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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session, 12–16 August 2019

Opinion No. 54/2019 concerning José de la Paz Ferman Cruz and Aren Boyazhyan (Mexico)*

1. The Working Group on Arbitrary Detention was established in 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 in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 22 August 2018, the Working Group transmitted to the Government of Mexico a communication concerning José de la Paz Ferman Cruz and Aren Boyazhyan. The Government replied to the communication on 22 October 2018. 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 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);

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



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

Submissions

Communication from the source

4. The source has submitted information with regard to two situations involving the deprivation of liberty of migrants, namely Mr. Ferman Cruz and Mr. Boyazhyan. According to the source, these two cases are indicative of a structural issue and illustrate how administrative detention is applied as a rule, without periodic review, judicial protection or due process guarantees.

The case of Mr. Ferman Cruz

5. Mr. Ferman Cruz is a national of El Salvador. He is 54 years old and cannot read. He did farm work and was self-employed. He fled his own country after his land was stolen, his life was threatened and a member of his family was sexually assaulted. He arrived in Mexico on 10 September 2015.

6. Mr. Ferman Cruz was detained on 11 November 2015 in Tapachula by agents of the National Institute of Migration. He was taken to the Siglo XXI migrant holding centre, where he was detained and deportation proceedings were brought against him.

7. On 26 November 2015, Mr. Ferman Cruz submitted an application for refugee status to the Mexican Commission on Assistance for Refugees. This resulted in the suspension of the migration procedure pending the outcome of the asylum application.

8. On 6 January 2016, after having been detained for two months with no explanation, Mr. Ferman Cruz was transferred to the migrant holding centre in Mexico City.

9. According to the source, on 26 January 2016 the National Institute of Migration issued Decision VARANA 5359, which states: “The holding period ... has been excessively long and extending it any further could undermine the foreign national’s well-being.” The Decision provides that “the person concerned should be granted a temporary visitor’s permit with permission to carry out paid work”. The Decision was not brought to Mr. Ferman Cruz’s attention and was not carried out. He became aware of it only on 4 October 2016, upon gaining access to his case file.

10. On 11 May 2016, Mr. Ferman Cruz appointed legal counsel to represent him in proceedings before the National Institute of Migration. On 20 June 2016, Mr. Ferman Cruz petitioned the National Institute of Migration to release him and regularize his migration status on humanitarian grounds and confirmed that he had appointed legal counsel.

11. In the absence of a response from the migration authorities, two requests for a reply, as well as evidence that Mr. Ferman Cruz was eligible for release, were submitted, on 29 June and 4 July 2016.

12. On 7 July 2016, Mr. Ferman Cruz was informed that a reply had already been sent, but the competent migration official did not deliver this reply or read it out to him. Since Mr. Ferman Cruz cannot read, he refused to sign the notice of receipt with his fingerprint.

13. On 12 July 2016, Mr. Ferman Cruz’s lawyer requested information on the Decision from the competent migration official, who stated that Mr. Ferman Cruz’s release had been authorized but he did not have a copy of the Decision and did not know why it had not been executed.

14. On 13 July 2016, Mr. Ferman Cruz’s lawyer travelled to the offices of the National Institute of Migration, where his requests to view the response of the Institute and review the case file were denied on the ground that there was allegedly no record of his appointment as Mr. Ferman Cruz’s counsel, despite the fact that his appointment was recorded in the case file. Later that day, the official who had delivered the earlier notice of

receipt demanded that Mr. Ferman Cruz sign a document with his fingerprint as a prerequisite for the execution of the order for his release. Mr. Ferman Cruz agreed to sign the document, although he was unable to read its contents, but was not released. In response, Mr. Ferman Cruz launched various judicial proceedings.

15. According to the source, Mr. Ferman Cruz started receiving threats from officials in the migrant holding centre after filing for legal remedies, such as “We are going to send you back to your own country”. Attempts were made to pressure him into signing an order of assisted return and he was threatened with deportation several times. Examples of the threats he received include: “You should give up on your appeals or we will deport you”; “We do not care what the judge says, we are going to send you back to your own country”; “If you do not withdraw your appeals, we will deport you”; and “We are going to make you disappear”. Mr. Ferman Cruz was subjected to various reprisals, including punishments, restrictions on the food he was given and the calls he was allowed to make, verbal abuse and a lack of medical assistance.

16. The source reports that Mr. Ferman Cruz was released on 8 November 2016, pursuant to a decision issued by the Mexican Commission on Assistance for Refugees. However, the arbitrariness of his detention and the procedural irregularities in his case have not been acknowledged.

Application for refugee status

17. The source reports that the Mexican Commission on Assistance for Refugees received Mr. Ferman Cruz’s application for refugee status on 26 November 2015, 15 days after he was placed in detention.

18. On 2 February 2016, the Commission issued a decision rejecting Mr. Ferman Cruz’s application for refugee status, which he appealed. On 19 May 2016, the Commission decided that Mr. Ferman Cruz’s case should be reconsidered, in the light of questions surrounding the accuracy of the information presented on his application form, specifically doubts as to whether the form reflected the information he had provided to the official from the Commission, since he had not filled it out himself and was unable to verify whether it was accurate.

19. On 1 and 5 July 2016, Mr. Ferman Cruz appointed legal counsel to represent him in proceedings before the Commission; this appointment was acknowledged on 11 July.

20. The source indicates that the Commission did not take any measures to advance the proceedings for several months. On 27 September 2016, an official from the Commission collected Mr. Ferman Cruz’s background information a second time for the purposes of his asylum application. On 21 October 2016, the Commission decided to grant protection to Mr. Ferman Cruz.

21. On 4 November 2016, a request for an update on the asylum procedure was sent to the Commission but went unanswered. On 8 November, the Commission issued an official notice of its decision to grant protection to Mr. Ferman Cruz, pursuant to which he was released from the migrant holding centre.

Judicial protection against deprivation of liberty

22. Mr. Ferman Cruz filed various petitions for the remedy of *amparo*, in which he complained of violations of his rights to liberty and integrity of the person and of due process.

23. In a petition for *amparo* submitted on 12 July 2016, Mr. Ferman Cruz claimed that he was being held illegally, since he had been informed by an official of the National Institute of Migration that the order had been given for his release. The National Institute of Migration denied the allegations and the proceedings were dismissed on 12 August 2016.

