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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012

#### No. 33/2012 (Mexico)

#### Communication addressed to the Government on 13 March 2012

#### Concerning Mr. Hugo Sánchez Ramírez

**The Government did not reply to the communication of the Working Group within the 60-day time limit**

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

## **Submissions**

### *Communication from the source*

3. Mr. Hugo Sánchez Ramírez is a 24-year-old indigenous Mazahuan taxi driver, residing in Depósito San Antonio in the municipality of San José del Rincón, Mexico State. On 21 July 2007, he was arrested after his car was intercepted at a stop known as El Catorce, between the communities of Providencia and Villa Victoria, Mexico State, by municipal police officers from Mexico State in Villa Victoria.

4. When the car stopped, two passengers ran out of the taxi, leaving in it a backpack. The police officers shot at the car, which was hit by six bullets. Mr. Sánchez Ramírez and two passengers in the taxi, Raúl Martínez García and Manuel Mendoza García, were arrested. The municipal police officers said that they arrested the three individuals because they were “acting suspiciously” and claimed that they had been caught in flagrante delicto to justify the absence of an arrest warrant. The officials are said to have placed two weapons in the car, next to the handbrake, thereby manipulating the scene.

5. After their arrest, the three individuals were taken to a rural location where they were interrogated and tortured by the municipal officials. They were then taken to the Villa Victoria Town Hall, where three officials from the Special Investigation Unit for High-Risk Situations (CEISAR) were present. They were interrogated again in the Town Hall and photographs were staged of them carrying weapons and wearing balaclavas over their faces.

6. On 22 July 2007, the three arrested persons were brought before the Office of the Attorney-General and the federal judicial authority on charges of possession of firearms and ammunition for the exclusive use of the army.

7. On 23 July 2007, Mr. Sánchez Ramírez made a statement to the public prosecutor and was released upon payment of bail of 8,000 Mexican pesos (about US\$ 624,000).

8. On 24 July 2007, case No. 29/2007 was brought before the Fourth District Federal Criminal Court of Mexico State for the offences of possession of firearms for the exclusive use of the army, navy and air force, and possession of firearms without a licence. On 30 June 2008, the federal criminal judge handed down a judgement sentencing Mr. Sánchez Ramírez to 5 years’ imprisonment and a fine of 100 days’ minimum wage. On 16 October 1998, the sentence was upheld by the Second Circuit Court No. 2.

9. On 8 August 2007, Mr. Sánchez Ramírez was arrested again by state judicial police in Villa Victoria, Mexico State. This time, however, an arrest warrant had been issued by the judge of the Sixth Criminal Court of First Instance of the Judicial District of Toluca, Mexico State, for the offence of kidnapping two minors.

10. On 31 July 2007, case No. 201/2007 was brought before the Sixth Criminal Court of First Instance of the judicial district of Toluca. On 8 August 2007, the arrest warrant was issued in the municipal offices of Villa Victoria. On 15 August 2007, he was formally sentenced to imprisonment.

