



# General Assembly

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session (30 November-4 December 2015)

#### Opinion No. 56/2015 regarding Nestora Salgado García (Mexico)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 15 June 2015 the Working Group transmitted a communication to the Government of Mexico concerning Nestora Salgado García. The Government replied to the communication on 18 November 2015. 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 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 aims towards or can result in ignoring the equality of human rights (category V).

## **Submissions**

### *Communication from the source*

4. Nestora Salgado García holds the nationality of both the United States of America and Mexico. She is a member of the Tlapanec indigenous group and is regional coordinator of the community police force in the municipality of Olinalá in the State of Guerrero. In the course of her official duties, she arrested several young people on suspicion of selling drugs, and she also arrested the municipal legal representative, Armando Patrón Jiménez, on suspicion of tampering with evidence at the scene of a double murder. The source submits that, because of these actions, Ms. Salgado García was arrested on 21 August 2013. She was transferred to the “Noroeste” (North-west) Women’s Federal Centre, the maximum security prison in the State of Nayarit. She was subsequently charged with kidnapping the municipal legal representative and the young people.

5. The source reports that, at 6 p.m. on 21 August 2013, Ms. Salgado García was forcibly arrested by members of the Marine Corps, the Mexican Army and the state police near Olinalá in La Montaña region in the State of Guerrero. The soldiers did not hold an arrest warrant and reportedly did not identify themselves at the time of the arrest. Ms. Salgado García informed them that she was a United States citizen, showed the soldiers a passport issued by that country and asked why she was being arrested. The authorities confiscated her passport, thereby avoiding the need to immediately notify the consulate and allow her access to consular assistance.

6. Ms. Salgado García was taken from Olinalá to Chilpancingo, also in the State of Guerrero. Upon arrival in Chilpancingo, she was transferred by helicopter to Acapulco, Guerrero, without being brought before a judge who could review the legality of her detention. In Acapulco, Ms. Salgado García was taken to a room inside a facility that was neither a prison nor a court. Once she was in the room, a man stripped her and searched her. Later, she was forced to sign a number of documents that she was not allowed to read.

7. The next morning, she was put on a private jet and taken to Tepic, Nayarit. In Tepic, she was detained in El Rincón, a federal maximum security prison for dangerous criminals. The source points out that at the time of her arrest and detention (on 21 August 2013) she was not informed of the reasons for either the arrest or the detention, nor was she informed of the possible criminal charges against her. Furthermore, she was not allowed to contact her family. The application for *amparo* subsequently filed by her family to challenge the incommunicado detention was rejected without any justification or reason being given. She did not receive any legal advice from a lawyer, and the prison authorities, acting without any justification or judicial authorization, arbitrarily classified her as a “very dangerous” prisoner.

8. The source reports that, five days after she was detained in El Rincón, a state court in Acapulco took the exceptional measure of ordering her pretrial detention in Tepic on charges of kidnapping (a state criminal offence). On 21 December 2013, a state court in Tlapa, Guerrero, also issued a pretrial detention order against Ms. Salgado García based on

charges of kidnapping and other harmful acts. Lastly, on 14 January 2014, a federal court in Nayarit ordered her pretrial detention on charges of participating in organized crime (a federal criminal charge), on the basis of the same facts alleged before the state courts. The source maintains that none of these courts referred to her arrest or pretrial detention, nor did they explain the reason for the extreme measure of placing the accused in a federal maximum security prison more than 1,100 kilometres from the alleged scene of the crime. Normally, persons in pretrial detention are held in a local prison. The authorities also failed to explain why the case of Ms. Salgado García constituted an exceptional case that would justify her detention.

9. During the state and federal proceedings, Ms. Salgado García was never brought before a judge and was not allowed to defend herself in court, as is required under international instruments that are binding on Mexico. With regard to legal advice, the source maintains that, despite the fact that international law that is binding on Mexico requires accused persons to be granted immediate access to their lawyers, the prison authorities did not allow Ms. Salgado García to meet with her lawyers until 8 August 2014, almost one year after her arrest. When one of her lawyers was finally allowed to meet with her, on 8 August, the meeting lasted for just 45 minutes and the lawyer was not allowed to bring a pen or notebook.

