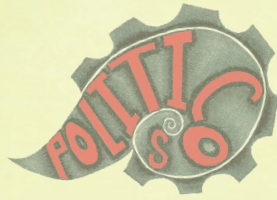




Imagen de portada

"Canto por la libertad" Pintura de Damián Gallardo Martínez, preso político, interno en El Salto, Jalisco, CEFERESO número 2 Occidente "Puente Grande"



Arbitrary and Illegal Detentions

Criminalization: A State Policy to Hindrance the Defense of Human Rights in Mexico



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**Criminalization: A State Policy to Hindrance the
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World Organisation Against Torture (OMCT), within the framework of the Observatory for the Protection of Human Rights Defenders.
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Files: Article 19 Office for Mexico and Central America, Consortio para el Diálogo Parlamentario y la Equidad Oaxaca A.C., Comité de Familiares, Amigas y Amigo “Damián Gallardo Martínez”, Comité Enrique Guerrero Aviña, Eva Lucero Rivero Ortiz y Nestora Salgado García.

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This publication was made possible by Pan para el Mundo’s funding. The contents, however, do not necessarily represent the opinion of this institution.

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I. INTRODUCTION

This document constitutes an articulated effort by different Mexican organizations of the civil society, committees of relatives of human rights defenders, political prisoners and international organizations specialized in legal support, documentation of human rights violations, and protection of human rights defenders.

This document aims to make public the systematic repression mechanisms used against human rights defenders and against the social movement in Mexico, in particular the use of arbitrary and illegal detentions to undermine the advocacy work.

The seriousness of the situation is illustrated through five cases of human rights defenders -Damián Gallardo Martínez, Enrique Guerrero Aviña, Librado Baños Rodríguez, Pedro Canché Herrera and Nestora Salgado García- who have been arbitrarily detained as a consequence of and reprisal against their advocacy work. To date, three of the five defenders remain unfairly deprived of their freedom.

With the publication of these cases, the aim is to make visible the existence of international mechanisms which make visible and recognize the human rights violations. These mechanisms are key tools in the pursuit of justice. Specifically, this document shows the opinions issued by the Working Group on Arbitrary Detention of the United Nations calling for the immediate release of the victims and the redress of the damage.

However, the coordinated effort of organizations and families seeking the implementation of these decisions has demonstrated the need to create effective mechanisms to monitor the implementation by the Working Group on Arbitrary Detention, in close coordination with the Office of the United Nations High Commissioner in Mexico.

The Working Group on Arbitrary Detention is one of the special procedures of the United Nations Human Rights Council. It was created in 1991 by the former Commission on Human Rights

(the current Human Rights Council) and it is made of five independent experts from the different regions of the world.

The mandate of the Working Group includes: 1. investigating cases on arbitrary detention; 2. requesting and receiving information from governments, non-governmental organizations, and victims and their families; 3. reporting annually to the Human Rights Council.

Amongst its main functions we can also find the field missions and the issuance of urgent actions.¹

It is worth noting that the Working Group on Arbitrary Detention, in the exercise of its mandate, interprets and applies international rules of international treaties that have been widely ratified by the Mexican government and incorporated into the national legal system by constitutional mandate. Under the procedures outlined in this document, Mexico has had full participation and opportunities to present arguments and evidence related to the complaints lodged.

“It is the only mechanism that has not been established by a treaty whose mandate expressly foresees individual complaints. This means that its activities are based on the right of individual petition, anywhere in the world.”²

The search for justice, and the eradication of human rights violations and impunity, particularly against human rights defenders, are an urgent priority in Mexico. To achieve this goal, strengthening and collaborating actively with international proceedings and mechanisms such as the Working Group on Arbitrary Detention is essential.

¹ Working Group on Arbitrary Detention, Office of the United Nations High Commissioner for Human Rights <http://acnudh.org/wp-content/uploads/2014/08/ES-Factsheet-WGAD-formato.pdf>

² Informative brochure No.26, Working Group on Arbitrary Detention, Office of the United Nations High Commissioner for Human Rights, <http://www.ohchr.org/Documents/Publications/FactSheet26sp.pdf>

II. ARBITRARY DETENTION OF HUMAN RIGHTS DEFENDERS IN MEXICO

World Organization Against Torture (OMCT)

The criminalization of human rights defenders is a growing systematic phenomenon in Latin America³. In the case of Mexico, there is a particularly alarming pattern of arbitrary detention of defenders. By improperly using criminal law, arbitrary detentions aim to obstruct the legitimate defense, protection and promotion of human rights for human rights defenders, and to change the “leading role that they play in the consolidation of democracy and the rule of law.”⁴

In Mexico, international bodies such as the Inter-American Commission on Human Rights have accepted that criminalization is used to hindrance the defense of human rights and social protest, making them look like illegal and criminal activities. They have also issued precautionary measures to face the very poor detention conditions they are subject to, which jeopardize their life and personal integrity. In this context, arbitrary detentions are used as a “tool to silent dissident voices, social movements and student movements”⁵ or critical opinions against public servants and other state actors. In fact, after issuing five official opinions between August 2014 and December 2015 in which they considered that there were arbitrary detentions and irregularities in the criminal proceedings of five human rights defenders in Mexico,⁶ the UN Working Group on Arbitrary Detention said they “feel seriously worried about the existence of what seems to be a pattern against human rights defenders in the country.”

This criminalization pattern against defenders features multiple forms of human rights violations, especially the right to personal freedom and to a due process: detentions with no court order issued by a competent authority, active participation of the military, judicial harassment, prosecution on trumped-up charges, double judgment, excessive extension of the criminal proceedings, inhuman conditions during detention -which normally takes place in maximum security prisons under solitary confinement, with no adequate medical attention and often with no access granted to the defenders’ lawyers.

3The Observatory for the Protection of Human Rights Defenders, *Criminalización de defensores de derechos humanos en contextos de proyectos industriales: un fenómeno regional en América Latina*, 2016; CIDH, *Criminalización de defensoras y defensores de derechos humanos*, 2015, parr.

