



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
22 March 2023
English
Original: Spanish

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 893/2018*, **

<i>Communication submitted by:</i>	Nino Colman Hoyos Henao, Francia Nelly Henao Agudelo and Gabriela Garibay Mendoza (represented by the Mexican Commission for the Defence and Promotion of Human Rights and the World Organization Against Torture)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Mexico
<i>Date of complaint:</i>	20 April 2018 (initial submission)
<i>Date of adoption of decision:</i>	11 November 2022
<i>Subject matter:</i>	Torture and lack of investigation
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment; duty to prevent acts of torture; duty to ensure that its competent authorities conduct a prompt and impartial investigation; right to reparation and compensation
<i>Articles of the Convention:</i>	1, 2, 10–14 and 16

1.1 The complainants are Nino Colman Hoyos Henao, Francia Nelly Henao Agudelo and Gabriela Garibay Mendoza, acting on their own behalf and on behalf of Mr. Hoyos Henao. Mr. Hoyos Henao and Ms. Henao Agudelo are citizens of Colombia and naturalized citizens of Mexico, and Ms. Garibay Mendoza is a citizen of Mexico. The complainants claim that the State party has violated the rights of Mr. Hoyos Henao under articles 1, 2, 10–14 and 16 of the Convention, and the rights of the other complainants under article 14 of the Convention. The complainants are represented by counsel.

1.2 The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 15 March 2002.

* Adopted by the Committee at its 75th session (31 October–25 November 2022).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Claude Heller did not participate in the examination of the communication.



Facts as submitted by the complainants

2.1 Mr. Hoyos Henao has a degree in computer systems engineering. He moved to Mexico City in July 2000 and became a naturalized Mexican citizen in 2004. At the time of the events described in the complaint, he lived with his partner, Ms. Garibay Mendoza, in the State of Guanajuato, where they ran a family business specializing in the maintenance, repair and sale of computer equipment and accessories. Mr. Hoyos Henao was also self-employed as a network and computer systems adviser and consultant for various companies and individual clients, including the road haulage company Cargueros Terrestres.

2.2. On 11 December 2007, the Office of the Special Prosecutor for Kidnappings, the “anti-kidnapping unit” of the Office of the Attorney General of the Federal District, opened a preliminary investigation into the kidnapping of the daughter of the owner of Cargueros Terrestres. The preliminary investigation was assigned to a public prosecutor (MP1) and two investigative police officers (PI1 and PI2).

2.3. On 25 May 2009, in the context of the aforementioned investigation, the public prosecutor assigned to the case requested the issuance of a summons (*orden de localización y presentación*)¹ to bring Mr. Hoyos Henao in for questioning. On 11 August 2009, between 4 p.m. and 4.30 p.m., three investigative police officers (PI1, PI2 and PI3) arrived at Mr. Hoyos Henao’s place of work, accompanied by three captains and other officers of the Federal District Judicial Police Force, and intercepted him when he left the premises. One of the officers, who failed to identify himself, informed Mr. Hoyos Henao that he was under arrest, showing him a sheet of paper for only a few seconds and later identifying himself with his official police badge at Mr. Hoyos Henao’s request. Three police officers grabbed hold of Mr. Hoyos Henao by the arms and loaded him into a private vehicle bearing no official identifying marks.

2.4. Inside the vehicle, Mr. Hoyos Henao was guarded by the three officers, who searched his trouser pockets, took his telephone and handcuffed him. One of the officers forced him to bend over with his head between his legs, while the other two insulted and threatened to kill him.²

2.5 After a journey of approximately half an hour, Mr. Hoyos Henao was removed from the vehicle and taken to an office on the premises of the Office of the Special Prosecutor for Kidnappings of the Office of the Attorney General of the Federal District. Once inside, the police officers threw Mr. Hoyos Henao to the floor, removed his shoes and watch, bound his hands and blindfolded him with a piece of plastic film. The officers began interrogating him, requesting information about the alleged kidnapping. During the interrogation, in reaction to Mr. Hoyos Henao’s claim that he had no information to provide because he had not been involved in the events, the officers employed various forms of physical and psychological violence, including insults; threats to kill him and his family and to cut off his fingers; repeated blows with their fists and blunt objects to his entire body, including his neck and head; stress positions, including one in which he was forced to stretch his arms backward and his abdomen forward and bring his chest to his knees while sitting on the floor and one in which he was forced to kneel for a prolonged period of time; intense pulling of the ears; the placing of a plastic bag over his head, which prevented him from breathing and caused him to pass out; and simulated drowning. The interrogation continued for at least two hours, until Mr. Hoyos Henao burst into tears and told the agents that he had already given them the truth and that he was willing to lie if doing so would end the beating. At that moment, someone entered the room and ordered the police officers to lower their voices because their superior

¹ In the Mexican legal system, persons subject to this type of summons are temporarily detained while checks are carried out; once the checks have been completed, the person is released.

² In the police report submitted by PI1 and PI2 regarding the arrest, the officers claim that they identified themselves before the arrest, presented the summons and used minimum necessary force to subdue Mr. Hoyos Henao, who attempted to flee. The police report confirms that 12 officers participated in the arrest and that subjugation techniques were used but does not specify what these techniques were or state that Mr. Hoyos Henao was informed of the reason for his arrest, of the place to which he would be taken or of his right to receive consular assistance.

was angry that the shouting could be heard in the outer area of the office. The police officers then took Mr. Hoyos Henao to another location, where he was allowed to lie down on a bench.

2.6. Mr. Hoyos Henao was then taken to Public Prosecutor's Office No. 50 in central Mexico City, where a forensic physician from the Directorate of Forensic Support for Central Prosecution Services examined his physical condition, in preparation for his being brought before the public prosecution service at 10.17 p.m. The medical report from this examination mentions "reduced range of movement in the neck" and contains a recommendation that Mr. Hoyos Henao be transferred to a hospital for treatment and diagnosis. He was then brought before the third rota public prosecutor, who was not the same person as MP1, i.e., the prosecutor who had been assigned to the preliminary investigation and had requested the issuance of the summons. Mr. Hoyos Henao was brought before the public prosecution service more than six hours after his arrest, which contradicts the prosecutor's statement on the preliminary investigation, according to which PI1 and PI2 brought Mr. Hoyos Henao before the public prosecution service at 8.38 p.m.

