

THE RIGHT TO ADEQUATE FOOD OF WOMEN DEPRIVED OF LIBERTY AND THE PROBLEM OF PRIVATIZATION IN CEFERESO 16

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1. INTRODUCTION

Almost all federal prisons in Mexico have been designed, built, and operated by private actors since 2010. The arguments to support this scheme have been the reduction of costs for the State and the consideration that companies have greater resources to guarantee adequate detention conditions and contribute to the reintegration of people.²

According to the latest data provided by the National Institute of Statistics and Geography of Mexico, at least 8 of 15 federal detention centers are in this scheme, including the only one exclusively for women: the Federal Center for Social Reinsertion No. 16 [hereinafter “CEFERSO 16”].³

The privatization of CEFERSO 16 did not fulfill the expectations of the government to guarantee adequate detention conditions nor reduce the costs of maintenance of women deprived of liberty. Conversely, women deprived of liberty do not receive enough food and their health and personal integrity is at constant risk due to the terrible quality of the food⁴.

Despite multiple complaints, the Mexican State has not only been passive but has maintained the contractual relationship with the company that provides the food service in CEFERSO 16, Alimentos con Idea, S.A. de C.V. [hereinafter “Alimentos con Idea”]⁵. The existence of any legal proceedings or sanctions against the company is unknown.

This situation could seem rare for a State that has several domestic laws and has ratified multiple international treaties that protect women deprived of liberty and their right to adequate food. As this paper will show, the problem of Mexico sets on the insufficient regulation of business activities in prisons, the lack of effective monitoring and accountability mechanisms, as well as the exclusion of private actors and women deprived of liberty in them.

To this end, the Mexican prison model and the case of CEFERSO 16 are first exposed. Starting with the law that has served to justify the intervention of private actors in this sector, the section also presents the information available on the enterprise responsible for the food service, as well as the most recent consequences that the intervention of this private actor has had on women deprived of their liberty.

Secondly, the obligations and mechanisms existing in Mexican legislation that apply to women deprived of their liberty are set out. Also, the second section provides an overview of the content of the right to food and the respective obligations arising from it according to

²Due Process of Law Foundation [DPLF]. *Privatization of the Mexican Penitentiary System*. (Aug. 22, 2016), at 16-17, https://www.dplf.org/sites/default/files/informe_privatizacion_del_sistema_penitenciario_en_mexico.pdf.

³National Institute of Statistics and Geography, at 8, National Census of the Federal and State Penitentiary Systems 2022, (Jul. 22, 2022), https://www.inegi.org.mx/contenidos/programas/cnsp/2022/doc/cnsipef_2022_resultados.pdf.

⁴IM Defensoras, et. al. Observation Missions on Prison Conditions. Visit to CEFERSO 16 Morelos (2022), at 12, 20-23, <https://im-defensoras.org/wp-content/uploads/2022/11/INFORME-Misiones-de-Observacion-sobre-las-Condiciones-Carcelarias-de-Kenia-Hernandez-Montalvan.pdf>.

⁵Federal Superior Audit Office, Annual Audit Program for the Superior Audit of the Public Account, at 6-7 (2020); https://www.asf.gob.mx/Trans/Informes/IR2020c/Documentos/Auditorias/2020_0100_a.pdf.

International Human Rights Law, particularly to General Comment No. 12 of the Committee on Economic, Social and Cultural Rights [hereinafter “CESCR”].

Next, this paper addresses the phenomenon of privatization of prisons through the analysis of the obligations and principles established by International Law when companies decide to become involved in activities related to public services or that affect human rights.

Lastly, this document elaborates on some conclusions and recommendations that are deemed necessary to prevent further violations and duly guarantee the right to adequate food for women in CEFERESO 16, and that could even contribute to the satisfaction of other economic, social, and cultural rights [hereinafter “ESC rights”], and the improvement of detention conditions of other persons deprived of their liberty.

2. THE PRISON MODEL, CEFERESO 16 AND THE RIGHT TO ADEQUATE FOOD OF WOMEN DEPRIVED OF LIBERTY

2.1 The privatization of prisons under Mexican Law

The main prison model in Mexico is Built, Operate and Transfer [hereinafter “BOT”], which entails that an enterprise is responsible for the construction, maintenance, and administration of prisons. In practice, the companies assume the role of guarantors of services and goods, while the State occupies a passive role limited to the payment of an agreed annual amount to the former.⁶

The BOT model was first proposed by the then-President of Mexico, Felipe Calderón Hinojosa in 2010. He argued that there was a need to fortify and modernize the prison system, as well as stimulate the economy of the country through reforms and new laws.⁷

The incursion of private actors under the BOT model can be seen through the Law on Public-Private Partnerships [hereinafter “LPPA”], which defines the scheme of public-private partnerships as a contractual relationship of long-term between public entities and private actors for the provision of services to the public sector or other final consumer. The infrastructure from the private sector is used to improve the social welfare and the levels of investment of the country⁸. Nonetheless, the LPPA was issued until January 2012, two years after private actors started to intervene in prison services in Mexico.⁹

Before the LPPA, the Mexican government decided to adopt the BOT model through service contracts for the long term. The contracts took place via direct award and the

⁶ Documenta and Mexico Evalua. Report on the situation of Private Prisons in prisons in Mexico, (Mar. 28, 2022), at 21, <https://www.mexicoevalua.org/wp-content/uploads/2022/03/documenta-informe-prisiones-privadas.pdf>.

⁷ *Id.*, at 15

⁸ Public-Private Partnerships Law [LPPA], art. 2, (Oct. 11, 2018), https://www.diputados.gob.mx/LeyesBiblio/pdf/LAPP_150618.pdf.

⁹ DPFL, *supra* note 1, at 21-22.

responsible authority to celebrate them was the Deconcentrated Administrative Body for Prevention and Social Readaptation [hereinafter “DABP”]¹⁰, the authority designed to organize and administer federal prisons.¹¹

Despite this framework, the Federal Superior Audit Office has pointed out the insufficient legal basis to accept the participation of private actors in the prison sector under the Law on Public Sector Procurement, Leasing and Services [hereinafter “LPSP”], which was initially used to justify the involvement of the enterprises. Since the conditions of the contracts are not fully established in those laws, the control and supervision of the companies’ activities has been jeopardized.¹²

Thanks to the information gathered by the Federal Superior Audit Office is known that the contracts rest on fraction IV of article 41 of the LPSP. This provision allows hiring enterprises without a public tender based on national or public safety concerns, and thus, to negotiate contracts through an invitation to three persons or direct award.¹³

The content of the contracts is not clearly stipulated in the law and no allusion to human rights of people or vulnerable populations is considered. In fact, the only reference to human rights is related to violations in regard to intellectual property¹⁴. As well, the election of the type of proceedings for the resolution of controversies is left at the mercy of the parties.¹⁵

Notwithstanding the fact that the LPSP conceives conventional penalties for delays in the provision of services, obliges private actors to respond when there are deficiencies and hidden faults in the provision of the service, and allows public entities to terminate the contracts in cases of non-compliance, the truth is that no parameters or remedies are specified. It gives the parties wide power to determine the content of obligations, and even decide whether they should repair or not possible damage, giving uncertainty about the cases where those measures could be applicable.¹⁶

Moreover, the sanctions for non-compliance with the agreements made are reduced to a fine or the temporal disqualification to celebrate new contracts and leave open to parties the initiation of civil, criminal, conciliation, and arbitration proceedings in case of deficient compliance, disagreements, and issues with the interpretation of the contract and

¹⁰Decree issuing the Regulations of the Executive Secretariat of the National Public Security System and of the Decentralized Administrative Body for Prevention and Social Readaptation, Official Journal of the Federation, (May 12, 2002), https://dof.gob.mx/nota_detalle.php?codigo=732487&fecha=06/05/2002.

¹¹Federal Superior Audit Office, Report on the Results of the Superior Audit of the Public Account, at 11, 23 (2013), http://www.asf.gob.mx/Trans/Informes/IR2013i/Documentos/Auditorias/2013_0057_a.pdf; Federal Superior Audit Office, Annual Audit Program for the Superior Audit of the Public Account, at 11 (2020); https://www.asf.gob.mx/Trans/Informes/IR2020c/Documentos/Auditorias/2020_0100_a.pdf.

¹²*Id.*

¹³*Id.*; *Cfr.* Law on Public Sector Procurement, Leasing and Services [LPSP], arts. 41-42, (June 2, 2021), https://www.diputados.gob.mx/LeyesBiblio/pdf/14_200521.pdf.

¹⁴*Id.*, art. 45 sec. XX.

¹⁵*Id.* art. 45.

¹⁶*Id.* arts. 53, 54.

the execution of the services¹⁷. No legal avenue is conceived for consumers, neither remedies nor measures to assess the potential or actual damage¹⁸.

Another point of concern is that all the language used on the LPSP shows that the focus is on the designated function and the financial or operative impact of the service, not on the people to whom those services are provided¹⁹. This not only restricts the type of guarantees that the law should consider to protect consumers and populations in a vulnerable situation impacted by the services offered by private actors but also denies their participation in the designing of the contract's duties and monitoring process of its compliance.

Finally, the LSPS does not establish any specialized area that supervises the compliance of the contractual obligation of private actors, which could be particularly important in the case of contracts of long term and the duties imposed on States regarding the protection of rights.

Therefore, the law does not include effective mechanisms for the accountability of companies that do not comply with the terms of the contract. This omission creates a fertile space for human rights violations and the inadequate expenditure of the public budget.

The legal void is more worrisome when it is noted that there is no transparency regarding the contracts services that government signs with private actors for the provision of services and goods in prisons,²⁰ even though Mexican law prescribes that civil society and public organisms of protection of human rights must have access to the prisons, their documents and all prison records to supervise the adequate guarantee of rights of people deprived of liberty.²¹

The existence of systemic deficiencies in the prison system, especially regarding the privatization of services, exposes a need for effective, comprehensive, sustainable reform of Mexican law. In doing so, the challenge ahead is to identify "legislative shortcomings, procedural bottlenecks and insufficiencies in physical rule-of-law infrastructure",²² such as those already exposed regarding the LPSP or those that the factual situation reveals, as shown subsequently.

