures alternative to different from pre-trial detention.

¹¹ United Nations, CAT/OP/MEX/1, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico, May 27, 2009, para. 169

¹² Complaints of mistreatment in federal prisons received by 2010 to March 2014. National Human Rights Commission

¹³ Report on the Results of Public Spending, 2012

See: http://www.asf.gob.mx/Trans/Informes/IR2011i/Grupos/Gobierno/2011_0021_a.pdf

Also ASILEGAL has reported that in Guerrero two women live on the same prison sharing common spaces with 131 male inmates.¹⁴

Female inmates claim that the most common forms of sexual abuse are as follows: molestation, obscene comments, pestering, sexual harassment, prostitution and the imposition of sexual favors that determine which rights they are allowed to exercise. The 04/2010 recommendation on “gender institutionalized violence” reports that sexual harassment, third-party prostitution and the human trafficking of females are just some examples of what women are undergoing in penal facilities in Mexico City. Some women claim they have been tortured with plastic bags used to suffocate them, and have been subject to beatings, electric shocks to their breasts, psychological violence and rape. With regard to women’s health, seriously ill female inmates are transferred to hospital under disproportionate security conditions such as the use of handcuffs. Mandatory contraceptive use is a practice commonly applied in order that women do not lose their right to conjugal visits, but one that is carried out without allowing them to make an informed choice in terms of their own wishes and the suitability of the measure for their own bodies, and, most importantly, it is a practice implemented regardless of their consent. Pregnant women are highly discriminated against by not providing them with appropriate medical assistance according to their needs. In prisons, there are no specialized doctors in obstetrics and gynecology.¹⁵

The Committee is further concerned at reports that in some prisons male and female inmates are detained in so-called “mixed-prisons” and that violence against women in detentions is widespread. (Articles 3 and 10 of the Covenant) 2010 Concluding Observations

2

Regarding prison violence last year, 2,436 incidents were reported involving 6,106 inmates. With 395 deaths, 1,218 fights, 47 suicides, 48 hunger strikes, 73 suicides, 20 jailbreaks, 25 homicides, 483 assaults and 114 self aggressions.¹⁶

Within the structure of the prison system it is the responsibility of the security and custody team to guarantee safety by ensuring that the inmates’ human rights are respected inside the prison facility. The shortage of prison staff poses a tremendous challenge to this task; the national average is 7.3 inmates per officer. Across the territory, this ratio varies from 3.1 to 19.2 inmates per officer¹⁷. Besides the shortfall and uneven distribution of officers, the lack of staff professionalization with regards to human rights and gender sensitivity must also be taken into account. In spite of projects such as the National Academy for Penitentiary Management, cases of abuse, torture¹⁸, and corruption on the part of administrative authorities and prison staff are still commonplace. In the last three years, for example, at least 365 officers, security chiefs and prison directors have been investigated as a result of jailbreaks.

¹⁴ Ayutla de los Libres prison. Prison System Statistics January, 2014. Page 23

See: <http://www.ssp.gob.mx//portalWebApp/ShowBinary?nodeId=/BEA%20Repository/1332037//archivo>

¹⁵ De la Peña, Cariño y Gutiérrez (2011). Mujeres privadas de libertad ¿Mujeres sin derechos? Diagnósticos sobre la situación de los Derechos Sexuales y Reproductivos de las mujeres privadas de libertad en los estados de Guanajuato, Guerrero, Puebla y Querétaro. México. Found in: http://dl.dropbox.com/u/79437401/Publicaciones%20ASILEGAL/diagnostico_sobre_los_derechos_sexuales.pdf

¹⁶ Prison System Statistics January, 2014. See:

<http://www.ssp.gob.mx//portalWebApp/ShowBinary?nodeId=/BEA%20Repository/1332037//archivo>

¹⁷ Elías Carranza, Director of the United Nations Latin American Institute for Crime Prevention and the Treatment of Offenders underlined how “the optimum estimated number is 1:1, that is to say one prison officer per detainee. Although this may seem an exaggerated level of personal supervision, this is the relationship that normally exists in Western European countries and in some selected institutions in Latin America. In reality, as Carranza explains, due to the shifts system necessitated by the nature of the work, at any given time half the workforce are at home and the other half are at work in the prison system. As 50% of the latter group are to be found carrying out their duties, while the other 50% are preparing for the shift handover, or resting, sleeping or eating, the ratio of officers to inmates is not in reality 1:1, but actually 4:1. Elías Carranza, “Prison overcrowding in Latin America and the Caribbean: The situation and possible answers”, in Elías Carranza (coord.) Criminal Justice and prison overcrowding. Possible Answers.”, Mexico, XXI, 2001.

¹⁸ Example: Recommendation 01/2012, *Torture inflicted by Prison staff Special Group Tiburón to inmates in CERESOVA for rioting to demand more visit days and improvement in found*. Comisión de Derechos Humanos del Distrito Federal.

Prohibition of torture and cruel inhuman or degrading treatment; Freedom from arbitrary detention and Condition of detention.

Articles 7, 9 and 10

Proposed Questions for List of Issues

- a) What is the Mexican government doing to monitor the extend and duration of solitary confinement in order to ensure human treatment of prisoners, in particular prisoners with a mental illness and other vulnerable people?
- b) What is the Government doing to provide suitable alternatives to prison in order to reduce the high rates of incarceration?
- c) What are Mexicans governments doing to address allegations of discrimination in the prison system?
- d) How can the participation of the civil society in the Mechanism for the Prevention of Torture?
- e) How many people are currently detained in each of the new federal penal facilities and in extant facilities?
- f) How many prison officers per inmates are found in the social reintegration centers in Mexico City, one of the States that suffers from the greatest over-crowding?
- g) How many people are currently detained in pre-trial detention and how many have now been sentenced?
- h) What is the average time for which a person finds themselves detained on remand?
- i) What measures will the Mexican state take in the short and medium term to combat delays in the sentencing process for people detained on remand?
- j) What has been the increase in the on remand population in the last 6 years?
- k) What measures are being taken in the short term to decrease overcrowding in penal facilities in your country?
- l) How many states in the Republic of Mexico have fully implemented the constitutional reform of criminal justice in the area of the penitentiary system?
- m) What obstacles to the full implementation of the penal reform in each of the states of the Republic of Mexico have been identified?
- n) In which states do judges have full jurisdiction to examine the conditions inside these penal facilities?
- o) What legal processes can be enforced by detainees in order to denounce the living conditions inside penal facilities, such as the lack of food and medical attention or mistreatment?
- p) In what ways are the life and personal dignity of inmates being protected against violent incidents and mistreatment in the social reintegration centers?

- q)** What measures are being carried both to make judges aware of the catalogue of alternative sentences provided in the law and to foster their application?
- r)** What percentage of sentences passed by judges are alternatives to prison?
- s)** How many people with learning disabilities are detained in penal facilities in your country?
- t)** What measures are being taken by the State to examine and investigate the number of people with a learning disability currently detained?
- u)** What actions are being taken to improve conditions for women detained in social reintegration centers in terms of sterilization, forced prostitution and maternity?
- v)** What actions have been taken to protect the human rights of the indigenous population detained in social reintegration centers?