



# FALSE SUSPICIONS

ARBITRARY DETENTIONS BY POLICE IN MEXICO

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# 1. EXECUTIVE SUMMARY

Arbitrary detention is an everyday occurrence in Mexico and is very often the starting point for persistent serious human rights violations such as torture and other ill-treatment, enforced disappearances and extrajudicial executions. Consequently, the study of arbitrary and illegal detention – a form of deprivation of liberty that can affect anyone – also helps inform an analysis of the conditions that facilitate other human rights violations.

This research analyses the way in which police forces in Mexico carry out arrests,<sup>1</sup> in particular in cases where the authorities allege that an individual was caught red-handed; that is, in the act of committing a crime (in flagrante delicto).

Amnesty International's research found that in Mexico the arrest of people allegedly while they were in the act of committing a crime is not a genuine response aimed at dealing with crime. Rather, it is a means used illegally by the authorities to target those who have historically faced discrimination, in particular young men living in poverty.

Amnesty International's research included interviews, granted on the basis of strict confidentiality, with 25 people who are currently or were until recently working within the justice system in general attorneys' offices, in courts and tribunals or in the police. The findings of this report are based on information arising from those interviews that was able to be verified with data from other sources, such as information from other NGOs, official documentation, reports by international organizations and cases previously documented by Amnesty International. In addition, this report includes six case studies that illustrate the human rights violations arising from arbitrary detention.

The organization's research found that the reasons why police officers from different forces in Mexico routinely resort to arbitrary detention include: to extort money from detainees; to detain a particular individual in return for payment from a third party; for politically motivated reasons (for example, the detention of people involved in social movements or human rights defenders); to investigate detainees in connection with another crime by detaining them for a misdemeanour that they usually have not committed; and to plant evidence and thus avoid having to carry out genuine investigations into crimes which have in fact been committed.

Amnesty International also found that a lack of resources and staff in various institutions is leading to violations of the rights of detainees and, indeed, of all those involved in any way in criminal proceedings, including the victims of crime. These inadequate resources include a lack of appropriate and ongoing training, a lack of essential material resources (such as those required to process a crime scene), excessive workloads, poor working conditions and job insecurity.

Anyone who is detained has a number of rights designed to protect them from abuses. These include the right to be informed immediately and in detail of the reasons for their detention and of their right to legal advice and representation from the moment of arrest, and to inform their family or relatives of their situation. Under international and national law, people also have the right to know which authority is depriving them of their liberty and to have their detention registered immediately. These rights are not always respected by police officers in Mexico; most of these rights were not respected in the cases documented in this report, for example.

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<sup>1</sup> In this document, the term "arrest" is used to refer to the act of apprehending or taking someone into custody. The term "detention" is used to indicate deprivation of or restrictions on liberty from moment the person is apprehended until they are released. See UN Human Rights Committee General Comment No. 35, Article 9 (Liberty and security of person), 16 December 2014, (CCPR/C/GC/35) para. 13.

Police are required by law to bring the detainee before the relevant authorities without delay. However, in practice unjustified delays occur which are often used to plant evidence or to coerce detainees into confessing to crimes, including through the use of torture or other ill-treatment.

When the police hand the detainee over into the custody of another authority, such as the Attorney General's Office, they are required by law to produce a report containing enough information to determine the reasons for and circumstances of the arrest. However, these documents often contain significant errors, fabricated information and other serious flaws. For example, reports are not always written and signed by those who actually participated in the arrest, as required by Mexican law, but by other officials who pretend to have participated in the arrest.

In Mexico, there are no clear regulations on the use of force: most police forces lack specific guidelines on the subject. This lack of clear regulations affects the behaviour of the police and is a further cause for concern since arbitrary detentions often involve unlawful or excessive use of force.

In June 2016, a new National Code of Criminal Procedure came into force throughout the country which has the potential to resolve cases more swiftly and ensure fair trials. As part of the reform, the position of "supervising judge" was created, an official responsible for reviewing the detention of each suspect allegedly caught in flagrante delicto in order to determine whether the detention was legal. However, Amnesty International's research shows that inadequate training for judicial officials, inconsistent interpretations of the new legislation and other obvious flaws are allowing the serious problems of the old system, such as the failure to respect the presumption of innocence of detainees, to recur. In addition, Amnesty International has received disturbing information from justice sector personnel that political pressure is being exerted on judges and public defenders, which is preventing them from doing their job properly.

While arbitrary detentions occur frequently, those suspected of criminal responsibility are rarely brought to justice, as is the case with most human rights violations and crimes in Mexico, with the perpetrators of 99% of the crimes committed enjoying impunity.<sup>2</sup> There are no clear public policies or effective mechanisms in place to deal with the problem of impunity. Amnesty International requested information from all state governments and the government of Mexico City about disciplinary or criminal proceedings against police forces for their participation in arbitrary detentions; only two states (Morelos and Coahuila) responded to confirm that they had applied some sanctions (79 sanctions in total) in recent years. All of the cases of arbitrary detention presented in this report remain unpunished.

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<sup>2</sup> J. A. Le Clercq Ortega and G. Rodríguez Sánchez Lara (Editors), *Global Impunity Index Mexico 2016 IGI-MEX 2016*, Universidad de las Américas Puebla, 2016.

# MAIN RECOMMENDATIONS

## TO THE MUNICIPAL, STATE AND FEDERAL POLICE AUTHORITIES:

- Ensure that the police guarantee, from the moment of arrest, the right of every person to be informed of the reasons why they have been deprived of their liberty and of their rights, including the right to immediately contact a lawyer of their choice.
- Establish clear regulations for all police forces with regard to detention and the use of force and ensure police receive appropriate and ongoing training and assessment on these and other relevant issues, such as their role as first responders in the criminal justice system.
- Establish the mandatory use of location tracking devices and audio-visual cameras in police vehicles. Recordings should be considered essential evidence in the evaluation of the lawfulness of an arrest or detention procedure, in particular to verify the place and time of arrest and the physical condition, including any injuries, of the detainee. Recording equipment should be used only for these purposes. The recordings obtained should be processed in such a way as to ensure that the police cannot alter them and they must be made available to the detainee and their defence counsel. An appropriate body, independent of the police, should be mandated to monitor that the recordings are used correctly and that they are destroyed after a reasonable time in most cases and immediately in cases where other people were recorded who had not been arrested but were being transported in the police vehicle for some other reason.

## TO THE FEDERAL AND STATE ATTORNEY GENERALS' OFFICES:

- Ensure the prompt, impartial, independent and thorough investigation of cases of arbitrary detention and other human rights violations that occurred following or in connection with arbitrary detention. Those with command responsibility who could be subject to criminal proceedings, in accordance with international standards, should be included in such investigations.
- Examine the cases of all detainees placed in their custody, in accordance with the standards of international law, and ensure that those who have been arbitrarily detained are released.

## THE MEXICAN CONGRESS:

- Abolish provisions in the Constitution and legislation that provide for mandatory pre-trial detention. The decision to adopt such precautionary measures should be at the judge's discretion, based on an individual determination in each case, and should only be implemented in cases where other alternative measures prove ineffective.
- Remove provisions from the National Code of Criminal Procedure that allow the police to detain people after a crime is committed based solely on witness testimony and without a warrant (*flagrancia por señalamiento*).
- Establish, as a matter of urgency, through the enactment of legislation, a unified register of arrests. This should be nationwide, consistent, in line with international human rights standards and the decisions of the Inter-American Court of Human Rights and include both state and federal authorities. Information should be recorded in real time and be easily accessible. Clear oversight and accountability mechanisms should be established to ensure such a register is implemented.

# 2. METHODOLOGY

## 2.1. SCOPE OF THE RESEARCH

Amnesty International's research focused on the circumstances surrounding arrests and detentions in Mexico where police officers alleged that the suspect was caught in the act of committing a crime (in flagrante delicto), and how the justice system dealt with such cases. The decision to focus on such detentions was based on the fact that they occur so frequently in Mexico<sup>3</sup> and that they can have important consequences in terms of the right to a fair trial and other rights. In addition, arbitrary detention is a human rights violation that recurs consistently in cases in Mexico reported to the organization.

The research was conducted between February 2016 and May 2017. Amnesty International initially interviewed 10 human rights organizations in Mexico and six experts in the fields of public security, policing and law enforcement in order to build a comprehensive picture of arrests in flagrante delicto in the country.

Subsequently, the organization conducted semi-structured interviews with 25 people who are currently or were until recently working within the justice system in the north, centre and south of the country.

These interviews were granted on the basis that strict confidentiality would be maintained. To protect the security of interviewees, Amnesty International has not included their names in this report. Similarly, for security reasons, when citing events reported to Amnesty International or quoting statements directly, these are attributed only by indicating the organization to which the individual belongs – the police, district attorney or public prosecutors' offices or the judiciary – without further detail.

Nineteen individual interviews were carried out and six other people were interviewed in two focus groups. In total 15 men and 10 women were interviewed. This sample included two members of the Investigative Police (both men), 12 members of staff from district attorney or public prosecutors' offices (seven men and five women) and 11 members of staff from various judicial bodies (six men and five women). Among the interviewees were Investigative Police officers and coordinators; staff, officers and coordinators of public prosecutor's offices; State Attorney Generals, court officials, other members of the judiciary and magistrates.

The diverse roles of those interviewed, in terms of geographical location (they were drawn from across the country), as well as in terms of the institution in which they worked (comprising the key institutions of the justice system) and the range of posts they filled (from the highest to the lowest levels of responsibility), enabled researchers to observe the issues under discussion from a wide variety of perspectives and to arrive at firm conclusions.

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<sup>3</sup> The National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH) stated that arbitrary detentions were the fourth most reported human rights violation among the complaints received during 2016. (CNDH, *Informe anual de actividades 2016*. See <http://informe.cndh.org.mx/uploads/nodos/10621/content/files/Quejas%20Hechos.pdf>). The CNDH informed the Inter-American Commission on Human Rights that between 2006 and 2015 it had received 10,249 complaints of arbitrary detention; 9,331 of torture or other cruel, inhuman or degrading treatment; 313 of enforced disappearance; and 11 of extrajudicial execution (Inter-American Commission on Human Rights, *The Human Rights Situation in Mexico*, 31 December 2015, (OEA/Ser.LV/II Doc. 44/15), para. 531).

These interviews are a primary source of information for this report. All the interviews were carefully recorded, categorized and analysed. The conclusions set out in this report are based on information that was consistent in key aspects across sufficient numbers of those interviewed (from different regions and institutions) and that could also be verified with data from other sources, such as information from other NGOs, official documentation, reports by international organizations and cases previously documented by Amnesty International.

In addition, Amnesty International met the Commissioner for National Security who provided valuable information both verbally and in writing. The organization wrote to state governments and the government of Mexico City to request information.<sup>4</sup> At the time of writing (in May 2017), responses had been received from the governments of Mexico City and the states of Coahuila, Jalisco, Michoacán, Morelos, Oaxaca, San Luis Potosí and Tabasco. The State of Veracruz's inadequate response merely stated that it was under no obligation to provide most of the information requested by the organization.

This report highlights six cases that were documented by Amnesty International and which illustrate several of the problems and human rights violations described by the justice sector personnel, human rights organizations and experts interviewed. With respect to these cases, Amnesty International had access to judicial and administrative records, various pieces of audio-visual evidence and statements by victims and witnesses, and was able to meet personally with victims or their relatives.

## 2.2 TERMINOLOGY

In this document, the term “arrest” is used to refer to the act of apprehending or taking someone into custody from the moment of physical restraint until they are brought before a competent authority. The term “detention” is used to indicate deprivation of or restrictions on liberty from moment the person is apprehended until they are released.<sup>5</sup>

The term “**justice sector personnel**” is used to denote those who perform essential functions in the justice system, for example, judges, public prosecutors and their staff, police officers and other law enforcement officials.

## 2.3. ACKNOWLEDGEMENTS

Amnesty International would like to thank all the people who agreed to speak to the organization and who have given permission for accounts of violations of their human rights to be included in this document.

In addition, Amnesty International is grateful for the technical information and methodological advice provided by the following experts: Alejandra Nuño, Alejandro Hope, Carlos Silva Forné, Elena Azaola, Miguel Sarre Iguíniz, Sandino Rivero Espinoza and Sergio Méndez Silva.

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<sup>4</sup> Requests were sent on 16 November 2016 asking for: 1. The total number of detentions by year and by each public security force, since 2014; 2. The number of detentions by arrest warrant, by emergency detention orders, or *in flagrante delicto*, since 2014; 3. Detentions disaggregated by the sex and age of the detainee, since 2014; 4. Detentions by each criminal offence or administrative misdemeanour, since 2014; 5. The number of officials in each police or security force, both municipal and state; 6. The salaries received by members of the various public security forces, both state and municipal; 7. Do the police forces in your state use the standard unified police report format? Has training on these reports been provided?; 8. The number of police officers who were given administrative or criminal sanctions for illegal or arbitrary detentions; and 9. Is training provided to the security forces on the use of force and the new criminal justice system? How much training is provided? How often?

<sup>5</sup> See UN Human Rights Committee General Comment No. 35, Article 9 (Liberty and security of person), 16 December 2014, (CCPR/C/GC/35) para. 13.



Agustín Pro Juárez (Centro Prodh), Centro de Derechos Humanos Paso del Norte, Centro de Derechos Humanos Zeferino Ladrillero, Ciudadanos en Apoyo a los Derechos Humanos, A.C. (CADHAC), Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), Comité de Defensa Integral de Derechos Humanos Gobixha A.C. (Código DH), Consorcio para el diálogo parlamentario y la Equidad Oaxaca A.C., and Indignación: Promoción y Defensa de los Derechos Humanos.

We wish to extend special thanks to all the men and women working in the justice system who agreed to meet Amnesty International and share their experiences and perspectives on detention in Mexico.

Finally, the organization is grateful to the authorities that provided official information for this research, especially the Commissioner for National Security.

# 3. POLICE ARREST PRACTICES IN MEXICO

International human rights law states that everyone has the right to liberty and prohibits arbitrary detention. However, NGOs working on human rights in Mexico receive a constant stream of cases which follow a familiar pattern. A member of a group which faces marginalization and discrimination (for example, a young man living in poverty) is detained while going about their everyday activities (for example, when returning home after work). The police do not tell them why they are being arrested and plant something on the person to incriminate them (for example, a weapon). The detainee is then brought before other authorities, who begin an impenetrable legal process. The person then spends several years in prison awaiting trial. If such actions reflect a common pattern, this must raise serious concerns about the way in which the Mexican police and the institutions of the Mexican justice system operate.

