



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

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Committee against Torture

Communication No. 500/2012

Decision adopted by the Committee at its fifty-fifth session (27 July-14 August 2015)

<i>Submitted by:</i>	Ramiro Ramírez Martínez, Rodrigo Ramírez Martínez, Orlando Santaolaya Villarreal and Ramiro López Vásquez (represented by the Mexican Commission for the Defence and Promotion of Human Rights and by the World Organization against Torture)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Mexico
<i>Date of complaint:</i>	15 March 2012
<i>Date of present Decision:</i>	4 August 2015
<i>Subject matter:</i>	Arbitrary detention and torture
<i>Procedural issue:</i>	Non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment
<i>Articles of the Convention:</i>	1, 2, 12-16 and 22



Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fifth session)

concerning

Communication No. 500/2012^{*,}**

Submitted by: Ramiro Ramírez Martínez, Rodrigo Ramírez Martínez, Orlando Santaolaya Villarreal and Ramiro López Vásquez (represented by the Mexican Commission for the Defence and Promotion of Human Rights and by the World Organization against Torture)

Alleged victims: The complainants

State party: Mexico

Date of complaint: 15 March 2012

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 4 August 2015,

Having concluded its consideration of complaint No. 500/2012, submitted to the Committee by Ramiro Ramírez, Rodrigo Ramírez, Orlando Santaolaya and Ramiro López under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants' representatives and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1. The complaint is submitted by Ramiro Ramírez Martínez, Rodrigo Ramírez Martínez, Orlando Santaolaya Villarreal and Ramiro López Vásquez, all of whom are Mexican nationals, born on 18 April 1985, 23 February 1983, 21 November 1985 and 14 December 1983, respectively. The complainants allege that the State party has violated their rights under articles 2, read in conjunction with 1; 16, read in conjunction with 2; and 12 to 15 of the Convention. The complainants are represented by counsel.

* The following members of the Committee participated in the consideration of the present communication: Ms. Essadia Belmir, Mr. Alessio Bruni, Mr. Satyabhoosun Gupt Domah, Ms. Felice Gaer, Mr. Abdoulaye Gaye, Mr. Claudio Grossman, Mr. Jens Modvig, Ms. Sapana Pradhan-Malla, Mr. George Tugushi and Mr. Kening Zhang.

** The text of the individual (dissenting) opinion of Committee member Mr. Alessio Bruni is appended hereto.

The facts as submitted by the complainants

2.1 On 16 June 2009, Ramiro Ramírez, Rodrigo Ramírez and Orlando Santaolaya were leaving their room at the Oceana hotel in Playas de Rosarito, Baja California, when they were stopped by a group of 8 to 10 hooded individuals in civilian clothing armed with rifles, who ordered them to the ground. When they asked why, the three men were hit on the legs with the guns and fell to the ground. A person in military uniform, who also had his face covered, then arrived and started giving orders, leading them to conclude that their assailants, who did not show an arrest warrant, were members of the army.

2.2 The assailants asked them about two persons called “el Rambo” and “el chuletas”, which were names used by Ramiro Ramírez and Orlando Santaolaya. They then asked them about a third person whom they did not know. The soldiers threatened to shoot the three complainants if they moved, before taking Ramiro Ramírez to the hotel room, from where cries of pain were heard. The soldiers then took Orlando Santaolaya to the same room and interrogated both men about persons who had allegedly been kidnapped; they handcuffed their hands behind their backs, blindfolded them, covered them with blankets, struck them in the ribs, stomach and jaw, put plastic bags over their heads and almost suffocated them, causing Ramiro Ramírez to lose consciousness twice, and applied electric shocks to their genitals and other parts of their bodies. In the meantime, Rodrigo Ramírez remained in the hotel lobby, where he was beaten repeatedly by two soldiers. After about one hour, the three men were taken outside and loaded into vans.

2.3 That same day, Ramiro López was working on an avenue in Playas de Rosarito. During his lunch break, as he was phoning his wife, around 10 vehicles approached him. The vehicles made up the convoy carrying Ramiro Ramírez, Orlando Santaolaya and Rodrigo Ramírez. Two persons in military uniform got out of one of the vans and asked Ramiro López “who he was warning with his phone”, to which he replied that he was not warning anyone, but rather speaking to his wife, and that they could check the number. The soldiers snatched the phone from him and forced him into one of the vehicles, striking him several times with a rifle.

2.4 After travelling for around 20 minutes, the vehicles stopped in front of a house. Ramiro Ramírez was taken out of one vehicle and into the house. Once inside, the soldiers threw him to the floor, put a plastic bag over his head and hit him on the jaw with weapons, causing it to dislocate. The beating lasted about one hour, during which time the other detainees remained in the vehicles outside. After taking Ramiro Ramírez back to the vehicles, the soldiers headed towards another house. They got out and entered the house, but when they heard screams from women and children inside, they got back into the vehicles and left the area. During the journey, Ramiro López was hit many times on his head and body, making him lose consciousness.

2.5 The soldiers stopped again in front of a house in the town of Rosarito. After taking the detainees inside, the soldiers threw them to the floor and beat them again all over their bodies, interrogating them about weapons and a person who had been kidnapped. When the complainants said that they had no idea what the soldiers were talking about, they were beaten again and subjected to death threats. The leader of the convoy pointed a pistol at Ramiro Ramírez’s head and threatened to kill him unless he confessed to kidnapping and possessing weapons. They remained in that position for approximately two hours.

2.6 Finally, the complainants were taken to the Second Military Zone in Tijuana, which belongs to Infantry Battalion No. 28. During the 30-minute journey, the soldiers continued to hit the detainees with weapons. When they reached the barracks, they kept on hitting and threatening them to make them confess to kidnapping someone in

the house in Rosarito and to possessing the weapons found inside. They put plastic bags on their heads again, after which Orlando Santaolaya and Ramiro Ramírez lost consciousness and had to be revived by an army doctor.