2.7. On 12 August 2009, at approximately 2 a.m., Mr. Hoyos Henao was again taken to the premises of the Office of the Special Prosecutor for Kidnappings, where police officers took his fingerprints and front- and side-profile photographs, read him a bill of rights, which did not mention his right to consular assistance, and informed him of his right to make a telephone call. His request to make a call was denied, however, because it would have been long distance. Mr. Hoyos Henao was then locked in a cell with a concrete bed; police officers repeatedly entered the cell to put pressure on him and threaten him in an attempt to coerce him into confessing to the alleged kidnapping. At 6 a.m. that day, he was allowed to make a telephone call to his mother, Ms. Henao Agudelo, who was living in Mexico City at the time.

2.8. On that same day – 12 August – at 11.50 a.m., Mr. Hoyos Henao was subjected to another medical examination prior to making his initial statement to the public prosecutor. The forensic physician, who had been employed by the Central Homicide Investigations Unit of the Office of the Attorney General of the Federal District, referred Mr. Hoyos Henao to a hospital to be examined by an orthopaedic specialist because, according to the physical examination, he was suffering from a neck sprain and contusion of the left knee. At 1.38 p.m., Mr. Hoyos Henao, assisted by private counsel, made his initial statement to the public prosecutor, in which he maintained his innocence. He did not report the torture for fear of reprisals. Mr. Hoyos Henao was then taken to Dr. Rubén Leñero General Hospital, where he was examined at 3.45 p.m. and was found to have "a neck sprain and a contusion to the left knee". A subsequent examination by an orthopaedic specialist at 4.20 p.m. revealed that Mr. Hoyos Henao felt "pain in the cervical vertebrae and around the left patella" and confirmed that he had suffered a "neck sprain and a contusion to the left patella ... causing partial functional limitation". Mr. Hoyos Henao was taken back to the Office of the Special Prosecutor for Kidnappings, where a physician from the Central Homicide Investigations Unit of the Office of the Attorney General of the Federal District concluded that he had sustained injuries that would "take less than a fortnight to heal".

2.9. The injuries sustained by Mr. Hoyos Henao as a result of the violence used on him during the interrogation, some of which were documented in the above-mentioned medical examinations, were again confirmed in an independent medical examination performed on 23 January 2013, which revealed the continued presence of several physical sequelae, despite the time that had elapsed, both in the cervical area of the neck (chronic non-systematized cervicalgia and incipient spondyloarthritis) and in the left knee (left femoro-patellar chondromalacia and secondary chronic gonalgia).

2.10. On 13 August 2009, Mr. Hoyos Henao was brought before Criminal Court No. 28 of the Federal District, which ordered that he be placed in preventive custody (*arraigo*)³ for 30 days, stipulating that the custody would last only for as long as was strictly necessary for the completion of the preliminary investigation. Mr. Hoyos Henao was then transferred to the

³ Article 16 of the Constitution provides that: "The judicial authority, at the request of the Public Prosecution Service and in cases involving organized crime, may order that a person be held in preventive custody ..., provided that it is necessary for the success of the investigation, the protection of persons or the safeguarding of legal rights, or where there is a well-founded risk that the person charged may evade justice. ... The total duration of the preventive custody may not exceed 80 days."

Preventive Custody Centre of the Office of the Attorney General of the Federal District, where he remained locked in his cell, since the Centre had no outdoor space. In this cell, he was handcuffed to the bedframe all night and was provided with two daily meals, but only one glass of water per day. Once a week, he was allowed family visits of a maximum of 15 minutes, during which he was chained to the table. Over the course of this period, the prosecution service conducted only one interview with a hearsay witness, which was later used as evidence in the criminal proceedings against Mr. Hoyos Henao.

2.11 On 28 August 2009, the Public Prosecution Service brought criminal proceedings against Mr. Hoyos Henao and requested the issuance of an arrest warrant, which was executed on 7 September 2009. Mr. Hoyos Henao was convicted of the offence of unlawful deprivation of liberty on 9 August 2010, following court proceedings in which he was partially assisted by court-appointed lawyers who, according to the complainants, did not comply with due process requirements. Mr. Hoyos Henao was found to have been involved in the commission of the offence only insofar as he had set up two email accounts that were allegedly used by the captors during negotiations for the release of the victim. However, a representative of Microsoft Mexico stated during the court proceedings that there was no trace of these accounts in the company's system. The sentence was upheld on appeal by the Ninth Chamber of the High Court of Justice of the Federal District on 14 January 2011. On 16 July 2015, Criminal Court No. 8 of the First Circuit granted an application for *amparo* filed by Mr. Hoyos Henao, finding a violation of his right to receive consular assistance at the time of arrest and ordering a retrial.⁴

Criminal investigation into the offence of torture

2.12 On 13 August 2009, Ms. Henao Agudelo, the mother of Mr. Hoyos Henao, went to the headquarters of the Federal District Human Rights Commission after visiting her son for the first time and filed a complaint claiming that he had been arbitrarily detained and tortured. That same day, a representative of the Commission visited Mr. Hoyos Henao, who informed the representative about the torture he had suffered. Later that day, the Commission brought these claims to the attention of the Office of the Attorney General of the Federal District, which resulted in the opening of a preliminary investigation on 16 August 2009 into the possible commission of the offence of torture against Mr. Hoyos Henao. However, the public prosecutor's office did not immediately investigate the claims. On 12 January 2010, Mr. Hoyos Henao reiterated his complaint before the Office of the Attorney General of the Federal District and identified P11 as the person who had detained and beaten him.

2.13 On 9 April 2010, a forensic physician and a forensic psychologist from the Department of Forensic Services of the Office of the Attorney General of the Federal District conducted an expert medical/psychological evaluation of Mr. Hoyos Henao to identify possible signs of torture, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). In their findings, they concluded that none of the information arising from the examination of Mr. Hoyos Henao was consistent with his claims of mistreatment at the hand of public servants, and that he showed no signs or symptoms of such mistreatment. However, the examination did not take into account the various injuries he was found to have sustained when he was examined after his arrest, including the neck sprain.

2.14 On 12 April 2011, the Office of the Attorney General of the Federal District granted a request not to proceed with a prosecution for torture, on the ground that neither the existence of the descriptive elements of the criminal offence of torture nor the probable responsibility of the persons accused had been proven by the evidence presented; particular reference was made to the medical/psychological evaluation's findings with regard to the absence of signs, symptoms and sequelae. Mr. Hoyos Henao was notified of the decision on 9 May 2011 and filed an appeal on 23 May 2011. On 3 August 2011, Mr. Hoyos Henao was notified that his appeal had been rejected and that the decision not to prosecute had been upheld.