## 3.1. WHAT IS AN ARREST *IN FLAGRANTE DELICTO*?

In Mexico, the police have the power to arrest any person caught in the act of committing what appears to be a criminal offence (*in flagrante delicto*). This report deals mainly with situations in which the police claimed an individual was caught *in flagrante delicto*, although some of the police practices described also apply to other forms of deprivation of liberty.

The notion of *in flagrante delicto* is widely accepted as permitting an individual caught committing an act which could constitute a crime to be temporarily deprived of their liberty and handed over to the appropriate authorities. In the Mexican legal system, this notion, derived from the Constitution which provides for detention “at the time an offence is committed or immediately after a crime is committed”,<sup>6</sup> extends to the country’s laws and jurisprudence.

The National Code of Criminal Procedure not only retains the provision for arrest in the act of committing an offence but also reiterates the provision relating to detention *immediately after a crime is committed* and splits this into two:<sup>7</sup>

- When a person who was discovered in the act of committing an apparently criminal act is immediately pursued and captured.
- When the officials carrying out the arrest did not personally catch the person in the act, but initiated a

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<sup>6</sup> Mexican Constitution, Article 16, para. 5.

<sup>7</sup> National Code of Criminal Procedure, Article 146.

search for the alleged culprit—which must be uninterrupted—based on information provided by someone who observed the alleged acts. If an arrest is made, it is considered legal on the broad assumption that the person when arrested has in their possession some object related to the crime or if the police have information that credibly supports the presumption that the person was involved in the offence.<sup>8</sup> This is known as *flagrante delicto by implication (flagrancia por señalamiento)*.


## WHAT IS ARREST OR DETENTION IN FLAGRANTE DELICTO?

When someone is caught in the act of committing what appears to be a crime and is detained.


### In Mexico someone **CAN BE DETAINED** if

1

The police see the crime and detain the person then and there.




2



The police see the crime, give uninterrupted chase and detain the person.

3

Someone else sees the crime and tells the authorities immediately so the person can be detained.



## 3.2. OTHER FORMS OF DETENTION IN MEXICO

While this report deals mainly with situations in which the police claimed an individual was caught *in flagrante delicto*, some of the police practices described also apply to other forms of deprivation of liberty, for example:<sup>9</sup>

**Arrest warrants:** arrests that occur following an order issued by a judge in a criminal court at the request of the public prosecutor.

**Emergency detention:** this type of arrest takes place following a decision by the public prosecutor when the authorities consider that it is not possible to obtain an arrest warrant and there is a significant risk that the suspect will flee or go into hiding. The power of prosecutors to order that someone be detained even when the person was not caught actually committing an offence and without an arrest warrant being issued is in conflict with fair trial guarantees.<sup>10</sup>

<sup>8</sup> Spanish original: “que haga presumir fundadamente que intervino en el mismo”.

<sup>9</sup> There are other forms of deprivation of liberty which are not addressed in this report, but which also deserve a serious examination, including detention for purposes of extradition, the administrative or “containment” (*aseguramiento*) detention of migrants and detention for civil or administrative offences (such as causing a scandal in a public place, damage to property, etc).

<sup>10</sup> UN Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Mission to Mexico, 29 December 2014, (A/HRC/28/68/Add.3), para. 18. This power is established both in the Constitution (Article 16) and in the National Code of Criminal Procedure (Article 150).

**Precautionary detention (*arraigo*):** allows individuals to be deprived of their liberty for up to 80 days without charge and without any evidence being produced implicating them in the alleged offence. During that time, the public prosecutor or district attorney can investigate the detainee. This form of detention is contrary to international law because, among other things, it violates the principle of the presumption of innocence and the fact that no charge has been laid seriously hinders an individual's ability to mount a defence. Amnesty International has previously called for the abolition of *arraigo*.<sup>11</sup>

In addition, another measure that can result in a person's arrest is **provisional preventive control**.<sup>12</sup> The Supreme Court has maintained that the police can also, as part of their powers of investigation and crime prevention, temporarily restrict someone's liberty, even if they were not caught in the act of committing a crime and no arrest warrant has been issued, if there are reasonable grounds, supported by evidence, for suspecting that a person is committing what appears to be a criminal act.<sup>13</sup> Provisional preventive control expires when evidence is obtained indicating that the person has committed or is committing a crime, thus justifying their arrest. Detentions on the basis of provisional preventive control that are not justified as set out above should be considered arbitrary detentions. However, despite the constraints laid down by the Court, these criteria are not set out in law and police powers to detain and investigate a person should be clearly defined in law and not only in court jurisprudence.

### 3.3. CIRCUMSTANCES OF ARREST



**“Criminal proceedings must relate to cases that really are the product of professional and scientific investigation and not only, as has been happening so far, almost exclusively related to *in flagrante delicto* or so-called tip-offs.”**

Judge Luis María Aguilar Morales, President of the Supreme Court of Justice.

In Mexico, so-called *in flagrante delicto* arrests are commonplace and are more frequent – according to the information provided by judicial and other experts interviewed – than arrests carried out under other legal provisions (such as on the basis of an arrest warrant or an emergency detention order).<sup>14</sup> The President of the


<sup>11</sup> Precautionary detention (*arraigo*) can be applied for offences linked to organized crime and is set out in Article 16, para. 8, of the Constitution and Articles 12 to 12.5 of the Federal Law on Organized Crime. Amnesty International has called on Mexico to abolish *arraigo*. Amnesty International, *Out of control: Torture and other ill-treatment in Mexico* (Index: AMR 41/020/2014). See also UN Committee against Torture Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October-23 November 2012), 11 December 2012 (CAT/C/MEX/CO/5-6), para. 11.

<sup>12</sup> The Court has stated that “preventive provisional control”, which should be based on information about crimes that have already been reported, may be “low level” (these allow a person to be subjected to simple questioning or visual search) and “higher level” (permitting searches of the person, clothing, belongings and vehicles). The latter can be applied when there are objective factors leading officials to believe that a crime has been committed or where the person is behaving in an evasive or confrontational manner. Supreme Court, “Personal liberty, Constitutional status of provisional restrictions on personal liberty”, *Gazette of the Weekly Report of the Judiciary*, Book 16, March 2015, Vol. II p. 1101; and “Provisional preventive control orders, Rules police officers must adhere to following a detention *in flagrante delicto* to ensure that it is lawful”, the *Gazette of the Weekly Report of the Judiciary*, Book 27, February 2016, Vol. I p. 669.

<sup>13</sup> Supreme Court, “The human right to personal liberty, Characteristics of the levels of contact between an authority that exercises powers of public security and a third party”, *Gazette of the Weekly Report of the Judiciary*, Book 16, March 2015, volume II, p. 1096.

<sup>14</sup> The little official information available also confirms that there are more detentions for offences *in flagrante delicto* than any other, as indicated in Amnesty International's previous findings. See, *Out of control: Torture and other ill-treatment in Mexico* (Index: AMR 41/020/2014). In Mexico, no official statistics are available on arrests or the reasons and legal basis for arrests. Amnesty International asked the governments of the 31 states and the government of Mexico City for information on detentions by local police and how they carry out their responsibilities. However, the replies received were inadequate and did not always give disaggregated information according to the nature of the detention (*in flagrante delicto*, arrest warrant or emergency detention order). Those that did contain this information confirmed that arrests *in flagrante delicto* were the most frequent.



↑  Graphic representation of Sergio Sanchez's case. © Sergio Ortiz/Amnesty International.

## SERGIO SÁNCHEZ ARELLANO

Sergio Sánchez Arellano used to sell sweets in Ciudad Nezahualcóyotl, State of Mexico. He was arbitrarily detained in March 2010 by the investigation unit of the Federal District (Mexico City) police for alleged involvement in a murder and attempted robbery.

Sergio told Amnesty International that he was detained on the night of 29 March 2010 outside his home in Ciudad Nezahualcóyotl by about 10 individuals; they were not in uniform and the vehicles they were travelling in were not marked as police vehicles. The officers arrested him without explaining the reason for his arrest, without informing him where he was being taken, without identifying themselves and without presenting any type of documentation. Both Sergio and his wife were beaten during the arrest. He was held incommunicado, beaten and threatened in an attempt to make him incriminate himself, but he did not do so. The next day, he was allowed to communicate with his family and he was brought before an official of the public prosecutor's office.

However, the authorities have reported a different version of events. They claim that on 30 or 31 March 2010 (the police report and the statements of the police officers differ), they had gone to the area outside Tacuba Metro Station in Mexico City, where someone had been murdered four weeks earlier, accompanied by an alleged witness to the crime in an effort to find the suspect. According to the court records, it was during this search that the witness claimed to recognize Sergio and the officers arrested him. Police brought Sergio before a public prosecutor's office official, who issued an "emergency detention order", despite the fact that such orders should be issued before an arrest is carried out, whereas Sergio had already been arrested at that point.

Sergio was convicted of murder and sentenced to 27 years and six months in prison. Amnesty International has reviewed the court records of the case and found serious inconsistencies in the police investigation, the prosecution and the sentencing. In November 2016, a federal court confirmed that Sergio had been arbitrarily detained, but it did not dismiss the testimony of the alleged witness, therefore confirming Sergio's prison sentence. At the time of writing, the case is at the stage of final review before the Supreme Court.

Sergio was arrested by unidentified policemen.

He was beaten and threatened to get him to confess to murder, but he didn't.

Sergio was convicted to 27 years in prison. His case is in the last judicial review.



The police report is inconsistent and has serious mistakes.

His rights for a fair trial weren't upheld.

Supreme Court has himself noted the prevalence of the use of *in flagrante delicto* as the basis for criminal charges and has indicated that the strength of the new criminal justice system depends on, among other things, the fact that: “Criminal proceedings must relate to cases that really are the product of professional and scientific investigation and not only, as has been happening so far, almost exclusively related to *in flagrante delicto* or so-called tip-offs.”<sup>15</sup>

However, the arresting officers do not apply the legal framework properly in all cases. For example, in many cases the official police reports do not reflect what really happened, resulting in arrests and detentions which are arbitrary under national and international law.

Arrests allegedly *in flagrante delicto* have served in particular to legitimize the actions of the authorities by conveying an impression that the police – and, by extension, the government – are doing an effective job fighting crime. A criminal court judge told Amnesty International: “This makes the State look and feel more successful”. Clearly, the problem is not that arrests are carried out when a crime is committed, but that legal requirements are ignored, crimes that never occurred are invented, or evidence is planted or fabricated in order to make an arrest. The same judge stated that: “The State uses arrests *in flagrante delicto*, whether or not they are legal... Some arrests *in flagrante delicto* are made up”.

Arrests *in flagrante delicto* by implication have been used to detain people unlawfully long after the alleged crime was committed, when the police obviously did not witness the act, when there was a considerable time lag between the incident and the arrest, and when the arrest was not preceded by an immediate and uninterrupted pursuit, as required by the National Code of Criminal Procedure.

In these cases the arrest is not justified and the case should be investigated in order to obtain, where there is relevant evidence, a court order for the individual’s detention. The justice sector personnel interviewed reported that there are cases in which the police track down a suspect in the days following the alleged crime and arrest them, plant incriminating evidence on them and make it appear as though the crime was committed only a short time earlier.

International law establishes that an individual may be deprived of their liberty only on such grounds and in accordance with such procedures as are established in law.<sup>16</sup> When detentions are carried out in contravention of domestic laws, they are arbitrary.

The disturbing information obtained by Amnesty International in interviews with justice sector personnel is consistent with that reported by other available sources, including the vast experience of civil society organizations working in the country and the cases that Amnesty International has documented in previous years. It suggests that in Mexico detentions for unlawful reasons and using unlawful procedures are an everyday occurrence. Such detentions are arbitrary under international law, as explained below.



**“The State uses arrests, whether or not they are legal...  
Some *in flagrante delicto* arrests are made up.”**

Criminal court judge, central Mexico.

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<sup>15</sup> Mexico. President of the Supreme Court of Justice and the Federal Judicial Council, Judge Luis María Aguilar Morales, at the opening ceremony of the First National Meeting of Criminal Justice System Personnel, 11 May 2017.

<sup>16</sup> Article 9.1 of the International Covenant on Civil and Political Rights and Article 7.2 of the American Convention on Human Rights.

## REASONS FOR ARBITRARY ARRESTS

One of the motives for arbitrary detention in Mexico is **extortion**. The police deprive people of their liberty in order to extort money in return for releasing them rather than bringing them before the public prosecutor, or for not accusing them or not planting evidence among their belongings to incriminate them.

While this can occur in connection with any type of crime, it is most prevalent in cases of organized crime. This is because there are specific provisions in Mexican law dealing with organized crime which afford weaker fair trial guarantees and other safeguards. They also give public prosecutors and district attorneys additional powers. For example, they have more time to investigate a detainee and can place someone in precautionary detention (*arraigo*) during the investigation, even if there is no evidence against them. One of the justice sector interviewees told Amnesty International: “the legal sub-system on organized crime is problematic, any detainee can be held incommunicado and subjected to extortion.”

Detainees are not the only targets of police extortion. There are also cases of **arrests carried out at the behest of third parties where the detainee is the victim of revenge or reprisal**. Detainees may be held briefly and released or they may be brought before other authorities with planted evidence and false testimony and be handed over for legal proceedings in the justice system.



**“The legal sub-system on organized crime is problematic, any detainee can be held incommunicado and subjected to extortion.”**

Magistrate in a criminal court, northern Mexico.

The practice also exists of arresting people **on the basis of a third-party petition** (*presentar a petición de parte*). This is when police officers arrest someone and bring them before a municipal official or the public prosecutor’s office solely on the basis that this was requested by other people in the community, without the person having been caught *in flagrante delicto* or there being any other proper legal basis for the arrest. Corruption is not necessarily a factor in such arrests.<sup>17</sup> Deciding whether or not to arrest someone is a police decision that should be made on the basis of the acts observed, other available information and the relevant legal framework. Under international law it is not acceptable that this decision-making process be suppressed in favour of a request from a third party.

