



General Assembly

Distr.: General
1 October 2024
English
Original: Spanish

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 100th session, 26–30 August 2024

Opinion No. 41/2024, concerning Higinio Bustos Navarro (Mexico)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 10 May 2023 the Working Group transmitted to the Government of Mexico a communication concerning Higinio Bustos Navarro. The Government replied to the communication on 11 July 2023. The State is a party to the International Covenant on Civil and Political Rights;
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination, based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).



1. Submissions**(a) Communication from the source**

4. Higinio Bustos Navarro is national of Mexico, born on 11 January 1963. He is a resident of Tepetzintla (municipality of Huautla, State of Hidalgo).

i. Detention and trial proceedings

5. According to the source, Mr. Bustos Navarro belongs to the Nahuatl Indigenous community and is a defender of Indigenous Peoples' human rights to self-determination and to land. He is a member of the Frente Nacional de Lucha por el Socialismo (National Front for the Struggle for Socialism), an organization that advocates for the human right to a dignified life, for the release political prisoners and against enforced disappearances and extrajudicial killings. He is also responsible for the tractor used by his community.

6. According to the information received, Mr. Bustos Navarro was arrested at 4.30 p.m. on 3 May 2021 at the intersection of the Huautla to Terrerillos road with the San Sebastián to Chicontepec road, in the municipality of Chicontepec, State of Veracruz. The arrest was made by plain-clothes officers of the Office of the Attorney General of the State of Veracruz, who did not show an arrest warrant or other type of order by a public authority. It is alleged that about 12 armed officers in civilian clothing forced him to get out of the vehicle in which he was travelling, handcuffed him and placed him in an unmarked white van without explaining what was happening. He was told only that he would be taken to the prosecutor's office in Tantoyuca, Veracruz, but in fact he was transferred directly to the Tantoyuca Social Rehabilitation Centre, where he is currently held.

7. At the time of the arrest, the authorities did not explain their reasons; they merely handcuffed the detainee and took him away. However, these authorities later stated that they had acted in compliance with an arrest warrant issued on 21 January 2011 by the judge of the Tantoyuca First Instance Court of Mixed Jurisdiction in connection with criminal case No. 05/2011-I, for an aggravated homicide that allegedly occurred in 2008.

8. Since his arrest, Mr. Bustos Navarro has been held in the Tantoyuca Social Rehabilitation Centre, as persons accused of aggravated homicide are not eligible for bail. In this regard, the source indicates that article 94 of the Criminal Code of the State of Veracruz provides that this benefit may not be granted to repeat offenders or persons convicted of the offences of aggravated homicide, rape, child pornography or aggravated robbery.

9. According to the source, Mr. Bustos Navarro is being arbitrarily detained and tried because of his political beliefs, as he is a member of the Frente Nacional de Lucha por el Socialismo, a social organization. The source claims that, in recent years, members of this organization have experienced different forms of politically motivated persecution, such as extrajudicial killings and enforced disappearances, that fabricated charges have been brought against them to keep them in prison; and that in all of these cases they had been cleared of any wrongdoing and released before being charged.

10. Mr. Bustos Navarro stands accused of a homicide allegedly committed at about 8.40 a.m. on 31 January 2008 – 13 years before his arrest – in the settlement of Felipe Ángeles in the municipality of Chalma, Veracruz.

11. On 4 March 2008, the Special Unit for the Investigation of Terrorism and Arms Stockpiling and Trafficking of the Office of the Assistant Attorney General for the Investigation of Organized Crime of the then Office of the Counsel-General of the Republic opened a preliminary investigation into the offence of homicide following a complaint by the father of the deceased.

12. The source indicates that the same events were under investigation by the Tantoyuca public prosecutor's office, which had opened a prosecutorial investigation on 31 January 2008 in response to the complaint filed by the father of the deceased. However, under an agreement of 3 April 2008, the investigating public prosecutor decided to decline jurisdiction in favour of the Counsel General's Office, which by official letter of 24 March 2008 assumed jurisdiction over the case, considering that the local investigation and the preliminary

investigation of the Special Unit for the Investigation of Terrorism and Arms Stockpiling and Trafficking were connected.

