



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its eighty-third session, 19–23 November 2018****Opinion No. 75/2018 concerning Gerardo Pérez Camacho (Mexico)***

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period by its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 17 July 2018, the Working Group transmitted a communication concerning Gerardo Pérez Camacho to the Government of Mexico. The Government replied to the communication on 14 September 2018. Mexico is a State 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 him or her) (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 Covenant (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,

* In accordance with paragraph 5 of the Working Group's methods of work, José Antonio Guevara Bermúdez did not participate in the adoption of this opinion.



disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mr. Pérez Camacho is a member of the Cora indigenous community and is from the municipality of Acaponeta, Nayarit. He was a prisoner in Oaxaca for approximately 10 years before being freed in 2012. While in prison, he became a Christian and married a Zapotec indigenous woman from the Central Valleys region of Oaxaca, with whom he has two daughters. Upon his release, he decided to preach his religion and settle down in Oaxaca with his family.

5. According to the information received by the Working Group, at around 8 a.m. on 12 October 2012, after dropping off one of his daughters at school and while he was driving along a public road with his wife, Mr. Pérez Camacho was stopped by three or so vehicles. About 12 people armed with long guns and handguns got out of the vehicles and said that they were police officers but did not at any point identify themselves. Using physical and verbal violence, they removed Mr. Pérez Camacho from his vehicle and took him to an unknown destination.

6. The source states that Mr. Pérez Camacho's arrest was marked by irregularities and arbitrariness from the very outset, noting that, in their report, the police officers stated that the arrest had been made in a different municipality (San Sebastián Tutla) and that Mr. Pérez Camacho had been apprehended while riding a motorcycle, moments after selling some rolled cannabis cigarettes.

7. Later that day, Mr. Pérez Camacho's family called an emergency number and reported a possible kidnapping. They then made the rounds to various police and judicial institutions. Having received no information concerning Mr. Pérez Camacho's whereabouts, they asked after him in a number of offices and detention centres. At one office, they were informed that an injured person with his head wrapped in his own clothes and who matched the description of Mr. Pérez Camacho had been spotted being taken into what were then the offices of the Strategic Operations Centre. They went to the Centre to enquire about him, but the Centre's staff would not let them in and denied that he was being held there.

8. Upon being told this, Mr. Pérez Camacho's family filed an indirect *amparo* application (No. 1490/2012) with a district court on the grounds of unlawful deprivation of liberty and incommunicado detention. The judge instructed court personnel to go to the offices of the Strategic Operations Centre in order to rule out the possibility that Mr. Pérez Camacho was being deprived of his liberty there. Upon entering the premises, the federal court staff found Mr. Pérez Camacho, who had visible injuries and showed signs of torture. They then ordered that his wife should be allowed entry. They noted down the account given by Mr. Pérez Camacho in a report dated 13 October 2012. It is allegedly indicated in the report that:

In view of the injuries that the directly aggrieved party, Gerardo Pérez Camacho, has been attested as having by the clerks of this court, the medical staff on duty at the Strategic Operations Centre attached to the Office of the State Attorney General and the Office of the Attorney General of the Republic, with headquarters in this city, are instructed to provide the aforementioned complainant with the immediate medical attention that he requires. Moreover, the representative of the Office of the Attorney General of the Republic in the State of Oaxaca, with residence in this city, should be notified, by official letter, of the statement given by the complainant in this report, which alleges that a criminal act has been committed.

9. The source notes that the report contains the statement given by the detainee, Mr. Pérez Camacho, at the time of the visit:

After my arrest, and before I was transferred to the offices of the Strategic Operations Centre, the police officers brutally tortured me in the offices of the State

Investigation Agency and in the offices occupied by the former Office of the State Attorney General, now the Office of the State Prosecutor General, in order to make me confess to the attempted murder of a political leader.

It is important to mention that, as a result of the attack on this political leader, his supporters began to hold demonstrations and roadside protests and to block off access to various institutions and roads to demand justice. Having received several blows to the head and other parts of my body, had electric shocks applied to my testicles and had my airways flooded with water, I passed out on a number of occasions.

One of the times when I regained consciousness, I pleaded with them to stop hitting me and to let me call my family, but all my requests were refused. The torture took place in the facilities that are currently occupied by the State Investigation Agency. There, after repeated beatings, they told me that, by hook or by crook, they would make me sign documents in which I admitted to having injured this political leader [...]

Given that I was resisting their demands and stating that I did not even know the person and would not sign the documents, the officers who had arrested me and were torturing me said that I would sign whether I wanted to or not, and continued to torture me, pushing back my fingers almost to the point of breaking them.

They dislocated both my arms, while I was sitting on a chair in handcuffs, by pulling them up towards my upper back in order to make me sign, but, despite all the torture to which I was subjected, I categorically refused to sign.

Later, they brought me before an investigating public prosecutor in the offices occupied by the Office of the State Attorney General in the judicial complex in the municipality of Reyes Mantecón, Oaxaca, where, as before, a public prosecutor told me to sign a document in which I admitted to being the person who had injured the political leader, but, once more, I refused. I grabbed the sheets of paper that I was supposed to sign and tore them up straight away.

When I did this – and in the presence of the public prosecutor, a deputy prosecutor [...] and a public defender from the Office of the Attorney for the Defence of Indigenous Peoples, who was supposedly there to defend me – the police officers went back to beating me, kicking various parts of my body, including my ribs, testicles, ears and legs. One of the officers also stuck the barrel of his pistol in my mouth, shoving it in so violently and repeatedly that he ripped out a molar on the left side and injured my tongue.

