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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020

Opinion No. 45/2020 concerning Brenda Quevedo Cruz (Mexico)*, **

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 2 April 2020 the Working Group transmitted to the Government of Mexico a communication concerning Brenda Quevedo Cruz. The Government replied to the communication on 2 June 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,

* 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.

** Seong-Phil Hong did not participate in the discussion of the present case.



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. Brenda Quevedo Cruz is a Mexican national who was born in August 1980. She usually resides in Coatlán del Río, Morelos. At the time of her arrest, she was a bachelor's degree candidate in communications and public relations.

5. The source reports that on 5 April 2006, the federal prosecutor filed charges in duplicate following a preliminary investigation and initiated criminal proceedings against Ms. Quevedo Cruz and others, before the Sixteenth District Court for Federal Criminal Proceedings in the Federal District, for the alleged offences of unlawful deprivation of liberty in the form of kidnapping, and organized crime. At the prosecutor's request, an arrest warrant was issued on 6 April 2006.

6. Ms. Quevedo Cruz was deprived of her liberty on 28 November 2007 in Louisville, Kentucky, in the United States of America. On 12 December 2007, the Ministry of Foreign Affairs was asked to draw up a request for provisional detention pending extradition; it did so on 8 May 2008.

7. Ms. Quevedo Cruz was transferred to Mexico City on 25 September 2009. Officers of the Federal Criminal Investigation Police, under the authority of the Attorney General's Office, informed the Sixteenth District Court that the arrest warrant had been executed and that the accused was at the disposal of the judicial authority, in Santiaguito prevention and social rehabilitation centre in Almoloya de Juárez, Mexico State. On 26 September 2009, the proceedings before the Sixteenth District Court were resumed.

8. On 26 September 2009, Ms. Quevedo Cruz made her preliminary statement before the Second District Court for Federal Criminal Proceedings in Toluca, Mexico State, which was providing assistance to the Sixteenth District Court. During those proceedings, she was informed that a judgment would be handed down within four months if the applicable maximum penalty in her case was not more than 2 years' imprisonment, or within one year if the applicable maximum penalty was greater than that, unless she needed more time to prepare her defence.

9. On 28 September 2009, the Second District Court for Federal Criminal Proceedings in Toluca, Mexico State, issued a detention order in respect of Ms. Quevedo Cruz, for the offences of organized crime and unlawful deprivation of liberty in the form of kidnapping, and ordered the initiation of ordinary proceedings.

10. In a letter to the Sixteenth District Court dated 8 October 2009, Ms. Quevedo Cruz's defence counsel requested that she be transferred to Santa Martha de Acatitla prison, since Mexico City was the jurisdiction in which the alleged offences were said to have been committed.

11. On 9 October 2009, the Sixteenth District Court ordered that Ms. Quevedo Cruz be transferred to Santa Martha de Acatitla women's prison in Mexico City, in accordance with the "fundamental right of the accused to serve her pretrial detention in the place where the trial is to be held, as a precautionary measure to ensure that she is present at the trial and, in addition, to enable her to exercise the fundamental rights that govern criminal proceedings".

12. By official letter SSP/1801/2009 of 12 October 2009, the Office of the Under-Secretary for the Prison System of the Federal District informed the Sixteenth District Court that:

The Federal District prison system is suffering from serious overcrowding problems, as Santa Martha de Acatitla women's prison has the capacity to accommodate 1,032 inmates but is currently housing 1,824, resulting in an overcrowding rate of 56.5 per cent and making it impossible to continue receiving inmates who are under federal jurisdiction ... In addition, the authorities of the women's prison ... have stated that the admission of the defendant in question would pose a personal and institutional security risk, as one of her fellow defendants in the Wallace case is also being held

there ... and the media coverage of the case has fuelled rumours among the population that there are plans to attack Ms. Quevedo Cruz.

13. The source claims that on 27 November 2009, Ms. Quevedo Cruz was subjected to torture and cruel, inhuman or degrading treatment or punishment at Santiaguito prevention and social rehabilitation centre in Almoloya de Juárez, Mexico State. Between 6.30 and 7 p.m., some prison guards came to her cell and told her that she was going to be taken to a meeting with the prison director. Instead, she was taken to a room where there were two men wearing suits and hoods. The men blindfolded and handcuffed her and sat her on a chair. They began to threaten her, beat her and suffocate her with a plastic bag, in order to make her confess to the offence of which she had been accused.