10. On 31 March 2014, a federal court in Guerrero ordered Ms. Salgado García's immediate release and she was acquitted of the federal charges against her. The federal judiciary recognized that, having been established in accordance with Mexican law and being authorized by the State, the community police force was therefore part of the State public security system. Decisions and actions taken by the community police to detain individuals accused of offences must be regarded as acts of State authority. Lastly, the court stated that, in the light of all the evidence, the community police could not be considered to be a criminal organization, as alleged. Given that Ms. Salgado García had acted in accordance with her official mandate as coordinator of the community police force, she had not committed any crime and should be released immediately. However, the source reports that, despite this explicit order for her release, and despite the fact that the state charges against her were based on the same alleged facts as the dismissed federal charges, Ms. Salgado García remains detained in the "Noroeste" Women's Federal Centre in Nayarit.

11. On 1 April 2014, her defence lawyers submitted the federal court's decision to the state courts in Guerrero, together with a request for her immediate release. At the time of submission of this communication, the State courts had not yet responded to Ms. Salgado García's requests and proposals, thereby violating the two-week deadline stipulated under Mexican law. On 8 June 2014, the defence counsel put forward further arguments in her favour and called for her immediate release. Once again, the courts failed to respond. On 26 September 2014, the defence once again called for her release and, until such time as she was released, an immediate improvement in her conditions of detention.

12. The source reports that the state proceedings were transferred to the court in Tlapa and, subsequently, to another State, Colima. Despite the fact that international law that is binding on Mexico requires judicial proceedings to be held within a reasonable time, the state courts have not yet responded to any of the requests made on behalf of Ms. Salgado García. The source also claims that the judiciary has hindered the processing of the case through constant moves and transfers, making Ms. Salgado García's defence almost impossible.

13. Since 22 August 2013, Ms. Salgado García has remained in solitary confinement in a small cell that is kept continuously lit. Only rarely is she allowed to leave her cell. If she wants clean water, she has to purchase it, which her family has been doing for her throughout the duration of her imprisonment. On numerous occasions, however, prison officials have denied her access to clean water.

14. Ms. Salgado García is at constant risk, as she is not receiving proper medical treatment. She needs constant medication and physical therapy. The prison denied her access to this treatment for almost a year. After a number of requests made by her defence counsel, the prison finally started giving her an assortment of 10 pills. However, the prison staff did not identify the medications and Ms. Salgado García had an adverse reaction to one of them, so she has refused to take any pills that she does not recognize. Currently, prison officials are not giving her any medication. Moreover, the prison authorities refused to treat her for toothache. After many complaints, and following direct intervention by the United States embassy, she was able to receive dental care and have the damaged tooth extracted.

15. The source also claims that the prison authorities have carried out reprisals in response to visits made by United States embassy officials, her lawyers, members of the Mexican parliament and other authorities. The prison refuses to provide her with clean water, even though it has been paid for. The authorities have even refused to allow her to go for a weekly walk outside her cell; the walks take place only when the guards allow it. The prison sends her food to her cell so that she will remain locked up there. In addition to these acts of reprisal, the authorities have not provided her with a prison uniform.

16. The source also submits that, in addition to her access to her lawyers being restricted, Ms. Salgado García is also not allowed to see her family on a regular basis. According to the source, for a period of time she was not able to receive visits from any of her family members, as her daughter had left Mexico in response to death threats and her sister was denied access to the prison. In order to contact other members of her family, including her husband, Ms. Salgado García has to make a reverse charge call to a single, designated number in Mexico. She is allowed to do this only once every eight days, for a maximum of 10 minutes each time, but even this length of time is not always granted. She is not allowed to make international calls, which constitutes a further personal hardship for her, as many members of her family are in the United States.

17. The source reports that, in view of the information provided, on 28 January 2015 the Inter-American Commission on Human Rights considered that the matter prima facie met the requirements of seriousness, urgency and irreparable harm and issued Precautionary Measure No. 455-13 requesting Mexico to adopt the necessary measures to ensure the life and personal integrity of Ms. Salgado García, providing proper treatment recommended by specialists.

18. In its reply to an urgent appeal issued by the Working Group and other special procedures mandate holders on 13 March 2015, the Government of Mexico reported that, since Ms. Salgado García had first been deprived of her liberty, various measures had been taken to protect her integrity. After the Commission issued the precautionary measures referred to above, three follow-up meetings were held to monitor the implementation of these measures. These meetings took place on 10 February, 18 February and 2 March 2015.

19. Regarding the source's claim that Ms. Salgado García is not receiving appropriate medical treatment, the Government of Mexico informed the Working Group that she had undergone medical examinations at the Civil Hospital in Tepic, Nayarit, in order to obtain a full assessment of her health. The medical diagnoses had been carried out on 26 February and 6 March 2015. A preliminary medical report had been issued on 11 March 2015, ordering additional medical examinations and some specific treatments. At the time when the Government of Mexico issued its report, the results of the final medical report were still pending.