¹⁷ *Id.* arts. 59,60, 63, 77, 80,

¹⁸ *Id.*

¹⁹ *Id.* arts. 54, 54 bis.

²⁰ DPFL, *supra* note 1, at 23.

²¹ National Law of Penal Execution [LEP], art. 58 (Sept. 19, 2019), https://www.diputados.gob.mx/LeyesBiblio/pdf/LNEP_090518.pdf.

²² UNODC, U.N. System Common Position on Incarceration, at 7 (April, 2021), https://www.unodc.org/res/justice-and-prisonreform/nelsonmandelarulesGoF/UN_System_Common_Position_on_Incarceration.pdf.

2.2 The delegation of food services in CEFERESO 16 to businesses

CEFERESO 16 is the only federal prison for women in Mexico. Situated on the highway Morelos-Amacuzac-Chimapa in the municipality of Coatlán del Río in the state of Morelos²³, this prison hosts 1140 women, according to the last data published on February 2023²⁴.

Beyond the long history of deficiencies related to adequate living conditions²⁵, this prison has also been recognized for its highly inaccessible location, which aggravates the breakage of family and social ties, the mental and physical struggles of women, as well as the institution of obstacles to access to justice.²⁶

CEFERESO 16 was incorporated into the Federal Prison System of Mexico on October 27, 2015. According to the decree, its creation was a response of the Mexican State to comply with the obligation of maintaining women in separated places from men during the compurgation of a measure of deprivation of liberty, as well as having an infrastructure adequate to those who lived with their children.²⁷

Moreover, the decree established that the Federation implemented a long-term integral services contracting scheme for penitentiary capacity, which aimed to strengthen the Federal Prison System as a beneficiary of the fiduciary ownership of goods, facilities, equipment, and other elements and services necessary for prisons, without affecting the primary, substantive, security, and control functions of social reinsertion²⁸, the primary goal of the penitentiary system.²⁹

Since December 2010, the Federal Government agreed to sign a service contract with a private enterprise and pay it annually one thousand 80 million Mexican pesos for 25 years in exchange for its operation of almost all the needs of women deprived of their liberty in CEFERESO 16.³⁰

The original responsible party for providing basic services to CEFERESO 16, with the except for security functions, was the enterprise CRS Morelos S.A. de C.V., which was an indirect subsidiary of Grupo Impulsora del Desarrollo y el Empleo en América Latina

²³National Security Commission, Process Evaluation, E904: Administration of the Federal Penitentiary System, at 170, (Dec. 2016),

<https://www.transparenciapresupuestaria.gob.mx/work/models/PTP/programas/sed/evaluaciones/2016/04e904phpr16.pdf>.

²⁴Monthly Notebook of National Penitentiary Statistical Information, at 7, (Feb. 2023, https://www.gob.mx/cms/uploads/attachment/file/811965/CE_2023_02.pdf.

²⁵ NMPT. Special Report 1/2023 of the NMPT related to the supervisory visits to the CEFERESO 16, at 14-17, (Mar. 2023), https://www.cndh.org.mx/sites/default/files/documentos/2023-03/IE_MNPT_2023_01.pdf

²⁶*Id.*, p. 25, 29, 35-39.

²⁷ Agreement incorporating to the Federal Penitentiary System the CEFERESO 16, Official Journal of the Federation, (Oct. 27, 2015), http://dof.gob.mx/nota_detalle.php?codigo=5413143&fecha=27/10/2015.

²⁸ *Id.*

²⁹ Political Constitution of United Mexican States, Feb. 5, 1917, art. 18.

³⁰National Security Commission, Process Evaluation, E904: Administration of the Federal Penitentiary System, at 170, (Dec. 2016), <https://www.transparenciapresupuestaria.gob.mx/work/models/PTP/programas/sed/evaluaciones/2016/04e904phpr16.pdf>; Federal Superior Audit Office, Annual Audit Program for the Superior Audit of the Public Account, at 4, (2020); https://www.asf.gob.mx/Trans/Informes/IR2020c/Documentos/Auditorias/2020_0100_a.pdf.

S.A.B. de C.V. [hereinafter “Grupo IDEAL”]³¹. Later, CRS Morelos S.A. de C.V. was acquired by Capital Inbursa de C.V. [hereinafter “Capital Inbursa”], an enterprise that has been pointed out as the current provider of services and conditions in CEFERESO 16.³²

Besides these internal modifications, the primary agreement has been renegotiated throughout the years, changing substantial elements, such as the amount of payment received by private actors³³ or the direct provider of certain services. The latter is the case of the supplier of the food service in CEFERESO 16.

In 2020, Grupo IDEAL celebrated a subcontract with the company Alimentos con Idea to delegate the provision of multiples services: from food, laundry, and cleaning to pest control, maintenance of exteriors, gardening, and others³⁴. This subcontractor is part of Grupo 2020, which is also composed of lfoods, an enterprise that used to offer food services in prisons until Mexican authorities disqualified it for the use of false documents in public bidding processes.³⁵

Since the beginning, Grupo IDEAL stated that the project was designed in line with the U.N. Agenda 2030, particularly with respect to the promotion of peace, justice, and strong institutions. Nevertheless, there is no proof of how sustainable development goals have been included in the contract or the decisions are taken by the enterprise³⁶. In practice, the reality is far from the alleged principles and standards mentioned by Grupo IDEAL.

Faced with this scenario of prison privatization in Mexico, the Inter-American Commission of Human Rights [hereinafter “IACHR”] has demonstrated its particular concerns regarding the high costs of the model provided by enterprises at the expense of the restrictions of the enjoyment of human rights.

For this body, privatization has endangered the aim of social reinsertion and contradicts several international standards about people’s deprived of liberty rights.³⁷ Up to its last Annual Report, the IACHR recommended the implementation of all kinds of measures to adopt gender-sensitive penitentiary policies that address the specific needs of women.³⁸

³¹Grupo Ideal. *Annual Report 2019*, at 22, (2019), <https://www.ideal.com.mx/wp-content/uploads/2021/10/Ideal-2019-Espa%E0%B8%84ol.pdf>; Minister of Security and Citizen Protection. *Federal Prison System*, (April, 2021), at 12,22, https://www.gob.mx/cms/uploads/attachment/file/665207/Sistema_Penitenciario.pdf.

³²*Id.*; Grupo Ideal. *Corporate Restructuring Prospectus*, (Feb. 5, 2020), https://www.bmv.com.mx/docs-pub/reescorp/reescorp_985976_1.pdf, p.1, 2, 22

³³*Cfr.* Minister of Security and Citizen Protection. *Savings of more than 5 billion pesos in renegotiation of contracts in the penitentiary system: SSPC*, (Oct. 19, 2022), <https://www.gob.mx/sspc/prensa/ahorros-por-mas-de-5-mil-millones-de-pesos-en-renegociacion-de-contratos-en-sistema-penitenciario-sspc>.

³⁴Federal Superior Audit Office, *Annual Audit Program for the Superior Audit of the Public Account*, at 6-7 (2020); https://www.asf.gob.mx/Trans/Informes/IR2020c/Documentos/Auditorias/2020_0100_a.pdf.

³⁵Abraham Nava, *Intoxicated inmates ask to be treated*, *Excelsior* (Oct. 3, 2022), <https://www.excelsior.com.mx/nacional/reclusas-intoxicadas-piden-ser-atendidas-cefereso-femenil-16-coatlan-del-rio/1543388>.

³⁶Ministry of Finance and Public Credit. *Project sustainability sheet* (2020), https://www.proyectosmexico.gob.mx/wp-content/cache/tmp/pdf_sostenibilidad/ES_84479_SOS.pdf.

³⁷Human Rights Situation in Mexico. IACHR., OEA/Ser.L/V/II, Doc. 44/15, ¶ 341-345 (2015); Report on Business and Human Rights: Inter-American Standards, IACHR, OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19, ¶ 367 (2019).

³⁸Annual Report 2021, IACHR, OEA/Ser.L/V/II. Doc. 64 rev. 1, at. 1141 (2022); Annual Report 2020, IACHR, at. 1182 (2020)

These concerns are confirmed by undeniable facts and numbers. CEFERESO 16 is the most expensive prison in Mexico as the government pays more than 300 U.S. dollars (6,634.27 Mexican pesos) for each woman per day, the highest amount per person in all federal prisons in the country.³⁹ In contrast, federal public prisons cost 17 times less than CEFERESO 16: approximately 22 U.S. dollars (390 Mexican pesos) for each person per day.⁴⁰

The Mexican government has reported annual payments of approximately 107 million U.S. dollars (1,925,000 Mexican pesos) to private actors involved in the provision of several services and goods in CEFERESO 16.⁴¹ Yet, the complaints concerning the quality and acceptability of food offered by Alimentos con Idea, S.A. de C.V. are a constant, as well as the cases relating to the negative effects on the health and personal integrity of women deprived of liberty.

2.3 The consequences of inadequate food in CEFERESO 16

Women have protested over the years about the food offered inside CEFERESO 16. The National Mechanism for the Prevention of Torture [hereinafter “NMPT”] and the National Commission on Human Rights [hereinafter “NCHR”] indicated that the quality and quantity of food was a continuous problem in all federal prisons through 2016, 2017⁴², and its special report focusing on women deprived of liberty in 2022.⁴³

By the end of 2022, the situation escalated rapidly and as a result of the authorities' inattention to the problem, at least 400 women in CEFERESO 16 suffered from food poisoning due to the ingestion of spoiled food.⁴⁴

The consequences were manifested through vomiting, diarrhea, headaches, fever, and even, fainting. Regrettably, the prison authorities not only failed to provide adequate medical care and medication to ill women but also sought to keep the cases of intoxication under reserve.⁴⁵

³⁹Minister of Security and Citizen Protection. Federal Prison System, p. 6. https://www.gob.mx/cms/uploads/attachment/file/665207/Sistema_Penitenciario.pdf

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² NCHR. *NCHR issues report 8/2016 of the NMPT on Federal Centers for Social Readaptation called "CPS Social Readaptation Centers called "CPS".* (Oct. 21, 2016), https://www.cndh.org.mx/sites/default/files/doc/Comunicados/2016/Com_2016_270.pdf; NCHR. *15 risk situations persist in "CPS" prisons, which endanger human rights of persons deprived of their liberty.* (July 5, 2017), https://www.cndh.org.mx/sites/all/doc/Comunicados/2017/Com_2017_224.pdf.

