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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020****Opinion No. 24/2020 concerning Mónica Esparza Castro and Édgar Menchaca Castro (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 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 7 January 2020 the Working Group transmitted to the Government of Mexico a communication concerning Mónica Esparza Castro and Édgar Menchaca Castro. The Government replied to the communication on 9 March 2020. 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, religion, economic condition, political or other opinion, gender, sexual orientation, disability,

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



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. Mónica Esparza Castro, a Mexican national, was born in 1986; she lives in Torreón. At the time of her arrest, she was working in the commercial sector. She is a person of limited financial means and has four children. Her brother, Édgar Menchaca Castro, also a Mexican national, was born in 1992; he too lives in Torreón. Mr. Menchaca was not employed at the time of his arrest.

5. According to the information received, Ms. Esparza and Mr. Menchaca were arrested in Torreón on 12 February 2013, at approximately 10 a.m., as they were travelling in a van with Ms. Esparza's husband,<sup>1</sup> who was also arrested. They were driving along Revolución Boulevard when a municipal police car motioned for them to stop, made them get out of the vehicle and asked them for identification.

6. Mr. Menchaca and Ms. Esparza's husband were searched and ordered to get into the back seat of the police car. An officer told Ms. Esparza that it was a routine matter, that perhaps there had been a mistake, but that they had to take her husband and her brother into custody to question them. He informed her that, if she wished, she could come with them in order to assure herself that the arrest was legal. Ms. Esparza decided to go with them. The police did not explain at that time that she too was being arrested. They were taken to the Public Security Directorate of Torreón. One of the officers drove off in the van that they had been travelling in; they were never able to recover it.

7. The source indicates that, also on 12 February 2013, at approximately 4.30 p.m., relatives of Ms. Esparza filed an application for indirect *amparo* relating to deprivation of liberty and incommunicado detention, in which they submitted that the detainees had been arrested unlawfully.

8. According to the source, Mr. Menchaca, Ms. Esparza and Ms. Esparza's husband were interrogated and tortured for some 14 hours in a warehouse on the premises of the Public Security Directorate by officers working there and in the presence of soldiers. When Ms. Esparza's husband said that he did not know the answers to their questions, the officers would push Ms. Esparza's head into a bucket of water until she began to drown. They put plastic bags over all three persons' heads to suffocate them. They struck Ms. Esparza with a wooden board; they pulled her hair back and dragged her by her hair along the floor; and they punched her and beat her with a metal object. All the while, they asked the two other detainees if that was what they wanted for her. They struck the two men in the back and in the chest and told Ms. Esparza that they would cut her up into pieces. They beat Mr. Menchaca using rifles and a wooden board, nearly everywhere on his body; they kicked him in the genitals and used tongs to pinch parts of his body.

9. The source reports that, subsequently, Ms. Esparza was raped by multiple officers, in front of her husband and her brother, and was subjected to other types of sexual abuse, the details of which are known to the Working Group.

10. According to the information received, the officers forced Ms. Esparza to watch while they sexually abused her husband. As a result of the torture, Mr. Menchaca finally said that he accepted the charges of the police officers, although he did not understand what they involved.

11. The source reports that, subsequently, the officers led the three individuals out of the warehouse; Ms. Esparza was bleeding and her husband was unable to stand or walk. They were kept inside a vehicle for a long period of time before being taken back to the Public Security Directorate, where they were left locked up in a bathroom.

12. Later, a federal court clerk arrived. He said that the detainees' family had filed an application for *amparo* to challenge the incommunicado detention and that he therefore had to confirm the identity of the detainees; he left after obtaining their signatures. The records

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<sup>1</sup> The name of Ms. Esparza's husband is known to the Working Group.

of this visit prove that the victims were in fact being held in custody at 8.25 p.m. on 12 February 2013, in the bathrooms of the Public Security Directorate, and that they were visibly injured.

13. According to the source, after a time, the police came and took the detainees to the Attorney General's Office in Torreón; they arrived there at approximately 1 a.m. on 13 February. This was confirmed as part of the *amparo* proceedings initiated. The court clerk verified, at 1.25 a.m. on 13 February, that the detainees had been transferred to the parking lot of the Attorney General's Office in Torreón and that they were injured.

14. The source indicates that the detainees were kept in the parking lot, where they were again subjected to threats, in order to make them confess their guilt, and where they were again administered electric shocks. The source states that, at this point, Ms. Esparza's husband fainted inside the van, as a result of the torture he had endured. Ms. Esparza watched him die and shouted to get the attention of the officers, who continued to give electric shocks to her husband's motionless body. A physician later arrived on the scene and declared Ms. Esparza's husband dead. They put his body in another patrol car and drove away; Ms. Esparza never saw him again.

15. The source reports that, before dawn, Ms. Esparza and Mr. Menchaca were taken to Mexico City, to the Office of the Assistant Attorney General for the Investigation of Organized Crime. There, Mr. Menchaca signed a statement without having read it. Having already been tortured and made to confess that he belonged to organized crime and that he had kidnapped and killed people, he was told that, if he did not sign, his family would be killed and he would be sent to a prison where he would be killed. Because of the injuries he had suffered as a result of his torture, on 14 February 2013, the Assistant Attorney General's Office had Mr. Menchaca transferred to a hospital for treatment.

16. As for Ms. Esparza, a clerk in the Attorney General's Office received her and told her that if she did not sign a document, "a call to the municipal police would be enough for them to go after your mom and your daughters, they'll kill them like they killed your husband". Ms. Esparza signed without reading the document before her and then she fainted. When she awoke, she was taken to the hospital, to be treated for her injuries. She had to sleep with bags of ice on her body to bring down the swelling and was placed in a hyperbaric oxygen chamber. There are a number of medical certificates attesting to the torture suffered by Ms. Esparza, including a statement by the National Human Rights Commission.

17. According to the source, torture was used to extract false confessions, which were then presented to the Attorney General's Office as evidence. Ms. Esparza and Mr. Menchaca subsequently found out about the made-up version of their arrest as presented by the police. That version indicated that, on 12 February, at 7.15 p.m., the police had been patrolling another area of Torreón when they saw an armed man entering a house and followed him; upon entering the house, they discovered several armed individuals carrying out a kidnapping. Allegedly, the individuals in question had surrendered and had confessed to being members of organized crime.