13. According to the source, the Special Unit for the Investigation of Terrorism and Arms Stockpiling and Trafficking decided to assume jurisdiction over the case because the complainant made a second statement – the first having been given at the Tantoyuca public prosecutor’s office – in which he claimed that his son was a soldier who belonged to an infantry battalion and who had been working undercover as a peasant farmer in order to investigate the activities of the Frente Democrático Oriental de México Emiliano Zapata (Emiliano Zapata Eastern Democratic Front of Mexico), a social organization that merged with others to form the Frente Nacional de Lucha por el Socialismo.

14. The source states that, on 15 December 2010, having completed the investigation, the federal prosecutor decided to prosecute Mr. Bustos Navarro and two other individuals for the offence of aggravated homicide. Accordingly, the Federal Prosecution Service transmitted the case file to a district judge in Tuxpan, State of Veracruz and requested him to issue an arrest warrant.

15. On 21 December 2010, the judge presiding over the Seventh District Court of the State of Veracruz formally registered the case file and, the following day, declared herself legally incompetent to hear the case, declining jurisdiction in favour of the Tantoyuca First Instance Court of Mixed Jurisdiction. The district judge argued that, while it was clear from testimonies gathered in the preliminary investigation that the deceased was an army infiltrator in the community of Felipe Ángeles (municipality of Chalma, Veracruz), where the events had occurred, there was no record of his having been commissioned or appointed to that role, or of what his functions or assignments had been, that would have allowed the court to establish that he was actually carrying out his duties when the offence was committed. In this regard, official letters from the Office of the Military Prosecutor made no reference to whether, at the time of the events, the victim was performing the duties he had been assigned, nor did they describe the nature of those duties. Consequently, the judge decided not to accept jurisdiction to hear the case.

16. On 21 January 2011, the judge of the Tantoyuca First Instance Court of Mixed Jurisdiction issued an arrest warrant against Mr. Bustos Navarro and two other individuals for the offence of aggravated homicide. The warrant was enforced on 3 May 2021, some 10 years later.

17. Regarding the domestic proceedings, including the appeals filed before the judicial and administrative authorities with the aim of challenging the lawfulness of the detention, the source reports that on 26 May 2021, an indirect *amparo* application was filed with the Eighth District Court of the State of Veracruz against the ruling of 6 May 2021, handed down in the framework of criminal case No. 05/2011-I, by which a detention order was issued for Mr. Bustos Navarro as the likely perpetrator of aggravated homicide. The remedy of *amparo* was sought on the grounds that there was no clear and precise incriminating evidence whatsoever against Mr. Bustos Navarro. However, on 21 March 2022, the Eighth District Court, sitting at Tuxpan, Veracruz, issued a final judgment in which it denied Mr. Bustos Navarro the protection of federal justice.

18. On 31 May 2022, a second indirect *amparo* application was filed with the Eighth District Court of the State of Veracruz against the ruling of 6 May 2021 whereby a detention order was issued against Mr. Bustos Navarro. Again, the application was based on the lack of clear and precise incriminating evidence against Mr. Bustos Navarro. On 2 February 2023, the Eighth District Court, sitting at Tuxpan, Veracruz, published a final judgment in which it denied Mr. Bustos Navarro the protection of federal justice.

19. The source reports that Mr. Bustos Navarro’s defence is waiting for an application for judicial review of the second indirect *amparo* decision to be sent to the relevant court.

20. According to the source, the aforementioned applications for *amparo* explain that the complainant, in his statement of 31 January 2008, did not make any accusation against Mr. Bustos Navarro, or even mention him; in fact, he stated that he did not suspect anyone or know why his son had been killed.

21. A subsequent witness statement to the public prosecutor, dated 18 April 2008, did not contain any accusation against or reference to Mr. Bustos Navarro.

