



**E Q U I S**  
Justicia para las mujeres

**SHADOW REPORT ON WOMEN'S  
ACCESS TO JUSTICE IN MEXICO**

**2017**

EQUIS: Justicia para las Mujeres (EQUIS) authorizes the publication of this report on the CEDAW Committee's portal.

## Introduction

EQUIS is presenting the following Shadow Report for the Committee on the Elimination of Discrimination Against Women (CEDAW) in light of the pre-sessional working group meeting that will take place in Geneva in November 2017.

EQUIS is a feminist organization whose mission is to transform institutions, laws and public policies, and women's leadership to improve women's access to justice. EQUIS contributes to the advancement of women's human rights and gender equality through the use of advocacy and litigation strategies at national and international level.

This document includes data EQUIS has collected through the implementation of its projects, all of which target issues that converge with recommendations made to the Mexican state.

### 1. Women incarcerated for drug-related offenses

It is worrisome that the issue of incarcerated women was not mentioned in the Committee's recommendations for Mexico in 2010 and 2012. The war on drugs and its disproportionate effects on women warrants special attention. According to the most recent national-level data<sup>1</sup>, the prosecution of women for drug-related offenses increased by 75% in 2015 and by 103,3% over the last two years. These offenses represent 43% of cases entering the federal criminal justice system. In addition, EQUIS identified the following critical issues:

#### *Excessive use of pretrial detention*

The Inter-American Commission on Human Rights (IACHR) recommends that pretrial detention be applied on an exceptional basis.<sup>2</sup> Similarly, Recommendation 148.64 of the UN Human Rights Council's Universal Periodic Review (UPR) of Mexico in 2013, urges the state to abolish this mechanism to further prevent the use of torture and ill-treatment.

EQUIS' research in three women's correctional facilities allowed us to meet women who had spent extended periods of time in pretrial detention. Article 166 of the Federal Code of Criminal Procedures provides exceptions for pretrial detention, however, we are especially concerned with our observation that the use of non-custodial protective measures is subject to the adjudicating body's criteria. The former applies this principle rigidly and without a gender perspective, in an attempt to correspond to current militarized drug policies that promote the use of force.

#### *A need for social reintegration policies*

Because Mexico has not yet incorporated mechanisms to guarantee women's social reintegration upon release from custody, it currently violates provisions of the "Bangkok Rules", particularly Rules 4, 47, 60, 67 and 69.<sup>3</sup>

Imprisonment stigmatizes women, subjecting them to a triple condemnation: they are punished criminally, socially and face discrimination inside prisons (in men's correctional facilities)<sup>4</sup>. It has been recognized internationally<sup>5</sup> that women who are incarcerated for non-violent crimes do not pose a danger to society. However,

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<sup>1</sup> National Institute of Statistics and Geography (INEGI), "National Census on Government, Public Security and State-level Penitentiary Systems", 2016.

<sup>2</sup> IACHR, *Report on Measures Aimed at Reducing the Use of Pretrial Detention*, Washington D.C, July 2017.

<sup>3</sup> United Nations *Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules)*.

<sup>4</sup> GIACOMELLO, Corina, "Women, drug offenses and penitentiary systems in Latin America". International Drug Policy Consortium (IDPC), London, October 2013. P. 17.

<sup>5</sup> UN "Bangkok Rules".

women's imprisonment and their subsequent criminal records seriously hamper their social reintegration, negatively affecting their lives and those of their family members.

EQUIS also observes that Mexico fails to comply with Bangkok Rule 4, which states that incarcerated women must serve their time in facilities close to their homes<sup>6</sup>.

#### *Deplorable conditions in detention centers*

Mexico has failed to address paragraph 69 in the Report of the Special Rapporteur on Torture<sup>7</sup> related to health in prisons. EQUIS' interviews reveal that women inmates have serious physical health problems (diabetes, hysterectomies, among others) and mental health impairments due to overcrowding and confinement that are not being medically or monetarily addressed.

#### *Lack of information*

It is important to highlight the need for an information system on incarcerated populations disaggregated by sex.<sup>8</sup> To provide an intersectional analysis of data, EQUIS conducted research by sending access to information requests to penitentiary authorities, revealing the following answers: authorities do not have an interest nor do they have sufficient information or resources to collect this data.

