

Working Group on Arbitrary Detention: Preliminary Findings from its visit to Mexico (18 to 29 September 2023)

Introduction

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

The Working Group first visited Mexico in 2002, approximately 20 years before this second official visit of 2023. The Working Group would like to express its gratitude to the Government of Mexico for its invitation to undertake the country visit and for its cooperation. During the visit, the Working Group met with the officials of the following Federal authorities: Ministry of the Interior, Ministry of Foreign Affairs, Ministry of Health, Ministry of Security and Citizens' Protection, Ministry of Defense, Ministry of the Navy, Attorney-General's Office, Supreme Court, Council of the Federal Judiciary, Federal Institute of Public Defender, the Congress of the Union, the Decentralized administrative body for the prevention and social rehabilitation, the National Migration Institute, the National System for the Protection of Children and Adolescents, the National Commission to Prevent and Eradicate Violence against Women, the National Institute for Indigenous People, the Commission for Dialogue with Indigenous Peoples and National Human Rights Commission, as well as authorities in the states of Mexico City, Nuevo León and Chiapas.

The Working Group would like to thank the OHCHR Mexico Office and their staff as well as the UN Country Team and the Resident Coordinator for supporting the visit. The Working Group also recognizes the numerous stakeholders from civil society and interviewees who shared their perspectives on the arbitrary deprivation of liberty. The Group thanks all of them for the information and assistance they provided.

These observations constitute the Working Group's preliminary findings from its country visit. They will serve as a basis for future deliberations between the members of the Working Group at its forthcoming sessions in Geneva. The Working Group will submit its report to the UN Human Rights Council in September 2024.

During the country visit, the Working Group enjoyed full and unimpeded access and went to 4 federal facilities and 11 State and municipal facilities. These included penitentiaries (both men's and women's at the federal and state level), police stations, migration detention centres, adolescent centres, child protection shelters, mental health hospitals and prosecutors' offices. It confidentially interviewed around 173 persons deprived of their liberty. The Working Group received unimpeded access to all places it sought to visit and it expresses its appreciation to the Federal and States Governments for their cooperation throughout the country visit.

1. Good practices and positive developments

The Working Group welcomes the constitutional, legal and regulatory reforms, introduced in Mexico since its 2002 visit. After the Working Group's first visit, Mexico has ratified several international human rights treaties, including on the International Convention on the Rights of Persons with Disabilities, the Inter-American Convention on the Protection of human Rights of Older Persons, and the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 11 April 2005. In 2007, the National Preventive Mechanism against Torture was created as part of the National Human Rights Commission. The system of regular, independent monitoring of all places of deprivation of liberty that OPCAT puts in place is not only a crucial tool for the prevention of torture and ill-treatment, but also for combating the arbitrary deprivation of liberty. Equally, the Working Group commends Mexico's 2008 ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and, since 2020, the acceptance of the individual communications procedure. The Working Group notes that enforced disappearances constitute an aggravated form of arbitrary detention. Additionally, the Working Group notes the following positive developments to prevent the occurrence of arbitrary detention.

1.1 Amendments to consolidate a human rights-centred and accusatory model of criminal justice

In 2008, Mexico transitioned to an accusatory model of criminal justice, which led to a significant reduction of practices that violated human rights. The presumption of innocence, now prescribed as a foundational principle, is instrumental for the avoidance of arbitrary detention. The new framework also provides that defendants have the right to appear before a judge and has reinforced victims' rights. Constitutional Amendments in 2011 placed human rights front and centre in the Constitution. The Working Group also notes improvements introduced pursuant to the 2016 Law on the Execution of Penalties and commends the increased use of conciliation boards to facilitate early release, for example in Chiapas. However, the Working Group emphasizes that Mexico must bring its Constitution and laws into conformity with all of its international human rights obligations, as detailed in these findings.¹

1.2 Introduction of a National Registry of Detentions

In 2019, Mexico introduced a constitutional reform which established that the authorities must maintain a National Registry of Detentions. This accords with the Working Group's previous recommendation that a proper detention registration system is essential for preventing arbitrary detention.² The Ministry of Security and Citizen's Protection oversees the National Registry of Detentions. Almost 2,000,000 searches of the database have been made by members of the public, and around 30 percent of those searches revealed that the person was in detention. Detentions must be entered into the registry within 5 hours of deprivation of liberty.