Then, another officer, in his eagerness to force me to sign, pulled back my fingers again, dislocating them. Despite the torture, I refused to sign any document in which they wanted me to admit to being guilty [of the offence], as can be seen from the statement dated 12 October 2012, when I appeared before the public prosecutor as a person of interest and refused to sign the statement, still in the presence of the public defender from the Office of the Attorney for the Defence of Indigenous Peoples, who asked the prosecutor to release me and have me given medical treatment, as I was badly injured.

But I was refused medical treatment, and the public defender made no effort to demand it, even though I was badly injured at the time as a result of the torture to which I had been subjected.

Subsequently, having realized that they could not get me to sign the incriminating document, they transferred me to the facilities occupied by the State Investigation Agency, where the director [...] took two packages from his desk and ordered the group commander to “fuck him over, whatever it takes, but make sure it sticks, because this prick is going to remember me. We are going to fuck him over, no matter what it takes.” Then the commander asked him, “with the white stuff or with the green?”, to which the director replied, “with the green, but do it properly, so it sticks”.

This is why, in the afternoon of the same day, 12 October 2012, I was brought before the public prosecutor responsible for investigating small-scale drug-dealing offences in the Strategic Operations Centre of the Office of the State Attorney General, in the América Sur district of Oaxaca de Juárez, where I was taken, under arrest, despite being seriously injured as a result of the torture to which I had been subjected.

It was not until the afternoon of 13 October 2012 that I learned what crime I was being accused of, namely possession of cannabis. When I gave my statement, I described how I had been tortured and how they had fabricated the offence of possession of cannabis. I told them how it had been the director of the State Investigation Agency himself who had taken the packages out of his desk and had ordered the officer to frame me for the offence.

This is where my family found me and where human rights officers and district court staff came to verify my injuries; it is also where I recall having repeatedly signed various documents in order to secure my release. I remember that some of them were blank, but, as I signed them in the margin, I did not think that they were important.

10. The source reports that, having seen the state that Mr. Pérez Camacho was in, his family filed a complaint with the Office of the Human Rights Ombudsman of Oaxaca and requested that representatives of the Office should go to where he was being held so that they could verify his injuries and the torture that he had suffered at the hands of the police as they attempted to force him to confess to a crime that he did not commit. The source attaches pictures of the injuries allegedly caused by the torture and references to articles from local newspapers that covered the story.

11. In response to the *amparo* application and the complaint filed on behalf of Mr. Pérez Camacho, the authorities ostensibly ordered his release on bail. However, when he tried to leave the offices where he had been detained (in the Strategic Operations Centre), a warrant was produced for his arrest in connection with another criminal case (No. 169/2012) being heard by the First Criminal Court of the Centro district of Oaxaca. That case dealt with the attempted murder for which he had been tortured in an effort to implicate him.

12. The source further reports that one of the people who accused Mr. Pérez Camacho was an individual whom Mr. Pérez Camacho had seen, lying injured and covered in blood on the floor of a room, during the time that he was being tortured by the police. When the two came face to face, the supposed witness said, in between groans, “it’s him, it’s him, let me go now”, indicating that Mr. Pérez Camacho had committed the crime under investigation.

13. According to the information received by the Working Group, the grounds for accusing Mr. Pérez Camacho of the crime of attempted murder in criminal trial No. 169/2012 are a statement given by a student who said that, while walking down the street, she saw a person on the other side of the road who resembled Mr. Pérez Camacho, and the statement made by the injured individual whom he had seen while he was being tortured. Subsequently, in another criminal trial (No. 168/2014), that witness testified that he had incriminated Mr. Pérez Camacho after being tortured.

14. In addition, the source indicates that, when asked to identify his assailant from an album containing photographs of various people, including Mr. Pérez Camacho, the political leader who had been assaulted picked out someone else rather than Mr. Pérez Camacho. Nevertheless, when issuing the detention order against Mr. Pérez Camacho, the judge placed no probative value on what the alleged victim had said at the time that he had been asked to identify his assailant.

15. The source further draws attention to the differences between the aforementioned photograph of the perpetrator of the attack on the political leader (which was disseminated by the Office of the Attorney General in the State of Oaxaca) and the photograph of Mr. Pérez Camacho.

16. The source indicates that a detention order was nevertheless issued on 25 April 2013 and that, to date, having filed an indirect *amparo* application (No. 1731/2012) with the

Third District Court in Oaxaca, Mr. Pérez Camacho continues to be deprived of his liberty on charges of that offence and another offence to which the source refers below.

17. On 29 September 2014, another warrant was issued for Mr. Pérez Camacho's arrest (criminal trial No. 168/2014, before the same court). He was accused of the murder of another leader of the same indigenous political group to which the victim in the previous case belonged. The charge was based on a telephone call to an emergency number that Mr. Pérez Camacho allegedly made from inside prison in which he confessed that he and others had taken part in a murder in Oaxaca.

18. The source explains that, months earlier, on 6 December 2013, several people turned up at the location where Mr. Pérez Camacho was being deprived of his liberty: two who claimed to be special prosecutors, two others who said that they were officers from the State Investigation Agency and other people belonging to the political group headed by the victim.

19. The purpose of the visit was purportedly to help Mr. Pérez Camacho to prove his innocence in criminal trial No. 169/2012. These persons allegedly told him that they were interested in clearing up the assault case and that they required his assistance in order to solve the murder of another political leader. To that end, they needed him to identify certain people as participants in the murder. They said that they had information concerning the people involved thanks to information allegedly provided in an anonymous telephone call. In exchange for his help, they would do everything that they could to prove his innocence in criminal trial No. 169/2012.

20. Mr. Pérez Camacho replied that he could not say something that he did not know to be true, let alone identify people as being guilty of an offence without knowing the facts, the people involved or the relationship between them.

21. Mr. Pérez Camacho was left alone in the cell with the prosecutors and the officers from the State Investigation Agency. The public officials insisted that Mr. Pérez Camacho should cooperate with them. When he refused, the officers threatened to harm him and his family. One officer held his arms while the other pulled his hair and punched him in the stomach. Since he refused to accuse other people of the murder, the officers attributed responsibility for the crime to him.