⁴ At the date of submission of the complaint, the criminal court of first instance had yet to issue its ruling.

2.15 Mr. Hoyos Henao filed an application for *amparo* with District Court for *Amparo* in Criminal Matters No. 14 of the Federal District, in which he alleged that the experts who had conducted the medical/psychological evaluation, the results of which formed the basis of the main arguments in support of the decision not to prosecute, were from the Office of the Attorney General of the Federal District, which was both the prosecutorial and the investigating authority in the proceedings. On 15 May 2012, *amparo* was granted on the ground that the provisions of the Istanbul Protocol on the independence of experts had not been respected during the preliminary investigation. It was noted that “the officers responsible for investigations must obtain evidence, specifically expert evidence, in an impartial and independent manner, meaning that it is prohibited to rely on public servants from the Attorney General’s Office itself for the gathering and processing of such evidence”.

2.16 On 14 June 2012, the decision not to prosecute was revoked, and different institutions were called upon to conduct a new medical/psychological evaluation. On 26 February 2013, two experts from the Department of Expert Services of the High Court of Justice of the Federal District issued findings based on a new medical/psychological evaluation, in which they indicated that Mr. Hoyos Henao showed no signs of torture and stressed that “Mr. Nino Colman Hoyos Henao’s injuries are consistent with movements typical of fighting, struggling, being subdued and/or resisting”. The experts added that they found Mr. Hoyos Henao to be suffering from chronic degenerative conditions of the neck and knee, as had been noted in the medical examination of 23 January 2013, but argued that these conditions were unrelated to the injuries of acute cervicgia and a contusion to the knee documented in the medical examination performed on him after his arrest.

2.17 On 18 March 2013, the public prosecutor again applied for a decision not to prosecute, arguing that the medical/psychological evaluation prepared by the experts of the High Court of Justice of the Federal District confirmed the findings of the previous evaluation carried out by experts from the Office of the Attorney General of the Federal District. On 29 July 2013, Mr. Hoyos Henao appealed the decision not to prosecute, claiming that the available evidence had not been properly evaluated. On 12 August 2013, the appeal submitted to the Office of the Attorney General of the Federal District was declared admissible, and various proceedings were ordered, including the preparation of a new medical/psychological evaluation by the Office of the Attorney General of the State of Mexico and the collection of certified findings in accordance with recommendation No. 2/2013 of the Federal District Human Rights Commission.⁵

2.18 The investigating officer stated that the conduct of a further medical/psychological evaluation by the Office of the Attorney General of the State of Mexico was impossible and again submitted an application for a decision not to prosecute, which was approved on 22 January 2014. A new appeal filed by Mr. Hoyos Henao was granted on 11 April 2014, and the case was returned to the investigating officer, who was requested to gather the evidence referred to in the ruling of the Directorate General of Human Rights of the Office of the Attorney General of the Federal District regarding recommendation No. 2/2013 of the Federal District Human Rights Commission. In this ruling, the Office of the Attorney General of the Federal District stated that it did not agree to any of the Commission’s recommendations. On 22 May 2014, a decision not to prosecute was again requested; this request was approved on 30 July 2014. In the corresponding decision, it was stated that the only evidence that the offence of torture had been committed lay in the complainant’s statements, which contradicted the statements of the arresting officers. In addition, although it was stated in the police reports on the arrest contained in the case file at that time that force had been used to subdue the detainee, no details were provided on the specific circumstances that had led to the decision to use force or on whether the arresting officers had complied with applicable standards on the prevention of the excessive use of force and human rights violations. Furthermore, in this decision, the public prosecutor gave evidentiary value to the first medical/psychological evaluation, despite the *amparo* decision of 15 May 2012 on the lack of independence and impartiality of the experts who had conducted that evaluation. An appeal filed by Mr. Hoyos Henao was dismissed on 1 December 2014, thereby approving the application not to prosecute, on the ground that the claims of torture made by Mr. Hoyos

⁵ See <https://cdhcm.org.mx/2013/02/recomendacion-022013/>.

Henao were the only evidence that any torture had taken place and were therefore insufficient to prove that the offence of torture, as defined in the local Criminal Code, had been committed.

2.19 On 19 June 2015, District Court for *Amparo* in Criminal Matters No. 1 granted the application for *amparo* filed by Mr. Hoyos Henao, ruling that the preliminary investigation had uncovered sufficient evidence of torture. The Court ordered the Public Prosecution Service to specify the evidence needed to clarify the facts, and to order the presentation of that evidence if it were found to be sufficient to proceed with a prosecution for torture. On 6 July 2015, the Office of the Attorney General of the Federal District appealed this ruling, arguing that its decision not to prosecute respected the guarantees of legality and legal certainty. On 21 January 2016, Criminal Court No. 8 of the First Circuit of the Federal District annulled the decision not to prosecute and ordered the Public Prosecution Service to refer the investigation to a court in order to ensure that all analysis and assessment of the evidence was carried out impartially.

2.20 On 29 February 2016, the Public Prosecution Service, in compliance with the *amparo* ruling, initiated criminal prosecution proceedings against PI1 and PI2 on the charge of the torture of Mr. Hoyos Henao. On 8 March 2016, Criminal Court No. 51 of Mexico City, to which the investigation had been referred, denied a request for the issuance of an arrest warrant on the ground that insufficient evidence had been gathered. The Court found that the various medical/psychological evaluations on file were contradictory and ordered that a new expert report be prepared by a third party acting as an arbitrator. The Court also cast doubt on the victim's statement on the basis of the principle of immediacy, according to which initial statements have greater evidentiary value, noting that Mr. Hoyos Henao did not report the torture in his initial statement to the public prosecutor or in his preliminary statement in court. Moreover, the Court argued that there was insufficient evidence to conclude that Mr. Hoyos Henao's injuries were intentionally inflicted with a view to coercing him into confessing, indicating that Mr. Hoyos Henao did not make a confession at any point during the criminal proceedings. The Court ordered the investigating officer to arrange a new medical/psychological evaluation and a confrontation between the complainant and the accused, to obtain copies of Mr. Hoyos Henao's criminal file to verify whether he had reported the torture, and to clarify the details of the minimum necessary force reportedly used by the police officers.

