



General Assembly

Distr.: General
28 January 2020
English
Original: Spanish

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-sixth session, 18–22 November 2019

Opinion No. 64/2019 concerning Ricardo Rodríguez Advíncula and Luciano Rodríguez Ramos (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 44/22.
2. In accordance with its methods of work (A/HRC/36/38), on 9 July 2019 the Working Group transmitted to the Government of Mexico a communication concerning Ricardo Rodríguez Advíncula and Luciano Rodríguez Ramos. The Government replied to the communication on 9 September 2019. 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);
 - (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,

* 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.



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. Mr. Rodríguez Advíncula, a Mexican national, born in 1977, is the owner of a transport business. His father, Mr. Rodríguez Ramos, also a Mexican national, born in 1949, works in the same profession. Mr. Rodríguez Ramos suffers from diabetes and high blood pressure. Both men have filed complaints relating to insecurity and corrupt behaviour by public officials. Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula have built infrastructure that has transformed the transport sector in their region. They have stood up for and defended the rights and interests of workers, businesses and customers in the transport sector in the State of Mexico. In 2009, they left the Institutional Revolutionary Party and joined the Workers' Party.

5. Third parties have reportedly made attempts to illegally take over the business belonging to Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula and have used criminal charges to have them placed in automatic pretrial detention in order to exert pressure on them. Complaints were filed against Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula on the basis of false and non-existent information and evidence that gave rise to the activation of the mechanism provided for in article 19 of the Constitution, which prohibits alternative measures to detention.

Arrest and detention

6. According to the information received, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were arrested on 11 August 2017 at approximately 2.30 p.m. The arrests were made on a public highway in the municipality of Ixtapaluca, State of Mexico, allegedly on the basis of arrest warrants, although these were not shown to them. The arresting officers used excessive force, assaulted family members and refused the detainees' request for the presence and assistance of a lawyer.

7. According to the source, during the arrest they were not informed of the charges against them, nor were their rights or the constitutional guarantees explained to them. They were transferred to the court orders division in Nezahualcóyotl. After being detained for eight hours without justification, they were taken to another unknown location in an armoured vehicle accompanied by several armed police officers. Throughout this time, they did not know what was happening, had no contact with family members or lawyers, were chained at the wrists and ankles, did not have access to health services and were not provided with adequate food. They were not immediately brought before a judge. They were ultimately transferred by helicopter to the Santiaguito Prevention and Social Rehabilitation Centre in Almoloya de Juárez, where they arrived at 2.20 a.m. on 12 August 2017.

8. The source indicates that after their arrest, the State Prosecutor's Office published a news item on social media. Entitled "Two suspected murderers arrested", it included images showing the faces of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula and publicly described them as killers.

9. Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were brought before a due process judge in Toluca on 13 August 2017 on charges of robbery with violence. The same day, they were ordered to be placed in automatic pretrial detention, with no possibility of requesting alternative measures.

10. On 17 August 2017, Mr. Rodríguez Ramos was discharged and ordered to be released. However, the Prosecutor's Office executed a new arrest warrant, this time for causing damage to property using explosives, another offence which gives rise to automatic pretrial detention. He was released on 23 August 2017 after again being discharged.

11. On 17 August 2017, the judge issued an order for Mr. Rodríguez Advíncula to stand trial and remain in pretrial detention. The defence filed an appeal on which the higher court ruled on 5 October 2017, ordering the case to be reset owing to procedural flaws. On 12 October 2017, a new order was issued for Mr. Rodríguez Advíncula to stand trial and he was again ordered to remain in detention. A time limit of two months was set for the investigation to be conducted. The defence again filed an appeal. That appeal was settled on 30 November 2017 when the Second Court of Appeal upheld the order for Mr. Rodríguez Advíncula to stand trial. The defence filed an application for indirect *amparo*, which was granted on 22 February 2018.

12. In the case of Mr. Rodríguez Advíncula, the source points out that the constitutionality of the order for him to stand trial and to remain in detention has not been established because the order violated fundamental guarantees. As reflected in his medical record, Mr. Rodríguez Advíncula's detention caused him to suffer physical and emotional exhaustion because his family and business were left unprotected. His safety and integrity were put at risk during his detention, as reflected in his statement at a hearing on 16 February 2018 before the due process judge, who sent an official letter to the Director of the Prevention and Social Rehabilitation Centre asking for "verification that security measures were in place to protect Mr. Rodríguez Advíncula's fundamental human rights and ensure his safety within the Centre, following his claims to have been the target of threats and acts of intimidation by a number of inmates".

13. On five occasions between 7 December 2017 and 19 March 2018, the defence requested an extension of the time limit for the conclusion of the investigation because the Public Prosecution Service had not gathered the essential evidence that had been requested. The due process judge granted repeated extensions to the time limit, amounting to more than four months.

14. The investigation was concluded on 9 April 2018 and the due process judge granted the Public Prosecutor's Office 15 days to file charges. On 24 April, the Public Prosecutor's Office submitted the charges but failed to include expert opinions. The judge decided, ex officio and without legal basis, to grant the Office a period of three days for the errors to be addressed. On 4 May, after the time limit had expired, the Public Prosecutor's Office filed the charges again, in partial compliance with the order. The charges were admitted.

15. On 11 May 2018, seven days later than required by law, the judge notified the defence that the charges had been admitted on 4 May. On 14 May, the defence lodged an appeal against the decision of 24 April; the appeal was dismissed.

16. On 4 June 2018, the parties were called to an interim hearing, which was then adjourned because other judicial decisions remained pending, in particular the outcome of the request of the Prosecutor's Office for a review of the *amparo* ruling of 22 February 2018.

