

**INFORME EPU 2013 SOBRE:  
DICAPACIDAD MENTAL Y PROCESO PENAL EN MÉXICO**  
(MENTAL DISABILITY AND CRIMINAL JUSTICE SYSTEM IN MEXICO)

Report presented by **Documenta, análisis y acción para la justicia social, AC**, Mexican NGO that pursues as **general objective** to impact on the building of citizenry and public policies to strengthen the culture of human rights as a fundamental pillar for the consolidation of the rule of law in Mexico. Three *institutional strategies* serve as guidelines to reach our objectives: i) investigation for the incidence; ii) strategic litigation; and iii) audiovisual documentary

Documenta's central themes are:

- Mental Health and Disability
- Criminal Judicial Reform
- Penitentiary reform

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## **I. UNACCOUNTABILITY AND THE CRIMINAL JUSTICE SYSTEM**

1. The ratification by Mexico of the convention implies a true change of paradigms in the recognition that PWD must be granted all the fundamental rights and freedoms under an equality framework, amongst them legal personality and access to justice. This situation is a departure from the still enforceable protectionist and depersonalization system.

2. An important percentage of the incidences with the involvement of PWD that ordinarily give rise to a criminal procedure, should have been re-conducted to the socio-sanitary scope disregarding the opening of a criminal case.

3. Even more, there are not factual conditions that assure a due process of law when they are subjected to a criminal procedure arisen from the commission of a felony or crime. Amongst the various troubles that they face, we can mention the following:

- The support provided to persons with a disability during either, an administrative or jurisdictional procedure are not enough to supersede the environmental obstacles and barriers, concerning both the present physical, legal, informational, communications infrastructure and the attitudes towards them<sup>1</sup>.
- Life in prison for people with mental disabilities becomes cumbersome in comparison with the rest of the population<sup>2</sup> derived from the deteriorating state of the facilities, the lack of special facilities for their reclusion, a deficient integral<sup>3</sup> medical attention<sup>4</sup>, unsanitary conditions, lack of understanding<sup>5</sup> and education of the guards and prison personnel, as well as the permanent isolation and lack of activities to which they are submitted. This set of circumstances constitutes a breach to their human right to receive a dignified and non-discriminatory treatment.
- The lack of though disaggregated official information that allows us to determine the judicial situation, conditions and attention programs for people with a mental disability that are presently imprisoned makes harder the review and reform of the public policies and their follow up by the civil society.

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<sup>1</sup> Representatives of several jurisdictional organs commit discriminatory acts and abuses against people with disabilities. In addition to discriminatory attitudes their facilities lack physical accessibility, information and communication within the jurisdictional system. Representantes de diversos órganos de procuración y administración de justicia comenten actos discriminatorios y abusos contra personas con discapacidad. Cfr. Programa de Derechos Humanos para el Distrito Federal; Section 28.4, pgs. 897 and 898.

<sup>2</sup> The Mexican prison system is on a crisis, facing several problems that may arise in a loss of credibility and that question its beneficial effects to society. Overpopulation and lack of space, together with other factors like self-government, drug trafficking, corruption and complicity of prison authorities with inmates, amongst others, have become the prisons into a space in which the breach of Human Rights, like dignity and safety, proper foods services, medical and psychological care, are systematically breached.

<sup>3</sup> Besides pharmacological treatment, people with mental disabilities require psycho-social rehabilitation treatment. The latter demands the intervention of not only psychiatrist, psychologist and physicians, but also of social workers, pedagogy experts, nurses, a physical rehabilitators, that jointly make a diagnose, treatment and rehabilitation of this individuals. Cfr. Diagnóstico de Derechos Humanos del Distrito Federal, Part V, Núcleo Sistema de Justicia, sections 2282 and 2283.

<sup>4</sup> One of the main irregularities that gravely affect the inmates with mental disabilities is that in most reclusion centers in our country there is a deficient medical care center. First, said places are without the necessary physicians to give care to the general population, and in the case they are they lack the knowledge to treat people with mental disabilities.