22. Notwithstanding the above, the complainant and father of the deceased, in his second statement, claimed that one of the perpetrators was a person of tall stature who he believed was named Felipe, whereas Mr. Bustos Navarro's given name is Higinio. The deponent also stated that this Felipe is from Tecomazuchitl (municipality of Chicontepec, State of Veracruz), whereas Mr. Bustos Navarro is from Tepetzintla (municipality of Huautla, State of Hidalgo).

ii. *Legal analysis*

23. The source claims that the arrest and detention of Mr. Bustos Navarro are arbitrary and constitute a violation of human rights and the guarantees enshrined in the Constitution of Mexico. The source contends that, since the detention lacks a legal basis, it constitutes a violation of article 1 of the Constitution on the obligation to respect human rights; article 14 on the principle of legality; article 16 on the principle of legal certainty; article 19, also on the principle of legal certainty, given the absence of sufficient evidence of the corpus delicti and/or Mr. Bustos Navarro's likely responsibility; and article 20 (B) (I) on the principle of presumption of innocence and due process.

24. It is claimed that Mr. Bustos Navarro has been deprived of his liberty as a result of the exercise of the rights and freedoms enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The source points to a violation of article 7 of the Universal Declaration of Human Rights, on the right to equality before the law and the right to equal protection of the law.

25. Furthermore, the source claims that Mr. Bustos Navarro's detention violates rights protected by the Covenant, namely, the right to freedom of thought, conscience and religion, under article 18; and the right to equality before the law and to protection against discrimination on the basis of political opinion, protected by article 26.

26. Finally, the source claims that international standards relating to the right to a fair and impartial trial have not been observed. Specifically, the source alleges violations of article 9 of the Universal Declaration of Human Rights on the prohibition of arbitrary detention, and of article 10, on the right to a fair and public hearing by an independent and impartial tribunal. In addition, the source alleges a violation of article 9 of the Covenant on the right not to be subjected to arbitrary arrest or detention and not to be deprived of liberty except on such grounds and in accordance with such procedure as are established by law, and of article 14 of the Covenant, which refers to guarantees of due process and a fair trial, especially the right to be presumed innocent.

(b) Response from the Government

27. The Working Group, in accordance with its methods of work, transmitted the source's allegations to the Government of Mexico on 10 May 2023 and requested it to submit a response by 10 July 2023. The Working Group requested the Government to provide detailed information on Mr. Bustos Navarro's case, clarifying the factual and legal grounds for his detention and explaining how it was compatible with the State's international human rights obligations. The Working Group also requested the Government to safeguard Mr. Bustos Navarro's physical and mental health.

28. The Government responded to the communication on 10 July 2023. In its response, the Government summarized the circumstances of the detention described by the source, and went on to state that the detention and prosecution of Mr. Bustos Navarro in no way violated the principles, rights and freedoms enshrined in the Universal Declaration of Human Rights, nor those contained in the Covenant, nor any other guarantee set forth in international norms relating to access to justice and the right to be tried by an impartial court. The State also denies that Mr. Bustos Navarro was detained for exercising his human rights or on discriminatory grounds, and therefore considers that Mr. Bustos Navarro's detention does not fall into any of the categories established by the Working Group.

29. The Government notes that Mr. Bustos Navarro was indeed arrested on 3 May 2021 in San Sebastián Chicontepec, Veracruz, by agents of the Veracruz Attorney General's Office, having been accused of an aggravated homicide believed to have been committed in 2008, and is currently being held in the Tantoyuca Social Rehabilitation Centre pending trial. The Government maintains that the detention was carried out with the proper arrest warrant, after Mr. Bustos Navarro's rights were explained to him, including the right to be provided with an interpreter if he did not understand or speak Spanish.

30. The Government clarifies that, under the Constitution, the Federal Prosecution Service has the legal authority and obligation to investigate any alleged offence, which it must do within the jurisdiction of each state and in accordance with the applicable criminal codes and procedures. In the case of Mr. Bustos Navarro, the Government submits that he was detained in compliance with the arrest warrant,² which was based on the complaint filed by the father of the deceased with the Federal Prosecution Service on 4 March 2010.

31. The Government also submits that the Veracruz Attorney General's Office opened³ a prosecutorial investigation⁴ against Mr. Bustos Navarro for the offence of homicide, the facts of which were connected with the preliminary investigation⁵ of the then Counsel General's Office, which took over the case.

32. The Government informs the Working Group that, at the time of Mr. Bustos Navarro's arrest, his rights were explained to him, with emphasis on the possibility of his being assisted by a translator or interpreter, free of charge, should he not understand or speak Spanish. Although his native language is Nahuatl, Mr. Bustos Navarro refused to speak in that language and asked to receive information in Spanish.

