



# General Assembly

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session, 12–16 August 2019

#### Opinion No. 40/2019 concerning Juan Carlos Requesens Martínez (Bolivarian Republic of Venezuela)

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 33/30 of 30 September 2016.
2. In accordance with its methods of work (A/HRC/36/38), on 19 October 2018 the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Juan Carlos Requesens Martínez. The Government replied to the communication on 18 January 2019, after requesting, and being granted, an extension of the deadline for submitting its reply. 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).



## Submissions

### *Communication from the source*

4. Juan Carlos Requesens Martínez is a young Venezuelan politician, aged 29, and a member of the National Assembly for the State of Táchira, representing the Primero Justicia political party.

5. The source indicates that Mr. Requesens was the president of the Federation of University Centres of the Central University of Venezuela, the Student Parliament and the National Federation of Students. As a member of the National Assembly, he was chair of the Standing Committee on Integrated Social Development and is a member of the Standing Committee on Domestic Policy.

6. During the first half of 2017, Mr. Requesens, together with other politicians, supported a national movement of protests and demonstrations. According to the source, the reasons for the protests were the failure to recognize the legitimacy and powers of the legislature and a complex economic, political and social crisis in the country. During the protests, Mr. Requesens was a victim of physical assaults by members of the security forces and armed civilian groups or “colectivos”.

7. The source reports that, on the night of 7 August 2018, alleged officials of the Bolivarian National Intelligence Service, who did not identify themselves, accosted Mr. Requesens and a member of his family in his home. The officials arrested Mr. Requesens without showing a warrant and took him to El Helicoide, the Intelligence Service’s headquarters.

8. Later that night, Mr. Requesens underwent a medical examination and was found to be in good health. His family had no contact with him from that time until his arraignment six days later, when only his lawyer had limited access to him.

9. According to the source, at the time of Mr. Requesens’s arrest, the President of the Republic spoke in public about the attempt on his life that had occurred on 4 August 2018. The President played and commented on a number of videos in which a member of the armed forces alleged that Mr. Requesens had collaborated in the planning and execution of the attack. The President reportedly accused Mr. Requesens of terrorism, illicit financing, murder, public incitement to commit an offence, sedition and treason.

10. The source points out that the criminal investigation concerning Mr. Requesens and his indictment and detention were revealed publicly by the President, in violation of the constitutional powers of other organs, for clearly political and propaganda purposes aimed at criminalizing dissent and persecuting opposition leaders.

11. Given the lack of information about Mr. Requesens’s arrest, on 8 August 2018 his family filed a complaint with the Chief Prosecutor’s Office of the Caracas Metropolitan Area. The violations alleged in the complaint included: (a) unlawful restriction of liberty by a public official; (b) wrongful admission into, and retention in, a prison establishment; and (c) the enforced disappearance of Mr. Requesens. It has not been possible to confirm whether the Prosecutor’s Office dealt with the complaint properly.

12. As a member of the National Assembly, Mr. Requesens, in accordance with article 200 of the Constitution, enjoys parliamentary immunity and is entitled to a preliminary merits hearing, as provided for in article 266 (3) of the Constitution, article 37 of the Code of Criminal Procedure and article 112 of the Organic Act on the Supreme Court. In order to initiate criminal proceedings against, and order the detention of, a member of the Assembly, the following conditions must be met: (a) a request to that effect must be made by the Attorney General; (b) the Supreme Court must authorize a preliminary merits hearing; (c) the National Assembly must lift the immunity of the member concerned, authorize his or her detention and the continuation of the proceedings; and (d) the Supreme Court must subsequently order the continuation of the trial. In cases of flagrante delicto, the member concerned may be placed under house arrest pending these procedures.

13. On 8 August 2018, the Plenary Chamber of the Supreme Court rendered a judgment, which was not published or notified until 13 August 2018. According to the judgment, which set out all the Attorney General’s preliminary charges, there was sufficient evidence to conclude that Mr. Requesens could have committed the following offences: (a)

continuing incitement to public disorder; (b) treason; (c) attempted murder of the President of the Republic; (d) attempted murder with malicious intent and out of futile motives; (e) terrorism; (f) financing of terrorism; and (g) criminal association.

14. The Supreme Court found that there was a situation of flagrante delicto in the present case since the offences are continuing in nature. According to the source, the finding, which is based on an arbitrary precedent, was made so as to preclude a preliminary merits hearing and enable Mr. Requesens to be arrested without a warrant. The source states that the Court erred in finding that there was a situation of flagrante delicto; according to domestic legislation, the term “in flagrante delicto” is applied to an offence for which the offender is discovered or caught at the time of its commission.

15. It is alleged that the powers of the National Assembly to decide on the lifting of immunity were usurped, inasmuch as the proceedings were referred to the National Constituent Assembly in order for it to waive immunity. The source states that, on 8 August 2018, the day after Mr. Requesens was detained, the National Constituent Assembly, which had usurped the functions of the National Assembly, decided to waive his immunity.

16. The source reports that, on 9 August 2018, Mr. Requesens’s family members submitted a letter to the Director of the Bolivarian National Intelligence Service in which they requested that he should be allowed to receive medicines and special food. Mr. Requesens needed these items because he had previously undergone an operation. Mr. Requesens’s relatives took him food every day, which they left at the entrance of the Service’s headquarters; however, they were unable to confirm that he received it. The Service did not allow medicines to be taken directly into the building.