18. It is reported that, during the first days of detention, the Attorney General's Office tampered with some of the evidence, including that related to the "police line-ups". The public prosecutor had shown the kidnapping victims photographs of Ms. Esparza and Mr. Menchaca for identification purposes. One stated that she did not recognize the people in the photographs. The second allegedly stated that she recognized the voice of Ms. Esparza, but the situation was not designed for voice recognition. The third allegedly stated that she recognized Ms. Esparza, but did not associate her with the kidnapping. None of them said that they recognized Mr. Menchaca. These alleged victims never appeared in court as part of the criminal proceedings, nor did they sign their statements, so that it was impossible to verify them. Despite the fact that the evidence was unlawful, it was nevertheless supported by the authorities in ordering the detention.

19. On 15 February 2013, the Second Federal Criminal Court Having Special Jurisdiction in Matters Relating to Searches, Preventive Custody and Interception of Communications ordered that the detainees should be held in precautionary detention without charge (*arraigo*) for 40 days, a period which was extended by a further 40 days on 23 March 2013. They were held at the Mexico City Detention Centre.

20. On 4 May 2013, the First District Court of Laguna issued a warrant for the arrest of Ms. Esparza and Mr. Menchaca, in relation to criminal case No. 24/2013. Mr. Menchaca was sent to Federal Social Rehabilitation Centre No. 8 West, in Jalisco. Ms. Esparza was admitted to Federal Social Rehabilitation Centre No. 2, in Nayarit.

21. According to the source, on 17 May 2013, the Second District Court for Federal Criminal Proceedings in Nayarit issued a detention order in respect of Ms. Esparza. It ordered pretrial custody on the basis of the offences alleged to have been committed, as the Constitution requires judges to apply it regardless of the individual circumstances of a case. The Court did not exclude the unlawful evidence, which had been obtained through torture, and disregarded the existence of medical certificates. Instead, it decided that the latter had been raised as a defence and did not give it consideration.

22. Ms. Esparza's defence appealed this decision and, on 18 July 2013, the First Single-Judge Court of the Eighth Circuit modified the contested order of detention, but allowed the criminal proceedings to continue.

23. With regard to Ms. Esparza's statement on how the arrest and torture had occurred, the judge indicated that it should not be taken into account, as the torture reported had occurred in Torreón, and the allegedly fabricated statement had been given hours later in Mexico City and was signed by a public defender. The source indicates that this is the document that Ms. Esparza signed without reading, after undergoing torture and while under threat. The judge invoked the theory of "procedural immediacy", according to which the first statement prevails over any subsequent statement or retraction. He claimed that the remaining evidence was sufficient to support the order of detention.

24. Also on 17 May 2013, the Fifth District Court for Federal Criminal Proceedings in Jalisco issued a detention order in respect of Mr. Menchaca, in criminal case No. 24/2013. He ordered Mr. Menchaca to be held in custody during the trial. Mr. Menchaca appealed this decision. However, the higher court upheld the order.

25. On 6 March 2015, Mr. Menchaca was transferred to Federal Social Rehabilitation Centre No. 14, in Durango. On 15 December 2015, Ms. Esparza was transferred to Federal Social Rehabilitation Centre No. 16, in Morelos.

26. Six years later, criminal proceedings are ongoing; the Federal Prosecution Service has submitted extemporaneous evidence which, since it was not admitted, has led to appeals.

27. It is reported that Ms. Esparza and Mr. Menchaca are being held in pretrial detention, awaiting the first-instance judgment; this judgment has not been handed down owing to the allegedly irregular proceedings of the Federal Prosecution Service, consisting of late submission of evidence and the filing of appeals.

28. The source argues that the police made the arrest without a warrant and that the detainees were not in the process of committing a crime. The only cases in which the Constitution allows for deprivation of liberty are: (a) with a court order; (b) with an order from the prosecution authorities; or (c) in flagrante delicto. None of these conditions were satisfied at the time of arrest. Later, the police officers related a false version of events, claiming that the arrests were made in flagrante delicto. However, this version is contradicted by the statements of three eyewitnesses to the arrest. In addition, the medical examinations and the hospitalization order, which corroborate the acts of torture, prove the veracity of the version of events as narrated by the detainees.

29. According to the source, after the arrest, the police officers held the detainees in their facilities for 14 hours. However, the Constitution requires that persons arrested be presented "without delay" to the public prosecution service. The detention at the Public Security Directorate of Torreón was illegal. This was the conclusion of the National Human Rights Commission, as set out in recommendation No. 15/2016, even if 7.15 p.m. (the time noted in the police report) is taken to be the time the arrest began.

30. The detainees were handed over to the Federal Prosecution Service of the branch of the Attorney General's Office in Coahuila, Torreón. It is claimed that, because of the conditions in which they arrived and the death of one of the detainees, it was more than obvious that they had been tortured. However, this fact did not lead the public prosecutor to question the version of the police officers, or to declare the arrest arbitrary. Even so, the

prosecutor noted the prolonged period of time during which the victims had been held. Despite all of the above, he took custody of them and transferred them to Mexico City.

31. The source points out that, after being taken to the Office of the Assistant Attorney General for the Investigation of Organized Crime, Ms. Esparza and Mr. Menchaca were held in precautionary detention (*arraigo*) for 80 days. *Arraigo* is a form of pretrial detention in which a person can be deprived of his or her liberty without being charged. In this case, the measure was ordered on the basis of a version of events that was allegedly fabricated and based on unlawful evidence, such as statements signed under torture. Besides these irregularities, it is argued that the concept of *arraigo* is in itself a violation of human rights, as it allows for prolonged detention without the bringing of criminal charges.

32. The source adds that, after the arrest warrant was issued, the detention was based on alleged involvement in the offences that gave rise to the charges brought by the Attorney General's Office, relying on the same unlawful and false evidence and the implausible version given by the police. The source argues that, for these reasons, there was no legal basis for deprivation of liberty.

