



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

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 992/2020\*, \*\*

<i>Communication submitted by:</i>	Damián Gallardo Martínez, on his own behalf and on that of his four minor children (M.M.B.H., L.K.G.C., X.K.G.C. and E.R.K.G.C.); Yolanda Barranco Hernández (his partner); Gregorio Gallardo Vásquez and Felicitas Martínez Vargas (his parents); and his five siblings, Florencia, Felicita, Idolina, Violeta and Saúl Gallardo Martínez (represented by Consorcio para el Diálogo Parlamentario y la Equidad Oaxaca, the World Organization against Torture and the Mexican Commission for the Defence and Promotion of Human Rights)
<i>Alleged victims:</i>	The complainants and the four minors
<i>State party:</i>	Mexico
<i>Date of complaint:</i>	17 May 2019 (initial submission)
<i>Date of adoption of decision:</i>	18 November 2021
<i>Subject matter:</i>	Arbitrary detention and torture
<i>Procedural issues:</i>	Failure to exhaust domestic remedies
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment; State party's obligation to prevent acts of torture; State party's obligation to ensure that its competent authorities proceed to a prompt and impartial investigation; right to reparation and compensation; statements obtained under torture
<i>Articles of the Convention:</i>	1, 2, 11, 12, 13, 14 and 15

1. The complainants are Damián Gallardo Martínez, acting on his own behalf and on behalf of his four minor children (M.M.B.H., L.K.G.C., X.K.G.C. and E.R.K.G.C.); his partner, Yolanda Barranco Hernández; his parents, Gregorio Gallardo Vásquez and Felicitas Martínez Vargas; and his five siblings, Florencia, Felicita, Idolina, Violeta and Saúl Gallardo Martínez. They are all nationals of Mexico. Mr. Gallardo Martínez was born in 1969 and is a defender of the right to education and the rights of indigenous peoples. The complainants

\* Adopted by the Committee at its seventy-second session (8 November–3 December 2021).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Erdoğan İşcan, Liu Huawen, Ilvija Pūce, Ana Racu, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.



claim a violation by the State party of Mr. Gallardo Martínez's rights under articles 1, 2, 11, 12, 13, 14 and 15 of the Convention, and of their rights collectively under article 14 of the Convention. The complainants are represented by Consorcio para el Diálogo Parlamentario y la Equidad Oaxaca, the World Organization against Torture and the Mexican Commission for the Defence and Promotion of Human Rights.

### **Facts as submitted by the complainants**

2.1 The complainants are members of the indigenous Ayuujk people of Santa María Tlahuitoltepec from the Mixe region in the state of Oaxaca. Mr. Gallardo Martínez is a teacher and defender of indigenous peoples' rights and the right to education. As part of his activities in defence of human rights, he has, for several years, promoted community education in the indigenous communities of the Mixe and Zapoteca regions in the Sierra de Oaxaca.

#### *Torture and ill-treatment, from the time of his arbitrary detention until his release more than five years later*

2.2 On 18 May 2013, at 1.30 a.m., Mr. Gallardo Martínez was arrested by seven federal police officers while he was at home asleep in his bedroom together with his partner, Yolanda Barranco Hernández, and their minor daughter, M.M.B.H. The officers broke down the door of his home, beat him and dragged him half-naked to a van. During the journey, which lasted for approximately two hours, the officers forced him to assume degrading and painful positions, threatened to rape and kill his daughter and his partner and to murder his parents, pretended to execute him with a weapon, beat him and caused him to choke.

2.3 At the end of the journey, Mr. Gallardo Martínez was held incommunicado and tortured for approximately 30 hours in a secret detention centre. He was beaten so that he would divulge information about other people involved in the education rights movement; when he did not give in, the officers continued to subject him to psychological torture by showing him photographs of his daughter and partner and claiming that they would rape and kill them, thus making him believe that they were in detention, if he refused to provide information about other persons involved in the social movement in the state of Oaxaca or if he did not agree to take part in committing the crimes of which he was later accused. Mr. Gallardo Martínez was forced to sign blank sheets of paper, which were later used as alleged evidence of self-incrimination. During the 30 hours that he spent in incommunicado detention, Mr. Gallardo Martínez was also deprived of water and sleep and prevented from defecating, was beaten on his testicles, stomach, back, face and head, was choked and was forced to witness acts of torture against other detainees.

2.4 On 19 May 2013, Mr. Gallardo Martínez was finally transferred to the Office of the Assistant Attorney General for the Investigation of Organized Crime, in Mexico City. A doctor from the Office for the Coordination of Forensic Investigations and Expert Witness Services of the Counsel General's Office noted that Mr. Gallardo Martínez was exhibiting "reddish ecchymosis of 1.5 cm in diameter in the left zygomatic region" and an "increase in volume on the dorsal side of the right foot". Thus, the complainants point out that the State itself noted the injuries, although the internal medical report unduly and deliberately omitted to establish when the injuries were sustained and how they occurred. At the Office of the Assistant Attorney General, officers once again threatened to kill his partner, daughter and parents; he was deprived of water, food and sleep, and was given unauthorized injections.

2.5 Late in the day, his sister Florencia Gallardo Martínez received a call informing her that Mr. Gallardo Martínez was in detention. She travelled to the premises of the Office of the Assistant Attorney General and, after waiting for several hours, was able to see her brother for five minutes; at that point, she noted the bruising that he had sustained.

2.6 That same day he was also assigned a public defender, who only came to sign a ministerial statement that Mr. Gallardo Martínez had made under torture that day.

2.7 Moreover, on 19 May 2013, his arrest for alleged offences of child abduction and involvement in organized crime was made public by means of a public conference, which was broadcast by national media outlets, in violation of the principle of presumption of innocence. This caused irreparable damage to his reputation, which endures even to this day.

Even today, despite having been acquitted after having spent more than five years in detention, the media continue to make him out to be a criminal and many press releases and articles linking him to the alleged crimes for which he was prosecuted continue to circulate.

2.8 On 20 May 2013, a doctor attached to the Counsel General's Office again examined Mr. Gallardo Martínez, noting "the presence of pain upon applying pressure to the posterior cervical region" and diagnosing "post-traumatic cervical pain and post-traumatic lower-back pain".