17. On the morning of 10 August 2018, the Vice-President and Minister of Communications said in a press conference that it would be proved that Mr. Requesens and another member of the National Assembly had been directly involved in the planning and execution of the attempted assassination of the President. He claimed that Mr. Requesens had been ordered by another member of the National Assembly to collaborate in the planning of the alleged attack.

18. The source indicates that the Vice-President showed a video in which Mr. Requesens allegedly confessed to being involved in the attack. The video was made while Mr. Requesens was being detained in strict custody at the headquarters of the Bolivarian National Intelligence Service, with no lawyers or public prosecutor present. The video, which gave no indication as to when or under what conditions it had been recorded, was the first opportunity to assess Mr. Requesens’s condition following his detention. The nature of the video and the way in which it was released indicate that Mr. Requesens’s statement was obtained under duress. The source claims that this amounts to a violation of due process guarantees, including article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The source points out that this is not an isolated case but a practice frequently used by State security organs.<sup>1</sup>

19. Also on 10 August 2018, at approximately 3 p.m., Mr. Requesens was transferred to the criminal courts for a first appearance before a judge in an operation involving the presence of several heavily armed officials. The source claims that he was brought before the judge after the constitutional and statutory period of 48 hours had elapsed.

20. Five hours after he had been transferred, the hearing before First Instance Supervisory Court No. 20, which had been assigned to a provisional judge, was postponed until Monday 13 August 2018. Mr. Requesens’s family members and lawyer had no real opportunity to ascertain his physical condition and integrity or to communicate with him.

21. On 10 August 2018, another video was posted on social media showing Mr. Requesens in a deplorable state and unaware of the orders he was obeying, from which it can be reasonably presumed that he was under the influence of some type of drug or chemical substance that had been administered to him. It is claimed that this constitutes a

<sup>1</sup> Office of the United Nations High Commissioner for Human Rights, *Human Rights Violations in the Bolivarian Republic of Venezuela: a downward spiral with no end in sight* (2018), p. 28; Inter-American Commission on Human Rights, *Democracy and Human Rights in Venezuela*, (OEA/Ser.L/V/II. Doc. 54, 30 December 2009), paras. 357 and 358.

violation of the prohibition of torture, aggravated by the fact that the person concerned had been deprived of his liberty and was being held in isolation and without due process.

22. On 11 August 2018, the President commented publicly on the video that had been published the previous day in an attempt to explain and justify the images, claiming that it showed a medical examination during the course of which Mr. Requesens had become agitated. The President ordered an investigation into the leaking of the video.

23. The source points out that the mere recording of a video of a detained person showing that person to be mentally disoriented constitutes a form of torture. When a person is held in detention, his or her conditions of detention are the responsibility of the State; in the present case, Mr. Requesens's conditions of detention amount to a violation of the integrity of the person and do not constitute humane treatment, thus violating the rights enshrined in article 5 of the Universal Declaration of Human Rights, articles 7 and 10 of the International Covenant on Civil and Political Rights and articles 1, 2 and 16 of the Convention against Torture.

24. On 12 August 2018, Mr. Requesens spoke by telephone with his family members and asked them for some personal items and food. Despite the telephone call, his physical condition remained unknown.

25. The postponed first hearing before the judge was scheduled to take place at 3 p.m. on 13 August 2018. That afternoon, Mr. Requesens was transferred to the court, with the hearing beginning at approximately 7 p.m.; it ended at 1 a.m. the following day. For the first time since Mr. Requesens's arrest, his defence counsel was able to meet with him briefly; he could see that he had been beaten and ill-treated, that he was agitated and that had clearly been subjected to psychological pressure and torture.

26. Mr. Requesens's counsel's request for a certified copy of his notification of appointment was denied, thus making it impossible for him to be officially recognized as defence counsel and preventing him from seeking appropriate remedies and visiting his client. Both he and members of Mr. Requesens's family were denied documents crucial to the case.

27. The source further points out that, at the start of the hearing, a relative of Mr. Requesens tried to enter the court room, but members of the National Guard prevented him from doing so and told him that he needed authorization from the Bolivarian National Intelligence Service.

28. During the hearing, Mr. Requesens told his counsel that he had no recollection of having recorded a video, thereby confirming that he had been in a state of unconsciousness, from which it can be concluded that he was under the influence of some type of drug or chemical substance.

29. The Office of the Attorney General charged Mr. Requesens with: (a) continuing incitement to public disorder; (b) attempted murder of the President; (c) attempted murder with malicious intent and out of futile motives of seven members of the Bolivarian National Guard, the military high command and government officials; (d) treason; (e) criminal association; and (f) unlawful possession of weapons and munitions. The Attorney General's Office asked that he should be remanded in custody during the trial and sought: (a) a prohibition on the sale or encumbering of his property; (b) the freezing of his bank accounts and financial instruments; and (c) the seizure of his movable and immovable property.

30. During the hearing, Mr. Requesens pleaded not guilty and denied making the alleged confession that the Government had made public, demonstrating that the statements shown in the video had been obtained under duress and without due process. The reading of the judgment was set for 14 August 2018.

31. On 14 August 2018, the Attorney General spoke to the media about the charges and stated that Mr. Requesens had been deprived of his liberty, without his even being officially notified.