2.21 Mr. Hoyos Henao appealed this decision; his appeal was referred to the judge of Criminal Division No. 3 of Mexico City, who upheld the decision to deny the request for an arrest warrant against PI1 and PI2 on 25 May 2016. The judge acknowledged that the extraction of a confession or of information is not a necessary condition for the commission of the offence of torture but reiterated the applicability of the principle of immediacy in relation to Mr. Hoyos Henao's failure to report the torture in his initial statement. She also ruled that a confrontation between Mr. Hoyos Henao and the aggressors was unnecessary, since Mr. Hoyos Henao had identified his aggressors in the context of proceedings before the Public Prosecution Service on 13 January 2010 and PI1 and PI2 had acknowledged their involvement in the arrest and in bringing Mr. Hoyos Henao into custody. The judge also questioned the veracity of Mr. Hoyos Henao's account of the torture, arguing that in a photograph taken on 12 November 2012 by an expert of the High Court of Justice of the Federal District, Mr. Hoyos Henao appeared to be smiling, which, she claimed, was inconsistent with the nature of the injuries he reported. The judge noted that the writ of indictment was not duly substantiated, ordered the preparation of a third-party medical/psychological evaluation by independent and impartial experts, and reiterated her order that steps be taken to clarify how "strictly necessary violence" had been used during the arrest.

2.22 On 17 June 2016, Mr. Hoyos Henao filed an application for *amparo* against the decision of the judge of Criminal Division No. 3 of Mexico City, claiming a violation of the right to legal certainty, the obligation of due substantiation and justification and the right to full reparation for harm done. On 29 October 2016, District Court for *Amparo* in Criminal Matters No. 1 of Mexico City ruled that the application was unfounded and upheld the judge's decision. The complainants point out that the judge's decision, in which she noted that there was insufficient evidence of torture, seems to imply a change in the criteria applied when

compared to the *amparo* ruling issued by the very same judge, in the same court, on 19 July 2015.

2.23 In compliance with the judgment, the case file was returned to the Public Prosecution Service, which, without having carried out the measures suggested by the court, requested on 7 September 2016, for the fifth time, the issuance of a decision not to prosecute, which was granted on 31 January 2017. Mr. Hoyos Henao was notified of this decision on 21 April 2017. He filed an appeal on 15 May 2017, which was granted on 7 August 2017; various measures were ordered, including the completion of a third medical/psychological evaluation by an institution other than the Office of the Attorney General of the Federal District or the Office of the Attorney General of the Federal District. On 18 December 2017, Mr. Hoyos Henao's representatives submitted a third independent expert medical/psychological evaluation, the conclusions of which stated that Mr. Hoyos Henao "was the victim of acts by means of which severe physical and mental pain and suffering were intentionally inflicted, in order to obtain from him information related to judicial proceedings. ... There is consistency between the sources of information cited in this report, the description of the events, the description of the physical and psychological findings, the physical and psychological examination, knowledge of torture practices in the country, and research about the physical and psychological impact of torture that directly correlates with the alleged events."

Proceedings before the Federal District Human Rights Commission

2.24 After Ms. Henao Agudelo filed a complaint with the Federal District Human Rights Commission on 13 August 2009, officials from the Commission visited Mr. Hoyos Henao, and experts engaged by the Commission conducted a medical/psychological evaluation of him based on the Istanbul Protocol. The findings of this examination showed that the injuries described in the medical records were consistent with Mr. Hoyos Henao's account of physical abuse and that the psychological examination found that he displayed characteristics typically seen following the sort of traumatic event that he had described.

2.25 On 13 February 2013, the Federal District Human Rights Commission issued recommendation No. 2/2013, in which it concluded that Mr. Hoyos Henao was the victim of assault and of physical and psychological suffering resulting from acts of torture committed by police officers attached to the Office of the Special Prosecutor for Kidnappings of the Office of the Attorney General of the Federal District. The recommendation was addressed to the Attorney General of the Federal District; in it, the Commission recommended that an investigation be carried out into the acts of torture, that a mechanism be established to strengthen oversight of the actions of public prosecution service officials responsible for investigations and the investigative police officers who assisted them, and that full reparation be made to Mr. Hoyos Henao for the material and moral harm done to him as a victim of torture. However, the Office of the Attorney General of the Federal District rejected this recommendation, denying the existence of any irregularity in the conduct of the arresting officers. Notification of this decision was issued on 6 March 2013, and the decision was reiterated in response to a request by the Federal District Human Rights Commission on 15 July 2015.

Background information on torture in Mexico City

2.26 The complainants indicate that the considerable increase in the number of kidnappings in Mexico City between 2006 and 2008 led to the adoption of an Anti-Kidnapping Policy by the government of the then Federal District, the establishment of the Office of the Special Prosecutor for Kidnappings in November 2008 and the conclusion of an agreement on the establishment of economic incentives for law enforcement officers of the Ministry of Public Security and the Office of the Attorney General of the Federal District who made arrests. The complainants indicate that this initiative gave rise to a perverse incentive to coerce defendants into pleading guilty and to use torture during investigations, which resulted in an increase in the number of cases of torture.

Complaint

3.1 The complainants claim that the conditions are met for an exception to be made to the rule of prior exhaustion of domestic remedies, given the unreasonable prolongation of the

torture investigations. They point out that, although eight years have elapsed since the reported events, the investigation is still in its preliminary phase, which demonstrates the inefficiency of the investigative authority and gives rise to doubts about its impartiality and independence.

3.2 The complainants claim a violation of Mr. Hoyos Henao's rights under articles 1, 2 and 10–16 of the Convention, and of their rights collectively under article 14 of the Convention.

3.3 With regard to the claim of a violation of article 1 of the Convention, the complainants reiterate that, from the moment of his arrest on 11 August 2009 at around 4 p.m. until approximately 10 p.m. that same day, Mr. Hoyos Henao was subjected to a long list of abuses by public officials, including physical and psychological violence, aimed at intentionally causing him physical and emotional pain in order to obtain a so-called confession in relation to offences for which he was subsequently charged. The complainants point out that, other than the statement made by the police officers identified as responsible for the acts of torture, no evidence has been uncovered that contradicts the victim's allegations, which are supported by multiple medical/psychological evaluations confirming his claims of torture.

3.4 The complainants allege that the torture and ill-treatment to which Mr. Hoyos Henao was subjected at the time of his arrest have caused him serious and lasting harm, as confirmed by the medical examination of 23 January 2013. In addition, the complainants emphasize that Mr. Hoyos Henao was the victim of profound emotional suffering, the effects of which continue to the present day.

