**UN Committee on Migrant Workers General Comment No. 5 on**

**Migrants’ Human Right to Liberty and their Protection from Arbitrary Detention**

**Questionnaire**

**December 2018**

**Organization Information**

Name of Organization Completing Form:

**Grupo Impulsor contra la Detención Migratoria y la Tortura (Group Against Immigrant Detention and Torture)**

*Made up by the following organizations:*

American Friends Service Committte – AFSC

Saltillo Migrant House

Fray Matías de Córdova Human Rights Center

FM4 Paso Libre

Community Action Group – GAC

Inclusión y Equidad (Inclusion and Equality)

Institute for Security and Democracy – INSYDE

Jesuit Migration Service – SJM Mexico

Jesuit Refugee Service – SJR Mexico

Mesoamerican Voices (Voces Mesoamericanas)– Action with Migrant Peoples.

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**Part A: General Information**

1. Please describe the process by which migrants are detained in your country. Which authorities are tasked with this responsibility? Who or what body oversees these authorities?

In Mexico, the authority tasked with carrying out detentions on migration grounds is the National Migration Institute (INM), under the authority of the Ministry of the Interior (SEGOB). Within the INM structure, the General Office for Migration Control and Verification is found, which is in charge of everything pertaining to control, verifications, immigration checks and detentions. However, there is no external body for the constant supervision of these authorities to monitor the actions of immigration agents.

In practice, a variety of police or military bodies can potentially participate in detention operations: Federal Police, Gendarmerie, the Marine, and state or federal police

1. Where do arrests and detentions take place? Is force typically used during arrest or detention? Are there standards for treatment of migrants during an arrest? To what extent are migrants informed of what is going on during an arrest (why they are being detained, possible charges against them, etc.)?

Detentions take place across the migration corridors that run across the country from South to North, mainly in the Southeast territory, which is militarized as a result of the “Comprehensive South Border Program”, where an average of 55% of immigration detentions are carried out.[[1]](#footnote-1)

In some cities, such as Tapachula, detention. Operatives in urban areas occur frequently in the areas where there is the greatest concentration of immigrant population.

Despite the fact that INM has protocols for the use of force, most immigration operatives are carried out with the use of violence and detentions frequently take place using discretionary and oftentimes discriminatory criteria, since the immigration agents do not have knowledge of their existence.

According to investigations carried out by civil society organizations, migrants are not informed of the reason for their detention, its consequences or of the legal framework protecting them.[[2]](#footnote-2) Generally speaking, the information they receive is contradictory and almost inaccessible.

It is also important to point out that the illegal and disproportionate use of force by immigration authorities is not only applied at the time of the detention, but also due to the opacity with which immigrant detention centers operate in Mexico.[[3]](#footnote-3) The cases of torture and other cruel, inhumane and degrading treatment occur frequently,[[4]](#footnote-4) within contexts of impunity, and oftentimes to dissuade the people who have been detained from seeking asylum and signing their deportation sheet.

1. Who are the personnel that staff facilities that hold people in detention (corrections officers, law enforcement, social workers, etc.)? What are the professional qualifications of staff at these detention facilities? Who oversees staff at detention facilities?

Immigrant detention centers are guarded by INM federal agents. If it is true that middle and senior management authorities) have licentiate level studies (roughly equivalent to Bachelor’s Degree) -law, to name a profession-, the corrections officers do not tend to have professional training. Likewise, working loads within these places are long, reaching up to 12-hour working shifts or even 24-hour ones.

It is important to point out that most centers (over 50) have security personnel from private companies, outsourced by the INM, who have no training in assisting migrants and the training they receive is scarce.

There are centers of deprivation of liberty for unaccompanied immigrant children of the Integral Family Development Systems (DIF), which have psychologists and social workers.

The INM personnel attached to the delegations has no regular supervision from the central areas of the Institute; whenever it is done, the Delegation’s immediate superiors supervise. Also, the Federation´s´ Superior Oversight (ASF) made known in 2016 the results of the evaluation on the performance of the National Migration Institute and public spending, where various deficiencies in the regulation, control, certification and protection processes were identified, adding to the lack of protocols and actions and points out that it “(...) places in a situation of vulnerability the regular and irregular migration flows that enter, transit, and remain or want to leave the national territory, and at risk the respect for their human rights independent of their immigration status”. Likewise, it found “inconsistencies in the information registries from the immigration verification visits carried out and programmed; the lack of access to information; no registry of complaints presented to its Internal Control body; little or no information about the services that are provided in migration stations”.[[5]](#footnote-5).

1. Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?

The immigrant detention centers - officially referred to as “migration stations” or “temporary centers (estancias provisionales)”, are operated by the INM, and belong to the Federal Government.

The so-called “shelters” for girls, boys and adolescents, in practice places of deprivation of liberty are operated by the DIF Systems of each State or Municipality.

All immigrant detention centers in Mexico are public property; however, private security bodies operate in almost all of them.

1. Does your country monitor detention facilities? Who monitors detention facilities? What are the standards that detention facilities must adhere to?

Despite the fact that the conditions for the access and observation of detention centers are very limited, some are monitored or observed *in situ* by the National Human Rights Commission (CNDH, National Human Rights Institution), the National Mechanism for the Prevention of Torture (MNP), international organizations such as the UNHCR, and/or civil society organizations. However, this work is not enough and what is most worrying is that the international organizations and civil society organizations lack the capacity to monitor all of the centers.

In the country, migration detention is not acknowledged as a form of deprivation of liberty, since the Mexican Migration Law uses euphemistic language such as “presentation”, “securing” or “housing” when referring to migration stations.

On the other hand, the “Norms for the functioning of Migration Stations and Temporary centers of the National Migration Institute”[[6]](#footnote-6) do not contemplate what is established in the international standards for treating people deprived of their liberty, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules).