There are also **politically-motivated arrests**; that is, arrests of members of social movements, human rights defenders and others who express disagreement with government policies and actions on fabricated charges.<sup>18</sup> In recent years this type of arrest has occurred during public demonstrations. Many of those arrested in these circumstances are subsequently subjected to criminal proceedings and remain detained for prolonged periods in order to intimidate and harass them, or as a way of preventing them from continuing their human rights work.<sup>19</sup>

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<sup>17</sup> The State of Morelos, in its reply to Amnesty International, listed “at the request of the affected party” as among the types of detention. Morelos State Commission for Public Security, *Mando único: nuevo modelo policial – Morelos: resultados a octubre 2016*, December 2016, p. 6.

<sup>18</sup> For example, Ildefonso Zamora Baldomero, an Indigenous and environmental rights defender, was detained in 2015 and remained in prison for nine months on fabricated charges. Amnesty International, *Urgent Action: Jailed Indigenous rights defender released*, 16 August 2016 (Index: AMR 41/4667/2016).

<sup>19</sup> Inter-American Commission on Human Rights, *The Human Rights Situation in Mexico*, 31 December 2015 (OEA/Ser.L/V/II Doc. 44/15), para. 380. Amnesty International, *Out of control: Torture and other ill-treatment in Mexico* (Index: AMR 41/020/2014), pp. 12-14. Amnesty International *Urgent Action: Mexico – demonstrators detained and ill-treated*. 25 November 2014 (Index: AMR 41/042/2014).



## “Making up *in flagrante delicto* situations allows the authorities to avoid investigating.”

Judicial official, southern Mexico.

*In flagrante delicto* is also used arbitrarily in relation to an alleged, and often non-existent crime, in order **to investigate a separate criminal offence**. In this type of detention, the detainee is accused of what various officials in the justice system have called “linking” or “frame-up” (“*chaleco*”) crimes, such as bribery or causing injury. Objects are planted on the person and they are falsely accused of having been caught *in flagrante delicto* committing a minor criminal offence. This then allows the person to be detained and investigated for another, usually more serious crime. Sometimes, this process starts with an allegation of an administrative misdemeanour. This practice has proved effective for police because it deprives a person of their liberty for long enough – sometimes just a few hours – for the police to find or fabricate evidence of another crime.

On the other hand, arbitrary detentions also reduce the work involved for the police and other justice sector personnel and enable them to **avoid investigating offences properly**. Claiming that a person was detained redhanded while carrying out an apparently criminal offence and presenting often planted evidence allegedly found on their person or property, means that the person will face criminal proceedings without the police having to investigate what really took place. An official involved in the administration of justice explained: “The *in flagrante delicto* provision is useful to the police because it allows them to avoid investigating. The police as first responders should carry out the first steps in the investigation, but they don’t know how to do it; they don’t have the necessary technical, scientific and legal knowledge.”


Finally, some arrests take place in circumstances where there is nothing to suggest that an offence or a crime has been committed, and where police corruption, punishment of the victim or extortion do not appear to be the motive. This could imply that there are other motives behind the detention that have yet to be identified.

In addition to arbitrary detentions, there are also irregular releases of people from custody, which often arise before detainees are brought before the public prosecutor’s or the district attorney’s office, because money has already been extorted from them or because of pressure on police officers from superiors or “instructions” to release them without going through the proper process.

Research for this report confirmed that many of these irregular practices rely on evidence planted by the police. None of the justice sector personnel interviewed cast doubt on the existence of a practice of planting evidence; they only differed in their perception of how widespread this practice is. In addition, they stated that the objects that are planted are usually linked to robbery, weapons and illegal drugs; this is consistent with reports from other sources and with several cases documented by Amnesty International.





↑  Portrait of José Adrián. Photographic intervention. © Sergio Ortiz/Amnesty International.

## JOSÉ ADRIÁN

José Adrián is a 14-year-old Mayan boy who has a disability that affects his hearing. On 25 February 2016, he was walking home from high school in X-Can, a small community in the eastern part of the State of Yucatán. That day there had been a confrontation between some young people and stones were thrown at a police patrol car. José Adrián's brother heard what had happened and went to look for him to make sure that he returned home safely. But José Adrián had already been arrested by municipal police officers who stopped him on the street and accused him of having damaged the patrol car, even though he was not there when the events took place. José Adrián was the only person detained.

When the police arrested him, they did not explain what was happening or why he had been stopped, nor did they immediately call his family. Instead, they beat him, threw him against the patrol car and stamped on his neck. They then stripped him of his shirt and shoes, handcuffed him, put him in the patrol car and took him to the nearby town of Chemax. When they got there, they hung him by his handcuffs from the top of a wall, beat him and threatened him to make him incriminate himself. They threatened that he would be held there for many years. José Adrián recalled: "They pushed me around and stamped on me...they put me in a dungeon". He sustained several injuries, especially to his neck, which took days to heal and the medical care provided by the state was inadequate.

A few hours later, José Adrián's parents arrived and were forced to sign an agreement before a Justice of the Peace in which they agreed to pay 2,500 Mexican pesos (MXN), (approximately US\$138) for the damage to the patrol car, as well as a fine of MXN700 (US\$39). The authorities threatened to imprison José Adrián if his parents failed to pay the required amount. The family was able to raise the money for the fine and the authorities agreed that they could pay for the alleged damage in instalments. The family filed a complaint with the Yucatán State Human Rights Commission and the State District Attorney, but at the time of writing there has been no progress in the investigation of the complaint and nobody has been punished.

José Adrián was on his way home from high school.



He was arrested by local police officers for allegedly damaging a police vehicle.

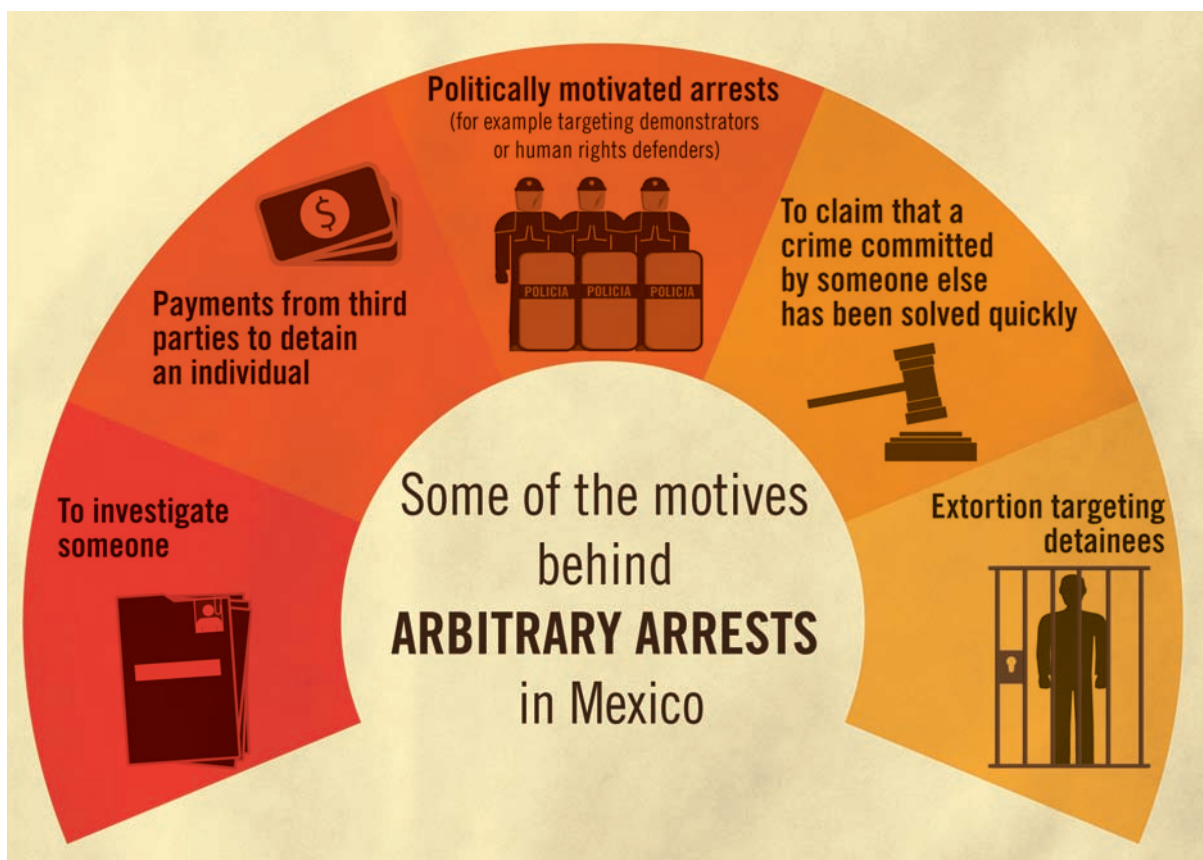
Policemen didn't explain the reason for the arrest, what his rights were, nor did they call his parents immediately.



The officers severely beat him and coerced him to confess.

To set him free, his parents had to commit to pay a fine and the vehicle's damages.





### 3.4. THE RIGHT TO INFORMATION CONCERNING ARREST

When someone is arrested, they have the right to receive specific information about their situation, including the right to an explanation, without delay, of the reason for their arrest. The police must provide clear information, free of legal jargon, indicating the legal grounds for detention and explaining why the person has been arrested. The police must also inform the arrested person of their rights, including the right to effective legal representation by a lawyer of their choice from the moment of arrest and the right to remain silent. All the information must be provided in a language that the person understands and, if necessary, a translator or interpreter must be provided.<sup>20</sup>

Additionally, when a detainee is brought before another authority, or if they are not released after a brief interaction with agents of the state, they have the right to communicate what has happened to others, such as relatives, friends or legal representatives.<sup>21</sup>



**“Now we have to carry cards to read out rights and that sort of bullshit.”**

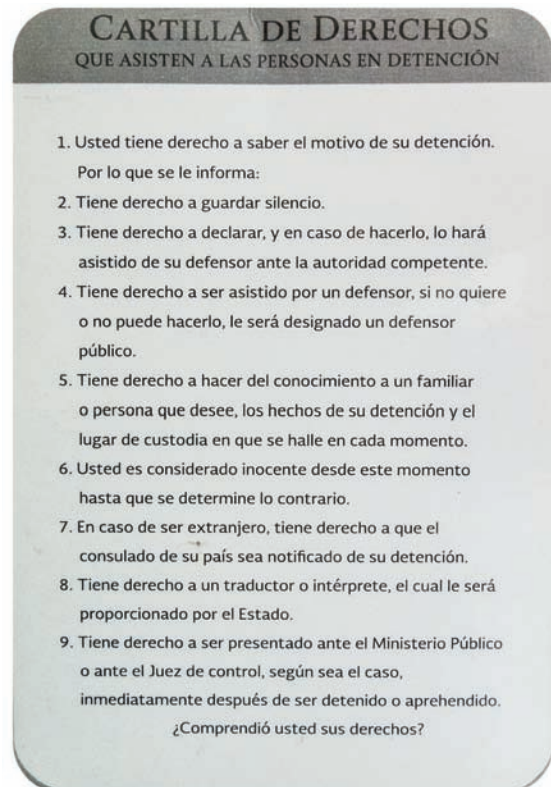
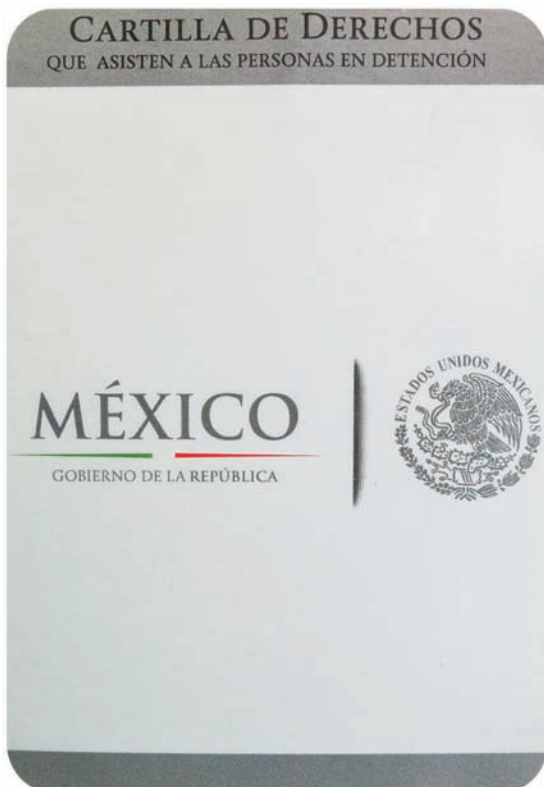
Investigative Police officer, central Mexico.

<sup>20</sup> Article 9.2 of the International Covenant on Civil and Political Rights and Article 7.4 of the American Convention on Human Rights.

<sup>21</sup> Inter-American Court of Human Rights, *Case of the Gómez-Paquiyaury Brothers v. Peru*, Merits, Reparations and Costs, Judgment of 8 July 2004, Series C, No. 110, para. 93.

Despite these obligations, the police usually do not have an adequate understanding of these rights and many police forces ignore these obligations, so the detainee is not informed of the reasons for their arrest and their rights are not explained to them. For example, in the case of José Adrián, a child, his family was not contacted immediately and in none of the six cases detailed in this report were detainees told why they had been arrested or informed of their rights.

This happens despite the efforts of some police forces to train officers and to ensure that detainees have their rights read to them. For example, the Commission for National Security told Amnesty International that it has distributed cards to Federal Police officers to be read out to detainees; officers are obliged to carry the cards and read them out during every arrest and have been trained on this. Amnesty International examined these cards and considers that they can be a useful tool for police to check that during each arrest they have provided all the necessary information to the detainee. The police must have the training necessary to explain these rights in a detailed and clear manner in cases where detainees do not understand the wording used on the card. The police also have an obligation to explain accurately the reasons why someone has been arrested.



↑  Card issued by the Mexican Government to be used to inform detainees of their rights. Mexican Government.

### THE TEXT OF THE CARD TO BE USED TO INFORM DETAINEES OF THEIR RIGHTS READS:

1. You have the right to know the reason for your detention. You have the right to be informed that:
2. You have the right to remain silent.
3. You have the right to make a statement, if you so choose. Any statement should be made in the presence of your lawyer and before the competent authority.
4. You have the right to the assistance of legal counsel, if you cannot or do not wish to appoint a lawyer, a public defender will be appointed for you.
5. You have the right to inform a relative or another person of your choice of the fact you have been detained and where you are held at all times.
6. You are considered innocent from this moment until proved guilty.
7. If you are a foreign national, you are entitled to notify your Consulate that you have been detained.
8. You have the right to a translator or interpreter, who will be provided by the state.
9. You have the right to appear before a public prosecutor or a supervising judge, depending on the case, immediately after being detained or apprehended.
10. Do you understand your rights?