4 CIDH, *Criminalización de defensoras y defensores de derechos humanos*, 2015, parr.

5 CIDH, *Situación de Derechos Humanos en México*, 2015, párr. 300.

6 Human Rights Council, Working Group on Arbitrary Detention, Opinion number. 56/2015 on Nestora Salgado García (Mexico), A/HRC/WGAD/2015, 2015, par. 42.

Moreover, isolation and torture are often used as pressure tools to force defenders to sign false confessions and fracture their convictions, amongst others. Officers' abusive behavior, inside and outside of the penitentiary facilities, and threats of retaliation against the defenders' relatives and lawyers are typical in this arbitrary detention pattern. In addition, most of these disturbing violations remain completely unpunished, even though the defenders report them systematically to the competent authorities. However, the judicial institutions do not carry out investigations, prosecute or punish the perpetrators, and there is not a suitable system to repair human rights violations either. National protection mechanisms are ineffective to face criminalization.

It is important to highlight the fact that all the actors directly or indirectly involved in the process of criminalization and arbitrary detention of defenders share the liability of these human rights violations: the Mexican State can be involved at federal and state levels, the police, the Army, the very government authorities, the judiciary through the judicial officers. They all share the liability with private actors such as private companies and landowners. The frequent exploitation of justice by the companies and landowners who usually initiate the criminal complaints against defenders, the lack of independence and impartiality of the judiciary, and the often neglectful behavior of the representatives of the government regarding the obligation to protect human rights defenders, which make this exploitation of justice easier, play an important role in the pattern of criminalization of human rights defenders.

The most criminalized category of defenders and the one that faces most court proceedings and/or arbitrary detentions in Mexico are those who fight for economic, social and cultural rights, particularly those whose work is related to the rights of indigenous peoples and communities and with the right to land, water and natural resources, in the context of extractive and hydroelectric megaprojects that have a negative environmental impact in ancestral indigenous territories. In most of the cases these projects are authorized with no previous consultation or free and informed approval from the indigenous communities.

The criminalization of defenders hinders the defense of human rights due to three reasons. First, it entails a de facto “paralyzation of their work because their time, resources and energy need to be allocated to their own defense”.⁷ Second, the criminal proceeding has a stigmatizing and illegitimizing effect that can isolate the defenders by hindering actions of solidarity and support from the national and even the international community. Last, criminalization does not only increase the risk for the defenders’ safety, and physical and psychological integrity, but it also creates a “climate of fear and sends an intimidating message to society at large”,⁸ that can lead to “self-censorship”.⁹

7 CIDH, Segundo informe sobre la situación de las defensoras y los defensores de derechos humanos en las Américas, OEA/Ser.L/V/ II. Doc. 66, de 31 de diciembre de 2011, párr. 76.

8 Human Rights Council. Informe de la Relatora Especial sobre la situación de los defensores de los derechos humanos, Margaret Sekaggya, A/HRC/25/55, 2013, párr. 59.

9 Inter-American Court of Human Rights, Norín Catrimán y otros (Dirigentes, miembros y activista del Pueblo Indígena Mapuche) Vs. Chile, 29 de mayo de 2014 , párr. 376.

**III. ADVISORY OPINIONS ON HUMAN
RIGHTS DEFENDERS ARBITRARILY AND
ILLEGALLY DETAINED IN MEXICO**

DAMIÁN GALLARDO MARTÍNEZ



I am an indigenous man, Ayuujk, Oaxacan, Mexican and a graduate from the Centro Regional de Educación Normal de Oaxaca; I am a man who questions the world, injustice, inequity and anti-democracy; I am a community member, a citizen, someone who did not decide to fight for the underdog or in behalf of the underdog... I am someone who decided to fight with the underdog, from the bottom; I am an imperfect friend, son, brother, husband and father; I am another political prisoner.

1. HUMAN RIGHTS DEFENDER INTRODUCTION

Damián Gallardo Martínez is an Ayuuk indigenous man, native to Santa María Tlahuitoltepec, Mixe, Oaxaca. He is a teacher and has been an education and indigenous people activist for a long time. Amongst others, these should be noted:

- Damian Gallardo was involved in the demonstration to free political prisoners like Doctor Felipe Martínez Soriano.¹⁰
- His participated in the teachers' struggle and the Popular Assembly of the Peoples of Oaxaca (Asamblea Popular de los Pueblos de Oaxaca – APPO) movement in 2006.

¹⁰ Felipe Martínez Soriano was the first Chancellor of the most important university in Mexico that was elected by a democratic way by the students and professors. Due to his struggle, he was accused of participating in the 23rd September Communist League or the People's Union. On 2nd April 1990 he was involved and incarcerated for the death of two security guards of La Jornada newspaper. Nine years later he was released without conviction. The doctor and former political prisoner played a key role at the Democratic University Movement in the late 1970's, when he was appointed a candidate to Chancellore of the Universidad Autónoma Benito Juárez de Oaxaca (UABJO) facing the repression of the governor Manuel Zárte Aquino.

- He has campaigned for the communitarian and popular education proposals in the indigenous communities of the Mixe region in Oaxaca.
- He defended the resistance against the structural reforms, in particular against the educational reform promoted by the current federal government.

2. MAIN HUMAN RIGHTS VIOLATIONS

At the Time of the Arrest

Damián Gallardo was arrested on May 18th at 1:30 a.m. in a private domicile in Reyes Mantecón, Oaxaca. The home was forcefully entered with no legal warrant or identification. His wife and daughter were at the premises.

At the moment of his illegal arrest there were no charges against Damián Gallardo. It was on May 22nd of 2013 when the federal authority initiated a criminal prosecution for organized crime and issued a warrant for the crime of abduction.