32. On 14 August 2018, at approximately 3 p.m., Mr. Requesens was again transferred to the court house. At about 10 p.m., the Court orally issued a custodial sentence. At the time of submission of the complaint, no document containing the measure imposed on Mr. Requesens had been published.

33. Since Mr. Requesens first appeared in court, his family members and lawyers have had no contact with him, despite going daily to the headquarters of the Bolivarian National Intelligence Service. Mr. Requesens has been held incommunicado and in isolation, and security officials have provided no information on his condition or his conditions of detention.

34. In the source's view, it is clear that if Mr. Requesens's arbitrary detention continues, the serious harm already caused by the violation of his rights may be compounded, even to the point of his life being put at risk. In view of the foregoing, on 16 August 2018, Mr. Requesens's family lodged a complaint with the Ombudsman's Office requesting that the Office seek measures for the protection of his human rights.

35. On 4 September 2018, Mr. Requesens's family filed a further complaint concerning human rights violations to the Directorate for the Protection of Fundamental Rights of the Chief Prosecutor's Office of the Caracas Metropolitan Area.

36. The source states that account should be taken of the continuing grave deterioration in judicial independence and separation of powers in the Bolivarian Republic of Venezuela, given that the judiciary suffers from serious structural defects that undermine its impartiality and independence. The source refers to reports issued by the Human Rights Council, the Office of the United Nations High Commissioner for Human Rights, the Organization of American States and the Inter-American Commission on Human Rights and judgments of the Inter-American Court of Human Rights.

37. The source points out that, since January 2016, the Supreme Court has rendered more than 60 judgments that undermine the constitutional powers of the National Assembly and seek to do away with the legislature and, with it, representative popular sovereignty.

38. According to the source, the lack of independence and impartiality of the judicial system can be seen in the high number of provisional judges – such as the judge leading the proceedings against Mr. Requesens – who have no security of tenure. The same lack of security applies to Public Prosecution Service prosecutors, since “the capacity or willingness of public prosecutors to initiate criminal proceedings is allegedly limited due to the lack of transparency in their appointments, instability of tenure, and the absence of technical criteria to govern the assignment of criminal investigations”.<sup>2</sup>

39. The source draws attention to the recommendations made to the Bolivarian Republic of Venezuela concerning judicial independence within the framework of the universal periodic review, many of which were rejected. The Human Rights Committee has expressed its concern about the lack of independence of the judiciary in view of the practice of appointing the country's judges and prosecutors on a provisional basis.

40. The source adds that the Supreme Court has refused to refer the case against Mr. Requesens to the National Assembly for a decision on his parliamentary immunity, as it is required to do under the Constitution. In fact, the Court submitted the case to the National Constituent Assembly, which decided to lift his immunity the same day as it received the request, one day after Mr. Requesens's arrest. The source claims that the convening and inauguration of the National Constituent Assembly were unconstitutional and have not been recognized by the international community.

41. The source points out that the Attorney General, who brought the charges against Mr. Requesens, was appointed unconstitutionally by the National Constituent Assembly and that he does not meet the requirements set for the post, owing to his ties with the Government.<sup>3</sup>

<sup>2</sup> Inter-American Commission on Human Rights, *Situation of Human Rights in Venezuela. Democratic Institutions, the Rule of Law and Human Rights in Venezuela* (OEA/Ser.L/V/II. Doc. 209, 31 December 2017), para. 134.

<sup>3</sup> He was the Governor of the State of Anzoátegui (2004 to 2012), a member of the National Assembly (2000 to 2004), a member of the National Constituent Assembly (1999) and a member of the now defunct Congress of the Republic; in the elections for all the above posts, he had ties with the governing party.

42. Attention is also drawn to the cases of other opponents who have been subjected to arbitrary detention and forced exile, deprived of their political rights and had their parliamentary immunity violated and stripped.

43. The source emphasizes that Mr. Requesens's case forms part of a systematic pattern of arbitrary detentions intended to persecute and intimidate political dissidents for exercising their rights, which has resulted in a multiple violations of various human rights, such as the rights to personal freedom and integrity, freedom of expression, political participation, assembly, demonstration, a fair trial and due process.

44. The source states that Mr. Requesens was deprived of his liberty because of his views and acts and his membership of the National Assembly and of the political opposition. The exercise of his constitutional functions as a parliamentarian and his role as a political representative and his criticism of the Government were the reasons for his persecution, harassment and detention.

45. The above is compounded by the political persecution to which he has been subjected, as reflected by the statements made by the President, the Vice-President of Communications and the Attorney General of the Republic, who declared Mr. Requesens to be guilty and publicly asserted his alleged responsibility, even though he had not been convicted.

46. In the source's view, Mr. Requesens's solitary confinement during his detention, the alleged acts of torture and the cruel, inhuman and degrading treatment to which he was subjected, and the serious due process violations that occurred constitute sufficient evidence of arbitrary detention. The source submits that Mr. Requesens's detention falls under categories I, II, III and V.

#### Category I

47. The source claims that, for a person to be deprived of his or her liberty in accordance with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and domestic law, a fair and legitimate court order is required. Mr. Requesens was detained without a court order. As the legal requirements were not met, the case falls under category I.