2.9 Mr. Gallardo Martínez was only able to appoint a private lawyer on 21 May 2013. Thanks to his lawyer's intervention, he was able to expand his statement and, in so doing, reject the ministerial statement submitted on 19 May 2013 on the grounds that it had been made under torture.

2.10 On 22 May 2013, based on his alleged self-incriminating confessions, he was formally indicted for the offences of involvement in organized crime and the kidnapping of two minors, nephews of one of the most important businesspeople in Mexico and close to former President Enrique Peña Nieto, and was transferred to Puente Grande maximum security prison in Guadalajara, Jalisco. It was in criminal case No. 136/2013 before the Sixth Criminal Court of El Salto, Jalisco, that the Federal Prosecution Service finally requested the dismissal of the case at the investigation stage, which had lasted for more than five years.

2.11 However, from 22 May 2013 to 28 December 2018, Mr. Gallardo Martínez remained in detention at the maximum security prison in Jalisco. During all those years, his relatives could not easily visit him. As indigenous persons with limited means at their disposal, they had difficulty in travelling to the detention centre because it was located at the other end of the country, thousands of kilometres away. Moreover, when they did manage to make the journey, they were often discriminated against and prevented from entering the centre.

2.12 On 22 May 2013, Mr. Gallardo Martínez also underwent a third medical examination by personnel attached to the Counsel General's Office, who noted that he was experiencing "pain in the cervical and dorsal region without any sign of external injury, greeny purple ecchymosis measuring 3 cm by 1.5 cm on the anterior face of the proximal third of the left arm; reddish ecchymosis measuring 6 cm by 3 cm on the dorsum of the right foot, accompanied by a discrete increase in volume" and "dermoepidermal excoriations on the left arm".

2.13 Until the day of his release following the dismissal of the criminal proceedings finally requested by the Public Prosecution Service – 5 years, 7 months and 10 days after his arrest – Mr. Gallardo Martínez was subjected to acts of torture. Since his admission to the maximum security prison on 22 May 2013, he was beaten on his back, kicked in the buttocks and screamed at in his ear, subjected to a body cavity search (oral and anal) while completely naked and had his hair shaved off. In the days that followed, the fleshy growth in both of his eyes worsened; this had a particularly serious impact on his eyesight that necessitated immediate surgery to avoid irreparable damage to his sight. Mr. Gallardo Martínez repeatedly requested the prison authorities to provide him with specialized medical care. When he did not receive an answer, he asked the judge to intervene and request that an ophthalmologist be allowed to visit him, a visit which was never authorized. Given the seriousness of the medical condition, Mr. Gallardo Martínez was finally operated on in the prison on 20 June 2017, by a prison doctor. Since he was refused the necessary post-operative care, he had to undergo surgery again in 2018. In general terms, during his time in detention, Mr. Gallardo Martínez was forced to live in overcrowded conditions (six inmates in an area measuring 2 m by 4 m), placed in solitary confinement, deprived of sleep and confined to his cell for 22 hours per day.

2.14 On 9 September 2014, a medical and psychological opinion, based on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), concluded that there was a high degree of consistency between chronic post-traumatic stress and depressive disorders and the torture described. The opinion noted that the injury to the dorsum of the foot was still visible ("post-traumatic cystic tumour measuring approximately 3 cm by 2 cm located below the malleolus on the far edge of the dorsum of the right foot") and that "the size, shape and assessment of said injury is fully consistent with the account given". The opinion also stated

that the blows were meted out “with conscientious and scrupulous care to ensure that no traces were left” and were intended to “bend the will to the extreme, isolate, cause psychological terror, continually inflict physical pain, weaken body and psyche and cause emotional pain, trigger panic and convince of the aggressors’ capacity to inflict pain and death”. The opinion concluded that “the examinee has been subjected to acts of torture. There is consistency between the sources of information on physical and psychological findings, the life history of the examinee, ... the results of the diagnostic tests carried out, as backed up by specialist literature, and the signs, symptoms, syndromes and conditions and sequelae exhibited by the examinee”. The opinion recommended the provision of specialized psychological assistance. The prison authorities and the judge were repeatedly requested to provide such psychological assistance, but it never materialized.

2.15 On 18 March 2016, a psychological report was issued by a psychologist from the Executive Commission for Victim Support. Her findings included the presence of anxiety, depression and post-traumatic stress disorder.

2.16 On 30 March 2016, another medical opinion was issued by the Executive Commission for Victim Support. It included a diagnosis of post-traumatic stress disorder, anxiety, sequelae of an injury to the left shoulder and right ankle caused by blows, and pain upon moving the right foot.

#### *Domestic remedies*

2.17 On 18 May 2013, Florencia Gallardo Martínez, the sister of Mr. Gallardo Martínez, filed an application for *amparo* on the grounds of disappearance, incommunicado detention and torture and risk of deprivation of life.<sup>1</sup>

2.18 On 19 May 2013, Ms. Gallardo Martínez also reported her brother’s incommunicado detention and disappearance to the National Human Rights Commission.<sup>2</sup> It was on the basis of that complaint that, on 20 March 2017, the Commission issued recommendation 5/2018, which attributes to the federal authorities responsibility for unlawful entry, excessive use of force, arbitrary detention, violation of legal security and failure to investigate complaints of torture. On 28 February 2018, the Commission filed a complaint with the internal affairs unit of the federal police and, on 30 August 2018, a second complaint with the Specialized Unit for the Investigation of Crimes Committed by Public Servants against the Administration of Justice of the Counsel General’s Office. No progress has been made in relation to either complaint.

2.19 On 24 May 2013, Ms. Gallardo Martínez also filed a criminal complaint for torture with the General Directorate for Crimes Committed by Public Servants of the Office of the Special Prosecutor for Internal Affairs against staff of the Counsel General’s Office. A preliminary investigation<sup>3</sup> was initiated but, to date, no progress has been made.