EQUIS systematized authorities' reports of extremely low numbers of incarcerated women, which demonstrate under-recording of prison populations that are inconsistent with official state records.

#### *Torture*

Following up on Recommendation 12b from the Committee on Mexico's Concluding Comments in 2012, EQUIS is extremely concerned with the consistency with which torture is used to obtain "evidence" and "confessions" from women involved in drug-related offenses, and how this relates to current punitive drug policies.

In interviews EQUIS conducted, incarcerated women provided testimonies of physical, psychological and sexual torture, especially during detention, which in many cases was arbitrary, with significant delays between their arrest and presentation before competent authorities. State agents' abuse of power against detained women turns sexual torture into an instrument of punishment, particularly for women in vulnerable circumstances (sex workers, indigenous or pregnant women, women with disabilities and/or lesbians).

#### Recommendations

Incorporate the issue of women's incarceration into women's human rights agendas. In accordance with CEDAW's Article 2, it is essential to broaden perspectives to consider practices of institutional violence against incarcerated women.

Publish and maintain reliable statistics in every detention center in every state on the number of women in pretrial detention and the duration of the former. Include data on offenses and the use of alternatives to pretrial detention.

Eliminate the list of serious offenses, providing solid arguments for pretrial detention and promoting alternative measures to incarceration.

Publish comparative studies and implement adequate measures to avoid the disproportionate negative impact of drug policy on women.

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<sup>6</sup> Idem,.

<sup>7</sup> A/HRC/28/68/Add.3 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, December 2014. Para. 69.

<sup>8</sup> GIACOMELLO, Corina and BLAS GUILLÉN, Isabel. "Reform Proposals in cases of Women Incarcerated for Drug-related Crimes in Mexico". Equis Justicia para las Mujeres and the Nacional Institute of Criminal Sciences, February 2016.

Apply the current General Law to Prevent, Investigate and Sanction Torture and other Cruel Inhuman, or Degrading Treatment in Mexico. Generate a data registry of torture victims broken down by sex, age, offense and state.

Facilitate visits to prevent abandonment that women often face by relatives while in prison.

## **2. Discriminatory practices in access to justice**

### *Discriminatory practices in judicial rulings/judgements*

General Recommendations 33, 35 and Recommendation 14 in the Committee on Mexico's Concluding Comments in 2012 highlight the importance of eliminating stereotypes and discriminatory actions in judicial personnel, as well as applying a gender perspective to case resolution.

When analyzing the judiciary's work, EQUIS has found judgements that continue to highlight the idea of women's femininity in descriptions of their conduct and physical appearance<sup>9</sup>, and that contain attributes related to maternity stereotypes.. As a result, women have been criminalized because they fail to comply to the roles traditionally assigned to them<sup>10</sup>. EQUIS has identified generalized criteria in the judiciary that places a disproportionate demand on women to prove that they demonstrated resistance to a sexual assault in order for it to be considered an offense. This leaves the fact that a woman consented or not as secondary evidence, in addition to failing to incorporate her statement as crucial evidence<sup>11</sup>. The above shows an alarming picture of the judiciary's lack of a gender perspective with which it conducts its work.

### Recommendations

Implement measures that foster the capacities of judicial personnel to incorporate a gender perspective in their work and eliminate stereotypes in judicial rulings.

Develop mechanisms to identify discriminatory rulings and practices that must be addressed and sanctioned.

### Training for judicial personnel on human rights

Following up on General Recommendation 33 and Recommendations 148.93, 148.96 and 148.99 from the UPR on Mexico in 2013, and the IACHR Country Report's Recommendations 36, 37, 40, and 43 in 2015, EQUIS has detected through access to information requests that Mexico has spent millions of pesos "training" its personnel, despite its failure to implement the rule of law and its disregard for human rights and due process in relation to increasing women's access to justice.

In 2015, the judiciary reported that forums, presentations, conferences and other academic dissemination events counted as training activities, which are all characterized by their brevity, and poor attendance by judicial personnel. Further, they do not include an evaluation of their impact on the institution's work. This inadequate implementation of judicial training reflects Mexico's mere simulation of compliance in its practices and reports.