33. The source highlights, in particular, the fact that the confessions obtained under torture and other unlawful evidence were not excluded, and that judicial decisions were thus made in violation of international human rights law. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated that:

international law stipulates that, once a credible allegation of torture or ill-treatment has been made, the State must prove that the torture or ill-treatment did not occur and judges must order the immediate exclusion of the evidence.<sup>2</sup>

The judicial authorities should:

automatically ... exclude any evidence or statement concerning which there is reason to believe that it was obtained as a result of torture or ill-treatment or in violation of fundamental guarantees and to ... impose on the State the burden of proving that the evidence was not obtained under torture and guarantee that unlawful evidence is excluded from the outset and that its exclusion is not postponed until sentencing.<sup>3</sup>

The Committee against Torture has expressed a similar view.<sup>4</sup> In 2010, the Inter-American Court of Human Rights recalled, in a case involving Mexico, that:

whenever a person alleges, within a proceeding, that his or her statement or confession was obtained under duress ... the burden of proof cannot rest with the plaintiff.<sup>5</sup>

In the source's view, the present case is a contradiction of international standards, since the judicial authorities did not admit incidental pleas in order to determine whether evidence should be excluded.

34. The source notes that Ms. Esparza and Mr. Menchaca have been in mandatory pretrial detention for more than six years, and there has been no assessment of their particular situation. Such a situation is in itself a violation of international human rights law.

35. In the source's view, Ms. Esparza and Mr. Menchaca are being held without any reason or legal basis; their deprivation of liberty violates international law; and there is no evidence of their involvement in any crime. There is, however, evidence of irregularities in their arrest.

36. Category I: the source alleges that there is no basis for the deprivation of liberty under national law. The source claims that the Constitution allows for detention in only three cases: with a court order; with an order from the prosecution authorities ("urgent case"); or in flagrante delicto. None of these conditions were satisfied at the time of arrest.

37. Category III: the source argues that, in the arrest, detention and criminal trial, the State failed to comply with articles 9 and 14 of the Covenant, since Ms. Esparza and Mr. Menchaca were not arrested on such grounds and in accordance with such procedure as are established

<sup>2</sup> A/HRC/28/68/Add.3, para. 56.

<sup>3</sup> Ibid., para. 83 (d).

<sup>4</sup> CAT/C/LKA/CO/3-4, para. 11, and CAT/C/PHL/CO/2, para. 23.

<sup>5</sup> *Cabrera García and Montiel Flores v. Mexico*, Judgment of 26 November 2010, Preliminary Objection, Merits, Reparations and Costs, para. 136, Series C No. 220.

by law. They were not informed, at the time of arrest, of the reasons for their arrest. They became aware of some of the charges that would later be brought against them only when they were forced, under torture, to sign statements in which they confessed to being part of organized crime.

38. In addition, Ms. Esparza and Mr. Menchaca were not brought promptly before the competent authority, but were held in police facilities and tortured for approximately 14 hours. Pretrial detention was ordered, as the judicial authorities had no alternative, such a measure being mandatory for the offences alleged to have been committed.

39. In the source's view, the judicial decisions taken demonstrate that the authorities did not give Ms. Esparza and Mr. Menchaca a fair hearing, particularly in the light of the allegations that they had been tortured. The judicial authorities have failed to examine this matter in accordance with international standards. Statements fabricated and/or obtained under torture have been admitted and assessed by the judicial authorities, whereas they should have been excluded.

40. Furthermore, the source alleges that the Government violated articles 7 and 10 of the Covenant on the basis of the torture inflicted on Ms. Esparza and Mr. Menchaca.

41. Category V: Lastly, the source indicates that, in general, people with limited financial resources are at particular risk of suffering arbitrary detention in Mexico. Ms. Esparza and Mr. Menchaca are among that vulnerable group of people. The source does not claim that, in this case, such was the reason for the arbitrary arrest, but claims that, after systematic documentation and continuous monitoring of cases such as this one, it has been observed that there is a pattern of arrest, prolonged detention, torture and fabrication of charges in an overwhelming majority of cases of persons with limited financial resources.

#### *Response from the Government*

42. On 7 January 2020, the Working Group transmitted the allegations of the source to the Government and requested it to provide, by 9 March 2020, detailed information on the case which would clarify the legal and factual grounds for the detention in question. The Government replied to the communication on 9 March 2020.

#### (a) Report No. 0185/13

43. The federal prosecutor attached to the Special Unit for the Investigation of Assault and Vehicle Theft of the Office of the Assistant Attorney General for the Investigation of Organized Crime brought criminal proceedings against Ms. Esparza, Mr. Menchaca and another person<sup>6</sup> for their probable involvement in the offences of organized crime, illegal deprivation of liberty and violation of the Federal Firearms and Explosives Act.

44. According to the Government, as per the information provided by the Public Security Directorate, on 12 February 2013, the police officers were on patrol when, at approximately 7.15 p.m., they observed a man carrying a firearm who, upon noticing the police, entered a house. They entered the house and ordered the man to put down his weapon and to lie on the ground. An officer seized him and took away his weapon.

45. They then saw a woman trying to go back into a room inside the house; two officers followed her and found two other men. These persons, who were arrested, were Ms. Esparza, Ms. Esparza's husband and Mr. Menchaca. Mr. Menchaca was carrying a firearm. In the same place, they found three people tied up on the floor. They also reported finding firearms and cartridges.

46. After the three arrested individuals were transferred to the offices of the Attorney General, Ms. Esparza's husband complained of pain and, during his transfer to the hospital, he died.

47. The Government reports that an officer met with the detained persons, in the presence of other officers, and informed them of their rights, as provided for in article 124, article 125,

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<sup>6</sup> As previously mentioned, the name of this individual is known to the Working Group. However, the source does not refer in the allegations to this individual, who is hereinafter referred to as "the third person".

read in conjunction with article 127 bis, and article 243 of the Federal Code of Criminal Procedure.

(b) Criminal case No. 24/2013

48. The detainees were referred to the Federal Prosecution Service, which initiated legal action against them before the First District Court in La Laguna, Coahuila de Zaragoza.