22. The source argues that there are obvious anomalies that demonstrate the falsity of the charge in this new case. The murder of which Mr. Pérez Camacho stands accused was committed in 2010, when he was in prison. The witnesses who identified him as the perpetrator of the murder are, for the most part, people who were being held in custody when they did so and were thus under the control of the authorities; moreover, they are all hearsay, rather than first-hand, witnesses. The record of the alleged call that served as a basis for the charge indicates that it was made from a place approximately 2.5 kilometres away from the detention centre where Mr. Pérez Camacho was being held.

23. The source considers that the authorities have systematically used torture as a tool to try to resolve cases involving highly publicized attacks that spark social unrest. They seek to find a speedy way of responding to the public's demands for social justice, without regard for whether innocent people, like Mr. Pérez Camacho, are left in prison as a result. It is claimed that Mr. Pérez Camacho is being scapegoated while the real culprit remains at large. It is also asserted that Mr. Pérez Camacho does not have a private lawyer as he cannot afford to hire one, so his defence is in the hands of a court-appointed lawyer paid by the State.

24. The source reports that Mr. Pérez Camacho is currently being held in remand detention in a regional prison in the town of Miahuatlán, Oaxaca because the offences of which he is accused (attempted murder and murder) are classified as serious offences under Mexican law, which means that he is not entitled to remain at liberty during the trial. The status of the three trials in which he is a defendant is as follows:

(a) The trial on the charge of drug dealing, which was supposedly the reason for his being held in custody, concluded in 2013;

(b) The case in which he is charged with attempted murder (criminal trial No. 169/2012, before the First Criminal Court of the Centro district of Oaxaca) is in the investigation stage (gathering of evidence), with no verdict having yet been pronounced;

(c) The trial for the crime of murder (criminal trial No. 168/2014, also before the First Criminal Court) is also in the investigation stage (gathering of evidence), with no verdict having yet been pronounced.

25. The source argues that the present case amounts to arbitrary deprivation of liberty under category III owing to the non-observance of guarantees of due process, in particular those related to the right to a fair trial. It is further argued that the detention is also arbitrary under category V, since Mr. Pérez Camacho was allegedly discriminated against on the basis of his status as a former prisoner, which was used to create the general impression that he was guilty, thereby dissuading people from questioning his arrest, and to justify an improperly conducted investigation.

Response from the Government

26. On 17 July 2018, the Working Group transmitted the allegations made by the source to the Government and requested it to provide detailed information on the case of Mr. Pérez Camacho by 15 September 2018. In particular, the Working Group requested the Government to clarify the factual and legal grounds for his detention and to explain how it was in compliance with the international human rights obligations of Mexico. The Working Group also requested the Government to ensure Mr. Pérez Camacho's physical and mental integrity.

27. The Government replied to the communication on 14 September 2018.¹ In its reply, the Government recalled that Mr. Pérez Camacho was detained, pending a preliminary inquiry, at the Strategic Operations Centre in the State of Oaxaca from 12 to 14 October 2012 on suspicion of having committed an offence against public health (namely small-scale drug dealing). Subsequently, on 14 October 2012, Mr. Pérez Camacho was arrested again in connection with criminal trial No. 169/2012 on charges of attempted murder, as a result of which he has, since then, been deprived of his liberty at the prison in Miahuatlán de Porfirio Díaz in the State of Oaxaca.

First arrest for an offence against public health

28. According to the Government, on the morning of 12 October 2012, two police officers apprehended Mr. Pérez Camacho in flagrante delicto pursuant to articles 23 and 23 bis of the Oaxaca Code of Criminal Procedure, having found him selling cannabis in a private residence located in San Sebastián Tutla, Oaxaca. The Government claims that Mr. Pérez Camacho resisted arrest and attempted to physically assault the officers, who nevertheless managed to subdue him while respecting the principle of proportionality as established by law. The officers conducted a body search of Mr. Pérez Camacho and found a nylon bag containing nine packages of dried green leaves wrapped in newspaper that had the characteristics of cannabis.

29. Mr. Pérez Camacho was handed over to the prosecutorial authorities of the Narcotics Unit of the Strategic Operations Centre, which launched a preliminary inquiry. That same day, Mr. Pérez Camacho's wife filed an indirect *amparo* application (No. 1490/2012) on the grounds of unlawful deprivation of liberty and alleged acts of torture committed during his detention and when Mr. Pérez Camacho was handed over to the prosecutorial authorities.

¹ The Government attached six documents to its reply: (a) a police report dated 12 October 2012 detailing the circumstances of Mr. Pérez Camacho's arrest; (b) the court decision of 26 October 2012 issued in relation to *amparo* application No. 1490/2012; (c) the arrest warrant in case No. 169/2012, dated 13 October 2012; (d) a document dated 14 October 2012 concerning Mr. Pérez Camacho's appearance in court and an accompanying medical certificate dated 9 August 2018; (e) the court decision pertaining to *amparo* application No. 1731/2012; and (f) the order to remand Mr. Pérez Camacho into custody in case No. 168/2014.

30. However, on 14 October 2012, the director of the Department for Preliminary Inquiries and Indictments ordered Mr. Pérez Camacho's release following the posting of bail in the amount of 7,000 Mexican pesos, bearing in mind that the offence for which Mr. Pérez Camacho was being investigated – possession of cannabis – is not classified as a serious offence under the Oaxaca Code of Criminal Procedure.

31. The Government states that, in a ruling of 26 October 2012, the Second District Court in the State of Oaxaca dismissed action for *amparo* No. 1490/2012 on the grounds that Mr. Pérez Camacho had reportedly been released and that the judge found that the acts attributed to the Mexican authorities had not been substantiated.