33. The Government indicates in its response that the authorities conducted several investigations into Mr. Bustos Navarro, which revealed his attempt to evade justice and subsequently allowed them to locate and arrest him at the intersection of the Huautla-Terrerillos state road with the San Sebastián-Chicontepec road in the municipality of Chicontepec, Veracruz.

34. The Government submits that Mr. Bustos Navarro and two other persons are suspected of committing the serious offence of aggravated homicide. The Government asserts that the arrest was made in accordance with article 20 of the Constitution and articles 113 and 152 of the National Code of Criminal Procedure, with the detainee being deprived of liberty at the regional prison of Veracruz on the basis of the arrest warrant and criminal case No. 05/2011, a measure taken on account of his likely responsibility for the murder.

35. The suspicion that fell upon Mr. Bustos Navarro originated in the complaint filed by the father of the deceased, who gave an account of the circumstances in which his son lost his life in the settlement of Felipe Ángeles, Veracruz, including the information that he was an infantryman in the Eighty-fourth Infantry Battalion and had been working undercover as a peasant farmer in order to investigate possible criminal activity in the sector.

36. The Government's response includes annexed documents, including the duly substantiated arrest warrant, the record of the reading of Mr. Bustos Navarro's rights, and other documents setting out the legal basis for the detention and the entire thread of legal logic establishing Mr. Bustos Navarro as a suspect in the aggravated homicide case.

37. The Government stresses that the detention of Mr. Bustos Navarro was in accordance with the applicable law, was necessary and proportionate and was reviewed by a judge in a timely manner.

38. The Government adds that Mr. Bustos Navarro has not been detained as a coercive measure for exercising his human rights or fundamental freedoms, but as a result of the application of the aforementioned laws. Similarly, the Government categorically denies that the detention is an expression of discrimination of any kind, since it is based solely on the

² Order No. C.P.05/2011.

³ By official letter No. FGE/FCEAIDH/CDH/5419/2023.

⁴ TAN/63/2008.

⁵ No. PGR/SEIDO/UEIT/025/2008.

criminal proceedings instituted for the offence of homicide and no distinction, exclusion, restriction or preference of any kind has been applied to the prisoner.

(c) Additional comments from the source

39. The Working Group transmitted the Government's response to the source on 11 July 2023 and requested any final comments and observations, which were received on 24 July 2023.

40. The source submitted a multi-page dossier refuting the Government's account of Mr. Bustos Navarro's imprisonment. In reference to the Government's argument regarding the possible guilt of Mr. Bustos Navarro in the homicide case, the source presents an exhaustive comparison of statements. The initial statement, which did not implicate Mr. Bustos Navarro in the commission of the offence, is inconsistent with the second one, made several years later, in which the father of the deceased contradicts himself and claims to have recognized Mr. Bustos Navarro.

41. The source emphatically points out that, in the initial statement of the father of the deceased, dated 31 January 2008, no accusation was made against Mr. Bustos Navarro, nor was he even mentioned. The father of the deceased stated that he did not suspect anybody and did not know why his son had been killed. The source points out that, although the initial statement was retracted, it prevails over subsequent statements because it is supported by the investigation report of 28 February 2008, signed by an officer of the state investigative police, whom the father of the deceased told that he had not recognized any of the perpetrators because their faces were fully covered.

42. The source asserts that, on 2 December 2010, the other eyewitness to the events made a similar statement to the public prosecutor, affirming that he had not seen the murderers' features.

43. The source stresses that Mr. Bustos Navarro is a prominent leader of a grass-roots social organization that has kept up a struggle to prevent the seizure of land recovered by the community more than 40 years ago; that the name of this social organization has changed over time and that, during all of this time, its members have been victims of extrajudicial killings, politically motivated imprisonment and arbitrary detention by State agents, with the aim of dismantling the organization.

44. The source mentions several cases of extrajudicial killings of members of the political organization to which Mr. Bustos Navarro belongs, in order to familiarize the Working Group with the context in which his detention was carried out, and states that Mr. Bustos Navarro was transferred without any order or explanation to a higher security prison in order to avoid the protests organized by his political movement in his place of origin. This transfer was illegal and arbitrary, as he was admitted to a prison a six-hour drive from the court in Tantoyuca where his case was registered, in order to hinder communication and contact with family members and the organization of his defence by lawyers and human rights defenders.