14. On 7 October 2010, Ms. Quevedo Cruz was transferred to the Islas Marías prison complex. On 13 October, she was again subjected to torture: she was blindfolded and her arms were bound using a blanket secured with adhesive tape. Later, a man thrust his fist between her legs several times, asking: "How does this feel?" Water was poured over her face to create a feeling of suffocation; she was given electric shocks and threatened with reprisals against her family.¹

15. The source notes that a complaint was filed with the National Human Rights Commission on 27 November 2009 in connection with these events (case file CNDH/1/2009/4670/OD). A complaint concerning the events that had occurred at the Islas Marías prison complex was also lodged (case file CNDH/3/2010/6007/Q).

16. On 3 July 2011, Ms. Quevedo Cruz's defence counsel filed an indirect *amparo* application against the detention order that had been issued on 28 September 2009 in criminal case 35/2006 of the Sixteenth District Court. The application was declared admissible on 26 July in *amparo* proceedings before the Thirteenth District *Amparo* Court for Criminal Matters in the Federal District.

17. On 30 September 2011, after the appropriate medical and psychological evaluations had been carried out, Ms. Quevedo Cruz was informed that there was not enough evidence to substantiate the allegations made in complaint CNDH/3/2010/6007/Q.²

18. The source reports that a preliminary investigation (18/UEIDAPLE/LE/12/2011) was opened by the Special Unit for the Investigation of Environmental Offences; the preliminary investigations into the complaints filed with the National Human Rights Commission, relating to the same facts, were merged with this investigation. On 28 July 2011, a decision not to prosecute was issued.

19. In a letter to the Sixteenth District Court dated 23 July 2012, Ms. Quevedo Cruz's defence counsel requested that she be transferred to Santa Martha de Acatitla prison or Tepepan prison, in Mexico City. In its response dated 25 July 2012, the Court held that the authority with competence to decide on this matter was the General Directorate for Prevention and Social Rehabilitation of the Federal Ministry of Public Security, under article 18 of the Constitution.

20. On 31 July 2012, the Thirteenth District *Amparo* Court for Criminal Matters handed down an interlocutory decision on *amparo* application 681/2012-1, whereby it permanently suspended the execution of the contested detention order, without ordering the release of the detainee:

However, having read the *amparo* application and the preliminary report of the relevant authority in full, and noting that the complainant is deprived of her liberty under a detention order issued on 28 September 2009 in criminal case 35-2006-II, the Court grants a permanent suspension to Brenda Quevedo Cruz, solely to

¹ The source attaches a psychiatric evaluation carried out in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (case file 35/2006-II, vol. XLI, pp. 285–295).

² Case file 35/2006-II, vol. XLI, pp. 519–529. The psychiatric evaluation nevertheless contains the following: "She said that she is trying to forget what happened but that she cannot. She feels panic when she leaves her cell. She avoids conversations about sex because she was sexually assaulted. She has no interest in or desire to engage in any activity; she simply does as she is told to avoid punishment. She feels completely alone and cut off from humanity."

ensure that she remains at the disposal of this District Court, as far as her personal liberty in the place of detention is concerned, and at the disposal of the judge in the case, as far as the proceedings are concerned, in accordance with the first paragraph of article 136 of the implementing act, until the relevant authority is notified of the order whereby the judgment handed down in the case becomes enforceable.

21. On 24 August 2012, the constitutional hearing of indirect *amparo* application 681/2012 was postponed because Ms. Quevedo Cruz requested that the Supreme Court assume jurisdiction over the case of its own motion. This request was dismissed by the First Chamber of the Supreme Court.

22. On 23 October 2012, the Thirteenth District *Amparo* Court for Criminal Matters in the Federal District handed down a judgment that became enforceable on 13 November 2012, under which the relevant authority was required to:

1. Declare the contested decision null and void. 2. Issue another decision in which, with full jurisdiction, it determines the legal situation of the *amparo* applicant with respect to all the acts for which she is being prosecuted, on the understanding that the analysis of the corpus delicti of unlawful deprivation of liberty in the form of kidnapping must be consistent with the criminal legislation of this city that was in force at the time of the events. Under articles 104 and 105 of the *Amparo* Act, the authority is required to inform this District Court, within 24 hours, of the steps taken to carry out the enforceable judgment in question.³

23. On 16 November 2012, the Sixteenth District Court issued a detention order in respect of Ms. Quevedo Cruz for the offences of organized crime and unlawful deprivation of liberty in the form of kidnapping, which is punishable under article 163, read in conjunction with articles 164 (I), (III) and (IV) and 165, of the Criminal Code of the Federal District that was in force at the time of the events, in 2005.

