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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 21/2025, concerning Manuel Santiz Cruz, Agustín Pérez Domínguez, Juan Velasco Aguilar, Martín Pérez Domínguez and Agustín Pérez Velasco (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 22 July 2024 the Working Group transmitted to the Government of Mexico a communication concerning Manuel Santiz Cruz, Agustín Pérez Domínguez, Juan Velasco Aguilar, Martín Pérez Domínguez and Agustín Pérez Velasco. The Government replied to the communication on 18 October 2024. 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,

¹ [A/HRC/36/38](#).



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. Submissions

(a) Communication from the source

4. Manuel Santiz Cruz, a Mexican national born in 1980, is an Indigenous member of the Tzeltal Maya community, an inhabitant of the municipality of San Juan Cancuc, Chiapas, and a campesino. He is the president of the Comité de Derechos Humanos San Juan Evangelista de Cancuc (San Juan Evangelista de Cancuc Human Rights Committee), in the parish of San Juan Cancuc and the diocese of San Cristóbal de las Casas. That committee has engaged in efforts to defend the land and territory from the construction of a stretch of highway between San Cristóbal de las Casas and Palenque and has opposed the presence in the municipality of the National Guard and army. It also mobilized against the sale of alcohol and drugs in the seat of the municipal government.

5. Agustín Pérez Domínguez, a Mexican national born in 1986, is an Indigenous member of the Tzeltal Maya community, an inhabitant of the municipality of San Juan Cancuc, Chiapas, and a campesino.

6. Juan Velasco Aguilar, a Mexican national born in 1983, is an Indigenous member of the Tzeltal Maya community, an inhabitant of the municipality of San Juan Cancuc, Chiapas, and a campesino.

7. Martín Pérez Domínguez, a Mexican national born in 1980, is an Indigenous member of the Tzeltal Maya community, an inhabitant of the municipality of San Juan Cancuc, Chiapas, and a campesino.

8. Agustín Pérez Velasco, a Mexican national born in 1982, is an Indigenous member of the Tzeltal Maya community, an inhabitant of the municipality of San Juan Cancuc, Chiapas, and a campesino.

9. Agustín and Martín Pérez Domínguez, Mr. Velasco Aguilar and Mr. Pérez Velasco are human rights defenders and members of the organization Pueblo Creyente (People of Faith), in the parish of San Juan Cancuc, which is very active in the defence of human and territorial rights in the region.

(i) Context

10. The source argues that there is a pattern of criminalization targeting Indigenous defenders of human rights, land and territory, who are unjustly accused, arbitrarily arrested, tortured and subjected to mandatory pretrial detention. There have been at least seven cases since 2020 that reveal such a practice, with convictions that were based on evidence alleged to have been fabricated.

11. The broader context of this case is that of San Juan Cancuc, a municipality whose inhabitants have historically opposed megaprojects, including a hydroelectric dam and superhighway, and the militarization of their territory. The arrests of the five Indigenous persons are part of a policy of criminalizing territorial defence. Through such a pattern, the State seeks to instil fear in Indigenous communities, create a chilling effect and put an end to their mobilization.

12. The criminalization of defenders of Indigenous Peoples in Chiapas and in Mexico is intended to make an example of them for their defence of human rights, land and territory and is a sign of the structural racism that, in Chiapas, is mainly directed against the Tzeltal community.

*(ii) Arrests and detention**a. Mr. Santiz Cruz, Agustín Pérez Domínguez and Mr. Velasco Aguilar*

13. At approximately 7 a.m. on 29 May 2022, three National Guard trucks, three Mexican army trucks and some 20 municipal police trucks from San Juan Cancuc arrived in the Abajo neighbourhood of the municipality of San Juan Cancuc.

14. The source indicates that the three individuals were in the Abajo neighbourhood talking about an incident that had occurred the night before, involving a police officer who had fallen from a cliff, when the municipal police chief ordered his officers to arrest them.

15. The municipal police seized all three individuals and loaded them into the back of their trucks, without an arrest warrant. Witnesses to the arrests went to look for them shortly thereafter at the San Juan Cancuc municipal police headquarters but were told that there were no detainees there. They were not informed of the whereabouts of the three persons arrested.

16. The three detainees were transferred to San Cristóbal de las Casas and then brought before the Public Prosecutor's Office for Indigenous Justice at around 10 a.m. on Monday, 30 May 2022, which means that they had been detained, incommunicado, and disappeared for more than 24 hours, with no official record.

17. According to the source, the special police team leader claims that he arrested the three individuals at around 8.10 a.m. on 30 May in the San Diego neighbourhood of the municipality of San Cristóbal de las Casas – some two hours away from where the source says they were arrested – because they were “acting evasively and in a confrontational manner”; that when they were searched, three nylon bags with contents resembling marijuana were found; and that they were brought before the Public Prosecutor's Office for Indigenous Justice at 10.05 a.m. the same day.