48. Given that Mr. Requesens is a member of the National Assembly, additional legal requirements should have been met in order for his detention to be lawful.

49. Under Venezuelan legislation, a member of the National Assembly may be arrested only if: (a) the Attorney General has submitted a prior request to that effect to the Supreme Court; (b) the Supreme Court authorizes a preliminary merits hearing; (c) the National Assembly lifts the parliamentary immunity of the member concerned and authorizes his or her detention and the continuation of the proceedings; and (d) the Supreme Court subsequently orders the member's detention and trial. In the present case, none of these requirements was met, since Mr. Requesens was arrested without a warrant.

50. Furthermore, Mr. Requesens was arrested without there being well-founded evidence of his involvement in the act in question. The Supreme Court merely indicated subsequently that no arrest warrant was required since Mr. Requesens was allegedly arrested in flagrante delicto, which meant that there was no need for a preliminary merits hearing. All of the foregoing was based on: (a) undisclosed investigative actions; (b) comments and statements made by Mr. Requesens in the legitimate exercise of his right to freedom of opinion and expression; and (c) statements supposedly made by an alleged former military officer and obtained while he was in detention and without regard for due process guarantees.

51. In view of the foregoing, the source submits that in the present case it is clearly impossible to invoke any legal basis justifying the deprivation of liberty, which thus comes under category I.

#### Category II

52. The source alleges that Mr. Requesens was arrested for exercising his rights to freedom of expression, freedom of thought and political participation. In the criminal proceedings against him, it was claimed that the statements and critical comments made by

him about the Government constitute criminal offences. Such statements reflect Mr. Requesens's critical views and are in no way connected with the alleged attack. However, the Attorney General concluded that Mr. Requesens's comments represented a national threat and accused an opposition member of the National Assembly of committing serious offences for expressing critical and dissenting views, thereby seriously violating Mr. Requesens's freedom of expression, thought and political participation. In the source's view, it is clear that in the present case the deprivation of liberty is based on the exercise of rights and falls under category II.

### Category III

53. The source alleges that, by detaining Mr. Requesens, the Bolivarian National Intelligence Service, the Public Prosecution Service and the Supreme Court violated his right to a fair trial. His right to be tried by an independent and impartial tribunal was violated because his case was tried by: (a) the Plenary Chamber, whose judges had not been appointed in accordance with the constitutionally established procedure; and (b) a provisional judge, who had no security of tenure and could be removed on a discretionary basis.

54. The source states that the lack of independence and impartiality of the judiciary, which is exacerbated in cases of a political nature and national relevance, has been previously considered by the Working Group.<sup>4</sup>

55. The source also points out that Mr. Requesens was denied access to a lawyer from the time of his arrest until his first hearing six days later. In addition, his lawyer has had no access to copies of the case file or to the record of his own appointment as counsel, which has been detrimental to the defence and undermined his ability to seek remedies. Furthermore, his lawyer has had no access to the judgment ordering Mr. Requesens's detention.

56. For these reasons, the source states that the international norms relating to the right to a fair trial have been violated so gravely as to give the deprivation of liberty an arbitrary character, under category III.

### Category V

57. According to the source, Mr. Requesens's detention constitutes discriminatory treatment on grounds of his political views, which are critical of the Government. The detention took place in the context of criminal proceedings initiated against Mr. Requesens for expressing his opinions and critical political views. This forms part of the systematic political persecution of opposition leaders, which has resulted in the arbitrary detention of numerous political dissidents.

58. Consequently, the source argues that Mr. Requesens's detention is arbitrary because it constitutes discrimination on political grounds and is therefore a violation of the principle of the equality of human beings, under category V.

### *Response from the Government*

59. The Working Group transmitted the source's allegations to the Government on 19 October 2018 and requested that it submit a response by 18 December 2018. The Government requested that the deadline be extended. The extension was granted, and a new deadline set for 18 January 2019. The Government submitted its response on 18 January 2019.

60. In its response, the Government states that Mr. Requesens was detained on the night of 7 August 2018, in the vicinity of his residence by officials of the Bolivarian National Intelligence Service, who were properly identified. Mr. Requesens was arrested for his alleged participation in the following offences: continuing incitement to public disorder, treason, attempted murder of the President of the Republic, attempted murder with

<sup>4</sup> Opinions No. 84/2017, No. 52/2017, No. 37/2017, No. 27/2015, No. 26/2015, No. 7/2015, No. 1/2015, No. 51/2014, No. 30/2014, No. 26/2014, No. 47/2013 and No. 62/2011.

malicious intent and out of futile motives of seven military personnel, terrorism, financing of terrorism, criminal association and possession of weapons and munitions.

61. According to the Government, the criminal proceedings relate to the assassination attempt that took place on 4 August 2018, when the President of the Republic was making a speech that was interrupted by the detonation of two explosive devices on two remotely operated drones. Several military personnel were wounded in the attack.

62. Following his arrest, Mr. Requesens was transferred to the headquarters of the Bolivarian National Intelligence Service in Caracas. An official record was drawn up in which it was noted that the accused had been informed of his rights.

63. The Government states that Mr. Requesens was arrested in flagrante delicto for the alleged commission of continuing offences, in accordance with article 44 of the Constitution of the Bolivarian Republic of Venezuela and article 234 of the Code of Criminal Procedure.