⁴³NCHR. *Diagnostic report on the living conditions of women deprived of liberty from an intersectional approach 2022*, at 112, 211, (2022), https://www.cndh.org.mx/sites/default/files/documentos/2022-04/Informe_Diagnostico_Mujeres_Privadas_Libertad.pdf

⁴⁴ Justino Miranda, "400 female inmates report food poisoning from rotten food in Cuemavaca jail", *Documenta* (Oct. 21, 2022), <https://observatorio-de-prisiones.documenta.org.mx/archivos/6473>.

⁴⁵ *Id.*

In light of this situation, family members and civil society organizations filed complaints with the NCHR, pointing out that the food service was provided by a private company and that this incident was not the first one, as women have always lacked enough food or options of good quality.⁴⁶

In response, the NCHR adopted precautionary measures requiring authorities to provide immediate medical care to ill women, as well as adequate food and nutritional diets to restore their state of health. Additionally, the specialized body assigned an extraordinary brigade *in situ* to monitor closely the situation and opened an investigation.⁴⁷

The conditions inside CEFERESO 16 have worsened over time by reducing the access of women to healthy, sufficient, and adequate food, as it has been reported that the amount has dropped to 60 grams per woman in each meal⁴⁸, that only untreated tap water is available for consumption, and that if they wish to eat other types of food, they have to buy them through a store, which only offers junk food⁴⁹ and very costly limited options, making them unaffordable and inappropriate for the needs of women deprived of liberty.⁵⁰

Although the dietary regime has been a constant problem in the Mexican prison system⁵¹, non-governmental organizations and media have reported that in CEFERESO 16, only 26% of women have access to enough food with good quality whereas 71% have denounced that the food provided has caused them diseases.⁵²

In 2023, the NCHR issued a statement that urged prison authorities to adopt serious actions to guarantee the rights of people deprived of their liberty. In its analysis, the body collected information from different public sources to acknowledge the multiple complaints with respect to decomposed food offered inside CEFERESO 16.⁵³

Later, the same institution published the Recommendation 59/2023 regarding the health contingency of 2022 caused by the ingestion of spoiled food in CEFERESO 16. According to its investigation, it was clear that the prison authorities did not comply with

⁴⁶María Fernanda Ruiz, *Women from Cefereso Femenil 16 urge medical attention and medicines due to massive intoxication*, Once Noticias (Oct. 5, 2022), <https://oncenoticias.digital/nacional/mujeres-del-cefereso-femenil-16-urgente-atencion-medica-y-medicamentos-por-intoxicacion-masiva/172164/>

⁴⁷NHCHR. *NCHR monitors the implementation of precautionary measures in favor of women deprived of liberty at CEFERESO 16, who were allegedly intoxicated*, (Oct. 1, 2022), https://www.cndh.org.mx/sites/default/files/documentos/2022-10/COMUNICADO_2022_279_1.pdf.

⁴⁸IM Defensoras et. al, *supra* note 3, at 23; Documenta and Mexico Evalua, *supra* note 5, at 66.

⁴⁹Ruiz, *supra* note 45.

⁵⁰ Recently, the NCHR issued the Recommendation 78/2022, stating that the cost of food and products in the stores of federal prisons was totally disproportionate for people deprived of their liberty. See in: <https://www.cndh.org.mx/documento/recomendacion-782022>, (Apr. 20, 2022).

⁵¹Documenta and Mexico Evalua, *supra* note 5, at 44-45.

⁵²CIMAC. *Due to human rights violations in CEFERESO where Kenia Hernández is imprisoned, they request its definitive closure*, (Mar. 15, 2023), <https://cimacnoticias.com.mx/2023/03/15/por-violaciones-a-derechos-humanos-en-cefereso-donde-esta-en-reclusion-kenia-hernandez-piden-su-cierre-definitivo/#gsc.tab=0>; Luis Carlos Sáenz, *Demand closure of Cefereso 16 female prison for human rights violations*, Zeta Tijuana, (Mar. 13, 2023), <https://zetatijuana.com/2023/03/exigen-cierre-del-cefereso-16-femenil-por-violaciones-a-derechos-humanos/>

⁵³NCHR. *Pronouncement for the adoption of urgent actions that guarantee the proper operability, security and governance in the country's penitentiary prisons in the country to protect the human rights of persons deprived of their liberty, their visitors and the staff working in them*, at 15, (Jan. 23, 2023), https://www.cndh.org.mx/sites/default/files/documentos/2023-01/PRONUNCIAMIENTO_2023_003.pdf.

their duty to supervise the actions of the company in charge of the food supply, since they failed to (a) take strict measures to monitor the quality and safety of the products offered, and (b) preserve and analyze important evidence that could have demonstrated the roots of the infection. For this reason, the NCHR issued several recommendations, including the provision of adequate health care and the need to incorporate a mandatory clause concerning the respect of human rights in contracts between the CEFERESO 16 and private actors⁵⁴.

3. UNDERSTANDING THE RIGHT TO ADEQUATE FOOD

3.1 National legal framework in regard to the right to food of women deprived of liberty

3.1.1 Domestic laws related to the right to adequate food and women deprived of liberty

The Federal Constitution of Mexico is categorical: the right to food must be nutritional, sufficient, of quality, and satisfied by the State to every person without discrimination.⁵⁵ Thus, people deprived of liberty have reinforced protection of this right, as the prison system is anchored to the notion of respect for human rights as part of the means to achieve the reinsertion of the person into society.⁵⁶

As a result of the special protection recognized for people deprived of liberty, Mexico strengthened its legal framework beyond its Constitution to create a specific and protective law, the Law on Penal Execution [hereinafter “LEP”].

The LEP law explicitly determines that people deprived of their freedom have the right to receive food with almost the same characteristics as mentioned in the Federal Constitution. The distinctive addition of this law to the constitutional definition of the right lies in the fact that food must be adequate to protect human health.⁵⁷ In the case of women, this right includes obtaining food that is healthy and proper for their children, too.⁵⁸

Moreover, to ensure the right to food of people deprived of liberty, Mexican State foresees that the DABP is obliged to offer free food and other basic supplies, as well as health care services that prescribe diets to guarantee varied and balanced food.⁵⁹

The situation of women in CEFERESO 16 is far from these national standards. Not only is the food not nutritious or of an acceptable quality for health, as can be seen from the minimum amount they receive and the reported illnesses⁶⁰.

⁵⁴ NCHR. *Recommendation 59/2023*. (Mar. 30, 2023), https://www.cndh.org.mx/sites/default/files/documentos/2023-04/REC_2023_059.pdf.

⁵⁵ Political Constitution of United Mexican States, *supra* note 28, art. 1.

⁵⁶ *Id.*, art. 18.

⁵⁷ LEP, *supra* note 20, art. 9, frac. III.

⁵⁸ LEP, *supra* note 20, art 10, frac. V.

⁵⁹ LEP, *supra* note 20, arts. 3 frac. XXV, 32, and 76 frac. III.

⁶⁰ *Cfr.* NHCR. *NCHR monitors the implementation of precautionary measures in favor of women deprived of liberty at CEFERESO 16, who were allegedly intoxicated*, (Oct. 1, 2022), https://www.cndh.org.mx/sites/default/files/documentos/2022-10/COMUNICADO_2022_279_1.pdf.

As well, the duty to provide free food and the direct imposition of the obligation to provide it to the State has not been fully observed either. Women have no choice but to accept food that is in poor condition and that causes them illness: only those who can afford products sold in a store have any other option⁶¹. This situation is not compatible with the constitutional and legal criteria regarding the right to food for women deprived of their liberty.

3.1.2 National mechanisms to supervise the human right to food and redress possible violations

The Mexican legal framework offers both judicial and non-judicial mechanisms to assess an alleged human rights violation, as well as to monitor the compliance of the obligations of the State in regard to the rights of women deprived of liberty, such as the right to food.

From the preventive aspect, Mexico has come up with two different mechanisms to ensure decent conditions for people deprived of their liberty in prisons and other detention centers: the NMPT and the Intersecretariat Commissions.

The NMPT was created in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [hereinafter “Optional Protocol of Torture”], which entails the duty of States to create their own mechanism of prevention of torture, beyond the establishment of an international body, such as the Subcommittee on Prevention of Torture.⁶²

At the national level, the NMPT was established through the Law to Prevent, Investigate, and Sanction Torture and other Cruel, Inhuman and Degrading Treatment [hereinafter “LPIST”]. As an independent body within the NCHR, it is responsible for the permanent and systemic supervision of prisons and other detention centers in the country.⁶³

The functions of this mechanism include visiting detention centers, accessing information regarding the situation of people deprived of liberty, elaborating reports and complaints before the NCHR, receiving information about possible torture practices in detention centers, filing criminal complaints, and issuing recommendations on public policy to improve detention conditions and the treatment of people in prison, among others.⁶⁴

Considering that the CEFERESO 16 ensures the service of food through an enterprise, the approach of the NMPT falls short. As can be seen in its reports, this body

⁶¹ *Id.*; NCHR. *Pronouncement for the adoption of urgent actions that guarantee the proper operability, security and governance in the country's penitentiary prisons in the country to protect the human rights of persons deprived of their liberty, their visitors and the staff working in them*, at 15, (Jan. 23, 2023), https://www.cndh.org.mx/sites/default/files/documentos/2023-01/PRONUNCIAMIENTO_2023_003.pdf.

⁶² Mexico ratified the Optional Protocol of Torture on 2005. See in: U.N. Status of treaties, Chapter IV Human Rights, Optional Protocol of Torture, United Nations Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9-b&chapter=4&clang=_en.

⁶³ LPIST, art. 72-73, (June 26, 2017), <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGPIST.pdf>.