32. On 22 September 2015, the Public Prosecution Service decided not to institute criminal proceedings against Mr. Pérez Camacho as it did not have sufficient evidence to arraign him on charges of small-scale drug dealing.

Second arrest: criminal trials Nos. 169/2012 and 168/2014

33. The Government explains that Mr. Pérez Camacho is subject to criminal proceedings Nos. 169/2012 and 168/2014, in which he is charged with the crimes of attempted murder and murder, respectively, and has therefore been held in pretrial detention since 14 October 2012 at the prison facility in Miahuatlán.

34. On 12 October 2012, a preliminary inquiry into allegations of attempted murder was initiated and, the following day, a warrant was issued for Mr. Pérez Camacho's arrest. On 14 October 2012, police officers apprehended Mr. Pérez Camacho and immediately handed him over to the First Criminal Court, which opened criminal case No. 169/2012. Then, on 20 October 2012, the trial judge issued a detention order against Mr. Pérez Camacho on the basis of his probable responsibility for the crime of aggravated attempted murder. The judge took into account various pieces of evidence before bringing criminal proceedings against Mr. Pérez Camacho.

35. However, Mr. Pérez Camacho filed *amparo* application No. 1731/2012 with the Third District Court against the aforementioned order. On 30 January 2013, the Court granted his *amparo* petition, ordered the annulment of the detention order and instructed that a well-founded and reasoned detention order be prepared which established the occurrence of the crime of aggravated attempted murder and the presence of premeditation, undue advantage and malice aforethought as the aggravating factors. On 25 April 2013, a new detention order was issued which established the elements of the crime and Mr. Pérez Camacho's probable responsibility for it.

36. According to the Government, criminal trial No. 169/2012 is at the investigation stage and, once all the evidence has been presented, the trial judge will issue a verdict.

37. The Government notes that criminal trial No. 168/2014 opened on 26 September 2014 and is based on Mr. Pérez Camacho's probable involvement in the murder of another political leader. On the same date, a warrant for his arrest was issued and executed and, on 2 October of that year, the Court issued a detention order against Mr. Pérez Camacho on the basis of various pieces of evidence.

38. Mr. Pérez Camacho filed appeal No. 335/2015 against the detention order issued by the judge of the First Criminal Court. The Third Criminal Division in the State of Oaxaca, which ruled on the appeal, upheld the order and changed the classification of the defendant's alleged degree of criminal responsibility from accessory to instigator.

39. The Government states that criminal trial No. 168/2014 is at the investigation stage pending the submission of evidence by the defence and of a report by the director general of the Social Rehabilitation Centre on prisoners' access to the public telephones in the Centre.

40. The Government argues that Mr. Pérez Camacho's first arrest was lawful, as it was carried out in accordance with the provisions on flagrante delicto set out in Mexican law, and that his rights were respected at all times. As a result of the findings of the preliminary inquiry, Mr. Pérez Camacho was released less than 48 hours after his arrest, and the Public Prosecution Service decided not to institute criminal proceedings. The judge of the Second

District Court in the State of Oaxaca dismissed action for *amparo* No. 1490/2012, having uncovered no violations attributable to the authorities.

41. In addition, taking into account the information regarding Mr. Pérez Camacho's second arrest, the authorities have upheld his right to due process during the criminal cases instituted against him. From the outset of the proceedings, he was informed of the charges against him, the names of the people testifying against him and the other information pertinent to the criminal cases in question.

42. The Government stresses that, in both trials, Mr. Pérez Camacho's detention was reviewed by an independent and impartial court of first instance and, subsequently, upon analysing the detention at second instance, the Third District Court in Oaxaca decided to issue a new detention order in compliance with all the guarantees of due process to which the accused was entitled.

43. The Government emphasizes that the decisions made with regard to the detention of Mr. Pérez Camacho and other actions taken in connection with the criminal proceedings brought against him have been objectively based on the evidence supplied by the Public Prosecution Service and are not the result of discriminatory treatment.

44. It also states that Mr. Pérez Camacho has had a proper defence during the proceedings, as can be seen from the fact that his legal representative has submitted evidence deemed to be relevant to proving his innocence, which is why the proceedings in question have not yet been concluded.

45. Lastly, in view of the seriousness of the charges against him, under article 19 of the Constitution of Mexico, Mr. Pérez Camacho cannot remain at liberty during his trial and is therefore being held in remand custody in Miahuatlán. As a person who is on trial, he is held separately from convicted prisoners. In the light of the foregoing, the Government reiterates that Mr. Pérez Camacho's detention is not arbitrary.

Further comments from the source

46. In additional comments, the source refers to the first statement given by Mr. Pérez Camacho in the offices of the Strategic Operations Centre, in which he described in detail how, before being taken to the Centre, he had been tortured and said that the reason for his arrest was not drug possession, but instead had to do with an attack on a political leader (criminal case file No. 169/2012). The source indicates that it is important for the Working Group to obtain a certified copy of the statement given by Mr. Pérez Camacho during the preliminary inquiry. The source insists that the facts are not as portrayed by the Government and that what really happened is that Mr. Pérez Camacho was arrested without having committed any offence at all.

47. The source adds that, while it is true that *amparo* application No. 1490/2012, filed by Mr. Pérez Camacho's family, was dismissed because he had been released, what matters is the content of the report of 13 October 2012, which gives an account of the federal court staff's verification of the injuries suffered by Mr. Pérez Camacho following his arrest. The judge ordered the representative of the Office of the Attorney General of the Republic in the State of Oaxaca to undertake an investigation into the possible torture of Mr. Pérez Camacho.