17. At a hearing on 7 August 2018 in the course of the review of the *amparo* ruling of 22 February 2018, the court refused to allow the inclusion of a video on Mr. Rodríguez Advíncula's detention. On 9 August, it issued a ruling ordering Mr. Rodríguez Advíncula to stand trial. A new application for *amparo* was filed against that decision; the application was dismissed on 19 October 2018, even though it had been demonstrated that Mr. Rodríguez Advíncula had been subjected to acts of torture and arbitrary detention.

18. The defence requested a review of the dismissal; the review proceedings took place between 6 November 2018 and 3 April 2019. When the trial judge was informed of the *amparo* application at a hearing on 4 September 2018, he adjourned the proceedings, and Mr. Rodríguez Advíncula remained in pretrial detention.

19. The source further reports that, at a hearing on 21 December 2018, the precautionary measures were reviewed and the judge considered that mandatory pretrial detention and article 19 of the Constitution were compatible with international human rights standards. The defence filed an application for indirect *amparo* regarding that decision; the application was dismissed on 25 February 2019. The defence then filed an appeal for a review by the Supreme Court; the outcome of that procedure remains pending.

20. On 3 April 2019, the decision to dismiss the *amparo* application was upheld. On 4 April, the parties were summoned to an intermediate hearing to discuss the indictment and the presentation and exclusion of evidence. On 24 April, an order was issued for the commencement of oral proceedings.

21. Between 7 and 13 May 2019, the evidence was presented. The Prosecutor's Office was then given 10 working days to prepare its final arguments, an arrangement which has no basis in law. The hearing was reconvened on 27 May 2019.

22. On 30 May 2019, the court acquitted Mr. Rodríguez Advíncula because the Prosecutor's Office had provided insufficient evidence and failed in its duty to prove the case. On the same day, Mr. Rodríguez Advíncula was released, having spent one year and nine months in pretrial detention.

23. The source deems it important for the Working Group to be aware that despite his release, due process violations were committed during the trial, in contravention of article 14 of the Covenant. In the relevant decision, the judge did not rule on the allegations of arbitrary detention and the corresponding evidence and did not take into consideration international standards on personal liberty. Furthermore, he did not issue any rulings relating to torture and ill-treatment or temporary enforced disappearance following Mr. Rodríguez Advíncula's arrest. Furthermore, the judge did not ensure that the Prosecutor's Office investigated the allegations of torture, did not request the relevant reports and did not undertake any relevant investigative activities.

Background and initial phase of the investigation conducted by the Prosecutor's Office of the State of Mexico

24. The source indicates that the case began with a murder committed on 18 February 2015. When the Prosecutor's Office of the State of Mexico became aware of the murder, it sent officials and law enforcement officers to the scene to conduct an examination of the body and its clothing, search for clues and make arrangements for the removal and transfer of the corpse. During the examination of the body, blood stains were observed. Officials failed to conduct the proper analysis to determine the cause of the blood stains. The body was identified and examined for external injuries and identifying marks, and the deceased's personal belongings and clothing were inspected. The Public Prosecution Service interviewed only one police officer, who reported that he had found two spent bullet casings. Detailed records from the victim's cell phone showed that moments before his death he had sent messages saying that the Vipers, a local criminal group, had arrived. The autopsy and medical reports indicated the origins of the deceased's injuries and the cause of his death. The Prosecutor's Office conducted a forensic examination of the crime scene and took photographs. Officials interviewed one of the three alleged eyewitnesses; the other two were not interviewed until 24 February 2015. When shown photographs, the witness identified a person other than Mr. Rodríguez Ramos or Mr. Rodríguez Advíncula as one of the alleged killers. An insufficient amount of gunshot residue was collected and therefore could not be analysed.

25. The source states that, despite the claim that there is a chain of custody for all the evidence, there was little evidence in the file at the time the arrest warrant was requested or when the accused was sent for trial. Since there was an unjustified delay on the part of the arresting officers, who did not immediately bring the detainees before a judge on 11 August 2017, the source alleges that the Prosecutor's Office made use of the intervening period to petition the authorities to decline jurisdiction. Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were not brought before a judge until 24 hours after their arrest, during which time the arresting officers subjected them to cruel, inhuman and degrading treatment.

Allegations from the source

26. The source alleges that the use of pretrial detention as a precautionary measure violates the principles of proportionality, suitability and necessity. The source claims that the Public Prosecutor's Office did not demonstrate why it was the most suitable measure to achieve the intended objectives, why it was necessary and would not entail excessive

restrictions on individual rights, or how, as a restrictive measure, it was proportionate, reasonable and not excessive in relation to the intended objective.

27. According to the information received, on 13 August 2017 the judge ordered automatic pretrial detention even though the Public Prosecutor's Office had not justified the need for it or demonstrated why it was the only measure that would guarantee that the accused would appear for trial. The judge did not allow an assessment of other less harmful measures. Pretrial detention was ordered because the offence is listed in article 19 of the Constitution. This runs counter to article 9 (3) of the Covenant,¹ according to which decisions about the use of such detention should be made on a case-by-case basis. According to the source, the presumption of innocence became a presumption of guilt because the possibility of imposing an alternative measure was not discussed. The judge was not able to analyse the individual circumstances of the case, thereby violating international legal standards and the independence of judges and ignoring the equality of human beings, as set out in article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.

28. According to the source, this creates a situation of discrimination between persons who can benefit from alternative measures to pretrial detention and persons who cannot. In the source's view, there has been a violation of articles 2 and 26 of the Covenant given that the alleged offences are listed in article 19 of the Constitution. Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were denied their freedom and were thus discriminated against, as compared to persons who are able to benefit from alternatives to pretrial detention.