18. On 30 May 2022, Mr. Santiz Cruz, while deprived of his liberty in a holding cell of the special police, at the headquarters of the regional police for Indigenous affairs, learned that the public prosecutor's office was believed to be preparing other warrants for his arrest, with the aim of keeping him deprived of his liberty forever.

19. On 31 May 2022, three witnesses, including Mr. Pérez Domínguez and Mr. Pérez Velasco, went to the same public prosecutor's office and said that they had observed the apparently illegal arrests of Mr. Santiz Cruz, Mr. Pérez Domínguez and Mr. Velasco Aguilar. According to the source, at 9 p.m. that same day, the three detainees were ordered to be “released”, without their lawyer being notified beforehand, and the investigation was closed.

20. As they were leaving the holding cells at the headquarters of the special police, Mr. Santiz Cruz, Mr. Pérez Domínguez and Mr. Velasco Aguilar were arrested pursuant to a warrant on a charge of aggravated homicide and transferred to State Social Rehabilitation Centre for Sentenced Persons No. 5 in San Cristóbal de las Casas.

21. The public prosecutor's office had apparently submitted a request for the arrest warrant to the due process judge on 31 May 2022 at 3:41 p.m. The judge issued the arrest warrant the same day at 3.40 p.m. – in other words, one minute before there was a request for it.

b. Mr. Pérez Velasco and Mr. Pérez Domínguez

22. At around 10 a.m. on 1 June 2022, one day after giving their witness statements, Mr. Pérez Domínguez and Mr. Pérez Velasco were arrested with an allegedly excessive use of force outside State Social Rehabilitation Centre for Sentenced Persons No. 5 in San Cristóbal de las Casas by officers with the special police of the Public Prosecutor's Office for Indigenous Justice and the state police. According to the source, they were not committing a crime, they were not told the reason for their arrest, and they were disappeared and held incommunicado for a couple of hours. The arrests were made in the presence of members of human rights organizations. The arrest warrant was issued by the due process judge at the request of the Public Prosecutor's Office for Indigenous Justice.

23. When Mr. Santiz, Mr. Pérez Velasco and Mr. Velasco Aguilar were transferred to State Social Rehabilitation Centre for Sentenced Persons No. 5, they were put into a van belonging to the special police, in which there were armed officers, and were not told where they were being taken. The source points out that this caused psychological harm, anxiety and anguish that persist to this day. It is also alleged that they were beaten on the head, chest and hands. The five accused are to this day being held at State Social Rehabilitation Centre for Sentenced Persons No. 5.

24. On 6 June 2022, the five Indigenous individuals were ordered to be placed in mandatory pretrial detention.

(iii) *Trial proceedings*

25. On 17 May 2023, the courts of the State of Chiapas handed down, at first instance, 25-year sentences for the five Indigenous persons.

26. On 4 June 2022, the due process judge was informed that the arrest warrant had been issued even before it had been requested by the public prosecutor's office, which demonstrated the judge's bias in the handling of the criminal proceedings. Nevertheless, the motion for the judge's recusal was denied.

27. At the oral hearing at first instance, the five defendants stated the facts relating to the arbitrary deprivation of their liberty in order to demonstrate that the entire case had been fabricated. Unfortunately, these facts were not considered in the judge's decision.

28. Once the judgment at first instance had been handed down, defence counsel for the five individuals filed a first appeal. On 22 August 2023, a hearing was held at second instance, where defence counsel for the five Indigenous persons set out for the court the alleged procedural violations that had been committed, demonstrating the shortcomings and contradictions in the evidence that the judge at first instance had allegedly ignored in convicting the five. However, the judges at second instance, instead of acquitting them, chose to order the case to be retried from the beginning of the stage of oral proceedings, which prolonged the time spent by the five individuals in mandatory pretrial detention by almost two years.

29. On 27 September 2023, defence counsel was notified that the indirect victim of the homicide had filed an application for *amparo* against the decision at second instance. According to the source, the Public Prosecution Service of Chiapas had been behind the application, naming 20 lawyers, at least six of whom had positions at the Service itself. The application for *amparo* was declared to be without merit and was interpreted as a tactic to delay the criminal proceedings.

30. The retrial was pushed back several months because of delays on the part of the Public Prosecution Service of Chiapas. Although the judiciary announced that the hearings would be resumed on 27 February 2024, they were postponed for a month. Finally, the case was retried from 13 March to 1 April 2024 before the court in San Cristobal de Las Casas. The source points out multiple inconsistencies in the evidence adduced by the public prosecutor's office, such as the lack of information on the victim's location during a key period, the absence of the protocol for first responders, failings in the determination of the cause of death, contradictions between the autopsy and the expert opinions, the lack of a formal identification of the deceased, experts' lack of professional credentials and medical findings that do not correspond with the content of the opinion delivered. In addition, the various reports are inconsistent with each other and with the body in the injuries that they describe.

