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Mexico: Eliminating *arraigo* will be an important step towards protecting human rights

Amnesty International has learned with satisfaction of the decision taken by the Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación* - SCJN) in which it rules on the unconstitutionality of the concept of *arraigo* in the Criminal Code of Chihuahua state. *Arraigo* is a form of preventive detention that is used throughout the country. This decision sets a very important precedent by recognising that the concept of *arraigo* undermines the right to personal freedom and associated rights, given that it enables the unfounded detention of individuals.

Amnesty International urges both Mexico's Attorney-General's office (*Procuraduría General de la República*) and State Prosecutors (*Procuradurías de Justicia estatales*) to uphold this decision in practice and stop requesting *arraigo* while they investigate a crime. It is essential to guarantee that preliminary investigations into crimes are undertaken without violating the fundamental rights of those involved, such as the presumption of innocence.

Arraigo is a mechanism that has encouraged bad practice in criminal investigations and creates a context in which the person under investigation is subject to a concealed form of detention on the part of the Attorney-General's office, without due judicial control – the detainee does not have to be taken before a judge. Amnesty International has documented a number of cases in which the Attorney-General's office has restricted the detainee's access to their family, their lawyer and to medical care. This situation fosters the use of torture, intimidation and coercion to put pressure on the detainee to make a confession, in violation of fundamental standards guaranteeing a fair trial.

The SCJN's decision is an important step towards strengthening the protection of fundamental rights in the criminal process. However, an in-depth reform of the system is essential if the protection of these rights, along with the presumption of innocence, is to be established and applied such that there is a real balance between the powers of defence and prosecution in the criminal process. Such constitutional and legal reform would be the only effective way of protecting human rights whilst encouraging prompt and effective investigations on the part of the Attorney-General's office.

Background information

In Mexico, *arraigo* has developed from the system of house arrest of people under criminal investigation. However, the Attorney-General's office and the State Prosecutors have turned *arraigo* into a form of preventive detention by using safe houses in which to confine people. These places are guarded by the judicial police and officials from the Attorney-General's office and serve to confine suspects whilst investigations are carried out to obtain evidence, including interrogations. The Attorney-General's office can request *arraigo* for 30 days (with the possibility of extension) from a judge with the argument that it is suspected that a person may escape justice whilst the initial inquiries are being completed. However the Attorney-General's office is very often not required to back this fear up with objective arguments.

The impact of the SCJN's decision is as yet unclear, given that this ruling still has to be converted into full law that will be referred to by courts throughout the country.