2.20 In July 2013, Mr. Gallardo Martínez appealed the detention orders issued against him for the crimes of kidnapping and involvement in organized crime, and filed an application for *amparo* for each alleged crime. The appeals were decided in May 2015; procedural violations were found to have occurred and an order was issued for a new decision to be handed down to remedy the procedural irregularities in question.

2.21 On 28 May 2014, the complainants filed a complaint against the federal police officers with the Office of the Special Prosecutor for the Investigation of Torture of the Counsel General’s Office, and a preliminary investigation<sup>4</sup> was opened, although, to date, no progress has been made.

2.22 In June 2016, Mr. Gallardo Martínez filed an application for *amparo* whereby it was agreed that his hair would not be shaved without his consent because doing so undermined his right to express himself. In retaliation, on 30 and 31 July 2016, he was placed in solitary confinement.

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<sup>1</sup> Case file No. 614/2013, Third District Court, Oaxaca.

<sup>2</sup> Case file No. CNDH/1/2013/3676/Q.

<sup>3</sup> 045/AP/DGCSP/14.

<sup>4</sup> 738/UEIDAPLE/DT/8/2014.

2.23 On 6 March 2017, Mr. Gallardo Martínez led a hunger strike, in which more than 100 detainees participated, to protest against prison conditions and treatment constituting torture or cruel, inhuman and degrading treatment (solitary confinement, confinement to a cell for 22 hours per day, forcing inmates to remain in awkward positions for a prolonged period, exhaustive searches and lack of adequate medical care). In retaliation, Mr. Gallardo Martínez was subjected to further harassment.

2.24 In March 2017, Mr. Gallardo Martínez made an urgent request to join the National Protection Mechanism for Human Rights Defenders and Journalists. Receipt of this request was not acknowledged until an appeal was filed in August 2017, which was eventually dismissed eight months later. After his release and, owing to his high-risk status as a result of the “media lynching” to which he had been subjected, he again requested to join the Mechanism. Although his request was accepted informally in March 2019, to date, he has not received any formal notification that he is now a member of the mechanism, let alone benefited from protection measures.

*International pronouncements on the case*

2.25 On 22 April 2014, the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association issued urgent appeal 3/2014 in response to the violations reported by the complainant. On 26 August 2014, the Working Group on Arbitrary Detention issued Opinion No. 23/2014, in which it confirmed the arbitrary character of Mr. Gallardo Martínez’s detention and recommended that he be released immediately. On 24 January 2017, the Special Rapporteur on the situation of human rights defenders published the final report on his mission to Mexico, in which he called for the release of Mr. Gallardo Martínez.<sup>5</sup>

*Context. Criminalization of social protest*

2.26 The complainants claim that the criminal proceedings brought against Mr. Gallardo Martínez are part of a pattern of torture and criminalization of social protest.<sup>6</sup> In Oaxaca in particular, the criminalization of social protest intensified in 2013 to quell resistance to so-called “structural reforms” by the Oaxaca teachers’ union; at least 141 instances of arbitrary detention of defenders of the right to education were documented. The complainants submit that this new wave of repression was characterized by recourse to criminal offences seldom before used to bring prosecutions: in the past, the crimes of terrorism, sabotage and conspiracy were used but, since 2013, the State has been charging activists with offences such as kidnapping, involvement in organized crime and money-laundering. These false accusations made it difficult to provide support, mount a legal defence and arrange family visits because the accused were transferred to maximum security prisons far from their places of origin. In addition, the Government invested millions to ensure that these accusations made the headlines, which seriously discredited the activists.

2.27 The complainants submit that there are, in fact, several pieces of exculpatory evidence ruling out the alleged participation of Mr. Gallardo Martínez in the offences with which he was charged. On 6 March 2014, an exercise involving playing back and listening to audio recordings confirmed that there was no audio-based evidence of the alleged negotiation

<sup>5</sup> While he was in prison, Mr. Gallardo Martínez also received many solidarity visits. On 6 February 2017, he received a visit from a delegation of the World Organization against Torture; on 16 March 2017, he received a visit from the representative of the Office of the United Nations High Commissioner for Human Rights in Mexico; on 27 March 2017, he received a visit from a delegation of the German Network for Human Rights in Mexico, the Oficina EcuMénica por la Paz and Amnesty International; on 26 September 2017, he received a visit from a delegation of representatives of the embassies of the European Union and the United States; and, on 19 October 2018, he received a visit from a delegation of Front Line Defenders.

<sup>6</sup> Pattern recognized by several international bodies, such as the Inter-American Commission on Human Rights, Human Rights Watch, Amnesty International, the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the universal periodic review mechanism.

between Mr. Gallardo Martínez and the family of the kidnapped children. Furthermore, on 13 March 2015, the First Collegiate Court of the Third Circuit of the state of Jalisco, in a decision handed down in connection with indirect *amparo* application No. 48/2014, ordered the exclusion from the evidence of the ministerial statement by a third party incriminating Mr. Gallardo Martínez, on the grounds that it had been obtained under torture. Moreover, on 14 July 2015, while the arresting police officers were being questioned, it was confirmed that he had not been arrested in flagrante delicto, as claimed during the criminal proceedings, but at his home, in his bedroom with his daughter and partner. Likewise, on 28 July 2016, municipal authorities and two members of the community gave statements confirming that, on 14 January 2013, the date of the kidnapping of the children of which he was accused, Mr. Gallardo Martínez was out working in different communities in Oaxaca. Lastly, on 21 June 2017 and 3 January 2018, on-site investigations confirmed that the address at which the police officers had supposedly arrested him in flagrante delicto does not exist.

2.28 After his having spent five years and seven months in prison on account of criminal proceedings that never progressed beyond the investigation stage, the Public Prosecution Service requested that the case be dismissed, and Mr. Gallardo Martínez was subsequently acquitted and released.

### **Complaint**

3.1 The complainants claim that the complaint has not been submitted to any other procedure of international investigation or settlement, as the procedure before the Working Group on Arbitrary Detention does not have the same binding character as those initiated before the treaty bodies and the scope of its recommendations is more limited than the present complaint.

3.2 The complainants also 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.

3.3 The complainants claim a violation of Mr. Gallardo Martínez's rights under articles 1, 2, 11, 12, 13, 14 and 15 of the Convention, and of their rights collectively under article 14 of the Convention.

