



That, on the basis of Article 103, section I, of the *Amparo* Law, and Article 107, section I, of the Political Constitution of the United Mexican States (CCPEUM), and first Article of the *Amparo* Law, we promote in a timely and appropriate manner an *AMPARO TRIAL*, against the failures of the authorities indicated as responsible. In order to comply with the provisions of Article 108 of the *Amparo* Law, we state the following:

**I. Name of the complainant:** The one indicated in the preamble of the claim.

**II. Address to receive notifications:** The one indicated in the preamble of the claim.

**III. Responsible Authorities:**

1. Constitutional Governor of the State of Morelos, Cuauhtémoc Blanco, with address at: Plaza de Armas s/n Cuernavaca Centro, Centro 62583 Cuernavaca, Morelos, e-mail: [cuauhtemoc.blanco@morelos.gob.mx](mailto:cuauhtemoc.blanco@morelos.gob.mx)
2. Secretary of Government of the State of Morelos, Pablo Héctor Ojeda Cárdenas, with address at: Plaza de Armas s/n first floor, Cuernavaca Centro, Centro 62000 Cuernavaca, Morelos, e-mail: [pabloojeda.segob@morelos.gob.mx](mailto:pabloojeda.segob@morelos.gob.mx)
3. State Commissioner of Public Security, José Antonio Ortiz Guarneros, with address at: Acapulco-Mexico Highway, Km. 102 +900, Acatlipa, Postal Code 62586, Temixco, Morelos.
4. Attorney General of the State of Morelos, Mnst. Uriel Carmona Gándara, with address at: Av. Emiliano Zapata #803. Colonia Buenavista, Cuernavaca Morelos. Postal Code 62130, Phone: (777) 3 29 15 00, e-mail: [urielcarmona@fiscaliamorelos.mx](mailto:urielcarmona@fiscaliamorelos.mx)
5. President of the High Court of Justice of the State of Morelos, Rubén Jasso Díaz, with address: at Francisco Leyva 7, Colonia Centro, Cuernavaca, Morelos. P.C. 62000. 777-362-1000 extension 1056.
6. Director General of the Penitentiary Centers of the State of Morelos, LL.B. Gilberto Barba Ocampo, domiciled in the village of Atlacholaya, at a known address with no number, P.C. 62790, Xochitepec, Morelos, e-mail: [dgestablecimientospenitenciarios@hotmail.com](mailto:dgestablecimientospenitenciarios@hotmail.com)

7. Director General of the Penitentiary of the State of Morelos, Jesús Francisco Flores Jiménez, domiciled in the town of Atlacholoaya, at a known address with no number, P.C. 62790, Xochitepec, Morelos, e-mail: [direccionoperativa.cgrf@gmail.com](mailto:direccionoperativa.cgrf@gmail.com)
8. Director General of the Penitentiary Centers of the State of Morelos, LL.B. Gilberto Barba Ocampo, domiciled in the village of Atlacholoaya, at a known address with no number, P.C. 62790, Xochitepec, Morelos, e-mail: [direccion.reinsercion@morelos.gob.mx](mailto:direccion.reinsercion@morelos.gob.mx)
9. Director of the Morelos State Center for Social Reintegration in Atlacholoaya,, Lluvia Oregón Bartolo, domiciled in the village of Atlacholoaya, at a known address with no number, P.C. 62790, Xochitepec, Morelos, e-mail: [ceresojuridico@gmail.com](mailto:ceresojuridico@gmail.com)
10. Director of the Female Center for Social Reintegration in Atlacholoaya, LL.B. Diana Inés Hernández Román, domiciled in the village of Atlacholoaya, at a known address with no number, P.C. 62790, Xochitepec, Morelos, e-mail: [centro.femenil.atlacholoaya@hotmail.com](mailto:centro.femenil.atlacholoaya@hotmail.com)
11. Director of the Social Reintegration Prison in Cuautla, LL.B. César David Chávez Patiño, with address at: Paulino Martínez Street, intersection with Emilio Vázquez Gómez, at Colonia Francis I. Madero, P.C. 62744, Cuautla, Morelos, e-mail: [carcel\\_cuautla@hotmail.com](mailto:carcel_cuautla@hotmail.com)
12. Director of the District Prison of Jojutla, LL.B. Gilberto Jesús Serna Rivera, with address at: Calle Zapatito, no number, colonia El Pochote, P.C. 62900, Jojutla, Morelos, e-mail: [juridico\\_jojutla@hotmail.com](mailto:juridico_jojutla@hotmail.com).
13. Director of the District Prison of Jonacatepec, Eva Mariela Juárez Marquina, with address at: Calle Libertad, no number, intersection with Moctezuma,

Barrio de Veracruz, P.C. 62930, Jonacatepec, Morelos, e-mail: [mdjj2010@hotmail.com](mailto:mdjj2010@hotmail.com)

**14.** Director-General of the Center for the Execution of Measures for Deprivation of Liberty for Adolescents in Alpuyeca, LL.B. Ania Dafne Ortiz Esparza, with address at: Carretera Alpuyeca-Miacatlán Km. 4.5, P.C. 62790, Jojutla, Morelos, e-mail: [dgema.admon@morelos.gob.mx](mailto:dgema.admon@morelos.gob.mx).

**15.** Secretary of Health of the State of Morelos, Mr. Marco Antonio Cantú Cuevas, with address at: Calle Ajusco No. 2, Colonia Buena Vista. P.C. 62130, Cuernavaca, Morelos, e-mail: [marco.cantu@morelos.gob.mx](mailto:marco.cantu@morelos.gob.mx).

~~\*E-mail:~~

**16.** Pre-Trial Services Unit in Morelos (UMECA), in the absence of exact information about its address, provided here is the address of the State Public Safety Commission located at Acapulco-Mexico Highway, Km. 102 +900, Acatlipa, Postal Code 62586, Temixco, Morelos.

**IV. Interested Third Parties:** We state that, because of the nature of the acts claimed, they do not exist.

**V. Events claimed:**

1. Failure to create, issue, and implement effective public policies, programs, or measures for prevention, risk mitigation, treatment and care of cases of infection by the SARS-CoV2 virus and failure to deal with corpses in a transparent and gender-sensitive manner, to safeguard the health, personal integrity and life of persons deprived of liberty in the following local prisons in the State of Morelos: Morelos State Center for Social Reintegration in Atlacholoaya, Female Center for Social Reintegration in Atlacholoaya, Social Reintegration Prison in Cuautla, District Prison of Jojutla, District Prison of Jonacatepec, Center for the Execution of Prison for Adolescents in Alpuyya.

## VI. Opportunity and legitimacy.

2. The submission of this claim is timely because the claimed failures have continuous effects, as they are acts of negative nature consisting of various failures of the responsible authorities. Such failures are of a consecutive nature *“because the violation is updated from one moment to the next, as they are continuous events that are not exhausted once produced, but until the omission ceases”*.<sup>1</sup>
3. First, in the present *amparo* trial, only direct violations of the Political Constitution of the United Mexican States (the Constitution) are alleged, which updates the exception to the principle of definitiveness provided for in Articles 107, section IV, of the Constitution and 61, section XX of the *Amparo* Law. That is why we believe that this respectable jurisdictional authority is competent to hear this matter without imposing as an obstacle the principle of definitiveness by any remedy provided for in the National Criminal Enforcement Law or other legal systems, since this is not an analysis of legality, instead, the unconstitutionality of the responsible authorities’ failures is directly claimed.
4. The failures are claimed in relation to the constitutional interpretation to be made of the obligations of multiple authorities (not only penitentiary, but also public defense, which is absent from the framework of action of any remedy provided for in the National Criminal Enforcement Law) with regard to the right to life, personal integrity and health protection of persons deprived of liberty. The resolution of the dispute therefore requires the direct interpretation of the Constitution by this jurisdictional authority.
5. Likewise, as recognized at the time by the Judicial Branch of the Federation in General Agreement 8/2020 issued by the Plenary of the Council of the Federal Judiciary (CJF), the extraordinary nature of the health emergency caused by the COVID-19 pandemic places justice system operators on a new ground. This situation is now endorsed in General Agreement 21/2020, which warns that: “It is a fact that the pandemic remains a danger to the health of all.”<sup>2</sup> Currently, no law provides for action in an emergency context such as the current one. In this

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<sup>1</sup> Thesis XVII.2.3 K (10th), Record 2016880, *Gazette of the Judicial Weekly of the Federation*, TCC, Tenth Period, Book 54, May 2018, Volume III, Page 2759 and Jurisprudence P./J. 43/2003, Record 183581, *Judicial Weekly of the Federation and its Gazette*, Plenary Court, Ninth Period, Volume XVIII, August 2003, Page 1296.

<sup>2</sup> General Agreement 21/2020 of the Plenary of the Council of the Federal Judiciary, concerning the resumption of deadlines and the staggered return of the courts in light of the contingency for the COVID-19 virus, approved on 28 July 2020, recital 7. Available only in Spanish, in: [https://www.cjf.gob.mx/resources/index/infoRelevante/2020/pdf/AcuerdoGeneral21\\_2020.pdf](https://www.cjf.gob.mx/resources/index/infoRelevante/2020/pdf/AcuerdoGeneral21_2020.pdf)

regard, the acts claimed pose a danger to the lives of people in a vulnerable situation in an unprecedented emergency context, and this extraordinary situation therefore demands maximum streamlining of justice in the interest of safeguarding the life, health and physical integrity of people.

6. Secondly, although it is only necessary to establish an exception to the principle of definitiveness, the plaintiff also considers the exception provided for in Article 107, section IV, of the Constitution and 61, section XX, of the *Amparo* Law, in connection with the fact that there is no remedy providing for the suspension of the acts claimed with: (i) the same scope, (ii) the same or lesser requirements and (iii) in terms equal to or less than the *Amparo* Law.
7. In the present case, there is no remedy that recognizes the legitimate interest of civil society organizations to which the suspension of the acts claimed is envisaged, for we only have authority to make administrative requests that concern prison authorities (while this *amparo* is about the failures of multiple authorities and not just penitentiaries) and detention conditions (while this *amparo* has a greater scope, since it also concerns measures to reduce overpopulation in prison centers).<sup>3</sup>
8. More commonly, according to the National Criminal Enforcement Law, it is first required to resort to the administrative procedure, which does not provide for suspension, unless it is an exceptional case of urgency. In order to be able to access the Enforcement Judge in an urgent case, it must be demonstrated that: “if the motion were not addressed immediately, it would be without matter.” This implies the imposition of additional requirements besides those provided for in the *Amparo* Law, for the suspension of the claimed act, and, therefore, this second exception is updated according to the principle of definitiveness.
9. Finally, Article 115 of the National Criminal Enforcement Law does not set a time limit for resolving failures and uses vague language on acts, without setting a concrete and specific time limit that provides legal certainty that the suspension would be decreed within a shorter period than that of the suspension in the indirect *amparo*.<sup>4</sup>

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<sup>3</sup> Jurisprudence 2nd./J. 104/2007, Record 172237, Judicial Weekly of the Federation and its Gazette, Second Chamber SCJN, Ninth Period, Volume XXV, June 2007, Page 283 and Jurisprudence 2a./j Thesis 197/ 2016 (10th), Record 2013379, Gazette of the Judicial Weekly of the Federation, TCC, Tenth Period, Book 38, May 2017, Volume III, Page 744 P./J.

<sup>4</sup> Jurisprudence 2a./J. 144/ 2015 (10th), Record 2010357, Gazette of the Judicial Weekly of the Federation, Second Chamber, Tenth Period, Book 24, November 2015, Volume II, Page 1113.

10. Accordingly, it is considered that the present *amparo* trial is admissible due to the fact that two of the exceptions to the principle of definitiveness apply: the absence of a remedy providing for the suspension of the claimed acts, and the existence of direct violations of the Constitution. In this regard, it is imperative that the analysis of the merits by this jurisdictional authority should be a priority in view of the risk to health, life and personal integrity of those persons who are in a situation of vulnerability aggravated by an emergency health of unprecedented proportions. These latter considerations will be of utmost importance, especially in the case of the study of the application for the complete and definitive suspension of the acts claimed, with restorative effects.

## VII. Legitimate interest

### A. Civil association for the defense of human rights with verified social purpose

11. The legitimate interest of the plaintiff is outlined in the terms of Articles 103, section I and Article 107, section I of the CPEUM in relation to Articles 1, section I and 5, section I of the *Amparo* Law, whenever they claim failures of the authorities of Morelos and the Federation and these failures are imputed to authorities for the purposes of the *amparo* trial, since they violate human rights recognized both in the Constitution and in international treaties to which Mexico is a party.
12. The Plenary of the Supreme Court of Justice (SCJN), contrary to thesis 111/2013, stated that the legitimate interest implies “an intermediate legitimization between legal interest and simple interest, since it is not required to verify the infringement of a subjective right, but neither does it imply that anyone can prosecute,” so that “legitimate interest only requires an infringement of the legal sphere understood in a broad sense, either because such interference is direct, or because the grievance stems from a particular situation that the person has in the legal order.”<sup>5</sup>

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<sup>5</sup> **LEGITIMATE INTEREST IN AMPARO. TO VERIFY WHETHER IT IS APPLICABLE TO A CIVIL ASSOCIATION, IT IS NECESSARY TO ANALYZE WHETHER THERE IS A RELATIONSHIP BETWEEN COLLECTIVE OR INDIVIDUAL HUMAN RIGHTS WHOSE VIOLATION IS CLAIMED AND ITS SOCIAL PURPOSE.** In accordance with the provisions of the Plenary of the Supreme Court of Justice, in the thesis of jurisprudence P./J. 50/2014 (10th), title and subtitle: "[LEGITIMATE INTEREST CONTENT AND SCOPE FOR THE PURPOSE OF THE LEGITIMACY OF THE AMPARO TRIAL \(INTERPRETATION OF ARTICLE 107, SECTION I, OF THE POLITICAL CONSTITUTION OF THE UNITED STATES OF MEXICO\)](#).", in order to have a verified **legitimate interest** in the *amparo* trial, it is necessary to verify the existence of an infringement of a certain legal sphere – not exclusively in a patrimonial matter – appreciated under a parameter of reasonableness, and not just as a simple possibility, that is, a logic that must keep the link between the person and the alleged infringement, so that a possible constitutional protection sentence would imply obtaining a certain benefit. Therefore, in order to verify **the legitimate interest** of a civil association in the defense of collective or individual human rights, it is necessary to analyze whether there is a

13. For the Supreme Court of Justice (SCJN), legitimate interest is defined as: “[T]hat personal, individual or collective interest, qualified, current, real and legally relevant, which can be translated, in the event of granting the amparo, as a legal benefit in favor of the complainant, arising from an infringement of their legal sphere in a broad sense, which may be of economic, professional, **public health**, or any other nature”.<sup>6</sup>
14. However, the plenary of the same Court<sup>7</sup> specified which elements one must gather in order to prove the legitimate interest of the complainant(s). For that reason, we will then set out the requirements specified by the SCJN, as well as the reasons why we maintain a legitimate interest in the acts claimed.
  - i. It implies the existence of a link between certain fundamental rights and the person who appears in the process.
15. There is a link between the rights of persons deprived of their liberty claimed in the present petition for *amparo* and the Centro Prodh as a legal entity defending human rights in Mexico.
16. This would not be the first time that a civil society organization dedicated to the defense of human rights has a legitimate interest recognized, as the First Chamber of the SCJN in the *amparo* held in revision 323/2014: Civil organizations whose social purpose is to intervene in public affairs, according to their purposes and principles, have a legitimate interest in governmental decisions relating to such social purposes.<sup>8</sup>
17. In this regard, the CESCR, which is responsible for the interpretation of the International Covenant on Economic, Social and Cultural Rights, has similarly pointed out, in General Comment 14, the importance of civil society organizations being recognized as having the right to participate in decision-making related to the right to health of persons in vulnerable situations (including persons deprived of liberty): “States parties should respect, protect, facilitate

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relationship between those whose violation it claims and its social purpose. TENTH COLLEGIATE COURT ON ADMINISTRATIVE MATTERS OF THE FIRST CIRCUIT.

<sup>6</sup> SCJN. First Chamber. Jurisprudence 1st/J. 38/2016 (10th). Gazette of the Judicial Weekly of the Federation. Tenth period. Book 33, August 2016, Volume II. Pg. 690.

<sup>7</sup> SCJN. Plenary. Contradiction of Thesis 111/2013. Gazette of the Judicial Weekly of the Federation. Tenth period. Book 14, January 2015, Volume I. Page 90.

<sup>8</sup> SCJN. First Chamber. Amparo in Revision 323/2014. Decided unanimously with five votes of Justices Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz, Jorge Mario Pardo Rebolledo (rapporteur), Olga Sánchez Cordero de García Villegas and President Alfredo Gutiérrez Ortiz Mena. Available only in Spanish for online reference at: <https://www.estevez.org.mx/wp-content/uploads/2016/05/323-2014-AR-PS-VP.pdf>



*and promote the work of human rights advocates and other members of civil society with a view to assisting vulnerable or marginalized groups in the realization of their right to health.*”<sup>9</sup>

18. On the other hand, the Judicial Branch of the Federation (PJF) has ruled that, in order to verify whether a civil association has a legitimate interest to attend the *amparo* trial, we must analyze whether there is a relationship between the human rights violation claimed and the social purpose of the association.<sup>10</sup>
19. The Centro Prodh was constituted by public deed thirty-four thousand one hundred and twenty-two on March 22, 1988, and registered in the book of legal entities number fifteen thousand and sixteen of the Property Public Registry of the Federal District (today Mexico City). Since its founding more than 31 years ago, the Centro Prodh has been dedicated to the defense of human rights in Mexico, dedicating much of its work to the defense of the right of access to justice for persons deprived of their liberty, through the documentation of cases, legal advice, litigation in national and international courts – jurisdictional and non-jurisdictional – and the criminal defense of some cases.
20. According to the most recent modification of its social purpose, the aims of the Centro Prodh are, among others:
  - 1.- *To provide support in the defense and promotion of human rights, benefiting poor people, sectors and regions; to carry out activities to achieve better living conditions and development for indigenous communities and vulnerable groups due to their age, sex or disability.*
  - 5.- *To assist national and international governmental and non-governmental institutions in carrying out the objective of the organization.*
21. The main thematic program of the Centro Prodh is called *Democratic Justice*, through which we seek to contribute to the consolidation of a democratic rule of law and to the struggle against impunity through the incorporation of international standards in public policies, mechanisms and practices related to citizen security and the judicial system to promote equitable access to justice. As it can be seen, the link between the Centro Prodh and the human rights of persons deprived of their liberty is unquestionable, considering both the social purpose

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<sup>9</sup> General Comment 14, CESCR. Paragraph 62. Available at: <https://www.refworld.org/pd/4538838d0.pdf>

<sup>10</sup> Joint Isolated Thesis I.10<sup>th</sup>.A7 K (10th), Registration Number 2016932, Tenth Collegiate Court on Administrative Matters of the First Circuit, Book 54, May 2018. Page 2585.

established in the memorandum of association and the work programs of the Centro Prodh.

22. In Mexico, there is a diversity of legal instruments and national and international decisions that develop the content of the right to defend human rights. For example, Article 2 of the Law for the Protection of Human Rights Defenders and Journalists defines human rights defenders as: ***“Private individuals acting individually or as members of a group, organization or social movement, as well as legal entities, groups, organizations or social movements whose purpose is the promotion or defense of human rights”***.
23. Based on this definition, it is clear that the Centro Prodh is a legal entity whose work is protected by Article 16 of the American Convention on Human Rights (ACHR), which must be guaranteed by the Mexican State. In this regard, the jurisprudence of the Inter-American Court of Human Rights (IAHR Court) establishes the following: ***“From this perspective, Article 16 of the American Convention also includes the right of individuals to set up and participate freely in non-governmental organizations, associations or groups involved in human rights monitoring, reporting and promotion. Given the important role of human rights defenders in democratic societies, the free and full exercise of this right imposes upon the State the duty to create the legal and factual conditions for them to be able to freely perform their task.”***<sup>11</sup>
24. Thus, the right of association, protected by Article 16 of the ACHR and Article 9 of the Constitution, includes the right to associate with the purpose of defending human rights. Likewise, the right to defend human rights falls within the duty of States and their authorities to ensure that the human rights of all persons are effectively respected, as contained in Article 1<sup>st</sup> of the Constitution and Article 1<sup>st</sup> of the ACHR. The excerpt above is from the judgment of the Inter-American Court in the case *Nogueira de Carvalho v. Brazil*<sup>12</sup>.
25. As it may be understood from the aforementioned, the right to defend human rights involves being able to effectively access the resources made available by

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<sup>11</sup> Inter-American Court, *Kawas Fernández v. Honduras, Judgment of merits, reparations and costs*, April 03, 2007. Paragraph 146.

<sup>12</sup> Inter-American Court, *Nogueira de Carvalho v. Brazil, Judgment on preliminary objections and merits* of 28 November 2006. Paragraph 74, 75 and 77: ***“The Court believes that, in a democratic society, discharge of the States’ obligation to create the conditions necessary for the human rights of all persons under their jurisdiction to be effectively respected and guaranteed is intrinsically linked to the protection and recognition of the important role played by human rights defenders, as it has been established in the continuous jurisprudence of the Court. The States have the duty to provide the resources necessary for human rights defenders to conduct their activities freely; to protect them when they are subject to threats and thus ward off any attempt against their life and safety; to refrain from setting up hindrances that might make their work more difficult, and to conduct conscientious, effective investigations of violations against them, thus preventing impunity.”***

the State apparatus as a means of defending them. Recognizing the legitimate interest of the Centro Prodh is a natural consequence of the nexus between the rights of persons deprived of liberty, the social purpose of the Centro Prodh's memorandum of association, with regard to the defense of the human rights of groups in situations of vulnerability, and the right to defend human rights, which includes the right to appeal.

- ii. The link does not require a power expressly granted by the legal order, i.e. the person in interest is able to express a grievance that is different from that of the other members of the society, as it is a qualified, current, real and legally relevant interest.

