

SUBJECT: EXPERT REPORT ON THE OBLIGATIONS OF PRE-TRIAL SERVICES (UNIDAD DE MEDIDAS CAUTELARES) OF THE STATE OF MORELOS DURING THE COVID-19 PANDEMIC.

PLAINTIFF: CENTRO DE DERECHOS HUMANOS MIGUEL AGUSTÍN PRO JUÁREZ A.C. (Human Rights Center Miguel Agustín Pro Juárez, Civil Association)

**ACTING DISTRICT JUDGE IN THE STATE OF MORELOS,
WITH RESIDENCE IN CUERNAVACA**

1. I, Javier Carrasco Solís, hereby submit for your consideration this technical opinion on the obligations of the Pre-Trial Services (Unidad de Medidas Cautelares) of the State of Morelos during the COVID-19 pandemic, to be considered alongside the lawsuit to which this report is attached.

I. RELEVANT BACKGROUND AND QUALIFICATIONS

2. I am currently the Executive Director of the Instituto de Justicia Procesal Penal, A.C. (Institute of Criminal Procedure Justice, Civil Association), and Member of the Citizen Council of the Commission for the Search of Missing Persons of the State of Morelos. I am a lawyer with a Juris Doctorate degree from DePaul University College of Law, Chicago, with certificates in international law and human rights.
3. I was an advisor on the implementation of reforms in various states and countries, currently supporting the consolidation of the system. I am a co-author of the pre-trial services model for adolescents and adults in Mexico that developed the methodology used by the pre-trial services units in Mexico.
4. I researched management of pre-trial services and the juvenile justice. I also created observatories on both matters. I am a trainer in preliminary hearing litigation techniques, measures to manage pre-trial releases, and oral hearings.

5. I am an advisor to the oral litigation team of the Jurist College of Cuernavaca, which has won several first regional, national and second international place prizes in Argentina, in university oral hearing competitions.
6. Finally, I highlight that I have not received any fees to write this report.

II. INTRODUCTION

7. Persons facing criminal proceedings have the right to be presumed innocent in accordance with the Political Constitution of the United Mexican States¹, the American Convention on Human Rights² and the International Covenant on Civil and Political Rights³, and to enjoy their health and human rights. This principle, in its aspect concerning the rule of treatment as innocent, implies the right to face the trial in freedom, guaranteeing the person's trial attendance and that they do not obstruct the investigation or put the victim, offended person(s), witnesses or the community at risk⁴. Under this human rights framework, pre-trial detention must be used exceptionally⁵, and the National Code of Criminal Procedures establishes a series of precautionary measures⁶ that allow a person to face the trial without interrupting or affecting it.
8. To comply with the human rights previously mentioned, the Instituto de Justicia Procesal Penal, A.C. (IJPP)⁷ offered technical assistance to the State of Morelos for the creation of the Pre-trial Services unit (Unidad de Medidas Cautelares - UMECA) for adolescents, in February 2011⁸, and for adults⁹, in August 2012. UMECA is a public institution under the General Directorate of Social Reintegration of the Penitentiary System Coordination of the

¹ Art. 20 B I, CPEUM, amended on 18 June 2008

² Art. 8.2, ACHR

³ Art. 14.2, ICCPR

⁴ Art. 19, second paragraph, CPEUM, amended on 18 June 2008

⁵ Art. 7.5, ACHR and 9.3 ICCPR

⁶ Art. 155, CNPP, March 05, 2014

⁷ <http://ijpp.mx>; UMECA in Morelos for Teenagers began its functions on February 9, 2011, and thus became the first unit of this kind in Mexico and Latin America. The technical team of IJPP and the Open Society Justice Initiative provided technical advice and training since 2009. Based on this model, and with support from USAID, the Pre-Trial Services Implementation Manual was published, and was used to create similar units. UMECA in Morelos for adults began on August 12, 2012.

