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Consideration of reports submitted by States parties under article 40 of the Covenant

Mexico

Addendum

Information received from Mexico on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/MEX/CO/5)*

[13 July 2012]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Information on paragraph 15 of the concluding observations

1. The institution of *arraigo* (pre-charge detention) in Mexico is a preventive measure provided for under criminal law whose purpose is to guarantee the effectiveness of the justice system.

2. Once a judge has received an application for *arraigo* and has reviewed the relevant procedural matters, he or she promptly examines the substantive basis of the application to determine whether it meets the general requirements set out in the corresponding constitutional and legal provisions, which are:

(a) The Prosecution Service has requested the detention;

(b) The crime in question is serious and/or is associated with organized crime;

(c) The detention is necessary for the success of the investigation and/or the protection of persons or property, or because there is a well-founded risk that the suspect may evade justice.

3. To this end, the relevance and admissibility of the material sent by the Federal Prosecution Service are analysed in order to determine whether the proffered evidence is substantial enough to justify the action and corroborate the applicant's allegations.

4. The prosecutor must thus demonstrate that there is a serious risk that the suspect may evade justice and/or that detention is necessary for the protection of persons or property.

5. Furthermore, the evidence provided must demonstrate, with a high degree of certainty, that the suspect is probably responsible for the commission of the crime in question.

Evidence considered for the issuance of an *arraigo* order

6. No information that has been obtained from anonymous sources, that arresting officers reportedly received from persons who they have apprehended, or that was obtained by deduction or in the form of hearsay may be used as evidence; only information that has been obtained first-hand is admissible.

7. A suspect's statement has evidentiary value only when it is made before the Prosecution Service and in the presence of the suspect's legal counsel or a trusted person. If the suspect denies the accusations, his or her statement is examined to determine whether it is corroborated by other evidence, or seems implausible or is refuted by other compelling evidence.

8. Statements made by victims or complainants to the prosecutor may be used as evidence only if the persons making the statements are deemed to be sufficiently capable and educated to assess the act in question and to provide assurance that they learned about the facts related in their statements first-hand rather than by deduction or in the form of hearsay. These elements, along with all the other evidence and all other objective and subjective circumstances, are then carefully weighed to determine whether the statement is true or false.

9. Statements made by protected witnesses will be accorded an indicative value when they are corroborated by other evidence and are therefore determined to be truthful; such statements cannot be deemed to outweigh other evidence or to be accepted out of hand simply because the person making the statement is presumed to have been a member of the criminal organization to which the statement refers.

10. Thus, the evidence needed in order to apply the precautionary measure of *arraigo* must be well-founded and must point to the suspect's possible participation in the commission of the crime in question.

11. In conclusion, there must be undeniable reasons for the judicial authorities to continue investigating the suspect, and the continuation of the suspect's detention must be justified by the nature of the crime and by the fact that the federal prosecutor has not yet had sufficient time to do so.

12. It should be emphasized that the types of evidence described above are only a sample of the wide range of evidence provided by the prosecutor when requesting the issuance of an *arraigo* order.

Decision

13. Once all documents have been reviewed, the corresponding decision is issued and the federal prosecutor is informed and requested to notify the suspect of the order and to forward the relevant records. The objective is to ensure that the suspect is aware of the judge's decision and of the reasons for it.

Compliance and monitoring

14. The duties of the Federal Prosecution Service with regard to *arraigo* orders are, in general terms, the following:

(a) Monitoring comes within the remit of the federal prosecutor, who is assisted by police officials under his or her supervision;

(b) The federal prosecutor must provide notification of the date of detention (in such an event) or release of suspects subject to *arraigo* orders, as well as any other decisions that substantially affect the inquiry;

(c) During detention, suspects' privacy must not be violated, their human rights must be respected and their health and physical well-being must be regularly monitored. The application of the order and fulfilment of the conditions attached to it must also be reported upon;

(d) The judge or any officer of the court authorized by him or her may, at any time, either on his or her own initiative or at the request of the detainee in question, visit the detainee to ensure that the measure is being applied in accordance with the conditions set out in the *arraigo* order and that the fundamental rights of the detainee are being respected;

(e) The prosecutor is required to report regularly on the implementation of the measure and the progress of the investigation;

(f) People being detained under an *arraigo* order are, as a general rule, held in the Federal Investigation Centre, located at Ignacio Morones Prieto 43, Colonia Doctores, Delegación Cuauhtémoc, Mexico City, Federal District. In exceptional cases, the federal prosecutor requests that they be held in other facilities owing to special circumstances. This is granted only when all necessary security and logistical issues have been satisfactorily addressed.