3.4 With regard to the alleged violation of article 1 of the Convention, the complainants recall that, after having been taken away by force, Mr. Gallardo Martínez was subjected to a litany of abuses intended to cause him physical and emotional pain, including beatings and threats of rape and death against his relatives, and to obtain from him an alleged confession for crimes with which he was subsequently charged. Thereafter, he continued to suffer ill-treatment and was kept in solitary confinement and incommunicado detention. They also recall that, according to the medical and psychological report, the torture was intended to "bend the will to the extreme, isolate, cause psychological terror, continually inflict physical pain, weaken body and psyche and cause emotional pain, trigger panic, convince of the aggressors' capacity to inflict pain and death" (see para. 2.14 above).

3.5 The complainants allege that the torture and ill-treatment to which Mr. Gallardo Martínez was subjected at the time of his arrest, in the secret detention centre, at the Office of the Assistant Attorney General for the Investigation of Organized Crime and, subsequently, in prison, have had irreversible consequences. In physical terms, the delay in treating his eye condition has caused permanent damage to his sight, which persists to this day. The sequelae of the blows to his left forearm and right foot are still visible. In addition, he has not received specialized psychological care, despite the recommendation made in the medical opinion; he was only able to begin receiving private specialized care following his release.

3.6 The complainants also 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 from occurring. Irregularities occurred from the beginning of the arrest process: no charges were brought and only an order to locate and hand over the person had been issued; however, an arrest warrant had not been served and the conditions of flagrante delicto or urgency had not been met, these being the only three sets of circumstances in which an arrest may be considered legal. The complainants recall that the Committee has expressed concern about

the use of arbitrary detention in Mexico, insofar as it is conducive to the practice of torture.<sup>7</sup> They also recall that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated, in relation to his mission to Mexico in 2014, that “safeguards are weak, especially those for detecting and preventing torture in these first moments. Detention records and medical examinations are often inadequate and do not mention allegations or evidence of torture; there is inadequate monitoring of the legality of detention or the deadline for bringing detainees before the Public Prosecution Service; detainees are not given immediate access to an adequate defence; detainees’ statements are given without judicial oversight or the presence of a lawyer”.

3.7 The complainants also allege a violation of article 11 of the Convention because, although the State party had an obligation to ensure compliance with existing laws and regulations by means of permanent assessment mechanisms, these mechanisms failed, as evidenced by the serious irregularities in the detention records and the lack of access to a lawyer and an independent doctor.

3.8 The complainants also claim a violation of articles 12 and 13 of the Convention. From the time of Mr. Gallardo Martínez’s arbitrary detention until his release, various judicial remedies have been sought in view of the torture that he suffered, without the investigation having progressed. Furthermore, in 2016, the local representation of the Counsel General’s Office in the state of Oaxaca initiated an investigation *ex officio*, claiming to have learned of the facts in press releases, again without any progress having been made. Lastly, in 2018, the National Human Rights Commission filed a complaint with the internal affairs unit of the federal police and with the Specialized Unit for the Investigation of Crimes Committed by Public Servants against the Administration of Justice of the Counsel General’s Office, respectively. No progress has been made in relation to either complaint. The complainants recall that, in the past, the Committee considered the failure to conduct an investigation for 15 months to amount to a violation of article 12 of the Convention,<sup>8</sup> whereas, in the present case, no investigation has been carried out for more than six years. They thus conclude that a prompt, immediate and thorough investigation into the acts of torture did not take place.

3.9 The complainants further allege a violation of article 14 of the Convention, not only to the detriment of Mr. Gallardo Martínez, but to that of all the complainants listed in the complaint. The complainants recall that the “immediate family or dependants of the victim” are also considered to be victims, in the sense that they are entitled to full reparation.<sup>9</sup>

3.10 The complainants submit that, although Mr. Gallardo Martínez is the direct victim of the alleged acts, all the other complainants are indirect victims. The detention of Mr. Gallardo Martínez has, in reality, affected Yolanda Barranco Hernández, his partner, physically and psychologically and has disrupted her life plan. In the early hours of the morning, hooded individuals forced their way into her home, breaking down the door, while she was asleep with her partner and her 9-year-old daughter. In addition to the trauma this caused her, she has been targeted for demanding justice (she took part in marches, protests, forums, meetings and other reporting activities, at home and abroad). Her salary was also withheld, which entailed a loss of income, and she has been subjected to persecution, intimidation, defamation and constant monitoring. This led her to request protection measures through the Office of the Human Rights Ombudsman of Oaxaca,<sup>10</sup> and to change how she travelled, as she was no longer safe on public transport, opting instead to take taxis or to arrange private transport. Whereas before she was in perfect health, she developed various disorders involving a strong emotional element (nervous colitis, gastritis, gynaecological disorders, allergies and anxiety). In addition, she had to move three times due to societal pressure in her neighbourhood and at work. Although she was able to visit her partner in prison, she suffered humiliating treatment

<sup>7</sup> See CAT/C/MEX/CO/5-6.

<sup>8</sup> *Halimi-Nedzibi v. Austria* (CAT/C/11/D/8/1991), para. 13.5. The complainants also refer to *Sonko v. Spain* (CAT/C/47/D/368/2008), para. 10.7; *Osmani v. Republic of Serbia* (CAT/C/42/D/261/2005), para. 10.7; *Blanco Abad v. Spain* (CAT/C/20/D/59/1996), para. 8.8; and *Dimitrov v. Serbia and Montenegro* (CAT/C/34/D/171/2000), para. 7.2.

<sup>9</sup> General comment No. 3 (2012), para. 3.

<sup>10</sup> Case file No. DDHPO/CA/1389/30/OAX/2014.

(she was forced to undress and faced excessive delays in entering every time she complained about the abuse).