⁶⁴ *Id.* art. 78.

never addresses the responsibility or involvement of private actors in several prisons⁶⁵. Its supervisory work focuses entirely on the actions and omissions of the State regarding prisons and other detention centers and does not involve any follow-up activity or an additional mechanism to monitor the compliance with the recommendations of its reports.⁶⁶

On the other hand, the Intersecretariat Commissions are regulated on the LEP as the bodies composed by local and federal authorities –such as the Ministries of Governance, Health, Economy, and others⁶⁷- in charge of the design and implementation of programs for social reinsertion in prisons, as well as post-conviction services at the federal and state levels.⁶⁸

Non-governmental organizations might participate in these Commissions if the authorities implement participatory mechanisms or sign collaboration agreements with them, restricting their possibilities to intervene. No mechanism of participation is prescribed for private actors or people deprived of liberty.⁶⁹

After three years of the publication of the LEP, the Intersecretariat Commissions were created as a result of the issuance of the General Recommendation 38/2019 by the NCHR, which explicitly urged the implementation of those bodies at the federal and state levels.⁷⁰

Regarding accountability mechanisms, four relevant remedies should be noted: the administrative petitions, the jurisdictional controversies, the Amparo Trial, and the recommendations.

Specifically, when prison authorities fail to ensure adequate conditions of living, the LEP establishes two legal remedies for people deprived of their liberty, administrative petitions and jurisdictional controversies.⁷¹

The administrative petitions are submitted to the Director of the prison in writing for any act, omission, or fact concerning detention conditions by any deprived of liberty person, her or his relatives, visitor, public or private defenders, prosecutors, as well as civil society organizations or authorities in charge of the protection of human rights of people deprived of liberty, or other group deprived of liberty. The admission and continuity of the

⁶⁵ Cfr. NMPT *Recommendation* 4/2017, (Sept. 8, 2017), https://www.cndh.org.mx/sites/default/files/doc/Recomendaciones/PrevencionTortura/RecPT_2017_004.pdf.

⁶⁶ *Id.*

⁶⁷ NCHR, *General Recommendation* 38/2019, at 4 (Oct. 14, 2019), <https://www.cndh.org.mx/sites/default/files/documentos/2019-10/Rec-38-gral.pdf>.

⁶⁸ LEP, *supra* note 20, art. 7.

⁶⁹ *Id.*

⁷⁰ NCHR, *General Recommendation* 38/2019, *supra* note 65, at 43-45; Decree creating, on a permanent basis, the Intersecretarial Commission for Social Reinsertion and Post criminal Services., Official Journal of the Federation, (Oct. 16, 2019), https://www.dof.gob.mx/nota_detalle.php?codigo=5575545&fecha=16/10/2019#gsc.tab=0.

⁷¹ LEP, *supra* note 20, art. 107, 116 frac. I, 117 frac. I.

proceedings must be solved within 24 hours of the reception of the petition while the final decision has to be issued 5 days after the admission of the petition.⁷²

When the person deprived of liberty disagrees with the outcome of the administrative petition, the LEP envisages the formulation of jurisdictional controversies within the following 10 days of the notification of the resolution of the petition. Jurisdictional controversies should be presented before a Judge of Execution, who will have to admit or reject the controversy within the next 72 hours.⁷³

Subsequently, parties will have up to 5 days to offer relevant evidence whereas the prison authorities must submit a report in the same term, being both delivered to parties for consultation previous to a hearing that should take place in the next 3 to 10 days.⁷⁴ The judgment should be rendered within the following 5 days from the hearing and its lack of compliance is subject to (i) previous analysis by the judge, (ii) the application of measures of constraint to prison authorities, and even (iii) the interposition of an appeal before a higher court if the petitioner is dissatisfied with the decision.⁷⁵

Exceptionally, jurisdictional controversies could be presented without the exhaustion of administrative petitions in urgent cases related to detention conditions that require an immediate assessment to prevent the extinguishment of the subject matter. Additionally, the Judge of Execution must issue *ex officio* provisional measures to suspend or order specific actions to avoid further violations or damage.⁷⁶

The Federal Constitution contemplates one mechanism in case of violation of any human right: the Amparo Trial.⁷⁷ The great advantage of the Amparo lies in the opportunity to sue private actors that carry out acts equivalent to those executed by authorities, affect human rights, and its functions are determined by a general law.⁷⁸

Considering that the right to food for women deprived of liberty is established in the LEP, which provides clear guidelines on how it should be provided, as well as recognizing the duty of the State to provide it, omissions or acts that affect this right - as in the present case - could be the subject of a possible lawsuit.⁷⁹

Nonetheless, its admission will depend on the exhaustion of previous remedies established in ordinary law or the existence of an exceptional situation, such as the alleged commission of torture or ill-treatment against a person.⁸⁰ Thus, only when other legal recourses applicable to deprived of liberty people are exhausted or when a transgression

⁷² LEP, *supra* note 20, arts. 107-114.

⁷³ *Id.*, art. 114

⁷⁴ *Id.*, arts. 124-126

⁷⁵ *Id.*, arts. 127-129, 131 and 132, fr. VIII.

⁷⁶ *Id.*, arts. 115, 122, and 123.

⁷⁷ Political Constitution of United Mexican States, *supra* note 28, arts. 103 and 107.

⁷⁸ Amparo Law [LARACPEUM], art. 5, (Apr. 2, 2013), <https://www.diputados.gob.mx/LeyesBiblio/pdf/LAmp.pdf>.

⁷⁹ LEP, *supra* note 20, arts. 10, 9, and 73.

⁸⁰ LARACPEUM, arts. 61 and 15.

to the right to adequate food reaches the threshold of torture or ill-treatment, the Amparo trial could be a proper avenue.

The last remedy that can push toward the sanction and reparation of human rights violations is the proceedings before NCHR. This independent and specialized body receives complaints of alleged human rights violations, conducts investigations, and issues resolutions with recommendations when authorities are considered responsible for human rights violations. Nevertheless, the decisions of the NCHR are not mandatory, giving authorities the freedom to accept and comply with them or not.⁸¹

Based on the abovementioned mechanisms, Mexico might appear to have a variety of domestic tools to facilitate the protection of human rights and their accountability and redress when they are violated. This consideration is far from the truth. Recently, the NCHR reported that women in CEFERESO 16 do not have enough legal avenues to complain about human rights violations.⁸²

This critique is easily demonstrated in this section. There are two judicial mechanisms and three non-judicial mechanisms: still, just the extraordinary remedy of the Amparo Trial takes into consideration the possibility to denounce private actors as parties when they engage in activities related to public functions. This option is usually the last resort since it is difficult to propose an immediate response, due to the high standard it imposes, such as the existence of a situation equivalent to torture or ill-treatment.

However, no ordinary remedy or monitoring mechanism establishes the necessary intervention of private actors. The focus is on the State's omissions or actions, a partial approach that leaves a loophole in favor of corporate abuse and impunity.

Also, the participation of women deprived of liberty seems limited. Even though the administrative petition, the judicial controversy, and the complaints before the NCHR allow them to take part in the proceedings, they usually turn to lawyers, family members, and non-governmental organizations to enforce their rights.⁸³

Therefore, these mechanisms do not offer an easy, accessible, and independent channel to facilitate the participation of women in the monitoring, accountability, and redress processes; giving what could be perceived as a constraint to the protection of their human rights.

⁸¹National Commission on Human Rights Law [LCNDH], arts. 3-6, (June 29, 1992), https://www.cndh.org.mx/sites/all/doc/normatividad/Ley_CNDH.pdf.

⁸²NCHR. *NCHR issues report 8/2016 of the NMPT on Federal Centers for Social Readaptation called "CPS Social Readaptation Centers called "CPS"*. (Oct. 21, 2016), https://www.cndh.org.mx/sites/default/files/doc/Comunicados/2016/Com_2016_270.pdf; NCHR. National Diagnostic of the Penitentiary System, at 680-681, (2021), https://www.cndh.org.mx/sites/default/files/documentos/2022-04/DNSP_2021.pdf.

⁸³ Cfr. CIMAC, *supra* note 51; FIDH. *Mexico: Health emergency in Morelos maximum security female prison*, (Oct. 10, 2022), <https://www.fidh.org/es/temas/defensores-de-derechos-humanos/mexico-emergencia-sanitaria-en-carcel-femenina-de-maxima-seguridad-en>.

3.2 International obligations regarding the right to adequate food of women deprived of their liberty

3.2.1 General framework of ESC and the essential content of the right to adequate food

The International Covenant on Economic, Social and Cultural Rights [hereinafter “ICESC”], envisaged not only a catalog of rights but the core principles on which any of them must be analyzed, regardless of their specific content. Therefore, before elaborating on the right to adequate food, it is necessary to address article 2 of ICESC, which includes the general framework for the proper interpretation of all ESC rights and their respective duties.

a. General framework

The article 2(1) of the ICESC entails an obligation for all State parties composed of four key elements: (i) undertake steps; (ii) the use of maximum available resources; (iii) the progressive achievement of the full realization of ESC rights; and (iv) the use of all appropriate means, such as legislative measures.⁸⁴

The duty to undertake steps implies they should be deliberate, concrete, and clearly targeted to comply with other obligations in the ICESC⁸⁵. In the case of corporate activities, including those related to public services and goods, this duty has to be understood as the development of “legislative, [...] administrative, financial, educational, social measures, domestic and global needs assessments, and the provision of judicial or other effective remedies”.⁸⁶

Additionally, States are obliged to use the maximum of their available resources, which means that they must prove that all efforts have been made to fully ensure the ESC rights. Even in financial crises, authorities must demonstrate that resources are being prioritized on behalf of vulnerable groups and that measures are being taken⁸⁷ to ensure a minimum subsistence.⁸⁸

As stated previously, the budget granted to CEFERESO 16 is one of the highest, and yet, it has not led to the improvement of prison conditions. Hence, it would be insufficient to argue that the State is using the maximum of its financial resources since such use should be aimed at guaranteeing minimum quality standards or essential foodstuffs.⁸⁹

⁸⁴ CESCR. *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, E/1991/23, ¶1 (Dec. 14, 1990).

⁸⁵ *Id.* ¶2.

⁸⁶ *Id.* ¶3.

⁸⁷ *Id.* ¶13.

⁸⁸ IACHR. *Note verbale dated 5 December 1986 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights ("Limburg Principles")*, E/CN.4/1987/17, (1987).

⁸⁹ CESCR, *supra* note 82, ¶10.

