

## **Opinion No. 25/2008 (Mexico)**

**Communication addressed to the Government on 30 May 2007**

**Concerning Mr. Olivier Acuña Barba**

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

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in due course.
3. (Same text as paragraph 3 of Opinion No. 17/2008.)
4. The Working Group welcomes with satisfaction the cooperation received from the Government with regard to the allegations formulated. The Working Group has transmitted the reply of the Government to the source of the communication, has received the observations of the source and considers that it is in a position to render an Opinion on the facts and circumstances of the case under consideration, taking into account the allegations formulated, the Government's reply and the observations of the source.
5. According to the information received, Mr. Olivier Acuña Barba, Mexican citizen, investigative journalist, director of the publication "Sinaloa Dos Mil" ("Sinaloa Two Thousand"), national media reporter for more than 20 years and foreign media correspondent, is detained in the prison of Culiacán, State of Sinaloa. He was arrested on 14 January 2006 at 8.00 a.m. in his residence, in the presence of his wife and children, by agents of the Police Investigation Model Unit of the Sinaloa State Ministerial Police (PME), who had been seconded to the Department of Investigations, wore civilian clothes and bore no distinguishing signs or insignia identifying them as police officers. They used vehicles without plates or official identification. In arresting him, the officers did not identify themselves nor did they show any arrest warrant.
6. Taken to a warehouse, he was tortured for more than 18 hours in order to confess to the murder of Mr. Loreto Antonio López Carvajal, alias "El Toñito", which had occurred on 3 October 2005. The victim of the murder had had a criminal record for robbery. According to the source, this confession aimed to prevent Mr Acuña Barba from continuing his journalistic investigations into the corruption of State authorities and police officers and from publishing further findings of his investigations. The subsequent trial took place in the Seventh Court of Culiacán, Sinaloa.
7. His wife and children were "held" for more than 24 hours in their residence, under constant police watch. The police officers left the residence after the intervention of the President of the State Commission on Human Rights. In leaving, they removed documents, notes, journalistic equipment, works of art and photographs belonging to Mr. Acuña Barba. He was finally presented to the Agent for Felonious Homicides in the Public Prosecutor's

Office. He was not allowed to choose his own defence counsel but was assigned an officially appointed defendress before that unit.

8. According to the communication, the criminal proceedings for homicide were based solely on the confession obtained from Mr. Acuña Barba by torture and on the assertions of Mr. Christian Ochoa, the prosecution's only witness, who, having earlier exculpated the journalist in an initial deposition and fled for several months, yielded to pressure, changed his statement and testified against Mr. Acuña Barba.

9. The communication refers to numerous investigations regarding cases of criminal, civil and political liability of State and police authorities for criminal acts (*inter alia*, murders, forced disappearances and corruption). Such investigations had brought about a series of acts of harassment and intimidation. The communication includes information on a number of earlier cases that Mr. Acuña Barba denounced and on requests made to the State authorities for protection, which he had never received.

10. In a second case of criminal proceedings filed against him with the Third Court of the same judicial district, Mr. Acuña Barba was accused of committing the crimes of death threats and unlawful entry.

11. In its reply, the Government acknowledges a report on the case, issued by the Public Prosecutor's Office of the State of Sinaloa, based on an investigation carried out by the Commission on Human Rights of that State and indicating, in sum, that:

(a) Mr. Acuña Barba was detained in the Culiacán Sentence Enforcement Centre.

(b) The arrest did not take place in his residence, in the presence of his wife and children and by non-identified agents but elsewhere, on the basis of an arrest warrant and by duly identified agents. Moreover, the detainee did not confess his responsibility for the murder of López Carvajal, had been treated well and had not been subjected to torture.

(c) There is no relation between the journalistic activities of the accused and his deprivation of liberty.

(d) There has been no detention of his wife and children.

(e) There have been no earlier cases involving the participation of Government officials in intimidation and harassment aimed at Mr. Acuña Barba.

(f) The two instances of proceedings filed against Mr. Acuña Barba are unrelated to the accusations that he formulated as a reporter.