29. The source points out that judicial oversight of the legality of detention is essential to ensure that such detention has a legal basis.² The source alleges that, in judicial practice, judges generally do not verify the legality of detention resulting from the execution of arrest warrants and there is no effective judicial remedy to challenge it.³ When State agents execute arrest warrants and do not immediately bring detainees before a judge, they blame the delay on the issuance of medical certificates, which do not appear in the case file, and make use of the intervening period to inflict cruel, inhuman and degrading treatment, including physical and/or psychological torture, as allegedly occurred in this case.

30. The source indicates that Mr. Rodríguez Advíncula's placement in pretrial detention was not subject to regular review. The due process judge did not at any time ask the Public Prosecutor's Office to provide justification for his continued detention. On 19 December 2018, a review of the precautionary measures was requested. On 21 December, the due process judge did not follow the established international guidelines,⁴ ruling that mandatory pretrial detention did not breach international standards and that, owing to the nature of the offence, it was not necessary for the Public Prosecutor's Office to prove that there was a need for caution.

31. The source also highlights serious violations of due process. The source claims that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were deprived of a proper defence because they were not notified in a timely manner of the charges that had been filed against them, they were not shown an arrest warrant at the time of their arrest and were not provided with information as to why they were being arrested. Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were not given the opportunity to assess or challenge the pretrial evidence that gave rise to the arrest warrant. The source alleges that there were other

¹ Opinion No. 1/2018.

² The source refers to the jurisprudence of the Working Group and to the Human Rights Committee's general comment No. 35 (2014) on liberty and security of the person.

³ Collegiate Circuit Courts: "the arrest, imprisonment and detention of the accused must be considered irreparable acts for the purposes of *amparo* proceedings, in accordance with article 61, section XVI, of the applicable law, when they are contested separately or in conjunction with the detention order, because even if constitutional protection were to be granted, it would be physically and materially impossible to restore the affected parties' enjoyment of the violated rights and return them to their prior state. At the material level, there would be no way to undo the complainant's arrest, imprisonment or detention, because they have already occurred and cannot be reversed by a ruling."

⁴ Opinion No. 1/2018, para. 65.

irregularities, including the loss of some pieces of evidence and a lack of rigour in the chain of custody. For example, the murder victim's trousers were destroyed, and the Prosecutor's Office reportedly lost video footage that was crucial to the case. The source also indicates that witnesses were manipulated, since they have a working relationship with one of the plaintiffs. These procedural irregularities impacted on the principle of equality of arms.

32. According to the source, if allegations of torture are disregarded without investigation, the person making them cannot mount a proper defence because no consideration is given to the possible unlawfulness of the trial. Failure to investigate torture as a human rights violation as part of the trial proceedings constitutes a violation of procedural laws.

33. The source adds that Mr. Rodríguez Advíncula's acquittal does not undo the one year and nine months he spent in illegal and arbitrary detention or the torture and violations of due process to which he was subjected. The source claims that there is a systemic problem in Mexico with regard to the fulfilment of its obligations to respect, protect and uphold human rights under article 2 (1) of the Covenant.

34. With regard to category I, the source states that the arresting officers did not inform the detainees of their rights or of the reasons for their arrest, nor did they provide prompt notification of the charges, in violation of article 9 of the Covenant. The detainees were not immediately brought before a judge to challenge the legality of their detention; this happened more than 12 hours after their arrest. Consequently, their detention had no legal basis and must be considered arbitrary. Furthermore, the legal basis for detention does not meet international standards on liberty of person and the guarantee of alternative measures with a view to ensuring that detention does not become the rule. Article 19 of the Constitution breaches the international obligation to ensure that pretrial detention is an exception rather than the general rule, as set forth in article 9 (3) of the Covenant. This represents a structural problem which is manifested in the mandatory application of pretrial detention. The source alleges a violation of the principle of legality owing to the application of article 19 of the Constitution; article 19 sets out vague and excessively broad criteria that are used to justify automatic detention. Since the proportionality, necessity and suitability of pretrial detention had not been demonstrated, the judge should have ordered alternative measures. However, owing to the provisions of the Constitution, he was unable to consider alternatives to detention.

35. With regard to category II, the source indicates that automatic detention without an individual assessment of the case constituted a violation of the right to equality set forth in article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. The detention came about because the exercise of the right to liberty of person on an equal footing was impeded.

36. With regard to category III, the source claims that pretrial detention should not be mandatory for all defendants charged with a particular offence, without regard to individual circumstances. Neither should pretrial detention be ordered for a period based on the potential sentence, rather than on a determination of its necessity. International standards relating to a fair trial were not observed; in particular, there was a violation of the fundamental right to be presumed innocent, as set forth in article 14 (2) of the Covenant. Given that criminal responsibility could not be demonstrated, the detention compromised the presumption of innocence. The imposition of mandatory pretrial detention for certain offences nullifies the presumption of innocence, since persons accused of such offences are automatically detained without consideration of alternative measures to pretrial detention. The source claims that the violation of the right to a fair trial must be considered to be of such gravity as to render the detention arbitrary.

37. With regard to category V, the source claims that the detainees were discriminated against because, under the Constitution, they were not permitted to benefit from alternatives to detention, which unjustifiably limited their right to liberty of person, in contravention of articles 3 and 26 of the Covenant. The denial of alternatives to detention gave rise to violations of the rights to equality before the law and non-discrimination that are set forth in articles 3 and 26 of the Covenant. Because of the offences of which Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were accused, no alternative measures were permitted,

giving rise to discrimination which erased their dignity and disregarded the principle of equality among human beings. The source indicates that as a result of the distinction made in article 19 of the Constitution, the detainees were subjected to discrimination on the basis of “other status”, which is prohibited under articles 2 (1) and 26 of the Covenant.