24. The second petition for *amparo*, submitted on 26 July 2016, pertained to the denial of Mr. Ferman Cruz’s right to be released and to the application of a non-custodial measure. The judge in the case ordered that Mr. Ferman Cruz be granted access to his case file, and

he was thus able to review the details of the proceedings. In October 2016, the decision of 26 January ordering Mr. Ferman Cruz's release came to light.

25. On 25 August 2016, the Court ruled that Mr. Ferman Cruz could be released on condition that the Embassy of El Salvador agree to take responsibility for him and to provide a financial guarantee. On 2 September 2016, Mr. Ferman Cruz's legal counsel challenged the ruling, alleging a violation of privacy and confidentiality owing to the unauthorized communication of personal information. On 17 April 2017, the court ordered that Mr. Ferman Cruz be released on condition that he agreed to sign in periodically with the public authorities. This decision was a positive step but it was ineffective, since Mr. Ferman Cruz had already been released.

26. According to the source, on 13 June 2017, during the *amparo* proceedings, medico-psychological evidence in relation to cases of suspected torture or ill-treatment was submitted, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). On 14 June 2017, the judge decided not to admit the evidence. On 17 August 2017, the Supreme Court was requested to assume jurisdiction over the case. However, the Court rejected this request.

27. The source reports that a third petition for *amparo*, this time contesting the deportation order, was submitted on 24 August 2016. As a result of taking these legal steps, Mr. Ferman Cruz was threatened with deportation and was subjected to duress, verbal abuse and punishments.

28. According to the source, on 29 September 2016 the Court decided to discontinue the *amparo* proceedings without reviewing the merits of the case, on the basis of the authorities' argument that the purpose of Mr. Ferman Cruz's detention was not deportation but temporary holding. This decision was contested on 24 October but was ultimately upheld.

29. A fourth petition for *amparo* was submitted on 14 October 2016 regarding the failure to execute the release order and alleged acts of cruel, inhuman or degrading treatment. The judge in the case disqualified himself from hearing the matter of non-compliance with the release order but declared himself competent to review the matter of the alleged violations of integrity of the person. Neither matter was resolved, however, as the decision was made to discontinue the proceedings.

The source's allegations

30. The source indicates that the migration authorities issued a release order on 26 January 2016, ordering that Mr. Ferman Cruz's detention be terminated. However, the authorities failed to give official notice of or comply with the order, on which grounds the source alleges that the deprivation of liberty of Mr. Ferman Cruz by the migration authorities was arbitrary.

31. The source alleges that the detention of Mr. Ferman Cruz was not carried out in accordance with the rules of a fair and impartial process. The Migration Act provides that foreign nationals have the right to enjoy due process guarantees, to submit evidence and to plead their case, to have access to their migration file, to be assisted by legal counsel and to benefit from the services of a translator or an interpreter.

32. It is alleged that Mr. Ferman Cruz did not have the opportunity to argue in defence of his rights. He was not given an opportunity to be heard and make his case before the authorities and he was not informed of the details of the reasons for his detention. Moreover, he was not informed of his rights as a detainee.

33. It is alleged that the National Institute of Migration obstructed Mr. Ferman Cruz's enjoyment of effective and timely legal assistance and representation. The source highlights that access to the records contained in Mr. Ferman Cruz's file was denied, that the authorities refused to recognize his legal counsel, that the visits he received from his lawyer were constantly monitored by the authorities and that limitations were imposed on his ability to communicate with the outside world.

34. The source alleges that the prolongation of Mr. Ferman Cruz's administrative detention constituted a violation of his liberty, since it did not comply with the principles of proportionality and necessity. According to the source, although access to judicial channels was guaranteed, such channels did not offer effective protection. Mr. Ferman Cruz's detention was not subject to periodic review and was reviewed only at the request of a party.

35. The source alleges that the actions of the judicial officials undermined the due protection of Mr. Ferman Cruz's personal liberty and caused the prolongation of his detention, since they led to the submission of multiple appeals to higher courts that prolonged the proceedings and delayed a decision on the merits.

36. The source notes that despite the various judicial actions undertaken, at no point did a judge review the legality of Mr. Ferman Cruz's detention. Only once he had appointed legal counsel were steps taken in defence of his liberty.

37. The source indicates that Instruction INM/DGCVM/0014/2016 establishes a special regime of a general and impersonal nature, under which there is a discriminatory category that allows for the segregation and confinement of a sector of the migrant population, namely asylum seekers, and the indefinite prolongation of their detention. According to the source, the authorities had no other reason, that is to say, no reason based on an individualized assessment of the necessity, proportionality or reasonableness of detention, to deprive Mr. Ferman Cruz of his liberty.

The case of Mr. Boyazhyan

38. Mr. Boyazhyan was born in Crimea (Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation). He went to Mexico in 2013 to live with his partner. He last entered the country regularly on 30 June 2014 on a tourist visa.

39. On 9 March 2016, officials from the National Institute of Migration went looking for Mr. Boyazhyan at his home, without identifying themselves and without a written warrant. They shouted at Mr. Boyazhyan and demanded that he show them his migration documents. Since he did not have any documents, the officials forcibly escorted him from the building, despite not having a warrant to enter his home. Mr. Boyazhyan was taken into the custody of the National Institute of Migration in Tijuana, where he was placed in "holding" pending a decision on his deportation.

40. On 16 March 2016, at the migrant holding centre, Mr. Boyazhyan applied for refugee status.

41. According to the source, Mr. Boyazhyan was transferred to the migrant holding centre in Mexico City on 25 March 2016. This was the only transfer of which he received advance notice.

42. On 23 March 2013, prior to the transfer, the Mexican Commission on Assistance for Refugees sent to the National Institute of Migration a request for Mr. Boyazhyan to submit, within three days, justification for his having failed to apply for refugee status within 30 days of his entry into Mexico. Mr. Boyazhyan had been unaware of this deadline and therefore did not reply.

43. On 29 March 2016, at the migrant holding centre, the National Institute of Migration took a statement from Mr. Boyazhyan. The interview was conducted through an English interpreter, which made it impossible to communicate effectively. Nonetheless, Mr. Boyazhyan was able to explain that the situation in Crimea (Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation) had made him stateless.

44. On 12 July 2016, Mr. Boyazhyan's legal counsel requested that he be released on bail, in accordance with article 102 of the Migration Act. This request was ignored and no reply was received.

