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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session (18-27 April 2016)

Opinion No. 17/2016 regarding Jesús Eduardo Sánchez Silva, Diblallin Islas Rojas, Jaime García Matías, Luis Enrique Matías Hernández, Erik Omar Rodríguez Santiago, Germán Guadalupe Mendoza Cruz, Santiago García Espinoza, Felipe López Morales, José Alberto Andrés López, Javier López Martínez, José Usiel Matías Hernández, Erick González Guillén, Javier Aluz Mancera, José Enrique Ordaz Velasco, Humberto Castellanos López, Eduardo Palma Santiago, Jorge Chonteco Jiménez, Luis Enrique López López, José de Jesús Martínez Castellanos, Bailón Rojas Gómez, Eugenio Hernández Gaitán, Celso Castillo Martínez, Eleuterio Hernández Bautista, Roque Coca Gómez and Feliciano García Matías (Mexico)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 11 February 2016 the Working Group transmitted a communication to the Government of Mexico concerning Jesús Eduardo Sánchez Silva, Diblallin Islas Rojas, Jaime García Matías, Luis Enrique Matías Hernández, Erik Omar Rodríguez Santiago, Germán Guadalupe Mendoza Cruz, Santiago García Espinoza, Felipe López Morales, José Alberto Andrés López, Javier López Martínez, José Usiel Matías Hernández, Erick González Guillén, Javier Aluz Mancera, José Enrique Ordaz Velasco, Humberto Castellanos López, Eduardo Palma Santiago, Jorge Chonteco Jiménez, Luis Enrique López López, José de Jesús Martínez Castellanos, Bailón Rojas Gómez, Eugenio Hernández Gaitán, Celso Castillo Martínez, Eleuterio Hernández Bautista, Roque Coca Gómez and Feliciano García Matías. The Government replied to the

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communication on 14 April 2016. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or other status and aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. The following 17 people are members of the Frente Popular Revolucionario:

- Jesús Eduardo Sánchez Silva, 23, employee
- Diblallin Islas Rojas, 26, vendor
- Jaime García Matías, 29, vendor
- Luis Enrique Matías Hernández, 22, student
- Erik Omar Rodríguez Santiago, 27, employee
- Germán Guadalupe Mendoza Cruz, 18, vendor
- Santiago García Espinoza, 30, vendor
- Felipe López Morales, 24, student
- José Alberto Andrés López, 25, builder
- Javier López Martínez, 37, concrete mixer operator
- José Usiel Matías Hernández, 20, vendor
- Erick González Guillén, 29, employee
- Javier Aluz Mancera, employee and representative of the detainees who also claims to be a victim of torture and severe cruel treatment
- José Enrique Ordaz Velasco, 19, student

- Humberto Castellanos López, 26, electrician
- Eduardo Palma Santiago, 27, waste collector
- Jorge Chonteco Jiménez, 45, tailor

5. The following eight people, who are also members of the Frente Popular Revolucionario, belong to an indigenous community:

- Luis Enrique López López, 23, student
- José de Jesús Martínez Castellanos, 22, driver
- Bailón Rojas Gómez, employee
- Eugenio Hernández Gaitán, 28, builder
- Celso Castillo Martínez, 30, employee
- Eleuterio Hernández Bautista, 35, builder
- Roque Coca Gómez, 38, carpenter
- Feliciano García Matías, 26, waste collector

6. The source indicates that the Frente Popular Revolucionario is a national social organization founded in 2001 that defends the economic, social and cultural rights of indigenous communities and of people living in marginalized urban areas through demonstrations and public activism.

7. On 7 June 2015, the 25 people listed in paragraphs 4 and 5 attended a march organized by Section XXII of the National Union of Education Workers/National Coordination Body for Education Workers in protest at the militarization of the State of Oaxaca and in favour of State education. The source explains that the march was prompted by amendments and additions to articles 3 and 73 of the Mexican Constitution that were adopted in February 2013 and that, according to the source, are aimed at restricting the labour rights of workers in the education sector.

8. The source states that, once the march was over, at around 4 p.m., the people were on a city bus heading to their homes in the Francisco Villa residential area in the municipality of Santa María Atzompa, Oaxaca, when they were arrested on the San Jacinto Amilpas bridge along with 61 other members of the Frente Popular Revolucionario (bringing the total number of people arrested to 86) by a group of officers from the Oaxaca State Traffic Police, the State Investigation Agency and the National Gendarmerie.

9. The source reports that, at the time of the arrests, which were made without a warrant issued by a competent judge and without any information being provided as to the reasons for them, the detainees were forced to get off the bus, subjected to ill-treatment, searched without their consent and stripped of their belongings.