Response from the Government

38. The Working Group transmitted the source’s allegations to the Government on 9 July 2019. The Working Group requested the Government to provide, by 9 September, detailed information about the case of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula.

39. On 9 September 2019, the Government responded, setting out the background to the proceedings against Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula. According to the Government, four case files were opened.

Case file No. 665770550003715

40. The Government reports that this investigation was initiated on 18 February 2015, when a body was discovered on a public highway. In the course of the investigation, evidence collection included an examination of the crime scene, the identification of the body and interviews with a number of witnesses. In the autopsy report, the victim was found to have died from a gunshot wound. Two witnesses identified Mr. Rodríguez Advíncula as one of the persons responsible.

41. On 12 March 2015, a due process judge in Zumpango issued an arrest warrant for Mr. Rodríguez Advíncula, which was enforced at approximately 3 p.m. on 11 August 2017, when police officers from the State Prosecutor’s Office identified Mr. Rodríguez Advíncula and informed him that they had a warrant for his arrest. However, he and his companions resisted, attacking the arresting officers both physically and verbally. Consequently, the arrest was not actually made until 4.30 p.m. and required the support of federal, state and municipal police officers.

42. On 17 August 2017, Mr. Rodríguez Advíncula was ordered to stand trial, a decision that he appealed. In a judgment of 5 October 2017, the case was reset. On 12 October 2017, a new order was issued for him to stand trial. That order was also challenged but was upheld in a ruling on 13 December 2017. Mr. Rodríguez Advíncula disagreed with the decision and filed an application for *amparo* against the ruling upholding the decision to send him for trial. At the *amparo* hearing, on 22 February 2018, the court sided with Mr. Rodríguez Advíncula, ruling that a new order for him to stand trial should be issued. Once again, Mr. Rodríguez Advíncula filed an appeal for review of the *amparo* ruling; the ruling was again upheld. A new order was issued for him to be sent for trial, and on 24 April 2019 the opening of the oral proceedings was ordered. Ultimately, Mr. Rodríguez Advíncula was acquitted on 30 May 2019 and released.

43. The Government notes that Mr. Rodríguez Advíncula was aware of the warrant issued for his arrest on suspicion of murder. On 13 April 2015, two years before his arrest, Mr. Rodríguez Advíncula filed a request for indirect *amparo*, which was registered under file No. 404/2015. His request was denied on the grounds that the facts of the case and his probable involvement were proven, together with the fact that the evidence he submitted with the request was insufficient to prove that he was elsewhere on the day of the murder.

Case file No. ZUM/CUA/ZUM/122/013518/16/07

44. According to the Government, on 13 July 2016 an investigation was launched following the recovery of a vehicle driven by Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula, which was found abandoned in a shop car park following a robbery. Consequently, a warrant was issued for their arrest. In the course of the initial investigation, evidence was gathered through interviews with several witnesses and examinations of the scene and the abandoned vehicle.

45. The Government reports that a complaint was filed in case file No. 162/2016 for the offence of aggravated robbery with violence. Four individuals stated that they had

witnessed Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula using violence to steal money from the complainants.

46. On 27 October 2016, the specialized due process judge for online issuance of search warrants and arrest warrants of the State of Mexico issued a warrant for the arrest of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula, which was executed on 11 August 2017.

47. The Government points out that a crowd prevented Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula from being transferred and admitted to Zumpango prison, which was the designated facility corresponding to the place where the offence had been committed. In order to protect their safety and that of the arresting officers, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were admitted to the Santiaguito Prevention and Social Rehabilitation Centre in the municipality of Almoloya de Juárez. Special competence was established by the judicial authority for security reasons and the case files were reassigned and allocated new numbers.

Case files Nos. 493500210113513 and 493500210113113

48. According to the Government, on 20 and 21 March 2013, case file No. 493500210113513 was opened in connection with a report that a bus operating between Mexico City and Zumpango and surrounding areas was on fire in Calle Golondrinas in the municipality of Teoloyucan. A second case file was opened in connection with a complaint filed by the driver of another bus that had been set on fire. In the course of the initial investigation, various pieces of evidence were collected, including witness interviews, two crime scene reports and forensic photographs.

49. In the course of the investigations, experts in explosives concluded that the damaged vehicles had been set on fire intentionally using gasoline and a naked flame. Three witnesses identified Mr. Rodríguez Ramos as one of the perpetrators of the offence.

50. The Government states that he was detained at the Santiaguito prison in the municipality of Almoloya de Juárez from approximately 6.10 p.m. on 17 August 2019. This was intended as a preventive measure designed to avoid a confrontation with a group of approximately 100 people who were waiting outside. This case was also filed with the due process judge of the Judicial District of Toluca.

Observations on the allegations of cruel and inhuman treatment

51. Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula have stated that they were attacked by the officers who arrested them. On 1 September 2017, at a hearing held by the due process judge of the Judicial District of Toluca, a case file was opened in connection with acts of torture reportedly committed against Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula.

52. According to the Government, various pieces of evidence have been gathered in the course of the investigation. An investigation report was requested and the Executive Commission for Victim Support of the State of Mexico was asked to appoint a psychologist and a legal adviser for Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula. In addition, the General Office for the Coordination of Expert Witness Services of the Prosecutor's Office of the State of Mexico was asked to appoint medical experts and psychologists specializing in the application of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). Mr. Rodríguez Advíncula was interviewed in the presence of expert psychologists and a legal adviser from the Executive Commission.