Nonetheless, the National Registry does not capture all detentions. In particular, administrative detentions of migrants and persons with psycho-social disabilities are not included. This creates an information gap which reduces the authorities' ability to prevent and redress arbitrary detention of migrants and other vulnerable persons. Moreover, whereas the Supreme Court held that military personnel, including those incorporated into the National Guard, must enter detentions into the Registry, several exceptions to this requirement persist. The Working Group emphasises that authorities must ensure that all officials carrying detentions of any nature, including those in the Army, Navy and National Guard, are required to enter those detentions into the National Register and that all officials, civilian and military, are aware of this responsibility.

1.3 Restriction of administration of justice by military courts

In its 2002 country visit report on Mexico, the Working Group cautioned that military courts should not be used to adjudicate military members accused of crimes ordinarily dealt with by civilian courts, such as drug-trafficking and enforced disappearance. In 2014, Mexico amended its laws to require that military members who commit crimes against civilians are tried before civilian courts. The Working Group considers this is a positive means of reducing the risk of impunity among military members for crimes including enforced disappearance and arbitrary detention. However, it notes that all human rights violations by military personnel should fall under the civilian jurisdiction.

1.4 National and State Human Rights Commissions and non-governmental human rights organizations

The Working Group met with the National Human Rights Commission and some state human rights bodies, as well as an array of non-governmental organizations which also conduct human rights work. It recalls that National Human Rights Commission and the state-level human rights commissions must perform their functions in an autonomous and independent manner.

The Working Group welcomes the fact that the National Human Rights Commission has a legal basis under Article 102 of the Constitution, in accordance with the Paris Principles on National Human Rights Mechanisms. However, the Working Group was concerned to learn that visits to persons deprived of their liberty by members of the national and state human rights commissions did not involve follow-up to inform them of efforts to redress their complaints.

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

² Report of the Working Group on Arbitrary Detention for 2007, A/HRC/7/4, para. 69. See also Principle 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

With respect to non-governmental organizations, the Working Group was concerned to hear of specific instances in which human rights defenders were subjected to reprisals, including through threats to fabricate charges against them. These included members of civil society advocating for the rights of members of minorities such as the LGBTI+ community, indigenous persons, and afro-Mexicans. Such reprisals violate inter alia Article 12 of the Declaration on Human Rights Defenders.³

2. Main Findings

The Working Group notes that arbitrary detention remains a widespread problem in Mexico due to a variety of causes and aggravating factors, both in the regulatory framework and in its implementation.

2.1 Criminal Justice

2.1.1. Mandatory Pre-trial Detention

Although pre-trial detention should be regarded as an exceptional measure to ensure the availability of the accused during criminal proceedings, Article 19 of the Mexican Constitution sets out a list of felonies that trigger mandatory pre-trial detention. In 2019, mandatory pre-trial detention was extended to 16 categories of crimes, which are vaguely framed and susceptible to extension to an indeterminate range of offences. In 2021, mandatory pre-trial detention was introduced for other crimes.

Of the approximately 90,000 people in pre-trial detention (“en proceso”) in 2022, around 50 percent are subject to mandatory pre-trial detention. Many of the detainees had been subjected to lengthy mandatory pre-trial detention, including some who were still in mandatory pre-trial detention over 5 years after arrest. Worryingly, excessively lengthy pre-trial detention was common amongst all detainees (noting that there was a total prison population of around 230,000 in Mexico in July 2023), not just those in mandatory pre-trial detention.

The Working Group is mindful that mandatory pre-trial detention has been identified as a violation of the right to personal liberty, as well as potentially undermining others, such as the presumption of innocence, the right to personal integrity and judicial independence. Mandatory pre-trial detention has been considered a violation of human rights in several opinions of the Working Group, including the Mexican context,⁴ and was declared to be a violation of Mexico’s obligations by the Inter-American Court of Human Rights, which ordered it to adjust its laws in this respect to meet international standards.