The third cross-cutting guideline of the ICESCR is the duty to achieve progressively the total realization of rights. Although ESC rights cannot be achieved immediately or in a short period of time, States must act in expeditiously and effectively as possible.⁹⁰

Based on the abovementioned facts, it could be said that Mexico has already taken steps to ensure that women deprived of liberty access to food by contracting services to make food available in prison. Now, the challenge ahead is to comply quickly and successfully with other elements of the right in order to demonstrate its commitment to the principle of progressivity.

In regard to the use of all appropriate means, States are not limited to the adoption of legislative measures, as judicial remedies, and administrative, financial, educational, or social measures could be needed. The assessment of the appropriate means must consider the specific circumstances of a case and the right at stake.⁹¹ In the context of the privatization of prisons, it has been noted that the existing laws and remedies are not enough. This entails a case in which legislative measures could be indispensable not only to give legal certainty but to enact judicial remedies and other administrative or financial measures.⁹²

Lastly, is worth noticing the principle of equality and non-discrimination described in article 2(2) of the ICESCR. This *jus cogens* norm becomes highly relevant for the case of study, as it recalls the duty to respect, protect and fulfill the ESC rights of all people in two ways: (i) without arbitrary distinctions based on prohibited grounds –race, color, sex, etc.-, and (ii) taking into account the requirement of measures to improve the position of groups in disadvantage.⁹³

Accordingly, women deprived of liberty possess a special protection under the legal scaffolding that entails a duty to refrain from imposing criteria that exclude them from access to ESC rights and a duty to adopt additional measures to achieve it, considering closely the specific needs and barriers they face.⁹⁴

b. The right to adequate food

The right to adequate food has been understood as “the fundamental right of everyone to be free from hunger” and an essential element in the achievement of an adequate standard of living in article 11 of ICESCR.⁹⁵

⁹⁰*Id.* ¶9.

⁹¹*Id.* ¶5-7.

⁹² DPFL, *supra* note 1, at 20-22.

⁹³ *Buzos Miskitos v. Honduras*, Merits, Reparations, and Costs, Judgment, IACtHR (ser. C) No. 432, ¶ 98 (Aug. 31, 2021); Ben Saul, David Kinley, Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases, and materials*, at 177-180 (Oxford, 1st ed. 2016).

⁹⁴ CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, E/C.12/GC/20, ¶27 (July 2, 2009); Differentiated approaches with respect to certain groups of persons in detention (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments) [hereinafter “Differentiated approaches”], Advisory Opinion OC-29/22, IACtHR (ser. A) No. 29, ¶68-69 (May 30, 2022).

⁹⁵ U.N. Status of treaties, Chapter IV Human Rights, ICESCR, art. 11, United Nations Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-9-b&chapter=4&clang=_en.

Similarly, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights [hereinafter “Protocol of San Salvador”] establishes that the right to food relates to adequate nutrition that allows “the highest level of physical, emotional and intellectual development”⁹⁶. Mexico acceded to the ICESCR in 1981⁹⁷ and ratified the Protocol of San Salvador in 1996.⁹⁸

The right to adequate food is linked to human dignity and the realization of other human rights⁹⁹, such is the case that it has been recognized as a key determinant factor of the right to health. It is also generally protected by article 26 of the American Convention on Human Rights.¹⁰⁰

Although it must be fulfilled progressively, the right to adequate food requires States to take positive measures to mitigate and alleviate hunger, as well as comply with certain minimum conditions.¹⁰¹ Specifically, the CESCR has referred that the right to food should be available, accessible, adequate, acceptable, and sustainable.¹⁰²

- The availability of food covers the options of feeding oneself or through a distribution, processing, and market system that allows food to arrive where needed.¹⁰³
- The accessibility involves that people acquire food without affecting other basic needs and that States create additional programs to procure food for socially vulnerable groups (economic aspect), as well as guaranteeing that food is accessible at all times and for any person, giving special priority and support for disadvantaged people (physical aspect).¹⁰⁴
- The adequacy of food refers to the multiple social, economic, cultural, climatic, and ecological conditions that should be considered when offering specific foods or diets.¹⁰⁵ This also entails two aspects: quantity and quality. The sufficient quantity is determined by dietary needs aimed at increasing and maintaining mental and physical health, and according to characteristics, such as gender, occupation, physical activity or feeding patterns (e.g. breastfeeding). A certain standard of quality is related to the absence of adverse substances and contamination of food through adulteration or improper handling, making it safe for human consumption.¹⁰⁶
- The acceptability is shaped by the consideration of “non-nutrient-based values attached to food and food consumption”, meaning the importance of cultural factors in the choice of food and other concerns of consumers related to the nature of food.¹⁰⁷

⁹⁶Protocol of San Salvador, art. 12, Nov. 17, 1988, O.A.S.T.S. 69.

⁹⁷ICESCR, *supra* note 93.

⁹⁸Protocol of San Salvador, *supra* note 94.

⁹⁹CESCR, *General Comment No. 12: The Right to Adequate Food (Art. 11)*, E/C.12/1999/5, ¶4 (May 12, 1999).

¹⁰⁰IACtHR, *Differentiated approaches*, *supra* note 92, ¶153.

¹⁰¹CESCR, *General Comment No. 12*, *supra* note 97, ¶6.

¹⁰²*Id.* ¶8.

¹⁰³*Id.* ¶12.

¹⁰⁴*Id.* ¶13.

¹⁰⁵*Id.* ¶7; *Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs*, Judgment, IACtHR. (ser. C) No. 400, ¶274 (Feb. 6, 2020).

¹⁰⁶CESCR, *General Comment No. 12*, *supra* note 97, ¶8-10.

¹⁰⁷*Id.* ¶11.

- The sustainability demands that food is not only available not but also for the long-term, including present and future generations.¹⁰⁸

In order to ensure the abovementioned elements, States must assume their duties to respect or abstain from taking measures that hinder access to food; to protect or ensure that other individuals and enterprises do not impede the access to food; and to fulfill, which entails reinforcing people's access and use of resources to ensure their subsistence (facilitate), and guaranteeing the enjoyment of the right to adequate food in cases where people cannot procure it for themselves due to situations beyond their control (provide).¹⁰⁹

Notwithstanding the fact that States have a margin of discretion on the development of actions to guarantee the right to adequate food, the violation of this right can occur when States fail to ensure the minimum core; deny its access and the means for its procurement to certain individuals; or even fail to regulate activities of third parties to prevent them from the transgression of this human right.¹¹⁰

In regard to private actors, the CESCR has established that they possess a significant role in the fulfillment of the right to adequate food that entails the adaptation of their internal regulations and the undertaking of activities in line with the content of the right.¹¹¹ Correlatively, States must remain vigilant and take an active approach to ensure that private actors comply with the obligations derived from the right to adequate food.¹¹²

Therefore, even when enterprises participate in activities related to the provision of food or that could affect its access; States maintain their duty as primary guarantors and protectors of the right to adequate food, especially for vulnerable groups.¹¹³ This responsibility demands the implementation of mechanisms to monitor the effective realization of the right in order to identify possible problems and adopt corrective measures; as well as the creation of appropriate remedies to assess violations of this right and provide integral reparations to victims.¹¹⁴

3.2.2 Specific considerations regarding the right to adequate food for women deprived of their liberty

The right to adequate food acquires differentiated nuances in cases of women deprived of liberty, as specific obligations attached to gender and the condition of deprivation of freedom arise. In view of the total control that States exercise in prisons, women deprived of liberty depend on the actions they take to guarantee and prevent violations of their rights.¹¹⁵

¹⁰⁸ *Id.* ¶7.

¹⁰⁹ *Id.* ¶15.

¹¹⁰ *Id.* ¶ 19-21.

¹¹¹ *Id.* ¶ 20.

¹¹² *Id.* ¶15-19; Indigenous Communities of the Lhaka Honhat Association (Our Land)v. Argentina. Merits, Reparations and Costs, Judgment, IACtHR. (ser. C) No. 400, ¶221 (Feb. 6, 2020).

¹¹³ CESCR, General Comment No. 12, *supra* note 97, ¶26-28.

¹¹⁴ *Id.* ¶31-32.

¹¹⁵ IACtHR, Differentiated approaches, *supra* note 92, ¶155.

In this context, the Inter-American Court of Human Rights [hereinafter “IACtHR”] has recalled States their duty to provide appropriate detention conditions, which include offering adequate food and diets according to the characteristics of the women deprived of liberty -such as possible illnesses or maternity, which could change their nutritional requirements – in order to avoid a treatment incompatible with human dignity that could be perceived as part of arbitrary punishment, additional to the deprivation of the freedom.¹¹⁶

If the special needs of women deprived of their liberty regarding food are invisibilized, there could be not only a violation of that specific right but also equal access to food in accordance with the particular needs of their sex and gender. This is recognized in the Convention on the Elimination of All Forms of Discrimination Against Women [hereinafter “CEDAW”], particularly articles 1, 2 (a), (e), and (f), or 12.2, which refer to the obligations that States have to take active steps to eliminate discrimination in laws or practices, including those committed by enterprises; along with the specific duty to ensure proper conditions to women during pregnancy and lactation¹¹⁷. This treaty was ratified by Mexico in 1981.¹¹⁸

The aforementioned obligations are reinforced by the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women [hereinafter “Belém Do Pará Convention”], which Mexico ratified in 1998¹¹⁹. According to article 5 in relation to articles 6 (b), 7 (d), (e), (f) and (g); and 9 of this Convention, women “are entitled to the free and full exercise of her [...] economic, social and cultural rights” and therefore, states must prevent violence against women that can diminish the enjoyment of their rights, through the adoption of a multiplicity of measures that includes the adequate prevention, sanction, and reparation of acts of violence, especially against women in a more vulnerable situation, such as those deprived of their freedom.¹²⁰

The right to adequate food for women deprived of liberty is also acknowledged in two instruments: the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders [hereinafter “Bangkok Rules”] and the Standard Minimum Rules for the Treatment of Prisoners [hereinafter “Nelson Mandela Rules”].

The Bangkok Rules emphasize that (i) pregnant women, breastfeeding mothers, and mothers with children in prison should receive adequate and timely food from State, and (ii) programs and services to assess their needs must take into account their culture and opinions¹²¹. Recently, the IACtHR echoed that pregnant women in prison deserve special

¹¹⁶Chinchilla Sandoval v. Guatemala. Preliminary Exceptions, Merits, Reparations, Costs, Judgment, IACtHR, (ser. C) No. 312, ¶¶184-185, 192-194, 199 (Feb. 29, 2016); Penal Miguel Castro Castro Prison v. Peru. Merits, Reparations, Costs, Judgment, IACtHR, (ser. C) No. 160, ¶¶29-38, 40-41, 197.51, 319-321 (Nov. 25, 2006).