15. The application of this measure, as it relates to human rights, is also monitored by the National Human Rights Commission. The Commission has issued a recommendation (No. 87/2011) regarding the application of *arraigo* orders in which it urges the Attorney-General's Office (*Procuraduría General de la República*) to avoid using custodial facilities other than its own for persons being detained under an *arraigo* order.

Extension of *arraigo* orders

16. In cases in which the federal prosecutor deems it necessary, he or she may ask the federal courts to grant an extension of an *arraigo* order.

17. Article 16 of the Constitution and transitional article 11 of the decree amending and supplementing various provisions of the Constitution of Mexico, which was published in the *Diario Oficial de la Federación* on 18 June 2008, and, in particular, article 12 of the Federal Act to Combat Organized Crime, as amended by a decree published in the *Diario Oficial de la Federación* on 23 January 2009, stipulate that the applicable provision authorizes, as a last resort, the extension of the measure up to a maximum of 80 days for cases in which the Federal Public Prosecutor's Office shows that the grounds invoked for the issuance of the *arraigo* order are still valid.

18. To authorize the extension of an *arraigo* order, the following conditions must be met:

(a) An *arraigo* order must already be in place;

(b) The reasons why the *arraigo* order was granted in the first place must still be valid.

Legal means of lifting the measure

19. If it can be demonstrated to the prosecutor that the suspect's probable culpability and/or the commission of the crime in question cannot be proven, then the prosecutor may ask the judge to lift the measure.

20. The individual concerned may apply to the judge for the *arraigo* order to be lifted if he or she considers that the grounds invoked for the detention no longer stand, in which case the judge will consult with the Public Prosecution Service and decide whether or not to lift the *arraigo* order.

21. While the relevant provision does not set a deadline for the ruling on such a request, once an application has been received, the prosecutor has 24 hours to contest the application. After this period has elapsed, regardless of whether or not a response from the prosecutor has been forthcoming, a decision is made, without delay, regarding the detainee's application.

22. Detainees may also enter an appeal for an action of *amparo*. The effectiveness of this measure depends on the timing of its submission, since, in the case of any proceeding in respect of the rights enshrined in article 16 of the Criminal Code or articles 19 and 20 of the Constitution, the time frame for considering the application is limited to a maximum of 3 days for the submission of the reasoned opinion of the judge who issued the *arraigo* order, and to 10 days following the request, for the issuance of the decision.

23. Therefore, by way of example, if the *arraigo* detainee puts forward the request for *amparo* on the first day on which the *arraigo* order takes effect, and, if on the tenth day the Constitutional Court holds a hearing and grants *amparo* after determining that the *arraigo* order was unconstitutional, the measure will be lifted.

24. Nonetheless, it should be noted that this may lead to an endless series of pleadings which may prolong the legal process and not be in the best interests of the individual concerned.

Information on paragraph 20 of the concluding observations

Immediate steps to provide effective protection to journalists and human rights defenders whose lives and security are under threat due to their professional activities, including by the timely adoption of the bill on crimes committed against freedom of expression exercised through the practice of journalism

25. On 5 July 2010, the Special Prosecutor's Office for Crimes against Freedom of Expression (*Fiscalía Especial para la Atención de Delitos Cometidos en Contra de la Libertad de Expresión*) was created and given the authority to direct, coordinate and supervise investigations and, where necessary, prosecute crimes committed against journalists. It is vested with the authority of the Office of the Federal Prosecutor.

26. On 16 February 2012 a new special prosecutor was named. Since then, a review of the activities of the Special Prosecutor's Office has been undertaken. Its substantive activities have been re-engineered by restructuring its preliminary inquiry procedures, and capacity-building initiatives for public prosecutors based on training and refresher courses have been conducted. A new liaison and cooperation strategy has also been initiated with non-governmental organizations, international agencies and the media.

