



## Submission to the United Nations Human Rights Committee ahead of Mexico's sixth periodic review

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### Reporting organisations:

**México Unido contra la Delincuencia, A.C (MUCD)** is a Mexican NGO working for security, justice and peace in Mexico. For more than two decades we have been dedicated to the analysis of citizen security policies; the implementation of projects on social prevention of violence, culture of legality and community empowerment; and the advocacy for a drug policy reform.

**Equis Justicia para las Mujeres, A.C (Equis)** is a feminist NGO dedicated to the advancement of women's rights and women's access to justice. We carry out research and advocacy activities to foster gender perspective in public policy, judicial transparency and promote the rights of all women, including women who are victims of violence, women in prison and drug users.

**Harm Reduction International (HRI)** is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.

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## Introduction

MUCD, Equis and HRI welcome the opportunity to report to the Human Rights Committee ahead of its sixth periodic review of Mexico, at its 127<sup>th</sup> session. This briefing provides information on Mexico's compliance with its human rights obligations under the International Covenant on Civil and Political Rights (ICCPR), with a focus on the country's drug policy. Accordingly, it will address the following items:

1. Militarization of public security and states of emergency (Issue 10)
2. Extrajudicial killings, enforced disappearances and torture (Issue 12)
3. Violation of the rights of women by the armed forces (Issue 12 in relation to Issue 9)
4. Treatment of persons deprived of their liberty (Issue 20)
5. Drug Dependence Treatment for Incarcerated Women (Issue 20 in connection to Issue 9)
6. Mandatory pretrial detention (Issue 20)

### 1. Militarization of public security

**Issue 10: De facto state of emergency, including *"measures taken to ensure that public security is, to the maximum extent possible, upheld by civilian security forces rather than by military forces and under no circumstances by paramilitary or similar groups"*.**

#### **States of emergency (art. 4).**

##### *1.1. Historical background: militarization of public security from 2006 to 2018*

Twelve years ago, the Mexican government started the so-called "War on Drugs", which implied the strengthening of the participation of the armed forces in public security. During this period, there has been an exorbitant increase in violence and serious violations of human rights: "since 2006, the spectacular deployment of the army to carry out tasks that correspond to the police has left more than 200 thousand dead".<sup>1</sup>

Since the first months of Felipe Calderón's government in 2006, the armed forces acquired a central role in public security: the number of permanently deployed troops across the country increased - approximately from 20,000 to

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<sup>1</sup> Javier Treviño Rangel, "El Ejército y su guerra: rendición de cuentas y cuentos", *Revista Nexos*, March 28, 2019. Available at: <https://seguridad.nexos.com.mx/?p=1316>

50,000 soldiers. Also, budgets of both the Secretariat of National Defense (SEDENA) and the Secretariat of the Navy (SEMAR) almost doubled.<sup>2</sup>

President Enrique Peña Nieto continued the same strategy. Between 2012 and 2017, due to “mixed operations” (public security and armed forces acting together), military bases increased from 75 to 182 and their range extended from 19 to 27 states, while the number of military personnel assigned to these bases tripled.

By March 2015, 32,000 armed forces continued to perform public security tasks.<sup>3</sup> According to the Secretary of National Defense, in 2016 there were approximately 52,000 soldiers deployed daily throughout the country. This number does not include the Navy or the Federal Police.<sup>4</sup>

In spite of the negative impacts of its predecessor’s policies, and their failure to reduce drug trafficking, the current President, Lopez Obrador, ended up perpetuating the same strategy.

### *1.2. 2018-2019: Militarization through the creation of the National Guard*

In November 2018, the Mexican Supreme Court of Justice (SCJN) held that the Internal Security Law (“Ley de Seguridad Interior”), approved during Peña Nieto administration, violated the constitutional and conventional law on the basis of “containing provisions that sought to normalize the use of the Armed Forces in matters of public security”<sup>5</sup>. In contrast, one day before, Andrés Manuel López Obrador announced a Constitutional amendment for the creation of the National Guard as a corporation administratively attached to the Secretariat of Citizen Security, but operationally operated by Secretariat of National Defense (SEDENA), which was approved last March.

Thanks to the efforts of civil society and the opposition of different political parties, the civil nature of the so-called National Guard was guaranteed at constitutional level (Article 21). However, this achievement was overshadowed by the transitional regime of the constitutional reform. This establishes that the National Guard would be integrated by the Federal Police, the Military Police (Army) and the Naval Police (Navy), and that the President would have the discretionary power to select the number of elements of each corporation that would be integrated to the National Guard. In addition, it includes the permanent participation, for five years, of Armed Forces in public security tasks in an “*extraordinary, regulated, supervised, subordinate and*

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<sup>2</sup> Catherine Daly, Kimberly Heinle y David A. Shirk, “Armed with Impunity Curbing Military Human Rights Abuses in Mexico”. Trans-Border Institute, Joan B. Kroc School of Peace Studies University of San Diego, 2012. Available at: <https://justiceinmexico.org/wp>

<sup>3</sup> Available at: [https://www.gob.mx/cms/uploads/attachment/file/85733/5\\_Amaya\\_ORDORIKA.pdf](https://www.gob.mx/cms/uploads/attachment/file/85733/5_Amaya_ORDORIKA.pdf)

<sup>4</sup> Centro Prodh, *Perpetuar el modelo de seguridad fallido: la Ley de Seguridad Interior y el legado de una década de políticas de seguridad contrarias a los derechos humanos en México*, Centro Prodh, 2017.

<sup>5</sup> Press Communicate, “CIDH saluda decisión de la Suprema Corte de Justicia de la Nación de México que declara inconstitucional la Ley de Seguridad Interior”, November 26, 2018. Available at: <https://www.oas.org/es/cidh/prensa/comunicados/2018/251.asp>

*complementary*” manner.<sup>6</sup> This transitional regime represents the claudication of the civil power before the military power and the continuity of a strategy which is at the root of many human rights violations recorded in the country in the last decade.<sup>7</sup>

The National Guard formally began functions on June 30, 2019. Nevertheless, before this date, it was already operating in Minatitlán and Cosoleacaque, Veracruz, as well as in the border areas.<sup>8</sup> This means that before June 30, an institution with members from the Army and Navy was performing public security tasks without any training.