53. The Prosecutor's Office has two medical certificates relating to the physical and psychological health of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula, including injury and drug reports, that were issued when they were arrested for murder and robbery with violence and engaged in an altercation with the arresting officers. Both certificates were issued by a doctor on 11 August 2017 and duly signed by Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula.

54. In addition, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula filed four complaints with the Human Rights Commission of the State of Mexico, three of which were found not to correspond to human rights violations.

Observations on the detention of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula

55. The Government states that the detention of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula did have a legal basis because it was ordered in accordance with the applicable legislation, was necessary and proportionate to the aims pursued, and was reviewed by a judge in a timely manner.

56. The Government recalls that, under article 21 of the Constitution, the Public Prosecution Service and the police have the power and the obligation to investigate any offence reported. Entities must exercise that power within the scope of their competence and in accordance with applicable legislation. In addition, article 16 of the Constitution states that arrest warrants may be issued only by a judicial authority and only after a complaint has been submitted in connection with an offence defined by law.

57. In the present case, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were detained on the basis of the complaints filed against them in relation to charges of murder, robbery with violence and damage to property. The complaints were supported by the evidence gathered in the investigations, from which sufficient elements emerged to determine their probable responsibility for the offences.

58. The detention of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula was justified by an arrest warrant issued by a judicial authority. In the case of Mr. Rodríguez Advíncula, pretrial detention was imposed for the following reasons:

(a) There was a presumption that he had committed an offence, as justified by the order for him to stand trial for the offence of aggravated murder; and

(b) There was a risk of flight, given that the offence for which he was to be tried carries a prison sentence of between 40 and 70 years.

59. The Government stresses that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were aware of the charges against them at all times. They were given the opportunity to mount a suitable defence, as evidenced by the fact that they have filed a number of appeals and requests for *amparo* proceedings challenging their respective arrest warrants and orders to stand trial. Their detention complied with domestic law, given that it was ordered by the competent authority in accordance with a court order and based on a specific criminal offence explicitly provided for in the legislation applicable at the time of the events.

60. The Government argues that the detention was necessary and proportionate. The Government refers to the jurisprudence of the Human Rights Committee and an opinion in which the Working Group found the detention to fall under category I because there had been no notification of the charges through an arrest warrant or by other means and the length of the pretrial detention had exceeded the period established under national law.⁵

61. It was necessary to hold Mr. Rodríguez Advíncula in pretrial detention because he was facing trial for an offence considered serious under the legislation in place. Under article 18 of the Constitution, pretrial detention should be ordered in cases involving offences punishable by custodial sentences.

62. From the outset of their detention, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were informed of the charges against them and of their right to an adequate defence and had the opportunity to appoint their own lawyers and to challenge the orders issued.

63. Furthermore, Mr. Rodríguez Advíncula's trial was conducted in accordance with the time limits established by law. Once the arrest warrant had been executed, he was immediately brought before a due process judge, who ruled, within the time limit established in the Constitution, that he should stand trial. Similarly, the district and

⁵ The Government refers to opinion No. 10/2015.

collegiate court judges ruled in a timely manner on the appeals brought before them. As a result of their lawyers' efforts to defend them, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula have been released.

64. In addition, the Government notes that the detention of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula was reviewed by a judge without delay. The Public Prosecutor's Office gathered various pieces of evidence that enabled it to determine that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula had likely committed offences of aggravated murder, robbery with violence and damage to property. The Public Prosecutor's Office requested warrants for their arrest. At the time of their arrest, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula and the crowd of people accompanying them resisted the police, causing a delay in the completion of the procedure. Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula had to be transferred to another detention facility for their own safety and that of the arresting officers.

65. The Government states that the detention of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula does not fall under category II. Their detention did not result from their exercise of rights or freedoms; rather, it was based on the fact that they had likely committed a number of criminal offences.

66. According to the Government, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula had access to a fair trial, in that they were able to submit relevant evidence and file the appeals to which they were entitled by law. Both the Public Prosecution Service and the judge hearing the case acted in a timely manner and with due diligence throughout the proceedings. Therefore, the detention does not fall under category III.

67. Lastly, the detention of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula did not violate the right to non-discrimination established in international law. No favourable or unfavourable distinctions, exclusions, restrictions or preferences have been applied in the case of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula, and the recognition of their rights or their enjoyment or exercise thereof, on an equal footing, have in no way been nullified or impaired. Consequently, the detention does not fall under category V.

Discussion

68. The Working Group thanks the source and the Government for their submissions.

69. The Working Group welcomes the release of Mr. Rodríguez Ramos on 23 August 2017, after 12 days of detention, and of Mr. Rodríguez Advíncula on 30 May 2019, after one year and nine months of detention. According to paragraph 17 (a) of its methods of work, the Working Group reserves the right to render an opinion regarding whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In this case, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula allegedly experienced serious violations of their human rights. The Working Group considers it important to issue an opinion on their deprivation of liberty.

70. In determining whether the detention was arbitrary, the Working Group must follow the principles established in its jurisprudence regarding 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. Mere assertions that lawful procedures have been followed will not be sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

Category I

71. The source alleges that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were deprived of their liberty without being shown a warrant and without being informed of the reasons for their arrest. The source adds that they were not promptly notified of the charges against them or informed of their rights.

72. The Government denies these allegations and claims that a judicial authority issued arrest warrants during the investigations.⁶ It further states that Mr. Rodríguez Advíncula was informed that the authorities had obtained a warrant for his arrest, that he had been aware of the warrant for two years before he was arrested⁷ and that he had filed an *amparo* request to challenge it. The Government submits that at the time of their arrest, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were informed of the charges against them and of their right to an adequate defence. However, the Government did not provide any information or evidence to substantiate its claims.