26. The Centro Prodh's interest in this *amparo* is qualified, current, real and legally relevant.
27. It is **qualified**, since it is a civil society organization that aims to defend the human rights of persons in vulnerable situations, and it is in a special situation in relation to the legal order derived from its purpose as an institution for more than 31 years.
28. This special situation in the face of the legal order is also reflected in the case of persons deprived of their liberty in the National Criminal Enforcement Law, since the Articles: 7, 26, 108, 116, 117, 166 and 170 recognize the role of civil society organizations in concluding collaborative agreements; making applications and initiating administrative procedures for the monitoring of criminal enforcement; as well as their participation in the development of plans and programs related to the enforcement of penalties. The prison authorities have the obligation to develop mechanisms for participation with civil society organizations.
29. The above makes it clear that not all citizens can demand the provisions of the National Criminal Enforcement Law, since the same legal rule considers a **special and explicit legal relationship with civil society organizations that advocate for the human rights of persons deprived of their liberty.**
30. In addition, the Centro Prodh has accompanied and represented the victims in two cases before the Inter-American Court of Human Rights that relate to persons who have been deprived of their liberty at some point: the case of women

victims of sexual torture in *Atenco vs Mexico*<sup>13</sup>, and the case of *Cabrera and Montiel Flores v. Mexico*.<sup>14</sup> In the *Atenco* case, the Inter-American Court even ruled on the arbitrariness of pre-trial detention and the inter-American standards on such a precautionary measure.<sup>15</sup> Also, in 2007, as part of the impetus for the reform of the criminal justice system in Mexico, the Centro Prodh appeared before the Inter-American Commission on Human Rights (IACHR) to address issues related to the rights of persons deprived of their liberty.<sup>16</sup>

31. Similarly, the Centro Prodh has litigated numerous cases at the national and international levels on behalf of persons who are or have been deprived of liberty.<sup>17</sup> In addition, it has recently accompanied and represented cases related to the defense of human rights of persons deprived of their liberty and the COVID-19 pandemic.<sup>18</sup>
32. According to the *Amparo* in Revision 323/2014 decided by the First Chamber of the SCJN, to prepare studies aimed at fulfilling the obligations of the Mexican State with respect to the right to education “allows the conclusion that there is a specific relationship with the object of its claim”.<sup>19</sup>
33. The *Centro Prodh* has carried out several investigations based on documented

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<sup>13</sup> Inter-American Court of Human Rights, Case of Women Victims of Sexual Torture in *Atenco v. Mexico*, Judgment of preliminary objection, merits, reparations and costs of November 28, 2018. Available for online reference at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_371\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_371_ing.pdf)

<sup>14</sup> Inter-American Court of Human Rights, Case of *Cabrera and Montiel Flores v. Mexico*, Judgment of preliminary objection, merits, reparations and costs of November 26, 2010. Available for online reference at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_220\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_220_ing.pdf)

<sup>15</sup> Inter-American Court of Human Rights, Case of Women Victims of Sexual Torture in *Atenco v. Mexico*, Judgment of preliminary objection, merits, reparations and costs of November 28, 2018. Page 94-96. Available for online reference at:

[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_371\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_371_ing.pdf)

<sup>16</sup> IACHR. Public Hearings. 175 period of sessions. October 12, 2007 Available at: <http://www.oas.org/es/cidh/audiencias/topicslist.aspx?lang=en&topic=14>

<sup>17</sup> In this regard, see: Case of *Alberta Alcántara and Teresa González*

<https://centroprodh.org.mx/causas/alberta-alcantara-teresa-gonzalez/?lang=en>. Case of *Jacinta Francisco*

*Marcial* (available only in Spanish) <https://centroprodh.org.mx/casos-3/jacinta-francisco-marcial/>. Case of *Idelfonso Zamora* (available only in Spanish) <https://centroprodh.org.mx/casos-3/ildefonso-zamora/>.

Case of *Sergio Sánchez Arellano* <https://centroprodh.org.mx/2018/01/24/sergio-sanchez-arellano/?lang=en>. Case of *Ángel Amílcar Colón Quevedo* <https://centroprodh.org.mx/causas/angel-amilcar-colon-quevedo/?lang=en>. Case of *Monica Esparza* (available only in Spanish)

<https://centroprodh.org.mx/casos-3/monica-esparza/>. Case of *Community Water Defenders* (available only in Spanish) <https://centroprodh.org.mx/casos-3/defensores-comunitarios-del-agua/>

<sup>18</sup> *Animal Político*, *La Lucha Cotidiana de los Derechos Humanos: Tres retratos de la defensa de derechos humanos en tiempos del COVID-19*, por Centro Prodh, 26 de mayo de 2020 (available only in Spanish), <https://www.animalpolitico.com/la-lucha-cotidiana-de-los-derechos-humanos/tres-retratos-de-la-defensa-de-derechos-humanos-en-tiempos-del-covid-19/>

<sup>19</sup> First Chamber SCJN. *Amparo* in Revision 323/2014. Page 67. Available only in Spanish at: <https://www.estevez.org.mx/wp-content/uploads/2016/05/323-2014-AR-PS-VP.pdf>

cases which have been summarized in publications and reports<sup>20</sup> whose primary objective is to demand and influence prison conditions, as well as the guarantee and respect of the rights of persons deprived of their liberty.

34. In the current context of the COVID-19 pandemic, the Centro Prodh has continued to defend persons and prison conditions because of the serious impact on their right to health, personal integrity and life. Following this work, various articles have been published<sup>21</sup> to make visible the pandemic impact on vulnerable populations, such as women, indigenous people and especially migrants and persons deprived of liberty.
35. On the other hand, the Centro Prodh's interest is **current and real**, as this *amparo* is about the failure to take measures related to detention centers, concerning the COVID-19 pandemic. Since the beginning of the year, this health emergency has had an impact on the conditions of detention and rights of persons deprived of their liberty.
36. It is **true**, therefore, what the Inter-American Commission on Human Rights itself, in its resolution 1/2020 has stressed: “*The importance of having the support, participation and cooperation of individuals and civil society groups, non-governmental organizations, community-based organizations, and the private sector to ensure that the governments’ efforts to prevent, contain and treat the pandemic are effective and timely.*”<sup>22</sup>

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<sup>20</sup>Prodh Center. *Del papel a la práctica: La aplicación de las reformas constitucionales en el sistema de justicia 2011-2016. Monitoreo de la aplicación de las reformas en materia de derechos humanos, penal y amparo.* (From paper to practice: The application of constitutional reforms in the justice system 2011-2016. Monitoring the implementation of human rights, criminal and amparo reforms). Available only in Spanish for online reference at: <https://centroprodh.org.mx/wp-content/uploads/2018/01/DelPapelPractica.pdf>

Prodh Center. *Mujeres con la frente en alto. Tortura Sexual en México y la respuesta del Estado.* (Chin up women. Sexual torture in Mexico and the State's response). Available only in Spanish for online reference at: [http://centroprodh.org.mx/wp-content/uploads/2018/11/TTS\\_Full\\_digitalversion.pdf](http://centroprodh.org.mx/wp-content/uploads/2018/11/TTS_Full_digitalversion.pdf)

Prodh Center. *Tortura Sexual en México. Contexto, prácticas e impactos.* (Sexual torture in Mexico. Context, practices and impacts). Available only in Spanish for online reference at: [http://centroprodh.org.mx/wp-content/uploads/2018/11/Informe\\_TSexual\\_Dic2015.pdf](http://centroprodh.org.mx/wp-content/uploads/2018/11/Informe_TSexual_Dic2015.pdf)

<sup>21</sup> Animal Político, *Los derechos humanos de las personas privadas de libertad frente al COVID-19* (*Human Rights of persons deprived of liberty in face of COVID-19*), by Centro Prodh, March 30, 2020 (available only in Spanish). <https://www.animalpolitico.com/la-lucha-cotidiana-de-los-derechos-humanos/personas-privadas-de-libertad-frente-al-covid-19/>

*Tres retratos de la defensa de derechos humanos en tiempos del COVID-19* (*Three portraits of the defense of human rights in times of COVID-19*), by Centro Prodh, 26 May 2020 (available only in Spanish).

<https://www.animalpolitico.com/la-lucha-cotidiana-de-los-derechos-humanos/tres-retratos-de-la-defensa-de-derechos-humanos-en-tiempos-del-covid-19/>

<sup>22</sup> IACHR. Pandemic and Human Rights in the Americas. Resolution 1/2020. Page 7. Available at: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>

37. The IACHR also urged to: “**Refrain from restricting the work** and movement of journalists and human rights defenders, who perform a key function during a public health emergency by reporting on and monitoring the actions of the State.”<sup>23</sup>
38. Special consideration should be given to the vulnerability of persons deprived of their liberty, their lack of accessible and quality information on the health emergency and their rights, as well as the shortage of public defenders, who face an excessive workload, and the difficulties of paying private lawyers’ fees. All things considered, the right of most persons deprived of their liberty to demand the fulfillment of their human rights in the context of the health emergency is an illusion. Thus, there is a reinforced duty on the part of the judiciary to recognize the legitimacy of the Centro Prodh in the context of the health emergency, and this is also the position expressed by the plenary of the Federal Judiciary Council in several general agreements that were published in the context of the suspension of judicial proceedings due to the pandemic.
39. Finally, it is **legally relevant** because the rights of persons deprived of liberty are at stake, including their life and personal integrity and, of course, their right to health. These rights are covered by national and international human rights standards, such as the ACHR, the International Covenant on Civil and Political Rights, the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Mandela Rules), the judgments of the Inter-American Court of Human Rights on persons deprived of their liberty, which have a binding obligation on the Judiciary.
- iii. It consists of a differentiated and broader category than the legal interest, but it is not a generic interest of the society as it is the case of the simple interest. In other words, it implies access to the competent courts for possible legal violations to interests that are legally relevant and thus protected.
40. The legitimate interest is a legal category that extends the range of legitimacy of the *amparo* trial which traditionally required the verification of the legal interest. However, it does not imply an arbitrary opening and without control of the legitimacy of the *amparo* trial, instead, it is expected that the complaining party proves the existence of infringements or violations of human rights with legal importance.
41. The Centro Prodh is able to demonstrate why the claimed act affects our legal

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<sup>23</sup> Ibid., p. 13.

sphere by hindering the achievement of our social purpose of defending human rights and hindering the free and full exercise of our right to legally defend relevant interests, as the human rights of persons deprived of their liberty. In other words, we have a particular interest in ensuring their human rights.

- iv. The granting of *amparo* would result in a legal benefit in favor of the complainant, i.e., a positive effect in their legal sphere, whether current or future but certain, which is not a remote consequence, but the immediate result of the resolution which, if any, is to be adopted.<sup>24</sup>
- 42. The Centro Prodh would benefit from being able to fulfill its social purpose of defending the human rights of persons deprived of liberty in the context of the COVID-19 pandemic.
- 43. An eventual grant of *amparo* would mean: **(i)** the possibility of freely exercising our social purpose of defending human rights, namely the human right of access to justice for persons deprived of liberty; **(ii)** the possibility of freely and fully exercising our right to defend human rights, specifically the human rights of persons deprived of their liberty in the context of the COVID-19 pandemic; **(iii)** Indirectly, the protection of the rights to life, health and personal integrity of persons deprived of their liberty against COVID-19.
  - v. There must be an infringement of the legal sphere of the complainant in a broad sense, appreciated according to its reasonableness and not just as a simple possibility.
- 44. For the SCJN, reasonableness implies that *“the infringement of the legal sphere of the complainant in the broad sense should be possible, that is, the existence of such infringement should be reasonable. Therefore, this term refers to the logic that should keep the link between the person and the alleged infringement.”*<sup>25</sup>
- 45. Concerning this element, first of all, the existence of the link between the complaining party and the infringement on our human rights is evident, especially since **preventing us from filing the *amparo* trial is to take from us the appropriate legal tool for the justiciability of the human rights of persons deprived of their liberty** and, therefore, the social purpose of the organization is violated and the rights of the Centro Prodh as a human rights defender are violated.

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<sup>24</sup> Amparo in Revision 323/2014. First Chamber SCJN. Page 63. Available only in Spanish at: <https://www.estevez.org.mx/wp-content/uploads/2016/05/323-2014-AR-PS-VP.pdf>

<sup>25</sup> SCJN. Plenary. Contradiction of Thesis 111/2013. Resolved at the session of 5 June 2014.

46. Secondly, the Centro Prodh performs dozens of visits to prisons each year, as well as numerous actions, procedures and appeals to the prison authorities concerning the rights of the persons we defend and accompany. In this regard, the Centro Prodh is a user of the prison system who would benefit from the improvement in the conditions both for the persons deprived of liberty who we accompany and for us as users of the prison system.

vi. Thus, the complainant has a different self-interest from that of any other, that the public authorities act in accordance with the legal order, when for this purpose such self-interest is affected.

47. As established, the Centro Prodh's purpose differentiates it, as a subject, from any other. For more than 31 years, the Centro Prodh has had expertise in the defense of human rights of persons deprived of their liberty and has performed specific investigations into the prison system, activism focused on decision-making authorities in the field, litigation on behalf of victims deprived of their liberty and other activities related to the defense of the human rights of persons deprived of their liberty.

vii. The identifiable legal situation arises from a specific relationship with the object of the claim that is argued, either by a personal circumstance or by sectoral regulation.

48. In order to identify the relationship of the undersigned with the object of our claim, i.e., that the fact that the acts claimed violate our rights, we have shown that the Centro Prodh has been a human rights organization in Mexico for more than 31 years and devotes much of its work to the defense of the human rights of persons deprived of their liberty.

49. In that sense, there is a personal circumstance that puts us in a different legal position with regard to the objective we seek: That administrative and judicial authorities related to criminal enforcement take the necessary measures to respect, guarantee, protect and promote the human rights of persons deprived of their liberty in the context of the COVID-19 pandemic.

viii. Although in a specific legal situation the collective or diffuse interest and the legitimate interest may be present, the fact is that such an association is not absolute and unailing.

50. As this criterion establishes, the SCJN has abandoned the definition of legitimate interest that required the pursuit of a collective interest in order to



consider that interest verified, as held by the Second Chamber in various cases. Therefore, regardless of whether a collective or diffuse right is involved, it still is a legitimate interest of the Centro Prodh.

ix. Due to its normative configuration, the categorization of all possible situations and assumptions of legitimate interest should be the product of the daily work of the *amparo* judges in applying such legal mechanism.

51. This Honorable Court has the opportunity to establish a precedent consistent with the jurisprudence of the judicial branch of the Federation and with the principle of progressivity established in the 1st Article of the Constitution, while it would lay the foundations for the justiciability of the rights of persons in situations of vulnerability during emergency conditions when their health, life and personal integrity are at real and immediate risk.

x. Finally, the interest must respond to the nature of the process of which it is a part, that is, the legitimate interest needs to be harmonious with the dynamics and scope of the *amparo* trial, consisting of the protection of the fundamental rights of individuals.

52. Lastly, the claim pursued by this complaining party is compatible with the purpose of the *amparo* trial. In this concern, the expected effects of a possible grant of the *Amparo* and Justice Protection are reasonably achievable; in other words, it is not a judgment that is impossible to obtain because the damage is irreparable or because its compliance would cause greater damages than an alternative judgment. Nor is there any updated cause of inadmissibility applicable to this *amparo* trial. Thus, it is not risky to state that the *amparo*, as a simple and effective resource, is the proper mechanism for effectively protecting our right to defend the human right of access to justice and the free and full exercise of our social purpose.

#### *B. Infringement in a certain legal sphere: Damage to prisons and communities*

53. As stated and explained in **the technical opinion on health conditions within prisons related to the COVID-19 pandemic** (offered as Annex III) issued by international and national experts on epidemiology, health and medicine who have not been compensated for the case – at the request of the complainant for the present case –, not taking concrete mitigation measures in prisons has the following consequences: i. Persons deprived of their liberty would be at higher risk during the COVID-19 pandemic; ii. Persons deprived of their liberty would be at a significantly higher risk of severe COVID-19 disease; iii. Prisons can

become reservoirs of COVID-19 by increasing the risk of future outbreaks not only in prisons but in communities; iv. Prisons can accelerate the spread of COVID-19 in communities; v. They may hamper the fight against the pandemic in communities. Also, as stated in the same report, the only viable health policy in prisons is to take risk mitigation measures to prevent COVID-19 infection.

54. These same statements are also present in other reports by the United Nations, World Health Organization and the Red Cross. As argued by Elena Leclerc, the coordinator of the health in detention program for the International Committee of the Red Cross (ICRC), an outbreak of coronavirus (COVID-19) in a prison could be devastating for the population there, especially an overcrowded prison where general health is already poor.<sup>26</sup>
55. International human rights organizations, such as the Inter-American Commission on Human Rights and the Office of the United Nations High Commissioner for Human Rights (OHCHR), also expressed their concern about the pandemic and emphasized the importance of countries taking action to address it within the framework of human rights, considering the differentiated impact on vulnerable groups such as persons deprived of liberty.<sup>27</sup>

### *C. In dubio pro actione and the development of every possibility of appeal*

56. The provisions of Article 17, third paragraph, of the Constitution should be observed: “Whenever the equality between the parties, the due process or other rights are not infringed in the trials or proceedings in the form of a trial, authorities should give priority to resolving the conflict over procedural formalisms”.
57. The *pro persona* principle is embodied in the principle of *in dubio pro actione*, in order to avoid unnecessary formalisms in the promotion of the *amparo* trial.<sup>28</sup> In

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<sup>26</sup> Available at <https://www.icrc.org/en/document/protecting-prison-populations-infectious-disease>

<sup>27</sup> UN, Office of the United Nations High Commissioner for Human Rights, COVID Guidelines 19 <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>

IACHR, Resolution 1/2020 on Pandemic and Human Rights in the Americas, <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>

<sup>28</sup> ACCESS TO AMPARO TRIAL UNDER NEW CONSTITUTIONAL ORDER I.30.C.12 K (10TH); 10TH. Época; T.C.C.C.; S.J.F. and its Gazette; Book XII, September 2012; Volume 3; p. 1496.

*PRO PERSONA* PRINCIPLE. ITS APPLICATION ALLOWS TO OPTIMIZE THE ADMISSION OF APPEALS UNDER AMPARO. I.40.C.12 C (10th), Judicial Weekly of the Federation and its Gazette Book XII, September 2012, Volume 3, page: 1945; EFFECTIVE JUDICIAL PROTECTION. THE JUDICIAL BODIES, IN INTERPRETING THE REQUIREMENTS AND FORMALITIES ESTABLISHED IN THE LAW FOR THE ADMISSIBILITY AND LEGITIMACY OF TRIALS, MUST

this respect, the origin of the present *amparo* trial should be understood in light of the *pro actione* principle.

58. The *pro persona* principle, which is obligatory in the Mexican legal order, has a procedural aspect: the *pro actione* principle. It supposes that, as regards interpretation of norms relating to fundamental rights, courts should opt for the one which would lead to the greatest protection and guarantee of rights when settling disputes concerning fundamental rights. Thus, the procedural requirements must be applied without excessively restricting access to justice for the protection of fundamental rights--so that such cases can effectively be heard. As stated above, the effectiveness of the *amparo* as a protection instrument must be analyzed in the light of the principles of conforming and *pro persona* interpretation; understanding in the latter its *pro actione* facet, thus, the *amparo* trial responds fully to the intended purpose of the constituent, favoring the admission of the *amparo* claim and reserving the study of the merits to the corresponding procedural stage.
59. The *Amparo* Law must be interpreted in the light of the right to effective controls through legal remedies to safeguard the rights at stake. This guarantee must be interpreted in the light of Article 2.3 of the International Covenant on Civil and Political Rights and Article 25 of the ACHR, in relation to Article 17 of the Constitution in its guarantee of effective judicial protection. By ordering that everyone has the right to due process in court, that will be provided in a prompt, complete and impartial manner in accordance with the deadlines and terms established by the laws.
60. In a similar sense, Articles 14 and 16 of the Constitution, as well as Article 8 of the ACHR, provide that for the determination of a person's rights and obligations

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BEAR IN MIND THE RATIONALE OF THE RULE TO AVOID FORMALITIES THAT MAY PREVENT A SUBSTANTIVE PROSECUTION OF THE CASE. 1a. CCXCI/2014 (10th), Gazette S.J.F.; Book 9, August 2014; Volume I; p. 536; DEMAND FOR DIRECT *AMPARO*. IN ORDER TO GUARANTEE THE HUMAN RIGHT OF EFFECTIVE JUDICIAL PROTECTION AND TO FULLY COUNT WITH THE 24 HOURS ON THE EXPIRATION DAY OF THE TIME LIMIT TO PROMOTE THE DEMAND, AS AN EXCEPTION, IT MAY BE PRESENTED AT THE RESIDENCE OF THE COURT CLERK, IN THE CITY OF RESIDENCE OF THE COMPLAINANT, WITHIN THE AUTHORIZED HOURS, WHEN THE RESPONSIBLE AUTHORITY RESIDES IN A DIFFERENT PLACE. III.3.T.11 K (10th); Gazette S.J.F.; Book 6, May 2014; Volume III; p. 1980. ACCESS TO DUE PROCESS THE GUARANTEES AND MECHANISMS CONTAINED IN ARTICLES 8, NUMBERS 1 AND 25 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS, INTENDED TO MAKE THEIR PROTECTION EFFECTIVE, ARE UNDER THE FUNDAMENTAL RIGHT PROVIDED FOR IN ARTICLE 17 OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES. Thesis: VI. 1st.A:J/2 (10th), Judicial Weekly of the Federation and its Gazette, Book XI, August 2012, Volume 2, P. 1096.

in a civil, labor, fiscal or any other nature, the authority must ensure three components:

- a) that the person be heard within a reasonable period of time;
- b) by a competent, independent and impartial judge or court (natural judge),
- c) previously established by law (non-delegable legislation).

61. Thus, the jurisprudence of the Inter-American Human Rights System has established that states have an obligation to develop and standardize **effective remedies** for the full protection of human rights, but also to ensure the proper application of such remedies by their judicial authorities.