1. During detention, do detainees have access to communication with their families, legal counsel, and their own consular authorities? Are detainees provided with information on the process they are going through?

According to the “Norms for the functioning of Migration Stations and Temporary Centers of the National Migration Institute for the functioning of Migration Stations and Temporary centers”, all of these safeguards contemplated by the instrument should be respected, in reality the right to phone calls or family visits are often not respected.

There is no free and public legal assistance for those detained and most lack legal defense, except those paying a private service or who get access to the defense provided by civil society organizations, who are a minority.

Consular authorities have no presence in the smaller and further away centers, but they do in concentrating stations, when dealing with Central American representations.

People sign documents indicating that they have received information about their rights, but all studies and monitoring experiences show that, in general, people lack basic information on their process, the reason for their detention, the time they will be detained, the way of incurring in the detention, what will happen after the detention, what their rights are and the alternatives they have at their disposal in resolving their situation.

1. Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of torture and trafficking, and other migrants who are particularly vulnerable?

Women are particularly mistreated with regards to the detention conditions and the access to specific medical assistance. Also, pregnant women or with babies lack specialized assistance.

Girls and boys suffer from illegal detention and are in cases imprisoned in common areas with adults. In 2018 alone, more than 31 thousand children and adolescents were deprived of their liberty for migration reasons, which amounts to 22.8% of the total population detained. On the other hand, women represented almost 25% of the population detained (more than 33 thousand females) of which 11,586 were minors.[[7]](#footnote-7)

On the other hand, the LGBTTTI is completely stigmatized and is at extreme risk with its safety and physical and psychological integrity, adding to the fact that no immigrant detention center has adequate places for their assistance.

Regarding the indigenous population, they undergo discrimination due to their ethnic or cultural origin and do not receive information in their language nor the possibility of having interpreters or translators.[[8]](#footnote-8) Cases have even been documented of Mexican population of indigenous origin detained by agents of the National Migration Institute and deprived of their liberty in immigration stations.[[9]](#footnote-9)

With regards to those with chronic illnesses, physical or intellectual disability, they do not receive any special attention and there are no protocols to identify, protect or channel victims of torture, sexual violence, gender-based violence, serious crimes or trafficking; let alone to identify other weaknesses.

Authorities also fail to identify people in need of international protection to provide access in seeking asylum. Whenever people request it on their own means, they are subjected to obstacles and harassment to dissuade them from accessing the procedure.

1. Does the detention process look any different if minors are involved?

Children and adolescents who are detained with their families (father and/or mother) also enter immigration detention centers.

Unaccompanied minors should be sent to detention centers from the DIF system. However, protocols that look to determine the adequate actions for their assistance are not enforced in any of them, in consideration of children’s best interest, as is established by the General Law for the Rights of Children and Adolescents.

In practice, more than 90% of minors are deported without being heard and without examining the possibility of applying social protection measures.

**Part B: Legal Treatment**

The legal foundation for immigration detention in Mexico has been progressively built since the end of the twentieth century, following the drafting of a migration policy aimed at the contention of irregular migration. It is therefore important to consider the general pattern of the Mexican migration policy, even if it is not the main objective of this section.

We will only mention that the “national security” and criminalization approach of migration make up the main lines for the country’s immigration policy. In this framework, if the purpose of the immigration detention is not clear, it is fair to suppose that the State has the objective of using detention a a weapon to dissuade irregular migration, punish it and carry out the deportation. In this sense, violations of fundamental rights of foreigners and justified and legitimized - arguing that irregular migration represents a risk to national security and economic balance.

Immigration detention, as such, became a common practice since 1974 with the General Population Law, which represents the origin of the legal framework for the detention of “irregular” immigrants (- meaning that those people not carrying a valid migration document at the moment of being stopped by state authorities). This law has been developing until reaching the procedure contemplated today in the Immigration Law and its regulation.

It is important to remember that in the Mexican legal system, the immigration detention figure is not explicitly foreseen, but that, rather, the Immigration Law as well as its regulation, use euphemistic terms such as “presentation” and/or “housing”. But this semantic cleverness should not mislead: they are immigration detentions and they constitute an act of deprivation of liberty prohibited in Mexico.

According to article 1 of the Constitution of the United Mexican States, the right of all persons to enter, transit and leave Mexican territory is acknowledged. But this right is subordinated to the powers of the immigration administrative authorities, which impose laws on immigration and apply limitations to the right to enter, transit and leave the Mexican territory.

The Immigration Law sets out the functions of the National Migration Institute (INM), which consist of control, verification, and migration review and determines that only officials of the INM can check migration documentation and retain them if they suspect that they have false documents, meaning that any other public authority carrying out these actions would be violating the Migration Law. Likewise, this law establishes the possibility of carrying out the immigration detention of foreigners who are in an irregular immigration situation until their situation in the country is determined. Foreigners who cannot regularize their immigration status for the time of their stay or assistance for their return, they will be presented and then housed (detained) in migration stations enabled. According to the law, immigrants may then not exceed the time limit of 36 hours, starting from the moment in which they were detained. As soon as they are at the disposal of the INM, those who are in an irregular migration situation may take on the assisted departure or be deported.

The law also specifies the prerogative of foreigners upon receiving information about their rights, the reasons for their presentation, their right to regularize their immigration status (articles 132 to 134 of the Migration Law) and to request international protection (political asylum, refugee status, complementary protection), although in reality they are rarely notified, being a systematic omission that evidently transgresses human rights. What holds true is that those requesting to regularize their immigration status, and those requesting international protection should not be detained by the INM, nor be presented in an immigration station (because it is a measure that is inconsistent with the 1951 Convention), although this continues to be a reality.