The Mexican authorities should reconcile its approach to preventive detention with international human rights law, by removing mandatory pre-trial detention from the Constitution and requiring that pre-trial detention may only be applied based on an individualized assessment in which it is shown that the defendant is either a flight risk, at risk of serious re-offending, or at risk of tampering with evidence or witnesses.

2.1.2. Arraigo (precautionary detention without charge)

The procedure known as arraigo was incorporated into the Constitution in 2008. It permits the authorities to detain a person for up to 80 days for criminal investigation purposes in organized crime, without indicting that person for a crime. The use of arraigo peaked between 2009 and 2012, but has decreased since 2013, and is rarely used these days. According to the information received by the Working Group, in 2022 it was used in 25 cases. An attempt to remove arraigo from the Constitution in 2019 was unsuccessful.

The Inter-American Court of Human Rights and other international bodies have called for Mexico to eliminate arraigo, as it violates the right to personal liberty and due process. Although authorities explained that arraigo is currently mainly used to protect witnesses in organised crimes cases, the Working Group notes that its ongoing existence creates the risk of arbitrary detention. It encourages the Mexican authorities to remove the procedure of arraigo from the Constitution and end its use as a basis for detention.

³ UNGA, A/RES/53/144 8 March 1999 (“Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”).

⁴ See, e.g. Opinion Nos. 32/2023; 14/2021; 1/2018.

2.1.3. The militarization of public security

In Mexico, the use of military forces to undertake public policing activities at the federal, state and municipal level is frequent. There are reportedly over one hundred thousand soldiers currently carrying out policing and public security tasks, as well as migratory control. This has been closely linked to rises in violence against detainees, disappearances, and homicides. Detainees arrested by military personnel frequently were subjected to serious violence and torture, including beatings with foreign objects.

Symptomatic of the extensive use of military elements in policing is the 2019 formation of the National Guard. According to the Constitution, the National Guard falls under the Ministry of Security and Citizen's Protection. Although the incorporation of military personnel into the National Guard has a transitory nature, the armed forces have been authorised to continue public security functions until 2028.

Whereas the National Guard took over the functions of the Federal Police, its personnel are predominantly military by background. Of its 128,000 members, around 48 percent come from the Army and Navy. Although members of the National Guard are trained inter alia in human rights and in gathering evidence, the Working Group notes that there are ongoing reports of violence in arrests and arbitrary detention by military personnel. Although arbitrary arrests committed by personnel of the Ministry of Defence and Navy have reportedly decreased, 60 of 240 complaints of arbitrary detention from 2018-2023 remain unresolved.

2.1.4. Excessive use of force during arrests

During its country visit, the Working Group learned that a significant number of detainees suffer serious and excessive violence during their arrests, such as a detainee being shot in the stomach by police, resulting parts of his intestine being removed. International human rights mechanisms, including the Working Group in its opinions, have also referred to ill-treatment and torture committed by security forces in Mexico.

Often beatings and torture are inflicted to extract confessions. Detainees are sometimes forced to give information about other alleged suspects or potential evidence and ill-treatment is also used as a matter of humiliation and punishment. For example, indigenous persons are sometimes beaten to force them to accept responsibility and called "indio" during arrests. A woman who was pregnant at the time of arrest and informed officers of this was hit in the stomach area and then driven around for hours by police to various locations to look for evidence to incriminate her and her boyfriend. Others were "taken for a drive", during which officers or military members did not deliver them promptly to the nearest civil authority, prosecutor, or judge, but instead took them to remote locations and inflicted violence against them with a view to forcing them to provide incriminating evidence.

These risks are exacerbated by the fact that a violative practice has emerged whereby the 48 hours within which a detainee must be brought before a judge is only counted beginning from when the detainee is presented to the prosecutor. This means that the time spent in police (or other security force) custody is not included in the counting of the 48 hours, as was also accepted by authorities. Given that the initial period after arrest is a critical time when a detainee is in most jeopardy of unduly self-incriminating or otherwise prejudicing their rights, it is critical that the 48 hours is counted from the time of the initial physical deprivation of liberty, rather than from some later point in time. The Working Group also notes with concern that the 48 hr period is frequently doubled to 96 hours in cases of organized crime. Moreover, the Working Group found deficiencies in the recording of apprehensions, with a variety of books, spreadsheets and other lists used across various institutions without a consistent methodology. Regarding accountability, although the authorities did refer to instances of security agents being investigated for violence against detainees, they did not provide details of any significant number of convictions for such activities.