20. The Government also submitted information on Ms. Salgado García's living conditions in the "Noroeste" Women's Centre. According to the authorities, she does receive telephone calls from her relatives. The authorities also reported that, between 22

August 2013 and 15 February 2015, she received 40 visits from relatives and from her lawyers.

21. The Executive Commission for Victim Support has provided Ms. Salgado García with victim support. The Commission has visited her on several occasions in the “Noroeste” Women’s Federal Centre to interview her and provide her with legal, medical and psychological support services. The authorities state that, in an interview conducted on 18 February 2015, Ms. Salgado García reported that she had been seen by specialist physicians and a masseuse, which had improved her physical and emotional health, and that she had access to medication. She also indicated that she had been in contact with her defence lawyers. In addition, at a meeting held on 26 February 2015, Ms. Salgado García asked the Executive Commission for Victim Support to assign a psychologist who could begin giving her psychotherapy. She also asked the Commission to request the National Human Rights Commission to follow up her complaint.

22. The Government also stated that the National Human Rights Commission had initiated proceedings in three separate cases on the basis of the complaints submitted by Ms. Salgado García. That Commission had also visited Ms. Salgado García a number of times and engaged in two reconciliation procedures with the General Directorate of Social Rehabilitation and Prevention, which had been agreed on 13 June 2014 and 22 December 2014. Lastly, the Commission had stated that Ms. Salgado García had not been subjected to ill-treatment by officials at the “Noroeste” Women’s Federal Centre and that this had been corroborated by Ms. Salgado García herself.

23. The Government said that, once Ms. Salgado García had undergone a comprehensive medical examination, and depending on the results of that examination, the Ministry of the Interior of the State of Guerrero would apply for her transfer to the Tepepan Women’s Reintegration Centre in Mexico City, by agreement with her representatives.

24. On 11 May 2015, the source reported that on 5 May 2015 Ms. Salgado García had begun a hunger strike protesting against her detention and her living conditions. On 3 June 2015, the source reported that the hunger strike was continuing and that as a result Ms. Salgado García’s health had worsened considerably.

25. The source states that the establishment of community police forces in indigenous communities is based on indigenous communities’ right to govern themselves, to have their own identity as peoples and to decide their own present and future. This right is recognized in the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), in article 2 of the Constitution of Mexico and in Act No. 701 on the Recognition, Rights and Culture of Indigenous Peoples and Communities in the State of Guerrero. Pursuant to this Act, the community police force is an auxiliary public security body that forms part of the State public security system.

26. The source contends that Ms. Salgado García was arrested because of her efforts to combat municipal corruption and organized crime. She was arrested by military personnel and State police officers who did not show any arrest warrant. Those who arrested her did not inform her of the reasons for her arrest or of the charges against her. She remained disappeared for days. Following her arrest, she was transferred to Tepic, the capital of the State of Nayarit, which lies 1,100 kilometres from her place of origin. When she revealed that she was a United States citizen, those who arrested her confiscated her United States passport, thereby preventing her from obtaining access to the consular assistance to which she was entitled.

27. Ms. Salgado García was not brought before a judge, which meant that there could be no judicial review of the lawfulness of her detention. The application for *amparo* subsequently filed by her family members to challenge her incommunicado detention was dismissed without any legal basis or reason being given. The prison authorities immediately

classified her as a “very dangerous” prisoner, without any justification or authorization by the courts.

28. Ms. Salgado García was charged with participating in organized crime (a federal charge) and kidnapping (a state charge). All the charges against her are based on actions carried out by the community police force of Olinalá as a legally recognized authority in the exercise of its public security duties.

29. She was arbitrarily denied access to her family members and her lawyers for almost a year.

30. Taking all these circumstances into account, a federal court in Guerrero ordered her immediate release with regard to the federal charge of participating in organized crime. The order was not obeyed, however, and Ms. Salgado García remains in detention. The federal court found that the acts for which she is being detained were carried out in her role as a community police officer; in other words, in the exercise of her public security responsibilities.

31. The constant transfers of Ms. Salgado García from one detention centre to another in different States have made it very difficult for her to enjoy the right to a properly substantive and professional defence.

32. In its reply to the urgent appeal issued by the Working Group and the special rapporteurs referred to earlier, the State did not rebut or refute any of the allegations set out above.