⁸ <http://ijpp.mx/acervo/podcast>

⁹ <http://ijpp.mx/noticias-2012-joomla/412-morelos-umeca-para-adultos-en-marcha-promovera-alternativas-a-la-prision-preventiva>

State of Morelos¹⁰. The objective of the unit is to provide the parties with verified information on procedural risks of detained persons to be used in the discussion on the implementation of measures (conditions) related to pre-trial release and in the supervision of these measures, once they are implemented. The unit exercises its functions observing several principles, including the presumption of innocence, and its supervisory work aims at facilitating individuals to comply with conditions for pre-trial release so that they remain at liberty during the criminal proceedings.

9. The work of the unit is crucial to keep people at liberty during the COVID-19 pandemic, since the prison system of Morelos faces a humanitarian crisis that has been exacerbated by the health emergency. The conditions of the prisons in Morelos and the lack of human and material resources within the three penitentiary centers (Atlacholoaya, Cuautla and Jojutla) represented a risk of COVID-19 infection for the prison population¹¹. For this reason, the State, through its institutions, has the obligation to guarantee the health, physical integrity and human rights of persons deprived of their liberty, and must take measures for the release of persons belonging to vulnerable groups and allow persons to remain at liberty during the stages of their proceedings.
10. Given the health emergency, UMECA plays an important role in keeping people facing criminal proceedings free, and thus not at risk of infection within prison facilities. In March 2020, when the federal authority decreed the sanitary measures and the federal and state judicial systems issued their agreements for the suspension of deadlines, the Pre-Trial Services had no clarity about their obligations during this period.
11. With the aim of providing recommendations for the Pre-Trial Services to adopt in order to continue their functions, the IJPP organized 10 weekly fora each Tuesday from March 31 to June 10, 2020. In the virtual fora, various discussions were organized to enable the units to share their experiences and provide good operational practices to protect the health of their staff, system operators and individuals charged with offenses during the pandemic.
12. The UMECA in Morelos is part of the security and justice system institutions, so it has the obligation to protect the people supervised, to avoid infection, and at the same time it must

¹⁰ The State Coordination of the Penitentiary System is currently under the State Coordination of Public Security, but in the six-year period from 2012-2018 it was under the Secretariat of Government as the State Coordination of Social Reintegration, and in the six-year period from 2006 to 2012, it was under the Secretariat of Public Security as the Under-Secretariat for Social Reintegration.

¹¹ <https://www.eluniversal.com.mx/estados/reportan-dos-muertes-por-covid-en-penales-de-morelos>

create mechanisms for them to continue to fulfill their jurisdictional obligations. In this context, a series of recommendations are developed for the UMECA in Morelos to adopt in its operational guidelines. Before addressing the recommendations, it is necessary to establish the legal framework and functions of the Pre-Trial Services unit as supervisory authority for measures to manage pre-trial release and conditional suspension of proceedings.

III. LEGAL FRAMEWORK AND FUNCTIONS OF THE UMECA

13. In Morelos and other states, the unit responsible for supervising the measures (conditions) for pre-trial release is called UMECA, but the bodies with similar functions can have different names. The CNPP (National Code of Criminal Procedures) refers to them as the supervisory authority for measures to manage pre-trial release and conditional suspension of proceedings, (*autoridad de supervisión de medidas cautelares y suspensión condicional del proceso*) granting to it the character of a procedural subject.¹² The measures to manage pre-trial releases are based on Article 19, second paragraph, of the CPEUM (Political Constitution of the United Mexican States), which states that “the Public Prosecutor’s Office may only request the judge for pre-trial detention when other pre-trial measures are not sufficient to guarantee the attendance of the accused at trial, the investigation process, or the protection of the victim, witnesses or community,¹³
14. According to the constitutional framework, the CNPP takes these procedural objectives to several articles in the chapter on the pre-trial measures and develops them, as follows:
- Art. 153. “The pre-trial measures shall be imposed by a court decision, for the necessary period of time, to ensure the presence of the accused in the proceedings, to guarantee the security of the victim or offended person(s) or the witness, or to avoid the obstruction of the proceedings.”
 - Art. 168 establishes the parameters to determine the risk of theft, which includes five aspects that the jurisdictional authority must consider for the personal attendance of the accused person in the proceedings.
 - Art. 169 establishes the parameters to be considered for the danger of obstruction of justice, i.e. the probability that the person accused will destroy or conceal evidence, influence co-defendants or witnesses, or intimidate public servants involved in the investigation.