The authorities should continue and strengthen these efforts so that all law enforcement officials understand the importance of these rights and of communicating them effectively. Several of the justice sector personnel interviewed during this research (especially police officers and staff in public prosecutors' offices) were surprised at these obligations and mistakenly believed that they were not applicable in all cases; for example, they thought that they were not relevant for detainees apprehended on the basis of an arrest warrant. A police officer who was interviewed stated with disdain: "Now we have to carry cards to read out rights and that sort of bullshit".

People need to know what body and which officers arrested them in order to check the police reports on which the accusations against them are based and to mount an adequate defence, among other reasons. However, as Amnesty International has verified in several cases, and as has been confirmed by various civil society organizations in Mexico, sometimes police officers are not in uniform and do not carry any other form of visible identification. Some also use unmarked cars. As a result, detainees do not know what is happening and assume that they are the victims of a crime, such as abduction, and if family or friends witness the arrest, they do not know who took the person. This is what happened in the case of Enrique Guerrero, Sergio Sánchez and Verónica Razo, documented in this report; all three were violently deprived of their liberty by unidentified men.

In some cases, arresting officers wear balaclavas or blindfold the person they are arresting, so the detainee cannot identify the officers who arrested them or confirm whether they remained in the custody of the same people all the time or if they are the people listed as the arresting officers in the court record.

## 3.5. TORTURE, ILL-TREATMENT AND EXCESSIVE USE OF FORCE



**“Torture is systematic and widespread in Mexico.”**

Clerk to the Supreme Court.

Interviews conducted for this report reinforce research establishing that in Mexico unlawful use of force during detention persists and that many detainees are subject to torture or other ill-treatment. Previous Amnesty International research found that torture was widespread throughout the country.<sup>22</sup> The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatments or punishment reached a similar conclusion, as has the Inter-American Commission on Human Rights.<sup>23</sup>

During the course of this investigation, justice sector personnel interviewed acknowledged that detainees had been ill-treated in various cases that they were familiar with and indicated that torture and other ill-treatment are still ongoing. They also noted that torture and ill-treatment are more common in arrests linked to organized crime, those which they termed “crimes of social significance” and those in the context of social protests. In all six cases detailed in this report, torture or other ill-treatment took place.

In general, police explain the injuries sustained by detainees by claiming that they were inflicted before the police intervened, that they were the result of accidents during detention or that they were self-inflicted. These justifications are used by the authorities to hide both torture and other ill-treatment, and excessive or unnecessary use of force. For example, injuries are caused by, among other things, the unnecessary use of force during efforts to subdue the detainee, unlawful use of firearms or less-lethal weapons, misuse of handcuffs or other devices and use of protection equipment as a weapon (such as police shields).

The use of force is not clearly regulated in Mexico. Many state bodies lack explicit standards on the subject. And where these do exist, they tend to be in the form of regulations or protocols, even though it is essential that the authority to use force and the circumstances in which force can be deployed are established in law and meet international standards.<sup>24</sup> Specific legal provisions, coupled with a robust system of accountability, would help to prevent violations of human rights such as those that occurred in the case of repression in the Yucatán community of Chablekal, included in this report, in which the state police fired tear gas inside a family house, among other abuses.

### 3.6. DISCRIMINATORY PROFILING IN ARRESTS

**Those who look ‘suspicious’ to the police tend to be arrested; that is, when in addition to being young and male they belong (or are perceived as belonging) to other groups who have historically suffered discrimination, such as Indigenous Peoples, migrants or those living in poverty, among others.**


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<sup>22</sup> Amnesty International *Out of control: Torture and other ill-treatment in Mexico* (Index: AMR 41/020/2014); *Paper promises, daily impunity: Mexico’s torture epidemic continues* (Index: AMR 41/2676/2015); *Surviving death: Police and military torture of women in Mexico* (Index: AMR 41/4237/2016).

<sup>23</sup> UN Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Mission to Mexico, 29 December 2014, (A/HRC/28/68/Add.3), para. 23; and Inter-American Commission on Human Rights, *The Human Rights Situation in Mexico*, 31 December 2015 (OEA/Ser.LN/II Doc. 44/15), para. 11.

<sup>24</sup> Amnesty International Netherlands, *Use of force: Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. Amsterdam, 2015, p. 43 onwards.



↑  Graphic representation of Enrique Guerrero's case. © Sergio Ortiz/Amnesty International.

## ENRIQUE GUERRERO AVIÑA

Enrique Guerrero Aviña, a student at the National Autonomous University of Mexico, a social and human rights activist and a member of the Colectivo Liquidámbur, was arrested on 17 May 2013 by officers of the Federal Police. The details of his detention do not paint a picture of a legal and professional police operation.

As he was driving his car in Mexico City, two trucks overtook him and blocked his road. One of the people in the truck got out and shot at him. Enrique managed to escape briefly, but they chased him and continued firing at him. He was captured shortly afterwards by men in civilian clothes who did not identify themselves, but who claimed to be Federal Police officers. They did not allow him to communicate with his family or a lawyer.

From the moment of his arrest, Enrique was beaten and humiliated. Subsequently, he was driven to an unidentified location where he was tortured, among other ways, by beatings, near-asphyxiation, and threats to his family, to try and extract information from him about various social movements. The next day he was taken to a facility run by the Mexico City Office of the Attorney General where he was told that they would continue torturing him if he did not confess to a kidnapping or at least tell them about "something illegal" that they could implicate him in. The Office of the Attorney General accused Enrique of involvement in organized crime and kidnapping, along with 12 others who also claimed to have been tortured. At the time of writing, Enrique had been in prison for more than four years, but judgment has yet to be passed in his case.

Enrique and the other defendants have reported the crimes of their captors to the Attorney General's Office, so far in vain. In December 2015, Enrique's arrest was declared arbitrary by the UN Working Group on Arbitrary Detention, which called on the state to take the necessary measures to ensure his release.<sup>27</sup>

Enrique was driving his car in Mexico City.



Enrique was tortured to incriminate himself for the crime of kidnapping.



Enrique has been almost 4 years in prison without being convicted.



A van started chasing after him and shooting at him. He was captured by men dressed as civilians who claimed to be Federal Officers.

He did not sign a written confession, but he was accused of kidnapping.

<sup>27</sup> UN Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session (30 November-4 December 2015), Opinion No. 55/2015 concerning Enrique Guerrero Aviña (Mexico), 18 December 2015 (A/HRC/WGAD/2015/55).

The UN Working Group on Arbitrary Detention considers detentions to be arbitrary when “the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.”<sup>25</sup>

Justice sector personnel interviewed for this research stated that most of the people arrested and most of those subject to criminal proceedings are young men, which is consistent with other available data.<sup>26</sup> However, participants had different interpretations of this: some felt this was due to the fact that it is young men would tend to commit the kind of crimes where they are likely to be arrested *in flagrante delicto* (such as assault or theft); for others, the arrests are the manifestation of discrimination in police practices, which one interviewee summed up as follows: “Those who tend to be detained are poor, migrants, from marginalized communities and, above all, young”. In some cases, the police claim that they are justified in arresting a young man living in poverty when he is in an affluent area of city (an area “where he does not belong”) or if he is on the street at night or seems “suspicious” and “up to something”. As one interviewee indicated, there are “baseless suspicions” that do not comply with the law or obligations set out by the Supreme Court.



**“Those who tend to be detained are poor, migrants, from marginalized communities and, above all, young.”**

Clerk to the Supreme Court.

Most of these youths are not detained in a contextual vacuum; they tend to be arrested for appearing “suspicious” to the police when, as well as being young and male, they belong (or are perceived as belonging) to other groups that have historically suffered discrimination, such as, for example, Indigenous Peoples, migrants or those living in poverty. It is very likely that there also are other forms of discrimination that have not been identified in this research.

Several of the justice sector personnel interviewed who sought to justify the large number of young people arrested did so using a discourse based on suspicions that normalize arrests based on discrimination and, therefore, are not permissible under international law. The prohibition of discrimination, including on grounds of race, colour, and national or social origin, is enshrined in international treaties ratified by Mexico.<sup>27</sup> The Inter-American Court of Human Rights has established the obligation of states to refrain from actions which, directly or indirectly, create discriminatory situations in law or in practice.<sup>28</sup>

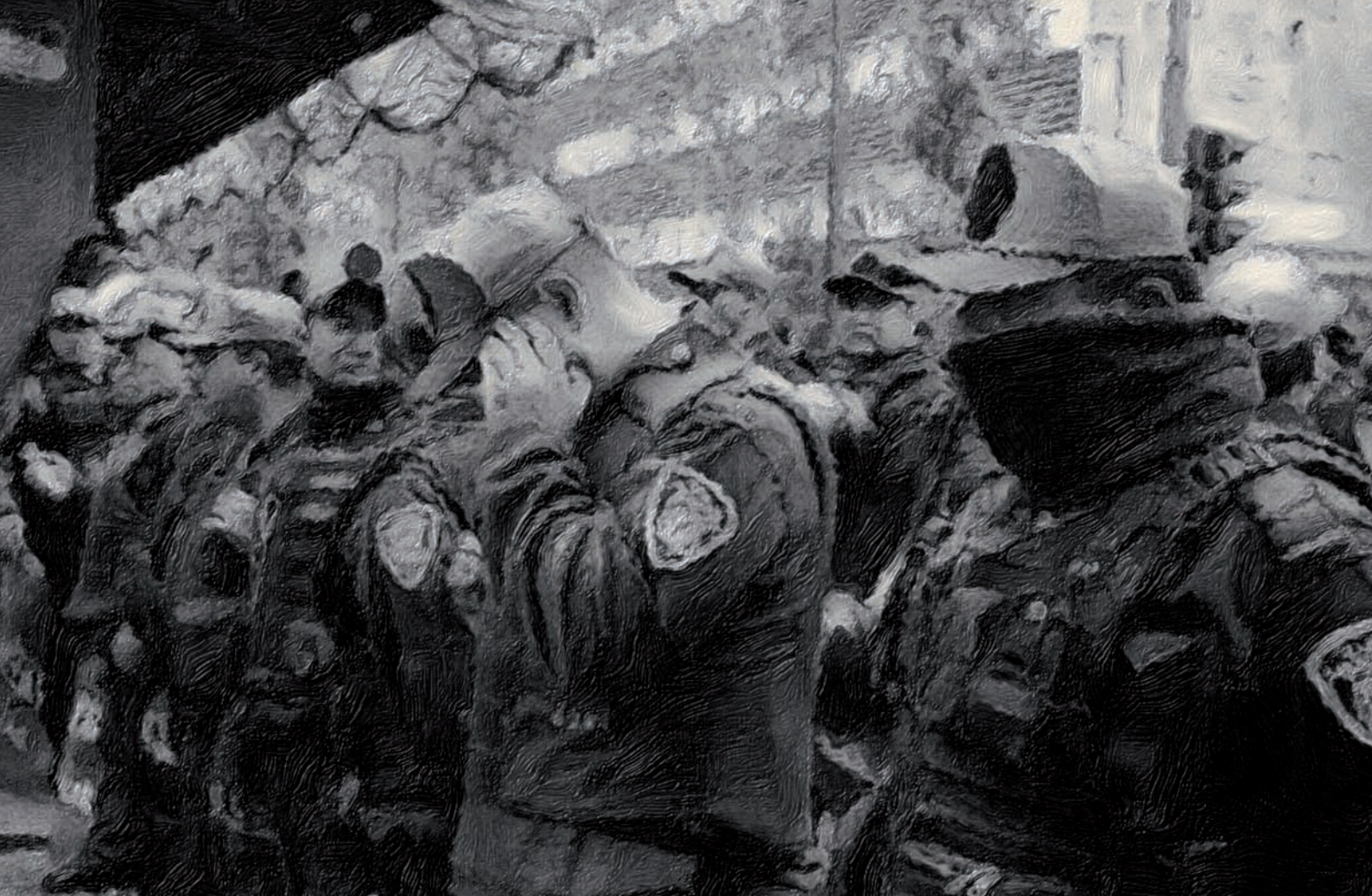
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<sup>25</sup> Human Rights Council, Methods of work of the Working Group on Arbitrary Detention, Thirtieth session, 4 August 2015 (A/HRC/30/69), para. 8(e).

<sup>26</sup> In 2015, young men (aged 18 to 29) formed the largest group of those facing criminal proceedings at state level. They made up 26.47% of the total number of people prosecuted, compared with 17.34% for men aged 30 to 39; 9.41% for men aged 40 to 49; 3.46% for men aged 50 to 59; and 5.06% for men aged 60 or over. The data included 26.88% of men with no age stated. The remaining 11.38% corresponds to women subject to criminal proceedings (INEGI, National Census of State Justice 2016). The data covers those tried or charged in criminal cases at first instance in 2015, the data is expressed here in 10-year age groups. This is consistent with the responses to requests for information received from the States of Coahuila, Morelos, Oaxaca, San Luis Potosí and Tabasco which suggested that young men form the largest group; responses from other states did not provide the information needed for this analysis. See also A. Alvarado Mendoza and C. Silva Forné, (2011). “Relaciones de autoridad y abuso policial en la Ciudad de México”, *Revista Mexicana de Sociología*, 73, núm. 3 (July-September, 2011), pp. 445-473.

<sup>27</sup> Among others, the International Covenant on Civil and Political Rights, Articles 2.1 and 26; International Covenant on Economic, Social and Cultural Rights, Article 2.2; International Convention on the Elimination of All Forms of Racial Discrimination, Article 2; and the American Convention on Human Rights, Articles 1 and 24.

<sup>28</sup> Inter-American Court of Human Rights, *Case of Nadege Dorzema et al. v. Dominican Republic*, Merits, Reparations and Costs, Judgment of 24 October 2012, Series C No. 251, para. 234.



