

UN Committee against Torture 66th Session (23 April – 17 May 2019)

Alternative report from Enfoque Consultoría MX to the UN Committee against Torture providing background information on detention conditions (Pre-trial detention and solitary confinement) in Mexico.

Contact: enfoqueconsultoriamx@gmail.com

1. Prison Overcrowding and Pretrial detention (Articles 11,12,13 and 16)

"(...) the Committee remains concerned by reports of overcrowding (...)

(a) Step up its efforts to alleviate overcrowding in prisons and other places of detention, by particular, making use of non-custodial penalties as provided for in the United Nations Standard Minimum Rules for Non-custodial Measure (the Tokyo Rules)"

CAT Concluding observations UN Doc CAT/C/MEX/CO/5-6, §19

Mexico's prison population has dropped since 2015 according to the last prison statistics released on January 2019 (See Anex A). The number of inmates in local and federal prisons decreased, to **198 384** in 2019 from **247 488** in 2015. Nevertheless, severe overcrowding issues persist at local level (See Table 1). This situation has forced inmates to sleep in shift and led to significant problems relating to sanitation, poor quality health care, and the lack of basic hygiene.

Although prison overcrowding has been reduced, in 2018 the Chamber of Senators passed a constitutional amendment that could send more people to prison. This reform included the amendment of article 19 of the Mexican Constitution to expand the list¹ of offences that require judges to order mandatory pretrial detention of accused individuals.² According to figures from the Ministry of the Interior, for January 2019, of the 198 384 people detained in Mexican prisons, 75 471 remain in pretrial detention (38.04% of the country's prison population). On the same period, there were 165 734 inmates under local jurisdiction (Fuero local), with 61 259 of the total number classified as pretrial detainees representing 37%.

Table 1. Occupancy level in 3 local prisons of the State of Mexico

Prison	Official capacity of the prison	Number of inmates	Occupancy level
Chalco prison (State of Mexico)	557	2 371	425.67%
Lerma prison (State of Mexico)	57	169	296.49%
Jilotepec prison (State of Mexico)	86	221	256.98%

¹ The new list of crimes will include corruption, electoral crimes, fuel theft, armed robbery, weapons possession and others.

² Amnesty International, Urgent Action Bill Could Further Pretrial Detentions, 14 December 2018. See: <https://www.amnesty.org/download/Documents/AMR4195742018ENGLISH.pdf>

Table 2. Number of inmates within the Federal and Local Jurisdiction in prison

LOCAL JURISDICTION				FEDERAL JURISDICTION			
Sex	Convicted	Pretrial detention	Total	Sex	Convicted	Pretrial detention	Total
Men	99 728 (63%)	57 766 (37%)	157 494	Men	17 518 (57%)	13 115 (43%)	30 633
Women	4 747 (58%)	3 493 (42%)	8 240	Women	920 (46%)	1 097 (54%)	2 017
Total	104 475 (63%)	61 259 (37%)	165 734	Total	18 438 (56%)	14 212 (44%)	32 650

Statistics shows that **women** who were accused of committing federal crimes are disproportionately affected by pretrial detention (see Table 2) due to the slow functioning of the federal judicial system, the lack of family support, and the long distances between courts and prisons.

In addition to a widespread problem of over-using pretrial detention, the problem is compounded by the excessive duration of pretrial detention. During the *in loco* visit of the Inter-American Commission on Human Rights in September 2015, the Commission received information about cases where people remain in prison without trial, for longer than the time referred to in the Constitution (2 years). In particular, during a visit to centers conducted by the Rapporteur on the Rights of Persons Deprived of Liberty, statements were received from individuals whose cases have far exceeded the constitutional limit of two years for the application of pretrial detention.

Case: *In Prison for 16 Years and Still Waiting for a Verdict* (New York Times, 2018) <https://www.nytimes.com/2018/11/13/world/americas/mexico-justice.html>

Suggested questions and recommendations:

In light of the background material above, we propose that the Committee formulates the following question and recommendation to Mexico:

Q. Please provide updated information, including statistics disaggregated by sex, gender, age and ethnic origin on the number of pretrial detainees who had exceeded the constitutional length of pretrial detention (2 years) and provide information on the average length of pretrial detention in Mexico at federal and local level.

R. Recommend Mexico to reduce the use of pre-trial detention and periodically review the ongoing validity of the circumstances prompting initial application of pretrial detention and whether the time in detention has exceed the limits set by the law and reason.