45. The source attaches a copy of the statement by the father of the deceased, in which he clearly insists, several times, that despite being a direct witness to the incident, he was unable to recognize or identify any of the perpetrators because their faces were fully covered and they were wearing hats. Moreover, in the same statement, the father of the deceased stated that he could not imagine who had killed his son, nor did he suspect anyone, since neither he nor anyone else in his family had had any problems in the community where they had lived peacefully for almost 18 years.

46. The source informs the Working Group that all legal remedies pursued in order to obtain Mr. Bustos Navarro's release have been denied and that the arbitrary detention was sanctioned by an unsubstantiated detention order issued against Mr. Bustos Navarro on 7 July 2023 by the Second Collegiate Criminal Court of the Seventh Circuit, sitting at Boca del Río, Veracruz, in clear violation of articles 1, 14, 16, 19 and 20 of the Constitution, articles 7, 9 and 10 of the Universal Declaration of Human Rights and articles 9 (1), 14 (2), 18 (1) and 26 of the Covenant.

2. Discussion

47. The Working Group thanks the source and the Government for their submissions.

48. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.⁶

49. The Working Group wishes to reaffirm that States have an obligation to respect, protect and uphold all human rights and fundamental freedoms, including liberty of person. This requires ensuring that any national law allowing deprivation of liberty is drafted and implemented in accordance with the relevant international standards set forth in the Universal Declaration of Human Rights, the Covenant and other applicable international instruments. Even if the detention does conform to national law, regulations and practices, the Working Group is mandated to assess the judicial proceedings and the law itself to determine whether the detention is compatible with the relevant provisions of international human rights law.

(a) Category I

50. The source argues that the arrest and detention of Mr. Bustos Navarro are arbitrary under category I of the Working Group. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As the Working Group has previously stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.⁷

51. In the present case, Mr. Bustos Navarro was detained by 12 officers of the Veracruz Attorney General's Office, armed and in civilian clothing, who, without showing an arrest warrant or other type of order by a public authority, forced him to get out of the vehicle in which he was travelling, handcuffed him and placed him in an unmarked white van without explaining what was happening. He was told only that he would be taken to the prosecutor's office in Tantoyuca, Veracruz, when in fact he was transferred directly to the Tantoyuca Social Rehabilitation Centre.

52. The Working Group recalls that the provisions of international law on deprivation of liberty include the right to be presented with an arrest warrant or equivalent document⁸ and to be informed at the time of the arrest of the reasons for the arrest, which is a procedurally inherent component of the right to liberty and security of person and the prohibition of arbitrary deprivation of liberty under articles 3 and 9 of the Universal Declaration of Human Rights and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Furthermore, the Working Group has consistently held that, to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged in article 9 of the Universal Declaration of Human Rights.

53. The Working Group wishes to point out that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society. This right, which is in fact a peremptory norm of international law, applies to all forms and situations of deprivation of liberty and should be granted without undue delay.

54. Despite the Government's assertion that Mr. Bustos Navarro was arrested on 3 May 2021 in San Sebastián Chicontepec, Veracruz, by agents of the Veracruz Attorney-General's Office, having been accused of the serious offence of aggravated homicide, believed to have

⁶ A/HRC/19/57, para. 68.

⁷ See, for example, opinions No. 72/2021, No. 89/2020, No. 79/2018, No. 35/2018, No. 93/2017, No. 75/2017, No. 66/2017 and No. 46/2017.

⁸ Opinion No. 88/2017, para. 27. In cases of arrests made in *flagrante delicto*, it is not generally possible to obtain a warrant.

occurred in 2008, the Working Group is not convinced that the aforementioned agents had in their hands, after 13 years, a firm arrest warrant, especially if the warrant was issued for the purposes of investigation and questioning, since no final judgment had been handed down against Mr. Bustos Navarro. Consequently, there was a violation of article 9 (1) and (2) of the Covenant.