<sup>5</sup> Typically prisons treat people with mental disabilities under the same criteria that other inmates. The guards and custodial personnel held them in the same facilities and expect them to follow the same rules and routines assuming their bad behavior is voluntary and an attempt to manipulate them. Resulting from the latter they impose them several punishments and restrict their rights, as it can be to obtain parole. Ideas taken from: Resumen sobre las conclusiones y recomendaciones de la Comisión en Seguridad y Abuso en las prisiones de los Estados Unidos de América. At:

[http://www.prisoncommission.org/pdfs/prison\\_commission\\_summary\\_es.pdf](http://www.prisoncommission.org/pdfs/prison_commission_summary_es.pdf)



4. All of the abovementioned situations are without a doubt a direct consequence of the legal framework applied together with inadequate institutional practices that purportedly ensure the defense and protection of the human rights of people with disabilities<sup>6</sup>.

5. We have to question Mexico concerning the lack of a due process of law to people with mental disabilities, as well as the institutional discrimination they face within the criminal jurisdictional system, likewise:

- a. They face an overrepresentation that actually prevents them to be assisted to become a capable autonomous subject at the criminal procedure, instead of only being an object of such.
- b. They are actually serving a criminal sentence (disguised as a “security measure”) without having the same rights as the rest of the prison population, and under more restrictive conditions.
- c. Once they are freed, they face even greater difficulties reincorporating themselves into their community. This situation transforms them in people that are more likely to relapse.
- d. The lack of an adequate system to verify and recognize a mental disability from the early stages of a criminal procedure that produces a special consideration concerning the rights of a certain person.

6. More specifically, during the several stages of the criminal process and the execution of the pertaining sentence, we can note the following:

- a. Arrest: Derived from the lack of an system able to identify mental disabilities from its early stages and communication and understanding barriers, they do not receive and adequate treatment that allows them to fully exercise their rights like remaining in silence, assistance of a legal counsel or even the possibility of following the procedure on provisional freedom either in their own recognizance or bail.
- b. Preventive detention: They are generally subjected to preventive detention regardless of the felony or crime that have committed, its seriousness, nor the criteria that corresponds to their mental disability as related with this precautionary measure.
- c. Trial: They face a disadvantageous situation in several levels derived from the lack of protocols that may assure the understanding of the procedure nor even the possibility to effectively communicate during said. This imports a risk to their right to have a due process of law as well as a breach to several judicial rights.
- d. Sentencing: The legal framework and lack judicial precedents specially attained to mental disabilities reduce the possibility to be granted a punishment different from imprisonment that assures rehabilitation and reintegration into the community.
- e. Liberty: On one hand there is not a set of rules that describe the specific and adequate reasons that may be alleged in order to obtain parole or the resolution to terminate the criminal punishment in the case of imprisoned people with mental disabilities; on the other hand, there is an evident lack of the governmental necessary aids to assure the proper transition and integration into the community which increases the vulnerability to relapse into another criminal procedure.

7. The present segregation of people committed into mental institutions (Prison Hospitals) contributes to the increase of their social exclusion, besides breaching the international standards on Human rights. While being segregated from society, these people lose all bonds with their family, friends and community; and

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<sup>6</sup> Particularly the People with Disabilities Act for Mexico City (PDAMC), besides being extremely short, does not consider any protection nor assurance of their Human Rights; does not include a binding language and any punishment it establishes for its breach is in the best case limited. Cfr. Programa de Derechos Humanos para el Distrito Federal; Section 28.1, pg. 878.



are subjected under the custodial regime of the mental institutions while losing any abilities to continue living within a society which precludes their future inclusion at said community.

8. Once that the unaccountability of the subject has been declared by a court, the judicial system should withdraw to a secondary position leaving all the responsibilities to the sanitary system, without prejudice of the obligation to duly inform the jurisdictional authority of any developments. The sanitary system should have been enabled with such autonomy that the need to occur to a court of law should be considered an exceptional case and not a normal procedure.