¹² Art. 105, CNPP

¹³ Art. 19, CPEUM, June 18, 2008.

- Art. 170 establishes the risks to the victim, offended person(s), witness or community, requiring “a well-founded risk of an act committed against such persons that could affect their personal integrity or put their life at risk.”
15. Once the procedural risks, which are the objectives of the pre-trial measures, have been outlined, the question during the court hearing is: What pre-trial measures should be requested and imposed? To answer this question, the CNPP first provides for 14 pre-trial measures in Article 155, and requires that they be adequate, proportional and with minimal intervention, in accordance with Article 156.
 16. According to this legal framework, the Public Prosecutor's Office or Victim's Advisor requesting the imposition of pre-trial measures must prove, with objective information, that the person charged represents one or more of the three procedural risks cited (Articles 168-170). The defense has the right, on the basis of the principle of contradiction, to discuss and point out aspects of the person in question so that the supervisory judge will finally make the corresponding decision. To assist with the provision of information on the person charged, for the hearing and subsequent supervision, the CNPP establishes the authority for the supervision of pre-trial measures and for the conditional suspension of the proceedings, which is discussed in the following section.
 17. On the basis of Article 153 of the CNPP, second paragraph, Pre-Trial Services ¹⁴ have the obligation to “monitor the due fulfillment of the judicial authority mandate.” The supervisory authorities have the obligation to perform a procedural risk assessment and the supervision of pre-trial measures other than pre-trial detention.¹⁵
 18. Chapter V of the CNPP establishes the powers of the supervisory authority for pre-trial measures and the conditional suspension of proceedings, which includes their nature (article 176) and their obligations (article 177). Some of the obligations are as follows:
 - Monitoring and tracking.
 - Interviewing to monitor compliance with conditions for pre-trial release
 - Paying unannounced visits.

¹⁴ Pre-trial services have different names depending on each entity, for example: Pre-Trial Services unit (*unidad de medidas cautelares*), unit of supervision of pre-trial measures and conditional suspension of proceedings (*unidad de supervisión de medidas cautelares y suspensión condicional del proceso*), center of pre-trial services (*centro de medidas cautelares*), management of pretrial services (*dirección de medidas cautelares*), execution of pretrial services (*ejecución de medidas cautelares*), institute of pre-trial (*instituto de servicios previos al juicio*). Also, organizational locations vary for each entity.

¹⁵ Art. 164, paragraph 1, CNPP.

- Checking the location of the accused persons.
 - Requesting information from the accused persons that is necessary to comply with the measures and obligations imposed.
 - Informing the parties about violations of the obligations imposed.
 - Keeping updated the database on pre-trial measures and obligations imposed, their follow-up and conclusion.
19. The primary function of the unit is the evaluation of procedural risks. The methodology used is that a person from the unit goes to the place where a person is detained to conduct an interview. The objective of the first interview with the detained person is to collect social and identity information, and subsequently these data are verified with family members, friends, sources of employment, databases, and the research folder. At the conclusion of the verifications, the operator applies an instrument to assess the risks, identifies them, and writes an opinion to be delivered to the Prosecutor, Victim's Advisor, and Defense, prior to the hearing.
20. Once the parties discuss the data and evidence for the imposition of pre-trial measures, the supervisory judge makes the decision. In the event that the pre-trial measures imposed do not include pre-trial detention, the person goes to the Pre-Trial Services unit to initiate supervision. The unit staff designs a supervisory plan and strategy, observing minimal intervention and facilitating the person's freedom. One of the indicators of the effectiveness of conditions for pre-trial release and the units is that individuals may face trials at liberty, as long as they are not detained for another crime, and they do not put victims at risk.
21. In order to fulfill the obligations defined, and others not included, the authorities must keep "a record, using any reliable means, of the necessary activities that allow the supervisory authority of pre-trial measures and the conditional suspension of the proceedings to be certain of the compliance or non-compliance with the obligations imposed."¹⁶ With these supervisory obligations of recording information on compliance or non-compliance, authorities, organizations and expert persons may access the data to determine compliance or non-compliance with conditions of pre-trial release. .