↑  *Policemen during protests in Mexico City. Photographic intervention. ©Amnesty International/Kenia Salas.*

The UN Committee on the Elimination of Racial Discrimination has urged states to take “the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person’s colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion.”<sup>29</sup>

Police in Mexico constantly use concepts such as “routine checks”, “suspicious attitude” or “evasive attitude” to justify detaining people. For example, in the case of José Humberto Márquez, described below, the police arrested him solely because they considered that “he seemed suspicious”, without having any evidence whatsoever that would lead them to suspect that he was committing a crime. Many of these concepts are based on interpretations, frequently erroneous, of criteria set out in the jurisprudence of the Supreme Court, especially in rulings on the powers of the police to stop and search under what are known as “provisional preventive control”, explained earlier.

In addition, justice service personnel interviewed expressed a worrying belief that, by virtue of their experience, the police are able to detect criminals without showing any tangible evidence-based rationale, even though each detention should be based on clear facts specific to the case.

Amnesty International is concerned about information received which indicates that many interactions with the police that end in arrest are based on the real or perceived profile of individuals, such as their socio-economic status, the colour of their skin, their form of dress or expression and so on. Arrests based on such discriminatory grounds are arbitrary under international law and also under national law, which contains a robust anti-discrimination clause in the first article of the Constitution and in federal and state laws.



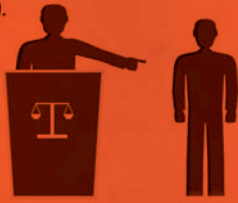


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<sup>29</sup> UN Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 65th session (2005).



# 4. ARBITRARY DETENTION AND THE JUSTICE SYSTEM

When state agents carry out an arrest, they have an obligation to comply with certain requirements in order to protect the rights of the person in their custody. The previous chapter discussed, among other things, the obligation of arresting officers to identify themselves and provide the detainee with specific information. There are also other mechanisms, under the auspices of different institutions, designed precisely to ensure rigorous monitoring of arrests through a detailed evaluation of each arrest, as well as supervision of the way in which the police operate. This section discusses some of the mechanisms in the justice system which could be used to evaluate the actions of the police.

<p>Detention is <b>ARBITRARY</b> when:</p>	 <p>It has no basis in law.</p>	<p>It is based on discrimination against the detainee.</p> 
<p>Someone is denied a fair trial (for example because legal requirements are not fulfilled or because they were detained in the absence of any objective evidence against them).</p> 	 <p>Someone is detained solely because of their migration status and without the involvement of a judge.</p>	<p>Someone is detained for the peaceful exercise of their human rights.</p> 

\*Based on the categories of arbitrary detention established by the UN Working Group on Arbitrary Detention.

## 4.1. REGISTER OF DETENTION

In order to protect the rights of any person deprived of their liberty, each detention (regardless of its type or duration) must be properly registered. A register of detention provides a precise record of where, by which authority and in what circumstances a person is detained during the entire period that they are deprived of their liberty. This helps to reduce violations of their rights, such as being taken to unofficial places of detention, being held incommunicado and being subjected to torture or enforced disappearance.

The register of detention should be started as soon as the person is arrested and must contain sufficient data to determine, *inter alia*, the identity of the person deprived of their liberty; their state of health and physical condition; the circumstances and reasons for the arrest and who was involved; the place where they were detained and which authority was responsible for the facility; as well as any change in their situation, such as their transfer, release or death.<sup>30</sup>

The obligation to establish and maintain a register of detention is set out in various provisions in international law.<sup>31</sup> Similarly, the Human Rights Committee and the Committee against Torture have repeatedly insisted on the need for states to keep updated records of detentions in order to prevent human rights violations and guarantee the rights of those deprived of their liberty.<sup>32</sup>

Moreover, Article 16 of the Mexican Constitution states that detentions must be recorded immediately; this is also mentioned, albeit inadequately, in the National Code of Criminal Procedure.<sup>33</sup> There is also an important legal basis for this in the General Law on the Public Security System, which requires that an Administrative Record of Detentions be established; to date this has not been adequately implemented.<sup>34</sup> As this obligation appears in the paragraph of the Constitution dealing with *in flagrante delicto* detention, several of the justice sector personnel interviewed believed, erroneously, that they were only required to register arrests *in flagrante delicto* but not other forms of deprivation of liberty.

The research conducted for this report showed that in Mexico there are no reliable records of detentions that comply with the international standards mentioned above. This is consistent with the findings of international bodies, for example, the UN Subcommittee on Prevention of Torture and the UN Committee on Enforced Disappearances.<sup>35</sup> Information received by Amnesty International points to failures mainly in relation to the registration of the time (and even day) of detention, the circumstances of the arrest and those involved in it. Registers of detentions repeat several of the failures, set out below, of police reports because for some justice

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<sup>30</sup> See the full list of minimum requirements in Article 17 of the International Convention for the Protection of All Persons from Enforced Disappearance and Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle IX, approved by the Commission during its 131st regular period of sessions, held 3-14 March 2008.

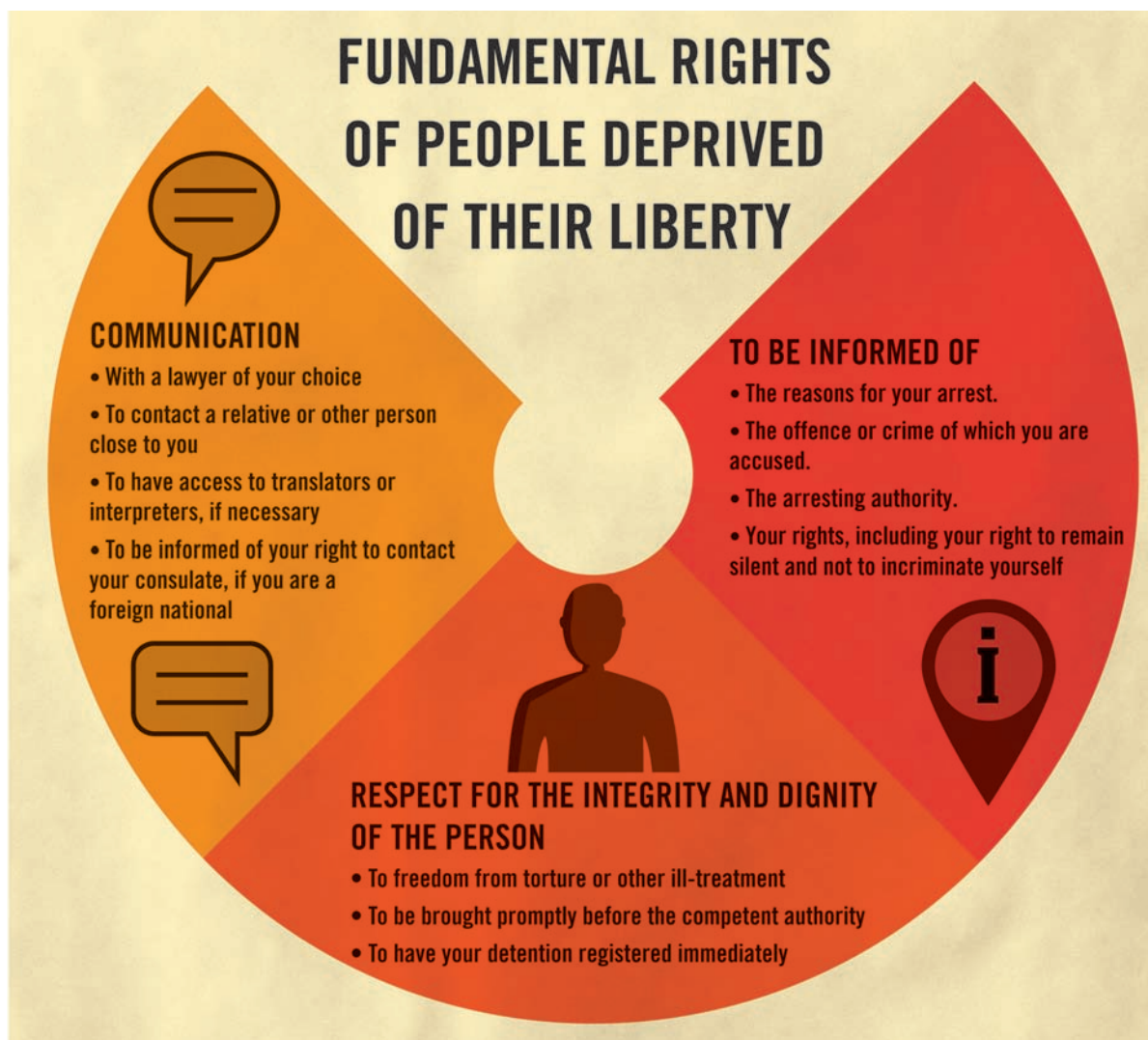
<sup>31</sup> The obligation is defined in Article 17 of the International Convention for the Protection of All Persons from Enforced Disappearance and Article XI of the Inter-American Convention on Forced Disappearance of Persons. The UN Standard Minimum Rules of the Treatment of Prisoners set out further standards for the management of files and records of persons deprived of their liberty, which must be kept in each detention centre, Rules 6-10 (UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) 21 May 2015 (E/CN.15/2015/L.6/Rev.1).

<sup>32</sup> UN Committee against Torture, Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October–23 November 2012), 11 December 2012 (CAT/C/MEX/CO/5-6), para. 10.d; and UN Committee on Enforced Disappearances, Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention, 5 March 2015 (CED/C/MEX/CO/1.).

<sup>33</sup> National Code of Criminal Procedure, Articles 132, sub-section VI, 147 and 150.

<sup>34</sup> General Law on the Public Security System, Articles 112 to 116.

<sup>35</sup> UN Subcommittee on Prevention of Torture, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico, 31 May 2010 (CAT/OP/MEX/1), para. 119; and UN Committee on Enforced Disappearances, Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention, 5 March 2015, (CED/C/MEX/CO/1.), paras 34 and 35.



sector personnel such reports act as a register of detentions<sup>36</sup> and for many others police reports are the source of information for the register of detentions.

In general, justice sector personnel are not clear about what a register of detentions should look like, including requirements in international law, nor of the operational requirements for the register. While notes are usually made about detainees by the police, public prosecutors and judges in their official notebooks, these notes differ in the facts and processes they record as the information is not consolidated. Officers on some forces inform their stations by radio when they make an arrest. This tends to be recorded, but it is an ineffective control measure if the system is not clear and interconnected with other records.

Information from existing registers is not shared among all those involved in the administration of justice, including defence lawyers. The register of detentions is not part of the public prosecutor's file on the investigation, nor is it usually presented during trial, despite being a key piece of evidence of the actions of the police, especially the description of the detention. As a result of these flaws, registers of detention in Mexico do not fulfil the aim of protecting the rights of detainees.

<sup>36</sup> Although Article 112 of the General Law on the Public Security System establishes the obligation of the police to give administrative notice of detention to the National Control Centre (Centro Nacional de Control) using precisely the unified police report, this important step does not by itself meet the obligation to keep a register of detentions, which must cover the entire duration of deprivation of liberty, not only the time of arrest.

The Inter-American Court of Human Rights analysed the flaws in detention registers in Mexico and determined that the country should strengthen its system for recording detentions, including by keeping records permanently up to date and linking all existing records “establishing a network that allows each detainee to be easily located”.<sup>37</sup> The UN High Commissioner for Human Rights recently recommended that Mexico adopt “a national law establishing a solid unified registry of all kinds of arrests and persons deprived of their liberty, including specific preventative measures to avoid arbitrary arrests, torture and disappearances”.<sup>38</sup>

The Mexican authorities, in the face of various questions about the lack of an effective register of detentions, generally argue that the Attorney General’s Office maintains a Detained Persons Registration System (Sistema de Registro de Detenidos, SIREDD). The Attorney General’s Office has a Public Detention Reference System (Sistema Público de Consulta de Detenidos, SPCD) where the names of all those detained by bodies under the authority of the Federal Public Prosecutor’s Office can be found. However, the SPCD does not record detentions related to organized crime. In addition, these systems only record detentions where people are in the custody of the Federal Public Prosecutor, but it does not include those held by other authorities, such as the police, the armed forces, the prison service and state or municipal bodies.

## 4.2. DETAINEES’ APPEARANCE BEFORE A COMPETENT AUTHORITY

Once an arrest has taken place, the police should immediately bring the arrested persons before the competent authorities<sup>39</sup> and formally hand them over. In Mexico, this procedure, known as “*puesta a disposición*”, is a formal procedure aimed at preserving information about arrests and guaranteeing the rights of detainees.<sup>40</sup>

In reality this does not always happen and there are unjustified delays in presenting the detainee, which can range from a couple of hours to several days. These artificially- prolonged delays are often used to investigate the case, plant evidence, torture or otherwise coerce detainees and allow alleged witnesses to agree on their version of events, among other things.



**“Police reports are a broken phone.”**

Official in the public prosecutor’s office, central Mexico.

When police bring detainees before the competent authority, they must file a report. Previously, police handed over a document commonly known as “*parte informativo*” which varied from one force to another. Recently Mexico has adopted a standardized police report, the unified police report (*informe policial homologado*, IPH).<sup>41</sup>

Reports often contain significant factual errors and false information, among other shortcomings. The current IPH is very complex and filling it in takes a lot of time; some police officers take several hours to complete one. Officers do not always feel adequately trained to complete the report and usually ask for the IPH to be drafted by staff in

<sup>37</sup> Inter-American Court of Human Rights, *Case of Cabrera García and Montiel Flores v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 26 November 2010, Series C No. 220, para. 243 and Operative paragraph 16.

<sup>38</sup> UN Recommendations on Mexico made by the UN High Commissioner for Human Rights, Mr. Zeid Raád Al Hussein following up on his official visit to the country in October 2015, Recommendation 7, Office in Mexico of the OHCHR, November 2016.

<sup>39</sup> An individual must be brought before a municipal official or a city official if they are detained for an alleged administrative offence or before the public prosecutor if they were detained for an alleged criminal offence.

<sup>40</sup> Mexican Constitution, Article 16, para. 5 and the National Code of Criminal Procedure, Article 147.

<sup>41</sup> National Public Security Council, Protocol for first responders with annexes on the Unified Police Report, the Rights Card and the Procedural Map, Version 1.0, no date. Source: [www.secretariadoejecutivo.gob.mx/normateca/normateca.php](http://www.secretariadoejecutivo.gob.mx/normateca/normateca.php).

the force's legal department, thus undermining the purpose of the document, which is to record what the police officer actually observed. In addition, reports are not always signed by those involved in the arrest, as required by Mexican law, but by personnel who did not participate in events. This undermines the right of defence, among others things, since detainees cannot challenge the actual arresting officers during the criminal justice process or in case review proceedings.