The National Peace and Security Plan 2018-2024 establishes that the National Guard will reach 50,000 troops,<sup>9</sup> distributed in 266 areas (“regional quadrants”). As stated by the Commander in Chief of the National Guard, “the deployment was carried out partially due to lack of trained elements on the day of the inauguration and, among the 266 regional quadrants, the 150 regions selected for startup were not necessarily those with the highest crime rates”.<sup>10</sup>

It is not yet known exactly how many of the members of the National Guard were transferred directly from the Military and Naval Police. The Secretary of the Navy indicated that it is planned to transfer to the National Guard all the 6,288 members of the naval police. The Secretariat of National Defense said that information on the number of military police elements that will be incorporated into the National Guard was non-existent.<sup>11</sup>

In addition to the above, the rush with which the National Guard has begun operating has triggered protests by officials of the Federal Police of Mexico against the government's decision to incorporate them into the National Guard.

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<sup>6</sup> See the Second Transitory Article of the National Guard constitutional reform. Available at: [https://dof.gob.mx/nota\\_detalle.php?codigo=5555126&fecha=26/03/2019](https://dof.gob.mx/nota_detalle.php?codigo=5555126&fecha=26/03/2019)

<sup>7</sup> Neither the National Guard regulations have yet clarified how the civil and police nature of this body will remain intact, before the imminent incorporation of the Army and the Navy. See: Frida Ibarra y Gerardo Álvarez, “La Guardia Nacional ante la Constitución y el Sistema Interamericano de Derechos Humanos”, *Animal Político*, August, 20, 2019. Available at: <https://www.animalpolitico.com/blog-invitado/la-guardia-nacional-ante-la-constitucion-y-el-sistema-interamericano-de-derechos-humanos/2019>. Available at: <https://seguridad.nexos.com.mx/?p=1316>

<sup>7</sup> Press Communique, “CIDH saluda decisión de la Suprema Corte de Justicia de la Nación de México que declara inconstitucional la Ley de Seguridad Interior”, November 26, 2018. Available at: <https://www.oas.org/es/cidh/prensa/comunicados/2018/251.asp>

<sup>7</sup> See the Second Transitory Article of the National Guard constitutional reform. Available at: [https://dof.gob.mx/nota\\_detalle.php?codigo=5555126&fecha=26/03/2019](https://dof.gob.mx/nota_detalle.php?codigo=5555126&fecha=26/03/2019)

<sup>8</sup> Paul Frissard y Daniela Osorio, “Dos meses de Guardia Nacional: ¿Qué observamos?”, *Revista Nexos*, September 2, 2019. Available at: <https://seguridad.nexos.com.mx/?p=1551>

<sup>9</sup> Plan nacional de paz y seguridad 2018-2024. Available at: [https://lopezobrador.org.mx/wp-content/uploads/2018/11/PLAN-DE-PAZ-Y-SEGURIDAD\\_ANEXO.pdf](https://lopezobrador.org.mx/wp-content/uploads/2018/11/PLAN-DE-PAZ-Y-SEGURIDAD_ANEXO.pdf)

<sup>10</sup> Paul Frissard y Daniela Osorio, “Dos meses de Guardia Nacional: ¿Qué observamos?”, *Revista Nexos*, September 2, 2019. Disponible en: <https://seguridad.nexos.com.mx/?p=1551>

<sup>11</sup> Arturo Ángel, “Guardia Nacional iniciará sin reglamento, con dudas sobre su estado de fuerza y capacitación”, *Animal Político*, June 28, 2019. Available at: <https://www.animalpolitico.com/2019/06/guardia-nacional-inicio-reglamento-dudas-capacitacion/>

Such protests are related to several concerns: reductions of salaries and benefits are being reduced; fear of being fired if they refuse to be incorporated into the National Guard; concerns “about serving under the command of military personnel who do not understand the civilian police service”.<sup>12</sup>

### *1.3. Intervention of other military bodies*

According to official data provided by SEDENA, 33,911 elements of the Army will continue to carry out public security work, without being incorporated into the National Guard.<sup>13</sup> Worryingly, there is no regulatory framework to ensure that said Army deployed in the streets will meet the criteria of an extraordinary, subsidiary, complementary, supervised and regulated participation, as mandated by the Constitution.

### *1.4. The result of militarization: disproportionate violence and opacity*

#### *1.4.1. Disproportionate violence*

The perpetuation of this militarisation strategy ignores the evidence on the role of armed forces in public security tasks and its consequences, and the geographical correlation between militarisation and outbreaks of violence in the country:<sup>14</sup> evidence shows that violence is much greater in municipalities where clashes between security forces and criminal organizations were registered, than in those where there were no confrontations. On average, the increase in homicides was 6% where confrontations were present, while the increase was up to 8% in case of participation of elements of the Armed Forces and up to 9% when members of SEDENA were involved.<sup>15</sup>

Likewise, a considerable increase in the use of lethal force by the Army, the Navy, and the Federal Police was recorded in the last years.<sup>16</sup>

Since 2007, the National Human Rights Commission (Comisión Nacional de Derechos Humanos -CNDH) has received more than 10,000 complaints of human rights violations committed by members of the Army. Consequently, from 2007 to June 2017 this body has issued 148 recommendations linked to

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<sup>12</sup> Paulina Villegas y Elisabeth Malkin, “La policía mexicana se rebela contra el nuevo plan de seguridad del gobierno”, *The New York Times*, July 5, 2019. Available at: [https://www.nytimes.com/es/2019/07/05/guardia-nacional-mexico-amlo/?rref=collection%2Fsectioncollection%2Fnyt-es&action=click&contentCollection=guardia-nacional&region=stream&module=stream\\_unit&version=latest&contentPlacement=1&pgtype=collection](https://www.nytimes.com/es/2019/07/05/guardia-nacional-mexico-amlo/?rref=collection%2Fsectioncollection%2Fnyt-es&action=click&contentCollection=guardia-nacional&region=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection)

<sup>13</sup> Arturo Rangel, “33 mil soldados seguirán en tareas de seguridad pública, sin formar parte de la Guardia Nacional”, *Animal Político*, May 31, 2019. Available at: <https://www.animalpolitico.com/2019/05/soldados-guardia-nacional-seguridad-publica/>

<sup>14</sup> Laura Atuesta, “Las cuentas de la militarización”, *Revista Nexos*, March 1, 2017. Available at: <https://www.nexos.com.mx/?p=31552>

<sup>15</sup> *Ibíd.*

<sup>16</sup> Pérez Correa et al, “Deadly forces: The Lethality Index of Mexican security forces 2007-2011”, in Barbara Frey & Alejandro Anaya (editors), *Human Rights in Mexico. Crisis and Opportunity*, University of Pennsylvania Press (forthcoming in 2018).

armed forces serious violations of human rights, such as torture, forced disappearance, extrajudicial executions and illegal use of force, and others.<sup>17</sup>