10. The detainees were subsequently transferred to a state police station in San Bartolo Coyotepec, where men and women were separated before being taken, hours later, to the Oaxaca regional branch of the Office of the Attorney General of the Republic. The source claims that the detainees were brought before the Office at around 11 p.m., in violation of the rights enshrined in articles 16 and 22 of the Constitution, which provide that detainees should be brought before the Federal Prosecution Service immediately.

11. Between 7.30 p.m. and 11 p.m. on 7 June 2015, 61 of the detainees (among them children, women and older persons) were released, leaving the 25 people whose names are listed above. Currently, these people are being held in a number of different rehabilitation centres.

12. On 8 June 2015, three applications for *amparo* were filed on behalf of the 25 detainees, one with the Second District Court and two with the Third District Court, both of which are in Oaxaca de Juárez, Oaxaca. The source indicates that, in the *amparo* proceedings, the measures taken against the detainees were suspended in order to preserve the status quo and to ensure that the detainees were not transferred from the detention centre where they were being held.

13. The source submits that, although the suspension had already been granted, the detainees were transferred to other states in Mexico, without prior notice being given to their relatives and without them having access to their respective lawyers; 12 detainees were sent to El Rincón prison, or Federal Social Rehabilitation Centre No. 4, in Tepic, Nayarit, and 13 were sent to Villa Aldama prison, or Federal Social Rehabilitation Centre No. 5, in Perote, Veracruz.

14. In a communication dated 9 June 2015, the federal prosecutor in charge of investigation agency No. 2 of the Investigations and Prosecutions Unit sent the original copy of the investigation into the case to the Third District Court in the State of Oaxaca and initiated criminal proceedings against the 25 individuals for the offences of carrying Molotov cocktails and terrorism.

15. In a writ dated 10 June 2015, the Third District Court ordered the detention of the 25 individuals, who did not, however, give preliminary statements as they were being held in locations away from the Court. The constitutional time limit was therefore suspended until the statements could be taken.

16. On 11 June 2015, preliminary statements were given by the 17 people listed in paragraph 4, who claimed to have been victims of torture at the time of their arrest and during their transfer to the federal social rehabilitation centres. The source reports that the most serious ill-treatment was suffered by Mr. Aluz Mancera, who has a heart condition and was systematically isolated in order to be subjected to extrajudicial interrogations. The source submits that, in the federal social rehabilitation centre in Veracruz, Mr. Aluz Mancera was threatened by the guards.

17. With regard to the eight detainees who stated that they belonged to an indigenous community (see paragraph 5 above), the constitutional time limit was suspended with the aim of finding a bilingual federal public defender with knowledge of the language and customs of that community.

18. On 17 June 2015, the Third District Court found that there was insufficient evidence of terrorism and, consequently, ordered the release of the 17 people listed in paragraph 4 in relation to that criminal offence. As to the carrying of Molotov cocktails, the Court found the 17 people guilty and ordered their detention.

19. Regarding the eight detainees listed in paragraph 5, the source explains that the constitutional time limit was restored on 26 October 2015, 4 months and 19 days after their detention. During this time, the individuals were held in maximum security prisons without their legal status having been resolved. It was not until 1 November 2015 that a release order was issued for the offence of terrorism and a detention order was issued for the offence of carrying Molotov cocktails. The latter order was the subject of an appeal, which is pending.

20. On 16 October 2015, the 17 people mentioned in paragraph 4 were transferred to the Regional Rehabilitation Centre in Villa de Etla, Oaxaca. The eight people mentioned in paragraph 5 were being held in two different rehabilitation centres: three in Federal Social Rehabilitation Centre No. 5 (Mr. Hernández Bautista, Mr. García Matías and Mr. Coca Gómez) and five in Federal Social Rehabilitation Centre No. 4 (Mr. López López, Mr. Martínez Castellanos, Mr. Rojas Gómez, Mr. Hernández Gaitán and Mr. Castillo Martínez).

21. The source states that there have been some irregularities in the arrest and detention of the 25 individuals, including a frequent failure by the arresting officers to respond to summonses for questioning. In the interrogations that were conducted successfully prior to the filing of an appeal, the police officers made various contradictory statements. As to the evidence, the source submits that there is no chain of custody, that it was not properly packaged and that it was destroyed, in violation of the defendants' right of defence, in that it prevented their lawyers from issuing an opinion disproving the supposed evidence.

22. The source explains that the 25 individuals have been deprived of their liberty since 7 June 2015 — the day of their arrest — and that, to date, none of them has been sentenced.

23. On the current situation of the 17 detainees mentioned in paragraph 4, the source reports that proceedings are at the stage of investigation and formal admission of evidence. However, not all the evidence presented has been accepted, which makes it impossible for the detainees to contradict the accusations against them and, by extension, to exercise their right of defence properly. The source adds that requests for the traffic police officers to be questioned have not been granted because of the failure of those officers to cooperate.

