Mexico Reviews Practice of Detaining Suspects of Certain Crimes for Extended Periods

Carlos Navarro

Follow this and additional works at: https://digitalrepository.unm.edu/sourcemex

Recommended Citation
https://digitalrepository.unm.edu/sourcemex/5982

This Article is brought to you for free and open access by the Latin America Digital Beat (LADB) at UNM Digital Repository. It has been accepted for inclusion in SourceMex by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu.
Mexico Reviews Practice of Detaining Suspects of Certain Crimes for Extended Periods

by Carlos Navarro  
Category/Department: Mexico  
Published: 2013-06-12

There is extensive debate in Mexico on whether the practice of detaining suspects in certain crimes for a period of time without charging them should be abolished. Prosecutors and other proponents of the controversial practice—known as the arraigo—argue that this is a much-needed tool to investigate and eventually prosecute those who commit serious violations of the law, including drug traffickers. But opponents argue that the practice, in any form, represents a gross violation of the civil rights of a detainee, especially since the arraigo has been applied to cases other than those linked to organized crime.

Analysts agree that changes to the practice are very likely, given extensive criticisms against Mexico for failing to curb human rights violations by the armed forces and law-enforcement agencies against detainees during former President Felipe Calderón’s high-profile war against drug traffickers.

Mexico’s high court (Suprema Corte de Justicia de la Nación, SCJN) already ruled in 2006 that the practice violated clauses in the Mexican Constitution that guarantee personal liberties and freedom of movement. The court’s decision basically guaranteed an end to the practice of unlimited detention of suspects without trial. In 2008, the Mexican Congress approved changes to the Mexican Constitution that set limits on the length of detention permitted under an arraigo. Authorities would be allowed to detain individuals for 40 days without trial, a period that could be extended to 80 days if authorities deemed it necessary.

But the "fix" that Congress approved at that time was not a significant step in improving Mexico’s atrocious record on human rights during successive administrations in the past several decades. The changes approved by Congress merely limited the amount of time that a suspect could be held without trial.

The Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), a private organization, says one of the system's biggest flaws, even after the changes, is that judges are still empowered to issue detention orders without prosecutors having to offer proof that a crime has a connection to organized crime. "They can take this action when there are only suspicions of links to organized crime, which leaves citizens vulnerable," said Daniel Joloy, a CMDPDH coordinator.

Many critics point to the extensive use of the arraigo during President Calderón’s administration as a sign that the previous administration put a higher priority on prosecuting drug-trafficking organizations than on protecting human rights.

Others agree that the changes have not made much difference in the government’s approach regarding the detention of suspects. "The arraigo is becoming one of the preferred instruments of authoritarian systems, whereby any person can be detained by the state without the least warning or investigation," columnist Ana Paula Ordoñez wrote in the Mexico City daily newspaper Excélsior.
in December 2012, shortly after Calderón left office. "The limit of 80 days of deprivation of liberty has been sufficient for authorities to commit all sorts of atrocities, including the use of torture to gain confessions."

**President Peña Nieto promises changes**

President Enrique Peña Nieto’s administration has promised to push for changes to the justice system and place a higher priority on individual rights. Shortly after Peña Nieto’s inauguration, Attorney General Jesús Murillo Karam spoke out against the arraigo and promised that the administration would seek judicial and legislative ways to eliminate, or at least modify, the practice.

"I hope that this new government does not fall into the temptation of using the arraigo for political purposes, a practice that occurred frequently during the government of Felipe Calderón," Ordorica wrote in her column. "I hope that this government and this attorney general refrain from using this tool that was used to cover up the bad performance of those who were charged with investigating and proving that a person participated in the commission of a crime."

Notwithstanding the administration’s promise to halt the practices employed by the preceding government, there is evidence that the arraigo is continuing. This has prompted charges against Peña Nieto of hypocrisy for openly criticizing Calderón while continuing the practice under his watch. "In the first four months of its tenure in office, this administration has detained 241 individuals under this judicial maneuver," said the Mexico City daily newspaper Milenio, citing a report from the Procuraduría General de la República (PGR). The report was obtained through the federal open-access law (Ley de Transparencia y Acceso a la Información Pública Gubernamental).

The semi-independent open-access institute (Instituto Federal de Acceso a la Información Pública y Protección de Datos, IFAI) has asked the PGR to release a document with the names of all individuals detained under the arraigo not only during the Calderón government but in the first several months of the Peña Nieto administration. The request asked for details on the resolution of each case, including whether a particular individual was set free, processed, or sent to trial and sentenced during the period.

**Congress to look at more comprehensive changes**

There are other efforts to address the situation, both legislatively and through the judicial system. Several motions related to the arraigo have already been filed before the SCJN, and Justice Arturo Zaldívar announced in early May that a committee of the court (Primera Sala) has agreed to examine these complaints.

In the Mexican Congress, legislators have proposed a change to Article 16 of the Mexican Constitution to reduce the amount of time that a suspect can be detained without trial while maintaining the right of authorities to continue the practice. Under legislation approved by the Chamber of Deputies at the end of April, the maximum time that a suspect could be held without trial would be 20 days. Furthermore, prosecutors are obligated to prove that suspects were engaged in an activity related to organized crime, terrorism, arms trafficking, pornography, or sex-trafficking for an arraigo to be granted.

The lower house approved the measure by an overwhelming vote of 389-32 with 14 abstentions at the end of the regular session. The Senate will consider the initiative when the next regular session begins on Sept. 1.
But the measure fell short of what some center-right legislators and international human-rights advocates were promoting, which was that federal legislation mirror the initiative approved by the Mexico City legislature (Asamblea Legislativa del Distrito Federal, ALDF) on April 30. The ALDF initiative, promoted strongly by Mayor Miguel Mancera, would totally eliminate the arraigo, although it does give prosecutors the option of detaining individuals without charges for five days if necessary. Any such detentions would require court approval.

"The practice of arraigo contradicts some of the most sacred principles of Mexico’s Constitution, such as freedom from arbitrary detention, gives prosecutors a perverse incentive to deprive people of their liberty before thoroughly investigating them, and undermines basic safeguards against torture," said José Miguel Vivanco, Americas director at Human Rights Watch (HRW). "The only way to ensure more effective, professional investigations and curb the negligence and abuse that this preventive detention has fostered is to strike it from the Constitution altogether."

There are some who argue that the arraigo is a necessary tool for law enforcement if the practice is not abused as it has been in recent years. "The arraigo has been used for almost any type of arrest while authorities prepare charges that will be presented to the Ministerio Público [prosecuting court]," Excélsior columnist Jorge Fernández Menéndez wrote at the end of February while the Chamber of Deputies was debating the issue. "And, yes, of course the practice has been abused. But the arraigo, when used properly, is a very useful tool in the fight against organized crime.

Fernández Menéndez acknowledged the argument that only 3.7% of the persons detained under an arraigo are ultimately prosecuted. "That is true. But that figure does not make sense unless you cross-reference it with another important set of statistics: 98% of the crimes that are denounced are not resolved."

-- End --