45. According to the source, on 29 July 2016 Mr. Boyazhyan withdrew an application for *amparo* as a result of pressure from the migration authorities, the lack of a response

from the judicial authorities, exhaustion due to his prolonged detention and the birth of his son while he was in detention. The source reports that the National Institute of Migration advised Mr. Boyazhyan not to complicate his situation any further and offered to “help him” to resolve his migration situation if he withdrew his application for *amparo*.

46. On 16 August 2016, the National Institute of Migration issued a deportation order against Mr. Boyazhyan. He was taken to the airport in Mexico City that same day. However, the deportation did not take place because Mr. Boyazhyan refused to board the plane and the migration officials escorting him did not have visas to enter Ukraine.

47. On 17 August 2016, Mr. Boyazhyan was transferred to the migrant holding centre in Pachuca, Hidalgo State, making it impossible for him to continue receiving assistance from his legal counsel. This transfer was conducted without advance notice.

48. On 1 September 2016, Mr. Boyazhyan submitted a request for the initiation of the statelessness determination procedure.

49. According to the source, on 6 September 2016 Mr. Boyazhyan was in his cell when migration officials entered without warning to take him to the airport for deportation. This time, Mr. Boyazhyan was not presented as an ordinary passenger but rather was made to enter the plane through the lower deck. National Institute of Migration officials hit him and pushed him in an attempt to force him into submission. When the pilot of the plane became aware of the situation, he refused to transport Mr. Boyazhyan.

50. On 7 September 2016, Mr. Boyazhyan was transferred to the migrant holding centre in Tlaxcala, without advance notice and without any record being made of the transfer.

51. On 12 September 2016, the Mexican Commission on Assistance for Refugees notified the National Institute of Migration that Mr. Boyazhyan’s request for the initiation of the statelessness determination procedure was under consideration. On 8 November, the Commission interviewed Mr. Boyazhyan without informing him of the interview in advance. That was the first and last time Mr. Boyazhyan had contact with officials from the Commission.

52. On 15 November 2016, Mr. Boyazhyan was granted stateless status through a definitive decision issued by the Mexican Commission on Assistance for Refugees, of which the National Institute of Migration was notified. However, the Commission did not formally notify Mr. Boyazhyan of its decision.

53. Mr. Boyazhyan remained unaware of the decision between 15 November and his release on 2 December 2016.

54. On 1 December 2016, without prior notice, Mr. Boyazhyan was informed of the Commission’s decision, the order was given for his release from the migrant holding centre on account of his stateless status, his migration status was regularized and the deportation order issued against him was dropped.

Administrative migration procedure

55. The source reports that on 16 March 2016 Mr. Boyazhyan applied for refugee status. On 17 April 2016, the Mexican Commission on Assistance for Refugees notified the National Institute of Migration that Mr. Boyazhyan’s application had been ruled inadmissible but did not share this information with Mr. Boyazhyan. The Commission had made its decision without ever contacting Mr. Boyazhyan.

56. Subsequently, on 7 September 2016, Mr. Boyazhyan submitted his request for the initiation of the statelessness determination procedure. Two months passed before he was interviewed by the Commission.

57. The source claims that this lack of diligence and communication, in addition to the lack of timely and adequate access to the procedures concerned, contributed to the unnecessary and disproportionate prolongation of the deprivation of liberty of Mr. Boyazhyan, created uncertainty and undermined his physical and psychological integrity.

Judicial protection

58. According to the source, Mr. Boyazhyan's legal counsel filed an application for *amparo* on 28 April 2016 with regard to the transfer and deprivation of liberty of Mr. Boyazhyan and the deportation order issued against him. The source indicates that the judge in the case ordered that Mr. Boyazhyan's deportation be suspended and that he remain in the migrant holding centre. The judge did not rule on Mr. Boyazhyan's request for the application of a non-custodial measure.

59. On 28 April 2016, the Court served Mr. Boyazhyan notice of a decision while he was in the migrant holding centre, where he claimed to have been subjected to ill-treatment. Subsequently, on 18 May 2016, in the context of new proceedings opened in order to shed light on the treatment of Mr. Boyazhyan, he was prevented from adequately explaining his situation by the presence of personnel from the migrant holding centre during his hearing; he felt threatened and lacked the necessary confidence and freedom to describe the demeaning and offensive way in which he had been treated. Mr. Boyazhyan considered it safe to mention only that he had been beaten during his detention in Tijuana. On 20 May 2016, the district judge ordered an investigation into these allegations.

60. According to reports issued by the district judge, this investigation began on 6 June 2016. However, Mr. Boyazhyan had no contact with any public officials in relation to the investigation and was kept in the dark with regard to its progress and outcome.

61. Mr. Boyazhyan submitted a second petition for *amparo* on 2 November 2016, seeking judicial protection against his detention and possible deportation while the determination of his legal status was still under way. He requested that he be released in view of his state of health as a result of the treatment to which he had been subjected, the poor detention conditions in which he was being held and the uncertainty surrounding his situation.

62. Through the *amparo* procedure, Mr. Boyazhyan was able to obtain copies of the migration file kept on him by the National Institute of Migration, to which he had had no access during the administrative migration procedure.

63. Since Mr. Boyazhyan did not speak Spanish, the judge decided that a migration official should act as an interpreter. The judge also requested other public institutions to provide translators for the purposes of the proceedings, but the institutions concerned indicated that they had no translators with the appropriate language combination. As a result, communication during the proceedings was inadequate.

64. On 28 March 2017, the judge decided to dismiss the case. The source alleges that, in dismissing the case, the judge shirked his responsibility to dispense justice and failed in his duty to protect and uphold human rights.

65. The source reports that the migration departments of the local public authorities of Hidalgo and Tlaxcala sent daily updates on Mr. Boyazhyan's physical health to the judge hearing the *amparo* case. These medical records and certificates were not studied or taken into account by the court in its decision-making process, despite the fact that they demonstrated that Mr. Boyazhyan's physical and mental health was deteriorating.

The source's allegations

66. The source claims that Mr. Boyazhyan was deprived of his personal liberty for a prolonged period of more than nine months. It is alleged that Mr. Boyazhyan was detained with no regard for his personal circumstances. These circumstances include the fact that he had been a resident in Mexico for more than two years, was in possession of identity papers and resided at an address known to the migration authorities. The authorities also failed to take into account the fact that he did not understand Spanish, had ties with the community, had a newborn child and had applied for international protection.