62. In this regard, the *amparo* trial is a judicial remedy for the protection of human rights and its guarantees provided for by the Articles 103 and 107 of the CPEUM, and its primary objective is to repair and/or stop the infringement generated by laws or acts of authority that violate human rights, so as to restore them to the victim. With regard to the concept of “effectiveness” required of *amparo* actions or remedies and their equivalents, the jurisprudence of the Inter-American Court of Human Rights has interpreted its appropriateness and remedial nature by pointing out that: “[A]ccording to this principle, the absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress. A remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective”<sup>29</sup>

63. In relation to the above, the thesis III.4. (III Region) 6K(10th.)<sup>30</sup> of **EFFECTIVE JURISDICTIONAL PROTECTION. IN ORDER TO ACHIEVE THE EFFECTIVENESS OF THAT HUMAN RIGHT, JUDGES MUST DEVELOP THE POSSIBILITY OF JUDICIAL REMEDY**, according to an interpretation of the elements that must be considered to ensure effective protection, which are set out below:

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<sup>29</sup> Inter-American Court. Case of *Bámaca Velásquez*, Judgment of November 25, 2000, para. 191. REQUESTED BY THE GOVERNMENT OF URUGUAY

<sup>30</sup> Fourth Collegiate Circuit Court of the Auxiliary Center of the Third Region with residence in Guadalajara, Jalisco, in the isolated thesis III.4.(III Region) 6 K (10th.), of the Tenth Period, published in the Judicial Weekly of the Federation and its Gazette; Book VI, March 2012, Volume 2, Constitutional Affairs, page 148.

(a) The right to due process or guarantee of jurisdictional protection is a subjective public right incorporated in any legal sphere so that, within the time limits provided for in the applicable law, they can have access to independent and impartial courts to make their claim or defend themselves against a lawsuit;

(b) the governed person must have guaranteed access to the jurisdictional authority with legal powers to resolve a specific matter provided for in the legal system, that is, anyone who needs due process shall have full assurance of receiving it by the permanently established courts, in advance of the conflict, without any condition other than the necessary formalities, reasonable and proportional to the case in order to achieve its processing and resolution; and,

(c) The implementation of the necessary and effective mechanisms to improve access to justice . Thus, the public power cannot condition or prevent access to the due process, which means that the applicable law must not impose limits on that right, although it must provide for formalities essential to the conduct of the process, therefore, in addition to the regulations, the bodies responsible for administering justice must facilitate the access to jurisdiction.

64. Moreover, *the pro-persona* principle requires that all the possibilities of remedies be developed, allowing them to have a useful effect on safeguarding the human rights of individuals.<sup>31</sup>
65. Therefore, failure to recognize the legitimate interest of the Centro Prodh and, consequently, dismissing the present claim would impede access to effective judicial protection, since it would imply an analysis lacking in completeness and clarity; imposing excessive procedural burdens, through an interpretation of the constitutional and legal framework that is typical of the substantial resolution.

#### D. *The strict interpretation of the causes of inadmissibility*

66. The grounds of inadmissibility provided for in Article 61 of the *Amparo* Law must be strictly interpreted so as not to interfere with the right of access to justice of the governed persons. Therefore, this jurisdictional authority shall analyze

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<sup>31</sup> Common Jurisprudence XXVII.1. (VIII Region) J/3 (10th), Tenth Period, Book XVIII, March 2013, Volume 3, p. 1830.

Article 113 of the *Amparo* Law, as well as the grounds of inadmissibility contained in Article 61, section XXIII, which by its open design could become unconstitutional and in the concrete case is applied in an abstract way to give content to powers that under the system of distribution of powers correspond to the Executive and Legislative Powers, but it is applied to the extreme of abstracting from any possibility of constitutionality control, when it is exactly the system of division of powers that is established to avoid arbitrary action. Furthermore, the analysis of the system of distribution of powers is carried out only from a formal dimension, without analyzing the material dimension, which is precisely where violations of the complaining party's rights are located.

67. Therefore, this court shall analyze in the specific case the constitutional application of Article 113 in relation to Article 61, section XXIII of the *Amparo* Law to harmonize the set of constitutional rights and the procedural norms with the purpose of giving them full effect and promoting the more expansive and less restrictive interpretation of rights.
68. It is clear that the judicial vocation in the application of the grounds of inadmissibility must be to admit the demand and exhaust the means of defense during the trial, rather than to prevent the governed persons from accessing justice. Human rights, in accordance with *the principle of progressivity*, cannot be interpreted restrictively, except in the case of constitutional restrictions, which is not the case here.
69. Accordingly, as stated above, this Honorable District Court is requested to recognize the legitimate interest of the Centro Prodh in filing the petition for *amparo* and to declare it appropriate when it is estimated that no grounds of inadmissibility are present.
70. **Under oath to tell the truth, we declare that** the facts and failures of which we are aware, which constitute the background to the claimed acts and the foundations of the concepts of violation, are as follows:

## **VIII. Background**

### *A. Global health and social emergency*

71. The World Health Organization, on 11 March of this year, declared a global health and social emergency, which requires effective and immediate action by governments, individuals and businesses, those who have an essential role to play

in minimizing the likelihood of transmission and the impact on society. The WHO also noted that early, bold and effective measures will reduce short-term risks to employees and long-term costs to businesses and the economy. Finally, it stressed that States would have to prepare for imminent contagion in enclosed spaces such as prison centers, a rule especially applicable to the case in question.

72. In addition to the above, it should be mentioned that on 23 March of the current year WHO appealed to States, under the specific heading of measures for the prevention and control of contagion within prisons and other places of detention, where it suggested that, in addition to measures of reducing visitors to prisons, temperature measurement or isolation and strict hygiene guidelines within establishments; that consideration should be given to the special vulnerable situation of persons deprived of their liberty , in addition to the fact that overcrowding and overpopulation pose a greater risk of infections<sup>32</sup>.

#### B. COVID-19 in Mexico

73. Mexico is in a state of health emergency because of the pandemic caused by the coronavirus. Since March 11, 2020, the World Health Organization declared the SARS-CoV2 virus outbreak (COVID-19) a pandemic and public health emergency of international relevance.<sup>33</sup>
74. In this context, Mexico reported the first case of COVID-19 on February 28, 2020, which is why the Federal Executive issued a Decree on March 23, agreeing to establish the General Health Council (CSG) on permanent session and to prioritize COVID-19 as a serious disease.
75. In addition, agreements from March 24<sup>34</sup>, March 27<sup>35</sup>, March 30<sup>36</sup>, March 31<sup>37</sup> and April 21<sup>38</sup> established extraordinary and preventive measures to address the

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<sup>32</sup> Cf. Call on the World Health Organization to take specific measures within prisons, available in Spanish at <https://www.infobae.com/america/agencias/2020/03/23/oms-aboga-por-medidas-para-evitar-brotos-de-coronavirus-en-las-carceles/>, accessed September 01, 2020.

<sup>33</sup> WHO, opening remarks by the Director-General of WHO at the media briefing on COVID-19 held on 11 March 2020, <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

<sup>34</sup> AGREEMENT establishing preventive measures to be implemented for the mitigation and control of health risks associated with SARS-CoV2 virus disease (COVID-19) - available only in Spanish. [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5590339&fecha=24/03/2020](https://www.dof.gob.mx/nota_detalle.php?codigo=5590339&fecha=24/03/2020)

<sup>35</sup> AGREEMENT amendment that adds the human resources management criteria to contain the spread of COVID-19 coronavirus in Federal Public Administration units and entities, published on March 23, 2020. Available only in Spanish. [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5590670&fecha=27/03/2020](https://www.dof.gob.mx/nota_detalle.php?codigo=5590670&fecha=27/03/2020)

pandemic, underscoring that COVID-19 is a health emergency due to force majeure and establishing the suspension of labor, educational and recreational activities, as well as voluntary travel limitations, in order to avoid the rapid spread of the virus.

### C. COVID-19 in Mexican prisons

76. On April 7 of this year, at the press conference led by the Assistant Secretary for Health Prevention and Promotion, Dr. Hugo López-Gatell Ramírez, the “Protocol of Action for the Care of COVID-19 within Federal Centers for Social Reintegration (CEFESOS)” was presented. It was created for the care of persons deprived of their liberty in two ways: prevention and emergency care.
77. However, this document does not establish how to address the conditions of hospitalization that represent an obstacle to containing and facing an outbreak of COVID-19; and it also leaves aside the overcrowding and overpopulation, lack of water and poor hygiene conditions, lack of specialized medical personnel or adequate medical infrastructure.<sup>39</sup>
78. In addition, this Protocol makes no reference to the more than 280 penitentiary centers located throughout the national territory, which house more than 180 thousand persons deprived of their liberty, including 15,934 belonging to the federal jurisdiction<sup>40</sup>.
79. As several experts and human rights groups have recognized, Mexican prisons, populated by more than 201,065 people,<sup>41</sup> constitute a potential epicenter for the rapid spread of COVID-19, **both inside and outside** prison facilities.<sup>42</sup>

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<sup>36</sup> AGREEMENT declaring the SARS-CoV2 virus disease epidemic as a health emergency due to force majeure (COVID-19) - available only in Spanish.

[https://www.dof.gob.mx/nota\\_detalle.php?codigo=5590745&fecha=30/03/2020](https://www.dof.gob.mx/nota_detalle.php?codigo=5590745&fecha=30/03/2020)

<sup>37</sup> AGREEMENT establishing extraordinary actions to address the health emergency generated by the SARS-CoV2 virus - available only in Spanish.

[https://www.dof.gob.mx/nota\\_detalle.php?codigo=5590914&fecha=31/03/2020](https://www.dof.gob.mx/nota_detalle.php?codigo=5590914&fecha=31/03/2020)

<sup>38</sup> AGREEMENT establishing extraordinary actions to address the health emergency generated by the SARS-CoV2 virus - available only in Spanish. March 31, 2020.

[http://www.dof.gob.mx/nota\\_detalle.php?codigo=5592067&fecha=21/04/2020](http://www.dof.gob.mx/nota_detalle.php?codigo=5592067&fecha=21/04/2020)

<sup>39</sup> Cf. Announcement of the Organization of Civil Society AsíLegal, published on 7 April 2020, available only in Spanish at: <https://asilegal.org.mx/comunicados/protocolo-para-la-atencion-de-covid-19-en-ceferesos-preocupante-e-incipiente/>, accessed on 26 April 2020.

<sup>40</sup> *Ibidem*.

<sup>41</sup> *Cuadromensual de información estadística penitenciaria nacional. Prevención y readaptación social. (Monthly national penitentiary statistical information notebook. Prevention and social*



80. Several prisons in the country have already reported cases and deaths from COVID-19. As of September 1<sup>st</sup>, the National Human Rights Commission (CNDH) reported 2,234 confirmed cases, 291 suspected cases and 198 deaths in prison facilities.<sup>43</sup> However, human rights and civil society organizations claim that the official figures do not correspond to the real impact caused by the virus.<sup>44</sup>
81. As of June 18, the rate of transmission in prisons at the national level is estimated at 8.5 new cases per day. <sup>45</sup> Because the disease may be asymptomatic in some cases and because Mexico does not perform regular, reliable, and comprehensive tests, the number of people infected with SARS-CoV2 is likely to be much higher than the number of diagnosed and documented cases.
82. Between 5.1 and 10 per cent of the population in Mexican prisons are particularly vulnerable to the virus due to age or underlying medical conditions.<sup>46</sup> At the national level, as of July 6, a total of 3,685 persons (just 2 per cent of the total prison population) had been released in the State of Mexico and **none in Morelos**.<sup>47</sup>
83. According to available information, systemic deficiencies exist in local prisons, including overpopulation, poor medical care, and difficulties in accessing water and personal hygiene products.

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*rehabilitation*). *Mexico. 2019* - Available only in Spanish at [https://forojuridico.mx/situacion-del-sistema-penitenciario-mexicano-2/#\\_ftn3](https://forojuridico.mx/situacion-del-sistema-penitenciario-mexicano-2/#_ftn3) [last accessed 8 July 2020].

<sup>42</sup> Human Rights Watch, *COVID-19: The Risk in Mexican Prisons*, <https://www.hrw.org/news/2020/06/04/covid-19-risk-mexican-prisons> June 4, 2020 [Last accessed July 7, 2020]

<sup>43</sup> National Commission on Human Rights, <https://twitter.com/CNDH/status/1300916533674356751> September 1, 2020. Available only in Spanish.

<sup>44</sup> Brookings, *Mexico's prisons, COVID-19, and the amnesty law*, 22 May 2020, <https://www.brookings.edu/blog/order-from-chaos/2020/05/26/mexicos-prisons-covid-19-and-the-amnesty-law/>

<sup>45</sup> Asilegal, *Prison Map COVID-19 - available only in Spanish*, <https://asilegal.org.mx/mapa-penitenciario-covid-19/>

<sup>46</sup> Latin American Criminology Society, *The Effects of Coronavirus on Latin American Prisons*, <https://criminologialatam.wordpress.com/2020/06/12/efectos-del-covid-19-carceles-de-latino-america/> June 12, 2020, p. 63 [last accessed July 9, 2020] - summary in English at <https://drive.google.com/file/d/1G9bus57ZL6fmKz4eo-pZiVeAKOQMCAfE/view>

<sup>47</sup> Latin American Criminology Society, *The Effects of Coronavirus on Latin American Prisons*, <https://criminologialatam.wordpress.com/2020/06/12/efectos-del-covid-19-carceles-de-latino-america/> June 12, 2020, p. 63 [last accessed July 9, 2020] - summary in English at <https://drive.google.com/file/d/1G9bus57ZL6fmKz4eo-pZiVeAKOQMCAfE/view>

Mainly through various provisions of the National Criminal Enforcement Law ([National Criminal Enforcement Law](#))

#### D. Prison overpopulation

84. The CNDH has recently highlighted systemic deficiencies in the prison system, especially overcrowding.<sup>48</sup> The numbers of the most recent prison population census estimate that 45.6 per cent of persons deprived of liberty share their cell with more than five persons.<sup>49</sup>
85. The special report on COVID-19 published by the CNDH on July 1<sup>st</sup>, 2020 states that the prison population in Morelos is made of 3,456 inmates, with a capacity of 2,047, so the facilities exceed 68.8% of the total capacity.<sup>50</sup> In terms of overcrowding, according to the 2019 Diagnosis, Cuautla was the most populated prison, with a capacity of 218 inmates and a population of 495 (overpopulation of 127%), CERESO of Atlacholaya had a capacity of 2,019 inmates and a population of 2,337 (15% above capacity), and Jojutla has a capacity of 132 inmates and a population of 338 (156% above capacity).<sup>51</sup> According to the National Human Rights Commission, the prison population in Morelos belonging to vulnerable groups is distributed as follows: 77 indigenous people, 28 inmates with mental disabilities, 197 elders, 503 people with disabilities, and 18 foreigners.<sup>52</sup>

#### E. Lack of hygiene supplies and medical care in the prisons

86. At national level, only 40 per cent of detainees received personal hygiene supplies, from which only 7.6 per cent were in state or local facilities.<sup>53</sup> In addition, 22.4 per cent of the national population received no medical care.<sup>54</sup> The 2019 National Diagnostic of Penitentiary Supervision reports poor hygiene, material and equipment in 63 per cent of state prisons, as well as deficiencies in

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<sup>48</sup> National Commission on Human Rights in Mexico, *Special Report COVID-19 in Prisons*, available only in Spanish <https://www.cndh.org.mx/documento/informe-especial-covid-19-en-centros-penitenciarios> p.

<sup>49</sup> National Commission on Human Rights in Mexico, *Special Report COVID-19 in Prisons*, available only in Spanish <https://www.cndh.org.mx/documento/informe-especial-covid-19-en-centros-penitenciarios> p.

<sup>50</sup> National Commission on Human Rights in Mexico, *Special Report COVID-19 in Prisons*, available only in Spanish <https://www.cndh.org.mx/documento/informe-especial-covid-19-en-centros-penitenciarios> p.

<sup>51</sup> National Commission on Human Rights, *National Diagnostic of Penitentiary Supervision 2019*, available only in Spanish <https://www.cndh.org.mx/web/diagnostico-nacional-de-supervision-penitenciaria>, p. 270. Available only in Spanish.

<sup>52</sup> National Commission on Human Rights in Mexico, *Special Report COVID-19 in Prisons*, available only in Spanish <https://www.cndh.org.mx/documento/informe-especial-covid-19-en-centros-penitenciarios> p.

<sup>53</sup> National Commission on Human Rights in Mexico, *Special Report COVID-19 in Prisons*, available only in Spanish <https://www.cndh.org.mx/documento/informe-especial-covid-19-en-centros-penitenciarios> p.

<sup>54</sup> National Commission on Human Rights in Mexico, *Special Report COVID-19 in Prisons*, <https://www.cndh.org.mx/documento/informe-especial-covid-19-en-centros-penitenciarios> p.

health care services in 33 per cent of state prisons.<sup>55</sup> The 2019 National Diagnosis also identified deficiencies in the care of women with children at the Atlacholoaya CEFERESE.<sup>56</sup>

87. In 2019, the National Diagnosis of Penitentiary Supervision<sup>57</sup> evaluated prison facilities in the State of Morelos under the following items: (I) Aspects that guarantee the personal integrity of inmates; (II) Aspects that guarantee a decent stay; (III) Conditions of governance; (IV) Social reintegration of inmates; and (V) Groups of inmates with specific requirements. Item I includes medical care, and item II includes the condition of facilities, hygiene and food. The 2019 National Diagnosis for Morelos identifies deficiencies in overcrowding, medical care, prevention of violent incidents, and material and hygiene conditions. It also concludes that there is a "lack or deficiency of material and hygiene conditions" in the medical area, the kitchen and the dining rooms.
88. Other highlights include deficiencies in the care of women with children, pregnant women, and elderly prisoners.<sup>58</sup> The National Diagnosis uses a classification system for the items and assigns colors (green, yellow or red) to the prisons according to their compliance with the criteria of each item. Only the Jonacatepec center was classified as green in item I, Guarantees of Personal Integrity. The remaining four centers (CERESO in Atlacholoaya, CEFERESO in Atlacholoaya, Cuautla and Jojutla) were classified as red in item II, Guarantees of a Decent Stay. The centers Cuautla and Jojutla were classified as red in item I, which includes medical care. The evaluation in the Diagnosis resulted in a total classification of 5.97 for Cuautla, 5.98 for the Atlacholoaya CERESO, 6.04 for Jojutla and 7.32 for the Atlacholoaya CEFERESO, from a maximum of 10. At state-level evaluation, item II, Guarantees of a Decent Stay, was classified as red, while the other four were classified as yellow.
89. More recently, in January 2020, a report of the Human Rights Commission for the State of Morelos pointed to urgent problems of overpopulation, poor medical care, lack of personnel, lack of work activities and clear inequality among inmates of the five local prisons and youth centers (CEMPLA).<sup>59</sup>

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<sup>55</sup>National Commission on Human Rights, National Diagnostic of Penitentiary Supervision 2019, [https://www.cndh.org.mx/sites/all/doc/sistemas/DNSP/DNSP\\_2019.pdf](https://www.cndh.org.mx/sites/all/doc/sistemas/DNSP/DNSP_2019.pdf) p. 8. Available only in Spanish

<sup>56</sup>National Commission on Human Rights, National Diagnostic of Penitentiary Supervision 2019, [https://www.cndh.org.mx/sites/all/doc/sistemas/DNSP/DNSP\\_2019.pdf](https://www.cndh.org.mx/sites/all/doc/sistemas/DNSP/DNSP_2019.pdf) p. 271. Available only in Spanish

<sup>57</sup> National Commission on Human Rights, *National Diagnostic of Penitentiary Supervision 2019*, <https://www.cndh.org.mx/web/diagnostico-nacional-de-supervision-penitenciaria>, p. 270. Available only in Spanish.

<sup>58</sup> National Commission on Human Rights, *National Diagnostic of Penitentiary Supervision 2019*, <https://www.cndh.org.mx/web/diagnostico-nacional-de-supervision-penitenciaria>, p. 271. Available only in Spanish.

<sup>59</sup> National Commission on Human Rights, <https://twitter.com/CNDH/status/1300916533674356751> September 1, 2020. Available only in Spanish.

90. Other problems reported included suicides, homicides, deaths from illness, confirmed HIV cases, and riots. These structural problems are widespread at a national level<sup>60</sup>, where 21% of prisoners share their cells with six to ten people, and 13% share them with more than fifteen people. These conditions prevent the implementation of social distancing measures. Access to water and personal hygiene is also a problem, as 12 out of 100 prisoners lack a washing space and 30 out of 100 lack access to clean water and medicines.

#### F. Riots

91. In addition, the material conditions of prisons, together with overcrowding, have led to riots. In the State of Morelos, in the beginning of July, in Atlacholoaya, a riot due to disputes over control of the prison left four dead and several wounded.<sup>61</sup> At national level, about 12 riots have been reported in 9 states.<sup>62</sup> According to the Latin American Society of Criminology, such turmoil and conflicts are likely to scale up due to the foreseeable increase in infections and deaths (caused by lack of medical care, poor structural material conditions and overcrowding), as well as the continuing restrictions on family visits that provide inmates with medicine, food and personal hygiene products.<sup>63</sup>

#### G. Discrimination

92. In addition to overpopulation and overcrowding, the situation of women in prison places them in a state of vulnerability to COVID-19. The population of incarcerated women has increased in recent years. As of January 2020, there were 10,589 women deprived of their liberty (5.23% of the population deprived of liberty in the country). There are a total of 215 women in prison in the state of Morelos, of whom 205 are in state prisons and 10 are in federal prisons.<sup>64</sup> The

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<sup>60</sup> El Sol de Cuernavaca, *Morelos con Deficiencias en el Sistema Penitenciario: CDHEM (Morelos with deficiencies in the Penitentiary System: CDHEM)*, <https://www.elsoldecuernavaca.com.mx/policiaca/morelos-con-deficiencias-en-el-sistema-penitenciario-cdhem-4760736.html>, January 28, 2020 [last accessed July 7, 2020] - Available only in Spanish.

<sup>61</sup> Noticias en la Mira, *Riña en penal de Atlacholoaya deja 4 muertos* (Riot in Atlacholoaya prison leaves 4 dead), <https://noticiasenlamira.com/estados/al-menos-2-muertos-por-rina-en-penal-de-atlacho-loaya-morelos/>, July 1, 2020 [last accessed July 9, 2020]. Available only in Spanish.