In some police forces, the intervention of legal departments is an institutionalized practice rather than an exception, as confirmed by several interviewees involved in the administration of justice. The fact that reports are produced by lawyers working for the police also has the aim of rectifying any potential problems that could arise regarding the way the detention was carried out; that is, reports are altered to “square” what happened with legal requirements.<sup>42</sup>

Several interviewees involved in the administration of justice expressed concern about these shortcomings in the police reports, including not being able to verify whether the facts described are true and whether the signatories are those who actually participated in the detention. One described the IPH and its role in the justice apparatus as “a broken phone” because the facts are distorted throughout the procedure. Another interviewee said that “the police reports are wooden, a third person writes them and the police sign them”.

This is especially worrying considering that in arrests allegedly *in flagrante delicto*, police reports are a key element in the justice system's determination of what happened and the legality of the arrest. As the Supreme Court has stated, when it comes to detention *in flagrante delicto*, the report is of particular importance because it is the document that should constitute the basis for the formulation of criminal-legal charges.<sup>43</sup> In the cases of Verónica Razo, Sergio Sánchez and Enrique Guerrero, detailed in this document, the police reports contain inaccuracies and falsehoods that have had serious consequences in legal proceedings; all three remain in prison. In the case of Sergio Sánchez, for example, the police report and the statements of the arresting officers contain inconsistencies even on fundamental points such as the date of the arrest.

The appearance of the detainee before a competent authority also includes the presentation of evidence and other objects recovered at the time of arrest. Problems are common in these cases, either because the police often fail to secure, pack and handle the evidence or follow the chain of custody correctly, or because they present objects that were not at the scene; that is, they plant evidence.

## 4.3. JUDICIAL REVIEW OF DETENTION

Regarding the supervision of detention, international law provides that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.<sup>44</sup> That requirement applies in all cases and is not dependent on the choice of the detainee or whether or not formal charges have been laid.<sup>45</sup>

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<sup>42</sup> These Mexican police practices have been documented previously; see M.A. Ruiz Torres and E. Azaola, “Cuadrar el delito: corrupción institucional y participación de policías en el secuestro en México”, en *Revista Perfiles Latinoamericanos*, FLACSO, año 22, Núm. 44, July-December 2014, pp. 91-112.

<sup>43</sup> Supreme Court, “Police reports. Police reports must be subject to strict judicial scrutiny and evidential assessment, given the legal consequences arising out of their content” (“*Parte informativo policial. Debe ser objeto de revisión bajo escrutinio judicial estricto de valoración probatoria, atendiendo a las consecuencias jurídicas que derivan de su contenido*”), *Gazette of the Weekly Report of the Judiciary*, Book 26, November 2015, Vol. I p. 987 (“*cuando se trata de detención en flagrancia, el informe tiene una particular trascendencia porque es el documento sobre el que es posible constituir la base para la formulación de la imputación jurídico-penal*”)

<sup>44</sup> See Article 9.3 of the International Covenant on Civil and Political Rights and Article 7(5) of the American Convention on Human Rights.

<sup>45</sup> UN Human Rights Committee, General comment No. 35, Article 9 (Liberty and security of person), 16 December 2014, (CCPR/C/GC/35) para. 32.

For many years, Mexico's criminal justice system was characterized by bad practices and human rights violations. It was an inefficient system in which people accused of a crime were not guaranteed a fair trial. In 2008, in an attempt to change this situation, Mexico passed an amendment to the Constitution which changed the system of criminal prosecution to one in which international fair trial principles were respected and guaranteed, *inter alia*, the presence of a judge at all stages of criminal proceedings, which should also be conducted in public.<sup>46</sup> The transition to the new system was completed in June 2016.

Justice sector personnel themselves agreed strongly that in the new criminal justice system it is easier to properly review detention, which has led to at an increase in the number of people being released in cases where their detention did not comply with the law or where there was insufficient evidence to render the detention lawful. The process is conducted through public hearings in which "supervising judges" assess the circumstances of the arrest, in the presence and with the participation of the detainee and their lawyer, as opposed to the previous system in which the assessment of the detention was essentially based on what was reported by the public prosecutor or district attorney. A member of the judiciary recalled that under the previous system the supervision of detention consisted of "a standard format that was pre-prepared and all that was changed was the date, name and crime".

Justice sector personnel interviewed by Amnesty International agreed that the new system is better and more efficient, offers better protection of the presumption of innocence and is generally more transparent.<sup>47</sup> However, it is also clear that the change has not been easy and various structures need to continue making adjustments in the months and years ahead. Many interviewees who had spent most of their careers in the old system are still uncomfortable with the rules of the new system and have found the strengthening of the fair trial principles complicated. A public prosecutor explained: "it wasn't easy changing to a system in which rules are rules".



**“Even among judges we cannot agree... Not even the judges understand everything in there.”**

Magistrate in a criminal court, northern Mexico.

Despite the shortcomings of the police reports, some justice sector personnel still place enormous trust in them and rely too heavily on the work carried out by the police. One complained that "the words of the police seem to be presumed to be truthful". Others seem to take a more cautious approach when examining cases.

Despite the expected benefits of the new criminal justice system, the supervision of arrests allegedly made *in flagrante delicto* remains difficult because the legal framework is unclear. Justice sector personnel told Amnesty International that the criteria for the interpretation of the new National Code of Criminal Procedure are still inconsistent and contradictory. For example, they reported that there were conflicting interpretations of how to assess the rationale for the time elapsed between a detainee's arrest and their appearance before the public prosecutor; how to evaluate the information contained in police reports; whether or not they need to open a debate during the hearing on detention in cases of mandatory pre-trial detention; and whether the obligation on the police to bring detainees directly to the public prosecutor means that they should not take them to the police station first in order to register the detention and get a medical assessment. One interviewee stated: "Even among judges we cannot agree... Not even the judges understand everything in there".

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<sup>46</sup> Decree reforming and adding several provisions to the Constitution of United States of Mexico, published in the *Diario Oficial de la Federación*, 18 June 2008.

<sup>47</sup> Other studies have reached similar conclusions, for example, a quantitative study on the perceptions of various justice sector personnel in Mexico found that they viewed the new criminal justice system positively. In particular they were positive about the fact the trials are now heard orally (93% of the judges, 98% of officials from the public prosecutors offices and 96% of public defenders surveyed) and believe that it will contribute to reducing corruption (82% of judges 79% officials from the public prosecutors offices and 77% of public defenders surveyed). (Nancy G. Cortés, Octavio Rodríguez Ferreira and David A. Shirk, *Justicebarometer 2016: Perspectives on Mexico's Criminal Justice System: What Do Its Operators Think?* San Diego, CA: Justice in Mexico, 2017)

Justice sector personnel differ in their views and actions regarding what they should do when faced with the arbitrary arrest of a person that they believe is guilty. In general, the judges interviewed indicated that they must prioritize the law and therefore release those detained unlawfully. However, others admitted that sometimes judges assess unlawful detentions to be legal if they feel the suspects are guilty. One indicated that, in these cases judges who were part of the former criminal justice system are reluctant to rule evidence inadmissible, even if it was unlawfully obtained, including when it was extracted under torture or other ill-treatment.

Many judges are influenced by pressures imposed on them by the state. Justice sector personnel acknowledged that in some cases – especially if they are prominent in the media or politically sensitive – there is indeed pressure to resolve them in a particular way. These pressures can range from subtle hints to direct orders from senior members of the state level judiciary and from the state level bodies, including the Executive. When judges do not yield to political pressure, they can face reprisals in the form of obstacles to the renewal of their mandate or administrative reviews by judicial councils (which administer, monitor and discipline the judiciary).

Public defenders can also be put under pressure. Several justice sector personnel stated that public defenders were expected to mount a weak defence in the cases assigned to them, for example by not “overdoing it” or by not behaving as if they were private lawyers and that those who exercise their role rigorously can face reprisals. This is particularly alarming because it is public defenders who often represent detainees during detention hearings, given that detainees have limited time to find a private lawyer of their choice before such hearings.

## 4.4. MANDATORY PRE-TRIAL DETENTION

In the past there was excessive use of pre-trial detention in Mexico.<sup>48</sup> The new justice system introduced various alternatives to pre-trial detention and use of this measure is gradually being reduced. However, there are still obstacles to the effective use of alternatives to pre-trial imprisonment, mainly because Article 19 of the Mexican Constitution obliges judges to issue pre-trial detention order for certain types of offences, as well as those that involve the use of violence.<sup>49</sup>



**“Mandatory pre-trial detention has no role in an adversarial criminal justice system, none whatsoever.”**

Judicial official, southern Mexico.

In these cases, judges are not able to assess the facts of the case to arrive at a decision; they are obliged to remand the suspect in prison. This is clearly contrary to the standards of international law, which state that pre-trial detention should not be mandatory based solely on the type of offence involved and that it should be used only as an exceptional measure and not a form of punishment. Pre-trial detention is only permissible when there is no other alternative measure that can effectively achieve a legitimate purpose, such as to address a substantial risk of flight, of harm to third parties or undue interference that would hinder criminal proceedings.<sup>50</sup> The reasons for ordering pre-trial detention must be strictly and narrowly interpreted and take into account the

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<sup>48</sup> Inter-American Commission on Human Rights, *The Human Rights Situation in Mexico*, 31 December 2015 (OEA/Ser.LV/II Doc. 44/15), para. 320 and UN Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, *Mission to Mexico*, 29 December 2014, (A/HRC/28/68/Add.3), paras 23 and 81e.

<sup>49</sup> The text states that the judge must order pre-trial detention in cases of organized crime, intentional homicide, rape, abductions, human trafficking, crimes involving violence such as the use of weapons and explosives, as well as serious offences, as determined in law, against national security, the free development of the personality and health.

<sup>50</sup> UN Human Rights Committee, General comment No. 35, Article 9 (Liberty and security of person), 16 December 2014, (CCPR/C/GC/35) para. 38 and Inter-American Court of Human Rights, *The case of J. v. Peru*, Preliminary Objections, Merits, Reparations and Costs; Judgment of 27 November 2013. Series C No. 275, para. 159.

particular circumstances of the individual (including their age and state of health).<sup>51</sup> The judicial authorities should periodically review the lawfulness of the detention and verify that it is still necessary and proportionate.<sup>52</sup>

Most justice sector interviewees agreed that mandatory pre-trial detention should not be retained, arguing that it “has no role in an adversarial criminal justice system” and that it does not further the aims of the justice system, but rather undermines the judicial function by pre-determining the outcome of an examination that should always take into account the facts of the case and proceed on a case-by-case basis.

This provision has also encouraged the planting of evidence as this facilitates the work for investigators. For example by claiming that a crime was committed *in flagrante delicto* on the sole basis of the suspect’s possession of a single object (such as arrests related to weapons or illegal drugs), investigators can ensure that the suspect is deprived of their liberty for some time. On the other hand, some courts are implementing a flawed practice of not questioning the circumstances of arrest when the alleged crimes or suspects permit mandatory pre-trial detention.

## 4.5. IMPUNITY FOR ARBITRARY ARRESTS AND DETENTIONS

Any person who has been the victim of unlawful arrest or detention has the right to adequate reparation,<sup>53</sup> including release if they are still deprived of their liberty. The right to reparation is applicable to persons whose detention or arrest violated national laws or procedures, international standards, or both. One form of reparation is the effective investigation of arbitrary detention. Investigations are also important because impunity encourages the repetition of human rights violations.<sup>54</sup>

In Mexico, a high degree of impunity for arbitrary arrests and detentions persists, as is the case for the majority of crimes, including violations of human rights committed by the security forces. It is estimated that impunity levels in Mexico are around 99%.<sup>55</sup> The Inter-American Commission on Human Rights has commented on the problem of impunity in Mexico, including impunity for crimes committed by public authorities: “The biggest problem in terms of access to justice in Mexico is precisely the systemic and structural impunity that affects the country”.<sup>56</sup> All the cases detailed in this report remain in impunity.

The criminal justice system and other forms of disciplinary investigation should serve as mechanisms for supervising the actions of the police. These monitoring systems must be clearly established in law. They should be part of an explicit public policy and aim to hold the police accountable for the exercise of their functions. This would reduce impunity, since this is one of the main factors that lead to the repetition of illegal actions such as those described in this report.

The implementation of such laws should ensure that not only those who participate directly in arbitrary arrests and detentions but also their superiors are punished if they issue an unlawful order or do not prevent illegal acts from being committed. Investigation processes must respect the right of the parties involved to a fair trial.

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<sup>51</sup> Amnesty International, *Fair trial manual* (Index: POL 30/002/2014), “Section 5.4: Permissible reasons for detention pending trial” p.62.

<sup>52</sup> UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988, principle 39.

<sup>53</sup> International Covenant on Civil and Political Rights, Article 9.5 and Inter-American Court of Human Rights, *Case of Aloeboetoe et al. v. Surinam*, Reparations and Costs, Judgment of 10 September 1993, Series C No. 15, paras 42 to 44.

<sup>54</sup> Inter-American Court of Human Rights, *Case of Servellón García et al. v. Honduras*, Merits, Reparations and Costs, Judgment of 21 September 2006, Series C No. 152, para. 154.

<sup>55</sup> It has been estimated that the level of impunity in Mexico is some 99%, meaning that 99% of crimes go unpunished (J. A. Le Clercq Ortega and G. Rodríguez Sánchez Lara, (Editors) *Global Impunity Index Mexico 2016 IGI-MEX 2016*, Universidad de las Américas Puebla, 2016).

<sup>56</sup> Inter-American Commission on Human Rights, *The Human Rights Situation in Mexico*, 31 December 2015 (OEA/Ser.LV/II Doc. 44/15), para. 485 onwards.





↑  Graphic representation of the case at the community of Chablekal. © Sergio Ortiz/Amnesty International.

## CHABLEKAL

Chablekal is a largely Mayan town which lies to the north of the city of Merida in the State of Yucatán. On 3 May 2016, a large contingent of state police entered the town for the second time that day to carry out a court order for a house eviction. The first time they had attempted to carry out the order, a number of residents tried to resist in various ways; some threw stones at the police.

