

OPINION No. 20/2007 (Mexico)

Communication addressed to the Government on 11 April 2007.

Concerning Jorge Marcial Zompaxtle Tecpile, Gerardo Zompaxtle Tecpile and Gustavo Robles López.

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

1. (Same text as paragraph 1 of Opinion No. 14/2007.)
2. The Working Group expresses its appreciation to the Government for having provided the requested information in a timely manner.
3. (Same text as paragraph 3 of Opinion No. 15/2007.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the Government's reply to the source and has received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, taking account of the allegations made and the Government's reply regarding them and also of the comments of the source.
5. Jorge Marcial Zompaxtle Tecpile, Gerardo Zompaxtle Tecpile and Gustavo Robles López were arrested by members of the Preventive Federal Police on 12 January 2006, when, on the Mexico City-Veracruz highway, they stopped to repair their vehicle.
6. Without being informed of the reasons for their arrest or being shown a legal warrant, they were taken to the station of the Preventive Federal Police in the city of Orizaba, where they were accused of trying to bribe the police officials who had arrested them. Some hours later, they were taken to the Orizaba office of the Federal Public Prosecutor.

7. The head of the office, without telling them the reasons for their arrest, ordered that they be placed in incommunicado detention. Two days later, the three of them made statements, without the assistance of defence counsel, to the Special Kidnapping Investigation Unit, since it appears that they were suspected of having kidnapped a senator. At no time during this period were they allowed to inform family members that they were being detained or to have legal assistance.

8. Subsequently they were transferred to Mexico City. There, the head of the Special Kidnapping Investigation Unit of the Office of the Deputy Attorney-General for the Investigation of Organized Crime (SIEDO), of the Office of the Attorney-General, ordered their release.

9. However, unidentified police officers transferred them to the Special Unit for the Investigation of Terrorism and Arms Hoarding and Trafficking, where they were held until 18 January 2006. On that day, they were informed that the Fourteenth District Judge for Federal Criminal Cases had issued a 90-day curfew order for offences connected with terrorism and arms hoarding and trafficking. The purpose of the curfew order was to enable the Special Unit for the Investigation of Terrorism and Arms Hoarding and Trafficking to collect the evidence necessary for instituting criminal proceedings against the three men, who were moved to a curfew house of the Office of the Attorney-General located in Mexico City.

10. On 6 March 2006, the detained men lodged a complaint against unconstitutional behaviour on the part of the authorities (an amparo complaint) with the First District Judge for Amparo Complaints in Criminal Matters in Mexico City. That judge agreed to consider the amparo complaint, but only in order that the constitutionality of the men's detention might be examined – not with a view to ending the deprivation of liberty. Ultimately, the complaint was dismissed when the men appeared before the judge. The judge also dismissed a further amparo complaint, submitted by the men on the grounds of prevention of access to a lawyer during the events that had taken place while they were being detained.

11. While the men were subject to the curfew order, officials of the Office of the Attorney-General hampered the efforts of the defence lawyers in various ways, denying them access to the file on the preliminary investigation, objecting to evidence offered by them and – inter alia – not allowing an expert graphoscopy test to be carried out.

12. On 31 March 2006, the home of the mother of the Zompaxtle Tecpile brothers, the home of Mr. Maximino Zompaxtle Tecpile and the houses and shops belonging to the two detained brothers were searched. No search warrant was presented.

13. On 10 April 2006, the file on the preliminary investigation was submitted to the Third District Judge for Federal Criminal Cases in Mexico City, with the number 43/2006. On 11 April 2006, this judge ordered that the three detained men be brought before him on the charge of violating the federal law against organized crime (terrorism). On 17 April 2006, the Office of the Attorney-General complied with the order in question and produced the three men in court. The judge ordered that they be held in custody on the same day.

14. In their statement to the judge, the three men denied having committed any offence. On 22 April 2006, the judge ordered that they continue to be held in custody on suspicion of having violated the federal law against organized crime. He

argued that it was not sufficient that the detained men deny the charges brought against them; they needed to support their denial with convincing evidence in refutation of the charges. His argument was based on jurisprudence supported by the Second Collegiate Tribunal of the Fourth Circuit of Mexico City.

15. Jorge Marcial Zompaxtle Tecpile, Gerardo Zompaxtle Tecpile and Gustavo Robles López were transferred on 17 April 2006 to the Northern Prison for Men in Mexico City, where they still are. Their trial is to take place before the Twelfth Federal District Judge for Criminal Cases in the state of Veracruz.

16. Human rights defendant Ms. Elena López Hernández, of the organization Red Solidaria Década contra la Impunidad [Decade against Impunity – Solidarity Network] has received death threats over the phone for having taken an interest in the situation of Jorge Marcial Zompaxtle Tecpile, Gerardo Zompaxtle Tecpile and Gustavo Robles López. These men consider themselves to be victims of numerous human rights violations, and they are afraid of being transferred to a maximum-security prison where it will be more difficult to communicate with the outside world and they will be physically more vulnerable. They are said to be seriously depressed as a result.

17. On 10 August 2007, the Government of Mexico submitted a reply to the allegations made by the source. It stated that the facts referred to in those allegations were not correct; the men had indeed been arrested by members of the Preventive Federal Police, but not under the circumstances described by the source.