73. In the absence of any information or evidence to substantiate the Government's claims,⁸ the Working Group finds the source's allegations credible. Even if arrest warrants were issued for Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula, the Government has not established that they were shown to them at the time of their arrest. If Mr. Rodríguez Advíncula did have prior knowledge of the warrant that had been issued against him, this does not exempt the authorities from their obligation to obtain a warrant, produce it at the time of arrest and explain the reasons for the arrest. Similarly, the Government has not refuted the claims that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were not immediately notified of the charges against them and were not informed of their rights.

74. According to article 9 (1) of the Covenant, no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. Article 9 (2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed of any charges against him or her. Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were not shown a warrant when they were arrested. The Working Group considers that in order for a deprivation of liberty to have a legal basis, it is not sufficient simply for there to be a law pursuant to which an arrest can be made. The authorities must invoke that legal basis and apply it to the circumstances of the case through a judicial order.⁹ Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were not informed of the reasons for their arrest, nor were they immediately notified of the charges against them. The Working Group considers that an arrest is arbitrary and constitutes a violation of articles 9 (1) and (2) of the Covenant if it is carried out without informing the person of the reasons for it,¹⁰ without immediate notification of the charges¹¹ and without complying with domestic legal procedures, such as notifying the accused of his or her rights.¹²

75. The source alleges that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were not immediately brought before a judge to determine the legality of their detention. The judicial review took place more than 12 hours after their arrest, and Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were subjected to temporary enforced disappearance during

⁶ The Government did not specifically mention that an arrest warrant was issued during investigations relating to the damage of property using explosives (case files No. 493500210113513 and No. 493500210113113). According to the Government, the detention in connection with that alleged incident took place at the Prevention and Social Rehabilitation Centre, where Mr. Rodríguez Ramos was already being held on suspicion of robbery with violence.

⁷ According to the Government, there was a significant delay between the issuance of the arrest warrants and their execution. For example, although a warrant was issued for the arrest of Mr. Rodríguez Advíncula on suspicion of murder on 12 March 2015, it was not executed until 11 August 2017. Similarly, the warrant issued on 27 October 2016 for the arrest of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula on suspicion of robbery with violence was not executed until 11 August 2017. No reasons were given for these delays. It is not clear to the Working Group whether the initial decision that it was lawful and appropriate to issue the arrest warrants would still have applied at the time of their execution.

⁸ Supporting information and evidence may include details of the arrest warrants, such as warrant numbers and the names of the officers who served the warrants, and details of the charge sheet signed by the defendant.

⁹ Opinions No. 46/2019, No. 33/2019, No. 14/2019, No. 9/2019, No. 53/2018, No. 46/2018, No. 36/2018, No. 10/2018 and No. 38/2013.

¹⁰ Opinion No. 10/2015, para. 34, and opinion No. 46/2019, para. 51.

¹¹ Opinion No. 1/2018, para. 59.

¹² Ibid.

that time.¹³ In its response, the Government points out that a crowd had gathered outside the facility where Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were to be detained, and they had to be moved to another centre for security reasons. The Government maintains that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were nevertheless brought before a judge without delay and in accordance with article 9 (3) of the Covenant.

76. The Working Group considers that judicial oversight of detention is a fundamental safeguard of personal liberty¹⁴ and is essential in ensuring that detention has a legal basis. The Human Rights Committee has indicated that 48 hours is ordinarily sufficient to satisfy the requirements of article 9 (3) of the Covenant.¹⁵ In the present case, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were brought before a judge within 48 hours. However, as discussed below, the judge was not able to assess the individual circumstances of the case or consider alternatives to detention because the Constitution mandates automatic pretrial detention.¹⁶ The fact that the specific circumstances of their situation could not be examined reinforces the conclusion that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were detained without a legal basis.¹⁷

77. The Working Group considers that the deprivation of liberty of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula violated the applicable procedures for arrest and had no legal basis. The detention is therefore arbitrary under category I.

78. In reaching this conclusion, the Working Group has taken into account the Government's assertion that the deprivation of liberty was carried out in accordance with the law and did therefore have a legal basis. In other words, the detention was based on the Criminal Code and article 19 of the Constitution, which lists the serious offences for which automatic pretrial detention is imposed. Nevertheless, the Working Group has established that even when detention is carried out in conformity with national legislation, it must also be consistent with the relevant provisions of international law.¹⁸

Category III

79. The source maintains that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were arbitrarily deprived of their liberty under category III because their right to a fair trial was not observed.

80. The source alleges that after Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were arrested, the Prosecutor General's Office shared pictures of them on social media networks alongside the heading "Two suspected murderers arrested". The Government did not contest this allegation.

81. The Human Rights Committee has established that public authorities have a duty to refrain from prejudging the outcome of a trial, including by abstaining from making public statements affirming the guilt of the accused.¹⁹ In the present case, the Working Group considers that the public depiction of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula compromised their right to be presumed innocent. Although they were referred to as "suspected" murderers, the use of the word "murderer" suggested that they were guilty and undermined their right to a fair trial. Furthermore, according to the facts of the case, Mr. Rodríguez Ramos was not accused of murder; the publication of his image accompanied by a description of him as a "suspected murderer" was therefore not only prejudicial, but

¹³ The source also states that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were brought before a judge on 13 August 2017, within 48 hours of their arrest.

¹⁴ A/HRC/30/37, para. 3.