<sup>62</sup> Latin American Criminology Society, *The Effects of Coronavirus on Latin American Prisons*, <https://criminologialatam.wordpress.com/2020/06/12/efectos-del-covid-19-carceles-de-latino-america/>, June 12, 2020, p. 63 [last accessed July 9, 2020] - summary in English at <https://drive.google.com/file/d/1G9bus57ZL6fmKz4eo-pZiVeAKOQMCAfE/view>

<sup>63</sup> Latin American Criminology Society, *The Effects of Coronavirus on Latin American Prisons*, <https://criminologialatam.wordpress.com/2020/06/12/efectos-del-covid-19-carceles-de-latino-america/>, June 12, 2020, p. 63 [last accessed July 9, 2020] - summary in English at <https://drive.google.com/file/d/1G9bus57ZL6fmKz4eo-pZiVeAKOQMCAfE/view>

<sup>64</sup> Secretaría de Seguridad y Protección Ciudadana, Prevención y Readaptación Social, *Cuaderno Mensual De Información Estadística Penitenciaria Nacional*, (Secretariat for Citizen Security and Protection, Prevention and Social Readaptation, *Monthly Report on National Penitentiary Statistics*), January 2020 [http://pyrs.gob.mx/sipot/cgprs\\_doc/2020/Estadistica/CE\\_01\\_2020.pdf](http://pyrs.gob.mx/sipot/cgprs_doc/2020/Estadistica/CE_01_2020.pdf) - Available only in Spanish.

figures for 2018 show a total of 10,526 women in prison at national level, 176 women in prison in the State of Morelos<sup>65</sup>, representing a 19% increase in the number of women deprived of liberty in Morelos over the course of two years.

93. Women constitute a vulnerable group in prisons, due to their gender<sup>66</sup>. Reasons for their vulnerability and corresponding needs include, *inter alia*: Gender-specific health care needs that cannot be adequately met; sexual abuse and violence against women in prison; the high likelihood of having caring responsibilities for their children, families and others; their disproportionate victimization from sexual or physical abuse prior to imprisonment; and a high level of mental health-care needs, often as a result of domestic violence and sexual abuse; the extreme distress imprisonment causes to women, which may lead to mental health problems or exacerbate existing mental disabilities, post-release stigmatization, victimization and abandonment by their families<sup>67</sup>.
94. These conditions are often aggravated by multiple or intersectional inequalities, such as ethnicity, socioeconomic status, disability, age, race, geographic location, gender identity, sexual orientation, and so on. As a result, women in prison face different types of discrimination in addition to gender discrimination. The obstacles these women often face in accessing basic services are even greater for women in prison who also identify as LGBT+, indigenous, elderly, foreigners, people with disability, as well as pregnant women, women with children in prison, and people who use drugs<sup>68</sup>.
95. Despite the recent increase in the female prison population, prison systems remain gender-blind<sup>69</sup>, and special gender needs are rarely considered during

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<sup>65</sup> Secretaría de Seguridad y Protección Ciudadana, Prevención y Readaptación Social, *Cuaderno Mensual De Información Estadística Penitenciaria Nacional*. (Secretariat for Citizen Security and Protection. Prevention and Social Readaptation. *Monthly Report on National Penitentiary Statistics*), September 2018

<http://www.cns.gob.mx/portalWebApp/ShowBinary?nodeId=/BEA%20Repository/1474616//archivo> - Available only in Spanish.

<sup>66</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Women and Imprisonment*, 2nd edition, with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules). Available at: [https://www.unodc.org/documents/justice-and-prison-reform/women\\_and\\_imprisonment\\_-\\_2nd\\_edition.pdf](https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf)

<sup>67</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Women and Imprisonment*, 2nd edition, with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), p.7. Available at: [https://www.unodc.org/documents/justice-and-prison-reform/women\\_and\\_imprisonment\\_-\\_2nd\\_edition.pdf](https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf)

<sup>68</sup> Equis: Justicia para las Mujeres, *¿Derechos Aplazables? El Poder Judicial frente a la población penitenciaria durante la pandemia por COVID-19 (Deferred Rights? The judiciary versus the prison population during the COVID-19 pandemic)*, available only in Spanish at [https://equis.org.mx/wp-content/uploads/2020/05/Informe\\_DerechosAplazables.pdf](https://equis.org.mx/wp-content/uploads/2020/05/Informe_DerechosAplazables.pdf) 2020.

<sup>69</sup> Council of Europe - European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Women deprived of their liberty, Excerpt from the 10th General Report*, published in 2000. Available at: <https://rm.coe.int/1680696a74>

incarceration<sup>70</sup>. In addition, the scarcity of timely and gender-specific data makes it very difficult to comprehensively assess the situation of women in prison and address their specific needs and challenges.<sup>71</sup>

## IX. Human Rights and Constitutional Principles Violated

96. The legal framework of Mexico recognizes that all persons shall enjoy the human rights recognized in the Constitution and in international treaties to which the Mexican State is a party, as well as the guarantees for their protection: and persons deprived of liberty are not an exception, according to the first paragraph of Article 1st of the Political Constitution of the United Mexican States.
97. Although the human rights of persons deprived of their liberty were previously recognized, since the constitutional reforms of 2008 and 2011, the amendment of Article 18 of our constitution reaffirmed that the prison system must have **as its main foundation the respect for the human rights of persons deprived of their liberty, including the rights to health, life and personal integrity as one of the main means of achieving the reintegration of the sentenced person into society**. Based on that, the prison authorities and those responsible for enforcing the sentences are obliged to respect and guarantee the human rights of persons under their custody, including the right to health.

### A. Right to health

98. States have an obligation to guarantee the right of everyone to enjoy the highest attainable standard of physical and mental health, as provided directly and indirectly by Articles 4 and 5 of the ACHR; 12 of the International Covenant on Economic, Social and Cultural Rights; 25 of the Universal Declaration of Human Rights; 24 of the Convention on the Rights of the Child; 12 of the Convention on the Elimination of All Forms of Discrimination against Women; 5 of the International Convention on the Elimination of All Forms of Racial Discrimination; 25 of the Convention on the Rights of Persons with Disabilities; 28 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador".

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<sup>70</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Women and Imprisonment*, 2nd edition, with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules). Available at: [https://www.unodc.org/documents/justice-and-prison-reform/women\\_and\\_imprisonment\\_-\\_2nd\\_edition.pdf](https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf)

<sup>71</sup> Kajstura, Aleks, "Women's Mass Incarceration: The Whole Pie 2019", Prison Policy Initiative, October 29, 2019. Available at: <https://www.prisonpolicy.org/reports/pie2019women.html>

99. This right to health is of particular importance in the case of persons deprived of liberty as emphasized by the Mandela Rules<sup>72</sup>; the European Prison Rules issued by the Council of Europe<sup>73</sup>; the Principles and Good Practices on the Protection of Persons Deprived of Liberty in the Americas and General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life.<sup>7475</sup>

## B. Right to life

100. As part of the obligation to guarantee the right to life, the authorities must account for the treatment of persons deprived of their liberty and must take appropriate measures to safeguard the lives of persons within their jurisdiction.<sup>76</sup> These obligations are particularly relevant with regard to persons in custody, since they are completely under the control of the authorities, placing them in a particularly vulnerable position.<sup>77</sup>
101. The Inter-American Court of Human Rights has thus interpreted Article 5.2 of the American Convention on Human Rights as guaranteeing that every person deprived of liberty has the right to live in conditions of detention consistent with their personal dignity and that the State must guarantee the right to life and to personal integrity, since it is responsible for the observance of the right to life of every person within its custody. Under the same interpretation, it also determined that the State should prevent the continuation of situations that could lead, by action or omission, to the suppression of the inviolability of the right to life.<sup>78</sup>

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<sup>72</sup> United Nations Organization. United Nations Standard Minimum Rules for the Treatment of Prisoners General Assembly, resolution 70/175, 17 December 2015, at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>.

<sup>73</sup> Council of Europe, European Prison Rules, adopted on 2020, Rule 39, at: [https://www.coe.int/fr/web/portal/news-2020/-/asset\\_publisher/JgmLwXY88pXi/content/revisee-european-prison-rules-new-guidance-to-prison-services-on-humane-treatment-of-inmates?\\_101\\_INSTANCE\\_JgmLwXY88pXi\\_languageId=en\\_GB](https://www.coe.int/fr/web/portal/news-2020/-/asset_publisher/JgmLwXY88pXi/content/revisee-european-prison-rules-new-guidance-to-prison-services-on-humane-treatment-of-inmates?_101_INSTANCE_JgmLwXY88pXi_languageId=en_GB).

<sup>74</sup> Inter-American Commission on Human Rights, Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle X, at: <https://www.oas.org/en/iachr/mandate/Basics/principles-best-practices-protection-pers-ns-deprived-liberty-americas.pdf>.

<sup>75</sup> Human Rights Committee of the United Nations, General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018, CCPR/C/GC/36, paragraph 25, visible at [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf).

<sup>76</sup> IACtHR, Judgment of 27 November 2013, paragraph 372.

<sup>77</sup> *Slimani v. France*, ECtHR, Judgment of 27 October 2004, para. 27. See also: *Lykova v. France*, ECtHR, Judgment of 22 October 2015, para. 114. *Lysias Fleurv et al. v. Haiti*, IACtHR, Judgment of 23 November 2011, para. 84.

<sup>78</sup> Inter-American Court. *Case of Juan Humberto Sánchez vs. Honduras*, 7 June 2003, para. 111.

### C. Right to personal integrity

102. The prohibition of inhuman or degrading treatment imposes on States the duty to ensure the health and well-being of persons deprived of their liberty, *inter alia*, by providing them with the necessary medical assistance.<sup>79</sup> In fact, “an inadequate level of health care can quickly lead to situations that fall within the scope of the term inhuman and degrading treatment.”<sup>80</sup> In this regard, the Judicial Branch of the Federation established that the prison authorities commit degrading and inhuman acts if the conditions in which the inmate is found are contrary to their human dignity<sup>81</sup>.
103. The Inter-American Court of Human Rights has considered it reasonable that, to some extent, certain rights may be affected by the deprivation of liberty as a sanction measure, but the right to life and personal integrity can never be abrogated. assumed. They must invariably be effectively respected and guaranteed as those of any other person not subject to such measures.<sup>82</sup> Otherwise, their failure to comply may result in a violation of the absolute prohibition of cruel, inhuman or degrading treatment or punishment.<sup>83</sup>

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<sup>79</sup> UN Committee Against Torture (CAT), *Observations of the Committee on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners*, 16 December 2013, UN-Doc. CAT/C/51/4, paragraphs 16 and 24. *Kudla v. Poland*, ECtHR (Grand Chamber), Judgment of 26 October 2010, Para. 94. *Tibi v. Ecuador*, IACtHR, Judgment of 7 September 2004, para. 156. *Vélez Loor v. Panama*, IACtHR, Judgment of 23 November 2010, Series C No. 218, stop. 198. IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, 31 December 2011, para. 519.

<sup>80</sup> *21st General Report on the CPT's activities cover the period 1 August 2010 to 31 July 2011*, CPT/Inf (2011) 12, 4 1993 November 2011, para. 30.

<sup>81</sup> THESIS II.3. P.8P (10TH), ACTS OF TORTURE. THE PRISON AUTHORITIES COMMIT THEM IF THE CONDITIONS IN WHICH THE INTERN IS FOUND ARE CONTRARY TO THEIR HUMAN DIGNITY, available only in Spanish at:

[https://sjf.scjn.gob.mx/SJFSist/Paginas/DetalleGeneralV2.aspx?Epoca=1e3e10000000000&Apendice=100000000000&Expresion=%25E2%2580%259C04%2520de%2520septiembre%2520de%25202020%25E2%2580%259D&Dominio=Rubro.Texto.Localizacion&TA\\_TJ=2&Orden=1&Clase=DetalleTesisBL&NumTE=33&Epp=20&Desde=-100&Hasta=-100&Index=0&InstanciasSeleccionadas=6,1,2,50,7&ID=2022063&Hit=12&IDs=2022071,2022084,2022087,2022069,2022072,2022075,2022078,2022080,2022081,2022083,2022090,2022063,2022066,2022067,2022068,2022070,2022073,2022074,2022076,2022064&tipoTesis=&Semana=1&tabla=&Referencia=&Tema=](https://sjf.scjn.gob.mx/SJFSist/Paginas/DetalleGeneralV2.aspx?Epoca=1e3e10000000000&Apendice=100000000000&Expresion=%25E2%2580%259C04%2520de%2520septiembre%2520de%25202020%25E2%2580%259D&Dominio=Rubro.Texto.Localizacion&TA_TJ=2&Orden=1&Clase=DetalleTesisBL&NumTE=33&Epp=20&Desde=-100&Hasta=-100&Index=0&InstanciasSeleccionadas=6,1,2,50,7&ID=2022063&Hit=12&IDs=2022071,2022084,2022087,2022069,2022072,2022075,2022078,2022080,2022081,2022083,2022090,2022063,2022066,2022067,2022068,2022070,2022073,2022074,2022076,2022064&tipoTesis=&Semana=1&tabla=&Referencia=&Tema=)

<sup>82</sup> Inter-American Court. *Case of "Institute of Child Reeducation" v. Paraguay*, 2 September 2004, para. 155.

<sup>83</sup> Inter-American Court. *Case of Fleury et al. v. Haiti*, 23 November 2011, para. 84.



## X. Concepts of violation

*A. The failure of the authorities in question, specifically the Department of Health, the Morelos Secretariat of Health and the Morelos Prison Authorities, to fulfill their special role as guarantor of the human rights of persons deprived of liberty (right to health, life and personal integrity) and to create concrete and effective public policies and government programs that target the prison population for prevention, risk mitigation and care in cases of COVID-19 transmission, under the same standards of care that are available to the general population.*

104. The State of Morelos, through the Secretary of Health and the prison authorities, are committed to creating public policies and programs that prevent, mitigate risks and address cases of infection, specifically within prisons, in favor of persons deprived of their liberty, prison officials and visitors.

105. In the United Mexican States, all persons shall enjoy the human rights recognized in the Constitution and in international treaties to which the Mexican State is a party, as well as the guarantees for their protection: and persons deprived of liberty are not an exception, according to the first paragraph of Article 1st of the Constitution.

106. Although the human rights of persons deprived of their liberty were previously recognized, since the constitutional reforms of 2008 and 2011, the amendment of Article 18 of our constitution reaffirmed that the prison system must have as its main foundation the respect for the human rights of persons deprived of their liberty, including the rights to health, life and personal integrity as one of the main means of achieving the reintegration of the sentenced person into society. Based on this, the prison authorities and those responsible for enforcing the sentences are obliged to respect and guarantee the human rights of persons in their custody, including the human rights to health, personal integrity and life.

### *Special status of the State as guarantor of human rights*

107. In this regard, it is necessary to start from the fact that the State has a special status as guarantor of the human rights of persons deprived of their liberty, since they are absolutely under their jurisdiction and control in all aspects of their life<sup>84</sup>. Because of

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<sup>84</sup> Inter-American Court. Case of “Institute of Child Reeducation” v. Paraguay. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 2, 2004. C Series No. 112, para. 152. See also, Inter-American Court of Human Rights. Case of Neira Alegria et al. v. Peru Background. Judgment of January 19, 1995. C Series No. 20, para. 60; Inter-American Court of Human Rights. Case of Fleury et al. v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 14, 2013. C Series No. 260, para. 189; Inter-American Court of Human Rights. Case of Chinchilla Sandoval v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of February 29, 2016. C Series No. 312, para. 168.

the control exercised by the prison authorities over the persons under their custody, these persons cannot satisfy, on their own, any basic need for a dignified life<sup>85</sup>.

108. In addition to what is established in the Mexican Constitution, there is a broad collection of international jurisprudence criteria that establish the scope of this State's respect and guarantee obligation concerning persons deprived of liberty. Among them, the Inter-American Court of Human Rights that has interpreted Article 5.2 of the ACDH, determining that every person deprived of liberty has the right to live in conditions of detention consistent with their personal dignity and that the State must guarantee the right to life and to personal integrity, since it is responsible for the observance of the right to life of every person under its custody. Under the same interpretation, **it also determined that the State should prevent the continuity of situations that could lead, by action or omission, to the suppression of the inviolability of the right to life.**<sup>86</sup>
109. Therefore, the Inter-American Court of Human Rights has considered reasonable that, to some extent, certain rights may be affected by the deprivation of liberty as a sanction measure, but this does not apply to the right to life and personal integrity. They must invariably be effectively respected and guaranteed as those of any other person not subject to such a measure.<sup>87</sup> Otherwise, their failure to comply may result in a violation of the absolute prohibition of cruel, inhuman or degrading treatment or punishment.<sup>88</sup>
110. However, with regard to the right to health, in the Case of Díaz Peña<sup>89</sup> and in the Case of J. v. Peru<sup>90</sup> it was pointed out that the obligation of guarantor on the part of the State implies safeguarding the health and well-being of prisoners, providing them, *inter alia*, with the medical assistance required according to their personal circumstances. In turn, the State should allow and facilitate the care of detainees by optional insurance chosen by themselves or by those who exercise legal representation or custody<sup>91</sup> when this is truly necessary in accordance with their actual situation, since the lack of proper medical care does not meet the minimum material requirements for decent treatment of human beings within the meaning of

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<sup>85</sup> Inter-American Court. *Ibid.* Paragraph 152.

<sup>86</sup> Inter-American Court. *Case of Juan Humberto Sánchez v. Honduras*, 7 June 2003, para. 111.

<sup>87</sup> Inter-American Court. *Case of "Institute of Child Reeducation" v. Paraguay*, 2 September 2004, para. 155.

<sup>88</sup> Inter-American Court. *Case of Fleury et al. v. Haiti*, 23 November 2011, para. 84.

<sup>89</sup> Inter-American Court. *Case of Díaz Peña v. Venezuela*, 26 June 2012, para. 135.

<sup>90</sup> Inter-American Court. *Case of J. v. Peru*, 27 November 2013, para. 372.

<sup>91</sup> Inter-American Court. *Case of Tibi v. Ecuador*, 7 September 2004, para. 156; *Case of Cruz Flores v. Peru*, 18 November 2004, para. 132.

Article 5 of the ACHR.<sup>92</sup> It is therefore possible to state that the lack of adequate medical care could itself be considered a violation of articles 5.1 and 5.2 of the Convention.<sup>93</sup>

111. With regards to international standards, such as the Mandela Rules, they agree with the above criteria, emphasizing that prison administrations and other competent authorities should provide health services in response to the individual treatment needs of prisoners<sup>94</sup>.

*Special condition of vulnerability of the prison population*

112. In the face of the COVID-19 pandemic, the personal integrity, health and life of persons deprived of liberty are in real and imminent danger, if one considers overpopulation, overcrowding, lack of adequate medical care, lack of a specific and effective policy or program for prevention and risk mitigation, and lack of effective protocols for the care of cases of infection.

113. Due to that, the failures claimed in this demand for *amparo* disproportionately affect persons deprived of their liberty, for if in the current Mexican context any citizen is exposed to the SARS-CoV2 virus, with persons deprived of liberty this risk increases and aggravates, since these people cannot be part of general preventive measures, such as the “National Day of Healthy Distancing” established by the Federal Government, nor have access to the specialized and intensive medical care that they may require.

114. Prisons cannot allow persons deprived of their liberty to be more affected than the rest of the population, precisely when there are proper means to meet an appropriate circumstance for all parties. It is the obligation of the prison and enforcement authorities to take extra measures to enable compliance with the measures ordered to the general population. Hence, the claimed failures cause serious harm and grievances to the right to health and life of persons deprived of liberty, as well as to their right to equality and non-discrimination.

115. Based on what is prescribed by expert reports consisting of: ***Technical opinion on health conditions within prisons related to the COVID-19 pandemic, Expert report***

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<sup>92</sup> Inter-American Court. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, 5 July 2006, para. 102.

<sup>93</sup> Inter-American Court. *Ibid.*, para. 103.

<sup>94</sup> UN. United Nations Standard Minimum Rules for the Treatment of Prisoners General Assembly, resolution 70/175, 17 December 2015.

*on obligations of the Morelos State Precautionary Measures Unit during the COVID-19 pandemic, Technical opinion on the handling of corpses in custody during the COVID-19 pandemic, Technical opinion on Measures for the Prevention of Contagion and Management of Deceased by COVID-19 in Centers of Deprivation of Liberty, Report of Antigone - Italy and Report of the Irish Criminal Reform Trust - Ireland*, as well as the WHO's recommendations to take effective measures to control and reduce the contagion and damages generated by COVID-19, it is necessary to identify the special context of vulnerability and precariousness presented by prisons in Mexico, in order to recognize the prevailing need for exceptional measures aimed at safeguarding the fundamental rights of persons deprived of their liberty. Based on the National Diagnosis of Penitentiary Supervision (hereinafter DNSP) published by the CNDH in 2019, it appears that the deficiencies and low qualifications of the Penitentiary Centers of the State of Morelos are primarily related to internment issues and deficiencies in health services; that is, poor material and hygiene conditions in the facilities to accommodate persons deprived of their liberty, in addition to the lack or poor hygiene of the medical area, kitchen and/or dining rooms. All this coupled with the lack of prevention of human rights violations and attention to cases of detection<sup>95</sup>.

116. However, based on the special degree of vulnerability of persons deprived of liberty and the need to take specific and exceptional measures to safeguard their human rights to physical integrity, life and access to health, key announcements have been issued by international agencies, including the Office of the United Nations High Commissioner for Human Rights (hereinafter OHCHR), which, on 16 March 2020, pointed out that the attention that States must provide must be comprehensive and transparent, understanding that while there are difficulties that Governments face in addressing the emergency situation, this does not imply that human rights violations are justified<sup>96</sup>.
117. From the analysis of what the IACHR has established in the Press Release 066/2020 and in the Resolution 1/2020, it is clear that there is particular concern with persons deprived of liberty, with the conditions of internment and the provision of medical services, with their families living outside, and with the poor hygiene conditions in the areas where communication with the outside world is made, at extreme risk and likelihood to be infected with COVID-19.

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<sup>95</sup> Cf. National Diagnostic of Penitentiary Supervision issued by the National Human Rights Commission in 2019, available at: [https://www.cndh.org.mx/sites/all/doc/sistemas/DNSP/DNSP\\_2019.pdf](https://www.cndh.org.mx/sites/all/doc/sistemas/DNSP/DNSP_2019.pdf), accessed September 01, 2020. Available only in Spanish.

<sup>96</sup> Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>, accessed September 01, 2020.

118. In addition to the above, the ICRC pointed out on March 11 this year that it is **"very difficult to contain [infections inside a prison]. Prisons aren't walled off from society when it comes to infectious diseases, because there is a constant flow of staff and visitors and the movement of detainees in and out of the facility. There is a constant interchange with society."**<sup>97</sup> It follows that, if this problem is not tackled, any attempt to mitigate the pandemic outside will fail.

