

# URGENT ACTION

## BILL COULD FURTHER PRETRIAL DETENTIONS

**The Mexican Congress could pass a constitutional amendment in the following weeks that would force judges to order pretrial detention in cases involving a broad series of crimes. Contrary to international law, the reform does not provide that judges can waive it or assess any evidence before determining if such deprivation of liberty is appropriate.**

On 6 December, the Mexican Senate passed a proposal to amend article 19 of the Mexican Constitution to expand the list of offences that require judges to order the pretrial detention of accused individuals. The amendment proposal is now before the chamber of deputies, where it is to be discussed in the following weeks. If approved, thousands of people would be sent to prison each year, while awaiting trial, in contravention to international human rights law.

According to official data, in Mexico, 29.6% of individuals deprived of their liberty have not been sentenced. Pretrial detention is usually excessively long due to the duration of criminal proceedings, in some cases reaching up to 10 years. Mandatory pretrial detention will not only send thousands of people to prison, but it will also do so without allowing judges to adequately review their case and assess the appropriateness of such measure.

International law provides that pre-trial detention should not be based solely on the type of offence and that it should be used only as an exceptional measure and not as a form of punishment. Mandatory pretrial detention enables imprisonment of people accused of crimes even in cases lacking sound evidence and would encourage further deficient criminal investigations and unsubstantiated criminal charges. This could reinforce the crisis of impunity in Mexico, a country in which nearly 99% of the crimes committed go unpunished.

### 1) TAKE ACTION

**Write a letter, send an email, call, fax or tweet:**

- Urging them to reject the constitutional amendment bill that seeks to expand the list of crimes for which mandatory pretrial detention exists under article 19 of the Mexican Constitution;
- Urging them to abolish provisions in the Mexican Constitution and legislation that allow mandatory pretrial detention.

### Contact these two officials by 25 January 2019:

President of the Board of Directors - Chamber of Deputies

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Salutation: **Dear Deputy/Estimado**

**Diputado**

Ambassador Gerónimo Gutiérrez

Embassy of Mexico

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Phone: 202 728 1600

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Facebook: [EmbamexEUA](https://www.facebook.com/EmbamexEUA)

Instagram: [@embamexeua](https://www.instagram.com/embamexeua)

Salutation: **Dear Ambassador**

### 2) LET US KNOW YOU TOOK ACTION

[Click here](#) to let us know if you took action on this case! *This is Urgent Action 202.18.*

Here's why it is so important to report your actions: we record the actions taken on each case—letters, emails, calls and tweets—and use that information in our advocacy.

**AMNESTY  
INTERNATIONAL**



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### ADDITIONAL INFORMATION

Excessive use of pretrial detention is a persistent problem in Mexico. The new criminal justice system -that entered into force for all the country in 2016- introduced various alternatives to pretrial detention. However, there are still obstacles to the effective use of other options to pretrial imprisonment, mainly because Article 19 of the Mexican Constitution obliges judges to issue a pretrial detention order for certain types of offences, as well as those that involve the use of violence. The proposed amendment will substantially broaden this list of crimes.

In these cases, judges are not able to assess the facts of the case to arrive at a decision; they are obliged to remand the suspect in prison. This measure is contrary to the standards of international law, which state that pretrial detention should not be mandatory based solely on the type of offence involved and that it should be used only as an exceptional measure and not a form of punishment. Pretrial detention is only permissible when no other alternative measure can effectively achieve a legitimate purpose, such as to address a substantial risk of flight, of harm to third parties or undue interference that would hinder criminal proceedings.

The reasons for ordering pretrial detention must be strictly and narrowly interpreted and take into account the particular circumstances of the individual (including their age and state of health). The judicial authorities should periodically review the lawfulness of the detention and verify that it is still necessary and proportionate.

This provision has also encouraged the planting of evidence as this facilitates the work for investigators. For example, by claiming that a crime was committed in flagrante delicto on the sole basis of the suspect's possession of a single object (such as arrests related to weapons or illegal drugs), investigators can ensure the detention of a suspect for some time, usually some years. On the other hand, some courts are implementing a flawed practice of not questioning the circumstances of arrest when the alleged crimes permit mandatory pretrial detention.

Name: N/a  
Gender m/f: N/a

Further information on UA: 202/18 Index: AMR 41/9574/2018 Issue Date: 14 December 2018