2.1.5. Abuse of flagrante delicto

Many arrests in Mexico are carried out without a pre-existing warrant, under the justification of flagrante delicto. Since 2016, the rules governing the accusatory criminal process require that people detained in flagrante delicto without an arrest warrant must be brought before a judge to carry out a control of the detention. However, the Working Group notes that expanded interpretations of flagrante delicto continue to

be used. These arrests under expanded interpretations violate human rights, as set out in several opinions by the Group on Arbitrary Detention.

The 2021 national survey of persons deprived of liberty indicated that 23 percent of detainees were arrested in the streets without an arrest warrant and that over 40 percent claimed that they were falsely accused of committing a crime. The Working Group recalls that, where a warrant is not obtained in advance, the scope of judicial control over detention is restricted to an *ex post facto* measure, by which time a violation may have occurred. There are circumstances, such as *flagrante delicto* or being "caught in the act", in which there is no opportunity to obtain a warrant *ex ante*. However, these must be interpreted restrictively to avoid undermining judicial control of detention.

In this respect, the Working Group was concerned to learn that an extended version of *flagrante delicto*, known as *flagrante por señalamiento*, or flagrancy by report, is applied in Mexico, whereby a person can be detained without a warrant at a later point in time despite not having been caught in the act by an official with policing powers, so long as a witness, who may be a private person, reports having seen them committing a crime. Another extended application of this notion relates to the situation when a person who allegedly committed a crime is not arrested immediately but is purportedly followed for a certain amount of time via street cameras, and then only arrested at a later stage. These extended interpretations of *flagrante delicto* are not consistent with human rights law and must be prohibited.

2.1.6. Deprivation of liberty under drug policy

From 2006, Mexico has taken a far more punitive approach towards the use and dealing of drugs. The possession of drugs is still criminalised and even possession at relatively low levels can be sufficient to meet the threshold to qualify as dealing drugs. As a result, there has been an increase in the imprisonment of drug users. The Working Group emphasises the importance of looking for alternatives to detention in this context.

Concerningly, the Working Group was informed of instances in which security forces fabricated charges against persons by placing drugs in their homes, vehicles, bags, or clothes. Reportedly, this practice continues to be rife among security forces. Allegations of such manufacturing of crimes must be taken extremely seriously, thoroughly investigated, and appropriately sanctioned where established. Where security forces can be equipped with body-cams or other recording devices, this can assist to a degree in reducing the possibility for such abuses of power. Additionally, the Working Group learned that detainees are often pre-textually charged for specific offences only to have them changed to different crimes once they are detained, which can undermine their rights to liberty, against self-incrimination and to an effective defence.

The Amnesty Law includes crimes related to drug offending, provided that they fall under federal jurisdiction. It covers vulnerable persons such as those in extreme poverty or indigenous people. However, the Working Group was told that only around 320 people had been released via amnesty, as the parameters of the law have been restrictively interpreted and the Amnesty Committee has only met five times in three years. The Working Group recalls that detaining a person despite there being an amnesty law applicable to them constitutes arbitrary detention under Category I. It strongly encourages the Amnesty Committee to avoid an overly restrictive approach to Amnesty Law, and to ensure that it implements amnesty-based releases expeditiously.

On a related note, the Working Group observed that photos of detainees posed in front of tables displaying drugs and weapons often appear in the media, sometimes with the names of detainees or other identifying information. Such images have the potential to undermine the presumption of innocence in any subsequent criminal proceedings. Although authorities have reportedly prohibited their own forces from disseminating such images, the posing of arrested detainees and illicit materials for the purpose of taking photos cannot be done without at least the complicity of the arresting forces. Whilst media freedom must be respected, the Working Group implores the Government of Mexico to ensure that its forces are not complicit in disseminating such images to the public prior to or during the criminal trials of any such detainees.

