

Conviction without trial:

gender and abbreviated proceedings
in the *Mexican criminal justice system*

Executive summary



Fairness, equality, justice

About

Fair Trials is an international civil society organisation dedicated to monitoring criminal justice systems around the world. The organisation works towards fair and equal criminal justice systems, with a team of experts based in Europe, Latin America, the UK and the US. Fair Trials has tracked and analysed the growth of summary proceedings and other waiver of trial mechanisms since 2016 and is the only international organisation that has studied the use of these mechanisms from a human rights perspective. Verónica Hinestroza, Senior Legal Advisor, and Luis Eliud Tapia, Legal Consultant, worked on this report.

DragonLab is a consultancy created by a group of female academics and activists to provide research and training with high methodological standards on issues of gender, human rights, transparency, and the justice system, among others. Dragon Lab seeks to have a social impact in order to improve the technical capacities, decision-making processes, strategy formulation and problem solving faced by state agents, activists, victims of human rights violations, victims of violence and society in general. Dragon Lab has been involved in various projects related to gender-based violence and the application of a gender perspective in judicial proceedings. Volga de Pina Ravest, Managing Partner, worked on this report.

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First published by Fair Trials in December 2022. © Fair Trials 2022.

“Fair Trials” includes Fair Trials International, Fair Trials Europe, and Fair Trials Americas. Fair Trials International is a registered charity (no. 1134586) and in 2010 was incorporated with limited liability in England and Wales (No. 7135273), and is based at 5 Castle Road, London, NW1 8PR. In May 2014, Fair Trials International founded Fair Trials Europe, which is a registered public foundation in Belgium (registered number 0552.688.677). In 2018 we founded Fair Trials Americas, which is a registered 501(c)(3) public charity in the United States of America (No DLN17053243307017). We were initially founded in 1992 with the name “Fair Trials Abroad”.

Acknowledgements

Fair Trials and Dragon Lab are grateful for the support of the Embassy of Ireland in Mexico through its Human Rights Cooperation Fund 2022 for preparing the study that underlies this report. We highlight their vision to understand the study of the abbreviated procedure from a gender perspective, as an opportunity to contribute to the promotion and realisation of human rights, particularly of women, and specifically their rights to equality, to a life free from violence and to access to justice under due process of law.

We want to thank the Federal Institute of Public Defence (IFDP) for its collaboration in the study. The openness of the Institute and the civil servants who participated in the methodological tools of the study demonstrate their interest in understanding, making visible, and reviewing the dynamics that are developing and creeping into the administration of justice. We trust that the report's findings and recommendations will serve as input to strengthen their determined efforts to provide technical legal assistance that guarantees human rights.

Finally, we would like to thank the Criminal Law Clinic of the Universidad Iberoamericana in Mexico City and its students for their support in compiling and organising information on the general application of the abbreviated procedure at the state level, as well as the review of sentences.

The study

The abbreviated procedure is a modality of the trial waiver systems that exist globally. In Mexico, it is a form of early termination of criminal proceedings provided for in national procedural legislation. In general terms, trial waiver systems can allow for a considerable reduction in the workload of prosecutors, courts and defence attorneys, as well as the length of the proceedings, thus improving the effectiveness of punishment and conviction rates. They are also credited with facilitating the strategic implementation of cooperation agreements to tackle corruption and complex organised crime networks.

Following the global trend of expansion of trial waiver systems, the use of the abbreviated procedure has increased significantly in Mexico in recent years, especially at the federal level. The abbreviated procedure allows defendants to get a reduction in the sentences that could be imposed for the crimes charged if they were found guilty. In specific cases where there is solid evidence of the commission of the crime, this can be beneficial for both parties. However, even in this context, the abbreviated procedure can mean, among other things, that defendants waive their right to trial and their right not to self-incriminate.

In practice, the abbreviated procedure dilutes the investigative process. It removes the guiding principles of the adversarial system, such as immediacy, contradiction and the rules for assessing the evidence. Due to its regulation, judicial decisions and the dynamics that have developed around its implementation, the abbreviated procedure prevents the discussion and evaluation of the circumstances in which the crime took place, the detention of the accused, and the gathering of evidence for the indictment. In this context, human rights violations such as torture for obtaining information, a confession, punishment or discrimination, and the illegality of detention, including false arrests, may be concealed.

The research conducted by Fair Trials and Dragon Lab, in collaboration with the Federal Institute of Public Defence, the findings of which are presented in this report, aimed to analyse the implications of the use of the abbreviated procedure in cases involving women accused of federal crimes in Mexico. This work sought to understand whether, and in what contexts, women, because of their gender, are at a disadvantage when presented with the choice of accepting the abbreviated procedure or advancing to the trial stage.