64. Owing to Mr. Requesens's status as a member of the National Assembly, and in accordance with article 200 of the Constitution, the Attorney General informed the Supreme Court on 8 August 2018 of his detention in order for it to be able to continue the proceedings. On the same day, the Plenary Chamber of the Supreme Court found that Mr. Requesens had been arrested in flagrante delicto, given that the offences were continuing in nature. The Chamber ruled that a preliminary merits hearing was not necessary, since the offences were continuing and had been committed in flagrante delicto, and ordered that Mr. Requesens should be remanded in custody.

65. The Government states that the Plenary Chamber also found that the case should be referred to the National Assembly in order for it to rule on the question of parliamentary immunity. However, it did not do so because it held the Assembly to be in contempt of court. The Chamber referred the proceedings to the National Constituent Assembly for it to rule on the question of parliamentary immunity.

66. The National Constituent Assembly is a collegiate body that is provided for under the Constitution and whose members were elected by vote on 30 July 2017 for the purpose of "transforming the State, creating a new legal order and drafting a new Constitution".

67. On 8 August 2018, the National Constituent Assembly passed a decree authorizing the continuation of proceedings against Mr. Requesens.

68. In accordance with the finding of the Supreme Court, on 10 August 2018, Mr. Requesens's case was transferred for a preliminary hearing to Specialized First Instance Supervisory Court No. 1, which is competent to deal with terrorism-related cases and has national jurisdiction. The hearing was postponed until 13 August 2018 for reasons of force majeure.

69. At the hearing, Mr. Requesens was charged with continuing incitement to public disorder, treason, attempted murder of the President of the Republic, attempted murder with malicious intent and out of futile motives of seven military personnel, terrorism, financing of terrorism, criminal association and possession of weapons and munitions.

70. The Government points out that Mr. Requesens was brought before a judicial body, the Supreme Court, on 8 August 2018, within 24 hours of his arrest.

71. The acts allegedly committed by Mr. Requesens are criminalized under articles 285, 128, 405, 406 and 80 of the Criminal Code, articles 52, 53 and 37 of the Organized Crime and Financing of Terrorism Act and article 112 of the Act on Disarmament and Arms and Munitions Control.

72. At the end of the hearing, the judge confirmed the preliminary charges against Mr. Requesens and ordered his detention and a prohibition on the sale and encumbering of his movable and immovable property. He ordered that Mr. Requesens should be held at the headquarters of the Bolivarian National Intelligence Service in Caracas. On 14 August 2018, the Court justified the detention.

73. The Government states that since his arrest Mr. Requesens has been held at the premises of the Bolivarian National Intelligence Service in conditions that ensure respect for his human rights and that neither his life nor his personal safety are at risk. He is able to



practise outdoor sports and leisure activities and has had access to food, medicine and drinking water provided by his family, in addition to what is provided by the authorities.

74. The Government reports that Mr. Requesens has the assistance of a lawyer of his choosing and has received visits from members of his family. Furthermore, he underwent various medical and psychological assessments and check-ups carried out by officials of the Bolivarian National Intelligence Service and the National Medical and Forensic Service on 9 and 21 August 2018; no signs of torture or ill-treatment were detected. Mr. Requesens underwent a toxicology test, which showed no sign of his having been administered a drug or chemical substance.

75. Regarding the video referred to by the source in which Mr. Requesens appears to be disoriented, the Government provides a transcription of a statement made by Mr. Requesens at the preliminary hearing in which he explains that as a result of an operation that he had undergone he needs to go to the bathroom often. The publishing of the video is being investigated and was condemned by the authorities, including the President and the Attorney General. The Office of the Ombudsman is investigating the claims of torture and ill-treatment.

76. The Government states that Mr. Requesens waived his right not to testify against himself and referred to his participation in the events voluntarily. A part of his statement was made public; the President and members of the executive commented on it, given the importance of the events and their connection with national security and defence and the need therefore to keep the public informed.

77. The Government states that Mr. Requesens's detention is not arbitrary under category I since he was detained in flagrante delicto, in accordance with the Constitution and the Criminal Code; accordingly, a legal basis exists that justifies the detention. Furthermore, his detention was authorized by the National Constituent Assembly.

78. According to the Government, the detention cannot be arbitrary under category II either, since it results from a finding of Mr. Requesens's responsibility in the commission of serious offences punishable by law. The detention did not result from the exercise of freedom of expression and political rights, but from a criminal investigation.

79. The Government adds that the detention also cannot be arbitrary under category III, since the trial was conducted in accordance with due process guarantees. Mr. Requesens was represented by a lawyer and was informed of his rights from the outset. At the preliminary hearing, neither Mr. Requesens nor his lawyer complained about limitations on the exercise of the right to a defence or a lack of access to the case file. Furthermore, the defence did not seek the available remedies to question the partiality of the judges hearing the case.

80. Lastly, the Government states that the detention is also not arbitrary under category V, because it does not constitute a discriminatory act. Mr. Requesens's detention is not the result of his political views but of evidence indicating his criminal responsibility.

81. In the Government's view, the investigation showed that Mr. Requesens was the person allegedly responsible for coordinating the transfer – from and back to Colombia – of the perpetrators of the assassination attempt and for providing them with funds and protection.