49. According to the Government, the police brought Ms. Esparza and Mr. Menchaca to the Federal Prosecution Service at 1.30 a.m. on 13 February 2013. A preliminary investigation was opened into the charges of organized crime, illegal deprivation of liberty and violation of the Federal Firearms and Explosives Act.

50. On the same date, the Federal Prosecution Service issued a detention and notification decision, in which it determined that these persons had been arrested in flagrante delicto, and therefore their detention was justified. Their investigation was ordered to be completed within 48 hours (before 1.30 a.m. on 15 February), and their custody was transferred to the Ministry of Security. The detainees were also informed of their rights under article 128 of the Federal Code of Criminal Procedure.

51. On 13 February, the Federal Prosecution Service attached to the Special Unit for the Investigation of Assault and Vehicle Theft of the Office of the Assistant Attorney General for the Investigation of Organized Crime accepted jurisdiction over the matter and initiated a formal investigation.

52. The Government indicates that Ms. Esparza gave her statement to the Federal Prosecution Service, at 9 a.m. on 14 February, and that a federal public defender was assigned to her. She was informed of the contents of the report of the arrest, so she was aware of the charges being brought against her.

53. Ms. Esparza stated that the facts recounted by the police officers who had arrested her were not correct and she recounted another version. She stated that her husband had been responsible, as part of a criminal organization, for the Torreón guard. She added that she had taken the police and soldiers to the place where they were depriving people of their liberty and to another building where there were weapons and some suitcases.

54. Mr. Menchaca made his statement to the Federal Prosecution Service at 12.10 p.m. on 14 February 2013; he was assigned a federal public defender and said that he was satisfied with the content of the report submitted by the police officers.

55. Mr. Menchaca said that, on 12 February 2013, he had been in the building where he was arrested with his sister and his brother-in-law, and said he could not remember any other details except that, when he arrived at the building in question, his brother-in-law was there and he noticed two people with their hands tied and their faces covered. He also reported that he vomited blood from the blows he had received from another member of the criminal organization.

56. Mr. Menchaca added that he had been working for a criminal organization for two years, described how it worked and referred to the people he had dealings with within it. He said that his sister knew about the group, but had nothing to do with its activities, and that she worked in a café.

57. The Government states that the Federal Prosecution Service obtained statements from the third person and from the three kidnapping victims, as well as medical certificates of any injuries, and ordered analyses of the objects and weapons seized, among other things.

58. On 15 February 2013, the federal prosecutor decided that the time limit established in the Constitution would be doubled to 96 hours, as the persons arrested were involved in organized crime.

59. On the same date, the Second Federal Criminal Court ruled that the accused should be held in precautionary detention, as requested by the Federal Prosecution Service, for 40 days, with a view to carrying out the preliminary investigation of persons involved with a criminal organization.

60. On 23 March 2013, the judge extended the detention period, having considered the evidence presented to him, with a view to completing the preliminary investigation, given that the crimes under investigation were serious. In addition, the documentary evidence

indicated that the individuals were alleged members of a criminal organization. It was also believed that the individuals charged could attempt to evade justice.

61. On 2 May 2013, the Federal Prosecution Service submitted the results of the preliminary investigation, together with an application to bring criminal proceedings against the accused. The Fifth District Court in Coahuila de Zaragoza ruled that a district court in La Laguna had jurisdiction in the case.

62. On 3 May, a criminal case was filed with the First District Court in La Laguna. In its decision of 4 May 2013, the First District Court issued an arrest warrant for probable involvement in the crimes of kidnapping, stockpiling of firearms and possession of cartridges for the exclusive use of the Army, Navy and Air Force.

63. On 16 May 2013, the District Court for Federal Criminal Proceedings in Jalisco issued a detention order in respect of Mr. Menchaca, for his probable involvement in crimes of kidnapping, stockpiling of weapons for the exclusive use of the Army, Navy and Air Force and possession of cartridges for the use of the Army, Navy and Air Force. On 17 May 2013, it issued a detention order in respect of Ms. Esparza, on the basis of evidence that suggested probable criminal involvement in the commission of these crimes.

(c) Investigations into possible acts of torture

64. On 13 August 2014, Ms. Esparza elaborated on her original statement, adding that, during her detention, she had received threats and ill-treatment, been harassed and suffered physical attacks.

65. By court orders of 10 October 2013 and 9 June 2015, the federal prosecutor was called to a hearing in respect of the statements regarding torture made in the preliminary statements. This in turn gave rise to a preliminary investigation by the Prosecutor General's Office in Coahuila de Zaragoza, which is currently under way.

66. By a decision of 14 July 2016, Ms. Esparza's statement was accepted as having been taken, as she did not wish to undergo a new medical examination, as proposed by her federal public defender, given that a medical report had already been issued by the National Human Rights Commission. On 10 April 2018, it was reported that Mr. Menchaca had not given his consent to a medical opinion, given that one had already been issued by the National Human Rights Commission.

67. According to the Government, an expert opinion issued by an expert attached to the General Office for the Coordination of Expert Witness Services of the Attorney General's Office found that the opinions issued by the National Human Rights Commission did not fulfil the criteria of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) or the Diagnostic and Statistical Manual of Mental Disorders.

(d) Preliminary observations

68. The Government stresses that the internal criminal proceedings have not yet been concluded. Therefore, allegations of human rights violations may still be considered, not only at the time of sentencing, but also by means of challenge on the part of the accused, such as an appeal or petition for *amparo*.

69. However, detainees and their criminal defenders have had the opportunity to lodge various appeals and to file petitions for indirect *amparo*.

70. The Government states that the facts could still be analysed as part of the proceedings, and evidence could be elucidated to examine the detention orders and determine the potential existence of human rights violations.

71. The Government argues that, based on the principle of subsidiarity of international bodies for the protection of human rights, the Working Group is precluded from considering the case.

## (e) State's observations on admissibility

72. According to the Government, the detention of Ms. Esparza and Mr. Menchaca had a legal basis and did not represent a failure to comply with international standards on the right to a fair trial.