2.7 That day and in the same barracks, the soldiers presented the complainants to the press as a “gang of kidnappers” and were photographed with weapons that had supposedly been found. After the press conference, the complainants were led to a room, where they were joined by about 10 soldiers who started to beat and interrogate them again. The soldiers told them that, the following day, a public prosecutor would come to take statements from them and that they would have to admit to the kidnapping and to the possession of weapons. When they refused, the soldiers hit them and began to rip out their toenails. In order to stop the torture, the complainants eventually agreed to confess to the public prosecutor the following day.

2.8 Also on 16 June, a doctor from the Ministry of Defence examined the complainants, noting some minor injuries but concluded that the detainees showed no signs of torture. On 31 July 2009, the same doctor conducted a second examination, in which he noted the need for Ramiro López to undergo ear, nose and throat examinations and for Ramiro Ramírez to have his jaw X-rayed. The medical report did not, however, mention any possible ill-treatment.

2.9 On 17 June 2009, a public prosecutor arrived at the barracks to take statements. The complainants signed their statement in front of the prosecutor, blindfolded and without the presence of a lawyer of their choice. Ramiro López refused to confess to participating in criminal activities and described the treatment that he had received in detention to the prosecutor, who did not, however, show any reaction. Once the complainants had signed, the prosecutor left the barracks and they remained in military custody.

2.10 That same day, an expert from the Attorney-General’s Office examined Ramiro López and produced a report in which he noted several injuries, including a burst eardrum. On 21 June 2009, a medical examination of the complainants described clear physical injuries and recommended that a proper medical evaluation should be conducted. It was recommended that Ramiro Ramírez should undergo a special maxillofacial examination and that Ramiro López should undergo an ear, nose and throat examination as he had a burst eardrum.

2.11 The complainants were held incommunicado at the barracks for four days, gagged with tape and bound hand and foot during the night. They were given no food or water, and not allowed to go to the toilet. They also continued to be beaten and were forced to read out sentences dictated by the soldiers into a tape recorder so that the agents could fabricate evidence against them.

2.12 On 19 June 2009, the public prosecutor tasked with the preliminary investigation requested that the complainants should be held in preventive custody (*arraigo*),¹ to be served in the same barracks where they were detained. On 20 June 2009, the Second Federal Criminal Court specializing in searches, preventive custody and interception of communications ordered that the complainants should be held in preventive custody until 30 July 2009 in the designated barracks and that they should remain at the disposal of the Prosecution Service.

2.13 On 20 June 2009, relatives of Ramiro López were able to visit him for the first time, in the presence of army personnel. They noticed evidence of injuries to his face

¹ Article 16 of the Constitution states that: “When dealing with organized crime, the judicial authority, at the request of the Prosecution Service, may order that a person be held in preventive custody [...], if such detention is necessary for the success of the investigation or for the protection of persons or property, or if there is a well-founded risk that the defendant will abscond from justice. [...] [T]he total period of preventive custody may not, however, exceed 80 days.”

and limbs. He told them that he was in severe pain and had difficulty hearing, and yet had not received any medication. The public prosecutor refused to allow the relatives of Ramiro López to give him the medication he needed.

2.14 The relatives of Orlando Santaolaya were able to visit him for the first time on 24 June 2009 and noticed that he had injuries to his face, jaw, abdomen and hands. The relatives of Ramiro and Rodrigo Ramírez were unable to visit them until 17 July 2009. When they did, Ramiro described how he had been treated and had difficulty speaking because of his broken jaw.

2.15 During the 40 days of preventive custody, the complainants were bound hand and foot at night, and gagged and locked up during sleeping hours. They were prevented from going to the toilet and received repeated death threats.

Procedure before the National Human Rights Commission

2.16 On 17 July 2009, the mother of Ramiro and Rodrigo Ramírez filed a complaint with the National Human Rights Commission, in which she detailed the treatment to which the complainants had been subjected. On 24 September 2009, she submitted another document to the National Commission, stating that she had gone to the Office of the Prosecution Service in Tijuana on several occasions, spoken to the prosecutor and informed him of the acts of torture, asked him to intervene and to authorize medical attention, and that the only response that she had received was to be told that the complainants had already received medical treatment.

2.17 On 24 September 2009, the relatives of Ramiro López filed a complaint of torture with the National Commission, stating that the Prosecution Service had refused to authorize the provision of essential medication. That same day, the wives of Ramiro Ramírez and Orlando Santaolaya also filed a complaint of torture with the National Commission.²

2.18 In a letter dated 30 October 2009, the National Commission stated that the complaint filed by the complainants' relatives made reference to alleged conduct that fell within the sphere of "administrative responsibility", and that accordingly the Ministry of Defence had been notified to enable it to inform the Army and Air Force Inspectorate-General with a view to investigating the facts. The National Commission added that the complaint had been "without substance".

2.19 On 24 May 2010, the Mexican Commission for the Defence and Promotion of Human Rights requested the National Commission to reopen the case, on the grounds that acts of torture were not a matter of administrative responsibility, but were rather human rights violations, and that, by refusing to consider the complaint, the National Commission had failed to fulfil its legal mandate. In a letter of 3 June 2010, the National Commission informed the Mexican Commission that the case had been reopened. In July 2010, the National Commission conducted a medical and psychological examination of the complainants in line with the Istanbul Protocol. The results, however, remained confidential and were not passed on to the complainants' relatives. Moreover, to date, the National Commission has not made any recommendations to the competent authorities.

Criminal proceedings

2.20 On 29 July 2009, 43 days after the complainants had been arrested, the Second District Federal Criminal Court in the state of Nayarit issued an arrest warrant against

² The complainants claim that, according to the National Commission's case file, of which they were unable to obtain a copy, the Prosecution Service replied to their relatives' complaints by asserting that the treatment received while in detention and preventive custody was "a matter of military discipline" and that "nothing happened".

the complainants, ordering their transfer to Federal Social Rehabilitation Centre No. 4 in Tepic, Nayarit, on 31 July.