*Inadequacy, unconventionality and unconstitutionality of the measures issued*

119. In this context, the Mexican Government declared on March 23, 2020, through the General Health Council, the recognition, in our country, of the pandemic named COVID-19, describing it as a serious disease of priority care; to subsequently issue the Agreement establishing the preventive measures to be implemented for the mitigation and control of the health risks involved in SARS-CoV2 virus disease (COVID-19), on 24 March 2020; this document decreed the "National Day of Healthy Distancing", which aimed at social distancing for the mitigation of population-based transmission of the SARS-CoV2 virus, in order to reduce the number of person-to-person infections and thus the spread of the disease, with special emphasis on vulnerable groups.
120. However, it is important to note that the measures of social distancing established in the "National Day of Healthy Distancing" do not include the specific context of persons deprived of liberty. As mentioned in previous paragraphs, the Morelos State Penitentiary Centers are overcrowded and overpopulated. In addition to having limited and difficult access to specialized medical care that might be required in face of a COVID-19 infection, it is therefore imperative to generate guidelines that seek to contain the pandemic.
121. It is important to highlight that on April 7 of this year, at the press conference led by the Assistant Secretary for Health Prevention and Promotion, Dr. Hugo López-Gatell Ramírez, the "Protocol of Action for the Care of COVID-19 within Federal Centers for Social Reintegration (CEFRESOS)" was presented. It was created for the care of persons deprived of their liberty in two ways: prevention and emergency care. It should be noted that, even though this document was intended to address the specific conditions that are presented in the prison centers and thus the special degree of vulnerability of persons deprived of their liberty, **it failed to translate the way in which conditions of hospitalization, that represent an obstacle to contain and address an outbreak of COVID-19, will be addressed; in addition to leaving aside the characteristics of overcrowding and overpopulation, the lack of water**

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<sup>97</sup> Cf. <https://www.icrc.org/en/document/protecting-prison-populations-infectious-disease>

**and the precarious conditions of hygiene, lack of medicines, specialized medical personnel or the appropriate medical infrastructure<sup>98</sup>.**

122. Another very concerning element of the Protocol is that it **addressed only the 17,058 persons who are deprived of liberty in 17 CEFERESOS of the country and not the 280+ penitentiary centers located throughout the national territory** that accommodate more than 180 thousand people deprived of liberty, of which 15,934 belong to the federal jurisdiction<sup>99</sup>.
123. In addition to the above, the Protocol in question neglects addressing the protection and guarantee of the rights to the integrity, health and life of people suffering from chronic degenerative diseases, people with some kind of disability, terminally ill, people with HIV, women and others. This lack of a differentiated approach limits the effectiveness of exceptional measures for a sector that is at imminent risk of loss of life in face of possible infection, since, as it has been mentioned repeatedly herein, the Morelos State Prison Centers do not have the necessary supplies for both basic and specialized health care.
124. In view of the general nature of the Protocol, the need to issue exceptional measures for the protection of persons deprived of liberty against COVID-19 is strengthened; from public health to the reduction of the population of prisons and detention centers, as confirmed by the Assistant Secretary for Health Prevention and Promotion on 18 April 2020, since we have to act according to the reality that the various prisoners in the country face in terms of medical care.

*Healthy distancing, medical isolation and contact with the outside world*

125. Ensuring physical distance is essential to prevent the spread of COVID-19, as the SARS-CoV2 virus can be transmitted when people cough, sneeze, or talk and can infect nearby people.<sup>100</sup> Specific measures are therefore also needed to allow physical distancing in prisons, without undermining the fundamental rights of detainees.<sup>101</sup> Needless to say, any restrictive measure must have a legal basis and be necessary,

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<sup>98</sup> Cf. Announcement of the Organization of Civil Society AsiLegal, published on 7 April 2020, available at <https://asilegal.org.mx/comunicados/protocolo-para-la-atencion-de-covid-19-en-ceferesos-preocupante-e-incipiente/>, accessed on 1st September 2020 - Available only in Spanish.

<sup>99</sup> *Ibidem*.

<sup>100</sup> WHO, Coronavirus disease (COVID-19) advice for the public, last updated April 29, 2020. See above para. 3.

<sup>101</sup> SPT, Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic, section I.3. Office of the United Nations High Commissioner for Human Rights. [Urgent action needed to prevent COVID-19 - rampaging through places of detention](#), Geneva, 25 March 2020.

proportional, non-discriminatory, with a limited period of enforcement, respecting human dignity and subject to review.<sup>102</sup> Therefore, persons deprived of liberty should receive thorough information, in a language they understand, about any restrictive measures.<sup>103</sup> Authorities must also ensure the transparency and constant monitoring of any restrictive measures applied.<sup>104</sup>

126. Highly contagious diseases, such as COVID-19, may require isolation of persons who are infected or suspected of being infected to avoid exposure and infection of others.<sup>105</sup> According to the UN, “failure to separate detainees with communicable diseases from other detainees may pose problems primarily for [the right to life].”<sup>106</sup> International standards provide guidance on how to organize this isolation. First, **medical isolation should be imposed only when clinically necessary and should not take the form of solitary confinement**<sup>107</sup>, the reasons for which are fundamentally different in nature.<sup>108</sup> The principle of medical isolation and its conditions must be decided by health care professionals<sup>109</sup> and not ignored or annulled by non-medical prison officials.<sup>110</sup> Isolation should never last longer than clinically necessary.<sup>111</sup> The health team should pay special attention to isolated individuals<sup>112</sup> who should receive significant human contact every day.<sup>113</sup> The decision to isolate a person must be communicated to the person and there must be the opportunity to notify third parties about the person’s health.<sup>114</sup>

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<sup>102</sup>, CPT, Statement of principles relating to the Treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, para. 4. IACHR, “Pandemic and Human Rights in the Americas,” para. 48.

<sup>103</sup>, CPT, Statement of principles relating to the Treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, para. 4.

<sup>104</sup> Inter-Agency Standing Committee, OHCHR and WHO, Interim Guidance on COVID-19: Focus on Persons Deprived of Their Liberty, p. 5.

<sup>105</sup> The Nelson Mandela Rules, Rule 30(d). IACHR, Review of the United Nations Standard Minimum Rules for the Treatment of Prisoners, para. 397.

<sup>106</sup> UN Human Rights Committee, [Cabal and Pasini Bertran v. Australia](#) Communication No. 1020/2001, U.N. Doc. CPR/C/78/D/1020/2001, 19 September 2003, para. 7.7.

<sup>107</sup> SPT, Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic, section II.9(14).

<sup>108</sup> [21st General Report on the CPT’s activities cover the period 1 August 2010 to 31 July 2011](#), CPT/Inf (2011) 28, 10 November 2011, para. 54.

<sup>109</sup> 21st General Report on the activities of the CPT covering the period 1 August to 31 July 2011, para. 62.

<sup>110</sup> WHO, Regional Office for Europe, Prisons and Health, 2014, p. 68-69? Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim Guidance, p. 5.

<sup>111</sup> WHO, Regional Office for Europe, Prisons and Health, 2014, p. 68-69?

<sup>112</sup> The Nelson Mandela Rules, Rule 46.

<sup>113</sup>, CPT, Statement of principles relating to the Treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, para. 8.

<sup>114</sup> The Nelson Mandela Rules, Rule 68. See also WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim Guidance, p. 5.

127. In the context of COVID-19, medical isolation should be limited to persons infected or suspected of being infected.<sup>115</sup> WHO recommends isolating them in single accommodations and, if not possible, accommodating detainees with similar risk factors and exposures in temporary quarantine. Cases of suspected infection should be under medical observation at least twice a day, including measuring of body temperature and checking for COVID-19 symptoms.<sup>116</sup> Isolation must end as soon as the sick persons recover and are no longer contagious; and isolation of prisoners with suspected infection must be ended after 14 days from the date of the last possible day of suspected contact.<sup>117</sup>
128. The harmful effect of prolonged isolation on the mental, physical and social health of persons deprived of liberty has been internationally recognized and States have been urged to limit its use to very exceptional circumstances.<sup>118</sup> States should therefore never use isolation or solitary confinement as a preventive measure to enable physical distancing.
129. International organizations have emphasized that meaningful contact with others is important to the well-being of persons deprived of liberty.<sup>119</sup> During the COVID-19 pandemic, to prevent the spread of the virus in prisons, visits by family and friends may be temporarily restricted. Such restrictions should be replaced by greater access to alternative means of communication (such as telephone or video conference) without creating a financial burden for the prisoners.<sup>120</sup> However, restrictive

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<sup>115</sup> WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim Guidance, p. 21.

<sup>116</sup> WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim Guidance, p. 21.

<sup>117</sup> WHO, [Considerations for quarantine of individuals in the context of coronavirus disease \(COVID-19\): interim guidance](#), 29 February 2020, p. 2. WHO, Regional Office for Europe, preparation, prevention and control of COVID-19 in prisons and other places of detention. Interim Guidance, p. 21.

<sup>118</sup> United Nations [Basic principles for the treatment of prisoners](#), Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, principle 7. United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, punishment A/66/268, 5 August 2011, para. 62-63. IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, para. 413. [Suárez Rosero v. Ecuador](#), Inter-American Court of Human Rights, Judgment of 12 November 1997, para. 89-90. [Miguel Castro-Castro v. Peru](#), Inter-American Court of Human Rights, Judgment of 25 November 2006, para. 323. 21st General Report on the activities of the CPT covering the period 1 August 2010 to 31 July 2011, para. 53. [Ramirez Sanchez v. France](#), ECHR, Judgment of July 04, 2006, para. 121- 124. [Razvyazkin v. Russia](#), ECHR, Judgment of October 03, 2012, para. 104. WHO, Regional Office for Europe, [Prisons and Health](#), 2014, page 27.

<sup>119</sup> 2nd general report on CPT's activities covering the period 1 January to 31 December 1991, CPT/Inf (92) 3, 13 April 1992, para. 51. IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, para. 576-578. [Lopez et al. v. Argentina \(available only in Spanish\)](#), Inter-American Court of Human Rights, Judgment of 25 November 2019, para. 118.

<sup>120</sup> SPT, Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic, section II.9 (11), CPT, Statement of principles relating to the Treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, para. 7. Inter-Agency Standing Committee, OHCHR and WHO, Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty, p. 5. United Nations High



measures should be evaluated periodically, in light of the status of the pandemic in the country, the specific needs of prisoners and the facilities available inside the prison. Restrictions on communications and alternative forms of communication with the outside world should be communicated clearly to the entire prison population and its visitors, in a language they understand, and with an indication of how long the restrictions will last.<sup>121</sup>

130. Persons deprived of their liberty must have access to a lawyer as part of their right to a fair trial and as protection against ill-treatment.<sup>122</sup> Access to a lawyer is essential for prisoners awaiting trial, but also for those who have already been sentenced, as a lawyer can help them solve problems they may have in prison, such as ill-treatment or adequate access to health care during the COVID-19 pandemic. Restrictions on this fundamental right must be exceptional and justified with convincing reasons, based on an individual assessment of the particular circumstances of the case.<sup>123</sup>
131. In the context of COVID-19, the possibility of meetings between persons deprived of liberty and their private or legal counsel must be maintained, and the prison authorities must ensure that they can speak confidentially.<sup>124</sup> If necessary, in the light of compelling circumstances, alternative communications such as video conferencing can be organized, but they must ensure the attorney-client privilege, confidential communication, and safeguards against retaliation and intimidation.<sup>125</sup> Such restrictions and alternatives should be clearly communicated to persons deprived of liberty in a language they may understand, with an indication of how long the restrictions may last.

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Commissioner for Human Rights, [Urgent action needed to prevent COVID-19 - rampaging through places of detention](#) Declaration of 25 March 2020.

<sup>121</sup> United Nations High Commissioner for Human Rights, Urgent action needed to prevent COVID - 19 - rampaging through places of detention, Declaration of 25 March 2020. See also the video material developed by the International Committee of the Red Cross: International Committee of the Red Cross, [COVID-19: Preparedness and response in detention. Safeguarding the health of detainees, staff and communities](#) 7 April 2020 (last accessed 11 June 2020).

<sup>122</sup> The Nelson Mandela Rules, Rule 61. European Prison Rules, Rules 23.1-23.6. IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle V. [Ibrahim and Others v. United Kingdom](#), ECHR, Judgment of 13 September 2016, para. 255. 21st General Report on the activities of the CPT covering the period 1 August 2010 to 31 July 2011, para. 20.

<sup>123</sup> Ibrahim and Others v. United Kingdom, ECHR, Judgment of September 13, 2016, para. 258. See also UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 18.

<sup>124</sup> Inter-Agency Standing Committee, OHCHR and WHO, Interim Guidance. COVID-19: Focus on Persons Deprived of Their Liberty, p. 5. SPT, Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic, section II.9(16).

<sup>125</sup> OMCT, [Building our Response on COVID-19 and Detention - OMCT Guidance brief to the SOS-Torture Network and partner organizations](#), 15 April 2020, p. 13.

## *Preventive medicine*

132. In this regard, international law provides that the provision of medical care within the prison centers is not limited to the treatment of persons deprived of their liberty who are sick, but also includes treatment and preventive medicine.<sup>126</sup>
133. To comply with the obligation to ensure preventive medicine within prisons during the COVID-19 pandemic, States must demonstrate adequate intervention in four areas: the educational and supervisory role of health personnel; personal and environmental hygiene, and the organization of tests and access to personal protective equipment. Below, this document will describe each of the items aforementioned.

### **1. Education**

134. The Nelson Mandela Rules of the United Nations emphasize the obligation of health services within prisons to assess, promote, protect and improve the physical and mental health of persons deprived of their liberty.<sup>127</sup> These preventive tasks have very specific implications when trying to fight the spread of the SARS-CoV2 virus. Thus, the health service within prisons must distribute appropriate information to persons deprived of liberty, staff and visitors, addressing issues such as: the nature of the disease, its transmission route and the protective measures to be implemented (including physical distance, use of personal protective equipment, hand washing, cleaning and disinfection), possible symptoms and available treatment.<sup>128</sup> Employees should receive specific training on infection, transmission, and prevention of COVID-19.<sup>129</sup>
135. For non-Spanish-speaking persons deprived of liberty and visitors, it will be necessary to develop translations or visual materials to deal with language barriers. Also, reports, fact sheets, brochures, posters and videos should be placed in the common areas of the prison and in the areas designated for visits.<sup>130</sup> In this regard,

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<sup>126</sup> Cf. Nelson Mandela Rules, Rule 25.1. [Report on the visit to “the former Yugoslav Republic of Macedonia” Carried out by the CPT from 21 September to 1 October 2010](#), CPT/Inf (2012) 4, para. 71.

<sup>127</sup> The Nelson Mandela Rules, Rule 25.1.

<sup>128</sup> 2nd general report on CPT’s activities covering the period 1 January to 31 December 1992, para. 54. WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim Guidance, 15 March 2020, p. 14.

<sup>129</sup> WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim guidance, p. 14. CPT, Statement of principles relating to the Treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, para. 3. See also Report on the CPT’s visit to “The former Yugoslav Republic of Macedonia” from 21 September to 1 October 2010, para. 71.

<sup>130</sup> WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim Guidance, p. 15. Special attention should also be given to indigenous peoples. United Nations, Department of Economic and Social Affairs, Indigenous Peoples [Indigenous](#)

the International Committee of the Red Cross has developed videos and supporting documents in 11 languages to provide information to staff, persons deprived of their liberty and visitors on how the COVID-19 pandemic has affected conditions of detention.<sup>131</sup>

136. In addition to all the above, various international precedents such as the Nelson Mandela Rules and the European Prisons Rules also state that the health service in prison must supervise, regularly inspect and advise prison administration on the hygiene and cleanliness of the institution (including sanitation facilities and access to running water), and of persons deprived of their liberty; as well as the suitability and cleanliness of the clothes and bed linen of the prisoners, and finally the necessary ventilation in the institution.<sup>132</sup>
137. It is essential that, in the context of the COVID-19 pandemic, the health care service actively advise on the hygiene and cleaning measures necessary to protect the health of persons deprived of their liberty, in the light of recommendations issued by international agencies and health authorities in the country.

## **2. Personal and environmental hygiene**

138. Persons deprived of their liberty shall receive running water, adequate quantities of essential personal hygiene products necessary for health and cleaning free of charge, in addition to access to adequate showering and personal hygiene facilities.<sup>133</sup>
139. In this regard, the right to water is protected in Article 4(6) of the CPEUM (Political Constitution of the United Mexican States). Also, according to the Inter-American Court, the right to life contained in Article 4 of the IACHR entails a positive obligation on States, which must guarantee the dignified life of individuals. As part of the right to a dignified life, a minimum vital group of rights must be guaranteed, such as the right to water. Therefore, the Inter-American Tribunal has held that:

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[Peoples and COVID-19](#), last accessed 15 June 2020. United Nations Expert Mechanism on the Rights of Indigenous Peoples [COVID-19 yet another challenge for indigenous peoples](#), 6 April 2020.

<sup>131</sup> International Committee of the Red Cross, [COVID-19: Preparedness and response in detention. Safeguarding the health of detainees, staff and communities.](#), 7 April 2020 (last accessed 11 June 2020).

<sup>132</sup> The Nelson Mandela Rules, Rule 35. European Prison Rules, Rule 44.

<sup>133</sup> The Nelson Mandela Rules, Rule 16 and 18. IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XII (2). IACHR, Review of the United Nations Standard Minimum Rules for the Treatment of Prisoners, p. 6. European Prison Rules, Rule 19.4. [Report to the Greek Government on the visit to Greece Carried out by the CPT from 28 March to 9 April 2019](#), CPT/Inf(2020) 15, para. 32. [Report to the Albanian Government on the visit to Albania Carried out by the CPT from 10 to 21 May 2010](#), CPT/Inf(2012) 11, para. 55.

“according to international standards, most people require a minimum of 7.5 liters per person per day to meet the basic needs defined, including food and hygiene.”<sup>134</sup>

140. WHO has clarified that 7.5 liters is the minimum per capita amount for hydration and food preparation needs. However, food preparation, laundry and personal hygiene require additional water supply. Therefore, WHO considers that basic access to water requires at least 20 liters of water per day, but this may pose a high risk to health and hygiene may be compromised. Intermediate access to water reduces health risk and implies a supply of 50 liters per capita per day. Finally, optimal access to ensure people's needs is around 200 liters of water. On this subject, the Federation's judiciary has pronounced itself on the right to water of persons deprived of their liberty, and has argued that: “The amount available to each person should correspond to the World Health Organization guidelines; therefore, water, facilities and services should be accessible to all, without discrimination”.<sup>135</sup>
141. Under the current conditions of the pandemic and the urgency to reduce its impacts, access to water should not be compromised in any way. At a minimum, the intermediate water supply must be guaranteed to avoid risks to human health.
142. In addition, General Comment No. 15 of the CESCR has established, with respect to the right to water, that its availability (continuous and sufficient, without arbitrary cuts), quality (i.e. that it is sanitary, with acceptable color, odor and taste) and accessible (physical, economic, without discrimination and in respect of the right to access information) must be guaranteed.<sup>136</sup> The CESCR also notes the prohibition of regressive measures involving reduced water supply, quality or accessibility.
143. In addition to the above, in response to the COVID-19 pandemic, international organizations have published detailed guidelines for criminal justice institutions, stating that adequate hygiene is essential to protect the rights to health and life of persons deprived of liberty, in order to stop the spread of highly contagious diseases, such as COVID-19, in the prison environment.<sup>137</sup> In this regard, they reiterate the

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<sup>134</sup> Inter-American Court, Case of Xákmok Kásek Indigenous Community v. Paraguay. Judgment of merits, reparations and costs. August 24, 2010, Series C No. 214, para. 195. Available only in Spanish at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_214\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_214_ing.pdf)

<sup>135</sup> Thesis I.9o.P.69 P (10th), registration number 2008053, Judicial Weekly of the Federation and its Gazette, 9th Collegiate Court on Criminal Matters, First Circuit, Book 12, November 2014, Volume IV, 10th time, p. 2928.

<sup>136</sup> CESCR, General Comment No. 15, “The right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)”, E/C.12/2002/11, 20 January 2003, para. 12. Available only in Spanish at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2002%2f11&Lang=ing](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2002%2f11&Lang=ing)

<sup>137</sup> SPT, Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic, section II.9(10). WHO, Regional Office for Europe,

importance of frequent hand washing and recommend constant and free<sup>138</sup> access to soap, water and personal towels, as well as hand sanitizer when hand washing is not possible.<sup>139</sup>

144. States also have a duty to ensure that all regularly used prison facilities are kept clean at all times.<sup>140</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment stresses that “the standard of accommodations is fundamental to the quality of life within a prison”,<sup>141</sup> and the European Court of Human Rights adds that “access to properly equipped and hygienic health facilities is of the utmost importance in maintaining the sense of personal dignity of persons deprived of their liberty.”<sup>142</sup> And general hygiene conditions must be of a satisfactory level (in particular with adequate population, access to direct sunlight, good ventilation and satisfactory hygiene standards)<sup>143</sup>, in addition to meeting all health requirements and with the duty of respecting privacy.<sup>144</sup>
145. It should be emphasized that the National Diagnosis of Penitentiary Supervision states that one of the main issues to be addressed in the Penitentiary Centers of the State of Morelos is the issue of ensuring a decent stay, since there are poor material and hygiene conditions in the facilities to accommodate persons deprived of liberty and poor conditions for the facilities to have contact with the outside world<sup>145</sup>.
146. Environmental disinfection is essential to stop the spread of the virus by COVID-19, as “people can become infected by touching contaminated surfaces or objects and

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Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim Guidance, p. 13.

<sup>138</sup> See below, Section D: Access to Treatment and Medication.

<sup>139</sup> WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance, p. 13. WHO recommends the use of chlorine-based gels in prisons. Alcohol-based hand rubs may be used if accompanied by appropriate safety measures to prevent misuse.

<sup>140</sup> The Nelson Mandela Rules, Rule 17. IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XII (1). European Prison Rules, Rules 19.21 and 19.5.

<sup>141</sup> [Report to the Bulgarian Government on the visit to Bulgaria carried out by CPT from 13 to 20 February 2015](#), para. 38.

