

# Opinion No. 24/2017

## concerning Mario Olivera Osorio (Mexico)<sup>1</sup>

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. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 7 February 2017, the Working Group transmitted to the Government of Mexico a communication concerning Mario Olivera Osorio. The Government did not reply to the communication. 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 him or her) (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 Covenant (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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

### Submissions

#### *Communication from the source*

4. Mario Olivera Osorio, born on XX January XXXX, is a primary-school teacher at the State Institute of Public Education in Oaxaca. He is also a member of section XXII of the National Education Workers' Union, the Oaxaca Education Workers' Democratic Movement and the National Coordinating Committee for Education Workers. It is reported that, in this capacity, he has participated actively in trade union activities in, and the social and political life of, his community, primarily as an advocate of education workers' labour rights.

5. The source claims that Mr. Olivera Osorio was arrested together with two other persons on the afternoon of 17 May 2013 while he was driving his vehicle on Avenida Universidad, Oaxaca. He was stopped by a van from which emerged individuals in civilian clothes carrying firearms, who did not identify themselves or produce an arrest warrant. After the arrest, excessive force was reportedly used to take him to unknown places, where he was interrogated in the early hours by unidentified persons. The source alleges that Mr. Olivera Osorio was tortured inside the van during the various transfers to which he was subjected.

6. It is stated that, the following day, on 18 May 2013, having been held in incommunicado detention overnight, Mr. Olivera Osorio was handed over to the Federal Prosecution Service and flown to

Mexico City. According to the information received, Mr. Olivera Osorio has been detained at a high-security prison, the Federal Social Rehabilitation Centre in Puente Grande, Jalisco, since 22 May 2013.

7. It is reported that the Prosecution Service charged Mr. Olivera Osorio with the offence of organized crime and that, consequently, on 28 May 2013, the Sixth District Federal Criminal Court of Puente Grande, Jalisco, issued a formal order for his imprisonment in connection with criminal case No. 136/2013-V. The source claims, however, that the only basis for this decision was a statement made by another suspect in the same case and allegedly obtained under torture.

8. From that moment, the criminal proceedings remained in the investigation phase (creation of the case file and trial) for over three years until 22 December 2016, when the case was referred to the Federal Prosecution Service for a period of 30 days. As a result, a first-instance judgment is apparently close to being delivered.

9. The source alleges that the detention of Mr. Olivera Osorio is arbitrary, because the real reason behind it is not the commission of an offence, but his participation in union activities and social activism in favour of labour rights, public education and the democratic reform of his trade union. The source states that this is corroborated by the lack of evidence or elements linking Mr. Olivera Osorio to the criminal offence of "organized crime". In this regard, it is argued that the detention of Mr. Olivera Osorio results from the exercise of his rights to the freedoms of expression, assembly and association, and to political participation in public affairs, as enshrined in articles 19 to 21 of the Universal Declaration of Human Rights and articles 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights. The detention may be considered arbitrary under category III.

#### *Response from the Government*

10. On 7 February 2017, the Working Group transmitted the source's allegations to the Government of Mexico, in line with its standard practice. The Working Group requested the Government to provide, by 9 April 2017, detailed information on the circumstances of Mr. Olivera Osorio's detention and on his current situation. It also requested the Government to clarify the legal bases for the continued detention, and to provide details regarding the conformity of this deprivation of liberty with international human rights law, in particular with the treaties to which Mexico is a party.

11. On 6 April 2017, the Working Group received a request from the Government for a one-month extension of the time limit for providing its response. The Working Group concluded that the request for an extension to the time limit did not fully meet the criterion set out in paragraph 16 of its methods of work, and therefore granted a partial extension of one week from the date of the original deadline.

12. The Working Group finds it regrettable that it has not received a response from the Government.

#### **Discussion**

13. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

14. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

15. Mr. Olivera Osorio is a primary-school teacher in Oaxaca. He is also an active member of section XXII of the National Education Workers' Union and the Oaxaca Education Workers' Democratic Movement.