In both of the cases previously mentioned, foreigners will remain “presented” – or detained- in the immigration station in a detention center.. Article 111 of the Migration Law provides as a general rule the fact that the INM has 15 working days, counted from the filing, to resolve the immigration status of the detainees. However, this period may increase in the following cases:

* There is no reliable information about their identity and/or nationality, or there is no difficulty obtaining identity and travel documents;
* the consulates of the country of origin or residence need more time for the issuance of identity and travel documents;
* There is an impediment for them to transit through third countries or an obstacle for establishing the travel itinerary to the final destination;
* That there is a medically accredited physical or mental illness or disability that makes it impossible for the immigrant presented to travel,
* and for an administrative or judicial appeal to be filed in which issues related to their immigration status in national territory are acclaimed; or an proceeding has been filed and there is an express prohibition by the competent authority for the foreigner to be transferred or for them to leave the country.

In any case, the law specifies that the accommodation of foreigners in immigration stations may not exceed 60 working days. However, there are several testimonies from people who say they have been detained for a longer period.

The Migration Act provides with a catalogue of recognized rights for foreigners detained, such as the right to be informed of the reasons for their detention, receive consular protection, have an interpreter, telephone communication, decent material conditions con (receive three meals a day and an adequate and nutritious diet, right to adequate facilities and the necessary personal hygiene materials), right to a medical examination and to receive medical and psychological help, legal representation, family visits, among others, and specifically the diverse 70 establishes the general guaranties of due process to which all migrants are entitled within the framework of administrative migration procedures. Despite this, although we can contemplate the existence of a specific administrative procedure that establishes the way in which the detention of foreigners in immigration stations should be carried out, in practice the rights related to this action are violated systematically.

Regarding the right to personal liberty, exceptionality should be given special attention in the case of immigration detention, because the “immigration violations” should not be criminal in nature (to which punitive actions would apply), but rather administrative. In this way, detentions should be considered an exceptional measure of last resort, given its consequences in people’s lives.

It is necessary to keep in mind that the constitutional text provides only two scenarios for the application of deprivation of personal liberty: for committing an offense (article 16) or as a sanction for an administrative sanction (article 21).

In order for immigration detention to be presumed of being consistent with the Magna Carta, it would have to be done with the purpose of sanctioning foreigners for migrating in an irregular manner and it could only last 36 hours, a situation that is far from the one provided by the Migration Law, which establishes in its article 111 that a person may stay in an immigration station for up to 60 days and in the case of using any means of defense, the detention shall be indefinite. We do not need to go any further into analysis to see the evident contradiction between the Migration Law and the Mexican Constitution. Rather, this means that there is possibility for deprivation of personal liberty even when there is no constitutional foundation to support it.

In order to carry out these detentions, the criterion of “proportionality” must be respected, where a rational relationship is established between the detention and its aim, as well as justifying the legal norm that authorizes the exercise of said act. In this sense, the detention of a migrant person should be carried out based on an individually analyzed case, specifying in detail the actions to be taken. In practice, however, foreigners entering the country with irregular documentation are detained indiscriminately and are subsequently taken into the detention centers, regardless of whether they have the right to request refuge and have the possibility of accessing alternatives other than detention.

In Mexico it is possible to request a writ of amparo against arbitrary detentions, as well as the suspension of the act claimed (regulated in articles 103 and 107 de of the Mexican Constitution and the Law of Protection), although in the case of the arrests referred to in this section, this appeal is not activated because it is resolved within the six months after its filing or up to a year after it, making it into an ineffective procedure, without taking into account the fact that the restitution measures such as immediate freedom, may not be ordered.

In addition to this, migrants do not resort to INM detentions due to ignorance of their rights or for not having the means available that make it possible.

On the other hand, regarding the processes derived from the denial of the refugee status, the review processes may take up to a year to reach a resolution, in which case only the writ of amparo described above can be filed.

In Mexico there is no judicial control ordering the detention of a migrant on charges of an irregular entry into national territory. This decision rests solely in the INM from the moment it identifies a foreigner in a possible irregular status. In so doing, it transgresses the human rights of personal liberty, equality and non-discrimination, dignified treatment, personal safety, legal security, among others, which are regulated both by international standards and in the national regulatory framework.

**Part C: Impact on Detainees**

1. Please describe the impact that detention has on detainees’ physical and mental health.

According to various researches carried out by civil society organizations, and specifically the one carried out by the Citizen Council of the INM, among the main recurring impacts on physical health are: flu, cough, sore throat, followed by headaches, hypertension, diabetes and gastrointestinal disease with symptoms such as diarrhea and vomiting. The latter are closely related to poor diet or ingestion of food in poor condition, which is given to people detained in centers. On the other hand, respiratory diseases are linked to the little ventilation of cells, overpopulation in the centers and the lack of hygiene in the facilities.

In 2015, the INM acknowledged cases of diseases that require special medical attention. For example, 52 cases of HIV/AIDS and 358 cases of mental disorders were found, of which 132 were caused by withdrawal syndrome.

The impact of the detention of migrants on mental health is particularly worrisome. On the one hand, one can notice emotional affectations that are detonated by the justified perception of being in a prison, and on the other hand, as a result of the violence used by immigration agents through conducts of enormous verbal, physical and psychological violence. At this point, it is important to note the systematic harassment facing asylum seekers, because the INM pressures them in different ways so that they desist from continuing with the process and accept their deportation.