2.1.7. Abbreviated trial procedure

Since 2016, an abbreviated trial procedure has been incorporated into Mexican legislation by the reform of the criminal process. Although the purpose is to reduce the strain on the criminal justice system, the Working

Group learned that detainees were pressured, often by their own lawyers (frequently public defenders), to accept responsibility in order to avoid a trial and possible greater sanction. Whereas it should always be open to guilty persons to acknowledge culpability, and whereas this can expedite proceedings and avoid re-traumatizing victims, caution must be taken to ensure that such abbreviated procedures are not used as a means of dissuading detainees from exercising their legitimate fair trial rights, including the right to silence, the presumption of innocence, and the right to adequate time and facilities to conduct their defence.

2.1.8. Bureaucratisation of the judicial appeal (amparo trial-habeas corpus)

The procedure known as amparo, a judicial remedy available in Mexico, is similar to a habeas corpus writ. It is provided for in the Constitution and the Amparo Act of 2013. This writ can protect human rights, including to liberty and life. Under Mexican law, the writ of amparo is federal remedy, irrespective of whether a case concerns crimes falling under a State entity's jurisdiction ("común" crimes).

While this procedure allows for release, the Working Group found out that this rarely occurs. For example, in CDMX, only 16.5% of cases in which arbitrary detention is found to have occurred result in the immediate release of the detainee. Similarly, the Committee on Enforced Disappearance noted, as a result of its country visit in 2021, that few judges make use the amparo procedure ("amparo buscador").⁵ As a matter of procedure, the Working Group was assured that judges can order additional information from the prosecution office or other authorities in order to address amparo requests. However, of the detainees who exercised the right, the vast majority had seen their amparo rejected without any further inquiry. Others had seen their amparo requests remain undecided for years, including one case in which an individual had remained in detention for 9 years without trial. Of the few who had successful amparo proceedings, they had nonetheless not been immediately released but some remained in detention awaiting a re-trial or reactivation of charges which had been held in abeyance while they served their existing sentence.

The Working Group considers that the amparo procedure has considerable potential to ensure that human rights are respected and that individuals are released where violations have occurred. However, the Mexican judiciary must ensure that judges vigorously exercise their powers under the amparo procedure. For its part, the Government and the judicial branch must ensure that all judges are aware of their powers to permit release pursuant to amparo requests, and that they are not retaliated against for doing so.

2.1.9. Judicial independence

An independent and impartial judiciary is essential to combatting arbitrary detention, as reflected inter alia by Article 14(1) of the International Covenant on Civil and Political Rights. The Working Group welcomes positive changes in this respect introduced with the reform of the criminal justice system. It was however concerned to learn that members of the executive authorities have pressured judges, particularly when those judges have ruled that executive initiatives contravene the law. In some cases, executive members name individual judges who issued decisions or opinions impugning government policies. More broadly, the federal judiciary is facing scathing budgetary cuts, reportedly up to 20 percent. Such measures undermine the ability of the judiciary to independently conduct its work without fear nor favour. The Working Group is concerned that this has contributed to the ongoing persistence of high numbers of cases of arbitrary detention at both the federal and state levels.

2.1.10 Right to legal assistance

The Working Group welcomes the information that approximately 95 percent of individuals charged with felonies are assigned public defenders to represent them free of charge. It also appreciates the efforts to provide a wide range of important legal services, including legal assistance to migrants. Additionally, it notes that the transition to an accusatory system has placed public defence lawyers on a more equal footing with the prosecution than previously. However, public defenders face heavy caseloads which compromise the quality of their services. Many detainees receive poor quality legal services. Moreover, the caseload results in a significant burden for the Public Defender's Offices (PDOs), which has financial and staffing constraints.

⁵ Para.59.

The result is a heightened risk of arbitrary detention particularly for persons lacking socio-economic means to obtain private legal assistance. Additionally, many detainees lack regular access to public defence counsel once detained; they are unable to contact lawyers by phone, as reportedly such phone calls are often not facilitated free of charge and public defenders often ignore calls from a detention facility. The Working Group reiterates its call to strengthen the PDOs (building on its recommendation (d) of its 2002 country visit report). It calls on the authorities to improve mechanisms for access to legal assistance (including through public defenders), particularly for detained persons, in a regular and timely manner.

2.2 Protections in detention

2.2.1. Conditions of detention

Safeguards for detained persons help to prevent arbitrary detention. Under human rights law, safeguards include facilitating prompt and continuing access to a defence lawyer, conducting a post-arrest medical examination, and communications with third parties as well as visits by external oversight mechanisms.