24. The source reports that the eight detainees mentioned in paragraph 5 are being subjected to cruel, inhuman and degrading treatment by guards and fellow inmates in the federal social rehabilitation centres. A request was made for them to be transferred to a state rehabilitation centre located close to their families, but this was rejected by the public prosecutor concerned. The act of holding them in prisons far from their families and homes jeopardizes their right to an adequate defence, their emotional state and their health.

25. Moreover, as regards these eight detainees, the source points out that the length of time that elapsed (4 months and 19 days) before the constitutional time limit was restored and the fact that release and detention orders were not issued until 1 November 2015 constitute violations of article 19 of the Mexican Constitution, which provides that a detention order should be issued within 72 hours of an individual being brought before a judge and that, in the event of a failure to comply with that time limit, the individual should be released.

26. The source considers that the detention of the members of the Frente Popular Revolucionario is arbitrary because the following provisions have been violated:

- Articles 9, 14, 16 and 17 of the Mexican Constitution
- Articles 3, 4, 9 and 11 of the Universal Declaration of Human Rights
- Articles 6, 7, 9, 10 and 14 of the Covenant
- Articles 2 (1) to (3), 13 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Articles 4, 5, 7, 15 and 16 of the American Convention on Human Rights
- Articles 1, 2, 3 and 8 of the Inter-American Convention to Prevent and Punish Torture

27. The source concludes that the facts set out above fall under categories II and III of the categories applicable to the consideration of cases submitted to the Working Group in that, on 7 June 2015, the 86 detainees attended a peaceful march, expressed their ideas and participated in political and social life. The source adds that these acts are allowed by the Mexican Constitution and by the Universal Declaration of Human Rights. The source further states that norms related to the right to a fair trial have been violated.

Response from the Government

28. The Government of Mexico replied to the communication on 14 April 2016, two days after the deadline, despite having been properly notified. In its response, the Government denies the facts without providing evidence to support its arguments. In the absence of any justification from the Government, the Working Group cannot accept the response as if it had been submitted within the time limit. Nevertheless, as provided for in its methods of work, the Working Group will evaluate all the information at its disposal, including the lack of evidence to contest the facts.

Further comments from the source

29. The response from the Government was duly communicated to the source, who did not submit any observations within the established deadline. Given that the response was submitted late, however, the lack of additional comments will not harm the source's case.

Discussion

30. In accordance with paragraph 5 of the methods of work, the Mexican member of the Working Group recused himself from participating in the discussion of the present case.

31. As a preliminary point, the Working Group finds it regrettable that, in a situation as serious as that described in the present communication, the State was not able to provide a substantive response within the appropriate timescale, bearing in mind the number of people involved, the allegations of human rights violations and the allegations made against these people by the State. The risks posed to people by the exercise of the State monopoly on the legitimate use of physical force are such that the State's lack of diligence and the absence of any justification are particularly surprising. The Human Rights Council has always reminded States of the need to cooperate with the Working Group, which entails providing a prompt response and available evidence to substantiate the facts and support the criminal proceedings, out of respect for the rights of the accused.

32. In the present case, 25 people claim to have been arrested while they were exercising their rights to the freedom to demonstrate and to the freedoms of expression and opinion. They also state that they were arrested and detained without being informed of any complaints against them and that their right to a fair trial was not duly respected, since necessary adjustments were not made to enable them to prepare an effective defence. Lastly, they claim to have been physically ill-treated and to have been transferred to various places of detention without their relatives being informed.

33. The evidence provided by the source to support the complaints of violations includes the judgment delivered by the Third District Court. Of the 25 people arrested and accused, 8 have been acquitted and 17 have been found guilty of carrying Molotov cocktails. It emerges, from the factual findings in the judgment, that the traffic police officers who made the arrests infiltrated the group of demonstrators in order to identify them. When the people were arrested on the bus, the police found exactly 25 backpacks, each of which contained bottled mixtures that, from experience, were identified as homemade Molotov cocktails. The defendants, however, deny the claims made by the traffic police, who they say have framed them. It should be noted, firstly, that the 25 people were not on the same bus and, secondly, that the National Gendarmerie and the Federal Police refused to take the detainees into their custody. However, the evidence given by the source offers no explanation for either of these events.

34. The Government, meanwhile, which responded after the deadline and provided no supporting evidence, stated that the people in question were wanted for breach of the peace, particularly in relation to the disruption of elections in the State of Oaxaca, and for carrying explosives. The Government also claimed that, within 72 hours, the people were brought

before a judge, who upheld the detention of the 25 individuals, while around 60 others were released. However, the Government has not submitted any material evidence in this regard, not even the documents related to the ongoing legal proceedings. At the same time, the Government indirectly acknowledges the arrest and detention of the 25 people and the arrest and detention of around 60 others, even though they were allegedly held only temporarily.