11. On 23 March 2009, Mr. Sánchez Ramírez was convicted of the crime of kidnapping. He was sentenced to 37 years and 6 months' imprisonment and a fine of 1,775 days' minimum wage (which amounts to 84,490 Mexican pesos, i.e. about US\$ 6,557), as well as compensation for material damage to the victims in the form of a fine of 272 days' minimum wage (12,947.20 Mexican pesos, i.e. about US\$ 1,005). The sentence was upheld on 6 July 2009 by the First Collegiate Criminal Chamber of Toluca.
12. Judicial proceedings against Mr. Sánchez Ramírez lasted two years. According to the source, his right to due process was repeatedly violated. The proceedings involved manipulated testimony, fabricated evidence, altered photographs and ill-treatment.
13. Mr. Sánchez Ramírez has served 5 years of a sentence for offences that he did not commit, on the basis of the evidence produced in the judicial proceedings. In August 2012, Mr. Sánchez Ramírez completed 5 years in prison, which is the length of the sentence for the offence of possession of firearms for the exclusive use of the army.
14. Currently, Mr. Sánchez Ramírez is detained at the "Altiplano" Federal Social Rehabilitation Centre (CEFERESO) in the municipality of Almoloya de Juárez, Mexico State.
15. His lawyer filed two direct applications for *amparo* on his behalf against the two appeal court decisions, before the Second Collegiate Criminal Court of the Second Circuit based in Mexico State. On 6 July 2011, the Supreme Court decided of its own motion to exercise jurisdiction over those applications which, to date, have not been ruled upon.
16. According to the source, this case provides a classic illustration of the practices of the judicial system in Mexico State and demonstrates a pattern of unlawful conduct by CEISAR. Rather than conducting professional investigations to identify the real culprits of serious offences, it reportedly designates vulnerable — particularly indigenous — people as alleged perpetrators, easily to obtain results in its fight against crime. The case also allegedly reveals that the principle of presumption of innocence does not apply in practice in Mexico State.
17. With regard to the criminal proceedings and conviction for possession of illegal firearms for the exclusive use of the army, the source considers that the arrest was arbitrary and based on an alleged "suspicious attitude". Excessive force was used; no basic procedural safeguards, such as informing detainees of their rights and of the reasons for their detention were observed; unlawful interrogations were conducted with the use of violence, intimidation and torture; photographs were unlawfully taken of individuals carrying weapons and wearing balaclavas in order to link detainees to other acts of violence committed; justifying the claim that the accused had been caught in flagrante delicto was irrelevant; and the police officers admitted that they had never asked Mr. Sánchez Ramírez or attempted to ascertain whether he was licensed to possess weapons.
18. The judicial authorities disregarded the principle of presumption of innocence and Mr. Sánchez Ramírez's right of defence, despite the many discrepancies in the accounts of municipal police and CEISAR officers. The judges used different criteria to assess the statements of the complainants and of the accused, based on the presumption of Mr. Sánchez Ramírez's guilt. They not only disregarded the many inconsistencies in the police officers' statements but also ignored the statements of the accused, even though they were consistent at all times.
19. The source maintains that there is no legal provision for, and therefore no definition of, the concept of a "suspicious attitude". The municipal police officers used excessive force in firing shots at three passengers of a collective transport vehicle. Throughout the proceedings, statements by police officers were given greater credence merely because they were made by public officials, while the value of the victims' statements was undermined

by the mere fact that they were accused of an offence. The judges also used the term “defensive statements” to dismiss those statements. Thus, the principles of equality before the courts and the right to a fair trial were not respected.

20. According to the author, the arrest and detention of Mr. Sánchez Ramírez for his alleged involvement in a kidnapping are arbitrary. The source refers to the fact that the key evidence used in the criminal proceedings was flawed: the photographs, forced identification and the fabrication of an alleged confession in the form of a *modus vivendi* and *operandi* report. The openly contradictory standards applied to the inculpatory and exculpatory evidence, and the malicious fabrication of offences. In order to convict Mr. Sánchez Ramírez, the prosecution fabricated evidence and the court ignored the rights to presumption of innocence and to a proper defence.

21. The entire proceedings were based on the use of photographs unlawfully taken during the initial arrest of 21 July 2007. These photographs were used to ensure that Mr. Sánchez Ramírez was identified as the alleged kidnapper by the two abducted minors. Although in their initial statements of March 2007, the minors had stated that they could not provide a description of the kidnappers because they had not seen them clearly, under pressure from CEISAR police officers, they identified Mr. Sánchez Ramírez as the driver of the car in which they had been abducted. The photographs were added to the preliminary inquiry file with no indication as to how they had been obtained. The identification procedure was carried out without any formality or precautions. Subsequently, both minors withdrew their identification statements. The judge, however, did not take these retractions into consideration.

22. Mr. Sánchez Ramírez was convicted of kidnapping solely on the basis of the forced identification of incriminating photographs obtained and used unlawfully and of an alleged confession with no signature and which could not have been made on the date indicated on the *modus vivendi* and *operandi* report. His lawyer attended neither the identification of the photographs nor the alleged confession. Mr. Sánchez Ramírez was not present at his alleged confession as he was on provisional release in his community on that date.

23. The source adds that during the proceedings, the judges applied restrictive and discretionary criteria to discredit all the various testimonies for the defence while admitting without objection all the testimony for the prosecution. The defence lawyer’s questions were frequently criticized. The replies to the questions of the defence were often dismissed and the evidence provided by the defence was completely disregarded, even when it had been requested by the same judge.