3.5 The complainants allege a violation of article 2 of the Convention because the State party failed to take appropriate measures to prevent the acts of torture and ill-treatment. They indicate that there were irregularities from the outset of the arrest procedure, such as the use of a summons rather than a duly substantiated arrest warrant. Moreover, Mr. Hoyos Henao was not informed of the reason for his detention or of the place to which he would be taken, nor of his rights as a detainee or his right to consular assistance. He was held incommunicado without access to a lawyer until the day after his arrest. The complainants emphasize that the detention, which took place without judicial authorization or a court order and without the possibility of prior judicial scrutiny, was conducive to the type of treatment to which Mr. Hoyos Henao was subjected. Furthermore, the fact that someone asked them to keep the noise down during the torture that took place on the premises of the Office of the Attorney General of the Federal District means that other persons, possibly other public servants of the Office of the Attorney General, knew about the torture but took no action to prevent it, in violation of article 2. The complainants note that Mr. Hoyos Henao's arrest was not registered in the preliminary investigation database, despite this being mandatory and there being no software failures reported on the day the events took place.⁶ The complainants add that Mr. Hoyos Henao was held for 25 days in preventive custody, which is a form of detention that violates the Convention insofar as it openly encourages torture. In this regard, they refer to the Committee's 2012 concluding observations,⁷ and to the Committee's explicit recommendation, in its decision in the case of *Ramírez Martínez et al. v. Mexico*,⁸ that the legal provision establishing preventive custody should be repealed.

3.6 The complainants argue that the force used by the arresting officers during the arrest was unnecessary and disproportionate, that the reasons for their use of force have not been clarified and that no explanation of what constitutes "minimum necessary force" has been provided. They point out that this disproportionate use of force may constitute a form of ill-treatment that violates article 16 of the Convention and refer to the Committee's decision in

⁶ The complainants reiterate that irregularities in the registration of detentions and the medical examination of detainees were highlighted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in the preliminary observations on his visit to Mexico between 21 April and 2 May 2014, available at https://hchr.org.mx/relatorias_grupos/conclusiones-preliminares-de-la-visita-oficial-a-mexico-del-relator-especial-sobre-la-tortura-y-otros-tratos-cruels-inhumanos-o-degradantes-juan-e-mendez/.

⁷ CAT/C/MEX/CO/5-6, para. 11.

⁸ *Ramírez Martínez et al. v. Mexico* (CAT/C/55/D/500/2012), para. 19.

the case of *Keremedchiev v. Bulgaria*.⁹ The complainants also emphasize that the detention conditions and treatment to which Mr. Hoyos Henao was subjected during his time in preventive custody violated his right to be treated with full respect for his dignity. They conclude that the improper use of force during Mr. Hoyos Henao's arrest and the treatment to which he was subjected while in preventive custody violated article 16 (1) of the Convention, read in conjunction with article 2.

3.7 The complainants also allege that although they have sought various legal remedies regarding the torture of Mr. Hoyos Henao since his arbitrary detention, no progress has been made in the investigation. The complainants point out that, at the time of submission of the complaint, the preliminary investigation into the acts committed against Mr. Hoyos Henao has been under way for eight years, and that, even so, insufficient evidence has been gathered to refute the complainant's allegations. They reiterate that the burden of proof lies with the State party when the individual claiming to have suffered torture or ill-treatment provides sufficient substantiation of his or her allegations. In this regard, the complainants refer to the jurisprudence of the Human Rights Committee, which has confirmed that: "A State party is responsible for the security of any person in detention and, when an individual claims to have received injuries while in detention, it is incumbent on the State party to produce evidence refuting these allegations."¹⁰ The complainants reiterate that the investigation has produced no results after eight years and point out that, despite the fact that it has carried out none of the measures that it was ordered to take, the Public Prosecution Service has filed as many as five decisions not to prosecute. In addition, they argue that the judges and institutions in charge of the investigation repeatedly relied on the principle of immediacy, with regard to which the Committee has already expressed its concern,¹¹ and indicate that it is very common for victims of torture not to report their torture upon first contact with the Public Prosecution Service or the judge. They add that the lack of diligence on the part of the investigating authority can be attributed to its lack of independence and impartiality, since it is also the authority responsible for the prosecution of Mr. Hoyos Henao and for the torture to which he was subjected.¹² The complainants conclude that the State party has failed in its duty to carry out a prompt, diligent, independent, impartial and exhaustive investigation of the events and to conduct the respective trials, punish those responsible and make reparations to the victims, in violation of articles 12 and 13 of the Convention.

3.8 The complainants allege a violation of article 14 of the Convention, not solely to the detriment of Mr. Hoyos Henao, but to that of all the complainants. The complainants stress that Mr. Hoyos Henao has suffered harm as a result of the torture inflicted on him, which has had a serious impact on his physical and mental health. In addition, Ms. Henao Agudelo and Ms. Garibay Mendoza have experienced severe mental suffering as a result of the alleged torture of Mr. Hoyos Henao. The complainants recall that the "immediate family or dependants of the victim"¹³ are also considered to be victims, in the sense that they also have the right to full reparation. The complainants indicate that the regulations governing reparation for victims of human rights violations in Mexico City provide only for financial compensation and restrict reparations to victims recognized by the Federal District Human Rights Commission or the National Human Rights Commission, subject to the acceptance of the recommendation by the competent authority. The complainants conclude that the fact that full reparations have not been made to them constitutes a violation of article 14 of the Convention.

3.9 The complainants allege a violation of articles 10 and 11 of the Convention, read in conjunction with article 2 (1), because although the State party has an obligation to ensure compliance with existing laws and regulations through permanent assessment mechanisms, these mechanisms failed and the authorities have not implemented measures or policies that effectively combat and prevent acts of torture, punish perpetrators and provide reparations to

⁹ CAT/C/41/D/257/2004, para. 9.3.

¹⁰ *Butevenko v. Ukraine* (CCPR/C/102/D/1412/2005), para. 7.5; *Sirageva v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.2; and *Zheikov v. Russian Federation* (CCPR/C/86/D/889/1999), para. 7.2.

¹¹ CAT/C/MEX/CO/5-6, para. 15.

¹² *Keremedchiev v. Bulgaria*, para. 9.4.

¹³ General comment No. 3 (2012), para. 3.

victims. This is evidenced, *inter alia*, by the authorities' rejection of recommendation No. 2/2013 of the Federal District Human Rights Commission, in which the Commission recommended the establishment of mechanisms aimed at strengthening the oversight and monitoring of the activities of public prosecutors.