67. The source indicates that the authorities ignored Mr. Boyazhyan's requests for the application of a non-custodial measure; when he requested release on bail, the migration authorities failed to respond. Moreover, the legality of his detention was not subject to

periodic review. After giving the order for Mr. Boyazhyan to be detained, the migration authorities did not voluntarily review the legality of his detention.

68. The source stresses that the only means of challenging detention is to file for *amparo*. However, the judges who heard Mr. Boyazhyan's case allowed him to remain deprived of liberty. The Third District Court of *Amparo* in Tlaxcala also failed to take any action to recognize or remedy the violations of which he was a victim, despite ordering that Mr. Boyazhyan receive medical treatment and being in possession of a record of his physical and psychological condition.

69. The source also argues that Mr. Boyazhyan's detention and the proceedings before the National Institute of Migration and the Mexican Commission on Assistance for Refugees did not follow the rules of due administrative process. Mr. Boyazhyan was not informed of the reasons for his detention, other than his irregular migration status, and he was not given a clear and well-defined opportunity to challenge his detention. The absence of any response to his request for release on bail and the fact that he was not granted access to his case file also amount to violations of his rights.

70. With regard to the proceedings before the Mexican Commission on Assistance for Refugees, the source claims that a lack of due process guarantees can be seen in the Commission's failure to communicate directly with Mr. Boyazhyan and interview him in person. Mr. Boyazhyan was not informed of the progress of the statelessness determination procedure.

71. With regard to judicial protection, the source indicates that although formal access to the justice system was guaranteed, effective, rapid and impartial protection was not provided. While an order to suspend Mr. Boyazhyan's detention was issued, he nonetheless remained in detention.

72. The source claims that the remedy of *amparo* and other forms of protection were ineffective and that the final ruling in his case proves this. The court ruled that the prolonged nature of Mr. Boyazhyan's detention was the result of the exercise by Mr. Boyazhyan of the legal defence mechanisms open to him, which suggests that the right to liberty must be relinquished as a prerequisite for the exercise of means of defence and access to justice.

73. The source maintains that, in the present case, Mr. Boyazhyan's detention and its effect on his physical and mental health constituted a form of torture. His detention was punishment for his irregular entry and stay in Mexico. Moreover, the prolongation of Mr. Boyazhyan's detention was an unjust, disproportionate and unreasonable punishment for his having exercised the right to a legal defence and judicial protection.

74. The officials of the National Institute of Migration clearly and intentionally harassed and pressured Mr. Boyazhyan in order to make him withdraw his applications for *amparo*. The harassment and pressure increased when the Court failed to protect his rights. This resulted in Mr. Boyazhyan's withdrawal of his *amparo* application on the promise that if he did so the National Institute of Migration would resolve his situation, after telling him that no solution would be possible until he withdrew his application. Once Mr. Boyazhyan had complied with these conditions, the authorities ordered that he be deported and tried to implement their decision the same day.

75. The transfer of Mr. Boyazhyan to the migrant holding centres in Hidalgo and Tlaxcala made it clear that his detention was a form of punishment. These transfers were clearly reprisals for Mr. Boyazhyan's having refused and resisted deportation, since they were carried out the day after the attempt to deport him failed.

76. The source indicates that during almost nine months of detention, Mr. Boyazhyan applied for release, judicial protection, refugee status and stateless status. However, these legal steps were met with intimidation and harassment intended to thwart his attempts to mount a legal defence.

77. Mr. Boyazhyan's detention caused him severe physical and psychological suffering. One of the main methods used by the authorities to coerce Mr. Boyazhyan was to isolate

him from his loved ones and make it difficult for him to benefit from legal representation and due process guarantees by transferring him to Hidalgo and then to Tlaxcala.

78. According to the source, the suffering that Mr. Boyazhyan experienced as a result of his detention and treatment was documented in certificates that demonstrate the deterioration of his health. The certificates show that Mr. Boyazhyan was found to be in a good state of health when he was placed in the first migrant holding centre but, over time, began to show symptoms of anxiety that led to illness; he was later diagnosed with other conditions and illnesses.

79. The source claims that a psychological assessment carried out within the framework of the Tlaxcala system for the comprehensive development of the family clearly concluded that Mr. Boyazhyan was in an emotional state of complete distress.

80. The source indicates that Mr. Boyazhyan was diagnosed with adjustment disorder with anxiety and generalized anxiety disorder. Both the migration authorities and the courts were fully aware of the harm that the detention and detention conditions were causing Mr. Boyazhyan but took no measures to protect his integrity.

Response from the Government

81. On 22 August 2018, the Working Group transmitted the source's allegations to the Government, requesting it to provide all relevant information by 22 October 2018. The Government submitted its response on 22 October 2018.

82. The Government indicates that Mr. Ferman Cruz was taken into the custody of the National Institute of Migration in Chiapas on 21 November 2015 because he had no migration documents. The National Institute of Migration initiated the migration procedure and notified the relevant consular officials. On 26 November 2015, Mr. Ferman Cruz applied for refugee status, in response to which the Mexican Commission on Assistance for Refugees requested the National Institute of Migration not to take measures to return him to his country of origin.

83. On 6 January 2016, the director of the migrant holding centre in Chiapas gave orders for Mr. Ferman Cruz to be transferred to the migrant holding centre in Mexico City in order to facilitate the refugee status application procedure.

84. On 26 January 2016, Mr. Ferman Cruz was notified of an official instruction granting him temporary release from the migrant holding centre and entitling him to a work permit. However, the Government indicates that Mr. Ferman Cruz did not wish to leave the migrant holding centre.

85. On 2 February 2016, the Mexican Commission on Assistance for Refugees issued a decision stating that it would not grant Mr. Ferman Cruz refugee status or provide him with complementary protection. On 2 March 2016, Mr. Ferman Cruz filed an application for the reconsideration of the facts of his case. On 19 May 2019, the Commission declared its previous decision null and void and ordered that the procedure be conducted again.

86. As a result, on 21 October 2016 the Commission issued a new decision granting refugee status and complementary protection to Mr. Ferman Cruz. Mr. Ferman Cruz was notified of the new decision on 4 November 2016. On 7 November 2016, the National Institute of Migration released Mr. Ferman Cruz from the migrant holding centre.