The research found that the current implementation and documentation of the abbreviated procedure in Mexico significantly limits the ability to examine the use of abbreviated procedures from a gender perspective, or to understand the differentiated impacts they have. To understand and respond to these obstacles, the study analysed the general functioning of the abbreviated procedure. It assessed the main challenges encountered, including those related to women defendants, with an analysis of the performance of the bodies involved in the criminal justice system and the conditions under which the abbreviated procedure is or is not accepted.

The study focused on the functioning of the abbreviated procedure in the federal criminal justice system, mostly based on the experience of the federal public defender's office. It details the understanding and performance of its officials concerning the abbreviated procedure, its challenges and good practices, particularly in cases involving women defendants.

Given this delimitation, it cannot be ruled out that those involved in the private practice of criminal law may observe different trends in the operation of the abbreviated procedure. It is also very likely that there are significant differences at the state level, where a much higher percentage of crimes are investigated, which are of a different nature and where public defence institutions tend to have very different characteristics and, above all, very different capacities.

The report, only available in Spanish, is structured in four sections, starting with the methodology used for the study. The second section introduces the theoretical framework for the most common gender issues in the criminal justice system. Section three deals with general aspects of waiver systems globally. The fourth section focuses on analysing the functioning of the abbreviated procedure at the federal level in Mexico and its gender impacts. Finally, conclusions and recommendations are presented for actors in the criminal justice system, in particular the defence, as input for the continuous strengthening of their work.

The study aimed to answer the question: what are the characteristics and consequences of using the abbreviated procedure in cases of women accused of federal crimes in Mexico? Per this question, the study adopted a gender perspective to collect and analyse information. The aim was to identify differentiated impacts or disproportionate effects on women's enjoyment of the safeguards of the criminal process for the exercise of their rights in the face of the possibility of accessing the abbreviated procedure. The working hypothesis of the study is that women are at a disadvantage when faced with the choice of an abbreviated procedure or proceeding to the trial stage.

The methodology selected for the research was qualitative and relied mainly on primary sources. In collaboration with the IFDP, a consultation was carried out with public defenders to learn about some general and contextual aspects of how the abbreviated procedure is used in federal cases, its main advantages and disadvantages, as well as its challenges and the role played by public defenders in this procedure.



Based on the consultation results, a survey was conducted among 840 public defenders specialising in criminal matters across Mexico, who were members of the IFDP as of June 2022; 797 responded anonymously. The survey asked about:

- the factors that allow access to an abbreviated procedure;
- the main motivations that lead defendants to opt for an abbreviated procedure;
- the possibilities for the defence to offer another alternative, even when defendants have opted for an abbreviated procedure;
- the consequences of this procedure;
- the frequency of its use and the type of crimes in which it is generally used;
- the possible existence of pressure to accept it; and
- other issues related to its general functioning and the role of prosecutors and judicial authorities in this regard.

In addition, we investigated whether there are differences in these factors in the case of women.

Four working meetings/round tables were also held in Mexico City with 60 public defenders from different states on the same topics, and 15 semi-structured virtual and individual interviews (Annex II) with women defenders to discuss and validate some of the working hypotheses resulting from the analysis of other sources. During the interviews, we delved into aspects related to the characteristics of trials with women defendants; the possible gender-based reasons for the crimes charged; and the differences that are evident in their cases, as well as the actions of the prosecution, the courts and the defence in these types of cases. Within the framework of this engagement, it was also possible to learn about the gender policies adopted within the IFDP.

In addition to the consultation with officials, a total of 32 public versions of sentences of abbreviated procedures, which were provided by the IFDP, were reviewed and categorised. The study drew on secondary sources, including official statistical data, legal instruments, reports from civil society organisations in the field on related topics, both in Mexico and internationally. These included previous findings of work carried out by DragonLab and Fair Trials. The results of the study were shared with IFDP management.

Conclusions

The criminal policy in force at the federal level has a differentiated impact and generates disproportionate effects on women, even though the percentage of women accused of crimes is much lower than that of men.

Women are mostly accused of carrying weapons and crimes that are defined as causing damage to collective health, which include crimes related to drug trafficking, crimes related to the danger of contagion, and crimes against reproductive rights. Previous research and literature has documented problems with the accusation and detention of women that are gender related.

In almost all cases, women are accused of crimes together with men. Women are often involved in criminal activities because of their emotional or familial relationships with men, because of pressure, or because they are cooking, cleaning or carrying out sex work in places where

crimes take place. Some are also charged simply for accompanying or covering for a man, without these reasons being properly considered by prosecutors when charging them.

Accused women are mostly in vulnerable situations and are further disadvantaged in the penal and penitentiary system because they lack resources and family support, which makes it difficult for them to access justice and prepare their defence. Their prosecution and punishment, moreover, does not have a significant impact on reducing crime or dismantling criminal groups.