31. The source indicates that, despite the foregoing, on 19 April 2024, the hearings were completed, and a new judgment was handed down at first instance, in which the five individuals were sentenced to 25 years' imprisonment. The five Indigenous persons and their legal counsel have filed an appeal.

32. At the domestic level, the five Indigenous persons have had an ineffective defence in the criminal proceedings against them, given that a judgment was handed down against them without account being taken of the violations that had occurred during their unlawful arrests. The source adds that, due to the strict interpretation of detention review, there were

obstacles in the criminal trial to there being an appropriate procedural stage for the examination of violations occurring at the time of arrest.

(iv) *Legal analysis*

33. The source alleges that the detention of the five Indigenous persons constitutes an arbitrary deprivation of liberty under categories I, II, III and V of the Working Group.

a. Category I

34. The source claims that the authorities never informed the Indigenous persons of the reasons for their arrests and did not translate any information into their language. They were then transferred to another location, removed from their jurisdiction and held incommunicado for a whole day. A day after the arrests, it was learned that they had been arrested for drug possession. That charge was not retained by the Office of the Attorney General of Chiapas. Subsequently, they were charged with aggravated homicide in connection with the death of a police officer.

35. The source indicates that the arrest warrant against the five individuals demonstrates the lack of impartiality in the justice system. The arrest warrant was issued at 3.40 p.m. on 31 May 2022, even though the public prosecutor's office filed its official request at 3.41 p.m. on 31 May 2022. The warrant was executed at different times: first, against Mr. Santiz Cruz, Mr. Pérez Domínguez and Mr. Velasco Aguilar, when they had been released following their arrests for drug possession, while they were leaving the premises of the public prosecutor's office; then, against Mr. Pérez Domínguez and Mr. Pérez Velasco, who were arrested while carrying out a peaceful demonstration for the others' release, outside the detention centre where they were being held.

36. The public prosecutor's office was unable to establish, either during the committal hearing or in the 19 April judgment, the deceased's cause of death. According to the source, the expert used by the public prosecutor's office is not a specialist and did not examine the body. This uncertainty prevents a determination as to whether there was a crime and, if so, who was responsible.

37. The source alleges that Mr. Santiz Cruz, Mr. Pérez Velasco and Mr. Velasco Aguilar were disappeared for one day, in San Juan Cancuc, on 29 May 2022, while Mr. Pérez Domínguez and Mr. Pérez Velasco were held incommunicado on 1 June 2022.

38. The source recalls that the Working Group has previously found that, in the context of arbitrary detention, holding persons incommunicado violates their right to challenge reasons for their arrest before a court under article 9 (4) of the Covenant.² The source also recalls that enforced disappearance, however brief it may be, and incommunicado detention affect in a number of ways the human rights set out in articles 6, 9, 14 and 16 of the Universal Declaration of Human Rights.

b. Category II

39. The five individuals were arrested because of their human rights activism and defence of land and territory as members of the human rights committee of the parish of San Juan Cancuc and of the organization Pueblo Creyente, and because of their opposition to the construction of a superhighway in their community's territory, which violates article 19 of the Covenant.

40. The source notes that, according to the Special Rapporteur on the situation of human rights defenders, human rights defenders are often criminalized through the justice system.³ The Inter-American Court of Human Rights has reiterated that States must not impose obstacles that hinder the work of defenders and must ensure that violations committed

² Opinion No. 71/2021, para. 68.

³ See [A/76/143](#).

against them are investigated seriously.⁴ In this case, the activism of the members of the human rights committee of San Juan Cancuc is the main reason for their criminalization, which took the form of their being sentenced to 25 years' imprisonment.

c. Category III

41. The source alleges that the rights of the five Indigenous persons were violated because they did not have an interpreter.

42. The source indicates that neither the five individuals nor their legal counsel had the opportunity to file an appeal against the violations that had occurred at the time the five were arrested, in violation of article 9 (4) of the Covenant.

43. The source recalls that the judicial branch of Mexico has established that due process judges cannot examine the circumstances of an arrest or prior events if an arrest warrant is being executed. In the adversarial criminal justice system of Mexico, due process judges can only examine the circumstances of an arrest carried out in a case of flagrante delicto or in an emergency, and not pursuant to an arrest warrant.⁵

44. Thus, detainees and their legal counsel are unable, during a review hearing, to raise claims regarding the unlawfulness or arbitrariness of an arrest. Nor can they allege these violations by means of an appeal or a petition for direct *amparo*, a special remedy for challenging judicial decisions in Mexico.

45. This has allowed the authorities to invent charges with unlawful evidence and make arrests that stigmatize or have a chilling effect on human rights defenders. The arrests are not subject to judicial oversight, which, according to the source, means that Mexico is in breach of article 9 (4) of the Covenant.