87. The Government reports that the office of the National Institute of Migration in Baja California ordered the initiation of administrative proceedings against Mr. Boyazhyan on 9 March 2016, when he was found to be unable to prove that he was in the country lawfully. He was placed in temporary holding pending the resolution of his migration situation.

88. On 18 March 2016, the National Institute of Migration informed the Mexican Commission on Assistance for Refugees that Mr. Boyazhyan wished to apply for refugee status in Mexico. However, the Commission rejected Mr. Boyazhyan's application on the ground that it had been submitted after the applicable deadline.

89. On 22 March 2016, the National Institute of Migration gave the order for Mr. Boyazhyan to be transferred to the migrant holding centre in Mexico City pending the resolution of his case.

90. On 28 April 2016, Mr. Boyazhyan filed for indirect *amparo* proceedings against the immigration check, his detention and his transfer to Mexico City. That day, the acts complained of were suspended. On 26 July 2016, Mr. Boyazhyan withdrew his application for *amparo*.

91. On 16 August 2016, the National Institute of Migration issued a deportation order against Mr. Boyazhyan and gave the order for him to be transferred to the migrant holding centre in Hidalgo pending deportation.

92. On 9 September 2016, following an interview with officials from the Mexican Commission on Assistance for Refugees, Mr. Boyazhyan made it known that he wished to apply for stateless status. The Commission reviewed Mr. Boyazhyan's application and granted him stateless status on 2 December 2016.

The "presentation" and holding of both migrants were conducted in accordance with applicable legislation

93. The Government stresses that the detention of Mr. Ferman Cruz and Mr. Boyazhyan was conducted in accordance with the procedure known as *presentación* ("presentation"), which is provided for in article 3 of the Migration Act and is defined as "a measure ordered by the National Institute of Migration whereby foreign nationals who are unable to demonstrate their migration status are placed in temporary holding for the purposes of the regularization of their stay or to facilitate their return".

94. On 21 November 2015, following an immigration check in a public place, Mr. Ferman Cruz was taken into the custody of the National Institute of Migration since he was unable to prove that his migration status was regular. Administrative proceedings were then initiated against Mr. Ferman Cruz and he was placed in holding pending the resolution of his situation.

95. On 9 March 2016, following an immigration check in Tijuana, Mr. Boyazhyan was taken into the custody of the authorities because he did not have the necessary documents to prove that his migration status was regular. Later that day, the National Institute of Migration initiated the migration procedure, pursuant to which Mr. Boyazhyan was placed in temporary holding.

96. In the light of the foregoing, the Government indicates that the presentation and holding of Mr. Ferman Cruz and Mr. Boyazhyan were ordered by the National Institute of Migration, the competent migration authority, in accordance with the Migration Act, and therefore in accordance with Mexican legislation.

The detention was reasonable, necessary and proportionate

97. The Government indicates that Mr. Ferman Cruz was placed in temporary holding in order to ensure his presence during the migration procedure and thus facilitate the resolution of his migration situation. On 26 November 2015, Mr. Ferman Cruz expressed his intention to apply for refugee status, in response to which the Mexican Commission on Assistance for Refugees requested the National Institute of Migration to refrain from taking measures to return him to his country of origin. The Commission issued a decision granting Mr. Ferman Cruz complementary protection, of which he was notified on 4 November 2016.

98. Mr. Ferman Cruz remained in a migrant holding centre while his legal counsel acted in his defence. This included the submission of multiple *amparo* applications against alleged deportation orders, his prolonged detention, acts of torture and ill-treatment, and the failure to execute the order for his release. The *amparo* proceedings were dismissed on grounds of inadmissibility owing to a lack of evidence that the alleged violations took place and to a change in Mr. Ferman Cruz's legal status.

99. The Government indicates that these applications prevented the National Institute of Migration from carrying out other measures to advance the procedure, since the courts ordered that the procedure be temporarily suspended.

100. The Government highlights that, in response to Mr. Ferman Cruz's application for refugee status, on 26 January 2016 the National Institute of Migration issued Decision VARANA 5359, granting him visitor status and permission to carry out paid work. The Decision also authorized Mr. Ferman Cruz's release from the migrant holding centre.

101. The Government indicates that Mr. Ferman Cruz was notified of the Decision the day it was issued. However, he refused to leave the migrant holding centre, indicating that he would prefer to remain there during the migration procedure; this decision was recorded in writing by a migration official and authenticated with Mr. Ferman Cruz's fingerprint signature.

102. On 7 November 2016, the National Institute of Migration issued a decision ordering Mr. Ferman Cruz's release, in the light of the decision of the Mexican Commission on Assistance for Refugees to grant him complementary protection.

103. In the light of the foregoing, the Government claims that the presentation and holding of Mr. Ferman Cruz were reasonable, proportionate and necessary, given all the circumstances of the case.

104. The Government indicates that Mr. Boyazhyan was placed in a migrant holding centre because he did not have the necessary documents to prove that he was in Mexico lawfully and his presence was required by the National Institute of Migration for the purposes of the subsequent procedures.

105. On 18 March 2016, the National Institute of Migration informed the Mexican Commission on Assistance for Refugees that Mr. Boyazhyan wished to apply for refugee status. However, the Commission rejected Mr. Boyazhyan's application on the ground that it had been submitted after the applicable deadline.

106. Subsequently, on 9 September 2016, following an interview with officials from the Mexican Commission on Assistance for Refugees, Mr. Boyazhyan made it known that he wished to request the initiation of the statelessness determination procedure. The Mexican Commission on Assistance for Refugees reviewed the request and issued a decision granting Mr. Boyazhyan stateless status. Accordingly, on 2 December 2016, the National Institute of Migration issued an order for Mr. Boyazhyan's release.

107. While Mr. Boyazhyan was in temporary holding, his legal counsel filed two petitions for *amparo*.

108. The first set of *amparo* proceedings were brought on 28 April 2016 with regard to alleged human rights violations that supposedly occurred during the immigration inspection at Mr. Boyazhyan's home, his detention, his transfer to the migrant holding centre, his holding on the premises of the National Institute of Migration and a deportation order issued against him. However, on 26 July 2016, Mr. Boyazhyan withdrew his application for *amparo*.