¹⁵ General comment No. 35, para. 33.

¹⁶ Mr. Rodríguez Advíncula was accused of murder and robbery with violence, while Mr. Rodríguez Ramos was accused of robbery with violence and causing damage to property using explosives.

¹⁷ Opinion No. 1/2018, para. 59.

¹⁸ See, for example, opinions No. 1/2018, No. 79/2017, No. 42/2012 and No. 46/2011.

¹⁹ General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30.

factually incorrect.²⁰ The Working Group considers that the right of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula to be presumed innocent was not respected, in violation of article 14 (2) of the Covenant.

82. The source further alleges that when Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were arrested, their request for access to legal assistance was denied. They were then held for eight hours without being able to contact their lawyers. The Government states that they did have access to legal assistance, which led to their release, and that as such they were able to conduct their defence. However, the Government did not respond specifically to the allegations.

83. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their arrest, and that such access should be provided without delay.²¹ In the absence of specific information to the contrary, the Working Group considers that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula did not have access to legal counsel from the outset of their detention, in violation of article 14 (3) (b) of the Covenant.

84. It is also alleged that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were treated unfairly and did not receive a fair trial. According to the source, when the judge ordered their arrest, he did not take into account international standards on the right to liberty. In addition, he did not issue a ruling in connection with the allegations of torture, ill-treatment and disappearance made by Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula. The judge did not ensure that the Prosecutor's Office continued to investigate these allegations and did not request the relevant reports. The Government indicates that a judge opened an investigation into the alleged torture and ill-treatment on 1 September 2017 and refers to a number of medical and psychological assessments. The Working Group does not have sufficient information to determine whether Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were denied a fair trial in this respect. The Working Group will refer this case to the Special Rapporteur on the independence of judges and lawyers.

85. Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were subjected to automatic pretrial detention because they were charged with offences appearing on the list of those for which that measure is mandatory under article 19 of the Constitution. In its response, the Government stated that the detention met the requirements of article 9 (3) of the Covenant because it was carried out in accordance with national legislation, was necessary and proportionate and was evaluated by a court without delay. The Government noted that the Constitution requires pretrial detention for certain offences.²²

86. The Working Group reiterates its opinion that automatic pretrial detention is in breach of the State's obligations under international human rights law. In opinion No. 1/2018, the Working Group considered this matter carefully and concluded that it violated article 9 (3) of the Covenant.²³

87. The Working Group notes that the list of offences for which automatic pretrial detention is required was expanded in 2019. The Working Group urges the Government to revoke the constitutional and legal provisions governing automatic pretrial detention or to amend them in accordance with the international obligations of Mexico.

²⁰ The source states that Mr. Rodríguez Ramos was arrested on suspicion of murder, but the arrest warrant, which was not presented at the time the arrests were made, related to an offence of robbery with violence.

²¹ A/HRC/30/37, principle 9 and guideline 8. See Human Rights Committee general comment No. 35, para. 35, and CAT/C/MEX/CO/7, paras. 14 and 15.

²² The Government refers to *Munarbek Torobekov v. Kyrgyzstan* (CCPR/C/103/D/1547/2007), para. 6.3. In that case, pretrial detention was not mandatory, and the court made an individualized assessment of the need for detention (paras. 2.13 and 6.3).

²³ See opinions No. 14/2019, No. 75/2018, No. 53/2018, No. 16/2018, No. 24/2015 and No. 57/2014; A/HRC/19/57, paras. 48–58 and OL MEX 18/2018. See also CAT/C/MEX/CO/7, paras. 32 and 33, and Inter-American Commission on Human Rights, *Report on the Use of Pretrial Detention in the Americas*, document OEA/Ser.L/V/II, p. 126.

88. The Working Group also considered the source's allegations concerning procedural irregularities that reportedly affected the fairness of the trial and the principle of equality of arms. These irregularities included: (a) the absence of an analysis of blood stains; (b) the fact that two eyewitnesses were not interviewed until six days after the alleged murder; (c) the fact that witnesses did not identify Mr. Rodríguez Advíncula from his photograph; and (d) the fact that upon forensic examination no traces of explosives were found on the victim's clothes. In addition, some key evidence was lost, demonstrating a lack of rigour in the chain of custody, and the authorities reportedly engaged in witness tampering.

89. 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.²⁴ The evidentiary irregularities described were a matter for the domestic courts, and the Working Group cannot therefore conclude whether, in this case, they reflect a violation of international standards relating to a fair trial.

90. In summary, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were denied the presumption of innocence and access to legal representation at the outset of their detention and were subjected to automatic pretrial detention. The Working Group finds that the violations were of such gravity as to give the deprivation of liberty an arbitrary character in accordance with category III.

Categories II and V

91. The source argues that the Constitution makes a distinction between defendants who can benefit from alternatives to pretrial detention and those who cannot, on the basis of the list of offences that require detention during trial. As a result, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula did not enjoy equal protection under the law because of the offences with which they were charged. In its response, the Government argues that no favourable or unfavourable distinctions, exclusions, restrictions or preferences have been applied in the case of Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula with the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of their rights.

92. In its opinion No. 1/2018, the Working Group found that constitutional provisions mandating compulsory pretrial detention discriminate between defendants in a manner that disregards the equality of human beings on the basis of "other status", namely the fact of having been charged with an offence that does not allow for alternatives to detention. Discrimination on the basis of "other status" is prohibited under articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant.²⁵ The Working Group considers that the facts of the present case disclose a violation of category V.

