

# No. 58/2013 (Mexico)

## Communication addressed to the Government of Mexico on 16 September 2013

### Concerning Marco Antonio de Santiago Ríos

#### The Government replied to the communication from the Working Group on 4 November 2013. The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three-year period in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

#### **Submissions**

##### *Communication from the source*

3. Marco Antonio de Santiago Ríos is a Mexican citizen resident in Colonia Infonavit Monterreal, General Escobedo, Nuevo León. He was arrested on 22 February 2013 at 1.30 p.m. at his home by agents of the Nuevo León State Investigation Agency.

4. The agents reportedly pointed their weapons at Mr. De Santiago Ríos's mother, Francisca Guadalupe Ríos Olivo, and took some of her personal belongings, including her identity card, credit cards and cash. They conducted an extensive search of the property for weapons and drugs, but found nothing.

5. Mr. De Santiago Ríos was driven to the central offices of the State Investigation Agency on Avenida Gonzalitos, Monterrey, Nuevo León, where a plastic bag was placed over his head and he was hit in the abdomen. He was told that his mother would be killed if he did not confess, and he was forced to sign blank sheets of paper.

6. In March 2013, Mr. De Santiago Ríos was transferred to the Topo Chico Prevention and Social Rehabilitation Centre in Monterrey, where his hands and feet were placed in shackles. He was then transferred to the Apodaca Social Rehabilitation Centre, where he also claims to have been tortured. The source states that Apodaca prison staff demanded that he should pay 200 pesos a week in order not to be tortured. Lastly, Mr. De Santiago Ríos was transferred to the Cadereyta Social Rehabilitation Centre in Nuevo León, where he remains.

7. The source states that the officers who arrested him did not have any kind of arrest warrant, nor was the arrest made on the basis of any kind of court order. This fact was reportedly acknowledged by some officers, who maintained that the arrest of Mr. De Santiago Ríos was carried out as part of a police raid.

8. The complaints submitted to the Nuevo León State Human Rights Commission (CEDHNL) have not produced results.

9. According to the source, the arrest and continuing detention of Mr. De Santiago Ríos are arbitrary.

#### *Response from the Government*

10. In its response dated 4 November 2013, the Government confirms that Mr. De Santiago Ríos was arrested on 22 February 2013 and that his mother claims that when she visited him she was informed that he had been beaten by agents of the State Investigation Agency.

11. Pursuant to a request from the detainee's mother for the Nuevo León State Human Rights Commission to intervene, the Commission visited him on 5 March 2013 and saw evidence of injuries. Mr. De Santiago Ríos claimed to have been in various detention centres before arriving at the State Investigation Agency centre, where he was also beaten and tortured; this is borne out by photographic evidence.

12. The Government states that, according to the State Human Rights Commission, Mr. De Santiago Ríos was remanded to the Nuevo León Prosecution Service, which initiated proceedings against him for the crime against health of small-scale drug trafficking, since he was found to be in possession of cocaine that was intended for sale.

13. In its investigation, the Nuevo León State Human Rights Commission found the complaint admissible and agents of the State Investigation Agency to be responsible; it requested a report from the State Attorney-General concerning the allegations made, which was issued on 8 May 2013.

14. The Nuevo León State Human Rights Commission conducted a psychological assessment of Mr. De Santiago Ríos, in accordance with the United Nations Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also received testimony from numerous individuals regarding the complaint.

15. On 30 April 2013, Mr. De Santiago Ríos was transferred from the Topo Chico Prevention and Social Rehabilitation Centre to the Apodaca Social Rehabilitation Centre. The Government states that a medical examination carried out in that centre certified that marks of injuries were visible on his body. The Nuevo León State Human Rights Commission reports that at the Topo Chico centre members of a criminal organization threatened Mr. De Santiago Ríos, saying that if he was transferred to Apodaca Social Rehabilitation Centre he would be killed, since he belonged to a different criminal group. Mr. De Santiago Ríos therefore requested the Commission to intervene; as a result, he was provided with protection the specific area of the prison in which he was being held, and in due course his transfer to the Cadereyta Social Rehabilitation Centre was arranged. The Government reports that the procedures followed by the State Human Rights Commission resulted in measures being taken to safeguard Mr. De Santiago Ríos's life and physical integrity, and that the latter was transferred at his request to the Cadereyta Social Rehabilitation Centre on 25 May 2013.

16. The Government's report concludes that steps were taken in a timely manner to protect Mr. De Santiago Ríos's human rights in the places where he was deprived of his liberty. Efforts were also made to collect evidence that made it possible to determine the truth of the incidents that formed the subject of the complaint. The Government adds, with regards to Francisca Guadalupe Ríos Olivo,

that there is no record of a complaint being filed with the Nuevo León State Human Rights Commission insofar as her rights are concerned. Ms. Ríos Olivo addressed the Commission on two occasions to request that her son should be interviewed.

*Comments from the source*

17. The source, in its response, adds no further details that would enable the Working Group to render an opinion as to whether the deprivation of liberty of Mr. De Santiago Ríos is arbitrary or not, stating only that his trial is to be conducted shortly.

**Discussion**

18. A review of the information submitted by the source and the Government is not sufficient to enable the Working Group to render an opinion as to whether Mr. De Santiago Ríos's detention is arbitrary or not, since there is no indication that the deprivation of liberty falls into any of the categories of arbitrariness set out in the Working Group's methods of work. The incidents described that might fall into category III do not seem to be severe enough to warrant considering Mr. De Santiago Ríos's detention as arbitrary.

19. The Working Group recalls that paragraph 17 (c) of its methods of work provides that "If the Working Group considers that further information is required from the Government or from the source, it may keep the case pending until that information is received."

20. In accordance with this provision, the Working Group decides to keep this case pending until it receives more detailed information relating to the arbitrariness of Mr. De Santiago Ríos's deprivation of liberty, specifically with regard to the particularly serious issue of his right to due process.

**Disposition**

21. In the light of the foregoing, and in accordance with paragraph 17 (c) of its methods of work, the Working Group decides to keep the case pending until further information is received from the source and the Government on the severity of the alleged violations of the right of Mr. De Santiago Ríos to due legal process, before rendering a final opinion on the arbitrary nature of the detention.

22. Notwithstanding the foregoing, the Working Group decides to bring this opinion to the attention of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

[Adopted on 22 November 2013]