109. The second set of *amparo* proceedings were brought on 2 November 2016 with regard to alleged human rights violations in connection with the deportation orders issued against Mr. Boyazhyan. However, on 28 March 2017, the judge hearing the case decided to close the proceedings because Mr. Boyazhyan had been granted stateless status.

110. In this regard, the Government indicates that the provisions of article 111 of the Migration Act on the prolongation of temporary holding measures resulting from an application for *amparo* or another procedure are being updated, to the effect that the applicant must remain in temporary holding until such applications are resolved.

111. The Government claims that the foregoing demonstrates that the presentation and holding of Mr. Boyazhyan were conducted in accordance with the principles of reasonableness, proportionality and necessity, which must be met in order for detention to be considered non-arbitrary.

112. In view of the fact that there was a legal basis for the presentation and holding of Mr. Ferman Cruz and Mr. Boyazhyan, since they were not in possession of documents proving that they were in Mexico lawfully, and that the measures taken were necessary, proportionate and reasonable and both complainants are now at liberty, the Government requests that their detention be found to be non-arbitrary.

The presentation and holding of the migrants did not result from the exercise of rights or freedoms

113. The Government reiterates that the presentation and holding of Mr. Ferman Cruz and Mr. Boyazhyan were carried out for reasons of public order, in accordance with the law. Moreover, Mr. Ferman Cruz and Mr. Boyazhyan had the opportunity to seek remedies against alleged violations before the Mexican courts, which they did by initiating the *amparo* proceedings mentioned above.

114. The Government indicates that since the presentation and holding of Mr. Ferman Cruz and Mr. Boyazhyan did not result from their exercise of rights or freedoms, but rather were carried out to allow the National Institute of Migration to regularize their migration status, their detention does not fall under category II.

The presentation and holding of the migrants did not result from the total or partial non-observance of the international norms relating to the right to a fair trial

115. The Government indicates that persons detained in the context of migration procedures have the same rights as persons detained in the context of criminal justice or administrative proceedings, including the rights set out in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

116. In accordance with article 70 of the Migration Act, all migrants have the right to receive legal assistance from and be represented legally by a person of their choosing during the administrative procedure. Migrants have the right to due process, which means that the procedure must be conducted by the competent authorities, that they have the right to submit evidence and plead their case, to have access to the records in their migration file and to benefit from the services of a translator or interpreter to facilitate communication, and that all decisions made by the authorities must be duly substantiated and reasoned.

117. The migration procedures initiated in respect of Mr. Boyazhyan and Mr. Ferman Cruz were conducted by the National Institute of Migration, which is the authority responsible for the presentation and holding of persons who are unable to prove that they are in the country lawfully.

118. From the moment they were taken into the custody of the National Institute of Migration, Mr. Boyazhyan and Mr. Ferman Cruz were able to appoint defence lawyers, who, in both cases, filed for remedies on their behalf and submitted the evidence they saw fit to present.

119. Mr. Boyazhyan benefited from the services of translators, although it should be noted that he speaks and understands Spanish.

120. Accordingly, contrary to the source's allegations, the Government claims that the detention of Mr. Ferman Cruz and Mr. Boyazhyan does not fall under category III, since they had access to a fair trial.

The detention was not ordered in response to an application for asylum or refugee status or on the basis of the complaints' status as immigrants

121. The Government recalls that the presentation and holding of Mr. Ferman Cruz and Mr. Boyazhyan were carried out following immigration checks conducted by the National Institute of Migration. Such checks are carried out in order to verify whether migrants have the necessary documents to prove that their migration status is regular. When the officials of the National Institute of Migration became aware that Mr. Ferman Cruz and Mr. Boyazhyan did not have the necessary documentation, they took them into custody.

122. The presentation and holding of Mr. Ferman Cruz and Mr. Boyazhyan were prolonged because their presence was required for the purposes of subsequent procedures, namely the refugee status application procedure and statelessness determination procedure.

123. In the light of the above, the Government maintains that while the presentation and holding of Mr. Ferman Cruz and Mr. Boyazhyan were ordered in the context of proceedings relating to their migration status, they were maintained for the legitimate aim of verifying the two men's identities and ensuring that they were present for the procedures initiated after they were taken into custody, for which reason their detention does not fall under category IV.

The presentation and holding of the migrants did not constitute a violation of international law on the grounds of discrimination

124. The Government indicates that, contrary to the source's allegations, Instruction INM/DGCVM/0014/2016 does not establish a special regime of a general and impersonal nature and does not provide for discriminatory categorization. In fact, it instructs the National Institute of Migration to transfer all migrants who request refugee status to the migrant holding centre in Mexico City so that their applications can be processed and resolved expeditiously.

125. Mr. Ferman Cruz petitioned for *amparo* against the above-mentioned instruction, but the Fifth District Administrative Court of Mexico City dismissed the case on 30 May 2018 on the grounds that the allegations presented were unfounded.

126. The Government reiterates that on 26 January 2016 the National Institute of Migration issued Decision VARANA 5359, authorizing Mr. Ferman Cruz's release from the migrant holding centre while his application for refugee status was under review, but that Mr. Ferman Cruz refused to leave the centre.

127. The presentation and holding of Mr. Ferman Cruz and Mr. Boyazhyan were carried out in accordance with the law, with the legitimate aim of verifying the men's identities and ensuring that they were present for the purposes of subsequent procedures. Consequently, these measures do not fall under category V.

Additional comments from the source

128. The Working Group transmitted the Government's response to the source on 22 October 2018. The source submitted final comments and observations on 6 November 2018.

129. The source indicates that deprivation of liberty, referred to as "holding" in the Migration Act, is mandatory in cases of migrants in an irregular situation. The Inter-American Commission on Human Rights has stated that the detention of migrants is the rule rather than the exception in Mexico. The Special Rapporteur on torture has arrived at the same conclusion. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families has also expressed concern regarding the conditions in which some migrants are detained.

130. The Constitution establishes that administrative detention may not exceed 36 hours. Holding, on the other hand, which is a measure provided for by the law, may last for 15 days and in certain circumstances may be prolonged for up to 60 days or even indefinitely.

131. The source claims that any suspension of the migration procedure leads to the prolongation of detention without a maximum time limit or safeguards such as periodic review.

132. The source alleges that no individual assessment of the merits of deprivation of liberty was undertaken prior to its application in either case, and that no evidence has been adduced to suggest that this measure was exceptional or that no less-harmful alternatives were available. The source stresses that the Government has invoked reasons of public order as its sole justification for the decision to order detention.