93. The Working Group recalls that article 26 of the Covenant not only prohibits discrimination, but also provides for the equality of all persons before the law. Article 26 contains an autonomous right that does not depend on the exercise of other rights.²⁶ In the present case, if it had not been for the constitutional provisions, Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula could have exercised their right to apply for the alternative measures to detention available to others. As they were unable to do so, they were automatically placed in detention. This constitutes a violation of their right to equality before the law and equal protection by the law within the meaning of article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. Their case therefore falls within category II. The Working Group is of the view that category II applies to detention resulting from the exercise of one or several of the rights set forth, as well as to detention resulting from a person being prevented from exercising these rights, since both situations may lead to arbitrary detention.²⁷

²⁴ Opinion No. 75/2018, para. 73, opinion No. 53/2018, para. 79, opinion No. 57/2016, para. 115, and opinion No. 10/2000, para. 9.

²⁵ Opinions No. 14/2019, No. 75/2018 and No. 1/2018.

²⁶ Human Rights Committee general comment No. 18 (1989) on non-discrimination, para. 12.

²⁷ Opinion No. 1/2018, para. 70.

Final observations

94. Although Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula have been released, they have not been granted compensation for their arbitrary detention, in violation of their right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant. This is particularly serious in the case of Mr. Rodríguez Advíncula, who remained in detention for one year and nine months despite having filed numerous legal challenges. Mr. Rodríguez Advíncula was released after being acquitted on the basis that the Prosecutor's Office had not presented sufficient evidence. The Working Group urges the Government to provide adequate compensation and other reparations to Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula.

95. The Working Group wishes to express its concern about the allegations that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula were subjected to torture and ill-treatment. According to the source, the officers who arrested Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula used excessive force and behaved aggressively towards their family members. The authorities detained Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula for a period of eight hours, during which they did not know what was happening, had no contact with their families, were chained at the wrists and ankles, had no access to health services and were not provided with adequate food. In addition, Mr. Rodríguez Advíncula was threatened and intimidated by other inmates during his detention.

96. In its response, the Government states that Mr. Rodríguez Advíncula and his companions resisted arrest on 11 August 2017 and physically and verbally attacked the arresting officers. The Government argues that it was necessary to transfer Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula to Almoloya de Juárez for security reasons. In addition, the Government refers to the medical assessments that were conducted in connection with the allegations of torture and ill-treatment. The Government also notes that Mr. Rodríguez Ramos and Mr. Rodríguez Advíncula filed four complaints with the Human Rights Commission of the State of Mexico, three of which were dismissed because no violations were found. Given the seriousness of these allegations, the Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

97. The present case is one of many the Working Group has received in recent years in connection with arbitrary deprivation of liberty in Mexico.²⁸ The Working Group is concerned that this may reflect a systemic problem of arbitrary detention in Mexico which may constitute a serious violation of international law. 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.²⁹

98. The Working Group would welcome the opportunity to engage constructively with the Government to address its concerns regarding detention. Given that a considerable period of time has elapsed since its visit to Mexico in November 2002, the Working Group considers that it would be timely to continue its dialogue with the Government by means of another country visit. The Government extended an open invitation to all thematic special procedures mandate holders in March 2001. Since Mexico is currently a member of the Human Rights Council, this would be a suitable time for the Government to confirm its invitation. Since 2015, the Working Group has submitted several requests to visit Mexico and has received assurances that these requests are being considered. The Working Group urges the Government to consider its requests and awaits a positive response.

²⁸ Opinions No. 54/2019, No. 14/2019, No. 88/2018, No. 75/2018, No. 53/2018, No. 16/2018, No. 1/2018, No. 66/2017, No. 65/2017, No. 24/2017, No. 23/2017, No. 58/2016, No. 17/2016, No. 56/2015, No. 55/2015, No. 19/2015, No. 18/2015, No. 23/2014, No. 58/2013 and No. 21/2013.

²⁹ Opinion No. 47/2012, para. 22.

Disposition

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

The deprivation of liberty of Ricardo Rodríguez Advíncula and Luciano Rodríguez Ramos, being in contravention of articles 2, 3, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

100. The Working Group requests the Government of Mexico to take the necessary steps to remedy the situation of Mr. Rodríguez Advíncula and Mr. Rodríguez Ramos 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 International Covenant on Civil and Political Rights.

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

102. The Working Group takes note of the interpretive statement made by Mexico regarding article 9 (5) of the Covenant, in which it states that, under the Political Constitution of the United Mexican States and the relevant implementing legislation, every individual enjoys the guarantees relating to criminal matters embodied therein, and consequently no person may be unlawfully arrested or detained. It further states that if by reason of false accusation or complaint any individual suffers an infringement of this basic right, he or she has, *inter alia*, under the provisions of the appropriate laws, an enforceable right to effective and fair compensation.³⁰ The Working Group notes that the State's legal system provides for additional bases for compensation.

103. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Rodríguez Advíncula and Mr. Rodríguez Ramos, including their allegations of torture, and to take appropriate measures against those responsible for the violation of their rights.

104. The Working Group requests the Government to bring its legislation, and in particular article 19 of the Constitution, into conformity with the commitments of Mexico under international human rights law, in the light of the considerations set out in the present Opinion.

105. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

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

Follow-up procedure

107. 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. Rodríguez Advíncula and Mr. Rodríguez Ramos;

(b) Whether an investigation has been conducted into the violation of the rights of Mr. Rodríguez Advíncula and Mr. Rodríguez Ramos and, if so, the outcome of the investigation;

³⁰ *Multilateral Treaties Deposited with the Secretary-General*, chap. IV.4.

(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.

108. 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.

109. 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.

110. 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.³¹

[Adopted on 19 November 2019]

³¹ See Human Rights Council resolution 42/22, para. 3.