¹¹⁷ U.N. Status of treaties, Chapter IV Human Rights, CEDAW, arts. 1, 2, 12.2, United Nations Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en.

¹¹⁸*Id.*

¹¹⁹Belém Do Pará Convention, Sept. 06, 1994, O.A.S.T.S. 61.

¹²⁰*Id.* arts. 5-7, 9.

¹²¹G.A. Res. 65/229, U.N. Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), arts. 48, 54 (Mar. 16, 2011).

protection that materializes in the implementation of programs and specialized diet plans that meet their medical and nutritional needs.¹²²

Similarly, the Nelson Mandela Rules enshrines that States have the obligation to provide food at usual hours and with nutritional value, quality, and well-prepared. Likewise, competent authorities must inspect and take measures to comply with recommendations to assure the “quantity, quality, preparation and service of food”.¹²³

3.3 Conclusions regarding the right to food at the national and international level

Human rights standards are clear. Whether Mexico's Federal Constitution or the ICESCR is consulted, the right to adequate food must be guaranteed without distinction to everyone and especially, to women deprived of liberty and the children that live with them¹²⁴.

Although this right does not usually imply the provision of food, in the prison context it does. Women deprived of their liberty depend on the State and in the case of CEFERESO 16, also on the company Alimentos con Ideas, to satisfy their food requirements¹²⁵.

In this regard, the Nelson Mandela Rules and the Bangkok Rules provide specific criteria that reinforce the right to food for women deprived of their liberty¹²⁶, a standard that has also been adopted by the CESCR and the IAtCHR¹²⁷.

However, it is not enough for the authorities to be singled out as the primary guarantors of the right to adequate food for women deprived of their liberty. On one hand, the State has a duty to protect the right against private actors' actions that hinder its enjoyment. On the other, the State must fulfill the right to adequate food by providing it directly.¹²⁸

Due to the privatization of CEFERESO 16, the recognition of private actors' responsibility in the respect and assistance to satisfy ESC rights is essential. Moreover, actions to prevent contamination of foodstuffs and antigenic conditions, as well as to provide quantities of food that comply with minimal dietary needs are urgent in this case. This entails a duty to protect actively the right to adequate food from omissions or undue actions of enterprises through effective measures, such as better regulations or judicial remedies that consider corporations' responsibility and accountability in regard to human rights in prisons¹²⁹.

¹²²IACtHR, Differentiated approaches, *supra* note 92, ¶157.

¹²³G.A. Res.70/175, U.N. Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rules 22.1, 35 (Jan. 8, 2016).

¹²⁴IACtHR, Differentiated approaches, *supra* note 92, ¶157.

¹²⁵Nelson Mandela Rules, *supra* note 121, rules 22.1, 35.

¹²⁶*Id.*

¹²⁷CESCR, General Comment No. 12, *supra* note 97; IACtHR, Differentiated approaches, *supra* note 92.

¹²⁸*Id.* ¶15.

¹²⁹CESCR, General Comment No. 3, *supra* note 82, ¶2-7.

Moreover, the State must take a solid position to force enterprises to comply with human rights norms as it does with other national tax or administrative legislation. This proposal is neither novel nor strange for International Human Rights Law. An example of this can be seen in the definition of torture: a practice also committed by private individuals with the acquiescence, consent, or at the instigation of the authorities.¹³⁰

In this case, the application of this analogy acquires greater force when it is observed that even if it was not the intention of the authorities to provide low-quality or spoiled food, the absence of preventive and reactive actions triggers sufficient tolerance to prove its passive positions before abuses committed by a company¹³¹. The IACtHR has stated that deliberate inaction or conduct that creates conditions for the infringement of a right and its impunity, involves the consent of the State to private actors' behavior¹³².

Under this logic, enterprises must also assume their responsibility which, despite being domestic and not international, must trigger a series of sanctions and measures that allow the non-repetition of the act and the just reparation of the damages caused. Furthermore, a practical way to effectively implement the obligations regarding the right to adequate food can be found in multiple guidelines and standards proposed by International Law, such as those described in the next section.

Mexican State cannot continue to maintain a passive stance in its duty to respect, protect and fulfill the right to adequate food for women deprived of liberty. Assuming its commitment entails major obligations to act in terms of regulation, oversight, and accountability in conjunction with reparations. Subsequently, this will be explained in more depth.

4. PRIVATE ACTORS AS MAIN GUARANTORS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

4.1 The privatization of services under International Human Rights Law

Everything which is not forbidden is allowed, right? The simple answer to the question of this legal maxim would be yes. However, if we try to respond to it in the context of private actors contributing to the satisfaction of ESC rights, it is more complicated. It is not sufficient that there is no prohibition, as certain conditions must be met to comply with national and international standards.

The provision of public services and goods is an undeniable function of the State. Even when governments decide to promote the participation of companies in services linked to ESC rights, the obligation to protect both the service and the rights at stake

¹³⁰U.N. Status of treaties, Chapter IV Human Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art 1, United Nations Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en.

¹³¹CESCR, General Comment No. 12, *supra* note 97, ¶ 15-19.

¹³²*Cfr.* López Soto v. Venezuela. Merits, Reparations, and Costs, Judgment, IACtHR, ¶146, (ser. C) No. 362, (Sept. 26, 2018).

belongs unequivocally to the State.¹³³ Hence, the delegation of these services and goods only involves additional and reinforced obligations to States in order to safeguard the full enjoyment of human rights.¹³⁴

Nonetheless, most prisons in reality are neglected and characterized as perfect scenarios for abuse, consequences that are connected to the lack of proper management, oversight, and accountability mechanisms.¹³⁵

As a way to prevent and stop the perpetuation of these patterns of violence, the CESC has laid out precise guidelines applicable to States that decide to engage with businesses to offer certain services and goods linked to ESC rights, recognizing explicitly that women are particularly affected by enterprises activities and require the implementation of actions with gender perspective.¹³⁶

As a general rule, States are subject to international responsibility for acts or omissions perpetrated by businesses, especially when the latter carries out an activity instructed by the former through a public contract.¹³⁷ Therefore, it is important that States exercise their duty to protect by adopting solid and strict legal frameworks that ensure the safeguarding of ESC rights linked to business activities, and offer legal avenues to seek redress in case of non-compliance or abuses.¹³⁸

In order to succeed in these duties, States must consider “public service obligations”, which entails the establishment of clear requirements in conformity with the minimum core of the right that companies have assumed to offer to certain populations as a result of an agreement with the State.¹³⁹ For instance, the right to adequate food must be culturally acceptable and meet the dietary needs of people, two conditions that enterprises will have to comply with, regardless of the private nature of the contract or other terms established there.¹⁴⁰

By the same token, the IAtCHR and the IACHR have indicated that the role of the State does not end in the delegation of functions to private actors. In fact, its responsibility is strengthened in contexts where the victims are part of a group in a special vulnerable situation due to a long historic and structural story of violence and discrimination, personal factors, or other specific position in which people could be, such as the condition of deprivation of liberty.¹⁴¹

¹³³ Ximenes Lopes v. Brazil. Merits, Judgment, IACtHR, (ser. C) No. 149, ¶96 (July 4, 2006).

¹³⁴ Chinchilla Sandoval v. Guatemala. Preliminary Exceptions, Merits, Reparations, Costs, Judgment, IACtHR, (ser. C) No. 312, ¶168 (Feb. 29, 2016).

¹³⁵ UNODC, *supra* note 21, at 6-7.

¹³⁶ CESCR, *General Comment No. 24 on State obligations under the ICESCR in the context of business activities*, E/C.12/GC/24, ¶5-9 (Aug. 10, 2017).

¹³⁷ *Id.* ¶11.

¹³⁸ *Id.* ¶14-16.

¹³⁹ *Id.* ¶21.

¹⁴⁰ CESCR, *General Comment No. 12*, *supra* note 97, ¶8.

¹⁴¹ Ximenes Lopes v. Brazil. Merits, Judgment, IACtHR, (ser. C) No. 149, ¶104 (July 4, 2006); IACHR, Report on Business and Human Rights: Inter-American Standards, *supra* note 36, ¶84,221.

The fact that the privatization of public sectors, such as the provision of food and other goods in prisons, is not prohibited under the ICESCR cannot mean a discretionary space for arbitrariness and diminishment of human rights. Hence, the Inter-American system has outlined 4 state duties in the context of business activities to prevent abuses: (i) regulate and adopt a national legal framework; (ii) prevent human rights violations; (iii) oversee corporate activities; and (iv) investigate, sanction and provide access to comprehensive reparations for victims.¹⁴² As discussed below, all of these duties apply in the context of food provision in private women's prisons.

Similarly, the CESCR has argued that the delegation of the obligation to satisfy certain services or goods to private companies requires States to (i) exercise rigid control to avoid practices that could hamper the quality or equal access to basic needs in order to obtain greater profits; (ii) ensure that people participate in the assessment of the conditions under which services or goods are provided, so the efforts of businesses direct towards the complete fulfillment of ESC rights¹⁴³; and (iii) create remedies for accountability and redress to guarantee the protection of the human rights, especially when they include or complement with access to independent and impartial judicial bodies.¹⁴⁴ Thus, it is important not only to regulate enterprises' activities and provide legal remedies when a human right is affected but facilitate the participation of consumers in the decision-making and compliance with ESC rights.

Likewise, the United Nations Guiding Principles on Business and Human Rights [hereinafter "UNGP"], one of the most important international instruments about business and human rights, provides a similar understanding of the States' role and the responsibilities of companies in this context.

Consequently, while the UNGP are not binding, the content of this instrument reflects the core of human rights obligations as stated by the CESCR, the IACHR, and the IACtHR¹⁴⁵. The principles are based on the pillars: protect, respect, and remedies, which entail states' obligation to protect all human rights, corporate responsibility to respect human rights during its activities, as well as the need to provide effective remedies.¹⁴⁶

In the case of the duty to protect all human rights, the UNGP refer that States should supervise enterprises' activities to ensure compliance with international obligations¹⁴⁷. This is comparable to the IACtHR identification of the primary obligation that public authorities

¹⁴²IACHR, Report on Business and Human Rights: Inter-American Standards, *supra* note 36, ¶86.