3.11 Moreover, M.M.B.H., the daughter of Mr. Gallardo Martínez and Ms. Barranco Hernández, who was 9 years of age at the time of the arrest, was an eyewitness to the arbitrary detention of her father and the attack against the security infrastructure of her home. Along with her mother, she suffered harassment and persecution, had to move three times and change schools. She also suffered social stigmatization, as her father had been publicly accused of being a child kidnapper. For the duration of her father's imprisonment, she was unable to visit him due to the distance involved and the vexatious protocols for entering the prison. This situation imposed physical and emotional distance between father and daughter at a time when the presence of a father figure is of vital importance for the development of a child's personality.

3.12 At the time of his arrest, Mr. Gallardo Martínez's three minor children from his first marriage, L.K.G.C., who was 16 years of age, X.K.G.C., who was 13 years of age, and E.R.K.G.C., who was 12 years of age, were living in their paternal grandparents' house in their indigenous community, which they had to leave in 2014 due to the climate of harassment that the situation had created.

3.13 Gregorio Gallardo Vásquez, the father of Mr. Gallardo Martínez and a 75-year-old retired indigenous teacher, also travelled from his community to the main square of Oaxaca City, where he stayed from 8 a.m. to 6 p.m. every day to demand justice for his son, in the hope of receiving attention and a response from the authorities. He also frequently took part in activities to speak out against the injustice being committed against his son, which took a significant physical and emotional toll on him and has had a permanent effect on his physical and mental health. During the 5 years, 7 months and 10 days that his son spent in detention, he visited him regularly at the prison, which was located approximately 15 hours away from his home; this situation has taken a serious economic, physical and emotional toll on him, owing to the ill-treatment that he suffered during his visits to the prison, where he was forced to follow protocols that violated his dignity and whose psychological and emotional impact was all the more significant because he was indigenous and an older adult.

3.14 Felicitas Martínez Vargas, the mother of Mr. Gallardo Martínez, who cannot read or write Spanish, frequently visited her son in prison, where she suffered ill-treatment for doing so, which has placed a serious physical and emotional strain on her. This has a particularly serious impact, taking into account the differential effect of this humiliation on an older indigenous woman. Moreover, on occasion, she was arbitrarily denied entry for wearing indigenous footwear, which constituted a serious abuse of authority and racial discrimination.

3.15 Mr. Gallardo Martínez's five siblings have been seriously affected by his detention. Florencia Gallardo Martínez was the first member of the family to be able to enter and see her brother after his arrest, suffering harassment by the authorities during her visit. The highly stressful and exhausting nature of the whole process damaged her health: her diabetes worsened, with stress being a factor precipitating the disease, and the associated emotional and psychological damage has had an impact on her social relations and life with her partner. The costs associated with mounting a legal defence were largely borne by her, and she had to put aside several personal (the building of her house) and professional projects, which significantly disrupted her life plan.

3.16 Idolina Gallardo Martínez, a teacher, led a series of public protests after her brother's arrest, coordinating the activities of the Committee of Relatives and Friends of Damián Gallardo Martínez. She suffered persecution because of these actions, which led her to request protection measures from the Office of the Human Rights Ombudsman of Oaxaca, together with Ms. Barranco Hernández.<sup>11</sup> She was also the family member who visited the prison most frequently, acting as a family liaison to ensure that there was constant contact with her brother, which required her to abandon her doctoral dissertation in the final trimester. To cover her travel expenses, she had to sell a plot of land that was of symbolic importance to the family and on which she was going to build her house. She also miscarried while facing various stressful situations, and her relationship with her partner and her partner's children

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<sup>11</sup> Case file No. DDHPO/CA/1389/30/OAX/2014.

was damaged owing to the stigmatization suffered by her family. When her brother was exposed and criminalized by the media and the moral integrity of her family was called into question, she was forbidden to go near the children because she was considered a “bad influence”. She also suffered ill-treatment at the prison, and was refused entry on three occasions.

3.17 The stigmatization suffered by his family had a severe psychological effect on Saúl Gallardo Martínez, which, in turn, had an impact on his work life, as he was singled out on account of the stigma attached to his brother’s arrest as a kidnapper. This situation led him to develop a depressive disorder. Due to his financial situation, he was unable to visit the prison, and his interpersonal relationship with his brother was affected as a result.

3.18 Violeta Gallardo Martínez started to experience paranoia, anxiety attacks and symptoms of high stress. Her financial situation also deteriorated, as she had to bear most of the costs of supporting of her niece, the daughter of Ms. Barranco Hernández, who devoted her time to demanding justice.

3.19 Felicita Gallardo Martínez also suffered serious psychological and emotional damage as a result of her brother’s detention. As she did not live in the state of Oaxaca, it was particularly difficult for her to be involved in the process of demanding justice, which caused her emotional anguish and also affected her interpersonal relationships with the members of her family.

3.20 Lastly, the complainants allege a violation of article 15 of the Convention because Mr. Gallardo Martínez was forced to sign an alleged confession of involvement in criminal acts, which the Public Prosecution Service used to justify his detention in prison for more than five years, for fear that the threats made against his family would be carried out.

3.21 Accordingly, the complainants request the following forms of reparation: (a) the prosecution, trial and punishment of all those responsible; and (b) comprehensive reparation for all victims, through: (i) specialized medical and psychological rehabilitation that is respectful of their worldview; (ii) protection, so that they can resume their work in defence of human rights; (iii) compensation; (iv) public acknowledgement of responsibility and a public apology, the modalities of which should be agreed with the victims; and (v) measures to ensure non-repetition, including: *a.* the cessation of all discourse that might delegitimize and criminalize the work of human rights defenders, and the launching of an inclusive process for designing a comprehensive public policy for the protection of human rights defenders; *b.* the creation and implementation of a national register of arrests; *c.* easy and rapid access for all victims of torture to comprehensive reparation processes, through prompt and immediate inclusion in the National Register of Victims, and the design of care and comprehensive reparation protocols by the Executive Commission for Victim Support; and *d.* the prompt adoption and implementation of the National Programme for the Prevention and Punishment of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### **State party’s observations on admissibility and the merits**

4.1 In its observations of 23 November 2020, the State party explains that criminal proceedings were opened against Mr. Gallardo Martínez for the kidnapping of two minors and that he had also been arrested in flagrante delicto in the commission of offences related to organized crime. The State party indicates that these criminal proceedings were closed in December 2018.