46. According to the source, the five individuals' legal counsel was subjected to constant harassment by the judge who presided over the oral proceedings various times.

47. With respect to mandatory pretrial detention, the source recalls that it is a constitutional measure pursuant to which judges must automatically order, without a request from the prosecution service or sufficient reasoning, that individuals be deprived of their liberty for the duration of the trial proceedings when they are charged with a crime considered serious.

48. The five individuals were allegedly deprived of their liberty under a measure of mandatory pretrial detention for more than two years, during which time they were held in the same facilities as persons who had already been found guilty in other cases. The Inter-American Court of Human Rights has already held that the measure is incompatible with treaty obligations because it violates human rights, including the presumption of innocence, and has described this measure as disproportionate and punitive.⁶

49. The source notes that the Government has treated the five Indigenous persons as if they were guilty of the crime, in violation of article 14 (2) of the Covenant, under which the presumption of innocence is made a guiding principle for judges and prosecutors are to remain objective in bringing criminal charges.

50. The source also alleges a violation of article 8 of the American Convention on Human Rights with respect to the right of a person to be assisted without charge by a translator or interpreter if he or she does not understand or speak the language of the court or tribunal; to receive detailed prior notification of the charges against him or her; to have adequate time and means for the preparation of his or her defence; and to be assisted by legal counsel of his or her own choosing, with whom he or she may communicate freely and privately. The failure to be provided with an interpreter violates the rights enshrined in

⁴ *Miembros de la Corporación colectiva de abogados "José Alvear Restrepo" v. Colombia*, Judgment, 18 October 2023, para. 477.

⁵ National Code of Criminal Procedure, art. 308.

⁶ *García Rodríguez et al. v. Mexico*, Judgment, 25 January 2023.

article 14 (3) of the Covenant and articles 7, 8 and 10 of the Universal Declaration of Human Rights.

d. Category V

51. The arrests of the five individuals were due to their activism as members of the human rights committee, specifically in a context where State officials are alleged to systematically engage in the criminalization of human rights defenders and defenders of land and territory in Chiapas.

(b) Response from the Government

52. The Working Group, in accordance with its methods of work, transmitted the source's allegations to the Government of Mexico on 22 July 2024 and requested it to submit a response by 19 September 2024. The Government requested, and was granted, an extension of the deadline for providing its response. The Working Group received the Government's response on 18 October 2024, by the established deadline.

53. In its response, the Government states that the arrests were made pursuant to a request filed by a prosecutor attached to the Prosecutor's Office for Indigenous Affairs, dated 31 May 2022, with the procedural and trial court of the judicial district of San Cristóbal, on suspicion of aggravated homicide.

54. According to records, on 29 May 2022, in the K'ani neighbourhood of the municipality of San Juan Cancuc, an individual was detained by community members who demanded 10,000 pesos to allow him to enter, as is customary in the area. As he was unable to pay, he was punched in the stomach and on the back. After reaching an agreement and being released, he was transported in a patrol car, where he said that he was in pain, and he later died.

55. Those facts led to the opening of criminal case No. 78/2022 and the issuance by the due process judge of an arrest warrant ordering that the five individuals be located and arrested.

56. After the end of the constitutional time limit and the conclusion of the legal hearings held during the initial proceedings, the five individuals were committed for trial for their probable involvement in the aggravated homicide and were therefore ordered to be placed in mandatory pretrial detention as a precautionary measure, with 30 calendar days granted for the investigation. An extension was requested, and 3 November 2022 was set as the deadline for concluding the investigation.

57. The legal proceedings took place and, after weighing each piece of evidence, on 17 May 2023, the trial judge convicted the detainees and sentenced each of them to 25 years' imprisonment. The judgment was appealed, which led to an order to for the case to be retried as from the hearing held on 15 May 2023 in order to allow the detainees to be assisted by an interpreter with demonstrated knowledge of the customs and traditions of the Tzeltal ethnic group and in order for the hearing to be conducted by a different judge. The judgment handed down by the new trial court judge contained a sentence of 25 years' imprisonment. An appeal was filed against this decision and, as a result, the appellants obtained a new judgment that modified the sentence and set the term of imprisonment at 18 years and 9 months.

58. The Government reports that the defendants filed another appeal on the grounds that their detention was arbitrary, but, after reviewing the documents in the case file, the judge examining the appeal denied it.

59. The government maintains that the detention was lawful and necessary, in line with the Criminal Code of the State of Chiapas, which sets terms of 25 to 50 years as the penalty for aggravated homicide. It asserts that the detainees had a defence lawyer and translations into the Tzeltal language from the outset.

(c) Additional comments from the source

60. The Working Group transmitted the Government's response to the source on 18 October 2024 and requested any final comments and observations, which were received on 30 October 2024.

61. The source's additional comments indicate that the Government was informed from the outset about the arbitrary detention of the five individuals but did not take account of the information or conduct an investigation. Instead, it continued with the sham trial against the five detainees.