82. The Government claims that the detention is not the result of Mr. Requesens's political stance either, since there are other persons on trial in the same case who do not share his critical and dissenting views.

*Further comments from the source*

83. The source claims that the Government errs in law by confusing the notion of "flagrante delicto" with the "permanent" or "continuing" character of some offences. In associating the different notions, the Government is seeking to justify the violation of Mr. Requesens's personal freedom and his detention in the absence of a court order. It makes no sense to characterize an offence as having been committed in flagrante delicto when the person concerned is located three days later in his home.

84. Article 200 of the Constitution expressly provides that, in the event of a member of the National Assembly committing an offence in flagrante delicto, the competent authority

must place the member under house arrest and immediately notify the Supreme Court; the person concerned must remain under house arrest until the start of the preliminary merits hearing and his or her immunity has been lifted, at which point the Court may order his or her arrest. Nothing of the sort happened in the present case.

85. The procedure for dealing with offences committed in flagrante delicto by members of the National Assembly was not followed, since Mr. Requesens was arrested in his residence and transferred to the headquarters of the Bolivarian National Intelligence Service before the Supreme Court was notified. The Court made a ruling the following day.

86. The source further submits that the evidence adduced by the State is untrue. It consists of documents and alleged medical tests carried out inside a police detention facility, with no independent body present able to verify their authenticity and objectivity.

87. Throughout his detention, Mr. Requesens has encountered difficulties in communicating with his family members and lawyer in private and in an effective and regular manner. Visits are neither frequent nor regular; they are only permitted when authorized by the Bolivarian National Intelligence Service. In addition, the source points out that visits take place in the presence of officials, who record the meetings.

88. Applications by Mr. Requesens's defence team to have access to him have been repeatedly denied. The only time his lawyers have been allowed to meet with him was on 9 November 2018 when officials decided that they could enter the premises; the meeting was not private, nor was it held in accordance with regulations. Furthermore, his lawyers have not been able to obtain a copy of the indictment and so are unaware of the specific details of the charges.

89. The Supreme Court has issued no ruling since 16 August 2018, when it ordered Mr. Requesens's detention. Since that date, the Court has been open for business on an irregular basis, which makes it impossible for the defence lawyers to carry out the necessary investigations.

## Discussion

90. The Working Group thanks the parties for the initial submission and subsequent contributions to the resolution of the present case.

91. The Working Group is mandated to investigate all cases of deprivation of liberty imposed arbitrarily that are brought to its attention. In the discharge of its mandate, it refers to the relevant international standards set forth in the Universal Declaration of Human Rights, as well as to the relevant international legal instruments, in accordance with its working methods.

92. 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 (see A/HRC/19/57, para. 68). Mere assertions that lawful procedures have been followed will not be sufficient to rebut the source's allegations.

## Category I

93. The Working Group has indicated that anyone who is arrested must not only be informed, at the time of his or her arrest, of the reasons for the arrest,<sup>5</sup> but also of the judicial avenue for challenging the lawfulness of the deprivation of liberty.<sup>6</sup> The reasons for the detention must include the legal basis of the arrest, the facts forming the basis of the complaint and the wrongful act. The "reasons" concern the official basis for the arrest, not the subjective motivations of the arresting officer.<sup>7</sup>

<sup>5</sup> International Covenant on Civil and Political Rights, art 9 (2).

<sup>6</sup> 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 7.

<sup>7</sup> Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 25.

94. Persons deprived of their liberty have the right to expect, at the time of arrest, guarantees of the right to legal assistance by counsel of their choice.<sup>8</sup> Similarly, persons deprived of their liberty have the right to be promptly informed of the charges against them.<sup>9</sup>

95. In the view of the Working Group, incommunicado detention restricts the rights to have access to a lawyer, to be brought promptly before a judicial authority and to challenge before a judge the lawfulness of the detention; it therefore constitutes a violation of article 9 of the Universal Declaration of Human Rights and article 9 (3) of the International Covenant on Civil and Political Rights.<sup>10</sup>

96. The Working Group has found that a person is arrested in flagrante delicto if he or she is apprehended during the commission of a crime or immediately thereafter or is arrested in hot pursuit shortly after the crime has been committed.<sup>11</sup>

97. In the present case, the Working Group received information from the parties indicating that on, 7 August 2018, Mr. Requesens was deprived of his liberty by the Venezuelan authorities in the vicinity of his residence and without a court order.

98. The Government claims that Mr. Requesens was arrested in flagrante delicto for his alleged involvement in the offences relating to the incidents of 4 August 2018, during an event at which the President was making a statement that was interrupted by “the detonation of two explosive devices on two remotely operated drones”.

99. Mr. Requesens was charged with the offences of continuing incitement to public disorder, treason, attempted murder of the President of the Republic, attempted murder with malicious intent and out of futile motives of seven military personnel, terrorism, financing of terrorism, criminal association and possession of weapons and munitions. All these offences are provided for in, and punishable under, existing criminal legislation.

100. The Working Group notes that Mr. Requesens was arrested three days after 4 August 2018. Similarly, it notes, but does not share, the Venezuelan authorities’ interpretation equating offences committed in flagrante delicto with offences of a permanent or continuing nature, which was made in order to circumvent legal procedures.