¹⁴³CESCR, General comment No. 24, *supra* note 134, ¶21-23.

¹⁴⁴*Id.* ¶38-41.

¹⁴⁵*Cfr. Id.*; Chinchilla Sandoval v. Guatemala. Preliminary Exceptions, Merits, Reparations, Costs, Judgment, IACtHR, (ser. C) No. 312, ¶168 (Feb. 29, 2016); IACHR, Report on Business and Human Rights: Inter-American Standards, *supra* note 36, ¶84, 221.

¹⁴⁶OHCHR, *Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect and Remedy" Framework*, UN Doc. HR/PUB/11/04, at 1 (2011).

¹⁴⁷*Id.* at 8.

have a primary to prevent that private actors' actions violate human rights through effective monitoring of the provision of the service delegated.¹⁴⁸

It is worth noticing that the obligation to monitor prison services effectively can take place through the creation of a system with internal and external mechanisms that not only supervise but inspect these services to reduce the risk of violence or abuse and consequently, prevent human rights violations¹⁴⁹. The national and independent mechanism established in the Optional Protocol of Torture to monitor detention centers and prevent practices of torture and ill-treatment could be an example of how to implement this duty.¹⁵⁰

On the other hand, the pillar concerning corporate responsibility to respect refers to the prevention and mitigation of adverse human rights impacts derived from enterprises' activities, which involves the creation of policies on human rights and processes to identify and redress possible abuses.¹⁵¹

On this topic, the Organisation for Economic Co-operation and Development [hereinafter "OECD"] has also addressed the importance of companies' cooperation to create legitimate proceedings to remediate adverse human rights impact and work with authorities to prevent serious threats to public health and safety deriving from the consumption or use of goods and services, looking closely to their practices when the needs of vulnerable and disadvantaged populations could be at stake.¹⁵²

As well, corporate responsibility could entail the promotion of transparency practices related to the disclosure of information about the contract's terms to the communities, limiting strictly the exceptions in which secrecy should prevail.¹⁵³

The last pillar of remediation comprises all the judicial and non-judicial mechanisms that provide proper reparation that includes apologies, restitution, rehabilitation, compensations, and criminal or administrative sanctions. The priority of businesses should focus on actions to mitigate the most severe or possible irreparable cases, while the States must create adequate avenues to investigate, punish, and repair comprehensively damage linked to human rights abuses.¹⁵⁴

In this regard, the CESCR has emphasized that corporate accountability for violations of the ICESCR should not be narrowed down to criminal liability but include administrative

¹⁴⁸Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil. Preliminary Exceptions, Merits, Reparations, and Costs, Judgment, IACtHR, (ser. C) No. 407, ¶120, (July 15, 2020); Albán Comejo v. Ecuador, Merits, Reparations, and Costs, Judgment, IACtHR, (ser. C) No. 171, ¶119, (Nov. 22, 2007).

¹⁴⁹UNODC, *supra* note 21, at 7-8.

¹⁵⁰*Id.* at 12; Optional Protocol of Torture, *supra* note 60.

¹⁵¹OHCHR, *supra* note 144, at 13-15.

¹⁵²OECD, *Guidelines for Multinational Enterprises*, at 31, 51-53, (2011) <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

¹⁵³John Ruggie (Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises), *Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators*, at 23-25, A/HRC/17/31/Add.3 (May 25, 2011).

¹⁵⁴OHCHR, *supra* note 144, at 25-26.

sanctions and other non-judicial remedies, such as action plans on business and human rights.¹⁵⁵

In all cases, non-judicial remedies should be coordinated with other judicial mechanisms to guarantee sanction and compensation for victims¹⁵⁶, and their effectiveness would require the State's capacity to enforce its compliance. Otherwise, its mere existence could result in an insufficient effort to materialize into the actual protection of the rights of victims and therefore, the adequate observance of the obligation of the States regarding the provision of remedies to repair corporate abuses.¹⁵⁷

An option for the States to promote access to remedies is the operational-level grievance. A grievance is a perceived injustice of a person's entitlement based on law, a promise, or even a customary practice. Thus, the grievance mechanism could be processes, state-based or non-state-based, and judicial or non-judicial, in which human rights abuses can be assessed and repaired.¹⁵⁸

The UNGP recommend state-based judicial and non-judicial grievance mechanisms for a wider system of remedy; the latter a better first step to solve a possible situation regarding human rights abuses.¹⁵⁹ While state-based judicial mechanisms are preferred to address corporate abuses, the UN has also considered state-based non-judicial grievance mechanisms and non-state-based grievance mechanisms. The first one entails that the State offers mediation, adjudicative or cultural processes that could be more adequate to address harm related to business activities. The second one is administered by private actors, could also use adjudicative, dialogue, and other cultural processes, and provide faster solutions.¹⁶⁰

A relevant example of non-judicial grievance mechanisms are those called "operational-level", which bring people and communities closer to the resolution of conflict, without the need for the exhaustion of other remedies. These mechanisms could serve to assess concerns and not only possible human rights abuses.¹⁶¹ Nevertheless, their existence should not be understood as a substitution or restriction to other complaint mechanisms. States also ought to facilitate access to effective operational-level mechanisms.¹⁶²

Non-judicial mechanisms require certain conditions to be effective. For instance, the IACHR has welcomed their use as long as they entail comprehensive reparations (i.e. restitution, rehabilitation, compensation, satisfaction, and guarantees of non-repetition), and embrace minimum due process guarantees related to the impartiality of the decision-

¹⁵⁵ CESCR, General comment No. 24, *supra* note 134, ¶¶49-50, 53-59.

¹⁵⁶ *Id.*

¹⁵⁷ IACHR, Report on Business and Human Rights: Inter-American Standards, *supra* note 36, ¶¶125-126.

¹⁵⁸ OHCHR, *supra* note 144, at 27-28.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* 29-31.

¹⁶¹ *Id.* 31-32.

¹⁶² Ruggie, *supra* note 151, at 21-22.

making body, the resolution of the case in a reasonable time, the motivation of decisions, among others.¹⁶³

In particular, the UNGP have indicated that any State-based or non-State-based, adjudicative or dialogue-based mechanism, must be (i) legitimate to develop trust between actors involved; accessible to all people; (ii) predictable in regard to the rules, stages, the time frame and the means to monitor the implementation of mechanisms; (iii) equitable through the access to information, advice and expertise to participate in the mechanisms; (iv) transparent to facilitate information about the development and performance of the mechanisms; (v) rights-compatible or in accordance with International Human Rights Law; (vi) a source of continuous learning that allows to assess the harm, prevent the repetition of potential abuses, as well as create better policies and practices; and (vii) permits the engagement with all the stakeholders and dialogue to address the design and performance of mechanisms that seek for agreed solutions or rely on an independent third-party mechanism. In the case of operational-level mechanisms, the last criterion is especially applicable:¹⁶⁴

Additionally, the Working Group on the issue of human rights and transnational corporations and other business enterprises [hereinafter “WBHR”] has brought attention to an elementary condition in all reparation mechanisms: a victim-centered approach. Enterprises and States must consider closely the expectations and experiences of right holders in order to avoid victimization, as well as ensure the real accessibility and adequacy of the remedies.¹⁶⁵

This approach may be more pressing in cases such as the one at hand, in which women in a condition of deprivation of liberty seek an adequate response to acts and omissions related to the right to adequate food.

The need to make the specific necessities of women visible in the access and enjoyment of their rights generates an unavoidable duty to include a gender and intersectional perspective within this approach to victims in cases where the gender factor sums up to others, such as the age, the economic situation or the condition of deprivation of freedom.¹⁶⁶ Therefore, women in prison should be especially considered through the incorporation of a gender approach in all policies, laws, and practices.¹⁶⁷

¹⁶³IACHR, Report on Business and Human Rights: Inter-American Standards, *supra* note 36, ¶142.

¹⁶⁴OHCHR, *supra* note 144, at 37-42.

¹⁶⁵WBHR. *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprise*, ¶81, UN Doc. A/72/162 (July 18, 2017).

¹⁶⁶IACHR, Report on Business and Human Rights: Inter-American Standards, *supra* note 36, ¶332; *Cfr.* CEDAW, *General Comment*. 28, Doc. ONU CEDAW/C/GC/28, (Dec. 16, 2010) ¶18 ;CEDAW, *General Comment* No. 35 Doc. ONU CEDAW/C/GC/35, (July 26, 2017) ¶12.

¹⁶⁷UNODC, *supra* note 21, at 9-10.

In this matter, the WBHR has identified that as part of the general obligation of equality and non-discrimination, it is necessary for companies, the State, and civil society actors to work hand in hand to break down patriarchal structures and hostile environments.¹⁶⁸

4.2 Conclusions regarding the privatization of services vis-à-vis the Mexican case

Although the UNGP are not binding, the pillars to protect, respect, and remedy are based on the legal obligations that the Inter-American system and the CESC have established, such as regulating enterprises' activities with a strong legal framework, supervising their actions are compatible with human rights obligations, provide access to justice through effective judicial and non-judicial mechanisms, as well as guarantee the participation of people directly affected by the services provided¹⁶⁹.

Moreover, the UNGP show the *how* for States and enterprises. Precisely, States can consult them to see great examples to put their obligations into practice. As well, they shed light on how companies can also assume their responsibilities with regard to human rights.

From this perspective, the non-binding nature of these guidelines should not be confused with the obligation of States to adequately regulate the public functions exercised by private parties, the active monitoring of their activities, and the adoption of other measures to prevent human rights violations, investigate, sanction and provide access to comprehensive redress¹⁷⁰.

Under this scenario, it is clear that there is an obligation of control over companies that, in turn, obliges them to commit to the protection of human rights if they seek to take part in the provision of services and goods related to ESC rights.

In this sense, the absence of international responsibility in the face of human rights treaties cannot be used to evade commitments that, emanating from national or international legislation, effectively constrain them to act in a certain way through the guidelines provided by the states themselves. Hence, it is important that Mexico adopts an active role and implement adequately its domestic and international norms in conjunction with the models and good practices that contribute to giving legal and material life to them¹⁷¹.