### Recommendations

Ensure that all judicial personnel – particularly judges – participate in seminars, workshops, courses, diplomas and professional development activities that raise awareness, update their knowledge, and allow them to specialize in human rights. Guaranteeing the quality of training must be an immediate priority for the judiciary. Training must be implemented with intersectional and gender perspectives, allocated an adequate duration of time to

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<sup>9</sup> Judicial decision emitted by the Twenty-sixth Judge of the High Court of Mexico City in criminal proceedings 279/2010.

<sup>10</sup> Available at: <http://equis.org.mx/imposible-que-una-mujer-no-sepa-que-esta-embarazada/>

<sup>11</sup> Indirect amparo 159/2017, "Porkys Case", emitted by the Third District Judge of Veracruz. Available at: <http://equis.org.mx/pronunciamiento-por-la-sentencia-de-amparo-1592017/> y <http://equis.org.mx/sentencia-en-caso-de-violacion-en-veracruz-muestra-fallas-estructurales/>

achieve specific objectives, and its impact must be evaluated through clear indicators that measure progress towards the inclusion of a gender perspective in the judiciary's work.

#### *Transparency in court rulings involving women's human rights*

Following up on General Recommendation 33 of the Committee on Mexico's Concluding Comments in 2012, EQUIS observes that the judiciary does not provide accessible information to citizens. There is a general lack of public knowledge on the interpretative criteria judges use in the resolution of cases, due to the lack of publication and dissemination of rulings. EQUIS implemented two national diagnostic exercises finding that under the principles of accessibility, completeness and opportunity, no judicial institution in the country complies with its obligations to make its rulings available to the public. The second diagnostic report demonstrated that with the 2015 General Transparency and Access to Public Information Law represents a legislative setback for judicial transparency, as it significantly reduces the amount of rulings the judiciary is required to make public.

#### Recommendations

The judiciary must publish complete, updated and accessible rulings in a timely manner, in order for citizens to observe the interpretative criteria applied to cases involving women's rights, allowing them to independently and efficiently monitor the inclusion of a gender perspective in the justice system.

#### *Strengthen measures to safeguard women's lives*

Following up on Recommendations 12b, 16c, 18g and 51g of the Committee on Mexico's Concluding Comments in 2012, Recommendation 42 of the IACHR 2015 country report, and Recommendation 148.104 of the UPR in 2013, Mexico must comply with its obligations to provide due diligence and to prevent violence against women by granting effective restraining orders.

EQUIS' litigation team found authorities lack knowledge of the legal framework applicable to violence against women, and they often do not apply a comprehensive and harmonized interpretation of the laws that protect women's rights outright. EQUIS observes that authorities repeatedly minimize the risks women face, as well as the rights of victims and witnesses.

#### Recommendations

Implement harmonized laws and standardized, specialized protocols with specific guidelines for justice authorities in cases of violence against women. Risk assessments must be considered, while determining the competencies and responsibilities of various authorities to effectively implement protective measures.

Effectively train judges and public prosecutors so they apply a gender perspective when processing cases.

Raise awareness in judges and public prosecutors on the importance of granting protective measures as part of their due diligence obligations.

Establish accessible mechanisms for requesting protective measures that comprehensively take into account victims' rights and the rights of witnesses of gender-based violence. Ensure protective measures are processed impartially, without undue delays and that they grant procedural safeguards for women's right to health at all times.

#### *Strengthen Gender Units in the judiciary*

Following up on Recommendation 14e of the Committee on Mexico's Concluding Comments in 2012, Recommendation 148.71 of the UPR in 2013, and Recommendation 40 of the IACHR's 2015 country report, EQUIS found that incorporating a gender perspective in the structure and operation of the judiciary is still pending. To achieve this end, Gender Units were created as permanent bodies in the judiciary.

EQUIS conducted national-level research in 2016 to evaluate this mechanism's functioning. Our research showed that only 27 state tribunals had a Gender Unit, and of the 19 with a work plan, only 5 had established indicators.

Only 4 had their own budget and 19 of them only had 1 or 2 staff. Their institutional design is weak as they are on a low level of the organizational chart. When we observe the activities Gender Units carry out, their purpose seems unclear, as they focus on training, human resources-related activities, health services and activities that often foment stereotypes.

### Recommendation

As long as Gender Units fail to be institutionalized, the delivery of justice with a gender perspective will be a pending task for Mexico. They must be strengthened by a supporting legal framework that places them at a higher level in the institutional hierarchy, provides them with adequate financial, material and human resources, and planning, monitoring and evaluation mechanisms for their Work Plan and activities.