48. The source also draws attention to evidence that Mr. Pérez Camacho was tortured during his detention, such as the complaint concerning a violation of his human rights lodged with the Office of the Human Rights Ombudsman of Oaxaca and material dated 30 April 2017 in the case file of the prosecutor's office of the State of Oaxaca concerning the penalization of one of the police officers who had tortured Mr. Pérez Camacho for having committed irregularities and mistreated Mr. Pérez Camacho during his detention. The source states that the investigation into these acts of torture is being carried out by an office of the same institution that is responsible for the violations, which calls its impartiality into question.

49. The source reiterates that irregularities in the actions of the State demonstrate the falsity of the charges brought against Mr. Pérez Camacho in all three trials. Mr. Pérez Camacho stands accused of assaulting two political leaders. He was arrested in order to

satisfy the public's demand for justice and accountability, and the fact that he is a former prisoner is being used to explain why he would assault the two political leaders.

50. The source reiterates that Mr. Pérez Camacho's arrest and detention on 12 October 2012 were arbitrary. Although there are provisions on flagrante delicto in Mexican legislation, the authorities apply them arbitrarily and purposefully use them to make arbitrary deprivations of liberty appear lawful. In order to evade judicial oversight, State officials use a minor offence (almost always fabricated) and flagrante delicto provisions to investigate and collect evidence for a case other than the one which originally provided the grounds for a person's supposedly in flagrante delicto arrest.

51. According to the source, this enables State officials to arrest, investigate and interrogate a person and to gather evidence in connection with an in flagrante delicto arrest when their true aim is to investigate an entirely different offence without any judicial oversight for up to 72 hours. In the source's opinion, this violates the detainee's right to due process, as it creates a situation in which the judicial authority is required to monitor the actions of State officials only as they relate to the case of in flagrante delicto rather than also monitoring any other investigative actions that they make undertake.

52. This gives rise to an arbitrary arrest that is made alongside an arrest in flagrante delicto and enables State officials to commit countless violations of a detainee's human rights with impunity. According to the source, it is almost impossible to prove this, since the State officials are the ones handling the information during an investigation, and they need only say that the arrest and investigation have been undertaken in response to an offence that was committed in flagrante delicto. They can then limit themselves to keeping the judicial authority informed about that case, while shielding any action they take unrelated to that case from judicial scrutiny.

53. Nevertheless, there are specific elements that make it possible to identify cases in which legal provisions on flagrante delicto have been used to cover up an arbitrary arrest, as in the case of Mr. Pérez Camacho:

(a) At the time of a person's arrest in flagrante delicto, that person is already under investigation for a separate offence;

(b) The arrest is made by an investigative police officer, rather than by a community police officer or a regular law enforcement officer;

(c) At the time of the arrest in flagrante delicto, no arrest warrant has been issued for that person for a separate offence;

(d) As soon as a person is released or, if the person is not released, then within the 72-hour time limit, the criminal investigation police arrest him or her pursuant to a warrant issued in relation to an investigation launched prior to the arrest in flagrante delicto;

(e) The person arrested in flagrante delicto states that he or she has been investigated, coerced or tortured in connection with an offence other than the one for which he or she was arrested in flagrante delicto by State officials.

54. The source states that, three years after Mr. Pérez Camacho's arrest, the charge relating to the case of flagrante delicto was dropped owing to a lack of evidence. In reality, the State had never had a case; that charge had merely been used to shield an arbitrary investigation from judicial scrutiny and oversight. This use of flagrante delicto provisions was not an isolated event but is simply one example of arbitrary arrests and detentions that are conducted in violation of a number of human rights, including the rights to the presumption of innocence, liberty, due process and access to justice.

55. Lastly, the source reiterates that, in the proceedings against Mr. Pérez Camacho, the State used the fact that he was a former prisoner to concoct a theory that would convince the Mexican public that a group of ex-convicts had conspired to attack a social leader; this theory was employed to make the public disbelieve his plea of innocence and give greater credence to the State's version of events. The State also violated his right to be presumed innocent by publishing his personal information in the media and proclaiming his guilt before any verdict was issued.

Discussion

56. The Working Group is grateful for the cooperation of both parties, which submitted the information that it needed in order to examine the present case.

57. In determining whether Mr. Pérez Camacho's deprivation of liberty is arbitrary, the Working Group bears in mind the principles that have been established in its jurisprudence concerning the consideration of evidentiary issues. If the source has established a prima facie case for breach of international standards on the protection of personal liberty and the prevention of arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions that lawful procedures have been followed will not be sufficient to rebut a source's credible allegations (A/HRC/19/57, para. 68).

58. In the present case, the Working Group observes that, starting in October 2012, three sets of criminal proceedings have been brought against Mr. Pérez Camacho. The first was linked to an alleged sale of cannabis (an offence against public health) which resulted in Mr. Pérez Camacho's arrest on 12 October 2012. Mr. Pérez Camacho was released on bail on 14 October 2012. In September 2015, the Public Prosecution Service decided not to institute criminal proceedings in relation to this matter.

59. Following his release on bail, on 14 October 2012, Mr. Pérez Camacho was arrested in connection with allegations of the attempted murder of the leader of an indigenous political group (case No. 169/2012). On 26 September 2014, new proceedings were instituted against Mr. Pérez Camacho in connection with the murder of another leader of the same political group (case No. 168/2014). Cases Nos. 169/2012 and 168/2014 are both still at the investigation stage. Mr. Pérez Camacho has been deprived of his liberty for over six years, since 14 October 2012. He is currently being held at a prison in Miahuatlán, Oaxaca.

Initial arrest in flagrante delicto for the alleged sale of cannabis

60. The first issue that arises is whether there was a legal basis for the initial arrest and detention of Mr. Pérez Camacho on suspicion of selling cannabis. Given that the versions of events presented by the source and the Government are contradictory, the Working Group considers it appropriate to review the allegations made by both parties.