The main symptoms identified in the context of immigration detention that can be classified as part of the traumatic experience, according to the recent Report of the National Migration Institute on immigration detention in Mexico are:

* Symptoms of re-experimentation of the traumatic event: intrusive memories of the event, recurring nightmares of the event, distress when facing elements that remind them of the event, and/or physiological reaction when recalling the event.
* Denial symptoms: denial of thoughts, feelings, conversations, decreased interest or participation in activities, feelings of detachment, blocking affection.
* Symptoms of hypervigilance: is suddenly distant, constant feeling that something is going to happen, anger fits, hyperactivity, and/or difficulty sleeping.
* Likewise, over 30% of people in detention evoked symptoms of depression at a critical level, 39% of the population presented symptoms of anxiety at a moderate level.”

Other affectations presented to their mental health due to detention are:

* Impairments to cognitive functions: lack of capacity to concentrate, decreased ability to think, reason, understand, retain and process information.
* Impairments to relational functions: distrust toward other people and particularly towards authority, problems interacting, tendency to irritability, isolation and/or aggressiveness.
* Impairments to the emotive-rational system: due to the increase of feelings of frustration, despair, helplessness, anger, nostalgia, sadness and uncertainty.
* Impairments to the system of motivations and basic beliefs: generalizing the sense of injustice as the prevailing system that transcends geographical limits combined with losing hope in the future.

On the other hand, detention centers in their majority do not have green areas or recreational and sports activities, nor with entertainment material, which has a negative impact on the physical health and the cognitive functions of the people detained. In conclusion, it is fair to conclude that the state of imprisonment migrants face punishes both the body as well as the mind, reason for which the emotional state is disrupted by the experiences they have had, from the moment of their detention until their admission into the center.

1. Please describe the varying impacts on particularly vulnerable groups, including racial and ethnic minorities. What systems or practices are in place to prevent discrimination in both proceedings and detention?

Detention centers in Mexico do not have measures to adequately assist the ethnical and cultural diversity of people deprived of their liberty which are found in them, in any of its dimensions. Vulnerable groups are most exposed to suffering from poor treatment and discrimination due to their specific condition and there are no institutional protocols for action that take into account the prevention of discrimination.

In the report drafted by the Citizen Council of the National Migration Institute (CCINM) on the findings of the monitoring mission carried out in 17 detention centers throughout the country during 2016, a considerable amount of people belonging to diverse cultural and ethnic groups, and it is proven that “all speakers of diverse languages expressed not receiving any type of translation service into their mother tongue at any moment”,[[10]](#footnote-10) and therefore are cannot express their needs or receive information to understand their process and the reasons for their detention.. Regarding the translation and interpretation needs, there is English and, in some centers, French translation available at most and these languages are often used to communicate with people whose first language is neither English nor French. In some cases, in the absence of professional translators, interpreting is done by people who are also detained. Virtually all people who speak languages other than Spanish or English do not have any type of translation service in their native language. This is even more clearly shown in the case of indigenous Central American women, who point out the lack of understanding when trying to express their concerns about their situation to the authorities.

Likewise, none of the centers has adequate diets based on religion or food practices regarding the culture and nutrition of the specific cultural groups, nor do they have adequate spaces specifically for spiritual or religious practice.[[11]](#footnote-11)

Regarding gender diversity, the spaces for the LGBTTTI community not only tend to be insufficient or non-existent but, whenever they do exist, they show precarious conditions and characteristics similar to prison cells. They are not allowed to leave the room; no recreational space or activity is provided for them either. Cases of mockery, discrimination, and sexual harassment toward this population have been documented. People from ethnic and indigenous groups tend to be victims of discriminatory treatment by the centers’ personnel as well as by others within the centers. There have even been documented cases of people of indigenous origin whose nationality is Mexican but that have been detained by agents of the National Migration Institute and deprived of their liberty, being subjected to torture and other cruel, inhumane and degrading treatments.[[12]](#footnote-12)

1. Please describe the way in which detention of migrants in your country particularly affects children who are detained. How does the detention affect education? Are educational resources available in the facilities in which they are held? Please describe any of these programs.

Despite the reiteration of principles and criteria, and progress in the harmonization of the national legal systems regarding migration and protection of the rights of children and adolescents regarding the non-separation of family units in detention centers, it can be seen how separation is a daily practice in the operation of the immigration stations and detention centers. Despite the fact that the General Law on the Rights of Children and Adolescents states that no child should be deprived of their freedom, even when travelling accompanied by adults, priority is given to migratory detention for the best interest. In the detention centers, only female children and adolescents can remain with their mothers when travelling with them, as do male children under 12 years of age. However, migration stations do not have adequate spaces to accommodate single-parent families, here the father is the one who travels with his daughters that are under age. They are therefore separated and can only see each other during hours established for family boding by the center’s rules. However, in many of the detention centers, these visits are limited to one hour a day and the time is often reduced. The space for family bonding is usually small and with no place to sit other than the floor. It is worth mentioning that sometimes the right to family bonding is denied as a form of punishment or retaliation by immigration agents or security guards.

In the case of single-parent families where the son/daughter is an adolescent, they are separated into different areas. The time they have to see each other and for mother-son/daughter bonding is very limited in frequency and extension. In the case of mothers with children over legal age, there are often strong restrictions for them to see each other during the detention, under the argument that men and women should be separated.

1. Is consideration given to keeping families together?

Despite the fact that the current national legislation on the protection of children prohibits the detention of children and adolescents by their immigration status, this is a systematic practice.

Detention has a strong impact on children and adolescents. In the various reports published by civil society organizations, there are testimonies of children with stress and depression linked to the situation of confinement. Adding to the deprivation of liberty, these boys and girls are also subjected to terrible conditions.

In overcrowded centers (something that frequently occurs), women with young children are forced to sleep on the floor (even under the bunk beds) and all together because there is no more space.