133. According to the source, the identity of both migrants was known to the authorities and was never in question, and identity verification was never given as reason for their

detention. No assessment was carried out with regard to a possible risk that made detention necessary in order to “ensure” the presence Mr. Ferman Cruz and Mr. Boyazhyan for the purposes of the proceedings.

134. The source alleges that the detention of migrants is carried out without effective judicial oversight and with no regard for reasonableness, necessity or proportionality. Contrary to the Government’s assertions, the suitability of detention is not assessed on a case-by-case basis but rather on the basis of the individual’s migration status.

135. According to the source, the Government’s reference to the application of judicial protection procedures is an attempt to prove that the detention was reviewed and was not arbitrary. However, these review measures were conducted on an exceptional basis and at the request of a party, and that the necessity and proportionality of detention are not automatically and regularly reviewed.

136. The source claims that the judiciary does not ensure the timely and effective protection of the right to personal liberty. This leads to situations in which a substantive decision is taken only after release, as well as to the withdrawal of applications for *amparo* and the dismissal of proceedings.

137. In the case of Mr. Ferman Cruz, the source notes that on 26 January 2016 the National Institute of Migration issued Decision VARANA 5359, granting him a temporary visitor’s permit with permission to carry out paid work, but that Mr. Ferman Cruz himself was not notified of this decision. In breach of the rules governing administrative procedure, the Decision does not include a signature or fingerprint acknowledging receipt. The temporary visitor’s permit features the sentence, “I wish to continue my proceedings before the Mexican Commission on Assistance for Refugees in this migrant holding centre”, but it is unclear who wrote this. This sentence constitutes a waiver of Mr. Ferman Cruz’s rights and does not comply with the requirements of the governing normative framework, which requires that all public servants adjoin their name, position and signature to the decisions they issue and the notices they serve. The identity of the public servant who wrote the note is unknown. Mr. Ferman Cruz denies having written it or having requested that it be written for him. Furthermore, the note was not written in the presence of a lawyer, who could have ensured that Mr. Ferman Cruz was fully aware of its contents.

138. The source claims that the allegations of torture were not properly investigated. On 8 March 2018, a court decided not to admit consideration of the Istanbul Protocol during the protection proceedings. Mr. Ferman Cruz’s counsel had planned to make reference to the Protocol to illustrate how his prolonged detention of almost one year had undermined his physical and psychological integrity.

139. In the case of Mr. Boyazhyan, the source reiterates that migration officials entered his home without a warrant and that there is no record in his case file of any act ordering that inspection.

140. The source notes that the order to place Mr. Boyazhyan in the migrant holding centre was issued on the ground that he had entered Mexico in an irregular manner, when in truth he had entered the country legally but his authorization to remain had expired. Such an offence is not covered by article 144 of the Migration Act.

141. The source claims that the effective exercise of the right to a legal defence and access to the means with which to exercise that right were obstructed by Mr. Boyazhyan’s transfer between various migrant holding centres; the authorities’ failure to provide information regarding the procedure, the reasons for his detention and the actions they had undertaken; Mr. Boyazhyan’s limited communication with the outside world; and the fact that Mr. Boyazhyan was denied full access to information regarding his case and his case file. Mr. Boyazhyan eventually gained access to the records in his case file through the intervention of the courts. However, his ability to prepare an effective and timely defence was undermined from the start.

142. According to the source, the judicial authorities considered it necessary for Mr. Boyazhyan to have an interpreter; however, whenever the clerk of the court visited Mr. Boyazhyan, he would ask a migration official, who had neither the requisite qualifications nor experience, to act as an interpreter. In the source’s view, an agreement establishing that

Mr. Boyazhyan does not need a translator, even if signed by him, cannot be considered valid if Mr. Boyazhyan did not benefit from the services of a translator who could explain the contents of the agreement to him before he was asked to sign it.

143. The source stresses that the exercise of means of legal defence against the arbitrary detention and the submission of applications for refugee and stateless status had the effect of prolonging the detention, with all the attendant effects on the detainee's physical and mental health.

Discussion

144. The Working Group thanks the source and the Government for the information provided, which allows for a thorough assessment of the facts and allegations in this case.

145. The Working Group notes that Mr. Ferman Cruz and Mr. Boyazhyan are no longer in detention but that the details of their respective situations, namely the duration of their detention, the lack of periodic review, the systematic nature of their detention and the lack of effective judicial protection, are such that there is still a need to adopt an opinion that provides clarity for the future, should similar situations arise. Consequently, in accordance with paragraph 17 (a) of its methods of work, the Working Group decides to proceed with its consideration of the case.

146. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹

147. The source and the Government do not disagree on the basic facts of the present case. Mr. Ferman Cruz is a national of El Salvador who, fearing for his life, fled his own country and arrived in Mexico in September 2015. He was detained on 11 November 2015. On 26 January 2016, the order was given for his release; however, he remained in detention. In May 2016, he applied to be released on humanitarian grounds, but his request was denied. In October 2016, the Mexican Commission on Assistance for Refugees granted Mr. Ferman Cruz protection, as a result of which he became a lawful resident of Mexico. He was released on 8 November 2016. Mr. Boyazhyan is from Crimea (Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation). He arrived in Mexico in 2013 and was detained in 2016. He was released on 2 December 2016, after almost nine months of detention, and recognized as stateless by the National Institute of Migration.

148. The key issue to be considered in the present case is the regime of administrative detention applied in respect of migrants.

149. The source alleges that the Mexican legal framework provides for the mandatory detention of migrants in an irregular situation. The Government states that the detention in the present case was conducted in accordance with the procedure of "presentation", which is provided for in article 3 (XX) of the Migration Act and is defined as "a measure ordered by the National Institute of Migration whereby foreign nationals who are unable to demonstrate their migration status are placed in temporary holding for the purposes of the regularization of their stay or to facilitate their return". The source stresses that this custodial measure may be, and in this case was, prolonged for more than 15 days or indefinitely.

150. The Working Group recalls that migrants should not be subject to automatic and mandatory detention, and that any deprivation of liberty exceptionally imposed must be limited in time and should not be unnecessarily prolonged. In addition, the detention of migrants should be subject to periodic review and appropriate judicial oversight.² In the present case, the way in which the two migrants concerned were detained demonstrates that alternatives to deprivation of liberty were not given due consideration and, therefore, that

¹ A/HRC/19/57, para. 68.