61. According to the source, on 12 October 2012, Mr. Pérez Camacho was driving his car when he was stopped by three vehicles. Twelve armed individuals who claimed to be police officers, but did not identify themselves, violently removed Mr. Pérez Camacho from his vehicle and took him to the Office of the State Attorney General in Oaxaca. The source asserts that the authorities tortured Mr. Pérez Camacho in order to make him confess to having participated in an attempted murder (case No. 169/2012). However, when Mr. Pérez Camacho refused to sign the confession, the director of the State Investigation Agency allegedly declared that he would frame Mr. Pérez Camacho for the possession of cannabis.

62. The source maintains that Mr. Pérez Camacho did not commit any offence that would justify his arrest on 12 October 2012 and that, consequently, the arrest was arbitrary. The authorities abused the legal provisions on in flagrante delicto arrests in order to investigate and collect evidence relating to the attempted murder case (case No. 169/2012). The source argues that the police regularly arrest suspects, supposedly in flagrante delicto, for minor offences that are, in reality, a pretext for the investigation of more serious complaints and that provide a way of covering up an arbitrary arrest. This allows the authorities to investigate other cases without any form of judicial oversight, since the courts can supervise only the actions taken by prosecutors and police officers in relation to the offence that is alleged to have been committed in flagrante delicto.

63. The Government contends that, on 12 October 2012, two police officers arrested Mr. Pérez Camacho after seeing him selling cannabis. However, the police report submitted by the Government indicates that the officers were acting on an order to bring Mr. Pérez Camacho before the Public Prosecution Service in relation to a different matter. The order was reportedly executed when they saw him with another person who was sitting on a motorcycle. The officers saw the other person give money to Mr. Pérez Camacho. That

person noticed their presence and fled immediately. The officers subsequently found a bag containing cannabis on Mr. Pérez Camacho's person. The Government asserts that Mr. Pérez Camacho was arrested in accordance with articles 23 and 23 bis of the Oaxaca Code of Criminal Procedure, which provides for the arrest of suspects in flagrante delicto.

64. Having taken into account the available information,² the Working Group considers that the source has established a credible prima facie case that there was no objective legal basis for Mr. Pérez Camacho's arrest on 12 October 2012 for the alleged sale of cannabis. The information provided to the Working Group leads it to conclude that the real reason for the arrest was linked to the investigation of case No. 169/2012, not to the commission of any offence in flagrante delicto. The Working Group sets out the reasons for reaching this conclusion below.

65. The source alleges that, after Mr. Pérez Camacho's family filed an *amparo* application (No. 1490/2012) on 12 October 2012, the judge ordered court personnel to go to the offices of the Strategic Operations Centre in order to determine whether Mr. Pérez Camacho was being detained there. According to the source, these persons found Mr. Pérez Camacho, who bore signs of having been tortured. The report of 13 October 2012 contains Mr. Pérez Camacho's account of his treatment while in custody, including the attempts made to force him to confess to the offence under investigation in case No. 169/2012. In its reply, the Government refers to the fact that *amparo* application No. 1490/2012 was dismissed on 26 October 2012 because Mr. Pérez Camacho had already been released, and it underlines the judge's finding that there had been no violations attributable to the authorities. However, the Government has offered no explanation of the circumstances that led to Mr. Pérez Camacho being in government custody while exhibiting visible injuries.

66. The source further claims that Mr. Pérez Camacho's family lodged a complaint (No. DDHPO/1437/2012) concerning his alleged torture with the Office of the Human Rights Ombudsman of Oaxaca. The Government does not address this issue in its submission. In fact, however, it has provided a medical certificate that would appear to support Mr. Pérez Camacho's claim that he was tortured while in custody from 12 to 14 October 2012.³

67. The Government acknowledges that, on 22 September 2015, the Public Prosecution Service decided not to institute criminal proceedings against Mr. Pérez Camacho because it could not prove that he was guilty of an offence against public health, namely the alleged sale of cannabis. The Government argues that this indicates that Mr. Pérez Camacho was treated fairly but offers no explanation for why he spent three years in pretrial detention. The Working Group considers that the dropping of the case strongly suggests that there was no objective legal basis for Mr. Pérez Camacho's initial arrest, which was supposedly made in connection with the sale of cannabis.

68. The Working Group considers that the way in which the events that led to Mr. Pérez Camacho's current detention unfolded was not coincidental. As acknowledged by the Government, the preliminary inquiry in case No. 169/2012 was launched on 12 October 2012, the day on which Mr. Pérez Camacho was arrested, ostensibly for a drugs-related matter. The arrest warrant in case No. 169/2012 was issued on 13 October 2012, the day before Mr. Pérez Camacho was released on bail. As a result, when Mr. Pérez Camacho tried

² The source asked the Working Group to request various types of information from the Government, including the statement given by Mr. Pérez Camacho during the preliminary inquiry, in which he claims to have been tortured during his detention from 12 to 14 October 2012. However, in accordance with its methods of work, the Working Group expects the parties to provide documents in support of their allegations.

³ In a document labelled as annex 4, the Government included a medical certificate dated 14 October 2012 that seems to indicate that Mr. Pérez Camacho exhibited injuries that he had sustained between 24 and 48 hours previously. The certificate does not appear to meet the requirements of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), as it has not been signed by Mr. Pérez Camacho's lawyer and another health official. See opinion No. 53/2018 (para. 76) and the Istanbul Protocol (para. 165).

to leave the Strategic Operations Centre on 14 October 2012, he was arrested again in connection with case No. 169/2012.

69. In the light of the foregoing, the Working Group considers that there was no legal basis for Mr. Pérez Camacho's arrest on 12 October 2012. Consequently, his deprivation of liberty from 12 to 14 October 2012 was arbitrary under category I,⁴ in violation of article 9 of the Covenant.