Numerous mothers’ testimonies mention that their children stop eating when they are locked up. There is evidence that under these circumstances the younger ones – especially babies and children under 4 – they constantly get sick due to inadequate food. In many of the centers, they have the institutional practice of giving milk only to children under two, which affects the diet of children between two and six years of age.

In general, medical care for babies and young children is poor. This situation is aggravated because oftentimes mothers with sick children are denied permission to visit the doctor, commonly under the argument that they have just recently gone, although they are sometimes even denied a foundation for the negative response. In the testimonies gathered, the women report that during the night there is no doctor or they are not allowed to visit them. Therefore, if a child goes through a crisis, they must wait until the next morning.

Children under 6 need five meals; however, in all of the centers they are only given three meals. This situation also generates a lot of worry among mothers, seeing that their children are very hungry and they have nothing to give them.

The diapers distributed among babies are not enough. In various centers it has been reported that they only are given one diaper for the nighttime and one for the daytime, even if the boy or girl is stomach-sick, which generates high levels of stress and great discomfort in babies, since this situation causes them pain, irritation and even skin lesions and generates distressed helplessness in mothers. In these cases, providing babies with cream for rashes becomes an unreachable goal within the centers.

The right to education is systematically violated in detained children. Detention centers lack educational programs. Of the different detention centers, only three have a space intended for children. All other centers are completely inadequate for children, with no options for educational and recreational activities. This situation generates a state of permanent despair in boys and girls, as well as in their mothers.

1. Are children typically kept in detention? How long?

The detention of boys, girls and adolescents (NNA) is often prolonged for various administrative reasons and has lasted up to several months. It is particularly serious when dealing with unaccompanied children and adolescents.

One of the most common scenarios of prolonged detention is the request for international protection. In several cities there are shelters managed by the DIF (Desarrollo Integral de la Familia). However, these are closed-door shelters in which the children remain in a situation of deprivation of liberty and uncommunicated with the outer world. It is de facto a prolongation of the migration detention, although in material conditions better than those of the detention centers managed by the INM, without the guarantee of the right to education and to the physical, mental and psychosocial development. In addition, their right to stay informed on their procedure and to have legal representation is not respected as is established by the law for the protection of children.

Although the institutional protocols indicate that unaccompanied boys, girls and adolescents seeking asylum must be immediately moved to these centers, in reality this takes weeks and sometimes even months.

Another situation that often causes the prolonged detention of NNA is when these travel accompanied by family members, which do not have identity documents. The processes for checking the link are highly bureaucratic and take months to be resolved.

1. How does the detention of migrants in your country particularly affect women? Are health resources for women made available to women in detention? How can women in detention access health resources? Are resources available for pregnant women in detention? How are pregnant women accommodated with respect to the conditions of detention?

Migratory detention subjects’ women in general, and pregnant women in particular, to indecent conditions, which put at risk their physical, mental and psychosocial health as was documented in the CCINM report.

The physical revisions upon entering the detention centers are carried out by male personnel most of the time.

A situation that is seen systemically in the different detention centers is the deficiency in the hygiene of mats and blankets. In the analysis of the specific needs according to gender, this situation worsens in the case of women. In some cases, the mattresses are stained by menstruation and they are not cleaned before being used again. These mattresses are therefore in unsanitary conditions, which are sources of infections and diseases, as well as generating a feeling of indignity in women and that, in the case of pregnant women generate risk conditions for pregnancy. This situation Is also related to the insufficient provision of basic equipment in detention centers. According to the cited reports, detained women are only given one sanitary towel for the nighttime and one during the daytime, which is insufficient for any woman in general.

Pregnant women in detention centers often show symptoms of depression and loss of appetite. In temporary centers. Whenever there is overcrowding, the testimonies of pregnant women report that they must sleep on the floor under these conditions. They also comment how the food that is given to them is inadequate for their health condition, which leads them to even stop eating.

Likewise, with regard to medical care, pregnant women interviewed admitted that they were not taken into account nor were given adequate or preferential treatment due to their condition; they also admit that ultrasound checks are not guaranteed systematically to all pregnant women.

It is also noted that lactating women suffer impacts from the detention, which leads to important effects on the development of their babies.

It is noted, on the other hand, that in migration stations or centers where there was medical assistance, the necessary checks and folic acids were provided.

**Part D: Alternatives to Detention**

1. What alternatives to detention exist in your country? Please describe these alternatives to detention and how they are generally perceived and implemented in your country.

The migration policy in Mexico is based on longstanding detention, reason for which the consideration of alternative measures and their application are recent and limited.

In December 2014 the General Law on the Rights of Girls, Boys and Adolescents (LGDNNA), was published. Here, it is established that “At no time are migrant children or adolescents, regardless of whether or not they travel in the company of an adult, to be deprived of freedom in immigration stations or in any other immigration detention centers” (DOF 02-12-2015, Article 111).

Subsequently, in August 2015 the “Pilot Program for the Care and alternative reception of unaccompanied migrant children and adolescents in Mexico” was established, through the Citizen Council of the National Migration Institute (CCINM) with the technical support of the International Detention Coalition (IDC), as part of a collaborative effort with the National Migration Institute (INM), which aimed to improve the mechanisms for the identification, channeling, reception and care of unaccompanied migrant children and adolescents.[[13]](#footnote-13)

However, up to now and despite the efforts of civil society organizations, the Mexican state still has not harmonized the Migration Law with the LGDNNA, which means that migrant children and adolescents continue to be deprived of their freedom at migration stations. In 2018 alone, 31,717 migrant minors were detained, of which 48.6% were children under 11 years of age.[[14]](#footnote-14)