#### *1.4.2. Lack of transparency and impunity*

It is extremely serious that the lethality of the use of force is currently characterised by a lack of transparency that reduces accountability. In 2014, the Army stopped reporting information on the number of civilians killed during episodes of confrontation. It is almost impossible to obtain this data and use it to measure the use of lethal force.<sup>18</sup> The Secretariat of National Defense also stopped publishing information related to the number of municipal, state and federal police officers who were injured, detained or killed in “clashes” between 2006 and 2018. Finally, SEDENA also does not publish its reports on the use of force or homologated police reports; this is in violation of current regulations<sup>19</sup> that made it mandatory to collect information about the confrontations where the Army acts in coordination to the police and where people are killed, injured or detained.<sup>20</sup>

Given this lack of transparency, the National Institute of Transparency, Access to Information and Protection of Personal Data (INAI) required SEDENA to conduct a thorough search of the information referred and make it public.<sup>21</sup> The decision of this autonomous body is crucial to ensure that the population has effective access to information related to the performance of the armed forces.

In this scenario, the absence of civil oversight in military affairs has also made it difficult to guarantee victims access to the truth, justice and reparation for violations committed by military bodies. “Between December 2012 and January 2018, the National Human Rights Commission (CNDH) received more than 4,600 complaints about alleged abuses committed by the military.”<sup>22</sup> According to the Washington Office for Latin American Affairs (WOLA), “of the 505 investigations initiated between 2012 and 2016, they had only obtained 16 convictions.”<sup>23</sup>

#### *1.5. Impact of militarisation on human rights, and legality of states of emergency, and of the provision of states of emergency*

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<sup>17</sup> Maureen Meyer, “Propuesta de Guardia Nacional concretizaría la militarización de la seguridad pública en México”, June 10, 2019. Available at: <https://www.wola.org/es/analisis/guardia-nacional-mexico-abusos-militares/>

<sup>18</sup> Coupland, Robin and Meddings, David, “Mortality associated with use of weapons in armed conflicts, wartime atrocities, and civilian mass shootings: literature review”, *BMJ*, 319(407), 1999.

<sup>19</sup> “La Directiva que regula el uso legítimo de la fuerza por parte del personal del Ejército y Fuerza Aérea Mexicanos, en cumplimiento del ejercicio de sus funciones en apoyo a las Autoridades Civiles”, “la Ley Federal de Armas de Fuego y Explosivos” and “El Manual de Uso de la Fuerza, de Aplicación Común a las Tres Fuerzas Armadas”.

<sup>20</sup> Javier Treviño Rangel, “El Ejército y su guerra: rendición de cuentas y cuentos”, *Revista Nexos*, March 28, 2019. Available at: <https://seguridad.nexos.com.mx/?p=1316>

<sup>21</sup> *Ibíd.*

<sup>22</sup> Human Rights Watch, “Informe Mundial 2019: México eventos 2018”. Available at: <https://www.hrw.org/es/world-report/2019/country-chapters/326034>

<sup>23</sup> *Ibíd.*



This Committee has already noted that the militarisation of law enforcement can result in the violation of the right to life and security, and has recommended that states centralise law enforcement functions on civilian institutions such as the national police.<sup>24</sup> A similar recommendations was already made to Mexico in 2010 by this Committee.<sup>25</sup>

In the same 2010 Concluding Observations on Mexico, the Human Rights Committee also expressed the concern that Mexico's militarised "War on Drugs" had entailed the derogation of rights in some regions of the country, as well as human rights violations apparently perpetrated by the military.<sup>26</sup>

In that regard, we recall that the derogation of rights under a state of emergency is only compliant with article 4 ICCPR when the emergency has been formally proclaimed by the state, a requirement that is "essential for the maintenance of the principles of legality and the rule of law".<sup>27</sup> So far, this requirement has not been met by the Mexican authorities.

Furthermore, derogations are not a wholesale removal of the protections granted by the Covenant. First, article 4.2 ICCPR explicitly excludes from derogation the right to life and the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment<sup>28</sup>. Secondly, any derogation to other rights must be strictly limited to the extent necessary by the emergency that triggered them.

In view of this, the actions taken by Mexico in the War on Drugs, as described above, are not compliant with the Covenant.

## **2. Extrajudicial killings, enforced disappearances and torture**

**Issue 12. "information on actions taken at both the federal and state levels to prevent and investigate human rights abuses and violations committed by members of the armed forces or security forces, including extrajudicial killings, enforced disappearances and torture, to punish those responsible and to ensure that the actions of police officers and members of the armed forces are consistent with**

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<sup>24</sup> Human Rights Committee, 'Concluding observations on the second periodic report of Honduras (United Nations, 2017), 21,

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoNGbyGkOIGC%2fg46yWsxEHvAsWZ9dtpLIRdNyWhUFxDS9TSKnM1HjcwVmj7vRSWWBxMIwMms4waby1y%2bABGIU4s4ZS%2fzpHhaQAHzXcoETsc%2b>

<sup>25</sup> Human Rights Committee, 'Concluding observations on the fifth periodic report of Mexico (United Nations, 2010), 11,

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssnn3otTjgQWftWGGStAtK%2fAIIdteZw9pELsKyA4KCdQ1cYGYVhfF%2bHWBul1UcrBSHiX8YducU6Bde4tQasgIdI0eQtvoIiGICf8bTD2GCD0P>.

<sup>26</sup> Ibid.

<sup>27</sup> Human Rights Committee, 'General Comment on Article 4' (United Nations, 2001), 2, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2bfud3cPVrcM9YR0iix49nIFOsUPO4oTG7R%2fo7TSsorhtwUUG%2by2PtslYr5BldM8DN9shT8B8NpbsC%2b7bODxKR6zdESEXKjilnNU%2bgQ%3d%3db>

<sup>28</sup> Ibid, para. 4.

**Covenant rights. Please include information on the measures taken to regulate the use of public force. Please also include information covering the period since the adoption of the Committee's previous concluding observations on: (a) the number of complaints received of human rights violations committed by members of the armed or security forces and the nature of the alleged violation in each case and the place where it was committed; (b) the investigations carried out in these cases, the judgements handed down (indicating whether they were convictions or acquittals); and (c) the remedies provided to the victims".**

**Right to life; prohibition of torture and cruel, inhuman or degrading treatment or punishment; right to liberty and security of person (arts. 2, 6, 7 and 9).**

The "War on Drugs" has resulted in an increase in the number of extrajudicial executions, forced disappearances, forced internal displacements, torture, and other forms of serious rights violations. In sum, instead of reducing the levels of violence in the country, the Armed Forces have exacerbated it.