62. The source states that violations of human rights and of the presumption of innocence have been documented, and contradictions have been identified in the evidence used in the trial. An expert witness revealed inconsistencies, such as the lack of precision with respect to the time of death of the person killed and discrepancies in the autopsies, demonstrating the unreliability of the evidence in the investigation.

2. Discussion

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

64. 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 requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.⁷

(a) Category I

65. The source reports that Mr. Santiz Cruz, Mr. Pérez Domínguez and Mr. Velasco Aguilar were arrested on 29 May 2022 by the army, the National Guard and the municipal police without an arrest warrant. They were disappeared – with no information about their arrests – until 30 May, when they were brought before the prosecution service on a trumped-up charge of drug possession. When released, on 31 May, they were arrested again, this time for aggravated homicide. The source states that they were never given information in their language, and that the arrest warrant had been issued before it had been officially requested.

66. Mr. Pérez Domínguez and Mr. Pérez Velasco were arrested on 1 June 2022 during a peaceful demonstration for the others' release, and their arrests did not fulfil the legal requirements. The source states that it was not a case of *flagrante delicto*. The Government states that the arrest warrant was issued on 31 May and that, on 1 June, the five persons arrested were brought before the authorities for their arraignment hearing.

67. The Working Group has stated that, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case. This is typically⁸ done through an arrest warrant or a court order, or an equivalent document.⁹ The reasons for arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual details to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.¹⁰

68. Detained persons have the right to be promptly informed of the charges against them. This is inherent in article 9 of the Universal Declaration of Human Rights and principles 2 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. These provisions also require that the procedures for carrying out legally authorized deprivation of liberty should be established by law and that States parties should ensure compliance with them, including by specifying when an arrest

⁷ A/HRC/19/57, para. 68.

⁸ Opinions No. 30/2018, para. 39; No. 3/2018, para. 43; and No. 88/2017 para. 27. In cases of arrests made in *flagrante delicto*, there will typically not be an opportunity to obtain a warrant.

⁹ Opinions No. 18/2023, para. 93; and No. 30/2017, paras. 58 and 59.

¹⁰ Opinion No. 85/2021, para. 69.

warrant is required.¹¹ If these procedures are not respected, a detention is arbitrary and seriously undermines the ability to conduct a proper legal defence.

69. Taking note of the source's submissions and the Government's response, the Working Group is not convinced that the authorities complied with legal procedures in carrying out the arrests of the five individuals. First, in its response, the Government does not refer to the source's claims regarding the deprivation of Mr. Santiz Cruz's, Mr. Pérez Domínguez's and Mr. Velasco Aguilar's liberty for alleged drug possession. The source, on the other hand, has attached witness statements and an application for *amparo* dated 31 May 2022 that Mr. Santiz Cruz filed with the district trial and *amparo* court, which set out the events surrounding his arrest and those of his companions on 29 May 2022. In its response, the Government also fails to respond to the source's allegations that the arrest warrant was issued by the judge prior to the request by the public prosecutor's office. Nor does it make any reference to the failure to show the five individuals the arrest warrant at the time of their arrests or to inform them of the reason for their arrests. The Government simply states that the arrest warrant was issued. Accordingly, the Working Group is of the view that the foregoing constitutes a violation of article 9 (1) and (2) of the Covenant and article 9 of the Universal Declaration of Human Rights.

70. The source notes that the five detainees were unable to challenge the violations during their detention, as judges cannot review events preceding an arrest warrant, limiting access to justice. The Government provides clarification only as to judicial oversight in cases where persons are caught committing an offence, without specifying how the lawfulness of arrests made pursuant to a court order is verified.

71. The Working Group recalls that the ability to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention and to obtain, without delay, appropriate and accessible remedies is a non-derogable right under international law.¹² According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge must be brought promptly before a judge, who will perform his or her judicial duties. As the Human Rights Committee has noted, 48 hours is normally sufficient to satisfy the requirement of bringing a detainee promptly before a judge or other officer authorized by law following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.¹³ Article 9 (4) of the Covenant guarantees the right to challenge the lawfulness of detention before a court.¹⁴ Judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in order to ensure that detention has a legal basis.¹⁵

72. In the light of the information received from the source and Government, the Working Group is not convinced that, upon their arrest, the five individuals were promptly brought before a judge for a review of the lawfulness of their detention. The foregoing violates article 9 (3) and (4) of the Covenant.

73. The source affirms that on 6 June 2022, the five Indigenous persons were ordered to be placed in mandatory pretrial detention. The Government's response confirms this information.

74. According to article 9 (3) of the Covenant, pretrial detention must be the exception and not the rule and should be ordered for as short a time as possible.¹⁶ It must be based on an individualized determination that it is reasonable and necessary for such purposes as to

¹¹ Human Rights Committee, general comment No. 35 (2014), para. 23.