That day, the police arrested, beat and intimidated various people, many of whom had nothing to do with the eviction. The police entered a church and several houses without a warrant, including the home of the Euan family, who had no connection with the eviction. The officers destroyed furniture and other possessions; threw tear gas in the garden and inside the house; threatened those present; beat and arrested Pedro Euan Flores; and wounded one of his sons, who was recovering from an injury and was on crutches. Another of the sons, Pedro Antonio Euan Santana, was taken from the house by force and beaten in the street. He lost his shoes and some of his clothes during the assault and was forced to walk barefoot on the baking-hot asphalt. The burns he sustained on his feet prevented him from walking for several weeks.

Pedro Antonio Euan, his father, and a worker who was in the house were arbitrarily detained by the police, along with other inhabitants of the town. After the arrests, the police did not explain what was happening or why they had been detained and took them in patrol cars to the city of Merida, where they were detained, without any medical attention, for two days until their lawyers secured their release.

During these events, the police hindered efforts by the human rights organization Indignación to document what was happening and briefly detained two members of the organization.

Complaints against the police were lodged with the Yucatán Attorney General's Office, but to date there has been no progress in the investigation that should have been undertaken.

The Euan family was at home in the community of Chablekal, located in the state of Yucatán.



They resorted to the use of tear gas inside and outside the house and beat up some members of the family.



They were in detention in the city of Mérida, with no medical attention, until they were released 2 days later.



Policemen, that were in the community to carry out an eviction in another house, broke into their house violently.

Several members of the family were arrested without getting an explanation.



Mexico City and most of the states that replied to Amnesty International's requests for information for the preparation of this report did not give a specific response on impunity for arbitrary arrests. The State of Tabasco replied that it does not have records of administrative procedures for arbitrary arrests and that there is no precedent for police officers being subject to criminal prosecutions for detentions classified as arbitrary or illegal.<sup>57</sup> The State of San Luis Potosí noted that there are no records that relate to arbitrary or illegal detention since 2014.<sup>58</sup> The State of Morelos indicated that in the 2014-2016 period two public officials in the District Attorney's Office and 66 police officers were given administrative sanctions for illegal or arbitrary detentions.<sup>59</sup> The State of Coahuila responded that in 2016 it issued 11 administrative sanctions to police officers.<sup>60</sup> These state governments did not indicate the nature of the sanctions mentioned nor whether criminal investigations were initiated in any of these cases.

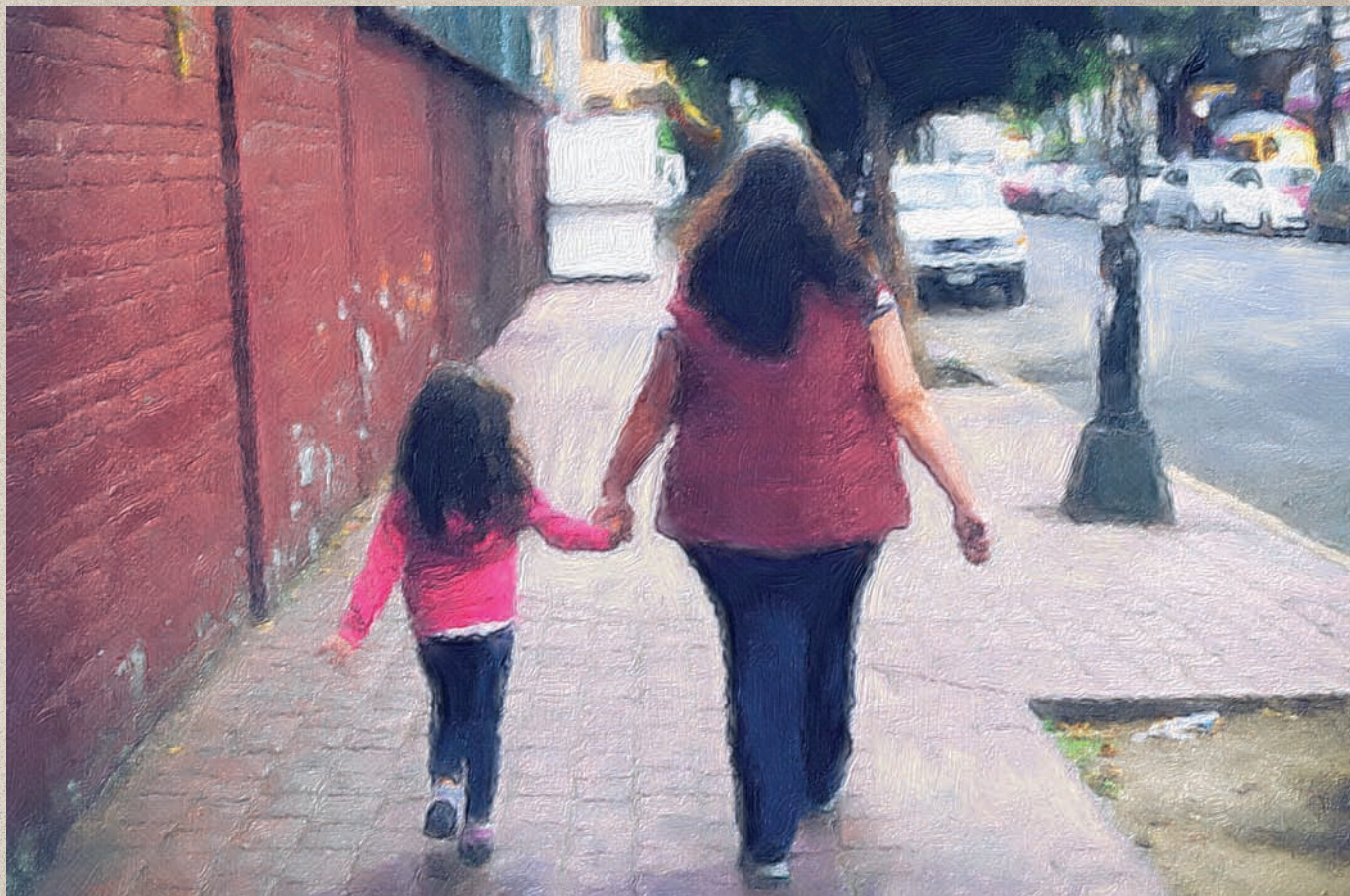
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<sup>57</sup> Reply to Amnesty International from the Secretary for Public Security for the State of Tabasco (reference SSP/6929/2016), 8 December 2016.

<sup>58</sup> Reply to Amnesty International from the Secretary for Public Security for the State of San Luis Potosí, (reference SSP/CCG/492/2016), 21 December 2016.

<sup>59</sup> Reply to Amnesty International contained in the document, State Commission for Public Security for the State of Morelos, *Mando único: nuevo modelo policial – Morelos: resultados a octubre 2016*, December 2016, District Attorney for the State of Morelos, (reference: FGEM.MOR.OFG.387.11-2016) 30 November 2016.

<sup>60</sup> Reply to Amnesty International from the State Commission for Public Security for the State of Coahuila (reference CES/052/2017), 17 January 2017.



↑  Graphic representation of Veronica Razo's case. © Sergio Ortiz/Amnesty International.

## VERÓNICA RAZO CASALES

Verónica Razo Casales was deprived of her liberty on the afternoon of 8 June 2011 in Mexico City. At about 1pm, she was in a street near her home when she was stopped by a group of armed men dressed in civilian clothes. They forced her into a car and took her to a local federal police station. She was held there incommunicado for 24 hours and subjected to sexual violence, among other forms of torture. Verónica was forced to sign a statement stating that she had been involved in a kidnapping.

Verónica's mother, who was with her just before she was detained, heard the commotion and saw a number of men take her daughter away. She thought Verónica had been kidnapped and reported the incident to various authorities that same day.

The police report of Verónica's arrest contained different information about the arrest. It states that the detention occurred about 20 hours after the actual arrest and was the result of an alleged anonymous complaint.

Verónica was charged, along with others, with belonging to a kidnap gang. More than six years after her arrest, Verónica has yet to receive a judgment in her case and remains in pre-trial detention.

Her family has lodged various complaints with the Attorney General's Office about the abuses she suffered, but to no effect.

Verónica Razo was walking close to her house in México City



She was intercepted by a group of armed men dressed as civilians that forced her into a car.



She was taken to a warehouse belonging to the Federal Police Department. She was held there with no communication for 24 hours and was subjected to several forms of torture, forcing her to sign a written confession.



The police report stated that the arrest happened around 20 hours after the actual arrest. It said she was arrested because they received an anonymous tip. She was being accused of kidnapping.



She has not yet been convicted and she is still in prison after 6 years of her arrest.



# 5. THE CONSEQUENCES OF ARBITRARY ARRESTS

Arbitrary arrests can have a serious impact on the enjoyment of human rights by facilitating other violations such as torture or other cruel, inhuman or degrading treatment or punishment, extrajudicial executions and enforced disappearances. This report details six cases that began with an arbitrary arrest and culminated with these sorts of violations.

When a person is arbitrarily detained, this not only affects their right to personal liberty, but it also jeopardizes many other rights such as the right to humane treatment and guarantees of a trial fair. For example, unlawful deprivation of liberty causes insecurity, distress and anxiety in the person who does not know what may happen to them, especially when effective safeguards are lacking, for example when they are not promptly presented before a judge and when their detention is not registered. Sometimes, relatives and other people close to them are similarly affected and this can constitute a violation of their right to humane treatment.

The time spent in detention without effective judicial control also deprives an individual of the possibility of legal assistance from a lawyer of their choice at a crucial time. In addition, the use of unlawful evidence – such as evidence that is fabricated or planted – can undermine the proper course of the investigation and the potential for a fair trial and result in additional human rights violations, such as prolonged arbitrary detention.

When a child under the age of 18<sup>61</sup> is detained, they are protected not only by all the rights and guarantees applicable to adults, but also by a series of additional rights arising from their different degree of physical and psychological development compared to adults. It is important to take into account their best interests as children. These rights include that arrest should be used only as a measure of last resort and for the shortest possible period of time<sup>62</sup> and that their parents or other relatives or legal guardians must be immediately notified of the arrest.<sup>63</sup> However, these rights are often not respected.<sup>64</sup>

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<sup>61</sup> Inter-American Court of Human Rights, Juridical Status and Human Rights of the Child, Advisory Opinion 17/02 of 28 August 2002, Series A, No. 17, para. 42. In addition, the Convention on the Rights of the Children defines a child as follows: “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained.” (Article 1)

<sup>62</sup> UN Convention on the Rights of the Child, Article 37(b).

<sup>63</sup> UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Rule 10.1, and UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly December 2012 (annex to Resolution 67/187).

<sup>64</sup> A study by the National Human Rights Commission and the Centre for Research and Higher Studies in Social Anthropology indicates that of the 730 of adolescents deprived of liberty who were interviewed, 59% said that at the time of arrest they were not told what crime they were accused of; 69% said that officers who arrested them did not inform them of their rights; 54% said they were not informed of their right to a lawyer; and 53% said they were not brought promptly before the public prosecutor (CNDH and CIESAS, *Adolescentes: vulnerabilidad y violencia*, Mexico, 2017, p. 135).



↑  Graphic representation of José Humberto Márquez's case. © Sergio Ortiz/Amnesty International.

## JOSÉ HUMBERTO MÁRQUEZ COMPEAN

José Humberto, aged 25, was arrested on 21 March 2010 by municipal police in Santa Catarina, State of Nuevo León, because he “seemed suspicious”. Another person present was also detained at the same time. The police alleged that the two were in possession of illegal drugs.

The officers took the two detainees to the municipal police station, but later decided that they would take them instead to the offices of the Federal Public Prosecutor and handed them over to municipal officers to escort them there. On their way there, the vehicles in which they were travelling were fired on by unidentified people, several public officials died and others, including the other detainee, were injured. José Humberto was unharmed.

As a result of these events, the Municipal Public Security Director requested support from the Navy Secretary for the transfer all those present by helicopter to the University Hospital in Monterrey. At the hospital, the wounded officers and the other detainee were taken out of the helicopter. José Humberto remained on board, although there is clear evidence, including videos and testimonies, that he had been on the helicopter. His body was found a day later in an abandoned site in the municipality of San Nicolás de los Garza, also in Nuevo Leon. On his body, which bore injuries consistent with torture, were plastic bags containing illegal drugs.

The National Human Rights Commission concluded that officials of the Navy Secretariat were responsible for the arbitrary detention, forced disappearance, torture and execution of José Humberto Márquez. The case has been investigated by the Attorney General's Office, but to date the case has not been presented before a judge, despite the fact that the investigation has progressed and there are sufficient grounds for doing so.

25 year old José Humberto, was arrested by local policemen because he looked “suspicious”



On their way to the prosecutor's office, the vehicles were attacked. Several people were killed and others were injured.



The Navy Secretary sent a helicopter to transfer the people to the hospital but José Humberto never arrived.



The Attorney General Office has refused to present the case before a judge even though there are enough elements to do so.



His body was found the next day. Laying on top of him, were bags full of illegal drugs. There was evidence he had been tortured.



## **In Mexico, anyone can be arbitrarily arrested, but the risk is greater if you are from a vulnerable group, for example, if you are young, living in poverty or Indigenous.**

As mentioned above, pre-trial detention is used disproportionately in Mexico and is mandatory for certain kinds of offences. As a result, a person who is arbitrarily detained and framed for a serious crime or for using violence when committing a crime can spend several years in prison awaiting trial, despite the fact that the Constitution sets a maximum period of two years for pre-trial detention. This is what happened in the cases of Enrique Guerrero, who was arbitrarily detained in May 2013, and of Verónica Razo, who was arbitrarily detained by plainclothes armed officers and accused of a kidnapping in 2011. Both remain in federal prisons awaiting judgment.

These situations facilitate torture or other ill-treatment. In the six cases detailed in this report, the victims were tortured or subjected to other cruel, inhuman or degrading treatment or punishment. In some cases the aim was to coerce them to sign false statements implicating themselves in crimes, as in the cases of Enrique Guerrero, Sergio Sánchez and Verónica Razo. In others, it was part of a police operation, as in the case of the Mayan community of Chablekal. Sometimes it was used as a punishment for what the individual had, or was perceived to have, done, as appears to have happened in the case of José Adrián. And in one case, that of José Humberto Márquez Compean, the victim of arbitrary detention was subjected to enforced disappearance and subsequently extrajudicially executed.