Despite the fact that the National Peace and Security Plan 2018-2024 introduces "a radically different public security paradigm than has been applied in the previous six years"<sup>29</sup>, the security policy in the country has not undergone a radical change: the Army continues to carry out public security tasks without any control and there is no guarantee that the National Guard will maintain its civil and police character.

### *2.1. Significant increase in homicides and extrajudicial executions*

The former Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution found that during the administration of Felipe Calderón (2006-2012) 102,696 homicides were reported, of which 70,000 related to the War on Drugs.<sup>30</sup> For 2015, INEGI accounted for 20,525 homicides. According to data from the Public Security System, a total of 9,452 homicides were specifically and directly related to the War on Drugs that year. In 2018, the highest number of homicides occurred in the recent history of Mexico was recorded, with around 33,000 dead;<sup>31</sup> according to data from the Executive Secretariat of the National Public Security System (SESNSP), during the first seven months

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<sup>29</sup>Plan nacional de paz y seguridad 2018-2024. Available at: [https://lopezobrador.org.mx/wp-content/uploads/2018/11/PLAN-DE-PAZ-Y-SEGURIDAD\\_ANEXO.pdf](https://lopezobrador.org.mx/wp-content/uploads/2018/11/PLAN-DE-PAZ-Y-SEGURIDAD_ANEXO.pdf)

<sup>30</sup> Consejo de Derechos Humanos 26º período de sesiones Tema 3 de la agenda Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo Informe del Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, Christof Heyns Adición Misión a México. Available at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.22.SPA.pdf>

<sup>31</sup> Alberto Najar, "Primer informe de gobierno de AMLO: la controvertida estrategia de seguridad de López Obrador que no ha servido de momento para frenar al narcotráfico", BBC Mundo, Ciudad de México, September 2, 2019. Available at: <https://www.bbc.com/mundo/noticias-america-latina-49521069>



of the current government 1,525 wrongful killings were committed, of which 75% with a firearm.<sup>32</sup>

Other serious episodes of violence related to the fight against criminal organizations have been recorded this year: on April 26, a massacre occurred in Minatitlán, Veracruz, where 13 people were killed; in August, 9 people appeared hanging on a bridge in Uruapan, Michoacán; and on the night of August 27-28, 30 people were killed by armed men in a bar in Coatzacoalcos, Veracruz.<sup>33</sup>

## 2.2. Disappearances crisis

The strategy of militarisation of public security, and the dynamics of violence that it has generated, also produced thousands of disappearances. Some civil society organizations estimate that there are between 30,000 and 50,000 disappeared people after ten years of War on Drugs.<sup>34</sup> The official estimate is at least 40,000 missing persons.<sup>35</sup> Also, according to data from the Office of the Attorney General of Military Justice, from 2007 to 2017, 78 criminal investigations against Army forces, have been initiated for the crime of forced disappearance.<sup>36</sup>

The National Search Commission (Comisión Nacional de Búsqueda) has reported that, so far, "4,974 bodies have been found in 3,024 "clandestine graves" in the past 13 and a half years.<sup>37</sup> However, new graves continue to be found: on "La Guapota", Veracruz, 43 clandestine graves and undetermined human remains were found<sup>38</sup>; in Tamaulipas, a group of mothers found three graves with at least 265 human remains<sup>39</sup>; finally, mothers who are members

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<sup>32</sup> Juan Raúl Linares, "Mucha Guardia Nacional, pero la violencia sigue", *Revista Proceso*, September 7, 2019. Available at: <https://www.proceso.com.mx/598731/mucha-guardia-nacional-pero-la-violencia-sigue>

<sup>33</sup> Paul Frissard y Daniela Osorio, "Dos meses de Guardia Nacional: ¿Qué observamos?", *Revista Nexos*, September 2, 2019. Available at: <https://seguridad.nexos.com.mx/?p=1551>

<sup>34</sup> Una guerra sin rumbo claro – El País: <https://elpais.com/especiales/2016/querra-narcotrafico-mexico/>

<sup>35</sup> Gobierno Federal destina 400 MDP a la búsqueda de desaparecidos. Nota de El Informador, February 4, 2019. <https://www.informador.mx/mexico/Gobierno-Federal-destina-400-MDP-a-la-busqueda-de-desaparecidos-20190204-0043.html>

<sup>36</sup> José A. Guevara B., "CMDPDH: Las Fuerzas Armadas y la seguridad pública", *Revista Nexos*, March 1, 2019. Available at: <https://www.nexos.com.mx/?p=41380>

<sup>37</sup> Georgina Zerega, "El Gobierno de México cifra las fosas clandestinas en más de 3.000", *El País*, August 30, 2019. Available at: [https://elpais.com/internacional/2019/08/30/mexico/1567173416\\_337248.html](https://elpais.com/internacional/2019/08/30/mexico/1567173416_337248.html)

<sup>38</sup> José Luis Pardo Veiras, "México: el violento país que AMLO no tiene bajo control", *The New York Times*, May 12, 2019. Available at: <https://www.nytimes.com/es/2019/05/12/homicidios-lopez-obrador/>

<sup>39</sup> París Martínez, "Madres hallan fosa con 500 cadáveres en Tamaulipas; acusan a autoridades de ocultar información, pero Fiscalía lo niega", *Animal Político*, February 12, 2019. Available at: <https://www.animalpolitico.com/2019/02/madres-fosas-cadaveres-tamaulipas/>

of the “Colectivo Solecito” found the largest clandestine grave in Mexico in Santa Fe Hills, Veracruz, with about 298 skulls and 22,500 human remains .<sup>40</sup>

### *2.3. Forced displacement related to insecurity and militarization*

The Internal Displacement Observatory of the Norwegian Refugee Council in Mexico accounted for 130 thousand people displaced by violence resulting from the frontal fight against drug trafficking.<sup>41</sup> In the same vein, the National Human Rights Commission, in 2016, highlighted that violence in the country has forced 35,433 people to leave their homes.<sup>42</sup> Also, the Mexican Commission for the Defense and Promotion of Human Rights in Mexico (CMDPDH) reported that 310,527 people were forcibly displaced from 2009 to January 2017 due to the violence generated by drug trafficking and the militarized response of the Federal Government.<sup>43</sup>

### *2.4. Torture*

According to Human Rights Watch, from December 2012 to January 2018, the Attorney General's Office initiated more than 9,000 investigations into cases of torture.<sup>44</sup> According to data obtained by the CMDPDH, the Office of the Attorney General of the Republic reported that of the 2,877 investigations for torture from 2015 to 2017 against members of the Armed Forces, 1,847 were against elements of the SEDENA, while 1,030 were against members of the Navy.<sup>45</sup>