The defender was disappeared and incommunicado for approximately 30 hours. His right to communicate with both his family and his lawyer was denied by the authorities. Despite the fact that a writ of Amparo had been submitted to the different state and federal courts to avoid incommunicado detention and torture, the authorities denied the presence of Damián Gallardo and the other detainees at their facilities.

During his illegal detention at the SEIDO facilities, Damián Gallardo was tortured by being deprived from food or using the toilet. He was hit in his testicles and stomach and they stomped on his feet. Likewise, he was shown a series of pictures of his family and they threatened to kill and/or rape his wife and daughter if he didn't sign blank sheets of paper -due to the circumstances of the arrest, he thought that his family was also detained.

It is important to highlight that once the detention was made public, an extensive media campaign was initiated, generating a message that put his family, wife and daughter, at risk.

At the Maximum Security Prison

Afterwards, and from the moment he started being deprived from his freedom at the maximum security prison Centro Federal de Readaptación Social No. 2 Occidente “Puente Grande”, in Jalisco, Mexico, Damián Gallardo continued to suffer physical and psychological torture by being subject to unjustified punishment and to other cruel, inhuman and degrading treatment by the prison authorities.

These included threatens to transfer him, making him remove his shoes and socks and pull down his trousers and underwear and squatting while being insulted. He has also been subject to physical and psychological aggressions by a particularly dangerous inmate, since he is held at a maximum security prison. He has also been reprehended in several occasions for asserting his rights at the Cefereso. In addition, the poor medical care and meal conditions contribute to deteriorate his health.

It should be noted that the trip from Oaxaca to the CEFERESO facilities takes approximately 15 one way, which is 30 hours return by highway to hold a visit that ranges from 3 to a maximum of 8 hours.

Physical and Psychological Impact and Consequences

The multiple human rights violations explained above have generated irreversible consequences on the human rights defender. He suffers from insomnia and severe eyesight issues. Furthermore, based on the government's refusal to make a specialized medical and psychological diagnosis, the seriousness and entirety of those consequences remain unknown.

It should be noted that the Istanbul Protocol was applied and the results highlighted that he was a victim of torture and cruel, inhuman and degrading treatment, which was documented in his file o on 3rd September 2014.

3. OPINION OF THE WORKING GROUP ON ARBITRARY DETENETION

During their 70th session in August 2014, the Working Group on Arbitrary Detention issued opinion number 23/2014 regarding the case of Damián Gallardo Martínez. It is worth mentioning that the Working Group requested information to the Mexican Government and that it was not submitted within the legal timeframe.

In this opinion, the Working Group describes as arbitrary the detention of Damián Gallardo and confirms that his arrest and detention "seem to be based on his work in favor of indigenous peoples."

It is important to note that this was the first opinion issued by the Working Group concerning the arbitrary detention of one of the human rights defenders from the five cases presented herein.

Likewise, the Working Group found the confessions obtained under torture unfounded and referred the case to the UN Special Rapporteur on Torture.

It recognized an infringement of the legal certainty to which all persons are entitled, as well as the right of all detainees to a fair, impartial and equitable trial.

The Working Group urges the Mexican Government to immediately end arbitrary detentions and other human rights violations as well as to provide due remedies.

4. RECOMMENDATIONS AND URGENT CALLS FROM THE WORKING GROUP

Considering the seriousness of this situation and in compliance with the opinion issued by the Working Group, the immediate release of Damián Gallardo is urgently needed to stop the multiple and reiterated human rights violations that he is being subject to.

It is also critical to provide due remedies for the human rights defender, which should include -but not be limited to- a public acknowledgement of the violations committed against him and the provision of medical and psychological attention, including a full diagnosis and medical and psychological treatment by trusted specialists.

Finally, the Mexican authorities should conduct an effective investigation regarding the torture and abuse inflicted on Damián Gallardo, so that those responsible due to their actions or negligence are brought to justice.

Although there are criminal complaints filed¹¹ based on those human rights violations, there is no progress whatsoever. Another complaint was filed with the CNDH,¹² which, three years after, has yet to issue a recommendation in this regard.

It is important to highlight that the Office of the General Attorney (Procuraduría General de la República) did not file the criminal complaint for torture, but rather filed it for abuse of power. No progress has been made up to date.

11 13/FIDTS/2013 for raiding his home and 045/AP/DGCSP/14.

12 CNDH/1/2013/3676/Q, filed by Florencia Gallardo Martínez, sister of the Defender.

LIBRADO BAÑOS RODRÍGUEZ



...I was 16 years old when I left home, I went to high school, where I learnt about Marxism because I studied philosophy and as a philosophy of the people, I adopted Marxism; Marxism is the science that liberates awareness.

I promote and defend rights and equality, which are rights for all humans.

1. HUMAN RIGHTS DEFENDER INTRODUCTION

Librado Jacinto Baños Rodríguez is a lawyer, a human and land rights defender, a community leader, a university professor and researcher, and a community advisor for different social and peasant movements in the states of Guerrero and Oaxaca.

He co-founded the Unión Cívica Democrática de Barrios, Colonias y Comunidades – UCIDEBACC (Civic Democratic Union of Neighborhoods and Communities) in Pinotepa Nacional, on Oaxaca's coast, a community with over 800 inhabitants, promoting the defense of the territory, of humans rights, and of the collectivity and autonomy of the indigenous peoples and the peoples of African descent.

In June 2013 he started with the UCIDEBACC community the struggle for health and education rights. He also started the defense of a land that was fraudulently given to a private company (Coppel).¹³ It is in this context that the arbitrary detention took place.

¹³ Coppel is one of the 100 largest companies in the country, as ranked by Expansion – larger than Sears Department Stores, El Palacio de Hierro and Famsa, as well as banks such as Santander, Inbursa and Scotiabank. In 2015, 51 Viana stores are bought to be turned into Coppel stores with an investment of \$2,500 billion pesos. Currently the company has branches outside of Mexico in Argentina and Brazil.