3

³ IACHR, Practical Guide to Reduce Pretrial Detention. See: <https://www.oas.org/en/iachr/reports/pdfs/GUIDE-PretrialDetention.pdf>

2. Use of solitary confinement

(Articles 11 and 16)

In Mexico, inmates (both sentenced or in pre-trial detention) are placed in solitary confinement on the following grounds:

- **Disciplinary or punitive segregation**

The National Act on Enforcement of Criminal Penalties (*Ley Nacional de Ejecución Penal, LNEP*) includes solitary confinement as a form of punishment, which shall be temporary and used as a last resort when it is shown to be necessary to protect fundamental rights, such as life and integrity of persons deprived of their liberty, and to protect legitimate interests related to the prison's internal security.⁴ According to the National Act, solitary confinement as a form of punishment is strictly prohibited in the case of women who are pregnant or breast-feeding and women with children (Articles 36 and 43, LNEP). Also the National Act prohibits indefinite solitary confinement as a form of punishment or for more than 15 consecutive days.⁵ Nevertheless, in practice the National Preventive Mechanism (NPM) has identified that sanctions include 30 days of solitary confinement, and lack of due process

⁴ **Artículo 41 LNEP.** Sanciones Disciplinarias (...) La persona privada de la libertad no podrá ser sancionada dos veces por los mismos hechos. Sólo podrán ser aplicadas las sanciones disciplinarias siguientes (...): III. Aislamiento temporal: Esta sanción sólo se permitirá como una medida estrictamente limitada en el tiempo y como último recurso, cuando se demuestre que sea necesaria para proteger derechos fundamentales, como la vida e integridad de las personas privadas de libertad, salvaguardar intereses legítimos relativos a la seguridad interna del Centro Penitenciario o del personal de dichas instituciones;

⁵ **Artículo 42, LNEP:** Queda prohibido imponer medidas disciplinarias que impliquen tortura y tratos o penas crueles, inhumanos o degradantes, el encierro en celda oscura o sin ventilación y el aislamiento indefinido o por más de quince días continuos. Durante el aislamiento, la Autoridad Penitenciaria estará obligada a garantizar un mínimo de contacto humano apreciable por lo menos cada veintidós horas durante el tiempo que dure la medida.

during the imposition of sanctions.⁶ The National Commission of Human Rights (CNDH) registered that 20 774 inmates were placed in solitary confinement as a form of punishment.⁷ Both the CNDH and the NPM have identified that the punishment of solitary confinement has been given to inmates arbitrarily by authorities, without prior proceeding being held to officially inform them of the duration of the isolation.⁸ On its mission to Mexico, the UN Rapporteur on Torture observed that solitary confinement was often imposed for extend periods, even months, without the detainee being allowed to come out or to receive visitors. The Special Rapporteur also observed a case in Santa Martha prison where a woman being held in solitary confinement was clearly psychologically disturbed. Solitary confinement generally involved critical overcrowding in small cells and appalling conditions in Nezahualcóyotl (State of Mexico), Santa Martha (Mexico City), La Mesa (Baja California) and Topo Chico (Nuevo Leon).⁹

Similarly, during his visit to the Santa Martha Women's Center for Social Rehabilitation, the Rapporteur on the Rights of Persons Deprived of Liberty (IACHR) observed deplorable conditions in the solitary confinement cells that are used, and in particular the prolonged period for which this type of punishment is applied. One of the inmates said she had been

⁶ Mecanismo Nacional de Prevención de la Tortura, Recomendación M-02/2017 sobre centros de reclusión que dependen del Estado de Guerrero. See: http://www.cndh.org.mx/sites/all/doc/recomendaciones/prevencion_tortura/recpt_2017_002.pdf

⁷ CNDH, Recomendación General N° 22 sobre las prácticas de aislamiento en los centros penitenciarios de la República Mexicana, 2015. See: <http://informe.cndh.org.mx/uploads/menu/120/Anexo%20%203%20A.1%20Recomendacion%20general%2022.pdf>

⁸ Ibidem.

⁹ UN, *Report of the Special Rapporteur on Torture, UN Doc A/HRC/28/68/Add.3*, § 65

locked up for three months in punishment cells, a period of time also confirmed by the authorities.¹⁰

- **Administrative segregation (prison management policy)**

In Mexico some establishments, mainly in the Federal Prison System (CEFERESO) and prisons located in those states bordering the U.S. (such as Baja California, Chihuahua, Tamaulipas) have long-term prison regimens where inmates are placed in involuntary administrative segregation at discretion of the prison authorities, which run contrary to social reintegration. Administrative segregation is not technically a sanction or a punishment, and can be indefinite. Solitary confinement is applied to inmates by prison and judicial authorities based on the interpretation of Article 18 of the Constitution that states, "*Special centers shall be created for preventive imprisonment and for penalties regarding organized crime. The competent authority can restrict communication between accused person or prisoner and third parties in the event of organized crime, except for defender. The authority also can impose measures of special surveillance on these inmates. This provision can be applied to other inmates who require special security measures*".

These regimens are characterized by the following situations:

1. Inmates are locked up for 21 - 23 hours in a cell, with only an hour's outdoor exercise, usually alone in small courtyards.
2. Reduced access to constructive activities.
3. Sensory deprivation with limited access to fresh air and direct sunlight or the lights are turn on permanently.