The Working Group learned that these safeguards vary from one facility to another and are frequently not fully observed by the authorities in Mexico. Detainees struggled to obtain access to a lawyer once detained. Many detainees were only allowed one ten-minute phone call per 8 days, which they could use either to talk to their family or lawyer. Given that they usually choose to talk to family and given that lawyers rarely visit the detention facilities which are often located in remote areas, this restriction has considerable potential to prejudice pre-trial detainees' exercise of fair trial rights.

Ill-treatment and violence during detention can also impact on a detainee's ability to exercise their rights, particularly if they suffer injuries as a result thereof. At the federal level, many detainees suffered excessive violence during their arrests but that the Working Group heard that penitentiary staff generally did not use violence against them. However, there were instances of violence by prison guards, indicating that this violative practice has not been eliminated. There is also corruption in some facilities. Moreover, pre-trial detainees (not subject to any conviction) were often housed together with convicted detainees. Several detainees had serious wounds and illnesses and complained that they were unable to access effective medical treatment. A particularly prevalent concern was the lack of medication available to unwell detainees. Many could only get medication if their families obtained it for them. The Working Group emphasizes that where it is medically necessary, the authorities must ensure its availability to detainees. Detainees also complained about improper food and the Working Group observed overcrowded conditions in some facilities, with detainees sometimes sleeping on concrete floors without blankets being provided, which are not compatible with human rights protections.

In some prisons at the federal and state levels, detainees are kept locked in their cells most of the day and rarely, if ever, leave the cell block in which they were housed. Prisons are hampered by chronic staff shortages, including in key roles such as security guards and prison medical staff. Those shortages impact on their ability to take detainees out of their cell blocks for exercise and activities. This was particularly noticeable at the men's federal facilities visited, where many detainees had spent months without leaving their closed-in cell blocks.

Regarding sanctions in detention, the Working Group noted that detainees found to violate prison rules were often placed in deplorable cells, with no bedding and only hard concrete floors to sleep on. Such conditions are not compatible with human rights guarantees as reflected in the Nelson Mandela Rules. Moreover, solitary confinement was available for use as a punishment for up to 15 days for misconduct. In reality, however, the Working Group found out that confinement for 30 days and more continues, albeit usually in small groups. The Working Group recalls that Rule 45 of the Nelson Mandela Rules provides that solitary confinement shall 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. It should be prohibited in the case of prisoners with psycho-social disabilities or physical disabilities.

A systemic safeguard for detainees is prison registries. However, the Working Group found that registries in prisons were non-effective, as they were not consistently utilised and updated by the authorities. There were

concerns raised about poor internet connectivity, old equipment, and a lack of trained human resources to update the registry. These shortcomings must be addressed to ensure this tool is available.

While some prisons were under capacity, the Working Group also discovered that severe over-crowding in some male prisons visited by the Group is of particular concern. In one of them, for example, 16 pre-trial detainees are kept locked in small rooms. The Working Group calls upon the authorities to set minimum requirements in respect of the floor space and cubic content of air, per inmate to respect human rights including the right to adequate time and facilities to prepare a defence. It also reiterates the link between overcrowding and an excessive length of pre-trial detention, which has been found by this Group to violate the ICCPR, and encourages the authorities to resort to alternative preventive measures.

2.3 People in vulnerable situations

2.3.1. Migrants

The Working Group notes that Mexico is a transitory step for migrants seeking to access the United States of America from Central and South America as well as a growing array of other states. Many of those people are asylum seekers. In recent years, the situation in Central America, Ecuador, and Venezuela has led to a dramatic increase in the numbers of migrants passing through Mexico, or in some cases using it as destination country. Flamed by the migration policies of the United States of America, the situation has resulted in migrants often being subjected to conditions in contravention of Mexico's human rights commitments.

Large numbers of migrants and asylum seekers are detained in Mexico, amounting to over 240,000 in the first half of 2023. Under the Constitution, such administrative detentions should be limited to 36 hours and the Supreme Court has held that detention of migrants for 15-60 days under the Migration Law is unconstitutional. However, the Working Group discovered that a significant number of detained migrants are held beyond the 36-hour time limit, which raises the risk of arbitrary detention. Moreover, the Working Group learned that when migrants who are detained for crimes seek to exercise legal rights, such as amparo, then they are often told they will be kept for months instead of being let go in 36 hours. There should be no punishment for exercising legal rights, particularly in context of migration.