4.2 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 pending. The State party submits that the complainants have not reported any failure to conduct or any delay in the investigations and that they can initiate *amparo* proceedings to address the failings of the authorities responsible for clarifying the unlawful conduct reported.

4.3 On the merits, the State party claims that it is not responsible for violations of the Convention. In particular, with regard to articles 1 and 2, the State party argues that the burden of proof is on the complainants. With regard to the allegations of torture at the time of his arrest, the State party points out that the injuries referred to in the medical reports did

not endanger Mr. Gallardo Martínez's life, and that they could have been sustained during his arrest or if he had gone over on his ankle.

4.4 The State party also argues that, since it has not been proved that the crime of torture was committed, it cannot be held responsible for the violation of articles 14 and 15 of the Convention.

4.5 Lastly, the State party argues that it is not responsible for violations of articles 12 and 13 of the Convention, stressing that the investigation is not an obligation of result but of means.

#### **Complainants' comments on the State party's observations on admissibility and the merits**

5.1 In their comments of 4 April 2021, the complainants note that the State party's response is criminalization-focused. Despite the criminal proceedings having been closed, in its observations, the State party continues to view the matter from a criminalization standpoint, which has been reflected in its actions since the arbitrary detention took place, and has merely reproduced background information from the criminal case without analysing the serious failings and inconsistencies it discloses. The complainants reiterate that no guarantees were provided at the time of the arrest and that it was precisely the absence of such guarantees, such as the failure to record the detention, that triggered a series of serious human rights violations.

5.2 In particular, the State party continues to claim in its observations that the arrest was carried out in flagrante delicto for the offence of involvement in organized crime, when such an allegation is totally false and implausible, as has already been demonstrated by the exculpatory evidence and, in particular, by the questioning of the arresting police officers, which confirmed that he was not arrested in flagrante delicto for any offence, as had been alleged in the criminal proceedings, but at his home, in his bedroom with his daughter and partner (see para. 2.27 above).

5.3 With regard to the alleged inadmissibility of the complaint for failure to exhaust domestic remedies because Mr. Gallardo Martínez did not initiate *amparo* proceedings to address the failings of the authorities responsible for the torture investigations, the complainants point out that *amparo* is an extraordinary remedy and that it need not be exhausted. They also reiterate that the appeals continue to be unreasonably prolonged almost eight years after the events.

5.4 With regard to the violation of articles 1 and 2 of the Convention, the complainants note that the State party simply concludes that the injuries could have been caused by something other than acts of torture, without analysing the series of inconsistencies and shortcomings reported.

5.5 The complainants also note that the State party failed to respond to the alleged violation of article 11 of the Convention, and argue that, in failing to do so, it admitted its responsibility by omission.

5.6 With regard to the violation of articles 12 and 13 of the Convention, the complainants allege that the State party has not shown that it has taken reasonable steps to advance the investigation and punish those responsible. They also explain that the authorities have sought to intimidate Florencia Gallardo Martínez every time she has approached them to enquire as to the status of the investigations. They add that they do not have access to official information on the status of preliminary investigation No. 738/UEIDAPLE/DT/8/2014 (see para. 2.21 above) and that they were informed that, on 30 December 2019, the Public Prosecution Service requested a ruling not to prosecute in connection with preliminary investigation No. 045/AP/DGCSPI/14 (see para. 2.19 above), which was subsequently appealed.

5.7 With regard to the violation of article 14 of the Convention, the complainants recall that the Working Group on Arbitrary Detention recognized the acts in Opinion No. 23/2014, as did various special rapporteurs of the United Nations (see para. 2.25 above) and even the National Human Rights Commission (see para. 2.18 above). Furthermore, the complainants indicate that, in September 2020, the Attorney General's Office reportedly granted Mr.

Gallardo Martínez the status of a victim of torture, although, to date, he has not been notified of that step, and that, on 29 March 2021, the Executive Commission for Victim Support registered as indirect victims Felicita Gallardo Martínez and the children L.K.G.C., X.K.G.C. and E.R.K.G.C., while the registration of the other complainants as such remains pending. The complainants submit that, contrary to the State party's allegations, the commission of the crime of torture was in fact recognized by this means. With regard also to comprehensive reparation for the harm done, the complainants also report that Mr. Gallardo Martínez submitted a request for reparation to the Executive Commission for Victim Support, in which he requested measures of restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition. The request was assigned number CEAV/CIE/034/2020 and processed, but no information is available on its status. The complainants also state that Mr. Gallardo Martínez continues to suffer the effects and sequelae of the injuries noted in various medical reports, and that his private doctor – who has experience in treating patients who were victims of torture – found him to be suffering from “chronic tension headache and sleep disorders as a direct result of the traumatic event referred to” and “metabolic disorders resulting from exposure in prison to food of dubious quality and rich in unsaturated fatty acids”.

5.8 Lastly, with regard to the violation of article 15 of the Convention, the complainants reiterate that, although Mr. Gallardo Martínez was forced to sign a confession under torture, there was never any real evidence against him. In fact, they recall that the statement by a person who incriminated him was declared invalid by an indirect *amparo* decision ordering the exclusion of that statement from the evidence, as it had been obtained under physical and psychological torture (see para. 2.27 above). Thus, the illegal arrest and prison term of 5 years and 7 months were based on the alleged confession of Mr. Gallardo Martínez obtained under torture, and on a statement by a third party also obtained under torture.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claim submitted in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention.

6.2 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. The Committee notes that Mr. Gallardo Martínez's case was brought to the attention of the Working Group on Arbitrary Detention and of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. However, the Committee notes in the first place that the mandate of the Working Group concerns, *ratione materiae*, the issue of arbitrary deprivation of liberty and not torture. With regard to the consideration of the case by the Special Rapporteur, the Committee recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, whose mandates are to examine and report publicly on human rights situations in specific countries or territories or on cases of widespread human rights violations worldwide, do not constitute procedures of international investigation or settlement within the meaning of article 22 (5) (a) of the Convention.<sup>12</sup> Accordingly, the Committee considers that the examination of Mr. Gallardo Martínez's case by these procedures does not preclude it from examining the present complaint.