24. On 21 November 2012, the federal public defender representing Ms. Quevedo Cruz lodged an appeal against the constitutional deadline order of 16 November 2012 with the Second Single-Judge Criminal Court of the First Circuit in the Federal District (appeal case 21/2013).

25. On 12 March 2013, a judgment on the appeal was handed down, the first operative paragraph of which read as follows:

1. The constitutional deadline order of 16 November 2012, issued by the Sixteenth District Court for Federal Criminal Proceedings in the Federal District in criminal case 35/2006, shall be amended to include operative paragraph 2 bis, which shall read as follows: Although the defendant's personality profile has been entered into the record, it should not be taken into account in any way when the final decision is made.

26. On 21 March 2013, Ms. Quevedo Cruz filed an indirect *amparo* application against the judgment of 12 March 2013 with the Third Single-Judge Criminal Court of the First Circuit in the Federal District. In the application, it was argued that "the judgment confirms an order that is subjective and devoid of analysis" and that serves as a basis for the detention order. On 1 April 2013, the Third Single-Judge Criminal Court permanently suspended the execution of the contested decisions. On 31 December 2013, the Second Single-Judge Criminal Court of the First Circuit rejected indirect *amparo* application 12/2013.

27. Ms. Quevedo Cruz applied for a review of the judgment of 31 December 2013. Her application was declared admissible on 4 February 2014 as appeal case 31/2014 and was dealt with by the Eighth Collegial Criminal Court of the First Circuit. On 5 June 2014, the Court upheld the judgment.

28. On 25 September 2014, Ms. Quevedo Cruz filed an application for release due to insufficient evidence with the Sixteenth District Court. In this application, it was argued that the main evidence against Ms. Quevedo Cruz was the confession of another defendant⁴

³ Case file 35/2006-II, vol. XL, p. 499.

⁴ Vol. IV, pp. 748–757.

and that this confession had been granted full legal force and used as a basis for issuing a detention order against her. The application for release due to insufficient evidence was dismissed.

29. On 17 March 2015, the acts of torture described above were reported once again, when Ms. Quevedo Cruz gave an additional statement in criminal case 35/2006. In a decision handed down on 18 March 2015, the Sixteenth District Court ordered of its own motion that the relevant medical and psychological evaluations be carried out and opened preliminary investigation 433/UEIDAPLE/DT/3/2015.

30. The source reports that, even though Ms. Quevedo Cruz had repeatedly reported the abuse that she had suffered, the authorities responsible for the administration of justice and the protection of human rights did not act with due diligence. As a result, members of the federal legislative branch submitted an opinion urging the National Human Rights Commission to again provide support allowing for other medical and psychological examinations to be carried out in connection with the allegations of torture, in accordance with international human rights standards. However, the opinion was dismissed on the grounds that sufficient action had already been taken.⁵

31. The source claims that Ms. Quevedo Cruz remains in pretrial detention, in federal social rehabilitation centre No. 16 for women in Coatlán del Río, Morelos, more than 12 years after her arrest. She has been held in five different detention centres in Mexico, where her situation as a prisoner has never been objectively classified. Those centres include Santa Martha de Acatitla women's prison in Mexico City; Noroeste federal women's prison in Tepic, Nayarit; Santiaguito prevention and social rehabilitation centre in Almoloya de Juárez, Mexico State; and the Islas Marías federal prison complex in Nayarit. Ms. Quevedo Cruz is currently being held in federal social rehabilitation centre No. 16 for women in Coatlán del Río, Morelos.

32. The source notes that this situation has led to her being held in prisons with a higher level of security than required, such as the Islas Marías prison complex, which is for convicted prisoners, not pretrial detainees. The decision to place her in that prison also conflicted with the principle that she should be held in the prison closest to her home, and affected her communication with family members in the outside world and with her public defender in Mexico City.

33. The source claims that the acts described can be legally classified as violations of the international human rights standards that apply to Mexico.