A large number of children are detained in the context of migration. In 2022 alone, over 126,000 were channelled into centres run by the National Agency for Family Development (“DIF”). Under Article 99 of the Migration Act, children are not permitted to be held in migrant detention. However, in practice the Working Group found that children migrants were typically deprived of liberty, either in shelters solely for unaccompanied minors run by DIF or in facilities co-located with migrant facilities under the authority of the Institute for Migration of the Ministry of the Interior.

Having visited children deprived of liberty under the authority of the DIF, the Working Group noted that, although they were fed and sheltered, it is important that the Mexican authorities provide them with sufficient opportunities to ensure their development is not harmed and to ensure that any such detention is exceptional, when alternatives to detention are manifestly unfeasible, and that any such detention is limited in time.

Having also visited children deprived of liberty with family members in facilities co-located with migration detention facilities, the Working Group was concerned at the conditions. Children and their family members were sleeping in courtyard areas outside the facility buildings, in the heat. Moreover, whilst law reforms had reportedly prohibited the detention of child migrants, the Working Group saw children who were manifestly below 18 (and in some cases clearly below 10 years of age) deprived of liberty in these areas co-located with migration detention facilities.

Inside the migrant detention facility buildings themselves, the detained persons were not free to circulate within the facilities. Concerningly, the Working Group saw that metal gates with locks separated the rooms where migrants were housed from exits to the outside courtyards and guards prevented migrants from freely accessing those open-air locations. This also prevented migrants from accessing the complaints boxes of the relevant human rights commissions. Given the fire at the Ciudad Juárez facilities in March 2023, in which 40

people died and many were injured, the Working Group emphasizes that migrants should not be kept behind locked doors and should have access to outdoor areas freely.

Migrants also are subjected to frequent extortion of bribes by Mexican officials, often from the security forces. Those unable to pay were consequently detained, whereas others who were able to pay were allowed to go on their way. The widespread occurrence of such extortion risks creating an underground economy, which may become entrenched if security forces grow accustomed to extracting additional income in this unlawful manner. Any such extortion must be prohibited and stamped out in law and in practice.

2.3.2 Adolescents

The detention of adolescents from age 12 up to 17 in Mexico is subject to a special legal regime. Adolescents who are detained are kept in separate facilities from adults. While the facilities were largely clean and the Working Group did not learn of violence by staff or any other shortcomings within the course of the proceedings against them or in the detention, opportunities for external activities, such as visits to sporting and cultural events, were relatively limited and only available to small groups among the youths in the facilities. Given the developmental stage of their lives, it is important that all the detained youths should have opportunities to participate in stimulating activities.

More concerning, many adolescents experience considerable violence in their initial arrests and are not notified of the reasons for the arrest. This is reflected in a national survey which revealed that 66 percent of youths complained of suffering some kind of violent attack during their arrests. Youths were sometimes beaten by arresting forces who placed bags over their heads, and taken for drives during which they were pressured to confess to crimes. Moreover, adolescents are sometimes told by the defence lawyers to plead guilty to the crimes in order to avoid going into the adult criminal justice system. The Working Group emphasizes the need for adolescents to be given access to appropriately trained lawyers who rigorously defend their interests, given the vulnerable age they are at and the detrimental impact that being incarcerated will typically have on their future lives and physical and psychological well-being.

2.3.3 Indigenous people

The Working Group learned of instances in which indigenous people faced discrimination leading to their arrest and subjection to considerable violence by security forces. These included cases where the indigenous persons were advocating for the rights of their people, including on governmental premises and projects, and were charged with trespass and criminal damage. In this respect, the Working Group emphasizes that persons should not be subjected to detention merely due to exercising their rights, and that this is particularly important for indigenous groups engaging in non-violent protest actions. The Working Group notes that many indigenous persons advocate to protect the environment, and thus have a dual-faceted role, seeking to uphold the rights of their fellow indigenous people while also defending nature. Such activities should not be met by criminal sanction unless they involve serious violent offending or other grave crimes which cannot be addressed through alternative means. At the same time, if indigenous groups dispense traditional justice involving detention, this must accord with Mexico's human rights obligations including the prohibition of arbitrary detention and the prohibition of torture, cruel, inhuman, and degrading treatment.