2. MAIN HUMAN RIGHTS VIOLATIONS

At the Time of the Arrest

Librado was arrested in the early hours of 25th August 2013. The officers entered the UCIDEBACC¹⁴ community and they violently and forcibly entered his home and hit his youngest son when he tried to help his father. This operation involved a little over 300 officers from different police and military bodies, who did not show any arrest or search warrant. They held him in incommunicado detention in military facilities.

It is important to highlight that the officers searched the whole house, taking with them various valuable items such as laptops, cell phones, cameras, personal documents and cash, belonging to the organization.

The defender was subject to physical and psychological torture:

- At his home, the officers repeatedly hit him, as well as his underage son.
- Later, at the 47th Infantry Battalion in Pinotepa, they threatened to hurt his children and wife, and the military holding him hit him again.

The defender was incommunicado and held in a state prison for a long time, and no information on his whereabouts was released for approximately for 10 hours.

¹⁴ Democratic Civic Union Barrios, neighborhoods and communities (Ucidebacc), located in Pinotepa Nacional, on the coast of the State of Oaxaca. Approximately 10 to 12 hours from the city of Oaxaca.

At the Prison

Librado is imprisoned in a State Center for Social Prevention of the state of Oaxaca, facing federal charges. The defender has been subject to harassment and cruel, inhuman and degrading treatment at the prison throughout his confinement, especially in retaliation after the visits paid or the statements released by local or international human rights organizations.

Moreover, medical care for diabetes and eyesight problems has been denied, delayed and obstructed. This situation has resulted in the total loss of sight in one eye and 80% in the other. It should be pointed out that the government of the state of Oaxaca has stated that the defender's medical condition is not their responsibility, although there are several legal rulings stating that the state of Oaxaca is responsible for providing medical, psychological and surgical care for the inmates.

Physical and Psychological Consequences

The multiple human rights violations mentioned have damaged the human rights defender irreversibly.

The vision loss, the general deterioration of his health -including severe diabetes and hypertension- are irreversible and irreparable consequences of the torture and inhuman and degrading treatment inflicted throughout the three years of imprisonment.

The psychological consequences -including the posttraumatic stress syndrome and anxiety diagnosed- are also extremely serious.

Furthermore, the physical and emotional health of his underage son and his wife has been seen severely affected as a result of the different human rights violations suffered, as well as of the threats and harassment that they have been subject to since reporting the violations that the defender continues to suffer.

3. OPINION OF THE WORKING GROUP ON ARBITRARY DETENTION

During their 72nd session in May 2015, the Working Group on Arbitrary Detention issued opinion number 19/2015 regarding the case of Librado Jacinto Baños Rodríguez. It is worth mentioning that the Working Group requested information to the Mexican Government and that it was not submitted within the legal timeframe.

In this opinion, the Working Group describes as arbitrary the detention of Librado Baños and “considers that his arrest, detention and current prosecution are a retaliation against his active defense of the rights of indigenous peoples and peoples of African descent.”

Moreover the Working Group expresses “deep concerns for the deterioration of the state of health of Mr. Baños Rodríguez, as a result of the abuse inflicted in prison. The Group reminds that it is the Government’s responsibility to ensure that inmates are treated in compliance with the international regulations and standards, particularly with regards to health care.”

The Working Group urges the Mexican Government to immediately release the human rights defender and provide due remedies, including medical care after his release.

4. RECOMENDATIONS AND URGENT CALLS OF THE WORKING GROUP

The human rights defender needs to receive immediate and specialized medical care to deal with the severe deterioration of his health.

Moreover, Librado Baños needs to be released immediately so that his health can be taken care of and so that his arbitrary detention ends, in compliance with the opinion issued by the Working Group.

It is also a priority to provide due remedies for the damages caused, which must include -but not be limited to- a public acknowledgment of the violations committed against him, as well as medical and psychological care for him and for his son and wife.

Finally, the Mexican authorities should conduct an effective investigation regarding the torture and abuse inflicted on Mr. Baños Rodríguez, so that those responsible due to their actions or negligence are brought to justice.

Although there are complaints filed for the human rights violations, precautionary measures, and criminal complaints, the impunity and permissiveness is patent.

PEDRO CANCHÉ HERRERA



My hands are tied.
I have no way to know what happens outside.
I feel a tremendous, horrible emptiness,
I have hunger for information.
That is similar to blindness.

1. HUMAN RIGHTS DEFENDER INTRODUCTION

Pedro Celestino Canché Herrera is a Mayan journalist known in his community for covering and broadcasting the social demands of his people for 20 years, as well as for criticizing the current governor of the state.

As a part of his journalistic activity he covered the demonstration held in August 2014 against the excessive charges for water consumption and spoke out against the government's repression against the movement through videos and reports on social networks.

2. MAIN HUMAN RIGHTS VIOLATIONS

At the Time of the Arrest

He was arrested on 30th August 2014 by the federal police, who transferred him to the Deputy Attorney's Office (Subprocuraduría) of that district. Later he was sent to a municipal cell in compliance with an arrest warrant issued for the alleged crime of "sabotage", which is considered a serious crime by the Criminal Code of the State of Quintana Roo.

The night of 30th and the morning of 31st August 2014 he was physically and psychologically tortured by inmates of the Centro de Detención Municipal de Felipe Carrillo Puerto in the state of Quintana Roo. He was hit repeatedly, but received no treatment for the physical injuries of the torture inflicted.

He was also was held in “maximum security” cells intended for “highly dangerous” inmates, increasing thus the risk at which the journalist was exposed. The order to transfer him to Module 1, where “highly dangerous” inmates are held, was given by the Director of Municipal Public Security, Gerardo Gonzalez Espinoza, as an unjustified punishment.

Pedro Canché was released on 29th May 2015 as a result of a writ of Amparo submitted by his defense lawyer. A claim for due remedy was lodged and is currently being processed.