34. Firstly, the source claims that Ms. Quevedo Cruz's right to liberty and security of person and her right not to be subjected to arbitrary arrest or detention, under article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant, have been violated. Ms. Quevedo Cruz has been in pretrial detention for more than 11 years even though no judgment has been handed down at first instance. This situation means that her detention no longer constitutes a reasonable, precautionary measure, but rather arbitrary detention and premature punishment. It constitutes a violation of her right to be tried within a reasonable time or released, her right to the periodic judicial review of measures that restrict personal liberty, her right to an effective judicial remedy, the principle that measures to restrict liberty must not constitute premature punishment, her right to be presumed innocent and her right to the prompt and efficient administration of justice. The fact that she has been held in pretrial detention for more than 11 years is not justified by any circumstances such as the complexity of the case or a request by the defendant to submit additional evidence; her detention therefore constitutes a de facto punishment, in violation of article 9 (3) of the Covenant.

35. Secondly, the source claims that the fact that Ms. Quevedo Cruz was held in the Islas Marías prison complex violated her right to integrity of the person, her right to be recognized as a pretrial detainee and her right to be segregated from convicted persons and to be subject to separate treatment appropriate to her status as an unconvicted person, in contravention of article 10 of the Covenant and article 5 (4) of the American Convention on Human Rights.

⁵ Opinion submitted to the Standing Committee of the Congress on 29 July 2015 (LXII/3SR-19/56586).

36. Thirdly, the source claims that Ms. Quevedo Cruz was subjected to acts of torture that violated her right to physical and mental integrity, which is enshrined in article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and article 5 (2) of the American Convention on Human Rights. The acts in question clearly constituted torture and other cruel, inhuman or degrading treatment or punishment. The Mexican authorities, in turn, failed to ensure a prompt and impartial investigation into the acts reported by Ms. Quevedo Cruz, as they are required to do under article 12, read in conjunction with article 16, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

37. Ms. Quevedo Cruz was the subject of an urgent appeal sent by the Working Group and three other special procedures of the Human Rights Council on 20 October 2017.⁶ The Working Group has taken note of the Government's reply of 5 April 2018.⁷

Response from the Government

38. On 2 April 2020, the Working Group transmitted the source's allegations to the Government. The Working Group requested the Government to provide detailed information on the case of Ms. Quevedo Cruz, clarifying the legal and factual grounds for her detention and explaining how it was compatible with the international human rights obligations of Mexico, by 1 June 2020. The Working Group requested the Government to ensure Ms. Quevedo Cruz's physical and mental integrity.

39. The Government submitted its reply after the deadline, on 2 June 2020. The Working Group cannot consider the Government's reply to have been received within the time limit. The present opinion is rendered on the basis of all the information obtained by the Working Group, in accordance with paragraph 16 of its methods of work.

Discussion

40. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

41. As a preliminary matter, the Working Group notes that Ms. Quevedo Cruz's case has been submitted to the Inter-American Commission on Human Rights. The Inter-American Commission is reportedly considering the admissibility of the complaint. In its late reply, the Government requests the Working Group to refuse to consider the present case on the grounds that, under paragraph 33 (d) of its methods of work, it is precluded, by *lis pendens* and the requirement of coordination, from considering a matter that is currently before the Inter-American Commission. The Government argues that the Inter-American Commission and the Working Group are quasi-judicial bodies that are empowered to analyse human rights violations and make recommendations to States, and that it is important to strengthen the coordination between them in order to avoid situations where the same matter is being considered by both bodies.

42. The Working Group recalls that the procedural rules for the handling of communications are contained in its methods of work.⁸ As the Working Group has pointed out, including in its jurisprudence concerning Mexico,⁹ its methods of work do not prevent it from considering a complaint that is pending before the Inter-American Commission on Human Rights.¹⁰ As the Working Group has explained:

⁶ UA MEX 6/2017, available at

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23383>.

⁷ Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34001>.

⁸ Opinions No. 44/2018, para. 71; No. 43/2018, para. 63; No. 42/2018, para. 67; and No. 8/2018, para. 30.

⁹ For example, opinion No. 53/2018, para. 82.