24. The judge considered that it was unnecessary to take statements from police officers José Samuel Rojas Gutiérrez and Sacramento González Sánchez, who had reportedly helped to obtain Mr. Sánchez Ramírez’s alleged confession, or from the authors of the incriminating *modus vivendi* and *operandi* report. When the defence finally secured their appearance, the police officers made various contradictory statements and recognized that neither the incriminating interview nor the alleged confession of Mr. Sánchez Ramírez had taken place.

25. The source adds that this case reveals a pattern of arbitrary arrests and framing of indigenous and low-income persons, and states that as a result of their low income it is extremely difficult for indigenous persons to overcome the presumption of guilt against them. In order to demonstrate their alleged success in combating crime, police officers arrest persons they presume to be poor and with little chance of proving their innocence in court, such as taxi drivers and collective taxi owners.

26. The case also reveals a pattern of discrimination and inequality in the security and justice administration system. The source referred to the judgement of 23 March 2009 of the Sixth Criminal Court of First Instance of the Judicial District of Toluca, which literally

stated that Mr. Sánchez Ramírez “has no valuable assets of his own, a factor that works against him and which no doubt helped to account for his participation in the kidnapping, in order dishonestly to obtain money”.

27. The source recalls that in its 1998 report the Inter-American Commission on Human Rights (IACHR) already warned about the misleading interpretation in Mexican case law of the principle of procedural immediacy in respect of acts of torture and ill-treatment (see the IACHR report on the situation of human rights in Mexico [OEA/SER.L/V/II/100], paras. 309 to 315). In the Commission’s view this is an erroneous interpretation that violates due process.

28. Mr. Sánchez Ramírez’s lawyer has filed two applications for *amparo* with the Supreme Court (direct applications for *amparo* No. 4/2011 and No. 5/2011), seeking revocation by the highest judicial authority in Mexico of the interpretation that the judicial authorities have been applying to the principle of procedural immediacy and, in accordance with the principle of exclusion of unlawful evidence, the nullification of the unlawfully obtained and fabricated evidence that formed the basis for the conviction.

#### *Response from the Government*

29. No reply was received to the communication sent by the Working Group to the Government of Mexico on 13 March 2012 nor did the Government request an extension of the deadline for its reply.

#### *Comments from the source*

30. The source forwarded to the Government various new elements of information from various sources, which the Working Group will consider in this opinion.

#### **Discussion**

31. The following facts have not been disputed by the Government:

(a) On 21 July 2007, while driving his taxi, Mr. Sánchez Ramírez was arrested in the street by municipal police officers who considered that he was “acting suspiciously” — an unknown legal category that has been widely used in Mexico by the police and which, in view of its vagueness, facilitates arbitrary acts — an issue that has given rise to concern in all legal circles as it has been invoked to commit abuse, particularly through arbitrary arrests;

(b) At the time of issuing this opinion, Mr. Sánchez Ramírez has already served more than 5 years’ imprisonment, which is the length of the sentence for the offence of possession of firearms for the exclusive use of the army;

(c) At the time of his arrest, the police officers failed to present an arrest warrant;

(d) He was initially charged with illegal possession of firearms for the exclusive use of the army and was provisionally released on bail;

(e) He was nevertheless arrested again immediately afterwards, on a completely different charge: the kidnapping of two minors. Not only is the alleged offence entirely different from the first charge but so is the jurisdiction responsible for its investigation, trial and judgement, as the courts of Mexico State — rather than the federal courts — would have jurisdiction over the first alleged offence;

(f) The choice of jurisdiction was such that one offence was tried at the State level and the other at the federal level. The former jurisdiction imposed a sentence of 37 years and 6 months for the alleged kidnapping offence, while the latter jurisdiction imposed

a 5-year sentence for the offence of illegal possession of firearms for the exclusive use of the army;

(g) The Government has not refuted that the courts of first and second instance based their decisions on the initial statements made by Mr. Sánchez Ramírez at the police station rather than on those made to the judicial authorities. The convictions even accepted as evidence the initial statements of the kidnapping victims, even though they withdrew their identification at the trial. The initial identification by the victims was based on Mr. Sánchez Ramírez's photographs taken by the police when he had been convicted solely for the use of weapons for the exclusive use of the army;

(h) Mr. Sánchez Ramírez is currently detained at the "Altiplano" CEFERESO in the municipality of Almoloya de Juárez (Mexico State), where he is serving his long sentence.