2.21 On 1 August 2009, the Court took preliminary statements from the complainants, who claimed that the statements given to the Prosecution Service had been obtained through torture. Nevertheless, the judicial authorities failed to order an investigation. On 4 August 2009, the complainants made an additional statement, in which they denied the charges against them and reasserted that their initial statements had been obtained under torture when they were blindfolded. Despite the consistency of the complainants' statements and the details that they had provided on the acts of torture, the Court failed to order an investigation.

2.22 On 6 August 2009, despite the grounds for declaring the complainants' confessions inadmissible, the Court cited their statements as grounds for issuing a detention order³ against them for the offences of organized crime, possession of weapons reserved for military use, kidnapping and robbery.

2.23 The complainants appealed to the Twenty-fourth Circuit Court in Acapulco. On 8 January 2010, the Court upheld the detention order, again on the basis of the confessions, which, it argued, were "generally more truthful owing to their consistency with the facts", while the statements given subsequently "lacked evidentiary value as there was no other evidence to corroborate them". The complainants note that they remain in pretrial detention awaiting a final judgement.

2.24 On 20 October 2009, the wives of Ramiro and Rodrigo Ramírez went to the Attorney-General's Office to file a complaint of torture. After waiting for more than three hours without being attended to, they left. On 21 October 2009, they returned and a public prosecutor refused to receive the complaint, arguing that the acts came under military jurisdiction as they had been committed by military personnel. On 23 October, they filed a complaint with the Office of the Military Attorney-General and were summoned to testify on 14 December 2009. At that appearance, they were asked if they could further substantiate the reported facts, to which they said no. Since the appearance, they have received no further information on the alleged investigations into their complaint.

2.25 On 28 October 2009, the relatives of Ramiro López filed a complaint of torture with the Attorney-General's Office, which referred the case to the Office of the Military Attorney-General.

2.26 The complainants argue that domestic remedies have been exhausted as, according to the Committee's case law, the investigation into the acts of torture committed against them has taken too long to meet the standard of promptness required under article 12 of the Convention. The complainants indicate that more than two years have passed since complaints were filed by them in court and by their relatives before the Attorney-General's Office, despite which there has been little progress with investigations. The only update that they have received was that the complaints were being investigated by the military courts. The prolonged inaction of the investigative authorities in the face of serious human rights violations is, in the complainants' view, an insurmountable procedural obstacle, which means that the judicial remedy has failed to satisfy the condition of promptness required by the Convention.

2.27 The complainants add that referring investigations into torture to the military authorities ensures impunity in the trial and punishment of those responsible for human rights violations. They note that the Committee has expressed concern that in

³ A preventive measure of remand in custody governed by article 19 of the Constitution.

the State party cases of torture committed by military personnel against civilians during the performance of their duties continue to be tried in military courts.⁴

Background to the involvement of the Mexican armed forces in enforcing law and order

2.28 The complainants point out that the facts should be considered in the context of the State party's efforts to control organized crime, which have allegedly been stepped up under the presidency of Felipe Calderón. Within this context, the Special Federal Army and Air Force Support Unit was established by decree under the Ministry of Defence to assist the civil authorities in law enforcement operations. Since then, thousands of members of the armed forces have been deployed to that end.

2.29 The military intervention has reportedly led to a wave of human rights violations, including enforced disappearances, executions, torture, sexual abuse and arbitrary detention.⁵ The complainants claim that impunity reigns in such cases and that there is a lack of political will to combat it. The impunity is compounded by the referral of cases to military courts, as already noted by the Committee.

2.30 Owing to its location on the border with the United States of America, Baja California has been particularly affected by the fight against organized crime, and the army has assumed complete responsibility for law and order in several parts of the state. In addition to the aforementioned violations, military intervention in Baja California has allegedly consisted of raids to detain individuals in the absence of arrest warrants. The persons in question are held in preventive custody in military barracks, particularly those belonging to Infantry Battalion No. 28.

2.31 Lastly, the complainants note the human rights issues stemming from the use of preventive custody during investigations (*arraigo prejudicial*), given the shortcomings in processing and implementing it and the vulnerability of persons in such preventive custody, which explains the large number of torture cases, as already noted by the Committee, the Working Group on Arbitrary Detention, the Subcommittee on Prevention of Torture and the Special Rapporteur on torture. Because it is imposed at the pre-investigation stage, preventive custody also violates the principle of the presumption of innocence. The constitutional reform of 2008 made it possible to order preventive custody in cases of organized crime. The complainants indicate that the measure has been overused by the judiciary, bearing in mind that the number of preventive custody applications rose by 250 per cent between 2006 and 2010.

The complaint

3.1 The complainants claim a violation of article 2, read in conjunction with article 1 of the Convention. They maintain that the treatment received in detention and preventive custody amounts to torture under article 1, in that State officials deliberately inflicted severe pain and suffering on them to make them confess to the alleged offences of involvement in a criminal organization and kidnapping. The injuries sustained as a result of that treatment are recorded in the medical report produced by the Attorney-General's Office. Ramiro López suffered severe and irreversible damage to his hearing and Ramiro Ramírez was left with serious facial injuries.

3.2 The complainants assert that, by allowing them to be detained without a warrant, the State party failed in its duty to prevent torture. The State party also allowed them to be held incommunicado in military facilities, where they were denied access to a

⁴ See the Committee's concluding observations on the fourth periodic report of Mexico (CAT/C/MEX/CO/4), para. 14.

⁵ The complainants cite reports by Human Rights Watch, Amnesty International and the Mexican Commission for the Defence and Promotion of Human Rights as proof of such violations.

lawyer and an independent medical examination. They point out that the first expert medical evaluation was not performed until they had been detained for six days and was entrusted to a doctor who took one hour to examine all four of them. They were subsequently ordered to serve 40 days of preventive custody, during which time they remained in the same military facilities, leaving them exposed to further torture.

3.3 The complainants claim a violation of article 16, read in conjunction with article 2 of the Convention, inasmuch as they were thrown to the ground and beaten during their arrest and transfer, which amounts to an unnecessary and disproportionate use of force given that none of the complainants was armed or resisted. Moreover, while in preventive custody, the complainants were bound hand and foot at night, gagged and locked up during sleeping hours and prevented from going to the toilet.