Gender-related issues cannot be properly addressed when women waive their right to trial and the case is concluded by summary proceedings, as this prevents analysis of the merits of the cases and thus the gender issues related to the commission of the crimes or the accusations against women.

Although the federal public defender's office has internal policies related to gender mainstreaming in its work, the dynamics of the abbreviated procedure hinder the implementation of gender-sensitive defence strategies. This also impacts on the application of a gender perspective by judicial authorities.

Fair Trials has documented the rise of waiver of trial systems worldwide, which have often been implemented in the context of legal reforms that give criminal justice systems with adversarial elements. These systems pursue legitimate objectives such as efficiency. In Mexico, the trial waiver system applied is the abbreviated procedure. It was created to make the criminal justice system more efficient, reducing the length of trials and institutional expenditure, and its use has also increased over time.

In the federal criminal justice system, the abbreviated procedure is becoming the most common form of early termination of proceedings and the most common form of sentencing. According to INEGI, in the year 2021, federal pre-trial courts concluded 64.7% of criminal cases in abbreviated procedure sentences. Likewise, 4,644 convictions by the abbreviated procedure were issued in the same year, compared to 21 convictions by oral trial and 7 acquittals. This trend was also corroborated in some states such as Mexico City, Sonora and Aguascalientes.

The implementation of trial waiver systems raises human rights concerns that are relevant to the Mexican context. These concerns include: the existence of negative incentives that fail to ensure that accused persons voluntarily consent to waive their right to a trial; the reduction of international human rights law safeguards related to due process; the risk of convicting innocent persons; reduced scrutiny of prosecutorial and police actions in criminal proceedings that potentially violate human rights; and their differential impact on persons in situations of vulnerability.

The abbreviated procedure in Mexico is regulated in the Constitution, in the National Code of Criminal Procedures and by the interpretation of the Supreme Court. The prosecutor's office requests it to the pre-trial court, and for the pre-trial judge to approve it, it must verify, among other things, that the accused person waives his or her right to an oral trial and accepts responsibility for the crime. The abbreviated procedure concludes with a conviction of the accused.

There are three types of sentence reduction in the abbreviated procedure depending on the length of the sentences and how the offence was committed: reduction by two-thirds, one half or one-third of the minimum sentence for the offence in question.



The current interpretation of the Supreme Court of Justice of the Nation holds that the principles of publicity, contradiction, continuity and immediacy of the accusatory penal system do not apply to the abbreviated procedure.

The role assigned by the SCJN to the supervisory courts is to review the consistency, suitability, relevance and sufficiency of the evidence provided by the prosecution and to ensure that the person is waiving his or her right to trial in full knowledge of what it entails. Likewise, the SCJN has held that the courts cannot intervene in the scope of plea bargaining.

The SCJN held that it is possible to presume that persons accused of a crime accept the abbreviated procedure rationally, with agency and in their interests.

The investigation corroborated that there are factors in the federal criminal justice system that generate an atmosphere of coercion for accused people to opt for the abbreviated procedure despite the possibility of acquittal in oral proceedings.

The first factor is the disproportionate use of pre-trial detention, particularly mandatory pre-trial detention. A significant percentage of the federal crimes of which people, especially women, are accused in the criminal justice system are offences that entail mandatory pre-trial detention, such as carrying weapons and crimes against health; thus, the accused decide to negotiate while in prison and find in the abbreviated procedure the quickest way to obtain their freedom.

The second factor is that because defendants are in pre-trial detention when they negotiate the shortened procedure, they only accept it if they know they will be released. If, for example, they have a precautionary measure that does not keep them in prison or if by accepting the abbreviated procedure, they will remain in prison, they prefer not to opt for this form of early termination of proceedings.

The third factor is the lack of family support, particularly affecting women as they are often abandoned. This has an emotional and economic impact on women, which leads them to accept the abbreviated procedure.

The fourth factor is the fear of accused persons of receiving a high prison sentence if they opt for oral proceedings since criminal legislation contains increasingly high prison sentences.

The fifth factor is the length of time defendants must wait to go to trial. In several states of the country, it can take up to two years to reach trial, even though the CNPP indicates that the oral trial should begin a maximum of 60 calendar days after the order to open the oral trial is issued.

This group of factors undermines the idea that defendants decide with the agency to accept the abbreviated procedure, which is accentuated in the case of women. In reality, individuals negotiate with the prosecution on inherently unequal terms. Instead of reasoning about their best option, they often opt for the abbreviated procedure even though they are innocent.