Likewise, the CNDH, since December 2006, has received a total of "5,645 complaints that refer to torture and cruel treatment against the Armed Forces."<sup>46</sup>

## **3. Violation of the rights of women related to the Armed Forces**

### **Issue 12 in relation to Issue 9.**

<sup>40</sup> Rodrigo Soberanes, “Cierran Colinas de Santa Fe, la fosa más grande de México hallada por madres de desaparecidos”, Animal Político, August 9, 2019. Available at: <https://www.animalpolitico.com/2019/08/veracruz-cierran-colinas-santa-fe-busquedas-fosas/>

<sup>41</sup> Luis Pablo Beurgard. El País. Internacional. May 15, 2015. Available at: [http://internacional.elpais.com/internacional/2015/05/15/actualidad/1431655479\\_587421.html](http://internacional.elpais.com/internacional/2015/05/15/actualidad/1431655479_587421.html)

<sup>42</sup> Comisión Nacional de Derechos Humanos. Informe especial sobre desplazamiento forzado interno; demanda el reconocimiento oficial del fenómeno y atención a las víctimas bajo un perfil humanitario. 11 de mayo de 2016. Available at: [http://www.cndh.org.mx/sites/all/doc/Comunicados/2016/Com\\_2016\\_131.pdf](http://www.cndh.org.mx/sites/all/doc/Comunicados/2016/Com_2016_131.pdf)

<sup>43</sup> Desplazamiento interno forzado en México – CMDPDH. Available at: <http://www.cmdpdh.org/publicaciones-pdf/cmdpdh-desplazamiento-web.pdf>

<sup>44</sup> Human Rights Watch, “Informe Mundial 2019: México eventos 2018”. Available at: <https://www.hrw.org/es/world-report/2019/country-chapters/326034>

<sup>45</sup> José A. Guevara B, “Las Fuerzas Armadas y la seguridad pública”, *Revista Nexos*, March 1, 2019. Available at: <https://www.nexos.com.mx/?p=41380>

<sup>46</sup> *Ibíd.*

**Right to life; prohibition of torture and cruel, inhuman or degrading treatment or punishment; right to liberty and security of person (arts. 2, 6, 7 and 9). Violence against women (arts. 3, 6 and 7)**

Recent reports have shown the differentiated impact of militarisation between men and women. According to data collected by the National Survey of the Deprived Population of Liberty (ENPOL), 41% of women arrested by members of the Navy were victims of rape, compared to 5% of men.<sup>47</sup> Also, 21% of the women were victims of rape when they were arrested by the Army, compared to 5% of men.<sup>48</sup> It is also noted that, in the case of the Army, only 3% of the men arrested had a warrant for their arrest; this percentage decreases to 1.3% for women.<sup>49</sup>

Additionally, since the beginning of the War on Drugs and the militarisation of public security tasks, the homicides of women not only increased - the murder rate increased from 1.9 women per 100,000, in 2007, to 5.42 in 2017- but they changed in dynamics and intensity. While between 1997 and 2008 most homicides of women occurred in the private sphere, since 2009 the majority of homicides of women occurs in the public space. Additionally, the homicides of women committed with a firearm have increased significantly, compared to the increase in homicides by hanging or by use of a sharp object. Finally, the percentage of women shot by elements of the Army (6.92%) or the Navy (6.23%) is much higher than those shot by the municipal (1.26%), state (2.41%) , federal (2.59%) and judicial police (2.19%).<sup>50</sup>

Women are more at risk than men to suffering sexual torture during detention at the hands of the army or other public security officers. The CEDAW Committee expressed its concerns regarding the increase of sexual torture against women in Mexico in 2018, and in 2019 numerous Mexican and international NGOs documented cases of sexual torture against women in the alternative report to the United Nations Committee Against Torture<sup>51</sup>. Equis has collected several interviews of women in prison who have been victims of sexual violence during detention, including rape.

**4. Treatment of persons deprived of their liberty**

<sup>47</sup> Estefanía Vela, "¿Una milicia con perspectiva de género?", *Animal Político*, February 12, 2019. Available at: <https://www.animalpolitico.com/columna-invitada/una-milicia-con-perspectiva-de-genero/>

<sup>48</sup> Ibid.

<sup>49</sup> Estefanía Vela, "¿Una milicia con perspectiva de género?", *Animal Político*, February 12, 2019. Available at: <https://www.animalpolitico.com/columna-invitada/una-milicia-con-perspectiva-de-genero/>

<sup>50</sup> Estefanía Vela, "¿Una milicia con perspectiva de género?", *Animal Político*, February 12, 2019. Available at: <https://www.animalpolitico.com/columna-invitada/una-milicia-con-perspectiva-de-genero/>

<sup>51</sup> Organizations of Civil Society, INFORME ALTERNATIVO DE LAS ORGANIZACIONES DE LA SOCIEDAD CIVIL DE MÉXICO AL COMITÉ CONTRA LA TORTURA DE LA ONU 2012-2019, 2019. Available at: <http://www.cmdpdh.org/publicaciones-pdf/cmdpdh-informe-conjunto-cat-2019.pdf>.

**Issue 20. “updated information on the steps taken to: (...) (c) improve conditions for all detainees, in particular by reducing overcrowding and providing adequate food and medical services.”**

**Right to life; prohibition of torture and cruel, inhuman or degrading treatment or punishment; right to liberty and security of person, (arts. 2, 6, 7 and 9).**

#### *4.1. The rights of incarcerated persons under Mexican and international law*

Under Mexican law, social reintegration is understood as the governmental obligation to guarantee all reasonable means for the development of the personality of incarcerated people. That is why the National Law of Execution of Criminal Sanctions establishes that “persons deprived of their liberty in a Penitentiary Center, during the execution of pretrial detention or the penal sanctions imposed, shall enjoy all the rights provided by the Constitution and International Treaties of which the Mexican Government is a party, as long as these have not been restricted by resolution or sentence, or their exercise is incompatible with their object.”

Under international human rights law, persons deprived of their liberty enjoy all the rights set forth in the ICCPR, subject only to the restrictions unavoidable in a closed environment.<sup>52</sup> States have a heightened duty of care for the life and health of incarcerated persons,<sup>53</sup> which also implies the obligation to regularly monitor the health of detainees.<sup>54</sup>

Thereby, it descends from domestic legislation as well as from Articles 6 and 7 ICCPR that the state has an obligation to fully guarantee to the right to life and human integrity of incarcerated people, the right to dignified conditions of detention, and the right to health. The government must ensure that essential health services are available in prisons, and are of quality, based on scientific principles, best practices, and adequate to achieve physical and mental well-being of the incarcerated population.