6.3 The Committee takes note of the State party's allegations that domestic remedies have not been exhausted because the preliminary investigations into the complaint of torture are still pending and that the complainants have not reported any failure to conduct or any delay in the investigations by initiating *amparo* proceedings. The Committee further notes that the complainants have pointed out that the remedy of *amparo* is an extraordinary remedy that does not have to be exhausted, and that the appeals filed continue to be unreasonably prolonged almost eight years after the events.

<sup>12</sup> *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 7.1.

6.4 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.<sup>13</sup> In the present case, the Committee notes that more than eight years have elapsed since the complainants first filed a complaint so that an investigation would be opened into the acts of torture in question, and that, despite the fact that the Public Prosecution Service had the information necessary to conduct a prompt and effective investigation that would allow those allegedly responsible to be identified and prosecuted, that recommendation 5/2018 of the National Human Rights Commission called for a prompt investigation<sup>14</sup> and that the Commission submitted complaints, dated 28 February and 30 August 2018, respectively, to the internal affairs unit of the federal police and to the Specialized Unit for the Investigation of Crimes Committed by Public Servants against the Administration of Justice of the Counsel General's Office (see para. 2.18 above), no significant progress has been made in any of the investigations. The State party has not provided any justification for that considerable delay.

6.5 Under these circumstances, the Committee considers that domestic remedies have been unreasonably prolonged. Accordingly, the requirements of article 22 (5) (b) of the Convention do not preclude the Committee from examining the complaint on the merits.

6.6 The Committee considers the complainants' claims under articles 1, 2 and 11 to 15 of the Convention to be sufficiently substantiated for the purpose of admissibility and thus declares them admissible and proceeds to its consideration of the merits.

#### *Consideration of the merits*

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

7.2 Before proceeding to examine the complainants' allegations as they relate to the articles of the Convention which they have invoked, the Committee must determine whether the acts to which Mr. Gallardo Martínez was subjected constitute acts of torture within the meaning of article 1 of the Convention.

7.3 The Committee takes note of the complainants' allegations that, during Mr. Gallardo Martínez's arrest, he was beaten and dragged half-naked to a van in which, for approximately two hours, police officers forced him to assume degrading and painful positions, threatened to rape and kill his daughter and his partner and to murder his parents, pretended to execute him with a weapon and caused him to choke. The Committee also takes note of the complainants' allegations that, once the journey had ended, Mr. Gallardo Martínez was held for approximately 30 hours in a secret detention centre, where he was deprived of water and sleep and prevented from defecating, was again beaten on the testicles, stomach, back, face and head, was choked, was forced to witness acts of torture against other detainees, and was forced to listen as death threats were made against his relatives. In addition, while he was in detention at the premises of the Office of the Assistant Attorney General for the Investigation of Organized Crime, he was given unauthorized injections, and, again, officers threatened to kill his partner, daughter and parents, and he was deprived of water, food and sleep. The complainants claim that this treatment was meted out to force Mr. Gallardo Martínez to confess to an alleged crime, and he signed blank sheets of paper that were subsequently used as alleged evidence of self-incrimination. Lastly, during the five years and seven months he spent in Puente Grande maximum security prison in Guadalajara, he was again beaten on his back, kicked in the buttocks and screamed at in the ear; subjected to body cavity searches (anal); forced to live in overcrowded conditions, placed in solitary confinement, confined to his cell for 22 hours per day and deprived of sleep; and denied adequate and timely surgery.

7.4 The Committee also notes that the State party has argued that the injuries noted by the doctors attached to the Counsel General's Office could have been sustained during his arrest or if he had gone over on his ankle without, however, providing any further information. The

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<sup>13</sup> See, inter alia, *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* (CAT/C/55/D/500/2012), para. 16.4.

<sup>14</sup> Third recommendation.

Committee notes, however, that a medical and psychological opinion based on the Istanbul Protocol concluded that Mr. Gallardo Martínez had been subjected to acts of torture intended to “bend the will to the extreme” and “convince of the aggressors’ capacity to inflict pain and death” (see para. 2.14 above), and that doctors from the Executive Commission for Victim Support diagnosed him with anxiety, depression, post-traumatic stress disorder, sequelae of the injury to his left shoulder and right ankle, and noted that he experienced pain upon moving his right foot (see paras. 2.15 and 2.16 above). The Committee considers that the facts described by the complainants regarding the conditions in which Mr. Gallardo Martínez was arrested and subsequently detained, and the circumstances in which he was held during his time in detention constitute acts of torture under article 1 of the Convention.

7.5 The complainants allege a violation of article 2 of the Convention because the State party failed in its obligation to prevent the acts of torture described during his arrest and subsequent periods in detention. The Committee notes that Mr. Gallardo Martínez was detained by police officers without an arrest warrant and without being in flagrante delicto, and that he was unable to communicate with his partner for almost two days and with an independent lawyer for four days. During this time, he was interrogated under torture by the officers and forced to sign confessions, and an official from the Public Prosecution Service only came to sign a ministerial statement that Mr. Gallardo Martínez had made under torture. The Committee also notes that, despite the injuries noted during the medical examinations, and despite appeals having been filed against the detention orders issued against him, the authorities decided to keep him in detention on the basis of his alleged confession, simply ordering that a new decision be issued to remedy the procedural irregularities in question (see para. 2.20 above). 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.<sup>15</sup> In the light of the above circumstances and the lack of information provided by 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 as set out in article 2 (1) of the Convention.

7.6 The Committee also notes the complainants’ argument that article 11 of the Convention was violated because of the State party’s failure to put in place mechanisms to assess compliance with existing laws and regulations, which paved the way for serious irregularities in the recording of the detention and the lack of access to a lawyer and to an independent doctor. The Committee notes that the State party did not respond to this allegation. The Committee recalls its concluding observations on the seventh periodic report of Mexico, in which it urged the State party to ensure the systematic review of interrogation and arrest procedures, in accordance with article 11 of the Convention.<sup>16</sup> For these reasons, the Committee concludes that the State party has violated article 11 of the Convention.