3.4 The complainants allege that the State party violated articles 12 and 13 of the Convention by failing to ensure that competent and impartial authorities conducted a prompt investigation of the acts of torture, and by preventing them from filing a complaint of torture before an ordinary court and having competent authorities conduct a prompt and impartial investigation of their allegations.

3.5 The complainants state that, even though they submitted a complaint of torture to the Prosecution Service and, later, in court, along with a detailed description of the acts of torture, including when and where they were committed, no prompt and impartial investigation or independent medical examination was conducted, in violation of article 12 of the Convention. Moreover, the preliminary investigation was transferred to military courts, despite which, after more than two years, no member of the army has been prosecuted for the alleged torture, no evidence has been taken and the complainants have not been called to testify, with the trial remaining at the pre-investigation stage. The complainants add that both they and their relatives were prevented from filing complaints of torture with a competent and impartial authority. According to the Committee and other international case law, military courts are not be competent to hear cases of serious human rights violations, particularly when the victims are civilians.

3.6 The complainants claim a violation of article 14 as they were denied access to a prompt, effective and impartial judicial remedy to establish the facts, prosecute and punish those responsible for the acts of torture and to provide adequate compensation and rehabilitation.

3.7 The complainants maintain that, even though their statements of 17 June 2009 were obtained through torture while they were blindfolded, the criminal court judge whom they informed did not dismiss the statements as evidence during the trial, allowing them to be cited as grounds for the issuance of a preventive custody order. The complainants therefore assert that the State party has breached its obligation under article 15 of the Convention.

3.8 By way of redress, the complainants request that the State party promptly, impartially and thoroughly investigate the facts, prosecute and punish those responsible with sentences that are commensurate with the seriousness of the acts and provide fair and adequate reparation to the victims, including adequate compensation and the necessary rehabilitation.

State party's observations on admissibility

4.1 On 6 June 2012, the State party submitted its observations on the admissibility of the complaint, drawing attention to the constitutional reform of 2011, which incorporated the international human rights treaties ratified by Mexico and restricted the scope of military courts in cases of human rights violations against the civilian population. It pointed out that, in a judgement of 12 July 2012, the Supreme Court

ended military jurisdiction over cases of human rights violations against civilians. Moreover, a proposal had been made to reform the Code of Military Justice in order to restrict the application of military law in accordance with international standards.

4.2 The State party contends that the complaint is inadmissible because of a failure to exhaust available domestic remedies. Although the military authorities investigated the case and found that no violation had occurred, they relinquished jurisdiction in favour of the civil authorities in an official letter of 28 May 2012, in response to the recent constitutional reforms. As a result, the Attorney-General's Office launched a new investigation into torture. The State party indicates that, shortly, the complainants will be notified of the new investigation, which will enable them to submit further evidence, appeals and applications for *amparo* as appropriate.

4.3 The State party also asserts that, on 3 June 2010, the National Human Rights Commission instituted new complaint proceedings, which are ongoing. When it issues its ruling, the Commission may urge the competent authorities to implement a series of recommendations for the protection of human rights.

4.4 The State party queries the facts as presented by the complainants, noting significant discrepancies. It states that, on 16 June 2009, military personnel assigned to the Second Military Zone in Tijuana received a telephone call asking them to respond urgently to a kidnapping in a house in Playas de Rosarito, leading to the deployment of a 14-strong military intelligence unit to the house in question. Upon arrival, the unit arrested an individual outside the house, who said that he was acting as a lookout for his accomplices. The military personnel then entered the house and surprised three individuals drinking alcohol, who said that they had been holding a businessman captive for over 30 days. In the same building, the unit found a man who was bound hand and foot, blindfolded and with obvious injuries, including a severed finger. Numerous military weapons were also discovered. The military personnel arrested the complainants for their probable involvement in the offences of organized crime, possession of military weapons and kidnapping. The State party points out that, thanks to the unit's expertise, not a single shot was fired. The complainants were brought before the Attorney-General's Office, which requested that they should remain in military custody because of the threat that they posed. During the hearing by the public prosecutor on 17 June, the complainants were advised by a public defender, who informed them of their rights and explained what evidence would be considered during the preliminary investigation. In their statements, the complainants did not state that they had been subjected to torture, and only Ramiro López claimed to have been beaten, but did not wish to file a complaint as he could not identify the perpetrators. Moreover, none of the medical examinations conducted found any signs of torture. Lastly, the State party notes that the complainants were visited by their relatives while in preventive custody.

4.5 The State party points out that preventive custody is recognized in the Constitution and subject to strict judicial controls, in accordance with international standards. It was endorsed by Congress as a key tool in combating organized crime and, at the request of national and international human rights bodies, its use has been restricted and made subject to judicial oversight. Preventive custody is ordered only in cases of organized crime when it is strictly necessary for the success of the investigation or for the protection of persons or property, or if there is a well-founded risk that the defendant will abscond from justice. It can be ordered only by a specialized federal court, which is responsible for ensuring that suspects' rights are not violated. The State party adds that the measure is imposed only exceptionally in federal criminal cases.

Complainants' comments on the State party's submissions

5.1 On 13 July 2012, the complainants reiterated their argument that the requirement to exhaust domestic remedies should be set aside in the present case, given the unreasonably prolonged investigation.

5.2 In respect of the investigation launched by the National Human Rights Commission, the complainants maintain that the Commission is an advisory body whose recommendations are non-binding and therefore cannot replace the work of the judiciary. The Commission's investigations are thus irrelevant to the exhaustion of domestic remedies. Moreover, the Commission has failed to contact the complainants since it launched a new investigation on 3 June 2010.

5.3 The complainants submit that, despite the State party's claim that the constitutional reform is a step forward, its success depends on its de facto implementation, which requires the amendment of secondary legislation — including the current Code of Military Justice — that remains incompatible with international treaties. They note that the bill to amend this law has yet to be adopted by the Mexican Congress and add that the aforementioned Supreme Court ruling is not legally binding on all Mexican judges.