<sup>142</sup> [Ananyev and Others v. Russia](#), ECHR, Judgment from 10 January 2012, para. 156. See also [Montero-Aranguren et al \(Detention Center of Catia\) v. Venezuela](#), Inter-American Court of Human Rights, Judgment of July 05, 2006, para. 97. [Pollo Rivera et al. v. Peru \(Available only in Spanish\)](#), Inter-American Court of Human Rights, Judgment of 12 November 1997, para. 159.

<sup>143</sup> [Report on the visit to the Transnistrian region of the Republic of Moldova Carried out by the CPT from 27 to 30 November 2000 and Responses of the local authorities of the Transnistrian region](#), CPT/Inf (2002) 35, para. 48. African Commission on Human and Peoples' Rights [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa \(the Luanda Guidelines\)](#), adopted at its 55th Regular Session in Luanda, Angola, from 28 April to 12 May 2014, para. 25g.

<sup>144</sup> The Nelson Mandela Rules, Rule 13. European Prison Rules, Rules 18.1 and 19.3.

<sup>145</sup> The Nelson Mandela Rules, Rule 13. European Prison Rules, Rules 18.1 and 19.3.

then touching their eyes, nose, or mouth.”<sup>146</sup> In addition, telephones, showers, washbasins, toilets and other high-contact surfaces must be disinfected between uses.<sup>147</sup> So, protocols must be created that provide for the measures to be taken inside the penitentiary centers, to ensure that places and objects such as gardening equipment, furniture and transport vans are cleaned and disinfected several times a day, and that the areas where a person confirmed or suspected of having COVID-19 has spent time are completely clean and disinfected. In this regard, WHO has also recommended that, in the context of the pandemic, cleaning and disinfection be “consistently and correctly followed” by trained personnel.<sup>148</sup> In addition to arguing that “water and domestic detergents, as well as safe disinfectants for use in prison environments, should be used as general preventive cleaning.”<sup>149</sup>

147. In addition to all of the above, each person deprived of liberty must be provided with a separate bed and separate and sufficient bedding, which must be clean when received by the prisoner, kept in good condition and changed frequently enough to ensure cleanliness.<sup>150</sup> Mattress, blankets and bedding should be cleaned and washed regularly.<sup>151</sup> To address the risk posed by COVID-19, WHO recommends cleaning them with water and powder detergent or washing them in the washing machine at 60–90 °C with common laundry detergent.<sup>152</sup>

### 3. COVID-19 tests

148. Testing is an important tool for correctly detecting cases of COVID-19 and preventing new infections. According to WHO, “Efforts to control COVID-19 in society will likely fail if strong measures for infection prevention and control, testing, treatment, and adequate care are not carried out in prisons and other places of detention.”<sup>153</sup> States must ensure “broad access to tests ... for detainees ... [and]

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<sup>146</sup> WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim Guidance, p. 11.

<sup>147</sup> Yale University, Stanford University and Oswaldo Cruz Foundation (FIOCRUZ) [Opinion of medical experts](#), presented to the State Court of Rio de Janeiro in a case of a Public Civil Action #0087229-92.2020.8.19.0001, June 2020.

<sup>148</sup> WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim Guidance, p. 20.

<sup>149</sup> Ibid.

<sup>150</sup> The Nelson Mandela Rules, Rule 21. IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XII (1). European Prison Rules, Rule 21. African Commission on Human and Peoples' Rights, Luanda Guidelines, para. 25g.

<sup>151</sup> Report to the Bulgarian Government on CPT's visit to Bulgaria from 13 to 20 February 2015, para. 38.

<sup>152</sup> WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim Guidance, p. 21. See also WHO, Water, Sanitation, Hygiene and Waste Management for the COVID-19 Virus, Interim Measures, 23 April 2020, p. 5.

<sup>153</sup> WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention, p. 1.

prison staff,”<sup>154</sup> and should see prisoners and staff as priority categories for testing. To define when they are carried out in the context of the COVID-19 pandemic, it is possible to learn lessons from the approaches promoted by international organizations for the prevention of tuberculosis in prisons<sup>155</sup>, taking into account the specific needs of newly arrived prisoners, during the period of detention, and staff members.

149. International human rights law unanimously emphasizes the need for detainees to undergo a medical examination upon admission<sup>156</sup>, “in particular in order to prevent the spread of communicable diseases.”<sup>157</sup> In this regard, persons deprived of liberty who are infected must be isolated during the period of infection.<sup>158</sup> Although the consent of the prisoner must be guaranteed before any type of treatment, mandatory examinations are accepted if they are based on the law. In exceptional circumstances, they must be clearly and rigorously defined with respect to the principle of non-discrimination.<sup>159</sup>
150. Both WHO and the European Committee for the Prevention of Torture emphasized the need for systematic TB testing in newly arrived inmates.<sup>160</sup> In order to prevent the spread of COVID-19 in prison, they should also, as a general rule, undergo systematic testing. However, these systematic tests can be difficult to implement in countries where the testing material is not available to the general population. Alternatively, and as recommended by WHO, at admission, people should be screened for fever and lower respiratory tract symptoms, and isolated<sup>161</sup> if they have symptoms consistent with COVID-19 or if they have had a previous diagnosis of COVID-19 and are still symptomatic, until more medical tests and evaluations can be carried out.<sup>162</sup>

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<sup>154</sup> United Nations High Commissioner for Human Rights, [Press briefing note on Americas / Prison conditions](#), 5 May 2020.

<sup>155</sup> Tuberculosis is also transmitted from person to person through the air when sick people cough, sneeze, or spit. WHO, [What is TB? What is TB? How is it treated? Q&A](#), 18 January 2019

<sup>156</sup> The Nelson Mandela Rules, Rule 30. IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle IX (3). European Prison Rules, Rule 42.1.

<sup>157</sup> WHO, Regional Office for Europe, [Prisons and Health](#), 2014, p. 56. IACHR, Review of the United Nations Standard Minimum Rules for the Treatment of Prisoners, para. 168. [Report to the Danish Government on the visit to Denmark Carried out by the CPT from 3 to 12 May 2019](#), CPT/Inf (2019) 35, para. 61.

<sup>158</sup> The Nelson Mandela Rules, Rule 30(d). IACHR, Review of the United Nations Standard Minimum Rules for the Treatment of Prisoners, para. 261. European Prison Rules, Rule 42.3(f). See Section E below: Physical distance and medical isolation.

<sup>159</sup> Council of Europe, Committee of Ministers [Recommendation No. R \(98\) 71 of the Committee of Ministers to Members States arranging the ethical and organizational aspects of health care in prison](#), adopted by the Committee of Ministers on 8 April 1998 at the 627th Meeting of Ministers' Delegates, para. 16.

<sup>160</sup> WHO, Regional Office for Europe, Prisons and Health, 2014, p. 56. [Report to the Danish Government on the visit to Denmark Carried out by the CPT from 3 to 12 May 2019](#), CPT/Inf (2019) 35, para. 61.

<sup>161</sup> See Section E below: Physical distance and medical isolation.

<sup>162</sup> WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention, p. 4. Other countries have applied a systematic quarantine of newly arrived inmates for 14 days, with adequate medical evaluation and testing of prisoners with symptoms, while

151. While in detention, people must have access to a doctor at any time and without undue delay.<sup>163</sup> Moreover, in the context of the COVID-19 pandemic, they should have access to tests as soon as they experience symptoms. If a prisoner or staff member tests positive, persons deprived of liberty and staff members who have been in contact with those people in the previous two weeks should also be evaluated.<sup>164</sup> In addition, proactive and periodic testing of all prisoners could help detect outbreaks from the beginning, and protect prisoners, staff and the community.<sup>165</sup> WHO recommends mass testing to protect prisoners from tuberculosis, but recognizes that such testing may not be sustainable in some settings because of the cost and other logistical barriers.<sup>166</sup> The same difficulties can arise with the COVID-19 tests, where the financial resources for testing are not available to the general population. However, mass evidence should be organized immediately when a set of infections is identified within a specific prison, or even in a specific section of a prison, if there is no movement of persons and goods between sections, aiming at preventing the mass spread of the prison population.
152. It should be noted that tests should also be administered to prison officials, given their close interaction with prisoners and their constant movement between the outside and the prison facilities, or between various prison facilities, which is a risk of contagion and perpetuating the spread of the virus. In this regard, WHO recommends the systematic temperature measurement of all prison staff before entering prison;<sup>167</sup> therefore, personnel who experience symptoms or have been in contact with a positive person should be tested for COVID-19.

#### **4. Personal Protective Equipment**

153. Currently, States vary in their approach to using masks in public. However, it is proven that people infected with SARS-CoV2 can transmit the virus before

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WHO does not recommend systematic isolation due to the negative impacts that unnecessary isolation may have on mental health. See Ireland, [Department of Justice and Equality, Information regarding the Justice Sector COVID-19 plans](#) (last accessed 1 June 2020). WHO, Regional Office for Europe, [FAQ: Prevention and control of COVID-19 in prisons and other places of detention](#), last access on June 4, 2020.

<sup>163</sup> Third general report on CPT's activities covering the period 1 January to 31 December 1992, para. 34. The Nelson Mandela Rules, Rule 27.1. IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle X.

<sup>164</sup> WHO, Regional Office for Europe. Preparedness, prevention and control of COVID-19 in prisons and other places of detention. p. 14.

<sup>165</sup> Inter-Agency Standing Committee, OHCHR and WHO, Interim Guidance. COVID-19: Focus on Persons Deprived of Their Liberty, p. 4.

<sup>166</sup> WHO, Regional Office for Europe, Prisons and Health, p. 77.

<sup>167</sup> WHO, Regional Office for Europe, FAQ: prevention and control of COVID-19 in prisons and other places of detention, last accessed 4 June 2020. This approach has been developed for example in Ireland [Department of Justice and Equality, Information regarding the Justice Sector COVID-19 plans](#) (last accessed 1 June 2020).



symptoms develop and the face masks help prevent this spread.<sup>168</sup> According to recent recommendations, masks should be mandatory in many places, especially where physical distance cannot be respected, such as shops, public transport, or other confined or crowded environments.<sup>169</sup>

154. In prisons, which are generally densely populated and where persons deprived of liberty cannot maintain the minimum physical distance required, the masks should be distributed to each person imprisoned in a compulsory manner. Masks are classified as personal prevention equipment (PPE) and, as such, are essential components of preventive medicine. They should therefore be distributed free of charge to all the population in prisons. At least, prisoners should be required to use masks when in contact with inmates of other cells or with prison officials. Masks should be replaced or washed in accordance with recommendations issued by health authorities. The same rules apply to officials when they are in contact with persons deprived of their liberty.

#### *Access to treatment and medication*

155. International law emphasizes that all persons deprived of their liberty must have immediate access to the medical care necessary for their health status, in conditions similar to those of the general population.<sup>170</sup> They should receive treatment for diagnosed diseases, as prescribed by competent physicians, which should include a comprehensive treatment strategy aimed at properly treating health problems or preventing worsening.<sup>171</sup> Treatment should be administered and monitored appropriately by a qualified medical team.<sup>172</sup> If a prisoners's health requires transfer to the hospital, he or she must be transported immediately and in the manner required

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<sup>168</sup> WHO, [Advice on the use of masks in the context of COVID-19. Interim Guidance](#), April 6, 2020, p. 1-2.

<sup>169</sup> WHO, [WHO Director-General's opening remarks at the media briefing on COVID-19](#), Press Release, 5 June 2020.

<sup>170</sup> The Nelson Mandela Rules, Rule 27.1. [De la Cruz-Flores v. Peru \(Available only in Spanish\)](#), Inter-American Court of Human Rights, Judgment of November 18, 2004, (Series C) No. 115, para. 132. [Ivko v. Russia](#), ECHR, Judgment of December 15, 2015, para. 94.

<sup>171</sup> [Wenner v. Russia](#), ECHR, Judgment from 10 January 2012, para. 57. [Nogin v. Russia](#), ECHR, Judgment of January 15, 2015, para. 84. See also [De la Cruz-Flores v. Peru \(Available only in Spanish\)](#), Inter-American Court of Human Rights, Judgment of November 18, 2004, para. 132.

<sup>172</sup> [Bamouhammad v. Russia](#), ECHR, Judgment from 10 January 2012, para. 122. Report to the Greek Government on the CPT's visit to Greece from 28 March to 9 April 2019, para. 47. Report to the Bulgarian Government on the CPT's visit to Bulgaria from 13 to 20 February 2015, para. 48. See also [Chinchilla Sandoval et al. v. Guatemala](#), Inter-American Court of Human Rights, Judgment of February 29, 2016, para. 189.

by his or her state of health.<sup>173</sup> The decision to transfer must be made exclusively by qualified medical personnel.<sup>174</sup>

156. In applying these legal principles, all persons deprived of liberty within penitentiary centers, who are suspected or confirmed of having COVID-19, must have access to health services, including specialized and urgent health units outside the penitentiary system, without undue delay, especially for isolation and respiratory treatment.<sup>175</sup> The above is reinforced by the recommendations of the Office of the High Commissioner for Human Rights (OHCHR), which suggested that prison services develop close links with community health services and other health care providers<sup>176</sup> and know which hospitals are capable of providing specialized services (such as respiratory assistance, intensive care units). WHO also noted that “consideration should be given to protocols that can manage the patient on site with clear criteria for transfer to hospital, as unnecessary transport creates risks for transport staff and the receiving hospital.”<sup>177</sup>
157. Persons deprived of their liberty must have access to the necessary health services (examinations, treatments and medicines) free of charge and without discrimination on the grounds of their legal status.<sup>178</sup> This rule should also apply to the provision of hygiene and cleaning products and masks, as they are part of preventive medical care and remain the best ways to prevent the spread of the virus in a public health context.

***B. The Plenary of the High Court of Justice of the State of Morelos, the Institute of the Public Defender's Office, the UMECA of Morelos and the prison authorities' failure to issue guidelines and protocols guaranteeing the right to life, health and personal integrity, allowing the re-evaluation and change of precautionary measures consisting of preventive detention, as well as the making of applications to enforcement judges to promote pre-release benefits (advance release,***

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<sup>173</sup> The Nelson Mandela Rules, Rule 27.1. *Hernández v. Argentina*, IACHR, Judgment of November 22, 2019, para. 88. [Raffray Taddei v. France](#), ECHR, Judgment of December 21, 2010, para. 63. Third general report on the CPT's activities covering the period 1 January to 31 December 1992, para. 37.

<sup>174</sup> [Report to the Serbian Government on the visit to Serbia Carried out by the CPT from 26 March to 5 April 2015](#), CPT/Inf(2016) 21, para. 80.

<sup>175</sup> Inter-Agency Standing Committee, OHCHR and WHO, Interim Guidance. COVID-19: Focus on Persons Deprived of Their Liberty, p. 4. WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim Guidance, para. 6.4.

<sup>176</sup> Inter-Agency Standing Committee, OHCHR and WHO, Interim Guidance. COVID-19: Focus on persons deprived of liberty, March 2020, p. 4.

<sup>177</sup> WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim Guidance, March 15, 2020, para. 6.4. See also *Hernández v. Argentina*, Inter-American Court of Human Rights, Judgment of November 22, 2019, para. 88.

<sup>178</sup> The Nelson Mandela Rules, Rule 24.1. United Nations General Assembly [Resolution 43/173. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), principle 24. IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle X. Report to the Greek Government on the visit to Greece carried out by the CPT from 28 March to 9 April 2019, CPT/Inf(2020) 15, para. 51. [Report to the Ukrainian Government on the visit to Ukraine Carried out by the CPT from 8 to 21 December 2017](#), CPT/Inf(2018) 41, para. 83.

*conditional release or replacement of the sentence) to change the custodial sentences in the context of the COVID-19 pandemic, violating the human rights contained in articles 1, 4, 18 and 22 of the CCPUM and 4, 5 and 7 of the CCHA.*

**i. Reevaluation of cases of pre-trial detention to take alternative measures**

158. In response to the pandemic, the IACHR issued resolution 1/2020 entitled “Pandemic and Human Rights in the Americas”<sup>179</sup>, designating a specific section of recommendations to States for safeguarding the rights of persons deprived of liberty (paras. 45-48); including **the development of measures to address the overcrowding of the prison units , including the reevaluation of cases of preventive detention to identify those that may be converted into alternative measures to deprivation of liberty, giving priority to populations who face higher risk to their health from possible COVID-19 infection**, mainly older people and pregnant women or women with infants (para. 45). As well as **ensuring that, in the case of persons at risk in the context of a pandemic, requests for prison benefits and alternative measures to prison sentences are evaluated (...)** such assessments require more stringent analysis and requirements, **in accordance with the principle of proportionality and applicable inter-American standards** (para. 47).
159. This document was also taken up by the plenary of the Council of the Federal Judiciary in its General Agreement 8/2020 in THE EIGHTH RECITAL, in order to support the decisions that the Council adopted in the context of the pandemic that we are currently experiencing.
160. These positions are based on Mexican legislation, specifically in the National Code of Criminal Procedures, which establishes in its Article 166 that the exception of pre-trial detention shall be: “In the event that the accused person is a person with over seventy years of age or affected by a serious or terminal illness, the Court may order that the pre-trial detention be carried out at the home of the accused person or, if the case may be, in a medical or geriatric center, under the appropriate precautionary measures.”

**ii. Reevaluation of custodial sentences**

161. In view of the serious social repercussions caused by the SARS-CoV2 pandemic, various international organizations from both the OAS and the UN have issued resolutions pointing to the need to guarantee the right to health, to the integrity and

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<sup>179</sup> Available at <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>, accessed April 26, 2020.

life of persons deprived of liberty by reducing the prison population, given priority, exceptional and urgent treatment to cases of people with chronic degenerative diseases, with greater risk to their health and with greater risk of infection.

162. In response to the pandemic, the IACHR issued resolution 1/2020 entitled “*Pandemic and Human Rights in the Americas*”<sup>180</sup>, designating a specific section of recommendations to States for safeguarding the rights of persons deprived of liberty (paras. 45 to 48); among which are the adaptation of measures to address the overcrowding of units of deprivation of liberty, **including the revaluation of cases of preventive detention to identify those that may be converted into alternative measures to deprivation of liberty**. This gives priority to populations at higher risk of health in the face of a possible spread of COVID-19, mainly older people and pregnant or lactating women (para. 45). As well as it ensures that, in the case of persons at risk in the context of a pandemic, requests for prison benefits and alternative measures to prison sentences are evaluated, from the analysis of the requirements established by law and bearing in mind the principle of proportionality and the applicable inter-American standards (para. 47). In connection with this and within the framework of COVID-19, the United Nations Office on Drugs and Crime (UNODC) in Mexico, the Pan-American Health Organization/World Health Organization in Mexico and the Office in Mexico of the United Nations High Commissioner for Human Rights (OHCHR), all UN agencies published a document called UNAPS SPECIAL COVID-19 STANDARDS: United Nations Advanced Standards for the Mexican Penitentiary System<sup>181</sup>, which in turn is divided into four booklets.
163. More specifically, the document includes the following as a legal element to implement: “There is a procedure for the pre-release of persons deprived of their liberty according to prison policy. This procedure should **provide guidelines for the identification and prioritization of humanitarian cases in the case of older convicted persons, who carry a chronic-degenerative or terminal disease, regardless of the time they have served or left to be served on the sentence.**”<sup>182</sup>
164. For its part, the Inter-American Court of Human Rights, in issuing the Declaration of COVID-19 AND HUMAN RIGHTS: THE PROBLEMS AND CHALLENGES

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<sup>180</sup> Available at <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>, accessed April 26, 2020.

<sup>181</sup> Available at [https://www.unodc.org/documents/mexicoandcentralamerica/2020/Mexico/Estandares\\_Especiales\\_UNAPS\\_COVID-19.pdf](https://www.unodc.org/documents/mexicoandcentralamerica/2020/Mexico/Estandares_Especiales_UNAPS_COVID-19.pdf)

<sup>182</sup> Available at [https://www.unodc.org/documents/mexicoandcentralamerica/2020/Mexico/Estandares\\_Especiales\\_UNAPS\\_COVID-19.pdf](https://www.unodc.org/documents/mexicoandcentralamerica/2020/Mexico/Estandares_Especiales_UNAPS_COVID-19.pdf)

SHOULD BE ADDRESSED WITH A HUMAN RIGHTS PERSPECTIVE AND RESPECTING INTERNATIONAL OBLIGATIONS<sup>183</sup>, considered that "given the high impact that COVID-19 may have on persons deprived of liberty in prisons and other detention centers and with attention to the special position as the guarantor of the State, it becomes necessary to reduce the levels of overpopulation and overcrowding, and to implement **in a rational and orderly manner of alternative measures to the deprivation of liberty**".

165. In turn, the International Committee of the Red Cross (ICRC) issued the document Recommendations for the prevention and control of COVID-19 in places of detention, and in their recommendation<sup>184</sup> number 20 entitled "Judicial review of cases at risk of transmission and freedoms for humanitarian reasons" it states that the competent authorities should: Document cases of people with a higher risk of contagion and/or that may access legal and/or penitentiary benefits and ask judicial authorities to prioritize the cases identified. This could be justified on the basis of the rights to life, integrity and health, as well as the corresponding State duties of protection and guarantee, and principles such as human dignity, the need for temporary detention or punishment, the prohibition of the imposition of illegal, cruel, inhuman or degrading treatment or punishment, the principle of non-injury and finality of the sentence handed down, as well as the prohibition of conditions incompatible with deprivation of liberty, and the principle of normality according to which access to health care and services equivalent to the outside world should be guaranteed.
166. The previous resolutions and recommendations are based on Mexican legislation and are in accordance with the constitutional principles governing the system of social reintegration and criminal justice, so the authorities of the Mexican State – within the scope of their competences – are obligated to comply with them.
167. In its second paragraph, Article 18 of the National Criminal Enforcement Law states that "the prison system shall be organized on the basis of respect for human rights, labor, vocational training, education, health and sports as a means to achieve the reintegration of the sentenced person into society and to ensure that they do not become a repeated offender, **observing the benefits** that the law provides them."
168. The National Criminal Enforcement Law provides for benefits in favor of persons in prison, namely: (A) conditional liberty, (b) early release, (c) temporary replacement

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<sup>183</sup> Available at: [https://www.corteidh.or.cr/tablas/alerta/comunicado/Statement\\_1\\_20\\_ENG.pdf](https://www.corteidh.or.cr/tablas/alerta/comunicado/Statement_1_20_ENG.pdf)

<sup>184</sup> Available at [https://reliefweb.int/sites/reliefweb.int/files/resources/recomendaciones\\_para\\_la\\_prevenccion\\_y\\_control\\_de\\_la\\_covid-19\\_en\\_lugares\\_de\\_detencion.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/recomendaciones_para_la_prevenccion_y_control_de_la_covid-19_en_lugares_de_detencion.pdf)

and suspension of the sentence, (d) extraordinary leave for humanitarian reasons and (e) criteria for prison policy. As noted, the Law in comment regulates the possibility of eliminating or replacing the penalty or precautionary measure consisting of deprivation of liberty with a less serious one in several cases.