### *Indigenous women face discrimination when accessing justice*

Following up on Recommendation 35d of the Committee on Mexico's Concluding Comments in 2012 and EQUIS' work with 30 Mayan women promoters in 5 municipalities in Yucatan<sup>12</sup>, it is clear that community authorities, due to their geographical proximity, have the power to intervene immediately in violent situations. Community justice is characterized for its speed. It is advantageous that it is imparted by authorities who speak Maya, and have knowledge of the community and cultural context. In contrast, state-level institutions are inaccessible for indigenous women for multiple reasons: women lack knowledge regarding their existence and operation, the language and processes are very complex, and public servants often demonstrate racial discrimination.

In a diagnostic report,<sup>13</sup> EQUIS found that community authorities from Mayan municipalities in Yucatan face various obstacles to adequately address cases of violence against women. They receive no training on their functions and competencies in this regard, they lack knowledge on laws that protect women's rights and on which relevant justice institutions exist to take their case. Municipal authorities are paid low salaries, their communities are not assigned police officers, cars, or tools, and state-level authorities prohibit them from resolving cases of violence against women through mediation. In addition, Mayan women promoters highlighted that the main faults of community justice are that authorities are not available to resolve their cases, their resolutions are not binding, and they lack knowledge on women's rights and the laws protecting them.

### Recommendations

Guarantee indigenous women's access to both forms of justice, putting a special emphasis on revitalizing and strengthening the internal legal system. Foment participatory mechanisms to improve conflict resolution methods based on community values and practices.

Facilitate training processes for authorities based on interculturality, human rights and a gender perspective.

Provide community authorities with human and material resources so they can carry out their work more effectively.

Create liaison and coordination mechanisms (based on equality and mutual respect) among community and state authorities to promote, protect and guarantee the human rights of Mayan women who have experienced violence.

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<sup>12</sup> Information about the Project available at: <https://www.youtube.com/watch?v=oYJuzD-qEXI>

<sup>13</sup> EQUIS, *Diagnostic Report on the Utility of Community Justice in Conflict Resolutions Related to Violence against Women*, [Awaiting formal publication]

### 3. An analysis of public policies that address violence against women

#### *The importance of strengthening Women's Justice Centers*

Following up on Recommendations 19 c, d, e and f of the Committee on Mexico's Concluding Comments in 2012 and Recommendation 148.11 of the 2013 UPR, it is necessary to strengthen Women's Justice Centers (CEJUM).

According to ENDIREH 2016, of the 46.5 million women over 15 years of age who reside in Mexico, 66.1% have experienced at least one incident of discrimination or of emotional, economic, or physical violence in public or in their homes. 43.9% of women have been assaulted at least at one point in time in their marital, co-habitational or intimate partner relationships.<sup>14</sup> Though Mexico built 35 CEJUM, there are significant challenges in guaranteeing women's access to justice through the provision of a human rights-based, quality services.

EQUIS' 2017 report on CEJUM<sup>15</sup> found that the majority are not found in any formal laws or regulations and they are dependent on their state's Attorney General's Office. This limits their dialogue with other departments. Only 4 CEJUM have their own assets and legal personality. The majority do not have hiring criteria for directors, which encourages hiring for personal or political reasons. Public servants working in these Centers are affiliated with other institutions, and must follow their hierarchies, labor and administrative regulations. This impacts the quality of service delivery for CEJUM users. Only 11 Centers have an Annual Operating Plan which making it difficult to achieve objectives and implement activities in an efficient and timely manner.

#### Recommendation

CEJUMs must be accounted for in laws related to women's right to live free from violence. They must have a solid legal framework, operational guidelines and annual operating plans. To strengthen CEJUM institutionally, they must be constituted as decentralized bodies with their own assets and legal personality, and have budgetary independence. Hiring criteria must exist to ensure operational and management staff have an academic background and professional experience in human rights and gender issues, and the implementation of continual evaluation and professional development mechanisms must be guaranteed.

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<sup>14</sup> INEGI, National Census on Relationship Dynamics in the Home (ENDIREH), 2016.

<sup>15</sup> Available at: <http://equis.org.mx/wp-content/uploads/2017/07/Informe-CEJUM-.pdf>