Despite the lack of existing regulation, the “Pilot Program for the care and alternative reception of unaccompanied migrant girls, boys and adolescents in Mexico” represented a watershed to promote similar pilot projects for asylum seeking individuals and families in Mexico. This is because it allowed for the design of an interinstitutional coordination route to channel people from the Migration Stations to civil society shelters and Social Assistance Centers of the National System for the Integral Development of Families (DIF). Such is the case of the Migration Stations Program (Programa de Salidas de Estaciones Migratorias - SEM), that since July 2016 operates as a tripartite mechanism between the National Migration Institute, the Mexican Commission for Refugees (COMAR) and the United Nations High Commissioner for Refugees Mexico, with the aim of providing alternatives to detention to people subject of international protection and applicants for refugee status.[[15]](#footnote-15)

Despite advances in the implementation of interinstitutional coordination for detention alternatives, it is important to emphasize that these programs in Mexico are not official nor are they part of an institutional public policy, which means that they have been dependent of the goodwill of institutions and public officials in office, as well as of the role assumed by civil society organizations and shelters for advocacy, as well as in the reception and accompaniment of those benefitting from these type of programs. In general, the local population is unaware not only of the existence of these programs but of the existence of migratory detention in Mexico itself and the presence of approximately 59 detention centers for immigrants throughout the country,[[16]](#footnote-16) since it is not a public opinion topic, despite the fact that Mexico is the second country in America that detains the most immigrants, after the United States, and manages the largest migrant detention center in Latin America.[[17]](#footnote-17)

1. Have all detainees access to alternatives to detention? How many persons get an alternative to detention in comparison with the number of detainees?

In Mexico, not all people have access to alternatives to detention, since the policy on the topic of human mobility is characterized by systematic persecution, detention and deportation, all of which were reinforced since mid-2014 as a result of the Comprehensive South Border Program Integral de la Frontera Sur (PFS), increasing detentions of migrants by 80% and tripling immigration operatives only one year after their implementation.[[18]](#footnote-18) According to figures from the National Migration Institute (INM), in the last 5 years more than 740 thousand foreigners have been detained in Mexico and only in 2018, 138,612 detentions were carried out.[[19]](#footnote-19) Civil society organizations doing monitoring work inside the immigration detention centers in Mexico have denounced the situation of asylum seekers and in need of international protection which have been deprived of their liberty, who do not receive the adequate treatment or protection that enables them to request refugee status with the due guaranties, and above all they are inhibited from accesing to the procedure or they are discouraged from abandoning any interest in requesting asylum or waiving their procedures before the COMAR.[[20]](#footnote-20) This is especially worrisome due to the increase in the asylum requests in Mexico that have increased exponentially. From 2017 to 2018 requests doubled from 14,619 cases to 29,623 applicants, respectively, and by 2019, UNCHCR estimates that around 47 thousand people may apply for refugee status in Mexico. Adding to this, from 2014 to 2018, the INM detained 151,507 children and adolescents.

Therefore, despite programs focused on alternatives to detention for unaccompanied migrant NNA children and adolescents and asylum seekers, such as those described above, people who access these types of options reflect a minimum proportion compared to those detained. For example, from October 2017 to October 2018, almost 2,400 applicants for refugee status obtained alternative accommodation in civil society shelters[[21]](#footnote-21) under the Migration Stations Program. However, in that same period, 144,849 people were deprived of their liberty,[[22]](#footnote-22) which means that, on average, only 1.6% of people have access to the possibility of having an alternative to detention.

1. Have there been any policies proposed in your country that could achieve the same objectives as detention? How have these proposals for alternatives to detention been received in your country? Are proposals for alternatives to detention generally met with favor or have they been rejected? Please describe the criticisms of the policies for alternatives to detention by the general public. If these proposals have been rejected, what was the rationale for rejecting them?

Despite initiatives to promote alternatives to detention, promoted mostly by civil society or agencies of the United Nations, such as UNHCR in coordination with the INM and COMAR, the current migration policy in Mexico, generally based on detention and deportation, prevents this type of proposals from evolving and being established as part of a State policy. This is demonstrated by the fact that, to date, no program of alternatives to detention have been institutionalized, nor have they been published in the Federation’s Official Gazette, as part of government regulations. Likewise, figures of detention, compared to the number of people benefitted by the implementation of alternative measures to detention show that the bet should focus on a structural change in the policy on the topic of human mobility in Mexico, in a way that migration detention ceases to be the rule and the practice of deprivation of liberty for migration reasons disappears together with the Migration Stations. This is because, as has been constantly denounced by the organizations defending the rights of migrants and asylum seekers, the conditions that prevail in these spaces imply in themselves punitive practices that are linked to acts of torture and other cruel, inhumane and degrading treatments,[[23]](#footnote-23) as well as strong physical and psychological effects that accumulate over time, damaging the integrity of those under immigration detention. In this way, it is difficult to affirm that there are policies of alternatives to detention.

In order to solve the problems associated with the use of immigration detention, it is necessary for the Mexican state to commit to building a comprehensive policy on human mobility from a rights-guarantee perspective, within which the strengthening of the asylum system and an inclusion policy, so as to promote mechanisms that allow to leave detention as a systematic and generalized practice in Mexico behind.

**Part E. Additional information**

Please add any other information that you consider to be relevant for the CMW to take into account in the elaboration of this general comments.

**Migrant detention centers as tormenting environments**

Based on the experience of human rights organizations, it is possible to affirm that the way in which torture is expressed in the detention and deprivation of liberty of migrants in Mexico is through conditions which make up an “environment of torture”. Without ruling out the possible use of conventional torture techniques that are exercised directly on the body of a person, migrant people in detention find themselves in an environment of vigilance, control and arbitrariness that keeps them in a permanent state of psychological and body tension, with important consequences on their physical, mental and psychosocial health.