¹² 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, principle 4, paras. 4 and 5. The right to challenge the lawfulness of detention before a judicial authority is considered part of customary international law, which applies regardless of whether a State is Party to the Covenant. See also [E/CN.4/2005/6/Add.4](#), paras. 28 and 52; and opinion No. 15/2019, para. 28.

¹³ General comment No. 35 (2014), paras. 32 and 33.

¹⁴ See opinions No. 25/2021, No. 45/2019, No. 44/2019, No. 9/2019 and No. 35/2018.

¹⁵ [A/HRC/30/37](#), para. 3; and [CAT/C/VNM/CO/1](#), para. 24.

¹⁶ Opinion No. 64/2020, para. 58; and [A/HRC/19/57](#), paras. 48–58.

prevent flight, interference with evidence or the recurrence of crime.¹⁷ Courts must consider whether alternatives to pretrial detention, such as bail, would render detention unnecessary.¹⁸ In determining whether the conditions governing pretrial detention have been met, the Working Group examines whether the national courts have taken into account the particular circumstances of the person concerned but does not check whether there are risks that would make pretrial detention necessary.¹⁹

75. The Working Group, following its visit to Mexico in September 2023, reiterated that mandatory pretrial detention violates the right to liberty and can affect other rights, such as the presumption of innocence and equality before the law²⁰. The Inter-American Court of Human Rights also considered it incompatible with the obligations of Mexico and requested its elimination.²¹ The Working Group recommended that Mexico repeal the provisions on the measure and use pretrial detention only where there has been an individualized assessment that demonstrates risk of flight, serious recidivism or tampering with evidence or witnesses.²² In the case at hand, the available information does not indicate that those situations would apply to any of the five detainees.

76. The Working Group notes that alternatives to pretrial detention were not considered in any of the cases. Moreover, none of the detainees had their detention reviewed to determine whether it was appropriate, justified and substantiated, even though article 9 (3) of the Covenant requires that the justification for pretrial detention be analysed in a reasoned judicial decision in every case. According to the documents examined, this was not done.

77. In addition, the five individuals were detained under a measure of mandatory pretrial detention from 2022 until the sentence against them was handed down in 2023. The Working Group emphasizes that, despite the Government's assertions that the arrest and deprivation of liberty were carried out in accordance with national law, the arrests must also comply with the relevant provisions of international law. The Working Group's mandate requires it to examine whether this is in fact the case.

78. According to the source, Mr. Santiz Cruz, Mr. Pérez Domínguez and Mr. Velasco Aguilar were subjected to enforced disappearance for 24 hours when they were loaded into the back of a police truck on 29 May 2022. Witnesses to the arrests went to look for them shortly thereafter at the San Juan Cancun municipal police headquarters but were told that there were no detainees there. They were not informed of the whereabouts of the three persons arrested. The Government did not address these allegations.

79. The Working Group recalls that a deprivation of liberty entailing a wilful refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention has no valid legal basis under any circumstances. In addition, it is inherently arbitrary, as it places the person outside the protection of the law, in violation of article 16 of the Covenant and article 6 of the Universal Declaration of Human Rights.²³ The Government's failure to notify the detainees' families of their arrest and the location of their detention was also a violation of principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Furthermore, the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances recall that enforced disappearance constitutes a grave human rights violation regardless of its duration.²⁴

80. Being of the view that the Government failed to refute the source's allegations, the Working Group concludes that Mr. Santiz Cruz, Mr. Pérez Domínguez and Mr. Velasco Aguilar were subjected to enforced disappearance, in breach of article 9 (1) of the

¹⁷ Human Rights Committee, general comment No. 35 (2014), para. 38.

¹⁸ Ibid.

¹⁹ Opinion No. 15/2022, para. 66.

²⁰ See [A/HRC/57/44/Add.1](#).

²¹ *García Rodríguez et al. v. Mexico*, Judgment, 25 January 2023.

²² See [A/HRC/57/44/Add.1](#).

²³ Opinions No. 56/2023, para. 92; and No. 13/2020, para. 51.

²⁴ [CED/C/11](#), para. 15.

Covenant. Enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.²⁵

81. In the light of all the foregoing and given the violation of articles 3 and 9 of the Universal Declaration of Human Rights and of article 9 of the Covenant, the Working Group considers that the detention of the five individuals is arbitrary under category I.

(b) Category II

82. The source has indicated that the detention of the five individuals falls under category II because the detention stems from the exercise of fundamental rights or freedoms, including the rights to equality before the law, freedom of movement, freedom of expression, freedom of assembly and association and freedom to participate in public affairs, all of which are guaranteed by the Universal Declaration of Human Rights and the Covenant. The Government, in its response, states that the detention of the five individuals did not result from their exercise of their rights and freedoms but that, rather, they had been detained in furtherance of the State's obligation to punish acts that are contrary to the law.