¹⁶ Item 182, CNPP

IV. VIRTUAL SESSIONS

22. On the basis of the legal framework and the functions of the supervisory authority (UMECA in Morelos), the State has the obligation to implement emergency measures so that the accused persons follow the health measures, restricting their mobility, with healthy distancing, the use of protective equipment and, at the same time, ensuring that they continue to comply with their procedural obligations. During the restrictions due to the pandemic, uncertainties arose regarding legal processes on the obligations of compliance with conditions of pre-trial release.
- How is the health guaranteed for accused persons who are not in pre-trial detention and must go to the units of Pre-Trial Services periodically?
 - How can they go to the units if they must comply with health restrictions at the same time?
 - How are compliance measures to be met at a certain degree of periodicity?
23. Compliance with conditions of pre-trial release is key for individuals to continue their proceedings at liberty. In contrast, a report of non-compliance by the supervisory authority may result in the Public Prosecutor's Office requesting a review hearing, which may revoke the measures at liberty and order pre-trial detention, although not automatically, only after the supervisory judge has listened to the parties and decided. With the presence of COVID-19 in Morelos prisons, sending a person to pre-trial detention enhances the possibility of an infection to the detriment of their health.
24. Because of this reality, similar units and institutions in other countries adapted guidelines to ensure that people at liberty remain at liberty. For example, *the U.S. National Association of Pretrial Services Agencies*, in June 2020, issued a series of policies that institutions similar to Pre-Trial Services units adopted to address the emergency¹⁷. Some of the decisions implemented were the use of technologies for attendance, video conferences, releases, reduced arrests, and revokes of face-to-face attendance measures in institutions.
25. In Mexico, between March and June 2020, approximately 60-70 people from various entities participated in each forum, where they discussed the actions that the units were developing to address the COVID-19 emergency. During these weekly sessions, the persons representing the oversight units expressed their questions and others shared their practices. This exchange shows the obligation of the units to create the conditions conducive to the person's compliance with their conditions of pre-trial release.

¹⁷ <https://drive.google.com/file/d/1-jkFffQRmTTcqQ0VOEJWlmyyJI--gExB/view>

V. RECOMMENDATIONS

26. The UMECA in Morelos, like similar units, has the obligation, when requested by the parties, to provide them with information from the persons for the use in the debates on the imposition of conditions of pre-trial release, and must monitor compliance with them. This implies that the UMECA interviews persons detained since the first hours after the confirmation of the detention, evaluating their socio-environmental conditions to issue opinions on pre-trial measures. The unit then tracks each person through supervision activities. For these reasons, the recommendations issued in this section address the need for the unit to consider the particular conditions of individuals and the situation of COVID-19 in the institution. The recommendations are divided into three parts, which aim to be implemented as a public policy to ensure that people face their criminal proceedings in freedom and can provide for themselves.
27. First, the technical opinion that the UMECA gives to the parties, after completing the risk assessment contains information on the data of the detained person, their housing, work, and family status. In order to promote the imposition of non-custodial measures on detainees in the context of COVID-19, it is recommended that UMECA include detailed information on the persons detained in its interviews and in the technical opinions. It is important to note that the CNPP establishes that individuals have the right to provide the data on a voluntary and confidential basis, and this implies that the data provided are only used for the imposition of pre-trial measures and should not be used for other purposes.
28. The data that should be included in risk assessment interviews and in the technical opinions of UMECA in Morelos are as follows:
- a. Surveying health history to document whether the person has a history of diseases that can put the person at risk (e.g. hypertension, respiratory problems, diabetes, cancer, and those applicable according to WHO).
 - b. Specifying, in cases of women, whether they are pregnant.
 - c. Recording the person's body temperature, and this will require the Unit to purchase equipment for this record.
 - d. Information on the conditions of COVID-19 in the prisons of Morelos to contextualize the risks.
 - e. Including general information if a nearby person was sick days before detention.
 - f. Recommendations on the supervision scheme in case of the release.
 - g. Recommending measures at liberty.

h. Including the situation of COVID-19 in prisons in the opinions on procedural risks so that the Defense may argue this point for pre-trial release.