With this we refer to precarious and unhealthy conditions of life; ambiguous or arbitrary rules; diverse types of more or less subtle threats; corruption and extortion; coercion to desist from refuge and accept deportation; humiliating and discriminatory treatments by security officials and agents; lack of information or breach of their legal rights; and, in general, lack of security and human assistance measures with an intercultural, age and gender perspective.

The frequency, combination and relationship among these and other elements keep people in a traumatic environment which undermines their capacity for thinking and decision-making, reduces their psychic and physical resources to cope with the situation they are in and affects their interpersonal relationships and networks of support with the outside world. All of this generates deep harm in the biopsychosocial identity of the person which even comes to present health problems such as: anxiety, stress, somatization, depression, suicidal ideas or attempts and, in some cases, psychotic episodes.

The idea of environments of torture is based on a psychosocial and ethical paradigm which places at the center the dignity of people and complements the definition of torture and other cruel, inhumane and degrading treatment or punishment offered by the Convention Against Torture. To this regard, the researcher Pau Pérez Sales, expert in the research of this violation to human rights, points out the following:

“We define an environment of torture as a means that creates conditions that can be qualified as torture composed of a set of contextual elements, conditions and practices that circumvent the will and control of the victim and commit the self. This environment turns into cruel, inhumane and degrading treatments, or torture, when it has been generated to achieve any of the objectives specified in international law and specifically those named by the Convention Against Torture; obtaining information, confession, punishment, intimidation or coercion”.[[24]](#footnote-24)

**Access by civil society to migration detention centers**

Social organizations working on the monitoring of the migration detention centers and in the assistance and defense of those detained, we found that migration authority places obstacles on our work through the creation of bureaucratic impediments and limitations to the conditions of access to places of deprivation of liberty.

The situation can be resumed in the following:

* Most of the more than 50 detention centers that exist in Mexico are not monitored by civil society. This is especially aggravated in the so called “temporary centers”, places of reduced size designed for short-term detentions and located at road points. There is almost no organization that monitors these centers on a daily basis.
* It is important to remember that there are “shelters” that are not dependent on the INM, but rather on social services (Integral Family Development System), which in practice are centers of migratory detention for children and adolescents and lack monitoring or external supervision.
* The INM employs the regulations on access as a deterrent and has interposed bureaucratic strategies to prevent the access of social organizations to the centers.
* In the centers where the daily access of organizations is allowed (bigger “migration stations”, of the concentrator type), the conditions are very limited. There is no access to detention areas, but rather to smaller annexed spaces. Access to population lists- which would allow to identify cases according to certain criteria and in turn identify situations of vulnerability and risk- Is limited
* The INM prevents access to organizations and the detained people we defend to the file of the migration administrative procedure that keeps them detained and at risk of deportation, thus hindering their ability to defend themselves.
* There are no established mechanisms of dialogue between organizations and authorities so that the observations made by the former may be heard and therefore impact improvements in the treatment of migrants and the conditions of the centers.
* The weakness in the scope and conditions in which centers are monitored by civil society has a direct impact on the conditions in the treatment of the detainees. It is proven that constant monitoring is a preventive factor for human rights violations and mitigates the risk of cases of torture
* In addition, detainees that are accompanied by social organizations are often subjected to reprisals by the authorities which is expressed, for example, in the fact of being deported quickly, harassed and/or attacked.
1. These figures apply only to 2018 detentions made in Chiapas and Tabasco, being border states; However, if the states of Oaxaca and Veracruz are included, the percentage increases to 70.54% of immigration detentions carried out by the National Migration Institute. This information was obtained from the Annual Statistical Bulletin published by the Unit for Migration Policy on the cases of foreigners presented to the immigration authorities, according to the federal agency, 2018. Available at: <http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_presentados_y_devueltos_2018> [↑](#footnote-ref-1)
2. The report drafted by the Citizen Council of the National Migration Institute in July 2017, “Immigrant detainees in Mexico. Mission for the Monitoring of Immigration Stations and Temporary holding centers of the National Migration Institute” includes a legal analysis of the Migration Administrative Procedure (PAM) applied to immigrants deprived of their liberty and delves deeper into the topic of access to information and PAM. Available at: <https://www.wola.org/es/2017/10/consejo-ciudadano-del-instituto-nacional-de-migracion-expone-duras-realidades-que-enfrentan-los-migrantes-en-mexico/> [↑](#footnote-ref-2)
3. In 2005, the National Council for National Security released an Agreement in which it acknowledges the National Migration Institute as the National body for Security, therefore transferring these characteristics onto the Migration Station and Temporary holding centers, which has often been used to deny civil society organizations access to these spaces or information about them. Agreement available at: http://dof.gob.mx/nota\_detalle. php?codigo=2037114&fecha=18/05/2005 [↑](#footnote-ref-3)
4. For more information on the topic, please see the section on Torture in the context of human mobility and immigrant detention found in the Alternative Report of Mexican Civil Society Organizations to the UN Committee Against Torture 2012-2019. [↑](#footnote-ref-4)
5. See “Inconsistencies in the work and spending of the National Migration Institute”. Press release by the Migration Collective for the Americas, COMPA. March 10, 2016 Available at http://us7.campaign-archive2.com/?u=300e7ac6c945b1cff1e9f93e5&id=19be7394f0.  [↑](#footnote-ref-5)
6. Available at <http://dof.gob.mx/nota_detalle.php?codigo=5276965&fecha=08/11/2012> [↑](#footnote-ref-6)
7. See Statistics Bulletin 2018 by the Migration Policy Unit on cases of foreigners presented to the immigration authority, according to age groups, condition of travel and gender. [↑](#footnote-ref-7)
8. See Chapter 10. Treatment on gender and cultural diversity issues in immigration detention by the Citizen Council of the National Migration Institute, in their report on People under immigration Detention in Mexico, July 2017. Available at <https://www.wola.org/es/2017/10/consejo-ciudadano-del-instituto-nacional-de-migracion-expone-duras-realidades-que-enfrentan-los-migrantes-en-mexico/> [↑](#footnote-ref-8)
9. On the topic, see Recommendation 22/2016 issued by the National Human Rights Commission to the Commissioner of the National Migration Institute on May 22, 2016, on human rights violations, to personal freedom, of transit, to the non-discrimination of people of Mexican nationality, available at <http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2016/Rec_2016_022.pdf> [↑](#footnote-ref-9)
10. For more information of the topic, see the chapter on Treatment on gender and cultural diversity matters on detention of the report, available at: <https://www.wola.org/es/2017/10/consejo-ciudadano-del-instituto-nacional-de-migracion-expone-duras-realidades-que-enfrentan-los-migrantes-en-mexico/> [↑](#footnote-ref-10)
11. Íbid. [↑](#footnote-ref-11)
12. In September 2015, the Institute for Women in Migration together with the Estancia del Migrante González y Martínez, A.C. and Mesoamerican Voices, provided support in the case of a young indigenous man from a tsetal community in Chiapas, Mexico who was detained together with his sisters during a migratory operative on the highway since the immigration agents considered that they were from Guatemala, despite them having birth certificates issued by Mexican authorities. They did not speak Spanish, they could not read nor write and they were never provided with a translator, being deprived of their liberty in the Migration Station of Querétaro for 8 days. The young man was tortured by migration agents to force him to sign his assisted return to Guatemala. For more information on the testimonies of the victims, see: <https://vimeo.com/161527014> [↑](#footnote-ref-12)
13. See the document titled “Description of the Pilot Program for the care and alternative reception of NNA unaccompanied migrants in Mexico” from the Citizen Council of the National Migration Institute, presented during the Second Ordinary Session of the CCINM on June 30 2016. Available at: [https://www.gob.mx/cms/uploads/attachment/.../Descripcion\_del\_Programa\_Piloto.pdf G:\Mi unidad\05 FrayMa 2019\50 INCIDENCIA\60 NU\01 CMW\OG DETENCIÓN\DEF\HYPERLINK](file:///G%3A/Mi%20unidad/05%20FrayMa%202019/50%20INCIDENCIA/60%20NU/01%20CMW/OG%20DETENCI%C3%93N/DEF/HYPERLINK) [↑](#footnote-ref-13)
14. Information obtained through the Statistical Bulletin 2018 by the Migration Policy Unit on cases of foreigners presented to the migration authority, according to age groups and gender. [↑](#footnote-ref-14)
15. See Regional Integral Framework for Protection and Solutions MIRPS, Regional Follow up Report 2017-2018 by the Organization of American States and the United Nations High Commissioner. Available at: <https://www.acnur.org/5be46de64.pdf> [↑](#footnote-ref-15)
16. The National Migration Institute manages around 32 Migration Stations throughout Mexico, more than 15 Provisional Centers type A – foreseen for a maximum stay of 48 hours-, and 12 Centers type B – for a maximum stay of 7 days. See Global Detention Project in <https://www.globaldetentionproject.org/countries/americas/mexico> [↑](#footnote-ref-16)
17. See “Alternatives to detention, a new opportunity for Mexico´s new administration” by International Detention Coalition, September 2018. Available at: <https://idcoalition.org/wp-content/uploads/2018/10/Propuestas_Alternativas_MEX_2018-2024_25oct.pdf> [↑](#footnote-ref-17)
18. Boggs, Clay; Meyer, Maureen and Knippen, Jose, Un camino incierto: Justicia para delitos y violaciones a los derechos humanos contra personas migrantes y refugiadas en México, 2015. Available at <https://www.wola.org/wpcontent/uploads/2015/11/Un-camino-incierto_Nov2015.pdf> [↑](#footnote-ref-18)
19. National Migration Institute, “Annual statistical bulletin on cases of foreigners presented to the migration authority, according to the continent and country of nationality” from 2014 to 2018, Migration Police Unit, Ministry of Interior. Available at <http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Boletines_Estadisticos> [↑](#footnote-ref-19)
20. See report “Personas en detención migratoria en México. Misión de Monitoreo a Estaciones Migratorias y Estancias Provisionales del Instituto Nacional de Migración”, by the Citizen Council of the National Migration Institute, Mexico, July 2017. Available at: <https://www.wola.org/es/2017/10/consejo-ciudadano-del-instituto-nacional-de-migracion-expone-duras-realidades-que-enfrentan-los-migrantes-en-mexico/> [↑](#footnote-ref-20)
21. Marco Integral Regional para la Protección y Soluciones MIRPS, Regional Follow up report 2017-2018 by the Organization of American States and the United Nations High Commissioner for Refugees. Available at: <https://www.acnur.org/5be46de64.pdf> [↑](#footnote-ref-21)
22. National Migration Institute, “Annual Statistical bulletin on cases of foreigners presented to the immigration authority, according to the continent and country of nationality” from October 2017 to October 2018, Migration Police Unit, Ministry of Interior. Available at <http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Boletines_Estadisticos> [↑](#footnote-ref-22)
23. See “Migration Detention and Torture: from state of emergency to rule of law” by the Group against Immigration Detention and Torture, July 2018. Available at: <http://cdhfraymatias.org/web/?page_id=3399;%20https://sinfronteras.org.mx/index.php/informestematicos/> [↑](#footnote-ref-23)
24. Pérez-Sales, Pau. 2016. Tortura Psicológica. Definición, Evaluación y Medidas. Biblioteca de Psicología. Editorial Desclée de Brouwer. Bilbao, Spain. [↑](#footnote-ref-24)