5.4 The complainants maintain that President Calderón publicly stated that he would instruct prosecution services to try cases of human rights violations committed by military personnel in civilian courts. However, the Ministry of Defence continues to uphold the existence of military courts and their right to consider such cases.

5.5 The complainants note that they have not been informed that the civilian courts have reopened investigations, which demonstrates negligence on the part of the State party. They further note that, in any event, that would not change the fact that three years have passed without any progress being made in the investigation. The complainants add that, even if investigations were reopened by the civilian courts, these proceedings would offer very little hope of success given the overall number of convictions for torture in Mexico.

5.6 The complainants submit that the State party has provided a version of events that has been fabricated by the military authorities. As to the alleged tip-off received by phone by the military, they note that anonymous telephone calls are the usual argument given by the military to justify arbitrary detention. They add that the civilian police should be in charge of receiving such information.

5.7 The complainants draw attention to witness statements used in the criminal proceedings against them that confirm the time and place of their arrest, in accordance with the initial submission.⁶ They also highlight that, when they were taken to the aforementioned house, the weapons and the person who they had supposedly abducted were already there, which demonstrates that the military authorities clearly wished to incriminate them for offences of kidnapping and possession of weapons that they did not commit.

5.8 The complainants allege that they were not brought before the Prosecution Service immediately, as required by the Constitution, but were taken to various locations, tortured and subsequently brought back to the military barracks where they were shown to the media. The public prosecutor arrived only a few hours after the press conference. They stress that the authorities made up the claim that they were

⁶ The complainants have provided a copy of five eyewitness statements confirming the detention by military officers of Ramiro and Rodrigo Ramírez and Orlando Santaolaya in front of the Oceana hotel, as described in the initial submission.

caught in flagrante delicto in order to avoid issuing an arrest warrant and to arrest them arbitrarily.

5.9 The complainants contend that the decision by the public prosecutor to hold them in military custody constituted a grave risk to their safety, particularly in the light of the evident injuries described in their medical reports. Furthermore, the lack of any investigation into the alleged torture, notwithstanding the statements by Ramiro López and the injuries presented by the other complainants, is contrary to Mexican legislation and international standards, since a formal complaint of torture is not required to initiate proceedings.

5.10 According to the complainants, in Mexico it is common for medical reports to find no evidence of torture despite the presence of multiple injuries. Findings in such cases should be entrusted not to doctors but to the investigative authorities. They point out that the conclusions reached may be accounted for by the biased opinions of the medical experts, because if they found that torture had been committed, it would seriously jeopardize the institutions to which they themselves belong. The complainants maintain that investigations should be independent, as required by the Istanbul Protocol.

5.11 The complainants submit that the public defender who arrived at the military barracks failed to provide them with any information and merely told them to sign their statements. He also failed to request an investigation into their obvious injuries. They note that this type of behaviour is not uncommon when such procedures are performed at military facilities, since public defenders are likely to put themselves at risk if they try to protect persons in military custody and are thus unable to provide an effective defence.

5.12 Lastly, the complainants note that preventive custody during investigations is not subject to legal controls since it is not ordered within the context of ongoing criminal proceedings, unlike preventive custody during trial.

Decision by the Committee on the State party's request to consider the admissibility and the merits of the communication separately

6. On 25 July 2012, the Committee informed the parties of its decision, adopted by its Special Rapporteur on new communications and interim measures, to examine the admissibility together with the merits of the communication.

Additional observations by the State party on the admissibility and the merits of the communication

7.1 On 19 October 2012, the State party reiterated its arguments regarding the inadmissibility of the complaint and called for the complainants to cooperate with the investigations of the Attorney-General's Office.

7.2 The State party also made observations on the merits of the complaint, submitting that, on 8 June 2012, the Attorney-General's Office launched a preliminary investigation into possible acts of torture. It adds that the Attorney-General's Office has been reviewing the facts and the conduct of the Office of the Military Attorney-General. Various measures have been taken in this regard, including the appearance of the complainants before the Prosecution Service from 2 to 5 October 2012. The Attorney-General's Office is also taking statements from the complainants. Moreover, the complainants have undergone a specialized medical and psychological examination for cases of torture that was conducted by official experts, in accordance with the Istanbul Protocol.

7.3 Lastly, the State party informs the Committee of the legal framework that ensures victims of torture obtain redress and have the right to fair and adequate compensation, including rehabilitation, as well as the legal framework that prohibits the use of evidence obtained through torture in any legal proceedings.

Complainants' comments on the State party's submission

8.1 On 12 February 2013, the complainants called for the requirement to exhaust domestic remedies to be set aside in the present case.⁷

8.2 The complainants maintain that no genuine improvement in their situation is likely given that no date has yet been set for the investigating judge to pass judgement. They also point to serious shortcomings in the renewed investigations by the Attorney-General's Office, noting that the expert report issued in October 2012 by experts from the Attorney-General's Office was seriously flawed; no comprehensive assessment of the possible physical effects of torture was conducted and the psychological impact assessment was distorted, in violation of the Istanbul Protocol, to conclude that "there was no evidence of torture, but only of ill-treatment". The complainants note that the experts failed to take into account the previous medical reports available or the accounts of the victims to assess whether their injuries were consistent with the information provided. Regarding the psychological evidence, the experts concluded that symptoms of low mood, insomnia and other disorders were the result of imprisonment and not of acts of torture, without taking into account the provisions of the Istanbul Protocol, which sets forth that "the symptoms that the survivor has and the torture story that he or she claims to have experienced should be considered as a whole" and that the report should describe the degree of consistency between them.⁸

8.3 The complainants note other shortcomings in the ongoing investigation, including the failure to launch further inquiries since the reopening of the case. For example, the public prosecutor did not seek to intervene in the judicial proceedings against the victims, in which the Military Prosecutor's Office took statements from, but failed to question, several members of the military who were allegedly involved. It also failed to take statements from the complainants or conduct any further investigation, and shelved the case on 6 January 2010, only reopening it for consideration by the civilian authorities in May 2012 following the submission of the present complaint to the Committee.