¹⁰ Opinions No. 16/2016, para. 20; No. 21/2013, paras. 26–28; No. 52/2011, paras. 25–38; No. 9/2005, para. 7; and No. 28/1998, para. 11. The source refers to Inter-American Commission on Human Rights, Report No. 67/15, Petition 211-07, Admissibility, *Jorge Marcial Tzompaxtle Tecpile et al. v. Mexico*, paras. 34–35, and notes that the petition submitted to the Inter-American Commission in the

In no part of the applicable legal provisions is it stipulated that the Working Group shall refrain from considering matters that are being or have been examined under other international or regional procedures, including, for example, under the inter-American system of human rights protection. In addition, the Working Group, in accordance with the methods of work that govern its actions, and also with the resolution by which the Human Rights Council conferred its mandate, is not prevented from considering individual communications on cases of arbitrary detention in any State Member of the United Nations, even if another treaty body or non-treaty-based mechanism is considering the case, whether under either the individual complaints or communications procedure or the urgent action or precautionary measures procedure, as appropriate.¹¹

43. The Working Group has emphasized that paragraph 33 of its methods of work refers to its coordination with other United Nations human rights bodies that deal with individual cases, rather than with regional bodies such as the Inter-American Commission on Human Rights.¹² In practice, the cooperation provided for in paragraph 33 of the Working Group's methods of work tends to involve other United Nations special procedure mandate holders, rather than the treaty bodies. Furthermore, in the present case, the Inter-American Commission has not yet decided on the admissibility of the complaint, and there are some important issues that fall within the Working Group's mandate that have not been addressed. For these reasons, the Working Group considers itself fully competent to examine the present case concerning Ms. Quevedo Cruz and now turns to the issues raised in the communication.

44. In determining whether the detention of Ms. Quevedo Cruz is arbitrary, the Working Group has regard to the principles established in its jurisprudence concerning 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 (see A/HRC/19/57, para. 68).

(i) Category III

45. The source claims that Ms. Quevedo Cruz's right to liberty of person, under article 9 of the Covenant, has been violated. Ms. Quevedo Cruz has been in pretrial detention in Mexico for 11 years. According to the source, her detention is not reasonable, nor can it be described as a necessary precautionary measure. She is effectively serving a prison sentence, which means that her detention is punitive.¹³

46. In its late reply, the Government states that Ms. Quevedo Cruz was detained in accordance with the law for allegedly participating in the offences of organized crime and kidnapping; that her detention is reasonable, necessary and proportionate, in view of the allegations against her; and that her detention was reviewed by the courts without delay. The Government also maintains that Ms. Quevedo Cruz's rights, including her right to be heard by an independent and impartial tribunal and her right to a proper defence, have been respected at all times, as demonstrated by the various *amparo* applications and appeals that have been filed on her behalf. The criminal proceedings against Ms. Quevedo Cruz have been conducted on an equal and equitable basis.

47. The Working Group recalls that the reasonableness of any delay in the processing of a case has to be assessed in the light of the circumstances of the case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter

case of Ms. Quevedo Cruz refers to other violations that have not been raised before the Working Group.

¹¹ Opinion No. 57/2016, para. 102.

¹² Opinion No. 89/2018, paras. 5, 9 and 12. See also the heading that precedes paragraph 33 of the methods of work.

¹³ The Government notes that, under article 366 of the Federal Criminal Code that was in force at the time of the events, the penalty for the offence of kidnapping was 15 to 40 years' imprisonment. Ms. Quevedo Cruz has been in detention for 11 years and has almost served the minimum sentence for the offence with which she is charged.

was dealt with by the authorities.¹⁴ Although the submissions refer to numerous judicial applications filed by the defence, including applications relating to the alleged torture of Ms. Quevedo Cruz on two occasions,¹⁵ it has not been explained why, after 11 years, the trial has not taken place. The Government, in its late reply, did not even mention the length of time that Ms. Quevedo Cruz has spent in pretrial detention. The Working Group considers that, although Ms. Quevedo Cruz's detention may have been reasonable, necessary and proportionate when she was first detained in Mexico in September 2009, it cannot be described as such after the inordinate delay in the prosecution of the case. Such a lengthy delay, which cannot be justified under any circumstances, is all the more excessive as Ms. Quevedo Cruz spent almost two years in detention in the United States of America before she was extradited to Mexico.

48. The Working Group is of the view that Ms. Quevedo Cruz's trial has been delayed for an unacceptably long time.¹⁶ According to article 9 (3) of the Covenant, pretrial detention should be the exception rather than the rule¹⁷ and anyone detained on a criminal charge is entitled to trial within a reasonable time or to release.