169. However, Articles 108 and 115 of the National Criminal Enforcement Law legitimizes public defenders to bring administrative petitions against facts, acts or omissions in respect of conditions of detention before the Prison Authority. Similarly, Articles 117 and 118 also legitimize public defenders and the prison authority to **appeal before the enforcement judges on conditions of detention, as well as on the duration, modification and extinction of sentences.**
170. Legal provisions that legitimize human rights defenders and prison authorities to file administrative petitions or disputes concerning conditions of detention and on the modification or extinction of sentences must be understood as regulated competences precisely to guarantee the human rights of persons deprived of liberty recognized in Article 18 of the Constitution. These powers, under the proper application of the *pro persona* principles and consistent interpretation, allow public defenders and prison authorities to comply fully with the recommendations and guidelines issued by international agencies identified at the beginning of this petition.
171. Therefore, the present petition for *amparo* complains about the failure of the public defenders and the prison authorities themselves, for although they have the legal power to promote the improvement of prison conditions and the granting of pre-release benefits for persons deprived of liberty, the background referred to in the present petition for *amparo* indicates that they have not been implemented.
172. The failure complained of is about prison benefits consisting of conditional liberty, early release and alternative penalties.
173. According to Article 136 of the LNEP (National Criminal Enforcement Law), **conditional release** is a benefit that allows sentenced persons to continue to carry out their sentence under supervision with or without monitoring by an electronic device. Article 137 describes the requirements that the judicial authority must contemplate to be able to request it, however, as previously mentioned, public defenders must apply for it.
174. In accordance with Article 141 of the LNEP, the granting of **early release** extinguishes the prison sentence and allows for the release of the sentenced person, allowing only for the security measures or non-custodial sanctions that were imposed in the corresponding sentence.

175. In accordance with Article 144 of the LNEP, the custodial sentence may **be replaced** by a penalty or measure of non-custodial security, provided for in that Law, when certain cases are updated during the period of enforcement, for instance, when the penalty is unnecessary or incompatible with the conditions of the person deprived of liberty for senility, old age, or his or her serious state of health.
176. Finally, Article 146 of the mentioned Law provides that the Prison Authority may request the corresponding High Court of Justice of the State to apply the three benefits described above (conditional release, early release and alternatives to prison) to a certain group of persons sentenced according to certain criteria, for instance, for humanitarian reasons in the case of older adults, who carry a chronic degenerative or terminal disease.
177. In the same sense, within the national legislation, the National Code of Criminal Procedures provides in its Article 166 the following: “In the event that the accused person is a person over seventy years of age or affected by a **serious or terminal illness**, the Court may order that the preventive detention be carried out at the home of the accused person or, if necessary, in a medical or geriatric center, under the appropriate precautionary measures.”
178. This is also provided for in a large number of the penal codes of the states of the Republic as part of the guarantees to be held by persons deprived of their liberty.
179. As stated above, both considerations could be made by the Public Defender's Office of the State of Morelos, as well as by the prison authorities, since for all the above-mentioned benefits, the following relationships are maintained:
- a. These are alternative measures to prison that reduce overcrowding in Morelos prisons.
  - b. To be granted, they must be processed with the Enforcement Judge.
  - c. They may be requested informally at the request of public defenders or at the proposal of the Prison Authority.
  - d. Being a person over seventy years of age or suffering from a life-threatening medical condition is a criterion considered for granting it.
180. In view of this, we are complaining about the State Public Security Commission and its dependent prison authorities that fail to comply with the powers conferred on them by the LNEP, as well as the organic framework that regulates them.
181. Likewise, it is because of the expression in the present concept of violation, that the Public Defender's Office of the State of Morelos and the penitentiary authorities are

called upon for their failure to file administrative requests before the competent enforcement judges, concerning the current conditions of detention as set out in the demand background, in accordance with Articles 1107 and 108 of the LNEP; for their failure to request the competent enforcement judges to replace the custodial penalty of persons at particular risk in the event of a possible transmission of COVID-19, when they comply with the assumptions set out in Article 144 of the LNEP; for their failure to request the competent enforcement judges to grant the benefit of early release to all persons who fulfill the assumptions set out in Article 141 of the LNEP, as a preventive and cautionary measure in light of COVID-19; for their failure to prioritize cases of people at risk in the context of a pandemic, evaluating applications for prison benefits and alternative measures to the custodial penalty, based on the analysis of the requirements established in the law and in accordance with the principle of proportionality and applicable inter-American standards.

***C. Failure of the Governor and prison authorities to provide mechanisms for protection of the right to health of released persons and their communities***

182. In accordance with the Social Reintegration Law, the authorities have an obligation to provide social assistance to the persons released and to facilitate their social reintegration.<sup>185</sup> The Social Reintegration Law itself states that its purpose is to provide sentenced persons with tools for work, training, education, health and sport, so that at the time of their release they can perform better in society. In the context of the COVID-19 pandemic, it is essential to have provision for mechanisms that protect the right to health of released persons and their communities. The failure to provide for such mechanisms contradicts the duty to promote social reintegration systems, in which health is a fundamental pillar.
183. In addition, Article 207 of the LNEP also describes the provision of post-criminal support services to the released persons and their families to facilitate social reintegration, to ensure their dignified lives and to prevent recidivism. It is for this reason that the provision of individual assistance, including health care, food and accommodation, on a case-by-case basis, to the released persons is essential to facilitate their reintegration and development of a dignified life.
184. The provision of these health and social assistance services is also in line with the appeal issued by the United Nations High Commissioner for Human Rights, Michelle Bachelet, who requested in March that persons “released should receive medical examinations and be subject to the necessary measures to ensure that they receive

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<sup>185</sup> Law on Social Reintegration and Follow-up of Precautionary Measures, Legal Counsel of the Executive Branch of the State of Morelos. Last reform of 01/06/2016, Article 172



adequate care and follow-up, including health monitoring.”<sup>186</sup> This is in accordance with the provisions of the Mandela Rules, which provide for the need to establish the services of governmental or private bodies capable of providing the former prisoner with effective post-judicial assistance that will help to reduce prejudice against them and enable them to reintegrate into society.<sup>187</sup>

185. Because among the objectives of penalties and custodial measures is the reintegration of former prisoners into social life after their release<sup>188</sup>, so that they can lead a full and dignified life, it is essential to provide necessary social, health, professional and educational care for their rights to be protected also after their release.

186. Guaranteeing the right to health of persons released as a tool for their social reintegration has repercussions not only on former prisoners, but also on people in their community, so that these mechanisms must also play a role in protecting public health. The absence of such mechanisms not only presents a risk to the health of the persons released, but also to the public health of the communities to which they are released. According to those mechanisms, “in order to prevent a spread of communicable diseases contracted in prisons to the community, health services in prisons should be consistent with community standards and the need to protect public health.”<sup>189</sup> What is the omission herein claimed?

***D. The failure of the Attorney-General to change the policies of detention during the investigation of crimes, violating the human rights to life, health and integrity, as contained in Articles 1, 4, 18 and 22 of the CPEUM and 4, 5 and 7 of the CHAC.***

187. Easing overcrowding of prisons requires both the release and the reduction of imprisonment of persons. Thus, States are obliged to establish policies for the reduction of detentions with the aim of safeguarding the right to life, health and integrity of persons deprived of liberty and their communities.

188. The failure of the Office of the Attorney General to issue guidelines or policies aimed at reducing the prison population in the State of Morelos is thus claimed (see paragraphs 138 and 139 of this claim). The failure to do so makes matters worse if

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<sup>186</sup> Office of the United Nations High Commissioner for Human Rights, *Urgent action needed to prevent COVID-19 “rampaging through places of detention,”* <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>, 25 March 2020

<sup>187</sup> Nelson Mandela Rules, Rule 90

<sup>188</sup> Nelson Mandela Rules, Rule 4

<sup>189</sup> United Nations Office on Drugs and Crime, Introduction Guide to the Prevention of the Recidivism and Social Reintegration of Offenders, 2013, [https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Introductory\\_Handbook\\_on\\_the\\_Prevention\\_of\\_Recidivism\\_and\\_the\\_Social\\_Reintegration\\_of\\_Offenders.pdf](https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Introductory_Handbook_on_the_Prevention_of_Recidivism_and_the_Social_Reintegration_of_Offenders.pdf) p. 40.

one considers that in recent months, detentions have been increasing instead of decreasing. In Morelos, the total population deprived of liberty in January 2020 was 2,963, while in July 2020 the figure was 3,206. At the national level, there was an increase in prison numbers (both state and federal) from January (202,337) to July 2020 (211,999). This represents an increase of 8,066 people (4 per cent) during those six months. 41 per cent of persons in detention are held in pre-trial detention. Of the prison population, 40 per cent of men and 50 per cent of women in prison are detained in pre-trial detention. From January to June, the figures increased by 14.4 per cent for men awaiting trial and 16.7 per cent for women awaiting trial.<sup>190</sup> During the pandemic, the pre-trial prison population continued to grow: In March there were 77,230 people, while in June there were 85,265, while there was a decrease (of only 2,341) in the prison population.

***E. Failure of the prison authorities and the Governor to make all information about the pandemic transparent and accessible to the prisons.***

189. Based on the special degree of vulnerability of persons deprived of liberty and the need to take specific and exceptional measures to safeguard their human rights to physical integrity, life and access to health, key announcements have been issued by international agencies, including the Office of the United Nations High Commissioner for Human Rights (hereinafter OHCHR), who, on 16 March 2020, pointed out that the attention that States must provide must be comprehensive and transparent, understanding that while there are difficulties that Governments face in addressing the emergency situation, this does not imply that human rights violations are justified<sup>191</sup>.
190. States should provide detailed information on measures taken with regard to the prevention, medical care and regime of prisoners in the face of the pandemic.<sup>192</sup> States should also report different figures on a regular basis, such as the number of

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<sup>190</sup> Secretariat of Citizen Security and Prevention, *Monthly Cuaderno Mensual de Información Estadística Penitenciaria Nacional*, January 2020 (Available Only in Spanish) [https://www.gob.mx/cms/uploads/attachment/file/564750/CE\\_2020\\_ENERO.pdf](https://www.gob.mx/cms/uploads/attachment/file/564750/CE_2020_ENERO.pdf); Secretariat of Citizen Security and Prevention, *Cuaderno Mensual de Información Estadística Penitenciaria Nacional*, July 2020 (Available Only in Spanish) [https://www.gob.mx/cms/uploads/attachment/file/574798/CE\\_2020\\_JULIO.pdf](https://www.gob.mx/cms/uploads/attachment/file/574798/CE_2020_JULIO.pdf); Impunity Zero, Intersect, et al., "Dictamen sobre prisión preventiva oficiosa en Senado afecta principalmente a las mujeres" (Available Only in Spanish), 29 July 2020, <https://www.impunidadcero.org/uploads/app/articulo/137/contenido/1596037029I46.pdf>; Adriana E. Ortega and Nicole Huete, *La prisión en tiempos de COVID: una sentencia de muerte* (Available Only in Spanish), 29 July 2020, <https://www.animalpolitico.com/blog-de-intersecta/la-prision-en-tiempos-de-covid-una-sentencia-de-muerte/>.

<sup>191</sup> Available at: <https://news.un.org/es/story/2020/03/1471202> (Available Only in Spanish) and <https://news.un.org/es/story/2020/03/1470701> (Available Only in Spanish), accessed 26 April 2020.

<sup>192</sup> Sub-Committee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Recommendations of the Sub-Committee on the Prevention of Torture to States Parties and National Prevention Mechanisms Related to the Coronavirus Pandemic*, 20 March 2020, Section I.4.

cases detected, the number of deaths, including among staff members, and the number of cases referred to the investigating authorities.

***F. Failure of the prison authorities and the Morelos Prosecutor's Office to issue protocols and guides on the handling of corpses that comply with the provisions of the Minnesota Protocol.***

191. On the basis of the responsibility of States to protect the lives of persons in custody and to protect them from ill-treatment, both the prison authorities and the Prosecutor's Office have a duty to investigate deaths in custody to establish the factual circumstances surrounding death and identify lessons to be learned to avoid similar lethal incidents. These rules fully apply to deaths occurring in prisons during the COVID-19 pandemic.<sup>193</sup>
192. Deaths in custody (or shortly after the transfer from the prison) should be reported to an independent authority of the prison system and impartial investigations should be conducted to assess the circumstances and causes of death.<sup>194</sup> The investigation must determine, among other things, the cause of death, the facts that led to death (including contributing factors), and whether death could have been prevented.<sup>195</sup> An autopsy should be performed and the medical and prison administration services should receive the findings of autopsy reports (or at least information on the cause of death), as well as the results of any judicial investigation.<sup>196</sup> The ECHR emphasized that investigations should be effective, i.e. "capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible"; the authorities should "act of their own motion once the matter has come to their attention"; and investigations should be handled with "promptness and reasonable expedition."<sup>197</sup> The IACHR also emphasized that the authorities have a

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<sup>193</sup> The UN Special Rapporteur on extra judicial, summary or arbitrary executions has stressed that "death as a result, in whole or in part, of the denial of essential elements for life such as safe and adequate food, sanitation, adequate space, adequate ventilation or adequate medical care is, therefore, an arbitrary death for which the State is responsible." United Nations Special Human Rights Procedures, mandate of the Special Rapporteur on extra judicial, summary or arbitrary executions [COVID-19 and Protection of right to life in places of detention](#), p. 2.

<sup>194</sup> The Nelson Mandela Rules, Rule 71. [Prizreni v. Albania](#), ECHR, Judgment of June 11, 2019, para. 40. [Report to the Romanian Government on the visit to Romania Carried out by the CPT from 7 to 19 December 2018](#), CPT/Inf (2019) 7, para. 77. African Commission on Human and Peoples' Rights, Luanda Guidelines, Rule 21. [Ximenes-Lopes v. Brazil](#), IACHR, Judgment of July 04, 2006, para. 148. IACHR, Review of the United Nations Standard Minimum Rules for the Treatment of Prisoners, para. 325-327. The ECHR refers to deaths that occurred "in suspicious circumstances," while the Nelson Mandela Rules, CPT standards, the IACHR, and the Luanda Guidelines require an investigation into all cases of death in custody. The IACHR refers to any violation of the right to life and personal integrity.

<sup>195</sup> Report to the Romanian Government on the CPT's visit to Romania from 7 to 19 February 2018, para. 77.

<sup>196</sup> [Report on the visit to "the former Yugoslav Republic of Macedonia" carried out by the CPT from 6 to 9 December 2016](#), CPT/Inf (2017) 30, para. 42. Report to the Serbian Government on the CPT's visit to Serbia from 26 March to 5 June 2015, para. 84.

<sup>197</sup> [Prizreni v. Albania](#), ECHR, Judgment of 11 June 2019, para. 42-43

duty to conduct impartial and effective ex officio investigations without delay.<sup>198</sup> Family members of the deceased must receive relevant information about the circumstances of the death.<sup>199</sup> The Argentine Team of Forensic Anthropology (EAAF) argues in its report (Annex 5) that “the authorities must address the situations on a case-by-case basis, taking into account the rights of the family, the need to investigate the cause of death and the risks of exposure to infection”.

193. The causes and possible factors that contributed to a prison death should be carefully examined by the prison administration to determine whether the death could have been prevented and whether new measures or protocols should be adopted. Therefore, an analysis of each prison death should be conducted to consider what general lessons can be learned for the prison in which the death occurred.<sup>200</sup> As stated by EAAF on their report (Annex 5), a joint protocol of action by penitentiary institutions, including health and forensic institutions, should be envisaged for the management of deaths among the population deprived of liberty, in accordance with the requirements of the law and the international standards they apply.
194. In the context of the pandemic, the authorities cannot excuse this duty under the pretext of the possible transmission of COVID-19.
195. With respect to prison deaths in the context of the pandemic, the aim should be to meet the objectives set out in paragraph 25 of the Minnesota Protocol: (i) identify victims; (ii) recover and preserve evidence; (iii) identify potential witnesses and collect their testimonies; (iv) determine the cause, manner, place, time and conditions of death; (v) determine, where appropriate, individual responsibilities.<sup>201</sup> The EAAF considers that these objectives must be fulfilled: To clarify the circumstances in which death has occurred; (ii) to reduce the trauma of close relatives; to prosecute and punish those responsible; and (iv) to prevent future cases of death in custody (see Annex 5)

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<sup>198</sup> [Vera Vera et al. Ecuador](#), Inter-American Court of Human Rights, Judgment from 19 May 2011, para. 87.

<sup>199</sup> Report to the Romanian Government on the CPT's visit to Romania from 7 to 19 February 2018, para. 75.

<sup>200</sup> [Report to the Spanish Government on the visit to Spain Carried out by the CPT from 6 to 13 December 2018](#), CPT/Inf (2020) 5, para. 75. Report to the Romanian Government on the CPT's visit to Romania from 7 to 19 February 2018, para. 77.

<sup>201</sup>

<https://www.ohchr.org/layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Publications/MinnesotaProtocol.pdf&action=default&DefaultItemOpen=1>

196. For the purposes of autopsies, the guidelines explained in paragraphs 148-166 of the Minnesota Protocol should be followed.<sup>202</sup> It should be noted that, as the EAAF points out in its report (ANNEX 4): “Except in cases of hemorrhagic fevers (such as Ebola or Marburg hemorrhagic fever) and cholera, the corpses are usually not infectious and to date there is no scientific evidence of infection from exposure to the corpse of a person who died from COVID-19”. Consequently, public health hazards cannot be invoked as a legitimate justification for excluding the obligation to perform an autopsy and to investigate the circumstances, cause and manner of death of persons killed in prison in the context of the pandemic.
197. For the purposes of cadaver handling, the biosafety and safe management of corpses required by the EAAF should be adopted in accordance with WHO guidelines (see Annex 5, page 4 and 5).
198. The identification of bodies by relatives should follow paragraphs 115 to 129 of the Minnesota Protocol.<sup>203</sup> In the case of unidentified and unclaimed deceased persons, the provisions of the General Law on the Forced Disappearance of Persons, Disappearance Committed by Individuals and the National Missing Persons System shall be in place, in particular as regards whether any common grave that is used should have individualized spaces for burial that are precisely registered and identifiable.
199. Similarly, because the cause and manner of death of persons must be investigated, their bodies must not be incinerated. This is in accordance with Article 271 of the National Code of Criminal Procedures concerning the survey and identification of bodies.
200. Finally, the best practices in relation to the notification of death and the dignified delivery of remains to the relatives of the deceased must be taken into consideration, ensuring the measures conducive to biosafety, but also the sensitivity, privacy and dignity required by such a procedure. Family members should be given the appropriate medical advice and be allowed to open the coffin and see the body before the burial.

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<sup>202</sup>

<https://www.ohchr.org/ layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Publications/MinnesotaProtocol.pdf&action=default&DefaultItemOpen=1>

<sup>203</sup>

<https://www.ohchr.org/ layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Publications/MinnesotaProtocol.pdf&action=default&DefaultItemOpen=1>

## **X. Evidence.**

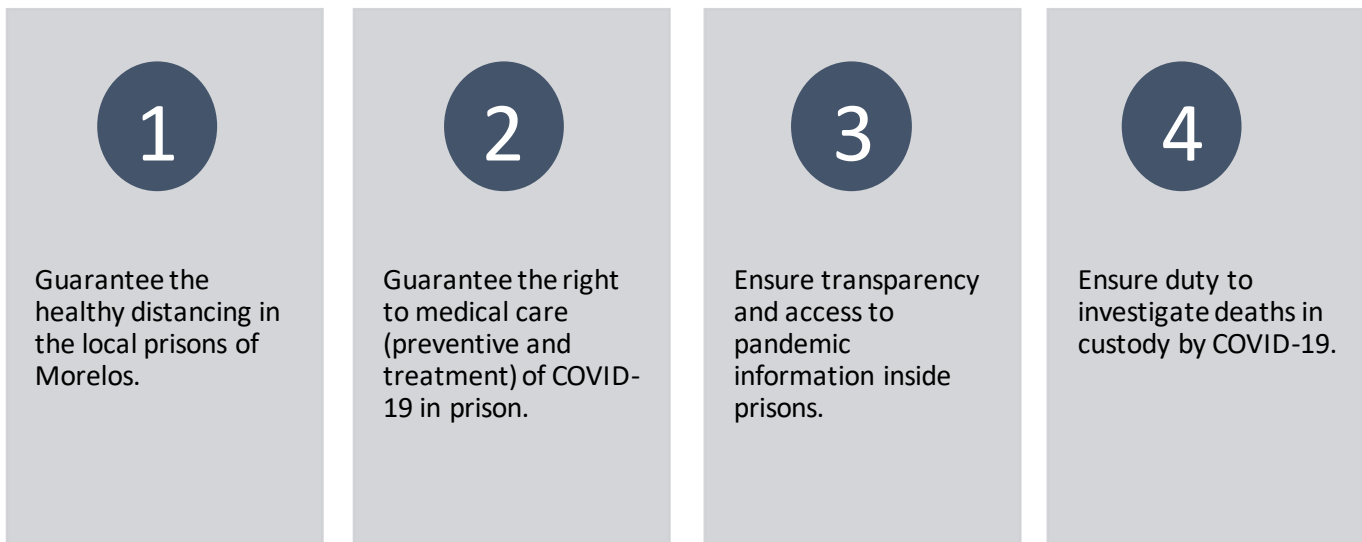
Despite the fact that we have the right to offer evidence in the future once this lawsuit is admitted, as established in Article 119 of the Amparo Law, we offer the following evidence herein:

1. Public document: Deed #34122, dated March 22, 1998, issued by the 140 Notary of the Federal District, stating that “Centro de Derechos Humanos Miguel Agustín Pro Juárez” was established as A CIVIL ASSOCIATION, which is attached to the present request for *amparo* as **ANNEX 1**.
2. Public document: Notarial instrument #117,526 - testimony of the substantive amendments of the bylaws, the admission of associates and the appointment of the board of directors - , that results from the protocol of the memorandum of “Centro de Derechos Humanos Miguel Agustín Pro Juárez”, Civil Association, Dated September, 11, 2018, issued by the Notary No 217, which is attached to the present request for *amparo* as **ANNEX 2**.
3. Private document: Technical opinion on health conditions within prisons concerning the COVID-19 pandemic, Fernando Alarida Escudero, PhD; Héctor Gomez Dantes, MD MSc.; Gregg Gonsalves, PhD JADD; Ranit Mishori, MD, MHS FAAFP; and Michele Heisler, MD MPA, which is attached to this request for *amparo* as **ANNEX 3**.
4. Private document: Technical opinion on health conditions within prisons in relation to the COVID-19 pandemic, Expert Report on the Obligations of the Precautionary Measures Unit of the State of Morelos during the COVID-19 Pandemic, which is attached to this request for *amparo* as **ANNEX 4**.
5. Private document: Technical Report on Measures for Preventing Transmission and Handling the Deceased by COVID-19 in Detention Centers, written by the Argentine Team of Forensic Anthropology (EAAF), which is attached to the present request for *amparo* as **ANNEX 5**.
6. Private document: Report on Policies to Prevent COVID-19 in Prisons, by the Irish Criminal Reform Trust, which is attached to the present request for *amparo* as **ANNEX 6**.
7. Private document: Expert Report on the Management of Dead Bodies in Custody and the COVID-19 Pandemic, by Albertina Ortega Palma, which is attached to the present request for *amparo* as **ANNEX 7**.
8. Private document: Italian Policies to Prevent COVID-19 and Contain its Spread in Prisons, issued by the organization Antigone, which is attached to this request for *amparo* as **ANNEX 8**.