The circumstances in which arbitrary detention occurs are varied but do not seem to be related to the actions of the victims. Often people are arbitrarily detained going about their normal daily business and nothing unusual had occurred to provoke the arrest. In the cases mentioned in this report, for example, José Adrián (aged 14) was returning home from school while Pedro Euan was at home with his family. Indeed, in Mexico, anyone can be arbitrarily arrested, although there is a greater risk if they are from a particularly vulnerable group for example: if they are young, living in poverty or Indigenous.

# 6. RESOURCES AND CAPACITIES OF JUSTICE SECTOR PERSONNEL



**“The police don’t understand the meaning of reading someone their rights, human rights or the Constitution.”**

Judicial official, southern Mexico.

Justice sector personnel require certain minimum conditions in order to be able to carry out their work properly and provide a service that meets international human rights standards and guarantees access to justice through fair trials. Amnesty International is concerned about the serious shortcomings that it has documented in this regard.

Since the reform of the criminal justice system was approved in June 2008, justice sector personnel have initiated, with varying speed and intensity, changes in administrative and legal processes, as well as training for new functions. However, various officials who are key to the proper functioning of the criminal justice system have yet to be adequately trained. It would seem that judicial officials are the best qualified, followed by prosecution personnel and lastly the police. Justice sector personnel interviewed agree that the police are the part of the criminal justice system that has received the least adequate training, despite the fact that they play an essential role. A police officer interviewed by Amnesty International said: “Detentions can no longer be done in the same way. The new system involves a lot of work and you can’t do everything. Many don’t even know how to bag up evidence properly and they don’t have the time or staff for all these things”.

There are serious flaws in police officers’ knowledge of the justice system, standards on the use of force, detention processes and the factors that must be present for *in flagrante delicto* arrests. As an official from the Public Prosecutor’s Office commented: “the police are poorly trained and carry out detentions badly”. Their lack of knowledge and skills to perform essential functions (such as the first contact with victims, protecting the scene of a crime, safeguarding evidence, etc.) has a direct effect on cases. Some mistakes cannot subsequently be remedied (for example the loss or contamination of evidence) and facilitate impunity.

In addition, the working hours of justice sector personnel are often excessive, which affects the quality of their work. Although those who work longer hours are generally those who work in the police (for example, working 24 hours and resting the following 24 hours and working several extra hours outside their normal working day), this is



↑  Policemen during protests in Mexico City. © Sergio Ortiz/Amnesty International.

a general problem in the criminal justice system and also affects judges and prosecutors.<sup>65</sup> A court official said that sometimes judges are too tired after more than 12 hours of hearings and may pay little attention to the case they have to resolve.



**“Detentions can no longer be done in the same way. The new system involves a lot of work and you can’t do everything. Many don’t even know how to bag up evidence properly and they don’t have the time or staff for all these things.”**

Investigative Police officer, central Mexico.

Justice sector personnel also face a heavy workload<sup>66</sup> and their ability to meet all the demands on them and carry out their proper functions are often hindered by a lack of personnel assigned to each area. This results in delays not only in resolving cases but also in medical assessments and in receiving detainees or evidence. Staff shortages also affect other areas necessary to ensure and deliver justice, such as experts or interpreters. These shortcomings have direct impacts on the rights of individuals who can wait years before their case is investigated or resolved.

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<sup>65</sup> A study on the view of those involved in administering justice showed that 87% worked more than 40 hours per week and most more than 50 hours. Nancy G. Cortés, Octavio Rodríguez Ferreira and David A. Shirk. *Justicebarometer 2016: Perspectives on Mexico’s Criminal Justice System: What Do Its Operators Think?* San Diego, CA: Justice in Mexico, 2017.

<sup>66</sup> Workloads vary depending on the type of organization and other factors, such as which state the official is in, the size of the population where they are working, etc. Examples given by justice sector interviewees ranged from courts with 300 cases to resolve in a year, to public prosecutor’s offices with almost 700 cases managed by one official and two assistants.



Many justice sector personnel lack material resources, such as vehicles that are in an adequate condition and sufficient fuel, telephones, material to bag up evidence, chemicals for laboratory tests and money for travel expenses, etc. An official working in a Public Prosecutor's Office told Amnesty International that it is difficult to get detainees in remote areas transferred to the main offices; the police do not want to bring people to the Public Prosecutor's Office because they have to pay for the fuel themselves. These shortcomings affect the way the police carry out their role and the quality of the service they provide to the community and violate people's right to access to justice.

In addition, police officers from many forces lack protective equipment, weapons and other tools necessary to carry out their work. In some forces the police do not have the necessary tools to deal with the different situations that may arise. For example, one justice sector interviewee explained that the only tool police in his community have is a firearm and that, therefore, they have difficulties in ensuring a proportionate use of force. In this situation, the police are prevented from fully exercising their lawful role in circumstances where they need legally to use force, but cannot use a lethal weapon.



**“We have very poor working conditions, you never even get to see your family.”**

Investigative Police officer, central Mexico.

Most of the police earn very low wages, and these vary from one force to another, especially in the Federal Police, but they may also vary between different types of police within a force. Salaries can range from the minimum wage, MXN 2,413 (about US\$120) per month, to MXN 24,000 (approximately US\$1,200) per month in the better paid forces.<sup>67</sup>

The salaries of others in the justice system, such as judges and public prosecutors or district attorneys, are often substantially higher. However, public defenders tend to be paid less than public prosecutors, despite the fact that the Mexican Constitution states that the salaries of defenders must not be lower than those of public prosecutors (Article 17 of the Constitution).<sup>68</sup>

Some of those involved in the administration of justice have an unusual employment situation. According to the Constitution and jurisprudence, the police and public prosecutors, among other state officials, are not employees but have only an “administrative” relationship with the state and so do not enjoy job security and some other rights which other public servants do.<sup>69</sup> In addition, some are paid not as salaried staff but have temporary insecure contracts for which they receive “honorariums”. This situation was considered by the justice sector personnel interviewed to help explain both the corruption and the inefficiency of the Mexican police.

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<sup>67</sup> In many police forces, officers receive salaries at around the minimum wage. In Mexico, only the 14.29% of economically active people who receive an income earn the minimum wage or less (INEGI, National survey of occupation and employment, Strategic indicators, Fourth Quarter, 2016.) The Mexican authorities estimate the living wage, that is, the “monetary value of a basket of food, basic goods and services”, for the urban population is MXN 2,779.64 per person per month, which is more than the monthly minimum wage of MXN 2,413 (National Council for the Evaluation of Social Development Policy, CONEVAL, *Valor mensual por persona de la Línea de Bienestar (canasta alimentaria más canasta no alimentaria*, as of February 2017).

<sup>68</sup> Nancy G. Cortés, Octavio Rodríguez Ferreira and David A. Shirk, *Justicebarometer 2016: Perspectives on Mexico's Criminal Justice System: What Do Its Operators Think?*, San Diego, CA: Justice in Mexico, 2017.

<sup>69</sup> Article 123, Section B, subsection XIII of the Mexican Constitution states that public prosecutors, legal experts and members of police forces at Federal, Federal District, state and municipal council levels, can be dismissed if they do not meet the requirements established by law or due to liabilities as a result of their functions. If the jurisdictional authority determines that dismissal or any other form of termination is not justified, the state shall be obliged only to pay to the employee the compensation and other benefits established by law, but this shall not mean the employee will be reinstated, regardless of the outcome of the trial or defence mechanism pursued. See also, the Supreme Court's statement that officials of the Ministerial Federal Police constitutionally belong to a special category in which it is not possible to claim labour rights, such as secure employment or posts, or to change conditions regarding permanency. (“*Policía Federal Ministerial. Sus agentes pertenecen constitucionalmente a un régimen especial donde no puede reclamarse la posible afectación a derechos laborales como el de estabilidad en el empleo o inmutabilidad de las condiciones de permanencia*”), *Gazette of the Weekly Report of the Judiciary*, Vol XXXIII, January 2011, p. 372.



↑  *Policemen during protests in Mexico City. © Sergio Ortiz/Amnesty International.*

Amnesty International considers that impunity is the main factor in understanding corruption in the Mexican police, but that issues related to police working conditions may also help explain the persistence of the problem.

# 7. CONCLUSIONS AND RECOMMENDATIONS

In Mexico, shortcomings in the justice system, inadequate legislation, almost total impunity and poor police training are a dangerous mixture that makes arbitrary arrests and detentions a daily reality, opening the door to other persistent human rights violations, such as torture or other ill-treatment, enforced disappearances and extrajudicial executions. Amnesty International believes that reducing arbitrary detention could have a crucial impact in reducing such human rights violations.

Arrests allegedly *in flagrante delicto* do not only occur in response to crimes that are actually committed, but are constantly misused for unlawful purposes. While anyone can be targeted, those from groups that have historically faced discrimination are most at risk. Amnesty International is particularly concerned about possible discriminatory motives behind the detentions of young men living in poverty.

Arbitrary detentions frequently go unpunished, as do most human rights violations and crimes in Mexico. The situation is further exacerbated by the lack of a strong, clear public policy and by the failure to implement efficient mechanisms to address the crisis of human rights and impunity facing the country. The authorities must take urgent measures to reverse this situation and prevent further human rights violations.

Taking into account the views of all the people involved in this research – including confidential interviews with those involved in the administration of justice, other public authorities, Mexican civil society organizations and other experts – as well as the obligations of the Mexican state under international law, Amnesty International makes the following recommendations:

## **TO THE MUNICIPAL, STATE AND FEDERAL POLICE AUTHORITIES:**

- Ensure that the police guarantee, from the moment of arrest, the right of every person to be informed of the reasons why they have been deprived of their liberty and of their rights, including the right to immediately contact a lawyer of their choice.
- Establish clear regulations for all police forces with regard to detention and the use of force and ensure police receive appropriate and ongoing training and assessment on these and other relevant issues, such as their role as first responders in the criminal justice system.
- Establish the mandatory use of location tracking devices and audio-visual cameras in police vehicles. Recordings should be considered essential evidence in the evaluation of the lawfulness of an arrest or detention procedure, in particular to verify the place and time of arrest and the physical condition, including any injuries, of the detainee. Recording equipment should be used only for these purposes. The recordings obtained should be processed in such a way as to ensure that the police cannot alter

them and they must be made available to the detainee and their defence counsel. An appropriate body, independent of the police, should be mandated to monitor that the recordings are used correctly and that they are destroyed after a reasonable time in most cases and immediately in cases where other people were recorded who had not been arrested but were being transported in the police vehicle for some other reason.

- Implement effective measures to ensure that police officers do not carry out arrests or detentions based on ethnic or national origin, age, social status, or on any other discriminatory grounds, and do not receive instructions from their superiors, explicitly or implicitly, to carry out discriminatory actions and that, if they do, they may disregard such orders without fear of reprisals.
- Review the current version of the unified police report (*informe policial homologado*, IPH) in order to ensure that its wording and its length are compatible with the functions, time constraints and operational needs of police officers deployed in the field and at the same time that it contains all the necessary information required under relevant international standards.
- Ensure that the unified police report is written and signed by the police officers actually involved in the reported event.
- Generalize the use of a card to read people their rights, such as the one issued by the Commission for National Security, in all police forces in the country, while ensuring that officials have sufficient training, beyond simply knowing what is on the card, to be able explain their rights adequately to people and ensure that they understand them.

#### **TO THE FEDERAL AND STATE ATTORNEY GENERALS' OFFICES:**

- Ensure the prompt, impartial, independent and thorough investigation of cases of arbitrary detention and other human rights violations that occurred following or in connection with arbitrary detention. Those with command responsibility who could be subject to criminal proceedings, in accordance with international standards, should be included in such investigations.
- Examine the cases of all detainees placed in their custody, in accordance with the standards of international law, and ensure that those who have been arbitrarily detained are released

#### **TO THE NATIONAL COUNCIL TO PREVENT DISCRIMINATION:**

- Carry out a study of discriminatory attitudes in police forces and develop a detailed work plan to address discriminatory arrests and detentions.

#### **THE MEXICAN CONGRESS:**

- Abolish provisions in the Constitution and legislation that provide for mandatory pre-trial detention. The decision to adopt such precautionary measures should be at the judge's discretion, based on an individual determination in each case, and should only be implemented in cases where other alternative measures prove ineffective.
- Remove provisions from the National Code of Criminal Procedure that allow the police to detain people after a crime is committed based solely on witness testimony and without a warrant (*flagrancia por señalamiento*).
- Remove provisions for precautionary detention (*arraigo*) from the Constitution and legislation.
- Establish, as a matter of urgency, through the enactment of legislation, a unified register of arrests. This should be nationwide, consistent, in line with international human rights standards and the decisions of the Inter-American Court of Human Rights and include both state and federal bodies. Information should be recorded in real time and be easily accessible. Clear oversight and accountability mechanisms should be established to ensure such a register is implemented.

- Urgently adopt a general law on the use of force in accordance with international human rights standards.
- Recognize the importance of the work of those involved in the administration of justice, including that of the police, and of ensuring their labour rights and amend Article 123, section B, subsection XIII of the Constitution.

#### **TO THE NATIONAL HUMAN RIGHTS COMMISSION:**

- Investigate arbitrary detention in Mexico and issue a general recommendation that addresses at least the aspects highlighted in this report, including possible discrimination in detentions, unnecessary and disproportionate use of force, impunity and the need for a registry of detentions and to strengthen police monitoring mechanisms.

#### **TO ALL AUTHORITIES:**

- Ensure the justice sector personnel, including those belonging to state bodies, especially police officers and public defenders, receive decent wages and social benefits appropriate for the work they perform.
- Ensure that those involved in the administration of justice are provided with the material resources necessary to carry out their functions efficiently and in accordance with the law and human rights.
- Guarantee, in law and in practice, the independence and impartiality of the judiciary, ensuring that judges are free from any interference, pressure or undue influence in the exercise of their functions.



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# FALSE SUSPICIONS

## ARBITRARY DETENTIONS BY POLICE IN MEXICO

Amnesty International interviewed public officials, in strict confidence, to understand in detail how the justice system works and was able to corroborate what thousands of victims have been saying for years: in Mexico, in many cases detention is not a response to crimes, but a measure used illegally that can target anyone, but especially young men living in poverty.

The justice system has failed to change this reality, nor has it sanctioned those responsible, even though these detentions can be the start of a string of violations of human rights that end in disappearance, torture and death.

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