16. On 17 May 2013, Mr. Olivera Osorio was arrested by individuals in civilian clothes carrying firearms. The individuals in question allegedly did not identify themselves or produce an arrest warrant. It was not until 28 May 2013 that Mr. Olivera Osorio was informed of the reasons for his arrest and subsequent detention. The Working Group considers that, since the arrest and subsequent detention for a period of 11 days had no legal basis, in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, they are arbitrary under category I.

17. After his arrest, Mr. Olivera Osorio was transferred to different locations, interrogated for several hours and tortured. It was not until the following day that he was handed over to the Federal Prosecution Service and sent to a high-security prison in Mexico City, where he remained in detention when the source's submission was transmitted. He was charged with the offence of organized crime, and a formal order was issued for his pretrial detention on 28 May 2013, on the basis of a testimony obtained under torture from a co-defendant. From that moment until 22 December 2016, the case remained in the investigation phase. In the absence of any explanation for such a lengthy period of pretrial detention, the Working Group is of the opinion that the detention violated the right to be tried without undue delay, as set forth in article 14 (3) (c) of the Covenant.

18. In addition, the Working Group is concerned by the allegations that Mr. Olivera Osorio was tortured and that the evidence used to detain him was obtained by torturing a co-defendant. These statements were neither challenged nor refuted by the Government. The treatment described constitutes, prima facie, a violation of the absolute prohibition of torture — which is a peremptory norm of international law — and of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Mexico is a party. It also violates article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant. Furthermore, the use of coerced confessions as evidence in legal proceedings is in violation of article 10 of the Universal Declaration of Human Rights, article 14 of the Covenant and article 15 of the Convention against Torture.

19. Consequently, the Working Group finds that the non-observance of international standards related to the right to a fair trial, as contained in the Universal Declaration of Human Rights and the international treaties that Mexico has ratified, is of such gravity as to give Mr. Olivera Osorio's deprivation of liberty an arbitrary character, such that it falls under category III.

20. Finally, the Working Group recalls its previous decisions<sup>2</sup> regarding the state of Oaxaca and considers that the allegations in the present case reveal a pattern of violations previously observed in such cases. In view of this and of the facts in the present case, the Working Group considers that Mr. Olivera Osorio was arrested in retaliation for his trade union activities, which are protected by article 20 of the Universal Declaration of Human Rights and article 22 of the Covenant. The detention of Mr. Olivera Osorio is therefore arbitrary under category II.

21. In line with its own practice, the Working Group will refer the allegations of torture in the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

22. Lastly, the Working Group would appreciate the opportunity to conduct an official visit to Mexico so as to engage in a constructive and direct dialogue with the Government in order to assist it in dealing with matters of concern related to arbitrary deprivations of liberty.

### **Disposition**

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

The deprivation of liberty of Mario Olivera Osorio, being in contravention of articles 5, 9, 10 and 20 of the Universal Declaration of Human Rights and 7, 9, 14 and 22 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

24. The Working Group requests the Government to take the steps necessary to remedy the situation of Mr. Olivera Osorio without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

25. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Olivera Osorio immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

### **Follow-up procedure**

26. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Olivera Osorio has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Olivera Osorio;

(c) Whether an investigation has been conducted into the violation of Mr. Olivera Osorio's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Mexico with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

27. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

28. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of the progress made in implementing the recommendations, as well as any failure to take action.

29. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>3</sup>

[Adopted on 25 April 2017]

<sup>1</sup>In accordance with paragraph 5 of the methods of work, José Antonio Guevara Bermúdez did not participate in the discussion of the present case or in the adoption of this opinion.

<sup>2</sup>Opinions Nos. 23/2014, 19/2015, 17/2016 and 23/2017.

<sup>3</sup>See Human Rights Council resolution 33/30, paras. 3 and 7.