35. It is interesting that the source should provide more elements in support of the complaint, including the judgment, which, depending on how one reads it, could be considered as damaging to the people involved. In the view of the Working Group, this strengthens the credibility of the source, who has presented all the elements in the case file to give the Working Group an objective overall assessment.

36. The Government, on the other hand, provides no evidence to substantiate its claims, though it does partly corroborate the source's account. Consequently, the Working Group gives no credence to the unfounded allegations and finds that all the source's statements are valid, especially as human rights violations against the indigenous population in particular appear to be common in the State of Oaxaca and have been highlighted by the Working Group and by other human rights protection mechanisms in the past.¹ The Working Group draws attention to the concluding observations adopted by the Committee on the Elimination of Racial Discrimination in 2012, in which the Committee reiterated its concern about the obstacles to access to justice faced by members of indigenous peoples and the alarming number of allegations of irregularities in cases concerning indigenous people, as well as the number of indigenous people in prison.² The Working Group therefore concludes that the detention is arbitrary and proceeds to identify the relevant categories.

37. The 25 people were arrested and detained for exercising their fundamental rights, as explained above. It is claimed that, during the march in which these people took part, public property was destroyed, particularly property relevant to the electoral process, and that the damage was caused as a result of the march. From the judgment, however, it is not possible to determine whether there was sufficiently conclusive evidence to link each one of the 17 people convicted to an act of destruction of public property. Moreover, it does not seem that the arrest and detention of the eight people who were acquitted resulted exclusively from the exercise of their rights, as there was a legitimate reason for their arrest and detention, namely the destruction of public property. Accordingly, and in the absence of adequate information on the situation, the Working Group cannot conclude that there was a violation under category II as defined in the Working Group's methods of work.

38. Regarding the fundamental right to a fair trial, as enshrined in article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant, the Working Group considers that the defendants did not receive legal assistance from the outset of their detention and were forced to admit their responsibility, even though some of them were subsequently acquitted. Legal assistance would have helped them protect their rights and, above all, would have stopped them from accepting responsibility in a situation that the people convicted have suggested was tense. In addition, the nature of the evidence, which was based solely on the actions of traffic police officers who infiltrated a group of demonstrators, arrested some of them and requested their detention, raises questions about the validity of the defendants' admission of responsibility. The people who were acquitted should not be excluded as the violation of their right to a fair trial occurred prior to the trial in which they were absolved. Indeed, these people, who are members of a national

¹ See Working Group opinions Nos. 23/2014 and 19/2015.

² See CERD/C/MEX/CO/16-17, para. 14.

minority, did not benefit from translation services that were indispensable for them to understand the charges against them and the proceedings instigated. This violation of the right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character under category III as defined in the Working Group's methods of work.

39. While the allegations of torture have not been detailed, the Working Group considers that they fit into an almost constant trend observed in similar cases and that the Special Rapporteur on the matter should be notified so that a proper investigation can be conducted.

40. To conclude, the Working Group would like, within the limits of its mandate, to express its deep concern at the systematic violations committed in Mexico against human rights defenders, citizens exercising their fundamental rights, and minorities, and at the mass judgments passed in certain criminal proceedings. The Working Group recalls that country visits make it possible to engage in constructive dialogue with States in order to help them implement the framework needed to avoid arbitrary detention. The Working Group urges the Government to consider the option of a constructive, continuous dialogue to recover the current situation with a view to securing a better future. In this case, a follow-up visit is necessary to achieve these objectives.

Disposition

41. In the light of the foregoing, the Working Group renders the following opinion:

The arrest and detention of Jesús Eduardo Sánchez Silva, Diblallin Islas Rojas, Jaime García Matías, Luis Enrique Matías Hernández, Erik Omar Rodríguez Santiago, Germán Guadalupe Mendoza Cruz, Santiago García Espinoza, Felipe López Morales, José Alberto Andrés López, Javier López Martínez, José Usiel Matías Hernández, Erick González Guillén, Javier Aluz Mancera, José Enrique Ordaz Velasco, Humberto Castellanos López, Eduardo Palma Santiago, Jorge Chonteco Jiménez, Luis Enrique López López, José de Jesús Martínez Castellanos, Bailón Rojas Gómez, Eugenio Hernández Gaitán, Celso Castillo Martínez, Eleuterio Hernández Bautista, Roque Coca Gómez and Feliciano García Matías are arbitrary in that they amount to a violation of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, and fall under category III of the categories of arbitrary detention applicable to the consideration of cases submitted to the Working Group.

42. Consequently, the Working Group calls upon the Government of Mexico to release immediately the people mentioned above who remain in detention and to afford appropriate redress, including compensation, to all the people mentioned.

43. Moreover, in accordance with article 33 (a) of its methods of work, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment so that he can conduct a proper investigation.

[Adopted on 26 April 2016]