(g) The investigation into the allegations of torture continues.

(h) The evidence against Mr. Acuña Barba in the proceedings related to the murder of Mr. López Carvajal consists of statements by the confessed perpetrators, Javier Estrada Acosta and Martin Edgar Ochoa, who actually accused Mr. Acuña.

(i) The arrest warrant and subsequently the detention order of 21 of January 2006 issued by the judicial authorities in charge of the case were appealed and upheld by the Criminal Circuit Chamber of the Central Region on 30 September 2006, while the subsequent constitutional (*amparo*) motion of the accused, Acuña Barba, was dismissed by the Second Court of Investigation on 3 November 2006. Once the investigation was completed, charges were brought against Mr. Acuña, who presented his answer to the accusation on 19 June 2007. The trial began on 31 July 2007.

12. In its observations on the Government's reply, the source insists on its allegations against the General Prosecutor of the State and its version of the facts but does not provide any new evidence.

13. On 29 May 2007, the Seventh Court of First Instance of the Criminal Branch of the Judicial District of Culiacán, Sinaloa, handed down a first instance sentence in Mr. López Carvajal's trial for homicide. The court found only one of the accused persons guilty and acquitted the other two, including Mr. Acuña Barba. The court found no evidence of his participation in the crime. The judgement ordered "his immediate and full release".

14. According to paragraph 17 (a) of its methods of work, adopted by the former Commission on Human Rights and the present Human Rights Council, the Working Group closes a case that has been referred to it, if the person concerned has been released. However, the Group may exceptionally render an opinion on whether or not the deprivation of liberty preceding the release was arbitrary.

15. Such an exception is not applicable to the present case because the Working Group has not been designed as a court of last resort and is not expected, in its Opinions, to evaluate the evidence presented in any legal action taken against a detainee or to rule on his or her guilt or innocence. Such is not the Group's mandate and, moreover, that task would be impossible without a previous and thorough examination of the records of the proceedings.

16. Accordingly, the Working Group is not competent to assess whether the arrest warrant, the detention order, the indictment and, eventually, the unappealable judgement fit the evidence in the file.

17. Moreover, this is a case of judicial proceedings and deprivation of liberty for ordinary offences, not for an offence in which the act denounced consists in the exercise of one of the rights belonging to Category II of the rights considered by the Working Group (namely, those provided for in articles 7, 13, 14 and 18-21 of the Universal Declaration of Human Rights and the respective articles 12, 18, 19, 21, 22 and 25-27 of the International Covenant on Civil and Political Rights).

18. Furthermore, there are no allegations of clear infringements of due process of law, such as, for instance, refusal to admit evidence provided by the accused, or other serious violations making the detention arbitrary according to Category III of the criteria used in considering cases submitted to the Working Group

19. On the contrary, the offences ascribed to Mr. Acuña Barba are not crimes of opinion and the rights enshrined in article 14 of the International Covenant on Civil and Political Rights were not violated. The Working Group, therefore, has no grounds for considering Mr. Acuña's detention as arbitrary. The main basis of the allegation made by the source is his journalistic work and his earlier denunciations regarding cases of corruption. The Working Group, however, lacks elements leading to the conclusion that Mr. Acuña's detention and the criminal proceedings instituted against him for ordinary offences took place in retaliation for his professional activities or his writings.

20. Moreover, the Working Group is also not competent to rule on whether the torture which, according to the allegations of the source, was inflicted on this person occurred indeed or had an effect. That matter falls within the scope of another public procedure created by the former Commission on Human Rights and the Economic and Social Council in 1967 and adopted by the current Human Rights Council. Nor can the Working Group pronounce itself on the alleged detention —or "holding", according to the communication— of his wife and children for 24 hours, an act denied by the Government and not supported by any evidence provided.

21. Under these conditions and in view of the foregoing, the Working Group, in accordance with paragraph 17 (a) of its methods of work, decides to close this case and deem its consideration terminated.

Adopted on 10 September 2008