70. Moreover, the Government arrested Mr. Pérez Camacho in the absence of any basis for applying flagrante delicto provisions and did not proceed expeditiously and within a reasonable time frame in relation to the charge of selling cannabis, which resulted in a three-year period of pretrial detention. In view of this, the Working Group considers that the Government violated Mr. Pérez Camacho's right to be presumed innocent and his right to be tried without undue delay. These violations are of such gravity as to give the deprivation of liberty an arbitrary character under category III, in violation of articles 9 and 14 of the Covenant.

Second arrest, in connection with cases 169/2012 and 168/2014

71. The source maintains that Mr. Pérez Camacho's second arrest and detention were arbitrary under category III owing to the non-observance of basic standards of due process and the right to a fair, independent and impartial trial.

72. The source alleges that, during Mr. Pérez Camacho's trials, there have been various evidentiary irregularities, including the following: (a) the victim of attempted murder (in case No. 169/2012) was shown photographs of several people, including Mr. Pérez Camacho, but identified somebody else as the perpetrator; (b) the picture of the suspect (in case No. 168/2014) distributed by the Office of the Attorney General when it was searching for the person in question does not match Mr. Pérez Camacho's physical appearance; (c) the murder (in case No. 168/2014) took place in 2010, when Mr. Pérez Camacho was in prison;⁵ (d) the witnesses who identified Mr. Pérez Camacho as the perpetrator (in case No. 168/2014) are, for the most part, people who were deprived of their liberty when they did so and were not first-hand witnesses; and (e) the record of a telephone call supposedly made by Mr. Pérez Camacho shows that it was made from a place approximately 2.5 kilometres away from the prison where he was being held.

73. The Working Group does not act as a national court or appellate body and does not assess the sufficiency of the evidence presented at trial.⁶ The existence or absence of the evidentiary irregularities cited by the source are a matter that is better determined by domestic trial and appellate courts. On the basis of the information submitted to it, the Working Group cannot conclude that there were any irregularities that amount to a violation of international human rights law.

74. The source claims that, during his initial period of detention in connection with the drugs-related matter, Mr. Pérez Camacho saw one of the people who accused him of attempted murder (in case No. 169/2012) being tortured by the police. According to the source, this person (who appeared to be badly injured) saw Mr. Pérez Camacho and indicated that he was the perpetrator, in an apparent attempt to put a stop to the torture. That person is now a State witness in case No. 169/2012. The source further alleges that the person is also a co-defendant in the attempted murder case (No. 168/2014), and that, during the trial, he testified that he had incriminated Mr. Pérez Camacho in relation to case No. 169/2012 after being tortured. The Government has not addressed any of these allegations in its reply.

⁴ The fact that the period of detention was short does not prevent it from being arbitrary. Any confinement of an individual that restricts his or her freedom of movement, even for a short period of time, may amount to deprivation of liberty. See opinion No. 67/2017 (para. 19).

⁵ The detention order indicates that Mr. Pérez Camacho participated in a meeting held in prison to plan the murder of the political leader with people who had allegedly been hired to carry it out.

⁶ Opinions Nos. 53/2018 (para. 79), 57/2016 (para. 115) and 10/2000 (para. 9).

75. The Working Group considers that the use of the testimony of a person who was allegedly tortured renders both sets of proceedings against Mr. Pérez Camacho fundamentally unfair insofar as they are based on evidence that is unlawful and intrinsically unreliable.⁷ The use of evidence obtained by torture or other forms of ill-treatment violates the Government's obligations under articles 1, 12, 13 and 15 of the Convention against Torture, to which Mexico is a party. The accusations in question should have been subjected immediately to a full and independent investigation. The Working Group has decided to refer this case to the Special Rapporteur on torture.

76. In addition, Mr. Pérez Camacho is currently deprived of his liberty, as he is being held in mandatory pretrial detention, because the crimes of which he stands accused (attempted murder and murder) are among the crimes for which the imposition of pretrial detention is obligatory, pursuant to article 19 of the Constitution. This issue, and its relation to the fairness of the proceedings against Mr. Pérez Camacho, has not been raised by the source or the Government. However, the Working Group considers it important to reiterate its opinion that mandatory pretrial detention is in breach of the Government's obligations under international human rights law.

77. In its opinion No. 1/2018, the Working Group examined this matter in detail and concluded that mandatory pretrial detention is in violation of article 9 (3) of the International Covenant on Civil and Political Rights,⁸ which stipulates that detention pending trial should be the exception rather than the rule and must be based on an individualized determination that it is reasonable and necessary.⁹

78. The Working Group considers that automatic pretrial detention for specified offences deprives detainees of their right to seek alternatives to detention, such as bail, in violation of the right to be presumed innocent under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant. The imposition of pretrial detention for specified offences reverses the presumption of innocence, as persons accused of those offences are automatically detained, without there being a balanced consideration of alternatives to detention. The Working Group wishes to emphasize that international standards, in particular article 9 (3) of the Covenant, do not preclude the imposition of pretrial detention in certain cases. However, they do stipulate that such detention may be ordered only once a judicial authority has carried out an individualized assessment of the case, as required by article 9 (3).

79. In the present case, the proceedings against Mr. Pérez Camacho have been unfair by reason of the alleged torture of a key witness and of the fact that he has been subject to automatic pretrial detention. The Working Group concludes that these violations are of such gravity as to give Mr. Pérez Camacho's deprivation of liberty an arbitrary character under category III.