¹⁰ IACHR, Press Release Rapporteur on the Rights of Persons Deprived of Liberty Conducted Visit to Mexico, 2015. See: http://www.oas.org/en/iachr/media_center/PReleases/2015/116.asp

4. Limited human contact with staff, fellow inmates or family and lawyers lead to social isolation. According to information collected by the IACHR, Federal Prisons (CEFERESOS) seem to be in better physical condition and are better controlled but also have an atmosphere of extreme repression. They are characterized by the use of prolonged isolation (up to 23 hours per day), restriction of communication among inmates, and serious difficulties in having contact with the outside world. This situation, along with other sources of discontent related to detention conditions—such as prolonged confinement for 22 or 23 hours per day in 2-by-3-meter cells, with two or three individuals to a cell—reportedly led inmates to start a hunger strike that same day. The IACHR observed with concern that civil society organizations have said there is a lack of information available on this matter.¹¹

5. This regimen does not prohibit the placement of inmates with psychosocial disabilities in segregation. The Subcommittee for the Prevention of Torture (SPT), after a 2016 mission to Mexico, referred its concerned about the situation of people with disabilities who were placed in solitary confinement for several years.¹²

¹¹ *Ibidem*.

¹² See: <http://cmdpdh.org/wp-content/uploads/2018/04/anexo-informe-del-subcomite-sobre-su-visita-a-mexico-del-12-al-21-de-diciembre-de-2016.pdf>

Worrying trend: Certifying prisons in Mexico by the American Correctional Association (ACA)¹³.

“85. All the federal prison facilities are accredited by the American Correctional Association and meet international standards, including standards calling for the prison population to be housed in decent conditions, without overcrowding and with access to all the services required for a minimum of well-being”.

Seventh periodic report submitted by Mexico under article 19 of the Convention, due in 2016, UN Doc CAT/C/MEX/7

In 2011, the American Correctional Associations International Correctional Core Standards (ICCS) were created and include detailed standards relating to all aspects of adult correctional operations. The ICCS was first implemented in Mexico in 2012 and since that time have served as the basis for international accreditation, training and education conducted by ACA. Over a dozen correctional facilities across Mexico are accredited by ACA, including both federal and state facilities.¹⁴

The standards are established by the ACA with no oversight by government agencies, and the organization sells accreditation by charging fees ranging from \$8,100 to \$19,500, depending on the number of days and auditors involved and the number of facilities being accredited.

The ACA promotes the use of restrictive housing, which is generally defined as holding someone in a cell, typically for 22 to 24 hours a day, with minimal human interaction or sensory stimuli. According to

¹³ The American Correctional Association is the largest corrections association in the world. Founded in 1870, as the National Prison Association, this organization of prison professionals had a prison-reform orientation. Accreditation is a system of verification that correctional agencies/facilities comply with national standards promulgated by the American Correctional Association. Accreditation is achieved through a series of reviews, evaluations, audits and hearings.

¹⁴ ACA, International Standards and Accreditation. See: http://www.aca.org/ACA_Prod_IMIS/ACA_Member/Intl_Correctio ns/Intl_SAC/ACA_Member/Intl/Intl_Standards.aspx?hkey=31b86a29-ae0e-46d1-a9f9-9ea9fabe856a

ACA’s Eligibility Criteria¹⁵ the following conditions must be satisfied prior to an agency’s acceptance into the accreditation process. The agency:

- Holds under confinement pre-trial or pre-sentenced adults or juveniles who are being held pending a hearing for alleged unlawful activity
- Holds under confinement convicted adult offenders or juveniles adjudicated delinquent
- Supervises, in the community, adult or juvenile offenders in residential or non-residential settings
- Has a single administrative officer responsible for agency operations
- Does not confine adults and juveniles together in residential and institutional programs

Although the Mexican government understands the use of restrictive housing as a good practice, this form of deprivation of liberty can result in significant negative effects related to mental health. Therefore, there is a need of increasing the public scrutiny of these type of regimes.

Suggested questions and recommendations:

In this context, we would like propose the following questions and recommendations:

Q. Please provide updated information, related to the number of people held in restrictive housing (including segregation, special housing and isolation) in federal and local prisons.

R. Recommend Mexico to ensure that solitary confinement, in federal and local prisons, is used only in exceptional cases as a last resort, for the shortest time possible and with the least-restrictive conditions possible. Also, to prohibit the use of solitary confinement in the case of prisoners with mental or physical disabilities.

¹⁵ ACA, Manual of Accreditation Policy and Procedure, 2017, p.15. See: https://www.aca.org/ACA_Prod_IMIS/docs/standards%20and%20accreditation/ALM-1-3_15_17-Final.pdf