55. The Working Group reaches the same conclusion after examining the pretrial detention order issued against Mr. Bustos Navarro, from which it is clear that a series of investigative proceedings were conducted in 2011 that did not conclusively establish Mr. Bustos Navarro's participation in the events of 2008.

56. Regarding Mr. Bustos Navarro's pretrial detention, the Working Group recalls that it is a well-established norm of international law that pretrial detention should be the exception and not the rule and should be ordered for the shortest time possible. Article 9 (3) of the Covenant establishes that it should not be the general rule that persons awaiting trial should be detained, but their release may be subject to guarantees to appear for trial or at any other stage of the judicial proceedings. It follows that, in the interests of justice, liberty should be recognized as the principle and detention as the exception. Detention pending trial must be based on an individualized determination that it is reasonable and necessary, considering all the circumstances. In addition, the courts should consider alternatives and, after an initial determination has been made that pretrial detention is necessary, there should be periodic re-examination of whether it continues to be reasonable and necessary, which has not happened in Mr. Bustos Navarro's case.

57. The Working Group notes that the arrest warrant against Mr. Bustos Navarro that the Government included in its submission was extended over a period of 13 years and was issued for investigative purposes, this being an exceptional measure at the pretrial stage that is regulated by the Mexican system of criminal procedure. The purpose of the measure is for the public prosecution service to hear the account of the person whose arrest has been requested in the context of an open investigation, and thus complete the information in its possession, either by collecting or ruling out evidence. Therefore, an arrest warrant may be issued only in a preliminary investigation pursuant to a request by the prosecutor justifying the need for the detention and identifying the individual to be detained. Judges receiving such requests have a duty to carefully consider the grounds put forward for the measure, remembering that, as with any other measure of deprivation of liberty, it must be exceptional, and they should verify the necessity and proportionality of its application. If the judge accepts the prosecutor's request, he or she will proceed to issue the warrant, which must meet all the requirements prescribed by criminal law.

58. None of these conditions has been fulfilled in relation to the detention of Mr. Bustos Navarro. The Working Group therefore concludes that multiple violations of his rights under article 9 of the Covenant and article 9 of the Universal Declaration of Human Rights were committed and that his detention is arbitrary under category I.

(b) Category II

59. The Working Group notes that Mr. Bustos Navarro belongs to the Nahuatl Indigenous community, is a defender of the human rights of Indigenous Peoples to self-determination and to land and is a member of the Frente Nacional de Lucha por el Socialismo – an organization that advocates for the human right to a dignified life, for the release of political prisoners and against enforced disappearances and extrajudicial killings. However, in the light of the information received, it does not find that the circumstances in which his detention occurred meet the criteria established under category II of the Working Group.

(c) Category III

60. Considering the source's claims, the Working Group will proceed to determine whether, in the course of the judicial proceedings that have been instituted against Mr. Bustos Navarro, the fundamental elements of a fair, independent and impartial trial have been respected.

61. The source asserts, and the Government has not refuted, that Mr. Bustos Navarro was arrested on suspicion of a homicide allegedly committed at around 8.40 a.m. on 31 January

2008 – 13 years before his arrest – in the settlement of Felipe Ángeles in the municipality of Chalma, Veracruz. A formal accusation was made on 4 March 2008, when the Special Unit for the Investigation of Terrorism and Arms Stockpiling and Trafficking of the Office of the Assistant Attorney General for the Investigation of Organized Crime of the then Counsel General's Office opened a preliminary investigation into the offence of homicide following a complaint by the father of the deceased. This resulted in a change in jurisdiction over the detainee and the legal rules used to prosecute him.

62. Indeed, the investigating public prosecutor subsequently decided to decline jurisdiction in favour of the Special Unit for the Investigation of Terrorism and Arms Stockpiling and Trafficking.