Data from June 2019 shows that there has been an increase of the prison population, probably as a consequence of a Constitutional reform approved in April 2019 which widens the number of offences that receive pre-trial mandatory detention.<sup>55</sup>

#### *4.2. Violation of prohibition of cruel, inhuman or degrading treatment or punishment*

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<sup>52</sup> Human Rights Committee, ‘General Comment No 21: Article 10 (Human Treatment of Persons Deprived of Their Liberty)’, 10 April 1992, 21, <https://www.refworld.org/docid/453883fb11.html>.

<sup>53</sup> Human Rights Committee, ‘Ms. Yekaterina Pavlovna Lantsova v. The Russian Federation, Communication No. 763/1997’, 29 March 2002, 9.2, <http://hrlibrary.umn.edu/undocs/763-1997.html>.

<sup>54</sup> Human Rights Committee, ‘General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life’ (United Nations, 2018), 26, [https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6\\_EN.pdf](https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf)

<sup>55</sup> Arturo Ángel, “Aumenta la población penitenciaria tras 5 años de tendencia a la baja”, *Animal Político*, September 3rd 2019. Available at: <https://www.animalpolitico.com/2019/09/poblacion-carceles-aumento-prision-preventiva/>.

#### *4.2.1. Inadequate health care standards in Mexican prisons*

The United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment reported in 2014 some cases of incarcerated people with chronic diseases and in needs of essential medicines which had been left untreated. Similarly, the Human Rights Commission of Mexico City, in its 2011 Special Report on the Right to Health of Persons Deprived of Liberty, warned about problems of accessibility and procedural delays for incarcerated patients that require specialized medical care.

Lack of access to health in prison is particularly acute in the case of women and children living in prison with their mothers. In Mexico, women represent 5% of the prison population. Out of 311 prisons, only 19 are exclusively for women. 53% states keep women in mixed prison centres. As shown by the National Commission of Human Rights<sup>56</sup>, access to health is more deficient in mixed prisons than in female prison centres.

Furthermore, women in mixed centres are more likely to be victims of intra-wall human trafficking and sexual exploitation by guards, prison staff, and other inmates, thus increasing the health consequences of sexual violence against women and the transmission of Sexually Transmitted Diseases.

According to civil society, sexual violence is more acute among trans-gender women in male prison centres.

Local civil society has also found that the situation of children that live in prison with their mothers is particularly dire. Constant field work carried out by Equis in different female prisons shows that children lack access to paediatricians, medications, educations, contact with the external world and the allocation of proper spaces and infrastructure. A striking case is the Federal Female Prison of Morelos, which operates under a semi-privatization scheme and is known as Centro de Prestación de Servicios (CPS) 16. Despite counting with a hospital and first-quality infrastructure, the centre lacks medical attentions and medicines, and children who live there with their mothers do not have access to proper health care and paediatric medicines.

#### *4.2.2. Drug use in Mexican prisons*

According to interviews conducted by the Human Rights Commission of Mexico City in prisons, 17% of people interviewed report using some type of drug. There is no accurate diagnosis of the situation and of the extent of drug use and drug dependence in prisons, however, based on interviews with the staff responsible for the different detoxification programs in operation in prisons, drug use seems to be common in all centres, with marijuana, crack and cocaine being the most common substances.

#### *4.2.3. Lack of drug treatment in Mexican prisons*

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<sup>56</sup> Comisión Nacional de los Derechos Humanos, *Diagnóstico Nacional de Supervisión Penitenciaria* 2018, 2018. Available at: [https://www.cndh.org.mx/sites/all/doc/sistemas/DNSP/DNSP\\_2018.pdf](https://www.cndh.org.mx/sites/all/doc/sistemas/DNSP/DNSP_2018.pdf).



According to the World Health Organization (WHO), drug dependence is a physical and psycho-emotional disease that creates a dependency or need for a substance, activity or relationship. Drug dependence is a health affectation and must be attended with the same standards of quality and diligence as any other disease. Accordingly, the Mexican National Law of Execution of Criminal Sanctions compels prisons to provide the necessary services for the treatment of drug dependence. However, to this day, there is no standardised protocol that establishes the types of treatments that must be available in prisons; therefore, the type of service offered is at the discretion and budgetary disposition of each of them.

The United Nations Office on Drugs and Crime (UNODC) found that: “in general, drug use disorders should be seen as health effects and should be treated in the public health system. The treatment requires the involvement of the health system and could benefit from the participation of the community and social assistance systems, and must be operated with informed consent by trained professionals with practical experience in the subject.”

However, according to available research this does not happen in Mexico. In general, there are special or annexed cells in prisons where people who require drug treatment are treated. In these annexes, people are isolated and medicated with antidepressants, even if this medication is not required. Psychosocial support is limited and it is not included as part of the treatment for drug dependence in Mexican prisons.

#### *4.2.5. Lack of Harm reduction services in prison*

Harm reduction has been recognised as a fundamental component of the right to health.<sup>57</sup> Harm reduction has been explicitly endorsed as an essential measure for people who use drugs on numerous occasions by the Committee on Economic, Social and Cultural,<sup>58</sup> as well as by the UN General Assembly,<sup>59</sup> the Human Rights Council,<sup>60</sup> the Committee on the Rights of the Child,<sup>61</sup> the Committee on the Elimination of Discrimination against Women,<sup>62</sup> the Special

<sup>57</sup> Among others, see: Paul Hunt, ‘Human rights, health, and harm reduction’, 8; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (2010) A/65/255, para. 55; CESCR, Concluding Observations on the combined initial and second periodic reports of Thailand, UN Doc. E/C.12/THA/CO/1-2; CEDAW, Concluding Observations on the combined fourth and fifth periodic reports of Georgia (2014), UN Doc. CEDAW/C/GEO/CO/4-5, para. 31(e); Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Mission to Poland (2010) A/HRC/14/20/Add.3, para. 86; CESCR, 2016, Concluding Observations on the sixth periodic report of Sweden. UN Doc. E/C.12/SWE/CO/6.

For more information, see: International Centre on Human Rights and Drug Policy, UNAIDS, UNDP and WHO, International Guidelines on Human Rights and Drug Policy (2019), 1.1.