33. The source concludes that the detention of Ms. Salgado García runs counter to articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Mexico is a party. Her detention is arbitrary, given the serious violations of her right to due process and judicial guarantees, as outlined above.

#### *Response from the Government*

34. In the application, the source requested both an urgent appeal and a communication under the regular procedure. Since the case met the requirements for an urgent appeal, the Working Group, together with other special procedures mandate holders, issued such an appeal on 13 March 2015. The initial reply, submitted by the Government on 21 April 2015, was in response to that urgent appeal. Subsequently, on 18 November 2015, the Government submitted a reply to the communication, in which it repeated its reply to the urgent appeal. Although the reply was submitted late, it will still be considered, as it is identical to the reply to the urgent appeal and addresses, in part, the questions raised in the communication.

35. However, the reply to the urgent appeal merely denied the allegations and stated that the federal court had dismissed the case against Ms. Salgado García, who was no longer in federal custody. The Government also stated that Ms. Salgado García was being held in state custody and that the Federal Government therefore had no involvement in her case or her continued detention.

#### **Discussion**

36. The source is reliable and highly credible, given that the substantive part of the source’s allegations is fully corroborated by the Government’s reply. The subsequent case before the Working Group is simple and can be summarized as follows.

37. Ms. Salgado García holds the nationality of both the United States of America and Mexico. She is an advocate for the indigenous population in the State of Guerrero, Mexico.

On 21 August 2013, Mexican soldiers and marines arrested her, even though there were no charges against her and no manifestly criminal activity had taken place. The source claims that Ms. Salgado García showed her United States passport but that it was ignored, which meant that the consulate could not be immediately notified. The source did not address the issue of her dual nationality, however, because at the time of the events Ms. Salgado García was in Mexico, the second State where she holds citizenship.

38. The reply received failed to provide justification for the local criminal case subsequently brought against her. The current situation of the case is disturbing.

39. Firstly, there is no doubt that both the arrest and detention of Ms. Salgado García without charges being laid against her are illegal and therefore arbitrary. Moreover, the fact that the Army arrests civilians for alleged crimes when national security is not at risk is of concern to the Working Group, in view of the danger faced by civilians in such situations.

40. In addition, the ongoing criminal case against Ms. Salgado García that is based on the same facts, when she has already been acquitted under the federal justice system, is unusual and violates the right not to be tried twice for the same acts. The federal forces arrested her; it is unclear why they released her and handed her over to the custody of the state authorities. It would seem that the Federal Government should ensure that an order issued by a federal court is enforced within its territory. In addition, federal States have international obligations that must be implemented within their territory. Mexico has a continued responsibility to ensure Ms. Salgado García's release, at least on the basis of its own court's judgment. In short, the ongoing detention of Ms. Salgado García has no legal basis, in the Working Group's view, and thus falls within category I.

41. For almost a year, Ms. Salgado García was denied access to a lawyer, and during that same period she was not brought before a judge or court, in violation of principles 9, 10 and 11 of 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, annex). These principles follow from the right to a fair trial, which includes the right to be tried without undue delay, as set out in article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights. This violation suffered by Ms. Salgado García falls within category III.

42. Also, it appears that she was persecuted because of her work in defence of the rights of the indigenous population. The Working Group has considered similar situations in the same country at its recent sessions (see Opinion Nos. 23/2014, 18/2015 and 19/2015). The Working Group is deeply concerned about the existence of what appears to be a pattern of targeting human rights defenders. While the abuse falls within category II in the categorization of arbitrary detention, the Working Group is also of the view that the matter should be referred to the relevant special procedure.

43. With regard to Ms. Salgado García's health, the Working Group welcomes the positive steps taken by the Government of Mexico and requests that the Government maintain its goodwill to guarantee quality treatment, in full consultation with Ms. Salgado García's family members. There have, however, been numerous allegations concerning her conditions of detention and the Government is requested to fully address those. The Working Group will also refer the matter to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for proper follow-up to ensure that Ms. Salgado García is not revictimized.

**Disposition**

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

The Working Group concludes that the arrest and subsequent detention of Ms. Salgado García fall within categories I, II and III of the categories applicable to the consideration of cases submitted to the Working Group.

45. Consequent upon the opinion rendered, the Working Group requests that the Government of Mexico take the necessary steps to remedy the situation, releasing Ms. Salgado García and providing her with suitable compensation.

46. The Working Group will refer the situation to the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the question of torture.

*[Adopted on 4 December 2015]*

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