At the Prison

The torture suffered at the time of his arrest and the following days caused a serious injury to his neck and a “numb” feeling in his hands, arms and shoulders. Therefore, on 3rd September 2014 he went to Hospital General de Felipe Carrillo Puerto.

He was prescribed an X-ray by the doctors at the hospital and he was told that they did not have the adequate instruments to provide the specialized attention that he required; they then recommended to perform a tomography scan to determine the accurate diagnosis of the physical damage.

After almost a month, and because of the poor medical condition of the journalist, at 16:00 on 23rd September 2014 he was again taken to the same hospital. However, he was not given a complete diagnosis or adequate treatment. On 25th September hospital staff discharged him and tried to unjustifiably bill for his stay. Since he refused to pay, the warden of the prison turned up at 22:30 accompanied by 15 police patrols to transfer him back. It should be noted that there is a recommendation by the Comisión Nacional de Derechos Humanos (National Human Rights Commission).

Physical and Psychological Consequences

The torture suffered by Pedro Canché, starting at the time of his arbitrary arrest and inflicted throughout his imprisonment, had a serious impact on his physical and mental health. He suffers from posttraumatic stress, and a permanent damage to his right shoulder due to the blows suffered in prison.

He is currently undergoing medical treatment and rehabilitation at the National Rehabilitation Institute and following up on the criminal complaint and claim for remedies that have not been resolved yet.

3. OPINION OF THE WORKING GROUP ON ARBITRARY DETENTION

During their 72nd session on 28th April 2015, the Working Group on Arbitrary Detention issued opinion number 18/2015 regarding the case of Pedro Celestino Canché Herrera.

It is worth mentioning that the Working Group requested information to the Mexican Government regarding this case. Even though the government provided said information, it failed to respond to the allegations regarding the arbitrary detention and the irregularities in the criminal proceeding.

In this opinion, the Working Group considers that “the arrest, detention and legal prosecution of Mr. Canché Herrera are a retaliation against his work.”

Moreover, they consider Pedro Caché’s detention arbitrary and urge the Mexican Government to “immediately release Mr. Caché Herrera and provide due remedies, including, amongst others, an adequate compensation and the provision of the medical treatment needed.”

4. RECOMENDATIONS AND URGENT CALLS FROM THE WORKING GROUP

Considering the seriousness of this situation, it is urgent to provide remedies for the Mayan journalist. These must include -but not be limited to- a public acknowledgement of the violations committed against him. The method, time and date of said acknowledgement must be agreed with Pedro Caché.

Comprehensive redress must include -but not be limited to- providing medical and psychological care, including diagnosis and medical and psychological treatment by specialists trusted by the journalist and human rights defender.

The recommendations are made in accordance with opinion number 18/2015 of the Working Group on Arbitrary Detention and in compliance with recommendation 13/2015 issued by the Comisión Nacional de Derechos Humanos (CNDH).

Finally, the Mexican authorities should conduct an effective investigation regarding the torture and abuse inflicted on Mr. Canché Herrera, so that those responsible due to their actions or negligence are brought to justice. In this respect it is of crucial importance to complete a diligent investigation within preliminary investigation 85/FEADLE/2015, which was presented on 31st July 2015 but has not progressed up to date.

ENRIQUE GUERRERO AVIÑA



What I ask for is impartiality in my criminal proceeding.
With this, I am sure we would clarify my case

1. HUMAN RIGHTS DEFENDER INTRODUCTION

Enrique Guerrero Aviña is a Philosophy student in the School of Philosophy and Literature of the Universidad Nacional Autónoma de México (UNAM). As a human rights defender, he is a member of Colectivo Liquidámbar, which promotes and protects Economic, Social, Cultural and Environmental Rights. Enrique is also a professional chess player with a rating of 1834 at the World Chess Federation (FIDE) and a member of the Taller Universitario Carlos Montemayor in the School of Philosophy and Literature.

Regarding the process of arbitrary detention and human rights violations faced, Enrique comments: “What are they trying to hide [with the official version] [...]? First of all, they are trying to cynically hide the fact that they tried to kill me, which can be proved by the experts’ reports from the Office of the General Attorney (Procuraduría General de la República), which mention that the car I was driving had bullet holes. Besides, I was subject to an enforced disappearance and torture [...]. By means of these actions, the State confirms their authoritarianism and total injustice as a *raison d’état*.”¹⁵

¹⁵ Enrique Guerrero Aviña, April 2016.

2. MAIN HUMAN RIGHTS VIOLATIONS

At the Time of the Arrest

On 17th May 2013, he was arbitrarily arrested by agents of the National Security Commission (Comisión Nacional de Seguridad, CNS) and the Public Security Secretariat of the Distrito Federal (Secretaría de Seguridad Pública del Distrito Federal).

The CNS agents followed him for several minutes while Enrique was driving his car in Mexico City, repeatedly trying to shoot his vehicle, which stopped due to the bullet impacts. The agents, dressed in civilian clothes, applied excessive force during the arrest, and without an arrest warrant Enrique was taken into a van that did not have any police markings. He was then tortured, insulted, forced to adopt different positions, deprived of sensorial stimulation, deprived of physiological needs, hit, humiliated, received threatens of hurting his family, rape threatens, was sexually tortured, suffocated, subject to a mock execution, deprived of medical care, deprived of social contact and he threatened of being attacked with animals.

He was then transferred to the Deputy Attorney General's Office for Special Investigations on Organized Crime (Subprocuraduría Especializada en Investigación de Delincuencia Organizada, SEIDO), where on multiple occasions police officers threatened to torture him again and to hurt his family if he did not plead guilty. He was disappeared, held incommunicado and tortured for approximately 30 hours with the aim of charging him with an abduction crime that he never plead guilty to in spite of the torture suffered. It is important to highlight that the statements of the CNS and the Attorney's Office mention that Enrique arrived at the SEIDO voluntarily.