49. Article 14 (3) (c) of the Covenant establishes the right to be tried without undue delay. In the present case, Ms. Quevedo Cruz's rights under both provisions have been violated. Furthermore, the amount of time she has spent in pretrial detention is incompatible with her right to be presumed innocent under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.¹⁸ This conclusion is consistent with the conclusions of other human rights mechanisms that the use of extended pretrial detention in Mexico represents a significant and ongoing violation of human rights.¹⁹

50. The Working Group further considers that the delay in the trial of Ms. Quevedo Cruz has rendered the proceedings against her fundamentally unjust. The offences with which she is charged took place more than 15 years ago, on 11 July 2005. It is likely that the integrity of the evidence and the witnesses' recollection of the events have deteriorated significantly over that time.²⁰ It is also likely that the witnesses and other persons involved in the proceedings have come to believe that Ms. Quevedo Cruz is guilty, since she has been imprisoned for many years. The Working Group acknowledges that all States have an obligation to investigate, prosecute and punish the perpetrators of offences, including persons facing serious allegations of involvement in organized crime. However, the Working Group's opinion in this case is focused not on the charges that are the subject of the proceedings against Ms. Quevedo Cruz, but rather on the conditions under which those proceedings have been conducted.²¹ States must provide all accused persons, regardless of the charges against them, with the procedural safeguards described in articles 9 and 14 of the Covenant, some of which were not provided in the present case.

51. In addition, the source claims that Ms. Quevedo Cruz's right to dignity and integrity of the person and her right to be separated from convicted persons while in pretrial detention have been violated. According to the source, Ms. Quevedo Cruz has been held in five different detention centres in Mexico over the past 11 years and her situation has not been objectively classified. As a result, she has been held in prisons with a higher level of

¹⁴ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 37, and general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 35.

¹⁵ Opinions No. 1/2020, para. 70; No. 24/2015, para. 41; and No. 15/2001, para. 23. See also the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), para. 53 (a).

¹⁶ In opinion No. 24/2020 concerning Mexico, the Working Group found a period of more than 7 years' pretrial detention to be unacceptably long (para. 113). In opinion No. 14/2019 concerning Mexico, it reached a similar conclusion with regard to a period of more than 4 years' pretrial detention (para. 76).

¹⁷ Human Rights Committee, general comment No. 35, para. 38.

¹⁸ *Ibid.*, para. 37.

¹⁹ See, for example, CCPR/C/MEX/CO/6, paras. 34–35, and CAT/C/MEX/CO/7, paras. 32–33.

²⁰ The purpose of ensuring that accused persons are tried without undue delay, under article 14 (3) (c), is not only to safeguard the interests of justice but also to avoid keeping persons in a state of indefinite uncertainty about their fate and future and to ensure that their detention does not last longer than necessary. See also Human Rights Committee, general comment No. 32, para. 35.

²¹ Opinion No. 1/2020, para. 74.

security than required, such as the Islas Marías prison complex, which is a facility for convicted prisoners. Ms. Quevedo Cruz has also been denied the right to be placed in the detention centre closest to her home. The source claims that this has affected her communication with her family and with her public defender, who is based in Mexico City.

52. The Working Group considers that the source has established a credible *prima facie* case that, while in pretrial detention, Ms. Quevedo Cruz has been held with convicted prisoners, including in the Islas Marías prison complex. Although the Working Group accepts that there may be reasons behind some of the decisions to transfer Ms. Quevedo Cruz from one facility to another,²² it is a well-established principle of international human rights law that persons who have not been convicted of a crime should be separated from convicted persons and should receive different treatment. Ms. Quevedo Cruz should not have been detained in any facility where she could not be treated in accordance with her status as an unconvicted person. The failure to comply with this principle violated article 10 (2) (a) of the Covenant²³ and contributed to the unjustness of the proceedings against Ms. Quevedo Cruz by placing her at greater risk of violations of her rights, including her right to physical and mental integrity.²⁴ Moreover, the fact that Ms. Quevedo Cruz was detained with convicted prisoners was incompatible with her right to be presumed innocent.

53. Lastly, the source claims that Ms. Quevedo Cruz was subjected to torture and ill-treatment on two separate occasions while in detention. According to the source, on 27 November 2009, while she was being held at Santiaguito prevention and social rehabilitation centre in Almoloya de Juárez, Ms. Quevedo Cruz was blindfolded, handcuffed, threatened, beaten and suffocated with a plastic bag. The source maintains that the purpose of this treatment was to force her to confess. It is alleged that on 13 October 2010, after she had been transferred to the Islas Marías prison complex, Ms. Quevedo Cruz was blindfolded and her arms were bound using a blanket secured with adhesive tape. She was sexually assaulted and was subjected to electric shocks and water being poured over her face. She was also threatened with reprisals against her family. Two complaints were filed with the National Human Rights Commission in connection with these events.