63. According to the source, the reason for this change of jurisdiction was the fact that the deceased was a member of the military who belonged to an infantry battalion and had been working undercover as a peasant farmer in order to investigate the activities of the Frente Democrático Oriental de México Emiliano Zapata (an organization that later merged with others to form the Frente Nacional de Lucha por el Socialismo). The change of jurisdiction upset the equality of arms in the proceedings, and a charge was brought against a person who was denied the right to be presumed innocent. The Working Group recalls that the notion of equality of arms is an essential characteristic of a fair trial and is an expression of the balance that must exist between the prosecution and the defence. On the basis of this principle, there is a strict obligation to respect the right of accused persons to have witnesses admitted that are relevant for the defence and to be given sufficient opportunity to question and challenge witnesses against them at some stage of the proceedings. However, the decisions taken were in line with the second complaint by the father of the deceased, in which he directly accused Mr. Bustos Navarro, rather than the initial statement, in which he clearly stated that he did not know and could not imagine who the perpetrator might be. Added to this picture is the fact that the Special Unit for the Investigation of Terrorism and Arms Stockpiling and Trafficking, as a specialized jurisdiction, did not accept the testimony of the police officer who drew up the report on the events. The Government did not comment on this matter. However, the situation infringes the right to have witnesses admitted that are relevant for the defence and is all the more serious under circumstances in which bail is not permitted, which also violates the provisions of the Covenant.

64. An important aspect of the fairness of a hearing is its expeditiousness. While article 14 (3) (c) of the Covenant explicitly addresses the issue of undue delays in criminal proceedings, the Working Group is alarmed that the authorities have enforced a warrant that was issued 13 years previously without providing specific information as to whether it had been renewed and was still in full force.

65. Added to these circumstances is the fact that Mr. Bustos Navarro has been deprived of his right to pursue constitutional remedies, as the three applications for *amparo* that were filed have been rejected. These applications are effectively based on the fact that the initial statements made by the father of the deceased contained no accusation and there were no witnesses that identified Mr. Bustos Navarro as the perpetrator. The right to seek legal remedies should not be limited or restricted under any circumstances.

66. On the basis of the materials provided, the Working Group accepts the source's version and maintains that Mr. Bustos Navarro's defence was not granted equality of arms in terms of respect of the right to have relevant witnesses admitted; he was not allowed to avail himself of his constitutional rights and nor was he granted bail because this was prohibited, resulting in the violation of his rights under, inter alia, article 14 (1) and (3) (e) of the Covenant.

67. All of these elements lead the Working Group to determine that Mr. Bustos Navarro is deprived of his liberty under category III of the Working Group.

(d) Category V

68. The Working Group is persuaded that Mr. Bustos Navarro was detained and is being tried in a discriminatory manner because of his status as an Indigenous person – a view strengthened by the knowledge that he belongs to the Nahuatl community, is a defender of the human rights of Indigenous Peoples to self-determination and to land and is a member of

the Frente Nacional de Lucha por el Socialismo, an organization that advocates for the human right to a dignified life, for the release of political prisoners and against enforced disappearance and extrajudicial killings. He is also responsible for the tractor used by his community. The Government, however, denies any link between Mr. Bustos Navarro's detention and his ethnicity or political affiliation.

69. The Working Group notes that articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, relating to the right to non-discrimination and equality before the law and the right to the equal protection of the law, have been violated, given that there was evident discrimination against Mr. Bustos Navarro. The Working Group therefore considers that the detention of Mr. Bustos Navarro is arbitrary under category V.

3. Disposition

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

The deprivation of liberty of Higinio Bustos Navarro, being in contravention of articles 1, 2, 3, 5, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 7, 9, 10, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

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

72. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Bustos Navarro immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. This is especially relevant given the interpretative declaration on article 9 (5) of the Covenant, entered by Mexico upon acceding thereto, which states that:

Under the Political Constitution of the United Mexican States and the relevant implementing legislation, every individual enjoys the guarantees relating to penal matters embodied therein, and consequently no person may be unlawfully arrested or detained. However, if by reason of false accusation or complaint any individual suffers an infringement of this basic right, he has, inter alia, under the provisions of the appropriate laws, an enforceable right to just compensation.

73. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Bustos Navarro and to take appropriate measures against those responsible for the violation of his rights.

74. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

4. Follow-up procedure

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

- (a) Whether Mr. Bustos Navarro has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Bustos Navarro;
- (c) Whether an investigation has been conducted into the violation of Mr. Bustos Navarro's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Mexico with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

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

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

78. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁹

[Adopted on 30 August 2024]

⁹ Human Rights Council resolution 51/8, paras. 6 and 9.