With regards to the arbitrary detention process and the human rights violations faced, Enrique has stated: “The terrible thing is that this stupid version is not a joke, maybe it’s a taunt, but it’s not a joke.”

“What are they trying to hide with this? First of all, they are trying to cynically hide the fact that they tried to kill me, which can be proved by the experts’ reports from the Office of the General Attorney (Procuraduría General de la República), which mention that the car I was driving had bullet holes. Besides, I was subject to an enforced disappearance and torture [...]. By means of these actions, the State confirms their authoritarianism and total injustice as a *raison d’état*.”¹⁶

At the Maximum Security Prison

Enrique was transferred to a maximum security prison in Puente Grande, Jalisco where he suffered cruel, inhuman and degrading treatment, and violations of his rights to safety, health and personal integrity.

He slept for long periods of time on the floor next to the toilet without a bed and was subject to continuous cell changes and threatened to be transferred to other prisons.

Enrique was forced to undress from the waist down and to squat, against which he has filed a writ of Amparo to stop this kind of harassment. He has requested medical care to treat the damage caused by the torture, but has yet to be treated.

Physical and Psychological Consequences

Enrique Guerrero still shows traumatic injuries in his neck and hands, and suffers from posttraumatic stress disorders caused by the consequences of the torture he suffered at the moment of his arrest and interrogation. As Enrique says: “I continue to resist the torture, because the torture did not end back then, it keeps coming back and charges against me in the privacy of my memories.”

The Istanbul Protocol completed by independent experts in July 2016 highlights the psychological consequences, recurring thoughts, sudden physical reactions, involuntary movements, sleep disturbances, feelings of guilt, sadness, distress, fear, and trouble concentrating, amongst others. He also shows physical consequences on his neck and left hand, and suffers from gastric problems, all related to the methods of torture used.

3. OPINION OF THE WORKING GROUP ON ARBITRARY DETENTION

On 19th April 2015, the Working Group on Arbitrary Detention delivered a message on Enrique Guerrero Aviña to the Mexican Government, to which the government did not respond. On their 74th Session, the Working Group issued opinion number 55/2015 regarding Enrique Guerrero Aviña.

Deliberations of the Working Group

The United Nations Working Group states that Enrique Guerrero was arrested by the police under exceptionally and violent circumstances, he was incommunicado and psychologically and physically abused.

It must be noted that, with regards to the detention, the arbitrary acts against Enrique Guerrero are consistent with those registered in, at least, sections 23, 25, 26, 29, 42, 47 and 54 of the report by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment on his mission to Mexico (21st April-2nd May 2014).

4. RECOMENDATIONS AND URGENT CALLS FROM THE WORKING GROUP

“The Working Group urges the Government of the United Mexican States to take the necessary steps to remedy the situation by immediately releasing Mr. Guerrero Aviña and providing him with the appropriate redress.”

The United Nations’ group of experts states that Enrique Guerrero Aviña “has been persecuted due to his human rights activism in behalf of other people in his region. He is a human rights defender who, as a result of his work, has been a victim.”

In this respect and in compliance with opinion 55/2015 of the United Nations, the Mexican government must grant the IMMEDIATE RELEASE OF ENRIQUE GUERRERO AVIÑA as well as the proper remedy for the damage caused to the human rights defender, which must include -but not be limited to- a public acknowledgment of the violations committed against him. With regards to his health, it is urgent to carry out medical and psychological tests by trusted specialists to diagnose, provide care and treat the medical conditions generated by the arbitrary detention and the torture he has suffered.

Finally, the Mexican authorities should conduct an effective investigation regarding the torture and abuse inflicted on Mr. Guerrero Aviña, so that those responsible due to their actions or negligence are brought to justice.

NESTORA SALGADO



I'm not afraid of hired killers... Now I'm afraid of the government, of the government disappearing me. If I disappear someday, it is obviously because the government wants to kill me or to disappear me because they are the ones attacking us. Right now nobody else is attacking us here... the town hall, the army, the navy. We are in the village to provide security; we have never been against them.

1. HUMAN RIGHTS DEFENDER INTRODUCTION

Nestora Salgado Garcia is 43 years old, and she is a Mexican and a U.S. citizen. She grew up in the indigenous community in the village of Olinalá, in the state of Guerrero, Mexico. She moved to the United States in 1991. In the last few years she made several trips carrying clothes and food for people with limited resources, turning into a community leader.

In 2013, she was appointed coordinator of the Olinalá Community Police. It is worth noting that the creation of the Community Police is based on the right to self-determination of the Indigenous Peoples that is recognized by the Mexican Constitution as well as by international treaties such as Convention 169 of the International Labour Organization. In Guerrero, they also have legal basis in compliance with Law 701 of Recognition, Rights and Culture of the Indigenous People and Communities of the State of Guerrero.

Nestora Salgado has worked towards the leadership of indigenous women, empowering them to defend themselves against domestic violence and other abuses.

The impact of the community police in the region -based on traditional accountability and social control tools- was drastic, with a 90% decrease of the crime rate and with no homicides during the first ten months of the operation.

2. MAIN HUMAN RIGHTS VIOLATIONS

At the Time of the Arrest

On 21st August 2013, Nestora Salgado Garcia was arrested in a joint operation by the Army, the Navy, the Federal Police and Ministerial Police at one of the checkpoints while she was driving back to her house. At the time of her arrest the agents did not identify themselves and there was no arrest warrant or any charges against her. It is worth noting that Nestora Salgado presented her American passport, which was confiscated, stopping her from obtaining consular assistance. She was not brought before a judge immediately and all subsequent decisions were taken by incompetent courts.

The defender was held incommunicado and transferred to the Centro Regional de Reinserción Social of Acapulco City, where she was forced to sign documents without reading them first. On 22nd August 2013, by means of an order issued by the government of the state of Guerrero, she was transferred to the federal maximum security prison: Centro Federal Femenil NOROESTE, located in the Libre Tepic road of the state of Nayarit, several days distance from Olinalá. She was denied an adequate defense lawyer appointed by her and she was forced to offer her initial statement without her defense lawyer. She was immediately classified as a highly dangerous inmate, and therefore confined in a solitary confinement cell for 24 hours a day.