27. The Special Prosecutor has held meetings with various non-governmental organizations, such as the Committee to Protect Journalists, the Executive Council of the Casa de los Derechos de los Periodistas, the Centro Nacional de Comunicación Social, Reporters Without Borders, Freedom House, the Executive Council of the Fundación para la Libertad de Expresión and the Asociación Mexicana de Editores. Meetings have also been held with international organizations such as the United Nations Office on Drugs and Crime (UNODC) in Mexico, Central America and the Caribbean. The objective of these meetings has been to establish a working relationship with each organization in order to combat impunity in respect of crimes relating to the protection of freedom of expression.

28. The Congress of the Union passed a decree which has added a second paragraph to section XXI of article 73 of the Constitution of Mexico. The decree was published in the *Diario Oficial de la Federación* on 25 June 2012 and states that: "The federal authorities are also competent to try ordinary offences linked to federal crimes or to offences committed against journalists, other persons or facilities that affect, limit or undermine the right to information, freedom of expression or freedom of the press."

29. The above amendment is intended to create a way of empowering the federal authorities to try ordinary offences linked to the protection of freedom of expression in order to combat impunity in respect of this type of offence and fulfil the State's international obligations.

30. The amendment is an important advance in this area, as it renders the federal authorities competent to try ordinary offences related to offences committed against journalists. This constitutes a significant change since, in previous cases where the Attorney-General initiated criminal proceedings, most Federal District courts declined jurisdiction, which therefore fell to the High Courts of Justice at the state level.

31. This amendment will grant the Special Prosecutor's Office a wider sphere of action once the corresponding changes have been made in the secondary legislation. To this end, the Attorney-General's Office is working with international bodies and non-governmental organizations to shape a regulatory framework that will strengthen both federal and State investigative powers.

32. At the same time, the Attorney-General's Office is undergoing a restructuring process that will endow it with increased operational capacity to protect journalists and prevent crimes directed at them and to investigate crimes against freedom of expression. In

order to standardize Federal Prosecution Service procedures, the Attorney-General's Office has also designed nine protocols to facilitate supervision and internal monitoring.

33. As of March 2012, the Attorney-General's Office had eight investigative units and has created four further units to handle its workload. Once the reform has gone through, the Office will increase its human and material resources to strengthen its substantive operations.

34. On 25 June 2012, the decree promulgating the Human Rights Defenders and Journalists Protection Act was published in the *Diario Oficial de la Federación*. This law is designed to underpin cooperation between federal and state bodies to implement preventive measures and urgent protection measures by means of a coordinated protection mechanism. The purpose of this mechanism is to safeguard the lives, well-being, freedom and safety of persons at risk as a result of their efforts to defend and promote human rights, to exercise freedom of expression and to engage in journalistic activities. The main aspects of the law are:

(a) It provides for the promotion of cooperation between federal and state bodies for the implementation of preventive measures and urgent protection measures designed to safeguard the lives, well-being, freedom and safety of persons who are at risk as a result of their efforts to defend and promote human rights, exercise freedom of expression and engage in journalistic activities;

(b) The law provides for the creation of a protection mechanism for human rights defenders and journalists to be implemented by the Ministry of the Interior so that the State can properly discharge its responsibility to protect, promote and safeguard human rights in accordance with article 1 of the Constitution of Mexico;

(c) Provision is made for the establishment of the Governing Board for this mechanism to serve as the main decision-making body for matters relating to the prevention of crimes against human rights defenders and journalists and their protection. The Board's decisions are to be binding upon the federal authorities;

(d) Provision is made for the creation of the Constituent Council as a consultative body for the Governing Board. Nine advisers will sit on the Council. One of those advisers will be elected by the Council members by simple majority to serve as the chairperson for a period of two years;

(e) Assaults are defined as acts which, whether by commission, omission or consent, impair the physical, psychological, moral or economic integrity of human rights defenders or journalists, of their spouses, cohabitees, ascendants, descendants, dependants, of persons who participate in the same activities within the same group, organization or social movement, or any other person deemed to be at risk.