73. The Government notes that article 16 of the Constitution stipulates that, in cases where a person is arrested in flagrante delicto, a judge must immediately authorize the arrest, or else order the person's release. According to the Federal Code of Criminal Procedure, an arrest is made: (a) at the time of the commission of the offence; (b) when the perpetrator is pursued and caught immediately after having committed the offence; or (c) immediately after having committed the offence, when the perpetrator is identified by the victim, another eyewitness or fellow perpetrator, or when objects or evidence are found that give reason to suppose that the perpetrator was involved in the commission of the crime.

74. Article 3 of the Federal Code of Criminal Procedure states that the police acts under the authority of the Federal Prosecution Service in the investigation of crimes and is obliged to make arrests in cases of flagrante delicto and to refer the persons arrested to the authorities.

75. On 13 February 2013, the Federal Prosecution Service issued a detention and notification decision, in which it determined that the accused had been arrested in flagrante delicto, and that therefore their detention was justified. The investigation was ordered to be completed within 48 hours, and the custody of the detainees was transferred to the Federal Prosecution Service.

76. On 15 February 2013, the Federal Prosecution Service decided that the time limit established in the Constitution would be doubled to 96 hours, as the persons arrested were involved in organized crime.

77. Article 2 of the Federal Code of Criminal Procedure states that if, taking into account the circumstances, the Prosecution Service deems it necessary to place a suspect in precautionary detention without charge, it must apply to the court giving reasons and grounds for its request, so that the court, after hearing the suspect, can decide whether to place him or her in such detention, under the supervision of the authorities. Precautionary detention can be extended for the time needed for the investigation, but must not exceed 40 days, a period which can be extended for a further 40 days.

78. In order to determine that the precautionary detention was proportional and necessary, the judge: (a) analysed the formal requirements of the application, and the evidence submitted; (b) found that the offences were characterized as serious offences by law; (c) noted that there was a likely link of the suspects to organized crime; (d) considered the fact that the detainees could have information or provide evidence that could help to prove their probable involvement in the crimes described, in addition to the fact that, at the time of their arrest, various war weapons, as well as three victims of a kidnapping, were found within close range of the detainees; and (e) stated that the assessment of the evidence presented did not prejudice the substantiation of the crimes and the suspects' probable involvement in those crimes; the existence of evidence that justified the need to initiate an investigation was sufficient.

79. The arrest of Ms. Esparza and Mr. Menchaca was examined by the court, which, after assessing the evidence, issued a detention order in respect of both individuals.

80. Organized crime is a serious crime; therefore, precautionary detention without charge was deemed appropriate, to allow for the completion of the necessary investigations, based on the principle of necessity and proportionality.

81. The detention of Ms. Esparza and Mr. Menchaca did not violate the right to non-discrimination established in international law. Not every differentiation of treatment is discriminatory, as long as it is reasonable and pursues a legitimate aim.<sup>7</sup> Ms. Esparza and Mr. Menchaca were detained because of the crimes they were suspected of having committed, not because of their socioeconomic position.

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<sup>7</sup> Human Rights Committee, general comment No. 18 (1989) on non-discrimination and general comment No. 21 (1992) on humane treatment of persons deprived of their liberty.

*Additional comments from the source*

82. The source reports that, on 12 March 2020, Ms. Esparza and Mr. Menchaca were acquitted in a first-instance judgment and were released after more than 7 years of deprivation of liberty. However, that judgment can be appealed and modified. Moreover, the kidnapping victims still have the possibility of challenging the ruling by filing a direct *amparo* application. Thus, a criminal conviction is still a potential outcome of the proceedings.

83. The judgment of acquittal concluded that the statements made to the prosecutor (alleged confessions) by Ms. Esparza and Mr. Menchaca should have been excluded from the criminal proceedings, as they were unlawful.

84. The source notes that the Government does not cite any legal basis for its allegation that criminal proceedings are ongoing and that the Working Group is precluded from considering the case. The arbitrary deprivation of liberty lasted for more than 7 years, and the victims have presented to the Government the facts of their detention since 2013. The remedies available under domestic legislation were neither effective nor efficient.

85. The source reiterates that the evidence shows that the police officers' description of the circumstances of the arrest was untrue. The evidence also makes clear that the statements given to the prosecutor under torture were fabricated and that the decisions that validated and prolonged the deprivation of liberty were unlawful. The Government does not address the incompatibility of precautionary detention without charge and of mandatory pretrial detention with international law.

86. In addition, the Government mentions that the Attorney General's Office issued a document criticizing the methodology of the medical and psychological opinions of the National Human Rights Commission. The source submits that this is part of a pattern consisting in using evidence obtained under torture in criminal proceedings, and of preventing or discrediting the documentation of torture. The lack of independence of the experts attached to the Attorney General's Office is a systemic problem, since such experts belong to the same institution that uses evidence obtained under torture to bring criminal charges.

**Discussion**

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

88. *First preliminary issue:* the Working Group takes note of the release of Ms. Esparza and Mr. Menchaca on 12 March 2020 and observes that they were held in pretrial detention for more than 7 years. Under paragraph 17 (a) of its methods of work, the Working Group may render an opinion notwithstanding the release of the persons concerned. Ms. Esparza and Mr. Menchaca were allegedly subjected to serious violations of their human rights, including torture, forced confessions and mandatory pretrial detention. In addition, the first-instance sentence that resulted in these individuals' release may be appealed, meaning that subsequent imprisonment could be imposed. The Working Group therefore considers it important to render an opinion on the present case.