29. Second, on the supervisory side, the approach is for the Unit to implement a series of policies to promote release from prison. The Unit's methodology requires that the operating persons with the oversight function be flexible and creative to meet the conditions and restrictions of the pandemic. Supervision must be multidimensional and flexible to ensure that people who remain at liberty avoid the revocation of the release measure, which will mean sending the person to preventive detention with risks of COVID-19 infection. The recommendation is that the Unit, through its public policy, should implement mechanisms to ensure that persons with non-custodial measures are kept out of prisons to prevent infection.

30. The recommendations for the monitoring area are as follows:

- a. Adopt clear guidelines on the flexibility of supervision.
- b. Suspend periodic attendance (for signatures) on the basis of the agreements that the judicial authorities have made on the frequency of attendance. Some units were uncertain because in some entities the court agreements do not mention measures to manage pre-trial release. Some units did not suspend periodic attendance at this point but adopted guidelines (see point 5). Those who decided to suspend them, please interpret the part corresponding to the deadlines.
- c. Units that did not suspend attendance: Allow only one person in the unit, mark distances, have hygienic products for people, and schedule visits to avoid crowds. The CDMX, which works with electronic signatures, placed the fingerprint reader outside the unit so that staff can clean the reader before and after the procedures, and the system generates the attendance for them.
- d. For the therapies required by conditional suspension, some units are working through videoconferences, others were not clear what to do as they depended on government institutions for these activities, and they were closed.
- e. The units are in contact with victims electronically to ensure that they don't get close to the accused person.
- f. Use of fingerprint readers placed outside offices to have minimal contact inside buildings.
- g. Establish that accused persons are not allowed to come to the Unit with relatives.

31. In general operational terms, the recommendations are as follows.

- a. Use various technologies to conduct evaluation and monitoring interviews so as not to have direct contact with people. For example, Calls, WhatsApp, Video Conferencing.

- b. Assign cell phones or other equipment to download the corresponding applications (ZOOM, TELMEX Video Conferences, WebEx and so on) so that staff can make video calls for interviews.
- c. Some units allowed high-risk people to work from home and take the supervision files with them.
- d. Other units set shifts for a percentage of the staff to come to the office for a few days and the other percentage, for the remaining days.
- e. Use of fingerprint readers placed outside offices to have minimal contact inside buildings.
- f. Establish that accused persons are not allowed to come with relatives to the Unit.
- g. Use the recommendations for the use of face shields, hand sanitizers, masks, and temperature measurement, as well as for the periodically sanitization of offices and equipment.
- h. Maintain the health status of staff and supervised persons to facilitate people coming to test when they are suspected of having contact with a person who has been tested positive.

32. In the context of policy design, it is recommended that the following challenges are considered:

- a. For persons who must pay bail to have the conditional suspension of their process, it must be harder to do so, because they are not working.
- b. Several institutions have suspended activities, which has made it difficult to comply with therapy requirements.
- c. Some units do not have all staff available (in states where unions allowed professionals to stay at home).
- d. The assessment and supervision of non-Spanish-speaking migrants has been a challenge because the interpreters' associations had their work suspended.
- e. Some courts have not been conducting hearings, others have conducted them virtually.

VI. CONCLUSION

33. The COVID-19 pandemic demonstrated the inequalities and crisis in the prison system of Morelos, since the lack of hygiene, spaces and basic materials places people deprived of liberty at a greater vulnerability. One of the recommendations of the United Nations is that States take steps to release at-risk population groups. This recommendation strengthens the position that States implement measures to allow persons at liberty to remain at liberty. For this reason, it is proposed that the UMECA in Morelos has an obligation to adapt the work it does in the evaluation and supervision of procedural risks to ensure that people comply

with the conditions of pre-trial release under a flexible and modified scheme. By complying with the measures, individuals may remain free during their criminal proceedings.

Javier Carrasco Solís

October 2, 2020