7.7 With regard to articles 12 and 13 of the Convention, the Committee takes note of the complainants’ allegations that the competent authorities failed to carry out a prompt, immediate and thorough investigation into the acts of torture, despite the complainants’ having sought various judicial remedies since 2013, an investigation having been initiated ex officio by the local representation of the Counsel General’s Office in the state of Oaxaca in 2016, and despite recommendation 5/2018 of the National Human Rights Commission and the complaints submitted by the Commission in 2018 to the internal affairs unit of the federal police and the Specialized Unit for the Investigation of Crimes Committed by Public Servants against the Administration of Justice of the Counsel General’s Office. The complainants also allege that, not only has the State party failed to show that it has taken reasonable steps to advance the investigation and to punish those responsible, but that the authorities have sought to intimidate them each time they have approached them to enquire as to the status of the

<sup>15</sup> CAT/C/MEX/CO/7, para. 15.

<sup>16</sup> Ibid., para. 17.

investigations, that they have no access to official information on the status of one of the preliminary investigations and that an attempt is being made to close the other one (see para. 5.6 above). The Committee also takes note of the State party's argument that it is not responsible for violations of articles 12 and 13 of the Convention, since the investigation is not an obligation of result, but of means.

7.8 The Committee recalls that article 12 of the Convention requires States parties to ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.<sup>17</sup> The Committee notes that, although Mr. Gallardo Martínez had visible injuries when he was examined by doctors attached to the Counsel General's Office on 19, 20 and 22 May 2013 (see paras. 2.4, 2.8 and 2.12 above), no immediate investigation was initiated.

7.9 The Committee further recalls that the investigation alone is not sufficient to demonstrate the State party's fulfilment of its obligations under article 12 of the Convention, if it can be shown not to have been conducted promptly and impartially. It recalls 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.<sup>18</sup> The Committee notes that, in the present case, the complainants filed formal appeals in respect of the acts of torture, which, more than eight years later, have not led to the advancement of the investigation or to the punishment of those responsible; rather the case is still at the preliminary investigation stage, without any justification for the excessive delay in the investigations having been offered or any timely information on the status of the investigations having been provided to the complainants. The Committee further notes that neither the investigation opened ex officio by the local representation of the Counsel General's Office in the state of Oaxaca in 2016, nor the two complaints filed by the National Human Rights Commission in 2018 have served to advance the investigations.

7.10 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.

7.11 The Committee takes note of the complainants' claims that the damage caused to Mr. Gallardo Martínez and the members of his family, who are also complainants, has not been repaired. The Committee recalls its general comment No. 3 (2012), which states that immediate family or dependants of the victim<sup>19</sup> are also considered to be victims, in the sense that they are entitled to full reparation. The Committee notes that the State party has begun the process of recognizing some of Mr. Gallardo Martínez's family members as indirect victims (see para. 5.7 above). The Committee also recalls that the general comment mentions the necessary measures of restitution, compensation, rehabilitation, satisfaction and the right to the truth, and stresses the need for States parties to provide the means necessary for as full a rehabilitation as possible for anyone who has suffered harm as a result of a violation of the Convention, which should be holistic and include medical and psychological care as well as legal and social services.<sup>20</sup> In view of the lack of a prompt and impartial investigation of the complaints submitted in respect of the acts of torture reported, and all the issues highlighted in the previous paragraphs, 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. Gallardo Martínez and the other complainants.

7.12 Lastly, the Committee takes note of the complainants' allegations that article 15 of the Convention was violated because Mr. Gallardo Martínez was forced to sign an alleged confession of involvement in criminal acts for fear that the threats against his family would be carried out. The Committee notes that the alleged confession, together with another statement by a third party, also obtained under torture, were the basis on which the Public Prosecution Service decided to keep Mr. Gallardo Martínez in detention for five years and seven months, before finally closing the case (see para. 5.8 above). Accordingly, the

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<sup>17</sup> *Ramírez Martínez et al. v. Mexico*, para. 17.7.

<sup>18</sup> *Ibid.*, para. 17.8.

<sup>19</sup> General comment No. 3 (2012), para. 3.

<sup>20</sup> *Ibid.*, paras. 11–15.

Committee considers that the facts before it disclose a violation by the State party of its obligation to ensure that any statement made under torture cannot be used in proceedings.

8. The Committee, acting under article 22 (7) of the Convention, decides that the facts before it disclose a violation of article 2, read alone and in conjunction with articles 1, 11, 12, 13, 14 and 15 of the Convention, to the detriment of Mr. Gallardo Martínez, and of article 14, to the detriment of the other complainants.

9. In accordance with rule 118 (5) of its rules of procedure, the Committee urges the State party to: (a) initiate an impartial, thorough, effective and independent investigation into the acts of torture; (b) prosecute, try and punish appropriately the persons found guilty of the violations; (c) award full reparation, including fair and adequate compensation, to the complainants, and provide as full a rehabilitation as possible to Mr. Gallardo Martínez, ensuring that it is respectful of his worldview as a member of the Ayuujk indigenous people; (d) make a public apology to the complainants, the modalities of which should be agreed with them; (e) 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 interrogation and arrest procedures, and the cessation of the criminalization of the defence of indigenous peoples' rights;<sup>21</sup> and (f) publish the present decision and disseminate it widely, including in a widely read newspaper in the state of Oaxaca. The Committee hereby requests the State party, in accordance with rule 118 (5) of its rules of procedure, 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.

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<sup>21</sup> In this regard, the Committee notes that, according to the Special Rapporteur on the rights of indigenous peoples, the criminalization of indigenous leaders not only has an individual impact (pretrial detention can last for long periods, and the stigmatization and loss of family and community ties can be long-lasting, even when the charges are dropped) but a collective impact. Indeed, criminalization is generally carried out with the express intent to silence indigenous peoples' voices, disrupt their organization and impede their ability to express their concerns; stigmatizing indigenous leaders by calling them criminals suggests that they are not reputable representatives of the community and aims to disrupt social cohesion; moreover, they will have reduced possibilities to defend the rights of their communities, as their resources and energies may be depleted in defending themselves against criminal charges (A/HRC/39/17, paras. 71–77).