89. *Second preliminary issue:* the Working Group notes the Government's assertion that the criminal proceedings have not concluded and that the alleged human rights violations can be examined through other remedies. The Government maintains that, on the basis of the principle of subsidiarity, the Working Group is not competent to consider this communication. The Working Group has stated on previous occasions that there is no provision in its methods of work which prevents it from examining communications when cases are still before national courts. The exhaustion of domestic remedies is not set out in the working methods as a requirement for the communication to be considered admissible.<sup>8</sup>

90. In determining whether the detention of Ms. Esparza and Mr. Menchaca was arbitrary, the Working Group has regard to the principles established in its jurisprudence regarding how to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood

<sup>8</sup> E/CN.4/1993/24; opinions No. 46/2019, No. 78/2018 and No. 44/2018.

to rest upon the Government if it wishes to refute the allegations. Mere assertions that lawful procedures have been followed are not sufficient to rebut the source's allegations.<sup>9</sup>

#### *Category I*

91. The source alleges that there was no legal basis for the arrest of Ms. Esparza and Mr. Menchaca. According to the source, they were travelling in a van on 12 February 2013, at approximately 10 a.m., when they were arrested. The source argues that the Constitution provides only three legal grounds for detention – a court order, an order from the prosecution authorities or a crime committed in flagrante delicto – and that none of these corresponded to the case in question. The source states that, at the time, the detainees were not informed of the reason for their arrest. Ms. Esparza did not even know that she was being arrested, as she had been informed that it was a routine stop and that she could accompany the officers. Ms. Esparza and Mr. Menchaca became aware of the charges against them only when they were subsequently forced to declare that they belonged to a criminal organization.

92. The Government's response offers a different version. According to the latter, on 12 February 2013, at approximately 7.15 p.m., the Torreón municipal police were on patrol when they observed a man entering a house with a firearm. The police followed the man into the house, where they found that Ms. Esparza and Mr. Menchaca had kidnapped three people. The Government claims that weapons were also found. Both suspects were taken to the Prosecutor General's Office. On 13 February 2013, the Federal Prosecution Service declared that Ms. Esparza and Mr. Menchaca had been arrested in flagrante delicto.

93. Having examined both accounts, the Working Group believes that the source has established a credible case which has not been refuted by the Government. The source has provided documentation to support the claims made, including an application for *amparo* filed on 12 February 2013 at 4.30 p.m., which suggests that Ms. Esparza and Mr. Menchaca were arrested hours earlier than the Government claims. The *amparo* describes the circumstances of the detention, giving details that match those provided by the source. In addition, the source provided a copy of the visit report prepared by the court clerk in the context of the *amparo* proceedings; it was the clerk who located the victims being held in the bathrooms of the Public Security Directorate on 12 February 2013 at 8.25 p.m. and noted that Ms. Esparza was visibly injured at that time. The Working Group finds the fact that detainees were being held in bathrooms as highly irregular, suggesting a lack of transparency and non-compliance with detention procedures.

94. According to article 9 (1) of the Covenant, no one may be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. Article 9 (2) of the Covenant provides that anyone who is arrested should be informed, at the time of arrest, of the reasons for his or her arrest. There was no legal basis for the arrest of Ms. Esparza and Mr. Menchaca, since it was made without a warrant and did not concern a crime committed in flagrante delicto, in violation of article 9 (1) of the Covenant. Nor were they informed of the reasons for their arrest, in violation of article 9 (2) of the Covenant.<sup>10</sup>

95. The source further alleges that the municipal police held Ms. Esparza and Mr. Menchaca in a warehouse for approximately 14 hours, when the Constitution requires that they be brought without delay before a judge. In its reply, the Government states that they were brought to the Federal Prosecution Service at 1.30 a.m. on 13 February 2013. However, the information received indicates that they were first brought before a court on 15 February 2013, three days after the arrest.

96. Judicial oversight of detention is a fundamental safeguard of personal liberty<sup>11</sup> and is essential to ensuring that detention has a legal basis. As the Human Rights Committee has observed, a period of 48 hours is ordinarily sufficient to meet the requirement under article 9 (3) of the Covenant of bringing detainees "promptly" before a judge; any delay must remain absolutely exceptional and be justified.<sup>12</sup> In this case, although Ms. Esparza and Mr. Menchaca were referred to the Federal Prosecution Service on 13 February 2013, they were not brought before a judge within 48 hours of their arrest, which constitutes a violation of

<sup>9</sup> A/HRC/19/57, para. 68.

<sup>10</sup> Opinions No. 46/2019 and 10/2015.

<sup>11</sup> A/HRC/30/37, para. 3.

<sup>12</sup> General comment No. 35 (2014) on liberty and security of person.

article 9 (3) of the Covenant.<sup>13</sup> The Government has not put forward any explanation for such a delay. Furthermore, even if Ms. Esparza and Mr. Menchaca had been brought before a judge without delay, there was no possibility of examining whether alternatives to detention would have been appropriate, owing to the order for mandatory pretrial detention. Given the lack of an individualized determination that the detention was reasonable and necessary, the Working Group considers that there was no legal basis for it.<sup>14</sup>

97. The Working Group considers that the arrest and detention of Ms. Esparza and Mr. Menchaca had no legal basis and was arbitrary under category I.

98. In reaching this conclusion, the Working Group has given consideration to the Government's assertion that the detention was carried out in accordance with Mexican law and in a reasonable, proportionate and necessary manner. Nevertheless, even when detention is carried out in accordance with national legislation, the Working Group must ensure that it is also compatible with international standards.<sup>15</sup>

### *Category III*

99. The source alleges that, following their arrest on 12 February 2013, Ms. Esparza and Mr. Menchaca were subjected to torture while being held in custody and during their interrogation by the Torreón police.

100. According to the source, Ms. Esparza's head was submerged in water to the point of drowning, a plastic bag was placed on her head, she was beaten with a wooden board and a metal object, dragged by her hair and told that she would be mutilated. She was allegedly sexually assaulted by several officers in front of her husband and brother, and she was given electric shocks. Ms. Esparza was also forced to watch her husband being sexually assaulted. Mr. Menchaca allegedly had a plastic bag placed over his head to suffocate him; was beaten with rifles and a board; was kicked in the genitals; and had parts of his body pinched with tongs. In addition, he was allegedly forced to watch his sister being physically and sexually assaulted.

101. Furthermore, the source states that, on arrival at the Prosecutor General's Office in Torreón, Ms. Esparza and Mr. Menchaca were kept waiting in the parking lot for a long period of time, where they were again subjected to threats and given electric shocks. The source reports that Ms. Esparza and Mr. Menchaca were hospitalized, owing to the seriousness of the injuries they had sustained during the torture. In Ms. Esparza's case, the injuries were so severe that she had to be placed in a hyperbaric oxygen chamber. The source provided a medical report from the National Human Rights Commission to support its claims.