18. According to the Government, the reason for the men's detention was the start of a preliminary investigation (No. PGR/SIEDO/UEITA/004/2006) relating to their probable involvement in organized crime and terrorism. As it was feared that they would run away, the federal authorities obtained from the Fourteenth District Judge for Federal Criminal Cases a curfew order for 90 days during which a thorough investigation might be carried out.

19. Also, the Government stated that while they were subject to the curfew order the men were visited by representatives of the General Directorate for the Promotion of a Human Rights Culture, the Victim Care Service and the Community Services of the Office of the Attorney-General and the National Commission for Human Rights, but they did not make any complaint about their situation.

20. Lastly, the Government stated that, once the preliminary investigation had yielded enough evidence of probable guilt, in April 2006, the men were brought before the Third District Judge for Federal Criminal Cases and accused of involvement in organized crime and terrorism. Criminal case 43/2006 is now being prepared.

21. On 29 August 2007, the source responded to the information provided by the Government, pointing out that the Government itself admitted that Jorge Marcial Zompaxtle Tecpile, Gerardo Zompaxtle Tecpile and Gustavo Robles López had been subjected to a curfew order, which is a form of preventive detention, since persons subjected to a curfew order are not brought before a judge and there is consequently no judicial control over their deprivation of liberty, as the Working Group itself indicated in its report on its visit to Mexico in October 2002.

22. Also, the source pointed out that, although the Government maintained that the facts referred to in the allegations were not correct, it did not provide any

information in support of its version of the facts, simply stating that the detention was connected with preliminary investigation No. PGR/SIEDO/UEITA/004/2006, whereas the defence lawyers of Jorge Marcial Zompaxtle Tecpile, Gerardo Zompaxtle Tecpile and Gustavo Robles López had been informed that the preliminary investigation relating to their clients had the identification number PGR/SIEDO/UESIS/0022/2006. In the opinion of the source, this indicates that there were no genuine reasons for the men's detention over so many months.

23. In the opinion of the Working Group, it is necessary to distinguish between two periods in the detention of Jorge Marcial Zompaxtle Tecpile, Gerardo Zompaxtle Tecpile and Gustavo Robles López. The first period ran from 12 January 2006, when the three men were arrested, to 17 April 2006, when they appeared before the Third District Judge for Federal Criminal Cases in Mexico City, who on the same day ordered that they be held in custody.

24. It has been established, since the Government acknowledges the fact, that during the more than three months that elapsed between their arrest by members of the Preventive Federal Police and their appearance before the competent judge, the three men were held in a so-called "curfew house" in order that the Office of the Attorney-General might carry out a preliminary investigation into them.

25. Thus, during this first period of detention Jorge Marcial Zompaxtle Tecpile, Gerardo Zompaxtle Tecpile and Gustavo Robles López were deprived of their right to be brought, personally and without delay, before the competent judge in order that they might contest their detention, although the mere fact that on 18 January 2006, six days after their arrest by members of the Preventive Federal Police, the Fourteenth District Judge for Criminal Cases imposed a 90-day curfew order on them for offences connected with terrorism could in no way be regarded as taking legal precedence over their right to be brought before the competent judge.

26. As indicated by the source, during its visit to Mexico in 2002 the Working Group expressed concern about the curfew order arrangement used for detaining people.² In the report made by it after the visit, the Working Group stated "this arrangement in fact amounts to a form of preventive detention of an arbitrary nature, given the lack of oversight by the courts".

27. Article 9 of the International Covenant on Civil and Political Rights establishes the right of every detained person to be brought promptly before a judge or another officer authorized by law to exercise judicial power. The obligation to bring detained persons before the competent judge can never be regarded as a purely formal obligation. Thus, the due presentation of detained persons to the competent judge cannot be subordinated to the mere authorization of detention by a judge, at the request of the Office of the Attorney-General, without the latter having effective jurisdictional control over their detention.

28. As regards the period from when Jorge Marcial Zompaxtle Tecpile, Gerardo Zompaxtle Tecpile and Gustavo Robles López were placed in custody as expressly ordered on 16 [17?] April 2006 by the Third District Judge for Criminal Cases in Mexico City to the present, the Working Group considers that there has been a failure to properly inform the three detained men about the nature of the charge that has been brought against them and because of which they are being detained.

² E/CN.4/2003/8/Add.3.

29. The Working Group notes that, although the Government stated that the version of the facts presented by the source was not completely correct, it has not presented any facts whatsoever that might contradict that version. Thus, while the confusion regarding the identification number of the preliminary investigation, referred to by the lawyers of the detained men, may be a purely formal matter (something that, at all events, the Government has not expressly denied), one certain fact is that those three men have been held in detention for over a year and a half and have not received a clear, specific and precise enumeration of the acts of which they are accused. Of course, merely assigning a number to a supposed preliminary investigation and imputing a terrorism-related offence in general terms is not enough. In its paragraph 3, article 14 of the International Covenant on Civil and Political Rights provides – as an inviolable right essential for a fair trial – that during the trial every accused person shall be entitled to be informed in detail of the nature and cause of the charge against him/her.

30. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Jorge Marcial Zompaxtle Tecpile, Gerardo Zompaxtle Tecpile and Gustavo Robles López is arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

31. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in accordance with the norms and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 22 November 2007