9. On 26 March 2013, the complainants requested the following measures of redress:

- (a) Their acquittal and release;
- (b) The payment of fair compensation proportional to the gravity of the violations, including for loss of earnings following arrest, for the costs incurred as a result of the violations (legal expenses, relocation of family members, etc.) and for the physical and psychological damage suffered;
- (c) Free and immediate access to appropriate and effective medical care and psychological support;
- (d) A reinvestigation of the facts to uncover the truth and a public acknowledgement of the State's responsibility;

⁷ See communication No. 291/2006, *Ali v. Tunisia*.

⁸ See the Committee's concluding observations on the combined fifth and sixth periodic reports of Mexico (CAT/C/MEX/CO/5-6), para. 17.

(e) The thorough investigation and criminal and administrative punishment of those responsible; the adoption of legislation prohibiting the Mexican army from performing police duties; the repeal of the provision of preventive custody in the Constitution; the reform of the Code of Military Justice to exclude cases of human rights violations from military jurisdiction; the reform of the Code of Criminal Procedure to instruct the legal authorities to rule out evidence obtained through torture and confessions not obtained before a judge; the guarantee that the Attorney-General's Office will employ qualified personnel to serve as experts in the implementation of the Istanbul Protocol; and human rights training for security, military and prison officers.

Additional observations by the State party

10.1 On 29 May 2013, the State party reiterated its arguments regarding the inadmissibility of the complaint and stated that the medical report issued on 10 January 2013 had taken into account the background of the case and had concluded that the complainants had suffered minor injuries, but did not display the signs and symptoms associated with torture. The State party emphasizes that the experts who carried out the examination had received specialized training on the effective documentation of torture at a seminar on the prevention, investigation and punishment of torture organized by the Secretariat for International Relations. It adds that the public prosecutor met with the complainants to obtain their assent for the expert to conduct the medical and psychological examination, which they gave.

10.2 The State party adds that medical care by an ear, nose and throat specialist has been requested for Ramiro López. Regarding the alleged jaw injuries of Ramiro Ramírez, the State party notes that the aforementioned medical report indicated that he could speak coherently without any sign of recent injury, which is not symptomatic of a fractured jaw.

Complainants' comments on the State party's observations and request for interim measures

11.1 On 8 October 2013, the complainants pointed out that the State party had failed to provide a copy of the aforementioned medical report in its possession as an item of evidence. They stress that the report contains neither a factual description of their signs and symptoms, nor a comprehensive analysis of the background to their case. They note that relevant aspects of previous examinations were not taken into consideration and that the examination was inadequate and superficial, interpreting the findings in a biased manner and out of context in order to avoid reaching the conclusion that torture had occurred. For example, the doctor discounted the allegations by Ramiro Ramírez about the blows to his jaw on the basis of a superficial examination, without consulting the medical files available from the prison that established that, for several months, he could eat only soft food because of his jaw injuries, and without ordering additional tests such as X-rays. As for Ramiro López, the doctor upheld the 2009 reports that described "minor injuries that should take less than 15 days to heal", despite finding an ear injury three years later. In respect of the psychological examination, the report stated that there was no evidence of post-traumatic stress disorder, even though no appropriate psychological tests had been conducted. Furthermore, most of the tests were personality-based, despite their scant relevance for finding evidence of torture, and many value judgements were passed that criminalized the complainants and invalidated their testimony.

11.2 The complainants also maintain that it is the prosecutor, and not the experts, who should determine whether torture has taken place, on the basis of the experts' clinical opinion as to whether the signs observed are linked to, or consistent with, acts of torture. They conclude that the examination lacked objectivity, comprehensiveness and

effectiveness, that the experts of the Attorney-General's Office lacked the independence and skill to investigate allegations of torture in accordance with the Istanbul Protocol and that the Attorney-General's Office was insufficiently independent to conduct a thorough and impartial investigation of acts of torture.⁹

11.3 The complainants request interim protection measures for Ramiro López in order to ensure due respect for his physical safety and health, and to prevent irreparable harm. They submit that, despite what has been alleged by the State party, the prison authorities failed to provide him with proper medical care. On 25 April 2013, Ramiro López awoke to find a significant amount of blood on his pillow. A prison warden who saw his bloodied face called for medical assistance. The doctor arrived three hours later and prescribed antibiotics and antihistamines, and assured him that he would be seen by an ear, nose and throat specialist. However, he never received such specialist treatment. On 18 June 2013, his mother submitted a complaint to the National Human Rights Commission for failure to provide medical care. On 3 August 2013, an ear, nose and throat specialist examined Ramiro López and diagnosed the loss of his left eardrum and the imminent loss of the right one, which urgently required microsurgery. However, despite repeated requests by Mr. López, the prison authorities said that they had neither the specialists nor the necessary equipment to conduct the operation and that it was not possible for a specialist from a public hospital to attend the detention centre. The complainants maintain that the serious hearing difficulties experienced by Mr. López are closely related to the facts before the Committee. In order to avoid irreversible damage, they call for the adoption of urgent interim measures to ensure that Ramiro López receives the medical treatment prescribed by the ear, nose and throat specialist.

Request for interim measures by the Committee

12. On 14 October 2013, the Committee requested that the State party should adopt interim measures to provide the appropriate specialized medical care and support required by Mr. Ramiro López for the injuries to his ears.

13. On 21 February 2014, the State party reported that Ramiro López had been prescribed medication and had been examined by general practitioners in the detention centre, and that his state of health was stable. It maintains that there is no grave or urgent situation or any risk of irreparable damage requiring the adoption of interim measures given the ongoing monitoring of the complainant's health problems, and therefore urges the Committee to dismiss the request.

14.1 On 4 April 2014, the complainants informed the Committee that the medical care provided to Ramiro López — which followed the request for interim measures by the Committee — was inadequate and consisted of the administration of antibiotics and antihistamines by general practitioners, despite the diagnosis ordering specialist emergency surgery. They reiterate the valid grounds for interim measures and add that the conditions of detention at the centre, in particular the lack of safe drinking water and the poor quality of food provided, have further exacerbated the plight of Mr. López.