102. The Government notes that the Attorney General's Office in Coahuila has initiated a preliminary investigation into the allegations of torture, which is pending. The Government refers to an opinion issued by an expert attached to the Attorney General's Office, which concludes that the forensic examinations of Ms. Esparza and Mr. Menchaca conducted by the National Human Rights Commission in August 2013 fell short of the requirements of the Istanbul Protocol. The source argues that this expert was not independent, since he is part of the same institution that uses evidence obtained under torture in criminal proceedings.<sup>16</sup>

103. The Working Group is dismayed by the treatment of the detainees described above and notes that the Government's explanation of the non-compliance with the Istanbul Protocol does not rebut the source's allegations. The conduct described appears to violate the absolute prohibition of torture as a peremptory norm of international law, as well as article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>17</sup> The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Special Rapporteur on the

<sup>13</sup> Ibid.

<sup>14</sup> Opinions No. 1/2018 and No. 64/2019.

<sup>15</sup> Opinions No. 1/2018, No. 79/2017 and No. 42/2012.

<sup>16</sup> A/HRC/28/68/Add.3, para. 40; CAT/C/MEX/CO/7, para. 26.

<sup>17</sup> CAT/C/MEX/CO/7, para. 8; CCPR/C/MEX/CO/6, paras. 30 and 31.

right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

104. According to the source, after being tortured, the detainees accepted the charges that they were members of a criminal group. They were reportedly taken to the Office of the Assistant Attorney General for the Investigation of Organized Crime in Mexico City, where they were both subjected to intimidation, including threats that their families would be killed, before signing confessions that they had not read. In its response, the Government states that both defendants gave their statements on 14 February 2013 and that they had both been assigned federal public defenders. The Government notes that it undertook further investigations, which involved obtaining statements from the three persons who had allegedly been kidnapped and reports concerning evidence gathered during the arrest.

105. The Working Group notes that the source's allegations concerning the forced confessions have not been refuted by the Government. As indicated previously, other evidence, including two *amparo* applications, the reports of the clerk who followed up on their situation and a medical report from the National Human Rights Commission, supports these allegations. The burden is on the Government to prove that the statements made by Ms. Esparza and Mr. Menchaca were given freely,<sup>18</sup> but it has not provided such proof. The Working Group notes that the judicial theory of "procedural immediacy", which was reportedly applied in this case, does not meet the standards of a fair trial.<sup>19</sup>

106. As a result of having been forced to confess, the right of Ms. Esparza and Mr. Menchaca to presumption of innocence under article 14 (2) of the Covenant was violated. So too was their right not to be compelled to confess guilt, under article 14 (3) (g) of the Covenant. Intentionally inflicting severe pain and suffering, as well as making threats and putting pressure on a person in order to obtain a confession, violates articles 2, 13, 15 and 16 of the Convention against Torture and makes the proceedings inherently unfair and the detention arbitrary.

107. In addition, the source alleges that Ms. Esparza and Mr. Menchaca were not given guarantees of a fair trial, as confessions extracted under torture were not excluded. When the detention order was issued against Ms. Esparza, the court considered that the allegations of torture were raised merely as a defence. Furthermore, when the order was appealed, the judge stated that the torture could not be taken into account, as the statement had been given hours after the alleged torture and had been signed by a lawyer.

108. The Working Group is of the view that the courts in this case should have ordered the immediate exclusion of the confessions and further investigations into the alleged torture. A judge's failure to intervene when allegations of torture are made amounts to a violation of the right to be tried by an independent and impartial tribunal under article 14 (1) of the Covenant,<sup>20</sup> as well as of the principle of equality of arms. The source has also established a credible case that the prosecution authorities failed in their duty to question the police's version of events, when there were clear indications that the detainees had been tortured.<sup>21</sup> The Working Group will refer this case to the Special Rapporteur on the independence of judges and lawyers.

109. The source alleges that there were irregularities in the collection of evidence, including the submission of photos of the accused, pressure on the victims to identify certain perpetrators and failure to comply with the procedure for voice recognition. These alleged kidnapping victims never appeared in court as part of the criminal proceedings, nor did they sign their statements, so that it was impossible to verify them.

110. 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.<sup>22</sup> The evidentiary irregularities to which the source refers are a matter for national courts.

<sup>18</sup> General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

<sup>19</sup> A/HRC/28/68/Add.3, para. 56.

<sup>20</sup> Opinions No. 53/2018, para. 77, and No. 46/2017, para. 25; A/HRC/28/68/Add.3, para. 56; CAT/C/MEX/CO/7, paras. 20–21.

<sup>21</sup> A/CONF.144/28/Rev.1, Guidelines on the Role of Prosecutors, para. 16.

<sup>22</sup> Opinions No. 64/2019, No. 75/2018 and No. 53/2018.

111. Furthermore, it is alleged that the deprivation of liberty was carried out in ways that are contrary to international human rights standards, namely precautionary detention without charge (*arraigo*) and mandatory pretrial detention. The source states that precautionary detention without charge is a form of detention provided for in article 16 of the Constitution, where a person can be deprived of liberty without criminal charges for 80 days. In addition, Ms. Esparza and Mr. Menchaca spent more than 7 years in mandatory pretrial detention, during which no assessment of their specific circumstances was conducted, because their alleged crimes were among those for which detention is automatically imposed under article 19 of the Constitution. The Government outlines the measures that the court has taken to impose precautionary detention without charge, noting that it is proportionate and necessary to allow further investigation.

112. The Working Group is of the view that the practice of precautionary detention without charge should be eliminated, as it can lead to prolonged periods of detention, without any charges having been brought against the suspect, and violates the presumption of innocence.<sup>23</sup> Furthermore, the Working Group reiterates its opinion that automatic pretrial detention is in breach of the human rights obligations of Mexico. The Working Group has carefully examined this case and concluded that mandatory pretrial detention also violates the presumption of innocence.<sup>24</sup> The Working Group notes that the category of offences requiring mandatory pretrial detention was broadened in 2019 and urges the Government to repeal the legal provisions providing for mandatory pretrial detention or to modify them in accordance with the international obligations of Mexico.