<sup>58</sup> In E/C.12/RUS/CO/5, E/C.12/LTU/CO/2, E/C.12/EST/CO/2 and E/C.12/UKR/CO/5.

<sup>59</sup> In its resolution 65/277.

<sup>60</sup> In its resolution 12/27.

<sup>61</sup> See the Committee’s general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health.

<sup>62</sup> In CEDAW/C/GEO/CO/4-5 and CEDAW/C/CAN/CO/8-9.



Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health<sup>63</sup> and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.<sup>64</sup>

Prisoners retain their right to health while incarcerated, which includes the right to harm reduction and preventive health services. Denial of these services in prison settings has also been found to contribute to, or even constitute, conditions that meet the threshold of ill treatment.<sup>65</sup>

It is now widely accepted that providing harm reduction services to the general public but not to prisoners is a flagrant violation of international human rights law.<sup>66</sup> This stems from the core obligation to “ensure the right of access to health facilities, goods and services, on a non-discriminatory basis, especially for vulnerable and marginalised groups”<sup>67</sup> and, closely related to this, the obligation to provide a standard of care that is at least equivalent to that available in the broader community, commonly known as the “principle of equivalence.”

Furthermore, Under ICCPR, states have a heightened duty of care to take the appropriate measures to protect the right to life of persons under their custody, which includes proactive measures such as providing the necessary medical care and regularly monitoring their health.<sup>68</sup> Turning a blind eye to both drug injection and equipment sharing leads to the creation of a high-risk environment for HIV infection, thus contravening this state obligation.

In spite of that, according to research by Harm Reduction International<sup>69</sup> Mexican authorities do not provide any form of harm reduction intervention to persons incarcerated.

## 5. Drug Dependence Treatment for Incarcerated Women

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<sup>63</sup> In A/65/255.

<sup>64</sup> In A/HRC/22/53.

<sup>65</sup> Sander G, Lines R, “HIV, Hepatitis C, TB, Harm Reduction and Persons Deprived of Liberty: What Standards Does International Human Rights Law Establish?” *The International Journal of Health and Human Rights* (2017)

<sup>66</sup> See for example, A. Grover, UN Special Rapporteur on the Right to the highest attainable standard of physical and mental health, Report of the UN Special Rapporteur on the Right to the highest attainable standard of physical and mental health, UN Doc. A/65/255 (August 6, 2010) para. 60.

<sup>67</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 14, UN Doc. E/C.12/2000/4, 2000, para 43(a).

<sup>68</sup> Human Rights Committee, ‘General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life’ (United Nations, 2018), 26, [https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6\\_EN.pdf](https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf)

<sup>69</sup> Katie Stone and Sam Shirley-Beavan, ‘The Global State of Harm Reduction’ (Harm Reduction International [HRI], December 2018), 16, <https://www.hri.global/files/2018/12/11/global-state-harm-reduction-2018.pdf>.

**Item 20 in relation to Item 9. “Updated information on the steps taken to: (...) (c) improve conditions for all detainees, in particular by reducing overcrowding and providing adequate food and medical services; (...) (e) protect the rights of women in detention.”**

**Right to life; prohibition of torture and cruel, inhuman or degrading treatment or punishment; right to liberty and security of person, (arts. 2, 6, 7 and 9). Violence against women (arts. 3, 6 and 7)**

#### *5.1. The state of healthcare for women in Mexican prisons*

In general, prison authorities are failing to guarantee essential health services in women's prisons. The United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment noted the lack of gynaecological medical care, the lack of attention to female hygienic and biological needs, and the precarious attention for pregnant women and nursing mothers.

Drug treatment programs for incarcerated women run on very little staff, little training, and no budget.

The incarcerated female population is much smaller than the male population.<sup>70</sup> Therefore, there are few specific detention centers for women in Mexico. Although Mexican law establishes that women must be imprisoned in spaces that are duly separated from those of men, the small female population makes it untenable to build prisons in every community. As a result, in most cases, spaces for incarcerated women are contiguous to prisons for men, and are very small.

For this reason, when medical treatment is available in women's prisons, it is supplied in special spaces or cells in deplorable conditions, with little access to medicines and little access to health specialists.

Civil society reports that when a woman requests treatment for her drug dependence, it is the custodians (and not a medical professional) who make a first assessment of her request and then transmit it to the prison authorities, who refer her to the health services, if these are available.

Equis current field work in prison with female drug users shows that women not only do not have access to treatment in prison, but also that the underlying factors of their dependent or problematic drug use – namely violence against children and gender-based violence against women and girls, sexual violence in most cases – are overlooked or further reinforced by their criminalization process and subsequent detention. Once again, detention in mixed centres further reduces women’s possibilities to access to drug treatment if needed.

#### *5.2. Drug dependence developed in prison*

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<sup>70</sup> World Prison Brief, March 2018.

Some civil society organizations have noted that women may develop drug dependence within prisons, due to the high availability of these substances – especially solvents and crack – in detention settings.

Also, these organizations have noted that unnecessary and forced medication of incarcerated women is common in the Federal Center for Women's Social Readaptation. The use of antidepressant or medications for post-traumatic syndrome is frequently found in these types of prisons that have little security personnel and use them as a control mechanism, rather than for health purposes.

This is in violation of several fundamental rights, and it is particularly worrisome considering that women may develop a dependency on this type of medication. According to the latest National Survey on the Deprived Population of Liberty (ENPOL) of 2016, 98.9% of women deprived of liberty have not received a condemnatory sentence, thus could be released from prison at any moment. The release phase is particularly delicate for women who have developed a dependency while in detention. Outside the prison, women face the impossibility of continuing to medicate and the risk of consuming more dangerous substances increases.

## **6. Mandatory pretrial detention**

**Item 20. Please also provide updated statistics on the number of persons deprived of their liberty, disaggregated by sex, age (adult or minor), whether the person is in pretrial detention or serving a sentence following conviction, and the place of detention, as well as the official capacity of each place of detention.**

**Right to life; prohibition of torture and cruel, inhuman or degrading treatment or punishment; right to liberty and security of person; right to a fair trial (arts. 2, 7, 9, 10 and 14). Violence against women (arts. 3, 6 and 7)**

### *6.1. Pretrial detention in national and international law*

In Mexican law, pretrial restraining measures are those provisions that a judge implements to persons who are being investigated in order to ensure their presence at the trial, to guarantee the course of the investigation, and to protect victims and witnesses. These are requested by the prosecution, which must justify the need for their imposition, as well as the proportionality of the measure, to a judge. Under these laws, pretrial detention is considered as a last resort measure and it can only be imposed when other types of measures are not sufficient to guarantee the purposes described above.