In March 2014 a federal court found her innocent, acknowledged the Community Police as part of the national and international indigenous rights and ordered her release.

However the courts of the state of Guerrero continued to work on different criminal cases with the same files. The acting governor, Rogelio Ortega, acknowledged publicly and in signed documents that she was a political prisoner. Even though she was acquitted of all charges, several criminal proceedings remain pending for appeals filed by the Prosecutor.

At the Maximum Security Prison

During her detention, Nestora Salgado was victim of cruel, inhuman and degrading treatment, including torture. This was repeatedly witnessed by the American embassy, whose representatives visited the defender on multiple occasions, requiring urgent medical treatment. Her right to have family visits was not respected and the legal visits were not authorized on time. Furthermore the treatment received from the prison authorities worsened after each visit from the American embassy.

It is worth noting that, before her detention, Nestora Salgado suffered from physical disabilities, chronic pain, and severe neuropathy in her hands, feet and back, which were totally controlled with pain medicine and daily exercise. However, the prison refused to provide adequate care despite the doctors' recommendations, which had a severe impact on her health. Throughout her detention she was physically isolated and confined in her cell for over 22 hours per day. She was not allowed to participate in any activities carried out by the common inmates and sometimes she was assigned to cells for women giving birth.

The multiple violations and the seriousness of the Nestora Salgado's situation was also recognized by the Inter-American Commission on Human Rights, which issued precautionary measures (455/13) in her behalf in January 2015. These measures were endorsed by the Group on Arbitrary Detention and 7 Rapporteurs and experts in an urgent action targeted to Mexico on 13th March 2015.

As a result of the serious physical and psychological deterioration accredited before the CIDH in May 2015 in the framework of implementation agreements, the defender was transferred to the Centro Femenil de Readaptacion Social Tepepán.

Nestora Salgado was released on 18th March 2016 after the Working Group issued its decision and after the acquittal in all pending criminal proceedings in Guerrero. She returned to the United States and started her process to obtain compensation and medical care for her serious health condition.

Physical and Psychological Consequences

The cruel, inhuman and degrading treatment and the torture suffered by Nestora Salgado had a deep impact on her physical and psychological health. She could not see two of her three daughters, her husband or her grandchildren for over two years. She went on a hunger strike for one month to denounce her detention.

Due to the conditions of her confinement and detention, she began to gradually lose the mobility in her limbs and to suffer from kidney and liver pain. The confinement and the lack of social interactions had an impact on the defender's emotional health, leading to depression, feelings of abandonment, a sleep disorder and deep despondency.

3. OPINION OF THE WORKING GROUP ON ARBITRARY DETENTION

During their 74th session on 17th December 2015, the Working Group on Arbitrary Detention issued opinion number 56/2015 regarding the case of Nestora Salgado García.

It is worth mentioning that the Working Group requested information to the Mexican Government and that this information was submitted untimely and by completely reusing a previous response to an urgent call of several United Nations proceedings.

Moreover, the response did not tackle the arbitrary detention or the irregularities in the criminal proceeding.

In this opinion, the Working Group describes as arbitrary the detention and expresses their deep concern for the multiple human rights violations suffered, including the fact that the defender was prosecuted twice for the same reasons.

It should be noted that this was the fifth opinion issued between 2014 and 2015 with regards to Mexico. The Working Group highlights the existence of a pattern against human rights defenders, recalling the opinions issued in previous cases with the same characteristics of arbitrary detention as retaliation against human rights advocacy work.

Moreover, the Working Group has triggered an alarm with regards to the health and the detention conditions of Nestora Salgado and refers the case to the Special Rapporteur on Torture. It also demands the immediate release and adequate remedy for the human rights defender.

4. RECOMENDATIONS AND URGENT CALLS FROM THE WORKING GROUP

Considering the seriousness of the situation, it is urgent stop the criminalization of Nestora Salgado. Even though she has been acquitted of the charges brought against her, she currently continues to face a high risk that prevents her from returning to her native country, since the General Attorney of the state of Guerrero has lodged appeals against the sentences issued in March of this year.

It is also a priority to duly and completely compensate the human rights defender for the material and non-material damages suffered. This compensation must include -but not be limited to- the restitution, rehabilitation, non-repetition, and coverage of all expenses, agreed with the defender and her representatives.

It is particularly important for the State to take appropriate steps to allow her to return to Mexico, ensuring the end of her criminalization through the effective closure of all the proceedings, and to take steps to protect her physical integrity.

Finally, the Mexican authorities should conduct an effective investigation regarding the torture and abuse inflicted on Nestora Salgado, so that those responsible due to their actions or negligence are brought to justice.

**IV. CONCLUSIONS
AND
RECOMMENDATIONS**

The five cases of arbitrary detention included herein evidence a severe human rights crisis in Mexico. These five cases are iconic and represent only a fractional part of the unpunished arbitrary detentions taking place in the country.

It is clear that the State policy seeks to criminalize and hindrance the defense of human rights throughout the country. This adds up to the fact that, far from trying to end this, the Mexican State continues to detain and intimidate defenders in this country.

Ending this situation would mean imposing criminal, civil and administrative sanctions to those responsible, who are part of the structures in charge of the safety and legal systems. It would also mean a series of deep reforms and changes both in the legal system and in the institutionalized repressive and violent practices against those who speak out against injustice.