9. It is advisable that since the start of the criminal investigation the sanitary system and their professionals can have access to the case, even more considering that it is precisely the sanitary authority the one in charge to impose the measures and allocate the resources that may be deemed necessary.

## **II. THE MAGNITUDE OF THE PROBLEM**

10. Recent statistics point out that on November 2011 from 40,411 interns at preventive prisons and jails at Mexico City, 796 of them are considered psychiatric unaccountable population. From those, there are 736 men and 60 women. Regarding their judicial status, 56.46% of them have already been sentenced, 14.95% are subjected to an ongoing judicial process (120 people), 4.67% are under a preventive measure (40 people) and 22.83% have reached a final judgment.

11. Nationwide statistics are scarce, however it has come to our knowledge that 10.91% of the prison population are suffering from mental disabilities.

12. In the case of women, we can provide statistics from 96 of the 226 prisons from women. From those 96 prisons, 36 have inmates with some kind of mental disability.

## **III. UNNACOUNTABILITY DETECTION**

13. Over a one year timeframe the Psiquiatric Attention Services dependent from the Health Ministry receive approximately 1915 requests, from those 1,493 request are directed to the same single hospital (Fray Bernardino de Alvarez). Approximately 30% of the request or 450 of them, are somewhat related with the criminal justice system.

14 .At the abovementioned hospital, the forensic psychiatry and psychology department is in charge of issuing the expert opinions concerning the mental health of a person; however it is staffed with only 2 psychiatrists and 3 expert psychologist.

15. Since 15 years ago onwards the requests for expert opinions have steadily increased 500 times. The lack of human resources has given rise to full schedules to carry out the proper examinations. In the case of the psychology department, if we request an examination with its pertaining expert opinion today, we would have an appointment until late the second semester of 2013. In part this overload can be explained due to the complete lack of expert personnel at the pertaining department of Prosecutor's office since 3 years ago. All the requested expert opinions concern the same topic: whether one person at the moment of committing a crime was aware and capable of discern what he was doing. Nevertheless, if the expert opinion concerning a certain case is going to be issued at least 6 months after the purported crime has been committed, the real facts over which the opinion has to be built are distorted by the sheer passing of time.

16. There are occasions in which an emergency case arrives to the hospital, mostly when security forces remit a person that they have detained and needs an immediate assessment. In this case, it is interns who



are in charge on carrying out the assessment. That I to say, there is not an specialized professional that is in charge of reviewing these cases.

17. On of the most sensitive points of this irregular process is maybe that the sanitary authorities lack legal competence to carry out the follow-up procedures, once they issue their expert opinion. Their participation at the criminal process is limited to only the issuance of an expert opinion, however the judges can still enjoy complete freedom to make and interpretation and weigh the value of said expert opinion within the case.

18. Finally, the only differentiating unaccountability criteria regarding mental disability concerns its temporality, whether it is permanent or not. There are not any more criteria that that help to determine the unaccountability grade of one person.

#### **IV. MENTAL DISSABILITIES & PRISON**

19. The life of imprisoned people with mental disabilities is even more cumbersome, as the facilities in which they are being held are not adapted to receive them. Under Mexico's legal framework there are important improvements for the people with disabilities, however they have become mute in the case of imprisoned people with mental disabilities. There is not a legal framework that assures the adequate treatment of these people while imprisoned.

20. The failure of the governmental mental health system has caused what some experts have called the criminalization of the mental disabilities. The ideal mechanism to prevent that people suffering a mental disability is imprisoned is the mental health system by itself. Besides providing mental healthcare, the treatment of people with mental disabilities in prison is exactly the same as the other inmates. The guards place them in the same facilities as other inmates and expect them to follow the same rules and routines. The guards are not capable to understand the nature of their mental illnesses and their behavioral effects. They assume that their eccentric behavior is either voluntary or an attempt to manipulate them. It is necessary to incorporate mental health issues considerations at the disciplinary procedures at prison. They cannot be granted parole as they are considered as people who do not obey the rules, however they are not capable to obey the rules because of their mental illness<sup>7</sup>.