3.10 The complainants request the following forms of reparation: (a) declare that the State party has violated articles 1 and 2 of the Convention, read in conjunction with articles 1, 10–14 and 16; (b) request the State party to ensure a prompt, impartial and thorough investigation of the facts, and to prosecute and punish the perpetrators with penalties appropriate to the gravity of the acts committed; and (c) request the State party to make fair and adequate reparation for the torture to the direct and indirect victims, ensuring that each of them has access to adequate compensation and the necessary rehabilitation.

State party's observations on admissibility

4.1 In its observations of 7 January 2019, the State party explains that a criminal case was opened against Mr. Hoyos Henao for kidnapping and that, after lengthy judicial proceedings, Criminal Court No. 56 of Mexico City sentenced him to 56 years and 8 months in prison. The State party indicates that the complainant filed an appeal, which was being considered at the time of submission of the observations.

4.2 The State party claims that the complaint is inadmissible because it is manifestly unfounded. It argues that District Court for *Amparo* in Criminal Matters No. 1 of Mexico City rejected an application for *amparo* on 29 October 2016 on the ground that the violations alleged in the application were unfounded. The State party notes that the complainant did not appeal this decision. It argues that, despite the various forms of reparation requested by the complainants, it has never been proven that Mr. Hoyos Henao was the victim of torture or cruel, inhuman or degrading treatment.

4.3 The State party argues that the complaint should be declared inadmissible for failure to exhaust domestic remedies, since the preliminary investigations launched into the complaint of torture are still under way. It adds that this inadmissibility for failure to exhaust domestic remedies is attributable to the complainant's procedural activity, invoking the complainant's decision to refuse to undergo a psychological evaluation on 19 May and again on 16 June 2016. The State party argues that the complainant's refusal to facilitate important proceedings has hindered the work of the Public Prosecution Service, and that the delay in resolving the case is therefore entirely attributable to Mr. Hoyos Henao's lack of cooperation.

Complainants' comments on the State party's observations on admissibility

5.1 In their comments of 20 June 2020, the complainants refer to the existence of more than 30 pieces of evidence supporting Mr. Hoyos Henao's claims. They also indicate that the Federal District Human Rights Commission, which is an official State institution, has in fact recognized that the torture took place.

5.2 With regard to the exhaustion of domestic remedies, the complainants indicate that on 30 April 2019, the Public Prosecution Service again decided not to prosecute. They reiterate that, over the course of 10 years, no meaningful results have been achieved, because the State party continues to deny the facts and to attempt to close the investigation. The complainants reiterate that the requirement to exhaust domestic remedies is applicable only to available remedies, those that are not unreasonably prolonged and those whose outcome would effectively improve the victim's situation. They maintain that Mr. Hoyos Henao did not refuse a new psychological examination but rather requested that it be postponed and that he be allowed to decide whether to undergo the examination once the judicial authorities had ruled on a pending appeal.

State party's observations on the merits

6.1 In its observations of 3 May 2019, the State party refers to the fact that the Committee has noted that pain and suffering may arise from the lawful arrest of an uncooperative and/or

violent individual.¹⁴ It argues that the injuries that Mr. Hoyos Henao was found to have sustained when he was examined after his arrest resulted from his attempts to resist and flee, because of which the arresting officers were required to use minimum necessary force; Mr. Hoyos Henao was in an emotional and violent state, which meant that the officers had to immobilize him and use subjugation techniques to get him into the patrol car. The State party notes that the complainant did not report any acts of torture in his statement to the Public Prosecution Service. It adds that Mr. Hoyos Henao had only injuries that take less than a fortnight to heal, and that it cannot be concluded, even on the basis of circumstantial evidence, that the injuries were caused by the conduct alleged by the complainant. In this regard, the State party refers to the aforementioned medical reports, as well as to the injury report and the report reconstructing the events issued after the submission of the communication. It determines that, in these circumstances, it cannot be concluded that the police officers intentionally inflicted pain on the complainant with a view to obtaining information from him.

6.2 The State party refers to the summons and the preventive custody order, which were issued in accordance with domestic legislation and constitute torture prevention measures. In addition, the State party indicates that the precautionary measure of preventive custody is no longer applied in Mexico City, as the article of the Code of Criminal Procedure for the Federal District that provided for it was repealed pursuant to recommendations of the Supreme Court of Justice and the Working Group on Arbitrary Detention. The State party emphasizes that it has complied with its obligation to prevent acts of torture through the existing regulatory system, which is constantly being revised to ensure compliance with international standards.

6.3 The State party argues that the Office of the Attorney General of the Federal District has carried out an investigation into the possible involvement of police officers in the alleged torture of Mr. Hoyos Henao but has not uncovered any evidence that would justify initiating prosecution proceedings. It refers to the conduct of several procedures, including an attempt to arrange for a medical/psychological evaluation to be conducted on Mr. Hoyos Henao by an institution other than the Office of the Attorney General of the Federal District, reiterating that the complainant refused to undergo this additional examination. The State party concludes that it has conducted a prompt and impartial investigation in accordance with the mechanisms in place to ensure that complaints of torture are properly handled and investigated.

Complainants' comments on the State party's observations on the merits

7.1 In their comments of 5 August 2019, the complainants clarify that a summons does not allow for deprivation of liberty and point out that the State party acknowledges having deprived Mr. Hoyos Henao of liberty by placing him in preventive custody, in violation of his human rights. They reiterate that Mr. Hoyos Henao has never refused to undergo a medical/psychological evaluation and that most of the evaluations referred to by the State party, as well as the report reconstructing the events, were conducted or prepared by the institution alleged to be responsible for his torture, which casts doubt on their independence and impartiality.

7.2 The complainants emphasize that the State party acknowledges that its officers used some form of violence on Mr. Hoyos Henao but has not provided any substantive evidence that calls into question the allegations of torture. They reiterate that the State party has provided no evidence to prove that its officers acted entirely in accordance with the law and has instead insisted on supporting its assertions by referring solely to reports issued by the very authorities accused of torture.

7.3 The complainants reiterate that the torture was reported to the Federal District Human Rights Commission, and that this report gave rise to an obligation to investigate the day after the events. They point out that the State party claims that the complainant did not report the torture in his statement to the Public Prosecution Service and continues to invoke the principle of immediacy, which has been criticized by international bodies. The complainants indicate that the investigation into the alleged acts of torture is being conducted by the very

¹⁴ *Keremedchiev v. Bulgaria*, para. 9.3.

institution accused of having tortured Mr. Hoyos Henao, which has on five occasions issued a decision not to prosecute in order to bring an end to the investigation. They reiterate that almost 10 years have elapsed since the first complaint of torture was filed, yet the State party has proven itself incapable of carrying out a serious, prompt and effective investigation in order to bring those responsible to justice and has provided no justification for this delay.