35. In the absence of a chairperson, the Constituent Council will elect an interim chairperson for the duration of the chairperson's absence or until the chairperson's term of office ends. An effort will be made to ensure that the Council's membership is a balanced mix of experts in human rights defence and in the exercise of freedom of expression and the practice of journalism.

36. The Constituent Council will have a national executive office whose function will be to coordinate the operation of the mechanism with state bodies, federal government agencies and independent organizations. It will be assisted by a technical body (the Reception and Early Response Unit), which will register cases for inclusion in the mechanism and identify those cases that are to be processed using the special procedure set out in the Protection Act.

37. The Office of the Public Prosecutor is working with the Ministry of the Interior to design the implementing regulations for this law and its protocols in cooperation with international bodies and social organizations.

38. The Consultative Committee that predated this law held nine meetings at which it assessed seven applications for protection measures and developed protocols for risk assessments and concerning beneficiary obligations.

39. Additionally, the Special Prosecutor's Office for Crimes against Freedom of Expression has helped to reactivate this mechanism and has actively participated in its work by serving as the coordinator for the Risk Assessment Subcommittee, which recently designed operational risk assessment protocols and guidelines regarding police action and the obligations of beneficiaries of protection measures. These protocols will serve as inputs for the preparation of operational manuals and the design of implementing regulations for the new law.

40. On 25 May 2012, the Attorney-General's Decision No. A/109/12, which amended and supplemented Decisions Nos. A/024/08 and A/145/10, was published in the *Diario Oficial de la Federación*. One of the provisions of this decision was to place the Special Prosecutor's Office for Crimes of Violence Against Women and Trafficking in Persons and the Special Prosecutor's Office for Crimes against Freedom of Expression under the authority of the Office of the Assistant Attorney-General for Human Rights, Victim Care and Community Services.

41. The new powers and duties conferred by Decision No. A/109/12 on the Special Prosecutor's Office for Crimes against Freedom of Expression include the following:

(a) The Special Prosecutor's Office for Crimes against Freedom of Expression has been placed under the authority of the Office of the Assistant Attorney-General for Human Rights, Victim Care and Community Services;

(b) The Office is to perform its functions in accordance with the guarantees and fundamental rights set forth in the Constitution of Mexico and international human rights instruments;

(c) Mechanisms are established for coordination and liaison with the National Human Rights Commission, state human rights commissions and non-governmental organizations working to defend human rights and the rights of journalists and of press agencies and organizations in line with the policies and guidelines on international matters issued by the Attorney-General's Office.

42. From January 2011 to 25 June 2012, the Attorney-General's Office requested protective measures in 108 cases on behalf of journalists, victims' families and media centres in order to prevent the perpetration of human rights violations and to safeguard them from suffering irreparable harm.

Prompt, effective and impartial investigation of threats, violent attacks and assassinations perpetrated against journalists and human rights defenders and, where appropriate, prosecution and institution of proceedings against the perpetrators of such acts

43. From 1 January to 31 December 2011, the Attorney-General's Office initiated 132 preliminary inquiries. Action was taken in 90 of those cases, as follows: in 16 of these cases, criminal cases were brought; in 1 instance, the case was dropped; and in 73 cases, it was ruled that the court lacked competence to prosecute or to dismiss the charges (not all of these cases concerned journalists); 83 of these cases are under consideration.

44. Additionally, the Federal Prosecution Service, which is authorized by the Constitution to undertake criminal investigations, compiled detailed reports in 58 cases, 57 of which were submitted for preliminary inquiry. One case is still under consideration.

Cases	*1 January to 31 December 2011*
Preliminary inquiries opened	132
Lack of jurisdiction	73
Cases dismissed	1
Criminal proceedings initiated	16
Pending	3
Lack of internal jurisdiction	1
Special Prosecutor's backlog (2010)	7
Resubmitted	38
Under consideration	83
Detailed reports compiled	58
Referred for preliminary inquiry	57
Closed	6
Lack of jurisdiction	8
Pending	4
Special Prosecutor's backlog (2010)	25
Under consideration	8

45. From 1 January to 25 June 2012, the Attorney-General's Office undertook 53 preliminary inquiries and prepared 29 detailed reports, 21 of which led to the opening of preliminary inquiries. The above is disaggregated as follows:

Cases	*1 January to 25 June 2012*
Preliminary inquiries opened	53
Lack of jurisdiction	32
Cases dismissed	1
Criminal proceedings initiated	8
Special Prosecutor's backlog (2010)	83
Resubmitted	5
Under consideration	100
Detailed reports compiled	29
Referred for preliminary inquiry	21
Lack of jurisdiction	2
Special Prosecutor's backlog (2010)	8
Under consideration	14

Detailed information on all cases of criminal prosecutions relating to threats, violent attacks and assassinations perpetrated against journalists and human rights defenders in the State party in its next periodic report

46. Between 1 January 2011 to 24 June 2012, the Federal Prosecution Service opened 24 preliminary inquiries (with no one being taken into custody during that process) and instituted criminal proceedings against 57 persons for various offences. These inquiries were opened following investigations initiated either in response to a report received by the Prosecution Service or after a formal complaint had been lodged.

Steps to decriminalize defamation in all states

47. The status of provisions in criminal law at the state level dealing with the offences of defamation, slander and other "offences against honour" is as follows:

State	*Legislation*	*Status*
Federal District	Press Offences Act	Articles 1 and 31 repealed on 11 January 2012
Aguascalientes	State criminal legislation	Not included in the new 2004 Code
Baja California	State Criminal Code	Articles 185 and 191 in force
Baja California Sur	State Criminal Code	Articles 336, 337 and 342 in force
Campeche	State Criminal Code	Articles 309, 310, 313, 315 and 321 in force
Chiapas	State Criminal Code	Repealed on 12 September 2007
Chihuahua	State Criminal Code	Not included in the 2006 Code
Coahuila	State Criminal Code	Repealed on 6 February 2009, although the offence of "affront to authority" remains in force and carries the following punishment: "A person who ridicules a public official in the course of that official's performance of his or her duties shall be subject to a prison sentence of between six months and two years and a fine."
Colima	State Criminal Code	Articles 217, 218 and 221 in force
Federal District	Criminal Code	Repealed on 15 May 2006
Durango	State Criminal Code	Not included in the 2009 Code
Mexico	State Criminal Code	Articles 275 to 278 and 282 in force. In the case of the offence of defamation, no sentence is imposed when the person in question is a journalist carrying out his or her work and what is said is true, in accordance with articles 6 and 7 of the Constitution.

State	*Legislation*	*Status*
Guanajuato	State Criminal Code	In force as amended. Articles 188 and 189 have been amended and supplemented, and the second paragraph of article 190 has been repealed.
Guerrero	State Criminal Code	Repealed on 30 November 2007
Hidalgo	State Criminal Code	Articles 191 and 194 in force
Jalisco	State Criminal Code	Repealed on 23 October 2007, but the sentence for any person who insults a public official remains in force.
Michoacán	State Criminal Code	Repealed on 6 July 2007
Morelos	State Criminal Code	Repealed on 11 December 2008
Nayarit	State Criminal Code	Articles 292, 294, 295 and 297 in force
Nuevo León	State Criminal Code	Articles 235, 236, 338, 339, 342, 343, 344 and 345 in force
Oaxaca	State Criminal Code	Repealed on 18 April 2009
Puebla		
Querétaro	State Criminal Code	Repealed on 25 February 2011
Quintana Roo	State Criminal Code	Repealed on 18 April 2007
San Luis Potosí	State Criminal Code	Repealed on 4 April 2009
Sinaloa	State Criminal Code	Repealed on 27 August 2009
Sonora	State Criminal Code	The provision on defamation was repealed on 12 July 2007; slander and libel remain offences under article 284.
Tabasco	State Criminal Code	Articles 166 and 169 in force
Tamaulipas	State Criminal Code	Repealed on 4 July 2007
Tlaxcala	State Criminal Code	Articles 248, 249 and 251 in force
Veracruz	State Criminal Code No. 586	Repealed on 10 August 2010
Yucatán	State Criminal Code	Articles 293, 294, 295, 298 and 299 in force
Zacatecas	State Criminal Code	Articles 274 and 281 in force