14.2 The complainants reiterate that criminal investigations are still under way, five years after they were reopened. The complainants have also provided updated information on the number of criminal proceedings for torture in order to demonstrate the impunity that prevails.¹⁰

⁹ The complainants noted that all 80 investigations conducted so far by the Attorney-General's Office based on the Istanbul Protocol have resulted in negative outcomes.

¹⁰ Between January 2001 and June 2012, the Attorney-General's Office launched 39 preliminary inquiries into torture, none of which resulted in prosecution.

15. On 27 June 2014, the Committee decided to uphold its request for interim measures, calling on the State party to provide Ramiro López with the necessary medical care to prevent irreparable damage.

Issues and proceedings before the Committee

Consideration of admissibility

16.1 Before considering any complaint contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

16.2 The Committee has ascertained, as it is required to do under article 22, paragraph 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.

16.3 The Committee further notes the State party's argument that domestic remedies have not been exhausted because the Attorney-General's Office and the National Human Rights Commission have reopened investigations into torture in the present case. The Committee also notes that the complainants have indicated that such procedures are ineffective, given that they have been unreasonably prolonged and are inadequate, and that, in the case of the National Human Rights Commission, the recommendations are non-binding.

16.4 The Committee recalls that the rule of exhaustion of domestic remedies does not apply if their application has been or would be unreasonably prolonged or would be unlikely to bring effective relief.¹¹ In the present case, the Committee notes that six years have passed since the Mexican authorities were made aware of the alleged acts of torture, without any notable advances in the investigation of the case. Although the Prosecution Service had the information at its disposal to conduct a prompt and effective investigation in order to identify and prosecute the alleged perpetrators, responsibility for the investigation was instead transferred to the military courts and the case was subsequently closed, only to be reopened by the Attorney-General's Office following the submission of the present complaint.

16.5 The Committee further notes that, since the opening of new proceedings in June 2012, the Attorney-General's Office has failed to make progress in promptly and effectively investigating the case and in bringing criminal proceedings for the reported acts of torture. The State party has offered no explanation for the significant delay, nor reasonable arguments on the potential effectiveness of the new investigation, particularly in the light of the limited and questionable procedures undertaken and the very rare convictions for torture in the State party. The investigations conducted by the National Human Rights Commission, which were reopened in June 2010, have seemingly not made progress, nor, due to the very nature of the Commission's recommendations, do they constitute an effective and enforceable remedy in terms of the exhaustion of domestic remedies.

16.6 In these circumstances, the Committee considers that domestic remedies have been unreasonably prolonged and are ineffective. Accordingly, the Committee is not precluded by the requirements of article 22, paragraph 5 (b), of the Convention from considering the communication on the merits.

16.7 The Committee thus proceeds to its consideration of the merits of the allegations submitted by the complainants under articles 2, read in conjunction with 1; 16, read in conjunction with 2; and 12 to 15 of the Convention.

¹¹ See, inter alia, communications Nos. 24/1995, *A.E. v. Switzerland*, Decision adopted on 2 May 1995, para. 4; and 441/2010, *Evloev v. Kazakhstan*, Decision adopted on 5 November 2013, para. 8.6.

Consideration of the merits

17.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, as required under article 22, paragraph 4, of the Convention.

17.2 Before considering the allegations made by the complainants under the articles of the Convention invoked, the Committee must determine whether the acts to which the complainants were subjected constitute acts of torture within the meaning of article 1 of the Convention.

17.3 The Committee takes note of the complainants' allegations that during their detention and preventive custody they were beaten repeatedly with weapons; plastic bags were placed over their heads; they were given electric shocks; their toenails were pulled out; and they were threatened with death. The complainants submit that such treatment was inflicted on them by members of the military in an attempt to force a confession. The Committee notes that, although the State party has offered a differing account regarding the reasons for detention, it has not contested the treatment described by the complainants. The Committee considers that the facts reveal acts of torture within the meaning of article 1 of the Convention.

17.4 The Committee considers that the complainants' allegations regarding the blows inflicted during their detention and transfer, and regarding the set of circumstances in which they were detained for long periods, handcuffed, gagged and blindfolded, without being allowed to go to the toilet, also disclose a violation of article 1, and does not, therefore, deem it necessary to consider separately the claims of a violation of article 16 of the Convention.

17.5 The complainants allege a violation of article 2 of the Convention, read in conjunction with article 1, because the State party failed in its obligation to prevent acts of torture during their detention and preventive custody. The Committee notes that the complainants were arrested without warrant by military personnel and remained in incommunicado detention for four days, under military guard, unable to contact their families and without access to an independent lawyer or proper medical treatment. During this period, they were questioned by the military under torture, paraded in front of the press and subsequently forced to sign statements blindfolded before the public prosecutor, who attended the military facilities on the day following their arrest. The Committee also notes that, despite the injuries found by the medical examinations and the statements made by Ramiro López before the Prosecution Service on 17 June 2009 and by the complainants before the criminal courts in August 2009, the prosecution and judicial authorities ruled that the complainants should remain in detention and subsequently preventive custody in the same military facilities where they had reportedly been tortured. It notes that the decision to place the complainants in preventive custody was based on the written confessions, without a hearing of the complainants. The Committee reiterates its concern regarding the provision of preventive custody and, in particular, the lack of monitoring, the lack of proportionality in its duration, its implementation — sometimes — in military facilities, the prevalence of complaints of torture by persons in preventive custody and the fact that it has been conducive to the admission into evidence of confessions presumably obtained under torture.¹² In the light of these circumstances, the Committee considers that the State party has failed to take effective measures to prevent acts of torture as required by article 2, paragraph 1, of the Convention.

17.6 Regarding articles 12 and 13 of the Convention, the Committee takes note of the complainants' claims that no prompt and adequate investigation into the acts of torture

¹² CAT/C/MEX/CO/5-6, para. 11.

was conducted, and that they were not allowed to report such acts and have their case promptly and impartially examined by the competent authorities.