International human rights law also prescribes that pre-trial detention should be used as a measure of last resort when strictly necessary, and it should not be mandatory, but rather follow an individualised assessment.<sup>71</sup>

The International Guidelines on Human Rights and Drug Policy encourage States to “Ensure that pre-trial detention is never mandatory for drug-related charges and is imposed only in exceptional circumstances where such detention is deemed reasonable, necessary, and proportional.”<sup>72</sup>

## 6.2. Pretrial detention for drug offences in Mexico

In violation of the above-mentioned standards, the Mexican Constitution establishes a list of criminal offenses for which judges must impose pretrial detention automatically. Among them are drug-related crimes.

The so-called “Small trafficking law”, introduced in 2009 as part of President Calderon’s crackdown on drugs created a category called “crimes against health” that includes a broad range of offences relating to drugs (such as cultivation, processing, transportation, sale or supply, purchase, possession, or consumption).

Under the Constitution, pretrial detention is mandatory for all drug-related crimes, including those related to small trafficking law (except possession for personal use). This leads to the systematic mandatory – thus absent an individualised assessment – detention of people who may be innocent. Most worryingly, a disproportionate number of people imprisoned for drug offenses in Mexico belong to the lowest levels of the drug market, are usually in a position of poverty or financial need, and were not rarely forced to participate in this illegal market.

Pretrial detention has a significant impact on the Mexican prison system. the country has a total prison population of, approximately, 204,422 people (corresponding to a rate of 164 per 100,000 habitants); 94.8% of prisoners are male and 5.2%, female.

39.2% of the total prison population in Mexico are pre-trial detainees.<sup>73</sup> As the chart shows, this trend has been steady during the last few years.<sup>74</sup>

<sup>71</sup> ICCPR Article 9 and 14; CCPR/G/GC/35; CCPR/C/99/D/150/2006, par.10(4)

<sup>72</sup> UNAIDS et al., ‘International Guidelines on Human Rights and Drug Policy’ (2019), 7.ii

<sup>73</sup> World Prison Brief, March 2018.

<sup>74</sup> World Prison Brief, March 2018.

Year	Number in pre-trial imprisonment	Percentage of total prison population	Pre-trial population rate
2000	63,724	41.2%	64
2005	87,844	42.7%	83
2010	91,297	41.7%	81
2015	102,740	41.5%	85
2018	79,660	39.2%	64

Based on World Prison Brief, March 2018.

Pretrial detention has a direct impact on the occupancy level and prison overcrowding. Overall, the Mexican prison system has a 94.4% occupancy level (based on official capacity). However, a different picture emerges when analysing the federal and local levels separately. In 2016, the federal prison system was at the 68% of its occupancy level, while the local prison system was at 111% occupancy level. As a consequence, in local prisons the 51% of the population shares their cells with five other people; 22% with other six to ten people; 11% with 11 to 15 people; and 13% with more than 15 persons).

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### 6.3. Pretrial detention of Mexican women for drug offences

In Mexico between 2011 and 2013, the total prison population increased by 7, while the population incarcerated for drug offenses grew by 19%.<sup>76</sup> This phenomenon is exacerbated for women. According to the organization Equis, Justicia para las Mujeres, "crimes against health represent, therefore, 13.5% of the crimes of the common law for which women are admitted [to prison]. According to the data, in 2014, the women who entered for drug trafficking crimes were 940; in 2015, there were 1,617 and, in 2016, the income of 1,911 women was recorded. It is observed, therefore, that the trend in the prosecution of these crimes has increased for women, showing a growth rate of 72% for 2015 and an increase of 103.3% in the last two years." Also, EQUIS points out that "crimes against health represent 43% of cases of imprisonment of women for crimes of federal jurisdiction. Although, in absolute terms, the figure is smaller than that of the common law, in percentage terms the difference is striking. At the federal level, crimes against health clearly represent the first cause of deprivation of women's freedom, with the crime of possession taking first place".<sup>77</sup>

Although data on imprisonment for drug crimes are not disaggregated and, as already mentioned, the crime of possession for consumption does not get mandatory pretrial detention, the "crimes against the health" do. For that reason, it is believed that in 2016 at least 1,169 women were in mandatory pretrial detention for drug offenses.

<sup>75</sup> World Prison Brief, March 2018.

<sup>76</sup> Pérez Correa & Chaparro Hernández, *Sobredosis carcelaria y política de drogas en A.L.*, 2017

<sup>77</sup> Equis, Justicia para las Mujeres, *Políticas de drogas, género y encarcelamiento en México*, 2018, p. 9-10. [http://equis.org.mx/wp-content/uploads/2018/02/Gui%CC%81a\\_Drogas.pdf](http://equis.org.mx/wp-content/uploads/2018/02/Gui%CC%81a_Drogas.pdf)

## Conclusions and recommendations

In light of the above, we respectfully ask This Committee to recommend the Government of Mexico to:

- Take all necessary steps to ensure that public security is upheld by civilian rather than military forces, to the maximum extent – thus reiterating recommendations made to the Government in the latest cycle of periodic review;<sup>78</sup>
- Ensure that all allegations of human rights violations committed by military forces are promptly and fully investigated, that the perpetrators are held accountable, and that victims have access to justice and reparations;
- Ensure that all allegations of torture and ill-treatment, disappearance, and extrajudicial killing are promptly and fully investigated, that the perpetrators are held accountable, and that victims and their families have access to justice and reparations;
- Ensure that complete, updated, disaggregated information on the number of civilians killed in confrontations with armed forces is publicly available;
- Protect and promote the human rights of people in detention, with a focus on guaranteeing adequate and dignified conditions of detention and access to essential healthcare – including harm reduction and drug treatment services;
- Initiate a process of reform of the system of incarceration of female prisoners, also promoting alternatives to incarceration when appropriate;
- Publish complete, updated, and disaggregated data on children with incarcerated parents living in prison. Ensure that children in prison live in humane and dignified conditions, and that their right to health be protected and promoted;
- Amend the provision in the national Constitution which requires the mandatory pretrial detention of subjects investigated for a range of crimes. Ensure that all people mandatorily detained have their cases reviewed on the basis of an individualised assessment of the necessity and proportionality of the detention;
- Initiate a comprehensive project of review of the country's drug policy in line with international human rights standards (as clarified by the International Guidelines on Human Rights and Drug Policy) and with a gender-mainstreaming approach; also with a view to reducing prison overcrowding, enforced disappearances, and extrajudicial killings.
- Consider decriminalising drug use and possession for personal use.

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<sup>78</sup> Para. 11