For indigenous persons in detention, which constitutes a significant proportion of detainees particularly in Chiapas, the Working Group learned that culturally appropriate food was not consistently available and that they were not consistently able to observe traditional practices. Regarding language, the Working Group notes the efforts of the National Institute of Indigenous Peoples, which assisted over 500,000 people in 2022 and an increasing number in 2023. This is important from the outset of deprivation of liberty, when the jeopardy of undermining legal rights is highest. The Working Group encourages the authorities to be proactive in training prosecutors, judges and other officials in the needs of indigenous persons in detention, which extend beyond language and also encompass socio-economic challenges, remoteness, and alienation from their peoples.

2.3.4 Detention of persons with psycho-social disabilities

According to the Ministry of Health, approximately 24 million persons in Mexico have psycho-social disabilities, 3.5 million of which have chronic symptoms that seriously impact their lives. Many of these persons face detention. The Working Group emphasizes that persons with psycho-social disabilities should be addressed by the authorities under the framework of health treatment and consistently with the right to liberty.⁶ Until recently, individuals deemed incompetent to participate in criminal proceedings were nonetheless able to be sanctioned for crimes through detention for a period corresponding to the crime. In 2019, the General Health Law was amended to introduce a new model for the treatment of those with psychiatric and/or substance abuse disorders and place more emphasis on the patients' autonomy and freedom of choice of treatment. If individuals are diagnosed as having psycho-social disabilities that preclude their fitness to stand trial for a crime, they can be detained via an involuntary internment as a safety measure, and the period of internment relates to the disorder of the individual rather than the nature of the crime committed.

Despite these changes, the Working Group was concerned to discover that individuals with serious psycho-social disabilities detained in penitentiaries, along with persons convicted for serious crimes. Although those with disorders were sometimes housed in separate blocks, they were otherwise subject to the same carceral conditions as the general population. Only negligible psycho-social disabilities treatment was available, with no psychiatrists among the prisons' medical staff on site. It also emerged that persons deemed incapable of participating in trial proceedings are detained at prison facilities in some cases. The Working Group emphasizes that persons with serious psycho-social disabilities which preclude their competence to be tried under criminal law should never be detained at criminal penitentiaries. Moreover, any person detained, including persons detained under the "safe-guarding" mechanism for their personal health, should be systematically recorded in the National Register of Detentions, with appropriate care paid to protect their private personal data and health-related information.

2.3.5 LGBTI+ persons

With respect to LGBTI+ persons, they were generally housed together to insulate against any potential harassment. They were reportedly not subjected to any notably different treatment to other detainees or other discrimination. However, prison officials noted that there were no particular protocols on how to address the particular needs of members of this community in detention. The Working Group considers that the authorities should undertake consultations to determine whether specific protocols are required beyond the existing laws and to identify best practices which could be followed.

3. Implementation and follow-up of the Working Group's opinions

During the visit, the Working Group met multiple individuals who had been released from detention as a result of being subjects of its opinions. This step demonstrates a commitment of the authorities to improving rights protection and compliance with the international human rights norms. However, others whom the Working Group has found to be arbitrarily detained remain in detention. The Working Group calls on the Mexican authorities to systematically implement all opinions which find that arbitrary detention has occurred. The Group further encourages to close gaps in domestic accountability by investigating cases of arbitrary detention and paying compensation to the victims, as well as following other recommendations set up in its opinions. It calls on the authorities to conduct public outreach campaigns to raise public awareness of human rights, including the prohibition of arbitrary detention.

Conclusion

These are the preliminary findings of the Working Group. We look forward to continue engaging in this constructive dialogue with the Government of Mexico while we determine our final conclusions in relation to this country visit. We acknowledge with gratitude the willingness and openness of the Government to invite the Working Group and note that this is an opportunity for introducing reforms to address situations, which may amount to arbitrary deprivation of liberty.

⁶ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, Guideline 20.