Based on the aforementioned, we would like to make the following recommendations:

To the Mexican government

1. To immediately release Damián Gallardo Martínez, Librado Baños Rodríguez and Enrique Guerrero Aviña, who have remained unfairly deprived of their freedom for more than three years.
2. To design and to implement integral redress plans for material and non-material damages, including measures for restitution, rehabilitation, satisfaction and guarantees of non-repetition. These measures must include □but not be limited to□ public acknowledgement of human rights violations, specialized and integral attention to tackle any physical and psychological consequences, restitution and measures of non-repetition. Amongst the guarantees of non-repetition and, in view of the existence of a pattern of arbitrary detention, torture and abuse against defenders, it would be essential to strengthen the safeguards against

possible acts of torture and to set guarantees concerning the right to medical and hospital treatment, since their arbitrary denial is a form of torture and abuse.

3. To design, within the framework of the Mechanism to Protect Journalists and Human Rights Defenders, an appropriate procedure to address the phenomenon of criminalization and punitive abuse of power as a silencing method that allows recommending measures to release the defenders as an immediate protection.

4. To design and implement a formal monitoring mechanism allowing the correct and proper full implementation of the opinions issued by the Working Group on Arbitrary Detention. This measure is essential to achieve justice in the five cases presented as well as in all other arbitrary detention cases in Mexico. Such mechanism should propose a structured communication and collaboration plan with deadlines agreed by the Working Group and the Mexican authorities in charge of the implementation of the opinions.

5. To acknowledge the criminal, civil and administrative liability to all those responsible, due to their actions or negligence, of serious human rights violations for the five cases herein in order to strengthen the guarantees of non-repetition.

To the Working Group on Arbitrary Detention

1. To immediately publish opinions and urgent actions, once they have been issued and notified to the State, so that they have an impact in key moments for the cases. The delay between the issuance and the publication prevents the appropriate authorities in the High Commissioner of the United Nations in Mexico from acting timely and delays its official submission to the relevant courts and authorities. If, due to lack of human resources, the publication is delayed, the High Commissioner must be

allowed to act immediately and victims must be provided with support.

2. To incorporate a short-term compliance deadline in the text of the opinions issued and to request a detailed compliance report.

3. To monitor the implementation measures through letters, visits of experts from the Working Group, signing of agreements, and the active participation of the Office of the UN High Commissioner in Mexico during implementation meetings.

4. To schedule a quick supervision and a visit of the experts from the Working Group to Mexico to document the monitorization of the cases on which an opinion has been issued, as well as the documentation of the general situation of arbitrary detention in the country.

To the National Commission on Human Rights (Comisión Nacional de Derechos Humanos):

1. To actively cooperate with human rights defenders to document the serious situations of illegal and arbitrary deprivation of freedom, as well as the acts of torture and incommunicado detention and breaches of the due process.

2. To expedite the investigations of complaints where they are responsible, and not to delay the issuance of precautionary measures and recommendations as in 3 of the five cases presented.

3. To promote compliance with the opinions issued by the Working Group against the Mexican government.
4. To make the opinions, recommendations and rulings issued by the OAS and the UN theirs.
5. To assist, monitor and evaluate the release processes, the medical care and the redress process requested by the Working Group to the Mexican government.

ANNEXED

PEOPLE OF OAXACA IN PRISON FOR REASONS POLITICAL VICTIMS OF DETENTION ARBITRARY

SECCION XXII

1. Mario Olivera Osorio
2. Sara Altamirano Ramos
3. Damián Gallardo Martínez
4. Lauro Atilano Grijalva Villalobos
5. Leonel Manzano Sosa
6. Efraín Picazo Pérez
7. Othón Nazariega Segura
8. Roberto Abel Jiménez
9. Juan Carlos Orozco Matus
10. Aciel Sibaja Mendoza
11. Heriberto Magariño
12. Francisco Villalobos
13. Rubén Nuñez Ginés

FPR

1. Javier López Martínez
2. Cornelio Canseco Hernández
3. Marino Cruz Canseco
4. Fernando Cruz
5. Bailón Rojas Gómez
6. Erick González Guillen
7. Eugenio Hernández Gaytán
8. Feliciano García Moliner
9. José Andrés López
10. José de Jesús Martínez Castellanos
11. José E. Ordaz Velasco
12. Santiago García Espinoza
13. Celso Castillo Martínez
14. Diblallin Islas Rosas
15. Eduardo Santiago

16. Erik Rodríguez Santiago
17. German Mendoza Cruz
18. Humberto Castellanos López
19. Jaime García
20. Jorge Chonteco Jiménez
21. Luis López López
22. Luis E Matías Hernández
23. Roque Coca Gómez
24. Eduardo Sánchez Silva
25. Javier Aluz Mancera
26. Eleuterio Hernández Bautista
27. Felipe López Ramos
28. José Uziel Martínez Hernández

UCIDEBAC

1. Librado Baños Rodríguez
2. Felipe Rojas
3. Teófilo García

UACOL

1. Adán Mejía López

MEDIOS LIBRES

1. César León Mendoza
2. José Zair Delgado Álvarez

CIPO RFM

1. Pablo López Alavés

ORGANIZATION: LOXICHA

1. Justino Hernández José
2. Agustín Luna Valencia
3. Fortino Enrique Hernández
4. Zacarías Pascual García López
5. Abraham García Ramírez
6. Álvaro Sebastián Ramírez
7. Fernando Santiago Enríquez
8. Constantino Santiago Santiago
9. Octaviano Fernández Pacheco
10. Gerardo Santiago Gabriel
11. Emmanuel Santiago Santiago
12. Israel Juárez Juárez
13. Pablo Hernández Luna
14. Jorge Ruiz Luna
15. José Andrés Santiago Ramírez
16. Apolinar García Antonio
17. Adrián Santiago Ruiz
18. Jorge Santiago Santiago

GUEVEA DE HUMBOLT

1. Nicasio Zaragoza Quintana
2. Edmundo Espinoza Guzmán
3. Amado Castro López

OTHERS

1. Enrique Guerrero Aviña
2. Martín Colmenares
3. David Vargas Araujo
4. Faustino Diego
5. Alejandra Chávez
6. Alberto Sandoval
7. José Ambrosio Martínez