

OPINION No. 18/2001 (MEXICO)

Communication addressed to the Government on 10 November 2000

Concerning Rodolfo Montiel Flores and Teodoro Cabrera García

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50 and 2000/36 and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time. The Government's reply was transmitted to the source, which transmitted its comments.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. According to the source of the communication, on 2 May 1999, Rodolfo Montiel Flores and Teodoro Cabrera García, founder members of the Organización de Campesinos Ecologistas de la Sierra de Petatlán y Coyuca de Catalán, which was founded in 1998 in response to widespread and illegal logging in that region, were detained by members of the 40th Infantry Battalion of the Mexican Army in the village of Pizotla, municipality of Ajuchitlan del Progreso, state of Guerrero.
5. According to the source, Rodolfo Montiel Flores and Teodoro Cabrera García were held incommunicado for five days on army premises and were subsequently brought before the public prosecutor of Coyuca de Catalán, Guerrero, on charges of planting marijuana, carrying arms without a licence and carrying arms intended for the exclusive use of the army.

6. The source also reports that the accused did not have access to their lawyers, either at the initial inquiry stage or during the initial court proceedings. It is also alleged that they were subjected to torture in order to make them sign incriminating confessions. The National Human Rights Commission, in its recommendation No. 8/2000, concluded that Rodolfo Montiel Flores and Teodoro Cabrera García were not carrying arms at the time they were detained and that the evidence had probably been planted.

7. On 27 October 2000, the 21st single-magistrate circuit court, which heard the appeal against the judgement handed down on 28 August 2000 against Rodolfo Montiel Flores and Teodoro Cabrera García, upheld the conviction and the sentences of six years and eight months' imprisonment and of 10 years' imprisonment, respectively.

8. In its reply, dated 24 August 2001, the Government of Mexico explained that:

Mr. Rodolfo Montiel and Mr. Teodoro Cabrera were sentenced on 28 August 2000 by the Fifth District Court in case No. 61/99, having been found guilty of criminal offences against health by planting marijuana and carrying firearms intended for the exclusive use of the army, navy and air force. Rodolfo Montiel Flores was therefore sentenced to six years and eight months' imprisonment and Teodoro Cabrera García to 10 years' imprisonment. The judgement was subsequently upheld on appeal by the competent court on 26 October 2000.

On 22 March 2001, counsel for the defence lodged a direct application for amparo (117/2001) against the judgement.

On 9 May, the collegiate circuit court granted the applicants amparo and the protection of federal justice, to make it possible for a certificate issued by two forensic physicians belonging to the international organization Physicians for Human Rights to be admitted in evidence.

Defence counsel for Mr. Montiel and Mr. Cabrera accordingly made submissions supporting the legal validity of the certificate, in order to have it considered by the judge hearing the case as evidence that the individuals in question had been subjected to torture.

The district judge has received the case file and a decision is awaited.

9. The source, to whom the Government's reply was transmitted, has communicated to the Working Group a number of comments and clarifications, based in particular on the following three documents relating to the proceedings: two medical certificates, an opinion in the form of a recommendation by the National Human Rights Commission of Mexico, and an application for amparo.

(a) Medical certificates. Two medical certificates (copies of which have been transmitted to the Working Group) were issued following an examination carried out in the prison itself - and hence with the consent of the authorities - by two forensic physicians (one Danish and the other Argentine) belonging to the international organization Physicians for Human Rights, whose authority in the area of forensic medicine is recognized (see references in

the file). This point, moreover, is not contested by the Government in its reply. In their submissions, the forensic experts note that the physical examination corroborates the two ecologists' statements with regard to when the torture was applied and the methods used;

(b) Mexican National Human Rights Commission recommendation No. 8/2000. The Commission states, inter alia that its recommendation is prompted by the violation of several constitutional provisions committed during the military operation, in particular against the two individuals detained ("After having brought the situation under control, the army personnel carried out an operation likely to ... expose the detainees to various acts violating their fundamental rights"). Following investigations by representatives of the Commission at the actual scene of the operation and interviews in prison with the two ecologists, the Commission concluded that, at the time of their arrest, the individuals concerned were not carrying arms (recommendation No. 8/2000, p. 9, para. (iii) (3)) and that "the acts of torture being investigated by an official of the Military Public Prosecutor's Office for Military Zone 35, as part of preliminary inquiry No. 35ZM/06/99, and concerning which, as of the date of issue of this recommendation, no statement has been made, did indeed take place" (ibid., p. 10, c);

(c) Application for amparo. The judge hearing the case considered that, in view of the credibility of the certificate issued by the above-mentioned two physicians, sufficient evidence existed to support the allegations that the two ecologists had been subjected to torture.

10. In the light of this specific and consistent evidence, the Working Group considers that the allegations made by the source are sufficiently substantiated, bearing in mind its decision No. 38/1994, paragraph 18 (see E/CN.4/1996/40/Add.1), in which it considered that the fact that a detention had been ordered on the basis of evidence obtained from a confession extracted under torture conferred on it an arbitrary character, having regard to the international standards which prohibit the practice of torture under any circumstances, but specifically in the light of those provisions which either explicitly refer to the inadmissibility of evidence obtained under torture or, with a view to preventing torture imply that no one should be compelled to testify against himself or to confess guilt, namely:

(a) Article 14.3 (g) of the International Covenant on Civil and Political Rights: "In the determination of any criminal charge against him, everyone shall be entitled ... Not to be compelled to testify against himself or to confess guilt";

(b) Principle 21.1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which refers to the case in which an authority takes undue advantage of the situation of a detained person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person;

(c) Article 15 of the Convention against Torture, under which "Each State party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made";

(d) Guideline 16 of the Guidelines on the Role of Prosecutors (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana, Cuba, from 27 August to 7 September 1990), which states: “When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect’s human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice”;

(e) The Human Rights Committee’s consistent case law, which states that no one shall be compelled to testify against himself or to confess guilt (Communication No. 74/1980, Miguel Angel Estrella v. Uruguay, 17 July 1980), or to sign a statement incriminating himself (Communication No. 52/1979, Delia Saldias de López v. Uruguay, 6 June 1979);

(f) Above all, the Human Rights Committee’s General Comment No. 20 (1992) on article 7 of the Covenant, which states: “It is important for the discouragement of violations under article 7 that the law must prohibit the use or admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment” (see HRI/GEN/1/Rev.3).

11. In the light of the above, the Working Group renders the following opinion:

The Working Group finds that there are reasonable and consistent grounds for concluding that the detention of Mr. Montiel and Mr. Cabrera was ordered in flagrant violation of article 5 of the Universal Declaration of Human Rights, articles 7 and 14 (g) of the International Covenant on Civil and Political Rights, and article 15 of the Convention against Torture, to which Mexico is a party. The Working Group considers that these violations are of such gravity as to confer on the detention an arbitrary character, falling within category III of the principles applicable in the consideration of cases submitted to the Working Group.

12. Consequent upon the decision of the Working Group declaring the detention to be arbitrary, the Working Group requests the Government of Mexico to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, as well as in article 15 of the Convention against Torture, in particular by taking measures to punish the authors of the violations and towards the release of these two persons from prison by discontinuing the proceedings against them.

Adopted on 14 September 2001