When it comes to negotiating the abbreviated procedure, 74.2% of federal public defenders erroneously consider that the abbreviated procedure is a right of the accused. This influences each public defender's position when explaining the abbreviated procedure to those they legally represent, as if it were an essentially beneficial practice.

In practice, defendants request the abbreviated procedure to the prosecutor's office in writing and propose the amount of the sentence reduction. This request is regularly made close to the date of the indictment because Agreement A/017/15 issued by the

Attorney General's Office states that the sooner the abbreviated procedure is requested, the better the reduction in sentence that the prosecutor's office can offer.

In addition, despite three types of sentence reduction in the federal penal system, only one of them is applied: the reduction of up to one-third of the minimum sentence for the related offence.

The current regulation of the abbreviated procedure contained in the Constitution, in the CNPP and Agreement A/017/15 gives discretion and power to the prosecution in the negotiation and undermines the investigation of crimes. The prosecution controls the timing of the negotiation and the possible benefits the accused may obtain. There are even allegations of corruption schemes against prosecutors' offices under which they offer better benefits to the private defence.

An additional finding is that Agreement A/017/15 increases the requirements to offer the abbreviated procedure, limits the margins for sentence reduction, and compromises the autonomy of prosecutors to decide on sentence reductions, given that each abbreviated procedure must be authorised by a superior without knowledge of the case.

Finally, the pre-trial courts regularly make sure that the accused understand the importance of accepting the abbreviated procedure; however, the same is not true of their obligation to analyse the consistency, suitability, relevance, and sufficiency of the evidence invoked by the prosecution, as there are cases in which the courts omit this duty. Added to this is the fact that, in some circuits, the same judge who issues the indictment is the one who authorises the abbreviated procedure.

Recommendations

IFDP

1. In compliance with internal regulations, consider the abbreviated procedure as one more option among all the possible defence strategies available to the accused, avoiding characterising it as a right.
2. To inform the definition of appropriate defence options, collect evidence and conduct investigative acts from a gender perspective.
3. Gather evidence and carry out investigative acts to improve the defendant's position concerning a possible trial or the negotiation of an abbreviated procedure with the Prosecutor's Office.

Prosecutor's Office

4. Reform Agreement A/017/15 to conform to the constitutional and legal requirements of the abbreviated procedure and to strengthen the autonomy of prosecutors to decide on the reduction of sentences.
5. Prosecute investigation files with a gender perspective to consider factors that may influence women accused of federal crimes. These factors could include: pressure, their relationships with men or being assigned gender-stereotyped tasks.
6. Assess the feasibility of offering the abbreviated procedure within a reasonable timeframe.
7. Request that mandatory pre-trial detention not be applied in cases with no precautionary risk and involving highly vulnerable persons.

Supervisory courts and the judiciary

8. Redistribute workloads to ensure that the oral trial starts within the margins established in the National Code of Criminal Procedures.
9. Ensure that the judge who decides the abbreviated procedure is not the same judge who issued the committal order in the same case.
10. Apply a gender perspective during the abbreviated procedure hearing to identify any gender factors that influenced the accused person's decision to opt for the abbreviated procedure.
11. Apply international human rights law and domestic due process standards to the abbreviated procedure.
12. Analyse that the evidence offered by the prosecution is consistent, suitable, relevant and sufficient.

Congress

13. Eliminate the concept of informal pre-trial detention to ensure that pre-trial detention is only ordered when fully justified, as a last resort and not on the basis of the offence charged.
14. Review penalties for offences such as carrying weapons and crimes against health to ensure that other forms of early termination, beyond the abbreviated procedure, are appropriate.

Actors in the penal system, civil society and international organisations

15. Monitor and study the exponential growth in the use of abbreviated procedure in the Mexican penal system
16. Devote efforts to understand and report on whether the regulation and implementation of the fast-track procedure
 - Violates the rights of persons accused of crimes, including the prohibition of torture and the presumption of innocence;
 - Disproportionately impacts women;
 - Induces innocent people to accept conviction
 - Fosters corruption in prosecutors' offices.
17. Incorporate a gender perspective into the analysis and implementation of drug, criminal and penitentiary policies in Mexico. Bearing in mind the enormous saturation of the federal criminal justice system, it is important that the bodies responsible for its design and implementation establish priorities aimed at effectively reducing crime and dismantling organised criminal groups rather than prosecuting and imprisoning highly vulnerable individuals.
18. Review the design of federal crimes and their penalties, especially those related to drugs and weapons, to have a system that favours the proper functioning of the adversarial criminal justice system. This implies the possibility, for example, of having access to other mechanisms, such as the conditional suspension of proceedings, which makes it possible to maintain the effectiveness of the process without disproportionately affecting the rights of individuals.
19. Review resource allocation to ensure that excessive workload of public defenders offices or courts do not lead to excessive trial waivers.

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