54. The source states that, although Ms. Quevedo Cruz tried repeatedly to seek justice, the authorities did not follow up on her complaints with due diligence. She suffered acts of torture that are incompatible with article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant. The Mexican authorities failed to conduct a prompt and impartial investigation as required by articles 12 and 16 of the Convention against Torture.

55. The Working Group considers that the source has established a credible *prima facie* case, uncontested by the Government, that Ms. Quevedo Cruz was subjected to torture and ill-treatment.²⁵ This conduct 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. Furthermore, the Working Group considers that Ms. Quevedo Cruz's ability to participate in her own defence was seriously affected by the alleged torture and ill-treatment, in violation of her right to equality of arms under article 14 (1) of the Covenant. The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its causes and consequences.

²² For example, the source cited information from the authorities about overcrowding and threats to Ms. Quevedo Cruz's safety. In its late reply, the Government explained that Ms. Quevedo Cruz was transferred to the Islas Marías prison complex because the federal prison system did not have enough accommodation for women.

²³ See also rules 11 (b) and 112 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); rules 56 et seq. of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); and principle 8 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. See also CCPR/C/MEX/CO/6, paras. 36–37.

²⁴ Human Rights Committee, general comment No. 35, para. 59, where it is noted that violations of article 10 of the Covenant may contribute to the arbitrariness of a person's detention.

²⁵ See CAT/C/MEX/CO/7, para. 8, which refers to a very high incidence of torture, including sexual violence, in the early stages of detention, and CCPR/C/MEX/CO/6, paras. 30–31.

56. The Working Group concludes that the violations of the right to a fair trial are of such gravity as to give the detention of Ms. Quevedo Cruz an arbitrary character (category III).

Final observations

57. This case is one of many that have been submitted to the Working Group in recent years in relation to arbitrary deprivation of liberty in Mexico.²⁶ The Working Group is particularly concerned about the excessively long period of pretrial detention in this case.²⁷ The Working Group is concerned that this may reflect a systemic problem of arbitrary detention in Mexico which, if it continues, 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.²⁸

58. The Working Group would welcome the opportunity to engage constructively with the Government in order to address its concerns regarding the arbitrary deprivation of liberty. Given that a significant length of time has elapsed since its last visit to Mexico, in November 2002, the Working Group deems it an appropriate time to conduct another visit to the country. In March 2001, the Government issued a standing invitation to all thematic special procedure mandate holders. As Mexico is currently a member of the Human Rights Council, this would be a suitable time for the Government to reaffirm its standing invitation. Since 2015, the Working Group has made several requests to visit Mexico and has received assurances from the Government that its requests are being considered. The Working Group urges the Government to reconsider its requests and looks forward to a positive response.

Disposition

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

The deprivation of liberty of Brenda Quevedo Cruz, being in contravention of articles 3, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within category III.

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

61. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Quevedo Cruz immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group urges the Government to take urgent action to ensure her immediate release.

62. The Working Group acknowledges the interpretative statement made by Mexico with regard to article 9 (5) of the Covenant to the effect that, under the Constitution and the relevant 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 an infringement of this right, he or she has, inter alia, under the provisions of the appropriate laws, an enforceable right to just compensation.²⁹ The Working Group therefore considers that there are additional grounds for compensation under the State party's domestic law.

²⁶ Opinions No. 28/2020, No. 24/2020, 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 and No. 18/2015.

²⁷ CCPR/C/MEX/CO/6, paras. 34–35; CAT/C/MEX/CO/7, paras. 32–33.

²⁸ Opinion No. 47/2012, para. 22.

²⁹ See *Multilateral Treaties Deposited with the Secretary-General*, chap. IV (4).

63. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Quevedo Cruz, including the allegations of torture, and to take appropriate measures against those responsible for the violation of her rights.

64. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its causes and consequences, for appropriate action.

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

Follow-up procedure

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

67. 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.

68. 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.

69. 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.³⁰

[Adopted on 25 August 2020]

³⁰ See Human Rights Council resolution 42/22, paras. 3 and 7.