7.4 With regard to preventive measures, the complainants indicate that the State party's arguments are of a general nature and do not prove that specific and effective measures were taken; they also recall that the duty of prevention is a specific obligation that requires the adoption of positive measures.

7.5 On 7 August 2020, the complainants submitted additional comments, in which they highlighted the impact on their current health and financial situation of the torture inflicted on Mr. Hoyos Henao. They claim, in particular, that Ms. Henao Agudelo is living in extreme poverty and has suffered severe health problems, including a heart attack, as a direct result of the torture and imprisonment of Mr. Hoyos Henao.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim submitted in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee takes note of the State party's allegations that domestic remedies have not been exhausted since the preliminary investigations into the complaint of torture are still under way and because of the complainant's failure to undertake necessary procedures.

8.3 The Committee recalls that the rule of exhaustion of domestic remedies does not apply if the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.¹⁵ In the present case, the Committee notes that more than eight years have passed since the complainants first filed a complaint of torture and that, despite the fact that the Public Prosecution Service had the information necessary to conduct a prompt and effective investigation that would allow for the identification and prosecution of those allegedly responsible, and despite the issuance of recommendation No. 2/2013 by the Federal District Human Rights Commission, no significant progress has been made in the investigation and the State party has offered no justification for this considerable delay. Under these circumstances, the Committee considers that domestic remedies have been unreasonably prolonged. Accordingly, the Committee concludes that, under the terms of article 22 (5) (b) of the Convention, there is nothing to preclude the Committee from examining the complaint on the merits.

8.4 The Committee considers that the complainants' claims under articles 1, 2 and 10–16 of the Convention, relating to the failure to prevent the alleged acts of torture, to investigate them promptly and impartially and to provide reparation to the victims, have been sufficiently substantiated for the purposes of admissibility and, accordingly, declares them admissible and proceeds to examine them on the merits.

Consideration of the merits

9.1 The Committee has examined the present complaint in the light of all the information submitted to it by the parties, in accordance with article 22 (4) of the Convention.

9.2 Before considering the allegations made by the complainants under the articles of the Convention invoked, the Committee must determine whether the acts to which Mr. Hoyos

¹⁵ *A.E. v. Switzerland* (CAT/C/14/D/24/1995), para. 4; *Evloev v. Kazakhstan* (CAT/C/51/D/441/2010), para. 8.6; and *Ramírez Martínez et al. v. Mexico*, para. 16.4, among others.

Henao was subjected constitute acts of torture within the meaning of article 1 of the Convention.

9.3 The Committee takes note of the complainants' allegations that, from the moment of Mr. Hoyos Henao's arrest on 11 August 2009 at 4 p.m. until at least 10 p.m. that day, he was subjected to physical and psychological abuse by public officials seeking to extract a confession from him concerning acts with which he was subsequently charged. This abuse allegedly included: repeated blows with fists and blunt objects to his entire body, including his neck and head; the use of stress positions and intense pulling of the ears; suffocation with a plastic bag, causing him to pass out; and insults and death threats against him and his family and threats to cut off his fingers.

9.4 The Committee notes the State party's claim that the injuries observed by the physicians attached to the Office of the Attorney General of the Federal District and other institutions could have resulted from the arresting officers' use of minimum necessary force to subdue Mr. Hoyos Henao, who was allegedly in an emotional and violent state and attempted to flee. However, the Committee also notes that the State party has not provided further information on the circumstances of these events or the details of the force employed and has not explained the lack of consistency between the cited reports, whose independence and impartiality was questioned in the *amparo* proceedings, and the medical reports attesting to the injuries, the expert reports of the Federal District Human Rights Commission and another independent expert report concluding that the physical injuries were consistent with the acts of torture alleged. The Committee considers that the facts recounted by the complainants concerning the treatment to which Mr. Hoyos Henao was subjected from the time of his arrest until being brought before the Public Prosecution Service, as well as the circumstances in which he was deprived of his liberty in preventive custody for 26 days, constitute acts of torture within the meaning of article 1 of the Convention, and therefore does not consider it necessary to examine separately the claims of a violation of article 16.

9.5 The complainants allege a violation of article 2 of the Convention, arguing that the State party failed in its obligation to prevent the acts of torture alleged to have occurred during Mr. Hoyos Henao's arrest and subsequent detention. The Committee notes the complainants' allegations, which were not refuted by the State party, that Mr. Hoyos Henao was arrested by police officers without a warrant and was not informed of the reason for his arrest or of his rights, including his right to consular assistance, that he was held incommunicado for several hours, and that he was not allowed access to a lawyer until the day after his arrest. The Committee also notes that the initial medical and medical/psychological evaluations were conducted by personnel attached to the Office of the Attorney General of the Federal District, the institution allegedly responsible for the torture of Mr. Hoyos Henao. The Committee recalls its concluding observations on the seventh periodic report of Mexico, in which it urged the State party to take effective measures to ensure that detainees enjoy the benefits of all fundamental safeguards in practice, from the outset of their deprivation of liberty, in line with international standards, including, in particular: the right to receive legal assistance without delay; the right to obtain immediate access to an independent doctor; the right to be informed of the reasons for their detention; the right to have their detention recorded in a register; the right to inform a family member of their detention without delay; and the right to be brought before a judge without delay.¹⁶ The Committee also reiterates that the State party should ensure that all physical and psychological assessments of alleged victims of torture are conducted in accordance with the principles, procedures and guidelines set out in the Istanbul Protocol, and that penalties are imposed in the event of irregularities.¹⁷ The Committee takes note of the State party's argument that the summons and the preventive custody order were issued in accordance with domestic law and constitute measures aimed at preventing acts of torture. However, the Committee reiterates its concerns about the use of preventive custody, especially the lack of monitoring and disproportionate duration of preventive custody, the use, on occasions, of military facilities for preventive custody purposes, the complaints of torture made by persons subjected to this form of custody, and the fact that preventive custody could make it easier to have confessions presumably obtained under torture admitted as

¹⁶ CAT/C/MEX/CO/7, para. 15.