80. Lastly, the source claims that Mr. Pérez Camacho's detention is arbitrary under category V inasmuch as he has been discriminated against on the basis of his status as a former prisoner. According to the source, the Government's theory about the crimes, namely that a group of ex-convicts conspired to attack these political leaders, has created the general impression among the Mexican public that Mr. Pérez Camacho is guilty. The source stresses that, by instituting proceedings against Mr. Pérez Camacho, the Government was seeking to demonstrate that it was taking action to deal with this crime, even if that meant punishing innocent people. The Government, meanwhile, denies these allegations and emphasizes that the decisions taken in relation to cases Nos. 169/2012 and 168/2014 have been based on objective evidence supplied by the Public Prosecution Service and are not the result of discriminatory treatment.

⁷ See opinion No. 47/2017, in which the Working Group reached a similar conclusion. In that case, a suspect was identified on the basis of information extracted from another individual under torture.

⁸ See also opinions Nos. 53/2018, 16/2018, 24/2015 and 57/2014, and document A/HRC/19/57, paras. 48 to 58.

⁹ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 38.

81. The Working Group considers that the source has not established a prima facie case that Mr. Pérez Camacho has been discriminated against because of his status as a former prisoner. Although that status may have made it easier for the Government to advance a credible theory about the crimes in this case, the Working Group cannot conclude that this involved differentiated treatment, as would be required in order to invoke category V.

82. Nevertheless, the Working Group finds that the constitutional provisions allowing automatic pretrial detention create two categories of defendants: persons accused of offences for which detention is not automatic, who can benefit from alternative measures, such as bail, and persons, like Mr. Pérez Camacho, who are accused of criminal offences for which such alternatives are not permitted.¹⁰ The Working Group considers that this distinction discriminates against defendants, in a manner that ignores the equality of human rights, on the basis of “other status” (in other words, being accused of an offence for which alternatives to detention are not permitted), which is a prohibited ground of discrimination under articles 2 (1) and 26 of the Covenant. The Working Group considers that the facts of the present case disclose a violation of category V.

83. The Working Group is deeply concerned by the source’s allegation that Mr. Pérez Camacho was subjected to torture and ill-treatment during his initial spell in detention and during the investigation of case No. 168/2014, when he was visited in prison by officers from an investigation agency. The Working Group is particularly alarmed by the source’s claim that a representative of the Office of the Attorney for the Defence of Indigenous Peoples was present while Mr. Pérez Camacho was being tortured. The Working Group has included these complaints in its referral of this case to the Special Rapporteur on torture.

84. This case is one of many that have been submitted to the Working Group over the past five years in relation to arbitrary deprivation of liberty in Mexico.¹¹ The Working Group is concerned that this may indicate the existence of a systematic use of arbitrary detention, which, if it continues, could constitute a serious violation of international law. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.¹²

85. Lastly, the Working Group would appreciate the opportunity to visit Mexico in order to work with the Government on the issue of arbitrary deprivation of liberty. Given that a significant amount of time has passed since it last visited Mexico in November 2002, the Working Group considers that this would be an appropriate time for it to conduct a visit to the country. Since Mexico is currently a member of the Human Rights Council, this would be an opportune occasion for the Government to extend an invitation. The Working Group recalls that the Government issued a standing invitation to all thematic special procedures mandate holders in March 2001, and it awaits a positive response to its visit requests of 15 April 2015, 10 August 2016 and 9 February 2018.¹³

Disposition

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

(a) The deprivation of liberty of Gerardo Pérez Camacho from 12 to 14 October 2012, being in contravention of articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant, was arbitrary and falls within categories I and III;

(b) The ongoing deprivation of liberty of Gerardo Pérez Camacho since 14 October 2012, being in contravention of articles 2, 7, 9, 10 and 11 (1) of the Universal

¹⁰ Opinion No. 1/2018 (para. 68).

¹¹ Opinions Nos. 53/2018, 16/2018, 1/2018, 66/2017, 65/2017, 24/2017, 23/2017, 58/2016, 17/2016, 56/2015, 55/2015, 19/2015, 18/2015, 23/2014, 58/2013 and 21/2013.

¹² See, for example, opinion No. 47/2012 (para. 22).

¹³ The Government indicated that, in view of other international commitments, it could not accommodate a visit in 2018.

Declaration of Human Rights and articles 2 (1), 9, 14 and 26 of the Covenant, is arbitrary and falls within categories III and V.

87. The Working Group requests the Government to take the steps necessary to remedy the situation of Mr. Pérez Camacho without delay and bring it into conformity with applicable international standards, including those established in the Covenant and the Universal Declaration of Human Rights.

88. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to: (a) grant Mr. Pérez Camacho an enforceable right to compensation and other reparations in accordance with international law for his detention from 12 to 14 October 2012; and (b) release Mr. Pérez Camacho immediately and accord him an enforceable right to compensation and other reparations in accordance with international law.

89. The Working Group takes note of the interpretative declaration to article 9 (5) of the Covenant by Mexico, which establishes that, under the Political Constitution of the United Mexican States and the relevant implementing legislation, every individual enjoys the guarantees relating to penal matters embodied therein, and consequently no person may be unlawfully arrested or detained. However, if by reason of false accusation or complaint any individual suffers an infringement of this right, he or she has, *inter alia*, under the provisions of the appropriate laws, an enforceable right to just compensation.¹⁴ The Working Group considers that this provides additional grounds for compensation under the State party's legal system.

90. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Pérez Camacho, including the allegations of torture and cruel, inhuman or degrading treatment, and to take appropriate measures against those responsible for the violation of his rights.

91. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture for information and possible action.

92. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

93. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Pérez Camacho has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Pérez Camacho;
- (c) Whether an investigation has been conducted into the violation of Mr. Pérez Camacho's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Mexico with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

94. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

¹⁴ *Multilateral Treaties Deposited with the Secretary-General*, chap. IV.4.

95. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

96. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they have taken.¹⁵

[Adopted on 21 November 2018]

¹⁵ Human Rights Council resolution 33/30, paras. 3 and 7.