113. Before their release, Ms. Esparza and Mr. Menchaca had been in custody for more than 7 years. It is difficult to understand why such prolonged pretrial detention was necessary, given the Government's claim that the defendants were arrested in flagrante delicto. The period of detention was unacceptably long, violating the right to be tried within a reasonable time and without undue delay under articles 9 (3) and 14 (3) (c) of the Covenant.<sup>25</sup>

114. The Working Group concludes that the violations of the right to a fair trial are of such gravity as to render the detention arbitrary under category III.

#### *Category V*

115. The Constitution distinguishes between accused persons who are allowed alternatives to pretrial detention and those who are not. Ms. Esparza and Mr. Menchaca were detained for more than 7 years, as their alleged crimes called for mandatory detention. The Government argues, with reference to the criteria used by the Human Rights Committee, that there was no distinction, exclusion, restriction or preference for or against them. They were arrested for the crimes they had committed and not on discriminatory grounds.

116. The Working Group is of the view that the constitutional provisions allowing for mandatory pretrial detention for some offences are discriminatory, in that they draw a distinction between persons who may apply for alternatives to imprisonment and those who may not, in a way that does not take into account the equality of human beings.<sup>26</sup> The Working Group found that this discrimination is based on the "other status" of some accused persons, namely the fact of having been accused of an offence for which alternatives to detention are not permitted, a basis for discrimination prohibited under articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant.<sup>27</sup> The Working Group considers that the facts of the present case disclose a violation of category V.

117. Finally, the Working Group takes note of the source's submission that persons with limited financial means are at particular risk of being arbitrarily detained in Mexico. The Working Group is concerned about this alleged pattern of detentions and refers these allegations to the Special Rapporteur on extreme poverty and human rights.

<sup>23</sup> Opinion No. 67/2011; CCPR/C/MEX/CO/6; CAT/C/MEX/CO/7; A/HRC/28/68/Add.3; A/HRC/40/8.

<sup>24</sup> Opinion No. 1/2018.

<sup>25</sup> Opinion No. 14/2019.

<sup>26</sup> Opinion No. 1/2018.

<sup>27</sup> Opinions No. 64/2019, No. 14/2019 and No. 75/2018.

*Final observations*

118. Although Ms. Esparza and Mr. Menchaca 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 given that they were held in pretrial detention for more than 7 years. The Working Group calls on the Government urgently to provide compensation and reparation to the victims in this case.

119. The Working Group expresses its grave concern about the death of Ms. Esparza's husband in the custody of the authorities. According to the source, Ms. Esparza's husband was unable to stand or walk as a result of 14 hours of torture. Ms. Esparza's husband died inside a van and officers allegedly continued to administer electric shocks to his motionless body. The Government states that Ms. Esparza's husband was beaten by a private individual before his arrest, and that he died, after his arrest, while he was being taken to the hospital.

120. The Working Group is dismayed by the alleged treatment of Ms. Esparza's husband and urges the Government to conduct an urgent investigation into the cause of his death and to return his remains to his family immediately.<sup>28</sup> The Working Group has decided to refer the case to the Special Rapporteur on extrajudicial, summary or arbitrary executions.

121. This case is one of many that have been submitted to the Working Group in relation to arbitrary deprivation of liberty in Mexico.<sup>29</sup> This pattern indicates a systemic problem which, if it continues, may amount to a serious violation of international law. Under certain circumstances, widespread or systematic imprisonment, in violation of the rules of international law, might constitute crimes against humanity.<sup>30</sup>

122. The Working Group would welcome the opportunity to engage constructively with the Government to address its concerns regarding deprivation of liberty. Given that a considerable time period has elapsed since its last visit to Mexico, it is an opportune moment to continue the dialogue with the Government by way of another country visit. As Mexico is a member of the Human Rights Council, it would also be appropriate for the Government to reaffirm its standing invitation to all special procedures. Since 2015, the Working Group has made several requests to visit Mexico and has received assurances that its requests are being considered. The Working Group urges the Government to consider its requests and hopes to receive a positive response.

**Disposition**

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

The deprivation of liberty of Mónica Esparza Castro and Édgar Menchaca Castro, 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, III and V.

124. The Working Group requests the Government of Mexico to take the steps necessary to remedy the situation of Ms. Esparza and Mr. Menchaca 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.

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

126. The Working Group draws attention to the interpretative declaration made by Mexico in relation to article 9 (5) of the Covenant, in which it states that, under its Constitution and implementing legislation, every individual enjoys the guarantees relating to penal matters embodied therein and that, if by reason of false accusation or complaint any individual suffers

<sup>28</sup> Opinion No. 56/2019; CAT/C/MEX/CO/7.

<sup>29</sup> Opinions No. 64/2019, 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.

<sup>30</sup> Opinion No. 47/2012.

an infringement of this basic right, he or she has, inter alia, under the provisions of the appropriate laws, an enforceable right to just compensation.<sup>31</sup>

127. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Esparza and Mr. Menchaca, including their allegations of torture and the death of Ms. Esparza's husband, and to take appropriate measures against those responsible for the violation of their rights.

128. The Working Group requests the Government to harmonize its laws, particularly articles 16 and 19 of the Constitution, on precautionary detention without charge (*arraigo*) and mandatory pretrial detention, with the obligations assumed by Mexico under international human rights law.

129. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extreme poverty and human rights; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

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

#### **Follow-up procedure**

131. 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 Ms. Esparza and Mr. Menchaca;

(b) Whether an investigation has been conducted into the violation of the rights of Ms. Esparza and Mr. Menchaca 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.

132. 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.

133. 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. The Working Group reserves the right to take its own action in follow-up to the opinion. 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.

134. 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.<sup>32</sup>

[Adopted on 1 May 2020]

<sup>31</sup> See *Multilateral Treaties Deposited with the Secretary-General*, chap. IV.4.

<sup>32</sup> See Human Rights Council resolution 42/22, paras. 3 and 7.