17.7 The Committee recalls the obligation contained in article 12 of the Convention to carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. In this regard, the Committee notes that, despite the complainants' obvious injuries on 17 June 2009 and the statements made by Ramiro López before the public prosecutor, there was no immediate investigation into the alleged acts. The State party has argued that the complainant did not file a formal complaint of torture. However, the Committee recalls that the relevant authorities must conduct investigations into torture of their own motion. In the present case, this omission was particularly serious considering that the victim was in the custody of the authority allegedly responsible for the acts. The Committee also notes that, on 1 August 2009, the complainants stated before the court that their confessions had been obtained under torture, in response to which the judicial authorities also failed to order an investigation. Furthermore, the Prosecution Service refused to receive complaints from the families of the complainants on several occasions, arguing that it was a matter for the military courts.

17.8 The Committee further recalls that the investigation alone is not sufficient to demonstrate the State party's fulfilment of its obligations under article 12, if it can be shown not to have been conducted promptly and impartially.¹³ 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.¹⁴ In this respect, the Committee notes that the families' complaint was eventually transferred to the Office of the Military Attorney-General, which merely summoned the family and the members of the military allegedly responsible and subsequently closed the case. The investigations reopened by the Attorney-General's Office in June 2012, three years after the events, have failed to move beyond the preliminary investigation stage, with no reasons given for the excessive delay in investigation and no timely information having been provided to the complainants on the progress of the case.¹⁵ The Committee also takes note of the serious concerns expressed by the complainants about the issuing of the medical and psychological report by experts of the Attorney-General's Office. Although these allegations have been challenged by the State party, it has failed to provide a copy of the report in its possession.

17.9 In the light of the foregoing, the Committee concludes that the State party has breached its obligations under articles 12 and 13 of the Convention.

17.10 The Committee notes the complainants' allegations that no redress has been provided for the harm caused to them and their families. In view of the failure to carry out a prompt and impartial investigation into the allegations made by the complainants and of the points outlined in the preceding paragraphs, the Committee finds that the State party is also in breach of its obligations under article 14 of the Convention.

17.11 In regard to the complainants' claim under article 15, the Committee notes that the criminal court in charge of the case issued a detention order against the complainants on the basis of their written confessions obtained under torture, despite the fact that the complainants had twice described before the court the manner in which they had been obtained. That decision was also upheld on appeal by the Twenty-fourth Circuit Court in Acapulco on the basis of the same statements. The Committee thus considers that the facts before it reveal a violation of the State party's

¹³ See, inter alia, communication No. 441/2010 (footnote 11 above), para. 9.4.

¹⁴ Ibid., para. 9.5.

¹⁵ See communication No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, Decision adopted on 24 November 2004, para. 5.4.

obligation to ensure that no confession made under torture is used in legal proceedings.

17.12 The Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the individual complaints procedure established thereunder. The Committee also notes that the State party's obligations include the observance of the rules adopted by the Committee, which are inseparable from the Convention, including rule 114 of its rules of procedure concerning requests for interim measures to avoid irreparable damage to the victim.¹⁶ Thus, by failing to provide Ramiro López with the appropriate specialist medical treatment required for his serious ear injuries, as requested by the Committee on 14 October 2013 and subsequently on 27 June 2014, the State party did not take into account its obligations under article 22 of the Convention.

18. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts before it reveal a violation of articles 1; 2, paragraph 1; 12 to 15; and 22 of the Convention.

19. In accordance with rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to: (a) launch a thorough and effective investigation into the acts of torture; (b) prosecute, sentence and punish appropriately the persons found guilty of the violations; (c) order the immediate release of the complainants; and (d) award full reparation, including fair and adequate compensation, to the complainants and their families, and provide the complainants with as full a rehabilitation as possible. The Committee also reiterates the need to repeal the provision of preventive custody (*arraigo*) from its legislation and to bring the Code of Military Justice fully into line with the decisions of the Inter-American Court of Human Rights to ensure that ordinary courts have sole jurisdiction over cases involving human rights violations. The Committee urges the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in conformity with the above views.

¹⁶ See, inter alia, the Committee's communications No. 249/2004, *Dar v. Norway*, Decision adopted on 11 May 2007, para 16.3; 300/2006, *Tebourski v. France*, Decision adopted on 1 May 2007, para 8.6; and 297/2006, *Sogi v. Canada*, Decision adopted on 16 November 2007, para. 10.3.

Appendix

[Original: English]

Individual (dissenting) opinion of Committee member Mr. Alessio Bruni

1. It is my opinion that the second sentence in paragraph 17.12 of the Committee's decision, reading "The Committee also notes that the State party's obligations include the observance of the rules adopted by the Committee, which are inseparable from the Convention, including rule 114 of its rules of procedure concerning requests for interim measures to avoid irreparable damage to the victim" should be deleted. Rules of procedure are adopted by the Committee unilaterally, they are not subscribed to by States parties.

2. However, the non-compliance by a State party with interim measures requested by the Committee constitutes a clear sign of lack of cooperation which undermines the Committee's effectiveness in fulfilling its mandate under article 22 of the Convention and should be clearly condemned.

3. Therefore, it is my opinion that instead of the words "[...] the State party did not take into account its obligations under article 22 of the Convention" appearing in the last line of paragraph 17.12 of the Committee's decision, the following words would have better reflected the facts of the case:

"[...] the State party did not comply with the Committee's request for interim measures and raised a serious doubt about its willingness to implement article 22 of the Convention in good faith".

4. In addition, paragraph 18 of the decision should be reformulated as follows:

"The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts before it reveal a violation of articles 1, 2 operative paragraph 1, and 12 to 15 of the Convention."

5. The following paragraph should also be added after paragraph 18:

"In addition, the non-compliance by the State party with the Committee's reiterated requests for interim measures pursuant to rule 114 of its rules of procedure caused serious damage to the effectiveness of the Committee's deliberations and raised a serious doubt about the willingness of the State party to implement article 22 of the Convention in good faith."