In regard to the duty to prevent, practices and mechanisms directed to monitor the activities of enterprises could be crucial to detect problems and issuing a quick response, as well as avoid the occurrence of damage¹⁷².

¹⁶⁸ Cfr. WBHR. *Gender dimensions of the Guiding Principles on Business and Human Rights*, ¶44, UN Doc. A/HRC/41/43 (May 23, 2019).

¹⁶⁹ Cfr. General comment No. 24, *supra* note 134, ¶10,12,14,23; Chinchilla Sandoval v. Guatemala. Preliminary Exceptions, Merits, Reparations, Costs, Judgment, IACtHR, (ser. C) No. 312, ¶168-171 (Feb. 29, 2016); IACHR, Report on Business and Human Rights: Inter-American Standards, *supra* note 36, ¶221,232.

¹⁷⁰ *Id.*

¹⁷¹ Cfr. OHCHR, *supra* note 144, at 37-42.

¹⁷² *Id.* at 13-15; WBHR. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprise, *supra* note 163, ¶81.

However, the current institutions that supervise the detention conditions in Mexico (Intersecretariat Commissions and the NMPT), do not include private actors or women deprived of liberty in their assessment, acting against the participatory element considered by the CDESCR and the UNGP in this context. Thus, even when the NMPT is based on a treaty and has been set as a model on how to develop monitoring activities in detention centers, the lack of engagement with private actors and transparency regarding the contracts signed with companies for the provision of services in CEFERESO 16, makes it inappropriate.

This situation is also contrary to the pillar of respect by corporations. The enterprises should cooperate to make their processes clearer, according to human rights, and take steps to not only prevent adverse human rights impact but remediate it in case it is needed. Considering the information of Alimentos con Ideas and the national legal framework, no actual steps have been taken by the company to assure the right to adequate food of women in CEFERESO 16 and to redress the harm. The precautionary measures and the pressure were imposed solely in the State, which is not enough due to the involvement of a private actor.

Furthermore, there is not only a failure regarding the adoption of measures to safeguard the right to adequate food for women deprived of liberty but a deficient system of legal remedies. As seen in the first section, only the Amparo Trial can provide an immediate and effective response to complaints arising from omissions and actions of both enterprises and authorities that affect human rights. However, this remedy is highly technical and extraordinary.

Therefore, the judicial and non-judicial mechanisms that Mexico has to assess the conditions of women in CEFERESO 16 concerning their right to adequate food do not comply with all the standards of the Inter-American System nor those provided by the United Nations. Although the mechanisms follow the rules of due process of law, they do not incorporate authorities as parties, causing their exclusion in the decision to repair. As well, the recommendations issued by the NCHR cannot be enforced if the authorities decide to ignore them.

Additionally, the accountability mechanisms are entirely state-based as no domestic law prescribes the obligation for enterprises to develop operational-level mechanisms or provide avenues for consumers in order to seek proper reparation in cases of corporative abuse¹⁷³.

Similarly, the differentiated approach and gender perspective that should permeate business activities related to ESC rights is not only supported by the provisions of the Working Group or the UNGP¹⁷⁴. This general obligation is reinforced in the prison context

¹⁷³Ruggie, *supra* note 151, at 21, 22, 29.

¹⁷⁴*Id.*

and in relation to vulnerable groups, such as women deprived of their liberty, due to the general principle of equality and non-discrimination enshrined in article 2(2) of the ICESCR and applicable to any right established therein. As mentioned previously, this has also been considered essential by the IACtHR or the CEDAW¹⁷⁵.

Nevertheless, the lack of participatory spaces for women deprived of liberty in the monitoring mechanisms and the legal remedies available show that there is no victim-centered approach or the assessment of specific needs and concerns through the women's voices¹⁷⁶. This omission not only affects the legitimacy of the existing mechanisms but also the transparency, engagement, and dialogue that must be present in order to seek avenues to prevent, investigate, sanction, and repair human rights abuses (corporations) and violations (State).

5. CONCLUSION

As explained in the first section of this article, the right to adequate food is explicitly established in the Mexican Constitution and the CDESCR, as well as reinforced in other specific domestic laws, treaties, and *soft law* instruments that protect to women deprived of liberty. Nevertheless, there is a clear problem of insufficient (i) regulation of private actors' activities in prisons, (ii) adequacy of the legal avenues available in cases of possible abuse or violation of ESC rights, such as the right to adequate food, and (iii) implementation of the human rights norm enshrined in national and international instruments.

According to the standards of the Universal and the Inter-American System, the problematic situation of Mexico can be solved through the compliance of two duties: (i) regulate closely the activities, especially the contracts that permit the hiring of private actors for prison services, and (ii) create robust oversight and accountability mechanisms¹⁷⁷.

The case of Mexico shows that a broad margin given to authorities and companies can cause the violation of the minimum standards of the right to adequate food for women deprived of their liberty, as no mandatory criteria are set to restrict possible abuses or deficiencies.

Therefore, the LPSP and other applicable laws that the State could use to justify the involvement of private actors should specify the legal responsibilities of companies in regard to human rights of consumers of the goods or services provided, with an emphasis on the vulnerability of some groups and persons.

¹⁷⁵ IACtHR, Differentiated approaches, *supra* note 92, ¶155; *Cfr.* CEDAW, General Comment. 28, *supra* note 164, ¶18; CEDAW, General Comment No. 35, *supra* note 164, ¶12.

¹⁷⁶ *Id.*

¹⁷⁷ IACHR, Report on Business and Human Rights: Inter-American Standards, *supra* note 36, ¶97-106; OHCHR, *supra* note 144, at 4-8.

In this respect, it is also highly relevant that contracts are accessible to all the members of society, particularly women deprived of their liberty and civil society organizations¹⁷⁸. This can be an effective way to enable transparency and allow other actors to engage in better monitoring activity. As well, providing information regarding the source that provides food entails an elementary part of the acceptability of food as it can be allowed to trace down the nature of food.

Moreover, the State should focus on the establishment of specific mechanisms that can monitor and assess human rights abuses committed by private actors. This step must be prescribed by law and included in all contracts¹⁷⁹.

In regard to monitoring mechanisms, the creation of independent bodies must include a representative number of women deprived of liberty, civil society, and authorities to supervise the compliance of the contract vis-à-vis the human rights established in the private document and the criteria stated in international and national standards applicable to Mexico¹⁸⁰.

This could be crucial as the NMPT and the NCHR have proven to be insufficient to prevent and guarantee the right to food of women deprived of liberty, as their recommendations do not have any binding force, and as demonstrated in section 4 of this paper, their responses have been reactive, not with a vocation to prevent or to constantly monitor the problem.

Instead, a monitoring mechanism that integrates all the actors that are party to the contract can lead to subsequent enforcement of the observations and recommendations taken. Likewise, it is also necessary that the NMPT assure its continuous and permanent presence through an area that engages exclusively with the follow-up of its own reports regarding detention conditions in prisons¹⁸¹.

As well, the participation of the consumers (women deprived of liberty) and experts (civil society organizations) could give more legitimacy and counteract possible dynamics of power or collusion between companies and the State¹⁸².

In this scenario, is vital that Mexico reforms the LEP and LPSP to include this type of mechanism as an obligation in cases where private actors engage in prison services. A way to target this concern is through the Intersecretariat Commission s already foreseen in the LEP¹⁸³, which can be modified in order to incorporate the participation with voice and vote to private actors and a representative sample of women deprived of liberty.

¹⁷⁸ CESCR, General comment No. 24, *supra* note 134, ¶21-24.

¹⁷⁹ *Id.*

¹⁸⁰ *Cfr.* OHCHR, *supra* note 144, at 5-7.

¹⁸¹ *Id.* at 8-9.

¹⁸² *Cfr.* CESCR, General comment No. 24, *supra* note 134, ¶21-23.

¹⁸³ LEP, *supra* note 20, art. 7.

Considering accountability mechanisms, women deprived of liberty have access to administrative and judicial mechanisms to assess improper living conditions. However, these do not include as a party to private actors involved in the provision of services and goods linked to ESC, which reduces the impact of the measures ordered in a future decision¹⁸⁴.

According to the obligation to provide remedies in cases of human rights violations and abuses, reforms to the LEP and the LPSP must be made to recognize companies as parties in administrative petitions and jurisdictional disputes. This addition would allow authorities to have more information available about the problem and its roots, as well as the specific actors that intervene directly with the enjoyment of the right, which can help to assess better the situation and provide effective solutions while serving the State as evidence of non-compliance, negligence or recurrent omissions to activate other proceedings against private actors.

Corporate accountability is highly relevant but must be understood beyond criminal liability or judicial and administrative mechanisms¹⁸⁵. Both should be complemented with state-based and traditional remedies with non-judicial remedies, such as operational-level mechanisms.

As mentioned in section 4, the operational-level grievance mechanisms are an option that involves the assumption of responsibility by private actors when harm is produced due to their activities¹⁸⁶. Thus, these mechanisms should be included as an unavoidable condition in the contract signed between the government and the company to proceed with the provision of the services.

Furthermore, operational-level mechanisms could be a way to fulfill the duty of the State to provide participatory spaces to design dietary regimes and closely follow compliance with contracts that are compatible with their human rights¹⁸⁷. Nowadays, women in CEFERESO 16 cannot take part in the design of measures to prevent and repair further damage concerning the quality and quantity of food provided. For this reason, building channels to give voice and recognition to women deprived of liberty also in the process of redress for possible human rights abuses are a step forward to the protection of the human right to adequate food.

In contrast to the mechanisms available to this day, the proposals here presented are not only based on a victim-centered approach and the specific duties of the State to respect, protect and fulfill the right to adequate food: it also provides a great opportunity to make enterprises part of the formula and assess the responsibility they have when it comes to the provision of services and goods related to ESC rights of vulnerable groups, such as women deprived of liberty.

¹⁸⁴ As explained in sec. 3.2.1 of this paper.

¹⁸⁵ CESCR, General comment No. 24, *supra* note 134, ¶49-50, 53-59.

¹⁸⁶ Ruggie, *supra* note 151, at 21-22.

¹⁸⁷ CESCR, General comment No. 24, *supra* note 134, ¶21-23.