² A/HRC/39/45, annex: Revised deliberation No. 5 on deprivation of liberty of migrants.

their detention was imposed on a mandatory basis. The authorities did not even take into account the family situation of Mr. Boyazhyan, whose partner was pregnant and gave birth to their child while he was in detention. The facts reveal a failure to respect the basic principles that should govern the detention of migrants.

151. The source also claims that the detainees were not permitted access to effective legal assistance during the proceedings. Moreover, in both cases, the detainees' applications for the remedy of *amparo* not only led to the prolongation of their detention but also to reprisals by migration officials, which were sufficiently serious as to force the withdrawal of some of the appeals lodged. This demonstrates that the legal procedures initiated were ineffective in ensuring judicial safeguards, which had a negative impact on the substantive procedure and on its perceived impartiality.

152. The Working Group considers that the above issues support the source's claims regarding the right to seek asylum.³

153. The Working Group therefore concludes that the deprivation of liberty of Mr. Ferman Cruz and Mr. Boyazhyan was arbitrary under category IV.

154. Furthermore, the Working Group notes with concern that an order was given for the release of Mr. Ferman Cruz but was not carried out, despite the order being a document with legal force intended to protect Mr. Ferman Cruz's personal liberty. It is difficult to believe that Mr. Ferman Cruz would have decided to remain in detention at the migrant holding centre when he had filed several judicial and administrative appeals seeking his release. Consequently, the continued detention of Mr. Ferman Cruz in spite of the release order was illegal, since it was devoid of any legal basis. The detention of Mr. Ferman Cruz following the issuance of the release order was therefore arbitrary and falls under category I.

155. The Working Group considers that Mr. Ferman Cruz and Mr. Boyazhyan were detained solely on the grounds of their migration status and their having submitted requests for protection in accordance with the law. The actions of Mr. Ferman Cruz and Mr. Boyazhyan constituted attempts to avail themselves of their rights, such as the right to seek asylum, which is enshrined in article 14 of the Universal Declaration of Human Rights. The Working Group has consistently affirmed that seeking asylum is not an offence and that no one may be deprived of liberty for the sole reason that they are seeking asylum.⁴ In addition, Mr. Ferman Cruz's and Mr. Boyazhyan's personal liberty was restricted even further when they sought, through the *amparo* procedure, the equal protection of the law to which they have a right under articles 7 and 8 of the Universal Declaration of Human Rights and article 26 of the Covenant. Accordingly, the Working Group finds that the prolonged detention of Mr. Ferman Cruz and Mr. Boyazhyan, which was motivated by their migration status and their exercise of the right to seek international protection and the equal protection of the law, was arbitrary under category II.

156. The alleged violations in the present case could also fall under category V, since both migrants were victims of structural discrimination on the basis of their status as foreign nationals and their personal backgrounds. However, in view of the fact that this information has already been assessed in relation to the findings under categories II and IV, the Working Group considers that it is not in a position to reach any further conclusions on this matter.

157. The Working Group recalls that torture and cruel and inhuman treatment are prohibited under international law in all settings, whether in the context of the criminal justice system or elsewhere. Moreover, it is an established peremptory norm of international law that no one may be returned to a country where he or she would be at risk of suffering serious and irreparable harm. In the present case, it is concerning that during the course of the migration procedure the National Institute of Migration decided to deport

³ See opinion No. 72/2017, para. 65.

⁴ See A/HRC/39/45, annex: Revised deliberation No. 5 on deprivation of liberty of migrants, paras. 9–11; opinions Nos. 1/2019, paras. 71 and 73, and 2/2019, paras. 80 and 92.

Mr. Boyazhyan without due regard for the principle of non-refoulement. It is equally worrying that Mr. Ferman Cruz was threatened with deportation by migration officials.

158. The Working Group is concerned at the allegations that Mr. Ferman Cruz and Mr. Boyazhyan were subjected to torture and ill-treatment. It is also concerned at information suggesting that the competent authorities, which are required to offer real protection pursuant to article 8 of the Universal Declaration of Human Rights, failed to provide effective judicial protection with regard to the allegations of torture and ill-treatment. The Working Group cannot understand how the remedy of *amparo*, which is intended to be an expeditious means of protecting fundamental rights, could have resulted in the prolongation of the detention of Mr. Ferman Cruz and Mr. Boyazhyan, leaving them in an even more vulnerable position and allowing for the possibility of further violations of their fundamental rights.⁵ The Working Group has decided to refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

159. Lastly, the Working Group is concerned about the allegations that the state of Mr. Ferman Cruz's and Mr. Boyazhyan's health deteriorated while they were in the custody of the State authorities. It has therefore decided to refer the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the human rights of migrants.

Disposition

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

The deprivation of liberty of Mr. Ferman Cruz, being in contravention of articles 7, 8, 9 and 14 of the Universal Declaration of Human Rights and of articles 9 and 26 of the International Covenant on Civil and Political Rights, was arbitrary and falls within categories I, II and IV.

The deprivation of liberty of Mr. Boyazhyan, being in contravention of articles 7, 8, 9 and 14 of the Universal Declaration of Human Rights and of articles 9 and 26 of the International Covenant on Civil and Political Rights, was arbitrary and falls within categories II and IV.

161. The Working Group requests the Government of Mexico to take the necessary steps to remedy the situation of Mr. Ferman Cruz and Mr. Boyazhyan without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

162. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Ferman Cruz and Mr. Boyazhyan an enforceable right to compensation and other reparations, in accordance with international law.

163. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Ferman Cruz and Mr. Boyazhyan and to take appropriate measures against those responsible for the violation of their rights.

164. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the human rights of migrants, for appropriate action.

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

⁵ See opinion No. 32/2019.

Follow-up procedure

166. 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 compensation or other reparations have been made to Mr. Ferman Cruz and Mr. Boyazhyan;

(b) Whether an investigation has been conducted into the violation of Mr. Ferman Cruz's and Mr. Boyazhyan's rights and, if so, the outcome of the investigation;

(c) 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;

(d) Whether any other action has been taken to implement the present opinion.

167. 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.

168. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of 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.

169. 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.⁶

[Adopted on 16 August 2019]

⁶ See Human Rights Council resolution 42/22, para. 3.