83. The Working Group takes account of the source's assertion that all the detainees are from the municipality of San Juan Cancuc, the inhabitants of which have historically opposed megaprojects, such as a hydroelectric dam and a superhighway, and the militarization of their territory. It also takes into account that one of the detainees is the president of the Comité de Derechos Humanos San Juan Evangelista de Cancuc, an organization that since its founding in 2010 has engaged in efforts to defend the land and territory and has mainly opposed the construction of a stretch of highway between San Cristóbal de las Casas and Palenque and the presence in the municipality of the National Guard and army. That committee was also active in mobilizing against the sale of alcohol and drugs in the seat of the municipal government.

84. The Working Group recalls that, according to the United Nations Declaration on the Rights of Indigenous Peoples, Indigenous persons have the right to life, integrity, liberty and security and must not be subjected to violence (art. 7). The Declaration also applies existing human rights to the specific context of human rights defenders. The Group recognizes the detainees as human rights defenders and stresses that their work is essential to democracy.

85. Furthermore, the obstacles and restrictions faced by environmental human rights defenders have been of particular interest to both the Working Group and the Human Rights Council.²⁶ The latter has adopted a resolution recognizing the importance of environmental human rights defenders and their protection, expressing grave concern about their situation around the world, strongly condemning all violations or abuses against environmental human rights defenders by State and non-State actors, and stressing that such acts may violate international law and undermine sustainable development at the local, national, regional and international levels.²⁷

86. The Special Rapporteur on the situation of human rights defenders noted that in almost all Latin American countries both government and corporate actors are involved in crimes against human rights defenders.²⁸ In addition, the source states, and the Working Group can observe, that the detainees are members of an Indigenous People that is an ethnic, religious and linguistic minority and that they have dedicated their lives to the defence of their territory, even though they do not receive equal protection under the law and their people are not protected against persecution, forced displacement or genocide. It is also observed that they are not guaranteed the rights to take part in the Government, to defend their communities' lands, to exercise self-determination or to define development on

²⁵ See opinions No. 53/2022, No. 38/2021, No. 77/2020, No. 13/2020, No. 11/2020, No. 6/2020 and No. 5/2020. See also Human Rights Committee, general comment No. 35 (2014), para. 17.

²⁶ Opinion No. 3/2020; and [A/HRC/54/51](#), paras. 55 and 56.

²⁷ Resolution 40/11.

²⁸ See [A/71/281](#).

their own terms, on the basis of their world view as an Indigenous People of the Tzeltal Maya culture.

87. The Special Rapporteur also notes that defenders of the human rights of Indigenous persons face serious risks, as they live in territories rich in natural resources that are coveted by both State and non-State actors. Indigenous Peoples often oppose encroachment on their lands and natural resource extraction, megaprojects and deforestation on their lands and territories, arguing that these activities compromise their traditional livelihoods, endanger the environment and ultimately are unsustainable. Many Indigenous environmental activists promote alternative visions of development, with a focus on sustainability, human rights and the rights of Mother Earth, including the concept of *Vivir Bien* (the notion of peaceable, harmonious, ethical and environmentally-sustainable living that underpins the Indigenous cosmovision).²⁹

88. In addition, the Working Group emphasizes that, under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant, everyone has the right to freedom of expression, which includes the right to impart information and ideas of all kinds, whether orally or in any other form. The exercise of this right may be subject only to such restrictions as are expressly provided for by law and necessary to ensure respect for the rights or reputations of others, or to protect national security, public order or public health or morals. The Working Group is of the view that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person and constitute the cornerstone of every free and democratic society. They are the basis for the full enjoyment of a wide range of other human rights, such as the right to political participation, as set forth in article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant.

89. In the case at hand, it is clear to the Working Group that the basis for the arrests and detention of the five Indigenous persons was their exercise of their rights and freedoms (articles 19, 21, 22, 25 and 27 of the Covenant) and not the alleged commission of a crime. It is worth mentioning that the Working Group agrees with the source that the public prosecutor's office was unable to establish, either during the committal hearing or in the judgment, the deceased's cause of death, and did not provide evidence with a sufficient technical basis to explain the cause of death of the police officer of whose murder the five defendants are suspected.

90. Furthermore, the source has informed the Working Group that the expert used by the public prosecutor's office did not have specialized training and did not examine the body directly. The lack of certainty prevents a determination as to whether there was a crime, a specific act, responsibility or a degree of responsibility, which is essential for the prosecution of a criminal case.

91. In the light of the foregoing, the Working Group find that the detention of the five Indigenous persons is arbitrary under category II.

92. It also decides to refer the case to the Special Rapporteur on the rights of Indigenous Peoples, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human right to a clean, healthy and sustainable environment.