¹⁷ Ibid., paras. 25 and 26.

evidence, and insists in its request that the provisions allowing for preventive custody be repealed from the State party's legislation.¹⁸ The Committee also recalls that the State party should ensure that all complaints of torture or ill-treatment are promptly investigated in an impartial manner by an independent body and that the suspected perpetrators of acts of torture and ill-treatment and the superior officers responsible for ordering or tolerating the acts are duly tried and, if found guilty, are punished in a manner that is commensurate with the gravity of their acts.¹⁹ The Committee recalls that in cases of allegations of torture, the State party has to demonstrate conclusively that the injuries the victim sustained in its custody were not inflicted through acts performed by State officials.²⁰ In the light of the circumstances described above and the lack of information from the State party about these events, the Committee considers that the State party has failed to fulfil its obligation to take effective measures to prevent acts of torture in accordance with article 2 (1) of the Convention.

9.6 In relation to articles 12 and 13 of the Convention, the Committee notes the complainants' allegations that no prompt, immediate and thorough investigation of the acts of torture was carried out by the competent authorities, despite the various judicial remedies sought by them since 2009 and despite recommendation No. 2/2013 of the Federal District Human Rights Commission. The Committee also notes that the Public Prosecution Service has repeatedly requested that no prosecution proceedings be initiated and that the body in charge of the investigation was the same one allegedly responsible for the acts of torture reported, which could undermine the impartiality and effectiveness of the investigation. The Committee also notes that, during the investigation, the authorities reportedly invoked the principle of immediacy, the application of which may contribute to the acceptance by judges of confessions presumably obtained under torture.²¹

9.7 The Committee recalls that article 12 of the Convention requires States parties to ensure that their competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.²² In this regard, the Committee notes that, despite the visible injuries that Mr. Hoyos Henao was found to have sustained when he was examined by physicians attached to the Office of the Attorney General of the Federal District after his arrest, an investigation was not immediately opened into possible acts of torture. The Committee also recalls that an investigation alone is not sufficient to demonstrate the State party's fulfilment of its obligations pursuant to article 12, if it can be shown not to have been conducted promptly and impartially, and that promptness is essential to ensure that the victim may not continue to be subjected to torture because, in general, the physical traces of torture soon disappear.²³ The Committee notes that the investigation has made no significant progress and that the decision not to prosecute has been made five times, despite the fact that the complainants filed various formal complaints of torture starting in August 2009, the existence of independent medical reports confirming the consistency of the injuries sustained by Mr. Hoyos Henao with the acts of torture described, his identification of the perpetrator, a recommendation issued by the Federal District Human Rights Commission confirming the allegations of torture, and an *amparo* ruling according to which there was sufficient evidence of torture. The Committee recalls that, in cases of allegations of torture, the State party has an obligation to open an investigation *ex officio*.²⁴ In the light of the above, the Committee concludes that the State party has failed to fulfil its obligations under articles 12 and 13 of the Convention.

¹⁸ *Ibid.*, paras. 18 and 19.

¹⁹ *Ibid.*, para. 25. With regard to the responsibility of superiors, see, *mutatis mutandis*, Human Rights Committee, general comment No. 36 (2019), para. 27; and Inter-American Court of Human Rights, *Women Victims of Sexual Torture in Atenco v. Mexico*, judgment of 28 November 2018, paras. 291–304.

²⁰ [CAT/C/MEX/CO/7](#), paras. 20 and 21; and [CAT/C/MEX/CO/5-6](#), para. 15. See also, *mutatis mutandis*, *Butovenko v. Ukraine*, para. 7.5; *Sirageva v. Uzbekistan*, para. 6.2; and *Zheikov v. Russian Federation*, para. 7.2.

²¹ [CAT/C/MEX/CO/5-6](#), para. 15.

²² *Ramírez Martínez et al. v. Mexico*, para. 17.7; and *Gallardo Martínez v. Mexico* ([CAT/C/72/D/992/2020](#)), para. 7.8.

²³ *Ramírez Martínez et al. v. Mexico*, para. 17.8.

²⁴ *Blanco Abad v. Spain* ([CAT/C/20/D/59/1996](#)), para. 8.2; and [CAT/C/MEX/CO/7](#), para. 25.

9.8 The Committee notes the complainants' claims that Mr. Hoyos Henao and the members of his family, who are also complainants, have not received reparations for the harm done to them. The Committee recalls its general comment No. 3 (2012), according to article 3 of which "immediate family or dependants of the victim" are also considered to be victims, in the sense that they have the right to full reparation. The Committee also recalls that it mentions, in general comment No. 3, the necessary measures of restitution, compensation, rehabilitation, satisfaction and the right to the truth, and stresses the need for States parties to provide the necessary means for as full rehabilitation as possible for anyone who has suffered harm as a result of a violation of the Convention. Such rehabilitation should be holistic and must include medical and psychological care as well as legal and social services.²⁵ In view of the failure to take measures to prevent torture and the lack of a prompt and impartial investigation into the allegations of the acts of torture in the present case, the Committee concludes that the State party has failed to comply with its obligations under article 14 of the Convention, to the detriment of Mr. Hoyos Henao and the other complainants.

10. The Committee, acting under article 22 (7) of the Convention, decides that the facts before it disclose a violation by the State party of articles 2 (1) and 12–14 of the Convention, read in conjunction with article 1, to the detriment of Mr. Hoyos Henao, and of article 14 of the Convention, to the detriment of the other complainants. As a violation of articles 2 (1) and 12–14 has been found on the same facts, the Committee does not consider it necessary to examine separately the claims of a violation of articles 10 and 11 of the Convention.

11. The Committee urges the State party to: (a) ensure a prompt, impartial, thorough, effective and independent investigation into the acts of torture, including the possible responsibility of superiors; (b) prosecute the alleged perpetrators and punish those found responsible with penalties appropriate to the gravity of the violations; (c) award comprehensive reparation, including fair and adequate compensation, to the complainants, and provide Mr. Hoyos Henao with medical and psychological rehabilitation to the fullest extent possible; and (d) take the steps necessary to provide guarantees of non-repetition in connection with the facts of the present complaint, including ensuring the systematic review of arrest and interrogation procedures. The Committee also reiterates the need for the State party to repeal the legislative provisions allowing for preventive custody.

12. Pursuant to rule 118 (5) of its rules of procedure, the Committee hereby requests the State party to inform it, within 90 days of the date of transmittal of the present decision, of the steps it has taken to respond to the above observations.

²⁵ General comment No. 3 (2012), paras. 11–15.