32. Mr. Sánchez Ramírez's lawyer filed two applications for *amparo* before the Supreme Court, requesting his personal freedom and the guarantee of a fair trial, with all the safeguards required under domestic and international law. Neither of the two applications, however, has proved effective within the meaning of article 8 of the Universal Declaration of Human Rights and articles 2, paragraph 3 and 9, paragraph 4 of the International Covenant on Civil and Political Rights.

33. These applications were filed with a view to ensuring that the Supreme Court at the federal level amended a highly contested interpretation by the courts of the principle of procedural immediacy, which gives precedence to testimony provided as close as possible to the time of the offence – notably that provided by the accused at the police station, when they are particularly vulnerable, under significant pressure and often under the influence of torture. This practice has been considered unacceptable in the light of the abuse to which it may give rise, as is clearly illustrated in the case of Mr. Sánchez Ramírez. Although he never possessed any prohibited weapons and never kidnapped anyone, he has received wholly unjust sentences, based on the police version of his statement. Similarly, the minors who initially identified Mr. Sánchez Ramírez in photographs and under pressure from the police subsequently withdrew their statements during the proceedings. During the trial, the police officers also admitted that Mr. Sánchez Ramírez had never made a confession.

34. The arrest of this person suggests that the interpretation of the principle of procedural immediacy by the judicial authorities has encouraged, and still encourages, the use of coercion to obtain statements and arbitrary arrests. The principle of procedural immediacy is still used to give more weight to initial statements made to police officers than to statements made in judicial proceedings, thereby encouraging ill-treatment and torture.

35. The decision of the Supreme Court to assume jurisdiction over the two applications for *amparo* filed with lower courts by the lawyer of Hugo Sánchez Ramírez was considered important and gave rise to hope of obtaining justice.

36. Regrettably, there has been further cause for disappointment in this case, which has had a similar impact on public opinion and in the legal spheres as the earlier case of Basilia Ucan Nah — who, like Mr. Sánchez Ramírez is an indigenous person — which led to opinion No. 36/2011 (Mexico) of the Working Group, adopted on 1 September 2011. The Supreme Court examined the applications for *amparo* on 19 October 2011, more than 10 months ago, but has still not handed down a decision. The Supreme Court is the body that is now in a position to correct the errors made by the judges and prosecutors in the courts of first and second instance and by the municipal and federal police, who arrested Mr. Sánchez Ramírez without an arrest warrant and charged him with offences in which he took no part.

37. Consequently, the Working Group considers that the arrest of 8 August 2007 and the subsequent judicial proceedings are arbitrary. The violations of due process were blatant and particularly serious in both judicial proceedings – which formed the basis for the convictions.

38. This case also demonstrates the unlawful practice of arbitrarily arresting persons who are poor or who belong to vulnerable sectors of the population, particularly indigenous peoples, and the random use of photographs of them carrying weapons and wearing balaclavas and randomly using the photographs in connection with other preliminary inquiries.

39. This case also illustrates the systematic obstruction of Mr. Sánchez Ramírez's lawyer and the clearly unequal application of standards and criteria to the parties.

40. Arrest without a warrant from a competent authority; the total inaccuracy of the charges brought against the person concerned; detention for more than 5 years; denial of the right to be tried while free; ongoing violation of the right to due process; the failure to ensure equal rights for the defence and the prosecution; and the absence of effective judicial remedies. All of the above are flagrant violations of the rights enshrined in articles 3, 8, 9, 10 and 11 of the Universal Declaration of Human Rights, articles 2, paragraph 3, 9, 14 paragraphs 1, 2, 3 (b), 3 (g) and article 26 of the International Covenant on Civil and Political Rights — to which Mexico is a party — and Principles 2, 10, 12, 13, 21, 23, 27, 36 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988. This gives the deprivation of liberty of Mr. Sánchez Ramírez an arbitrary character under category III of the Working Group's methods of work.

#### **Disposition**

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

The deprivation of liberty of Mr. Hugo Sánchez Ramírez is arbitrary under category III of the categories of arbitrary detention to which the Working Group refers in considering the cases brought to its attention.

42. Accordingly, the Working Group recommends that the Government of Mexico should immediately release the person concerned and remove from official State documents all references to his status as a convicted person, for all legal and administrative purposes.

43. It also recommends that the State party should provide redress for all the material and moral damage suffered by the person concerned through reasonable compensation.

*[Adopted on 30 August 2012]*