21. Additional to the problem that some mentally disabled people are imprisoned in common prisons, we have to consider that there are inmates that develop a mental condition during their stay in prison, caused either by illegal drugs, old age, or in the most cases as a way to cope with the saturation and adverse conditions of the reclusion center: "Specialized psychology refers to a phenomenon known as "prisonalization" and how being locked in a cramped space together with a general lack of activity during the day, will become in the perfect place to foster aggressiveness, violence and high emotional stress, that sometimes make the relationships amongst some many people unmanageable."<sup>8</sup>

22. As it has been accepted by the World Health Organization (WHO), the lock down by its own nature has an adverse effect on mental health. Therefore, the WHO suggests incarceration to be as minimum as possible, in order to satisfy the needs of the community of seeing the punishment for a crime.<sup>9</sup>

#### **V. RECOMMENDATIONS**

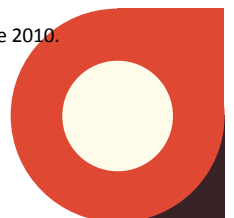
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<sup>7</sup> Some of these ideas were taken from: Resumen sobre las conclusiones y recomendaciones de la Comisión en Seguridad y Abuso en las prisiones de los Estados Unidos de América, at:

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<sup>8</sup> Jennifer Abate, Santiago, Investigaciones revelan graves efectos psicológicos de sobrepoblación penal, la tercera, 9 de diciembre de 2010.

<sup>9</sup> World Health Organization and World Bank, Informe Mundial sobre la Discapacidad, WHO, Geneve, 2011.



23. WE have to understand that this is a public health and instead of a security issue.

24. There has to be precise disaggregated official information concerning the present situation of people presently imprisoned that at the moment of their imprisonment presented any kind of mental disability or that have presented such during their stay.

25. Review the unaccountability criteria in order to achieve one criteria that considers disabilities in a case by case basis with reasonable adjustments. There is a contradiction: "If one person is declared unaccountable then it shall not be considered liable" which implies by itself a treatment different from prison.

26. Amend the legal criminal framework, so it foresees that people with mental disabilities that do not represent a danger to the general public when committing a crime or felony can be cared by the sanitary and social authorities under a specific program designed to strengthen their capabilities and include them at their community.

27. In the exceptional cases in which the participation of the criminal justice is deemed necessary, there has to be a legal framework that prevents a special case by case procedure<sup>10</sup> for the case of unaccountable people, that provides them with due respect of their procedural rights, as any other person accused of committing a crime has, and that in any event the preventive measure that are decreed over them are focused on their autonomous integration into community life.

28. Once that a thorough investigation has been made and the unaccountability of a person is determined, the case should be handled to the healthcare system giving it liberty to adopt the necessary measures tending to the quick integration of the person into community life. At the very least, there has to be some communication exchange between courts of law and the healthcare system, allowing the latter to intervene in the determination of the most adequate therapeutic measure and in the offering of the resources available for its implementation.

29. People suffering a mental disability, specially those committed in a mental institution, must receive individual support and legal representation in such a way that their right to access the justice system as protected by the Convention is ensured by the State.

30. Most of the cases can and must be treated out of prison, or even out of mental institutions in which presently people with mental disabilities are suffering the effects of being locked down and multiple abuses. In this concern, necessary community healthcare services must be expanded and organized in such a way that they can serve in a better way to the reincorporation of the people with mental disabilities into their community.

31. There is the need to assign resources in order to be able to identify and treat the imprisoned people with mental disabilities, and simultaneously reduce the number of people with mental disabilities at prisons and jails. The challenge for the governmental institutions is to create a net of aid and support programs in which the long term reincorporation of the people with mental disabilities into their community is the main goal.

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<sup>10</sup> At a special procedure an Evaluating Committee should determine the grade of liability of the person with mental disability considering factors such as: if he or she is under medication, if he or she has voluntarily or forcefully stopped to take medication, and whether his or her curator has acted diligently.