(c) Category III

93. In the light of the Working Group's considerations under category II, where it concluded that the detention of the five individuals is arbitrary because it results from a violation of the human rights of human rights and environmental defenders and from the exercise of the rights to freedom of opinion, expression, association and participation and to the active exercise of political rights in Mexican society, the Working Group considers the detention and the trial to be disproportionate and unjustified. However, given that criminal proceedings have been taken against them and considering the allegations of the source, the Working Group will proceed to determine whether fundamental elements of a fair,

²⁹ Ibid., para. 24.

independent and impartial trial have been respected in the course of the judicial proceedings.

94. The source has argued that Mr. Santiz Cruz, Mr. Pérez Domínguez and Mr. Velasco Aguilar, at the time of their first arrest, were subjected to enforced disappearance for 24 hours, which prevented them from being assisted by a lawyer of their choosing from the time of their arrest. The Government does not refer to these allegations in its response. The source also alleges that the five Indigenous persons did not have an interpreter to assist them in their defence. In its response, the Government states that the detainees were assisted by legal counsel and a translator working in the Tzeltal language from the outset of the proceedings.

95. The right to legal assistance is an essential element of the right to a fair trial, as it serves to ensure that the principle of equality of arms is duly observed.³⁰ The Working Group recalls that access to counsel is a right enshrined under article 14 (3) of the Covenant, principles 11 (2), 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 61 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and reinforced by article 11 of the Universal Declaration of Human Rights. Article 14 (3) (b) of the Covenant guarantees all persons charged with a criminal offence the right to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice throughout the period of their detention, in particular immediately after their apprehension, and that such access shall be provided without delay.³¹

96. The Working Group, taking into account its previous conclusion that Mr. Santiz Cruz, Mr. Pérez Domínguez and Mr. Velasco Aguilar were subjected to enforced disappearance following their arrests, considers that the authorities violated their right to have access to a lawyer immediately upon arrest, in violation of article 14 of the Covenant.

97. With regard to the source's allegation that, from the time of their arrests, the five individuals did not have access to an interpreter and that the information in the judicial proceedings was not provided in their native language, the Working Group notes that, according to the information provided by the source and the Government, following an appeal filed by the detainees against the judgment at first instance, the case was ordered to be retried as from the hearing of 15 May 2023 in order to allow the detainees to be assisted by an interpreter with demonstrated knowledge of the customs and traditions of the Tzeltal ethnic group. In the light of the foregoing, the Working Group concludes that, following their arrest, the five individuals were indeed not guaranteed the assistance of an interpreter, in violation of article 14 (3) (f) of the Covenant.

98. In the light of the foregoing, the Working Group considers that the detention of the five individuals is arbitrary under category III, as the State failed to comply with the international standards on the right to a fair and impartial trial enshrined in the Universal Declaration of Human Rights and the Covenant.

(d) Category V

99. The Working Group is convinced that, in the case at hand, the five individuals were detained and are being discriminated against because of their ethnicity and their status as human rights and environmental defenders. As part of this discrimination, they even faced rejection for their lack of fluency in Spanish, which was particularly evident in the authorities' failure to provide an interpreter for the five defendants, knowing that they were not fluent in the language used by the court. The violation of the rights and guarantees set forth in the Universal Declaration of Human Rights and the Covenant is compounded by

³⁰ See, for example, opinion No. 35/2019.

³¹ [A/HRC/45/16](#), paras. 51–53. See [A/HRC/30/37](#), annex, paras. 67–71. See also opinion No. 38/2021, paras. 90 and 91.

the violation of the rights guaranteed under the United Nations Declaration on the Rights of Indigenous Peoples.

100. The Working Group is concerned that the distinguishing feature in this discrimination is the fact that the detainees are members of the Tzeltal Maya Indigenous People and committed members of the organization Pueblo Creyente, in the parish of San Juan Cancuc, which is very active in the defence of human rights in general and of environmental, Indigenous and territorial rights in the region.

101. 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 the five individuals. The Working Group therefore considers their detention to be arbitrary under category V.

3. Disposition

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

The deprivation of liberty of Manuel Santiz Cruz, Agustín Pérez Domínguez, Juan Velasco Aguilar, Martín Pérez Domínguez and Agustín Pérez Velasco, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11, 20 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 16, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

103. The Working Group requests the Government of Mexico to take the steps necessary to remedy the situation of the five individuals 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.

104. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the five individuals immediately and accord them 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.

105. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the five individuals and to take appropriate measures against those responsible for the violation of their rights.

106. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the rights of Indigenous Peoples, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human right to a clean, healthy and sustainable environment.

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

4. Follow-up procedure

108. 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 the five individuals have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to the five individuals;

(c) Whether investigations have been conducted into the violation of the rights of the five individuals and, if so, the outcome of the investigations;

(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.

109. 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.

110. 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.

111. 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.³²

[Adopted on 4 April 2025]

³² Human Rights Council resolution 51/8, paras. 6 and 9.