In addition, according to the third paragraph, Article 75 of the Amparo Law, we request this court to seek ex officio all the evidence that may serve to determine this matter and also informally agree to all those proceedings that are deemed necessary to specify the rights of the complaining party, as well as the nature and effects of the acts claimed..

### **XI. Effects of the granting of *amparo* requested fund**

201. Based on expert reports consisting of: *Technical opinion on health conditions within prisons related to the COVID-19 pandemic, Expert report on obligations of the Morelos State Precautionary Measures Unit during the COVID-19 pandemic, Technical opinion on management of corpses in custody during the COVID-19 pandemic, Technical opinion on Prevention of Contagion Measures and Treatment of Persons Deprived by COVID-19 in Deprived of Liberty Centers, Report by Antigone Italy and Report by the Irish Criminal Reform Trust Ireland* I ask you carefully Honorable Mr. Judge that, in the order of priority set out below, they give the following effects in case of granting the *amparo*:



202. As indicated by all the expert reports presented and mentioned here, including all the guidelines of the World Health Organization and the Health Department itself, the main measure to prevent contagion is healthy distancing. Therefore, this measure is the most important and the most urgent measure to remedy the violations mentioned above. Considering this measure, the following guidelines are listed below in order of importance: Ensuring medical care (both preventive and treatment), ensuring transparency and access to information both for detainees and their families and for society in general, and ensuring investigation of deaths in custody. The following table contains the measures requested by the respondent authority.

Authority	Ensuring healthy distance: Release	Guarantee the right to medical care: Preventive and treatment	Ensure transparency and access to information	Ensure duty to investigate deaths in custody
<b>Health Department and Secretariat of Health of the State of Morelos</b>	1. To issue guidelines and protocols about COVID19, developed specifically for prisons, that guarantee the measures detailed below.			
<b>Prison Authorities: Governor, State Public Security Commission</b>	<p>1. Ensure social distancing in dormitories and common areas such as dining rooms, recreation areas, waiting rooms and medical rooms.</p> <p>2. Provision of shelter, food and health services to vulnerable released persons.</p> <p>3. Access to existing social assistance programs for the released persons.</p>	<p>4. Ensure personal and environmental hygiene (access to adequate washing and showering facilities; disinfection and cleaning measures in common areas; free provision of soap and other cleaning materials).</p> <p>5. Ensure the use and provision of masks, personal protective equipment and gloves to prisoners and prison staff.</p> <p>6. Ensure daily temperature checks.</p> <p>7. Conduct periodic and mandatory COVID-19 tests for those entering the prison. The tests should be of the nasopharyngeal swab type.</p> <p>8. Ensure that newly arrived persons with symptoms are quarantined without being confined or isolated at any time.</p> <p>9. Ensure medical examination of people with symptoms on the same day as they begin to present them, and immediately place them in medical isolation.</p> <p>10. Ensure contact tracing for prisoners and prison staff when an infection is detected.</p>	<p>11. Provide information on their website at least monthly and to prisoners at least weekly on measures taken to prevent the pandemic, cases of COVID-19, tests performed, treatments and deaths.</p> <p>12. Provide detailed information on measures taken about the prevention, medical care and regime of prisoners.</p> <p>13. Ensure access to information on the total number of persons deprived of liberty; number of persons deprived of liberty per cell; number of doctors per prison; number of medical personnel per prison; number of masks distributed per prison; number of COVID-19 tests performed per prison; Number of hygiene products distributed per prison; number of COVID-19 and atypical pneumonia cases detected; number of deaths among prison population and employees from COVID-19 or atypical pneumonia; number of cases referred to authorities responsible for investigations of death from COVID-19 or atypical pneumonia.</p> <p>14. Ensure education and training on the epidemic (provision of information and educational materials to prisoners, frequent communication of changes and situations in easily understandable language).</p>	15. Obligation to report and investigate(?) deaths in custody.
<b>Attorney</b>	1. Issue			1. Issue



<p><b>General's Office of the State of Morelos</b></p>	<p>guidelines that guarantee a special criminal policy for the pandemic that allows for reducing overcrowding in prisons, these policies should limit the use of preventive detention considering, in addition to the provisions of the law: the overcrowding of prisons, the number of cases of COVID19 in prisons, and the family and health situation of the individual.</p> <p>2. Re-evaluate cases of pre-trial detention with the advice of the State Monitoring Unit to precautionary measures and conditional suspension of the trial, considering the overpopulation of prisons, the number of cases of COVID19 in prisons, and the family and health of the person.</p> <p>3. Make requests for change of precautionary measure when, from the analysis of overpopulation in prisons, the number of cases of COVID19 in prisons, and the family and health situation of the individual, is an appropriate measure to address the pandemic.</p>			<p>protocols relating to the death in custody of persons infected with COVID 19 that ensure the investigation of ALL deaths in custody including that of COVID-19. These protocols must always respect the dignity of the deceased and their cultural and religious traditions.</p> <p>2. Ensure the training of prison staff in the management of corpses by COVID-19.</p> <p>3. Ensure a ban on the use of mass graves.</p> <p>4. Ensure that COVID-19 tests are carried out on corpses.</p>
<p><b>Public Defender's Office</b></p>	<p>1. Issue guidelines to ensure the adequate defense of people in the face of the COVID19 pandemic, through:  Identifying vulnerable persons in prison.  Requesting the reevaluation of both precautionary measures and sanctions consisting of deprivation of liberty to take alternative measures (house arrest, weekly registrations, delivery of passports, prohibition on leaving an area).  Requesting the release of all persons who may be released as a matter of priority.</p>			
<p><b>UMECA Morelos</b></p>	<p>1. Issue guidelines on the determination of risks that incorporate specific health situations of people in relation to the pandemic, for example by identifying health conditions that make a person vulnerable.  Issue guidelines on the supervision and monitoring of measures to make standards more flexible and to use technologies that do not put people's health at risk for compliance with their measures.</p>			
<p><b>Plenary of the High Court of Justice of the State of Morelos</b></p>	<p>1. Issue a General Agreement requiring supervisory judges to ask questions related to the health of individuals when deciding on provisional measures.</p>			

203. Regarding these measures, we request that States be required to comply with the following general principles<sup>204</sup>.

A. *Equivalence in care*

204. In organizing health services in prisons, States must ensure equivalence in care, which requires that care be provided to detainees under conditions comparable to those enjoyed by patients in the outside community.<sup>205</sup> The Inter-American Commission on Human Rights calls for the "highest possible level of care" for prisoners.<sup>206</sup>

205. In accordance with the Mandela Rules (paragraphs 24 and 27), the provision of medical services to prisoners is the responsibility of the State, since persons deprived of liberty shall enjoy the **same standards of health care that are available in the outside community** and shall have free access to the necessary health services **without discrimination on the basis of their legal status**, including in the case of urgent medical care. Moreover, when violations of the human rights of persons deprived of their liberty are considered serious due to their vulnerability, as recognized by the **Brasilia Rules**<sup>207</sup>, they are increased in the absence of safeguards.

B. *Principle of non-discrimination*

206. Prison conditions and access to medical care must be guaranteed without discrimination on the basis of race, skin color, gender, sexual orientation, language, religion, political opinion or other, national or social origin, property, birth or any other state.<sup>208</sup> The principle of non-discrimination creates a special

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<sup>204</sup> Open Society Justice Initiative, *The Right to Prison Health Care During the COVID-19 Pandemic*, Information Paper, July 2020, <https://www.justiceinitiative.org/uploads/7696dcfd-12e1-4ace-8f28-2a37f4a3c26b/brief-access-to-health-care-in-prisons-07082020.pdf>, in reference to Council of Europe, European Penitentiary Rules, adopted on 2020, Rule 39, [https://www.coe.int/fr/web/portal/news-2020/-/asset\\_publisher/JgmLwXY88pXi/content/revise-european-prison-rules-new-guidance-to-prison-services-on-humane-treatment-of-inmates?\\_101\\_INSTANCE\\_JgmLwXY88pXi\\_languageId=en\\_GB](https://www.coe.int/fr/web/portal/news-2020/-/asset_publisher/JgmLwXY88pXi/content/revise-european-prison-rules-new-guidance-to-prison-services-on-humane-treatment-of-inmates?_101_INSTANCE_JgmLwXY88pXi_languageId=en_GB)

<sup>205</sup> The Nelson Mandela Rules, Rule 24. Third general report on the activities of the CPT covering the period 1 January to 31 December Thursday, December 31, 1992, 4 June 1992, para. 38. See also [Report to the Government of the United Kingdom on the visit to Gibraltar Carried out by the CPT from 13 to 17 November 2014](#), CPT/Inf(2015) 40, para. 41. [Blokhin v. Russia](#), TEDH(), Judgment of March 23, 2016, para. 137.

<sup>206</sup> IACHR, Resolution 1/08. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle X.

<sup>207</sup> Brasilia Rules on Access to Justice for People in Vulnerability. Ibero-American Judicial Summit, 2008. 10.- Deprivation of liberty (22) Deprivation of liberty, ordered by competent public authority, may cause difficulties in exercising the other rights of which the person deprived of liberty is entitled fully before the justice system, especially when there is a cause of vulnerability listed in the previous sections.

<sup>208</sup> The Nelson Mandela Rules, Rule 2.1. IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle II. European Prison Rules, Rule 13.

obligation: States must take into account the individual needs of prisoners, particularly the most vulnerable.<sup>209</sup> Considering that the pandemic is deepening preexisting inequalities and exposing vulnerabilities,<sup>210</sup> persons deprived of liberty with the greatest risk of suffering from COVID-19 must be identified<sup>211</sup> and urgently addressed.<sup>212</sup>

207. The principle of non-discrimination necessarily implies the inclusion of a gender perspective in all the management of the pandemic in prisons. The position of the State as special guarantor of the aforementioned rights acquires specific characteristics under Articles 1 and 4 of the CPEUM, Articles 1 and 2 of the CEDAW and 4 of the Convention of Belém do Pará. Thus, in view of the obligation of justice operators to judge with a gender perspective, the following paragraphs and the concepts of violation should be analyzed in accordance with this duty, complying with the applicable legal framework for the protection of the rights of women deprived of their liberty. In addition, the effects of the resolution of this *amparo* should guarantee these rights, taking into account the particular needs of women deprived of liberty, also considering the causes of inter-sectional discrimination that some of them may face, and which could put them at particular risk in the face of the COVID-19 pandemic. In addition, the authorities responsible, within the framework of the pandemic, should not disregard their constitutional and conventional obligations regarding women's rights, including those concerning their sexual and reproductive rights, and to live a life free of violence.

## **X.- SUSPENSION OF THE PLAN AND THE OFFICIAL ACT CLAIMED.**

208. On the basis of Articles 107, Section X of the Political Constitution of the United Mexican States, 125, 126, 127, 128, 131, 138, and other applicable Articles of the *Amparo* Act, we request that the suspension be granted both immediately and ex officio, in order to guarantee the rights to personal integrity, protection of health, and the lives of persons deprived of liberty in detention centers in the State of Morelos.

209. We request that this District Court analyze, on the one hand, the situation of high risk and particular vulnerability in which persons deprived of liberty who suffer from any comorbidity or other condition are found, that puts them at greater risk against COVID-19. On the other hand, consider the importance of a

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<sup>209</sup> The Nelson Mandela Rules, Rule 2.2. IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle II.

<sup>210</sup> United Nations, [Policy Brief: The Impact of COVID-19 on Women](#), April 9, 2020, p. 2.

<sup>211</sup> See also above para. 3.

<sup>212</sup> SPT, *Advice to States Parties and National Prevention Mechanisms related to the Coronavirus Pandemic, section II.9(1)*. CPT, *Statement of principles relating to the Treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, para. 6. IACHR, *Pandemic and Human Rights in the Americas*, p. 3 and 6.

*prima facie* judicial ruling with regard to effective measures in the area of prevention of infection, risk mitigation, and adequate medical care, which the responsible authorities must take to avoid the violation of the human rights of persons deprived of their liberty.

210. However, as regards cases involving any of the acts prohibited by Article 22 of the Constitution, the *Amparo* Law is very clear: The suspension must be granted *ex officio* and immediately. In the case in question, the persons deprived of liberty have a special degree of vulnerability to possible infection of COVID-19 due to the conditions inherent to the detention centers in the State of Morelos, which go further in the case of persons who are in positions where they are at greater risk for COVID-19 infection; in addition to the fact that the prisons that house persons deprived of their liberty lack necessary resources to provide adequate medical care, what is of even greater concern when cases of COVID-19 occur.

211. The granting of the suspension of the plan and of the initiative requested relates to the very purpose of this scenario in the specific case, i.e., to prevent people from suffering greater infringements until the substance of the matter is resolved. The importance of granting the suspension also lies in the human rights at stake, and in the various ways in which they have been undermined. Given the prolongation of these human rights violations over time and the absence of adequate response from the State, this violation could be temporarily remedied if the suspension is granted. Since it would serve as a fundamental and appropriate tool for persons deprived of liberty to have immediate judicial protection, “insofar as a subsequent pronouncement could not remedy the damage caused by the delay in its dictation”<sup>213</sup>.

212. Taking into account the fact that the claimed acts are a series of omissions of different responsible authorities, the following jurisprudence criterion of the First Chamber of the SCJN (Supreme Court of Justice) is relevant and applicable to the case: "SUSPENSION. THE OMISSIVE NATURE OF THE ACT CLAIMED DOES NOT PREVENT ITS ORIGIN. Articles 107, section X, first paragraph, of the Constitution and 147 of the *Amparo* Law in force provide for the suspension of a genuine precautionary measure, the purpose of which is to preserve the subject matter of the dispute and to prevent persons from suffering infringements on their legal sphere while the substance of the matter is resolved, either by means of conservative measures or by means of advance relief (restorative effects), for which it is necessary to analyze: (i) the appearance of legal standing; (ii) the possible infringements to the social interest; and (iii) the legal and

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<sup>213</sup> Supreme Court of Justice of the Argentine Nation. Verbitsky, Horacio s/ habeas corpus. V. 856. XXXVIII. 3 May 2005, para. 7.

material possibility of granting the measure. In this sense, the nature of the acts, whether positive, declarative or negative, does not represent a factor that automatically determines the granting or refusal of the precautionary measure, since the words "taking into account the nature of the claimed act", which refers to the precept of the *Amparo* Law, it should be analyzed according to the consequences that the claimed acts may produce on a case-by-case basis...".<sup>214</sup>

213. On the basis of that, this District Court may grant the suspension with effects of restitution, since given the type of violations alleged, and the special condition of vulnerability of persons deprived of their liberty in the penitentiary centers of the State of Morelos in a torturous environment and with an imminent risk of contagion of COVID-19 and undermining their health, there must be a special diligence in their action, seeking to guarantee, as soon as possible, the rights to physical integrity, protection to health and life.

214. From the content of Articles 128 and 129 of the *Amparo* Law and the thesis mentioned above, at least two fundamental considerations must be rescued. The first is the appearance of legal standing and the non-infringement of the social interest, and the second, the analysis to be carried out by the *amparo* judge for the purpose of granting the suspension or not.

215. The suspension and the requested effects are always in accordance with the fundamental considerations for granting the suspension measure, since there is the appearance of legal standing and there would be no impact on the social interest.

216. With regard to the appearance of legal standing, "it is possible to anticipate with some degree of success<sup>215</sup>" that the violations of the fundamental rights of persons deprived of liberty in the prisons of Morelos exist and can be aggravated. In terms of the infringements to the social interest, there are no elements to affirm that, if the suspension is granted, such infringement would occur; on the contrary, it would mean progress in building a rule of law capable of guaranteeing the human rights of all people, especially the most vulnerable, and of preventing future serious violations.

217. On the basis of the social interest, it makes sense that the requested measures of granting the suspension will not result in any risk, since they would, on the contrary, result in the protection of the rights to personal integrity, protection of

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<sup>214</sup> Thesis 1a./J. 70/2019.

the health and life of persons deprived of their liberty and their visiting families and of the personnel working in detention centers.

218. Similarly, the existence of a pandemic and a public health emergency is undeniable, together with the unworthy conditions of detention in Mexican prisons, a situation that has been fully documented by national and international human rights agencies and has been reported throughout the present demand for *amparo*.

219. As it was already mentioned, the common denominator is generally the lack of guarantee of economic and social rights, especially the existence of violations of the right to health and personal integrity. If, under regular conditions, the health of persons deprived of their liberty is severely impaired, in the face of an international public health emergency, it is not only their health that is at risk, but also their personal integrity and life.

220. In addition to the above, as held by the Second Chamber of the Supreme Court of Justice of the Nation, “the judge must carry out a simultaneous study of the appearance of legal standing and the danger of delay with the possible infringement that may be caused to public order or to the social interest with the suspension of the claimed act”.<sup>216</sup> In the present case, human rights violations have been extended for a considerable period of time, since there is no guarantee or safeguard to protect their rights, persons deprived of liberty have had to live in conditions of outstanding vulnerability.

221. Under the reasoning of the Second Chamber, it is necessary that, within the analysis of this District Court, the danger of delay should be considered, since it would result in imminent damage to the rights to personal integrity and protection of the health and life of persons deprived of their liberty in the Penitentiary Centers of the State of Morelos.

222. The second consideration concerns the legal technique for resolving the suspension of acts classified as omissions by the responsible authorities. In this regard, the weighted analysis of the *amparo* judge must include the assessment of the facts in all its context and must be made from a human rights perspective. As has been reiterated, the obligation of the jurisdictional authorities is reinforced by virtue of the particular situation of vulnerability in which persons deprived of their liberty are found and the role of guarantor of the State in relation to them; this is why, when analyzing the source of the suspension, one should consider that the conditions of vulnerability represent a series of disadvantages compared

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<sup>216</sup> Thesis 2a./J. 204/2009.

to the rest of the population, and so the judicial authorities “must seek their greatest benefit possible”.<sup>217</sup>

223. CONSEQUENTLY, THIS DISTRICT COURT IS RESPECTFULLY REQUESTED TO GRANT THE SUSPENSION FOR THE PURPOSE OF:

<b>Authority</b>	<b>Requested measures in plane suspension</b>
<b>Prison Authorities: Governor, State Public Security Commission</b>	<ol style="list-style-type: none"> <li>1. Ensure social distancing in dormitories and common areas such as dining rooms, recreation areas, waiting rooms and medical rooms.</li> <li>2. Ensure personal and environmental hygiene (access to adequate washing and showering facilities; disinfection and cleaning measures in common areas; free provision of soap and other cleaning materials).</li> <li>3. Ensure the use and provision of masks, personal protective equipment and gloves to prisoners and prison staff.</li> <li>4. Ensure daily temperature checks.</li> <li>5. Carry out periodic COVID-19 tests on prisoners and staff, being mandatory for those persons re-entering the prison. The tests should be of the nasopharyngeal swab type.</li> <li>6. Ensure that the people who have newly arrived with symptoms are quarantined. This quarantine must always respect the right not to be confined and isolated and must respect no more than 22 hours without human contact and no more than 15 days in quarantine.</li> <li>7. Ensure medical examination of people with symptoms on the same day as they begin to present them, and immediate placement in medical isolation.</li> <li>8. Provide information on its website at least monthly for the general public and especially for family members and persons deprived of their liberty at least weekly, about the pandemic situation inside the prison (precautionary measures taken, identified cases, tests performed, treatments and deaths from COVID-19).</li> <li>9. Ensure education and training on the epidemic (provision of information and educational materials to prisoners, frequent communication of changes and situations in easily understandable</li> </ol>

<sup>217</sup> Thesis IV.1.C.7 C. Gazette of the Judicial Journal of the Federation, Tenth Period, T. III, August 2018, p. 3079.

	language). 10. Obligation to report and investigate deaths in custody.
<b>Attorney General's Office of the State of Morelos</b>	1. Ensure a ban on the use of mass graves.

**REQUESTS**

224. By virtue of the foregoing and on the above grounds we respectfully ask **YOUR HONOR, THE JUDGE:**
225. **FIRST.** To consider presented in the terms herein this demand for *amparo* and protection of FEDERAL JUSTICE against the acts and omissions of the authorities indicated as responsible.
226. **SECOND.** In accordance with the arguments set forth in the relevant section of this brief and with the public documents presented for this purpose, to recognize the legitimate interest of the complainant.
227. **THIRD.** To indicate the day and time for the respective constitutional hearing.
228. **FOURTH.** After the legal proceedings, to grant the *amparo* and protection of THE FEDERAL JUSTICE they claim.

**DULY AFFIRMED UNDER PENALTY OF PERJURY**