101. The Working Group has not received convincing information from the Government indicating that Mr. Requesens was detained at the time of the commission of an offence, in other words immediately after the offence was committed, or after a pursuit immediately following the commission of the offence. The Working Group is of the view that Mr. Requesens was not arrested in flagrante delicto.

102. The Working Group recalls that, under article 9 (1) of the International Covenant on Civil and Political Rights, any deprivation of liberty must comply with the previously established legal procedure.<sup>12</sup> The Human Rights Committee has stated that, as part of the procedures for arrest, the officials authorized to carry it out must be identified.<sup>13</sup>

103. The purpose of parliamentary immunity and the procedure for withdrawing it is to protect the legislative branch from judicial abuses. Against that backdrop, in countries whose laws establish specific grounds and a special procedure for the deprivation of liberty and/or prosecution of lawmakers, those standards specify “such grounds and in accordance with such procedure as are established by law”.

104. When the legal order requires the withdrawal of immunity as a precondition for depriving a person of liberty, this requirement must be observed. Once immunity has been withdrawn, the authorities are empowered to order a person’s detention. Failure to withdraw immunity results in arbitrary detention, as the detention was not ordered by an

<sup>8</sup> 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 9.

<sup>9</sup> International Covenant on Civil and Political Rights, art. 9 (2).

<sup>10</sup> Opinion No. 53/2016, para. 47.

<sup>11</sup> Opinion No. 13/2019, para. 53; No. 9/2018, para. 38; No. 36/2017, para. 85; No. 53/2014, para. 42; No. 46/2012, para. 30; No. 67/2011, para. 30; and No. 61/2011, paras. 48 and 49; E/CN.4/2003/8/Add.3, paras. 39 and 72 (a).

<sup>12</sup> Human Rights Committee, general comment No. 35, para. 11.

<sup>13</sup> *Ibid.*, para. 23.

authorized official in accordance with the legally established procedure. It also constitutes a violation of the right not to be arbitrarily deprived of freedom and the right to due process in criminal proceedings.<sup>14</sup>

105. The Working Group observes that Mr. Requesens was detained on the night of 7 August 2018. The following day, the Plenary Chamber of the Supreme Court upheld Mr. Requesens's detention, stating that he had been arrested in flagrante delicto because the offences in question were continuing in nature; it ruled that a preliminary merits hearing was unnecessary. It held that the security forces should keep him in custody, following receipt of the complaint of the Office of the Attorney General, in order to establish whether Mr. Requesens had committed, or had been involved in the commission of, an offence. The Court requested that the question of parliamentary immunity should be settled by the National Constituent Assembly, not the National Assembly.

106. The Working Group has been convinced that Mr. Requesens enjoys parliamentary immunity and the procedural benefit of a preliminary merits hearing as a member of the National Assembly, in accordance with domestic law. For any criminal proceedings to be initiated against a member of the National Assembly, withdrawal of immunity must be ordered by the Assembly.

107. Accordingly, the Working Group finds that the deprivation of liberty, in the absence of the implementation of the corresponding procedure for the removal of Mr. Requesens's immunity by the National Assembly, was carried out in violation of applicable constitutional and statutory law deriving from international instruments. The Working Group concludes that Mr. Requesens's detention was conducted in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

108. It is a well-established norm of international law that pretrial detention should be the exception and not the rule, and that it should be ordered for as short a time as possible. Article 9 (3) of the Covenant requires that the justification for pretrial detention be analysed in a reasoned judicial decision in every case. This provision also establishes that "release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement". Detention must be an exception made in the interests of justice. According to article 9 (3) of the Covenant, detention must be exceptional and of short duration, the accused person should be released if there are measures in place to guarantee that he or she will appear for trial and for execution of the judgment. If the period of pretrial detention is prolonged, the presumption in favour of bail should preferably be applied.

109. The Working Group notes that the judicial authorities ordered Mr. Requesens's pretrial detention and set a hearing for 18 December 2018, at which the Public Prosecution Service was to file charges in accordance with domestic law, failing which the case should be closed. The Working Group has been convinced that the hearing was not held on the date set and that in the meantime Mr. Requesens remained in detention.

110. In view of the fact that no warrant was shown to Mr. Requesens setting forth the reasons for his arrest, that he was not arrested for an offence committed in flagrante delicto, that he was held in solitary confinement for six days, that the procedure for the withdrawal of parliamentary immunity was not observed and that the permitted period for detention pending trial was extended, his deprivation of liberty is arbitrary under category I.

### *Category II*

111. The Working Group emphasizes that 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 to restrictions that are expressly provided for by law and are necessary to ensure respect for the rights or reputation of others, or for the protection of national security, public order, public health or morals.<sup>15</sup>

<sup>14</sup> Opinions No. 5/2018 and No. 31/2016.

<sup>15</sup> Opinion No. 58/2017, para. 42.

112. Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person and constitute the foundation stone for every free and democratic society.<sup>16</sup> They are the basis for the effective exercise of a wide range of other human rights, for instance the right to political participation, as set forth in article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant.<sup>17</sup>

113. Other human rights may not be limited on the basis of a person's actual or perceived opinions of a political, scientific, historic, moral, religious or other nature. It is incompatible with the Universal Declaration of Human Rights and the Covenant to criminalize the holding of an opinion, and it is impermissible for a person to be harassed, intimidated, stigmatized, arrested, or subjected to detention, trial or imprisonment, for reasons of the opinions they may hold.<sup>18</sup>

114. The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights, for instance, for the exercise of the right to take part in the conduct of public affairs, to vote and to be elected.<sup>19</sup>

115. The Human Rights Committee has stated that article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.<sup>20</sup> The Committee has also indicated that "political opinion may not be used as a ground to deprive any person of the right to stand for election".<sup>21</sup>

116. In the present case, the Working Group has received convincing information from the source, which was not contested by the Government, that Mr. Requesens took part in protests and demonstrations against the removal of the powers of the legislature and against the policies of the Government and their adverse effects on human rights. Furthermore, Mr. Requesens is a member of the National Assembly and, in the exercise of his parliamentary functions, has been a voice questioning the actions of the Government.

117. The Working Group has been persuaded that Mr. Requesens, in his capacity as an opposition member of the National Assembly and critic of the Government, was deprived of his liberty in order to silence him or to prevent him from continuing to exercise this function and criticize the Government, in violation of articles 19 and 21 of the Universal Declaration of Human Rights and articles 19 and 25 of the International Covenant on Civil and Political Rights, thus rendering the detention arbitrary under category II.

### *Category III*

#### *Right to challenge the detention before a judge*

118. As noted earlier, the Working Group observes that Mr. Requesens was detained without a court order and without having committed an offence in flagrante delicto and that he was held incommunicado for several days by officials of the Bolivarian National Intelligence Service. Such incommunicado detention violates the rights of a person to be brought promptly before a judge or other officer authorized to exercise judicial power and the right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful, as recognized in article 9 (3) and (4) of the International Covenant on Civil and Political Rights.

#### *Presumption of innocence*

119. Article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the International Covenant on Civil and Political Rights recognize the right of everyone charged with a criminal offence to be presumed innocent. This right imposes a number of

<sup>16</sup> Human Rights Committee, general comment No. 34 (2011) on freedom of opinion and expression, para. 2.

<sup>17</sup> Ibid., para. 4.

<sup>18</sup> Ibid., para. 9.

<sup>19</sup> International Covenant on Civil and Political Rights, art. 25.

<sup>20</sup> Human Rights Committee, general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 1.

<sup>21</sup> Ibid., para. 17.

obligations on State institutions, since the persons accused of a criminal offence must be treated as innocent until the charges have been proved beyond reasonable doubt. In the view of the Working Group, this carries an obligation for all public authorities, including the executive, to refrain from prejudging the outcome of a trial and to abstain from making public statements affirming the guilt of the accused.<sup>22</sup>

120. The Working Group has determined that statements publicly condemning the accused person before a sentence has been passed violate the presumption of innocence and constitute undue interference that undermines the independence and impartiality of the court.<sup>23</sup>

121. The Working Group has reiterated that public statements of high-ranking officials violate the right to presumption of innocence if such statements identify a person as being responsible for an offence for which he or she has not yet been tried, thereby leading the public to believe that person to be guilty and seeking to influence or prejudice the assessment of the facts by the competent judicial authority.<sup>24</sup>

122. In the present case, the Working Group has been persuaded that high-ranking officials of the Government made public statements and declarations incriminating Mr. Requesens in the acts of which he is accused.

123. Such statements presuppose Mr. Requesens's criminal responsibility. The Working Group has been persuaded that Mr. Requesens's right to the presumption of innocence has been violated, in breach of article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.

#### Right to adequate time and facilities for the preparation of a defence

124. Article 14 (3) (b) of the Covenant recognizes the right of every person to "have adequate time and facilities for the preparation of his defence", which is an important guarantee of a fair trial and equality of arms.<sup>25</sup> Adequate facilities for a defence include, inter alia, early access to all materials, documents and other evidence that the prosecution plans to offer in court.<sup>26</sup>

125. It was not until 14 August 2018, when the preventive detention measure was ordered, that Mr. Requesens was allowed to meet with his lawyer for the first time since his arrest. The Working Group has received no information to the effect that Mr. Requesens or his lawyer received a copy of the case file or the decision ordering his deprivation of liberty. Furthermore, the Working Group has been persuaded that Mr. Requesens faced obstacles in meeting with the lawyer of his choosing with sufficient time to prepare his defence. As a result, Mr. Requesens was prevented from having adequate time and facilities for the preparation of his defence, in breach of article 14 (3) (b) of the Covenant.

#### Judicial independence

126. The Working Group recalls the Basic Principles on the Independence of the Judiciary, in which it is stated that the law must guarantee the term of office of judges,<sup>27</sup> their security of tenure<sup>28</sup> and their system of promotions, which should be based on objective criteria such as professional ability, integrity and experience.<sup>29</sup>

<sup>22</sup> Human Rights Committee, general comment No. 32 (2007) on right to equality before courts and tribunals and to a fair trial, para. 30. *Kozulina v. Belarus* (CCPR/C/112/D/1773/2008), para. 9.8. Inter-American Court of Human Rights, *Pollo Rivera et al. v. Peru*, merits, reparations and costs, judgment of 21 October 2016, Series C No. 319, para. 177; *Tibi v. Ecuador*, preliminary objections, merits, reparations and costs, judgment of 7 September 2004, Series C No. 114, para. 182; and *J. v. Peru*, preliminary objections, merits, reparations and costs, judgment of 27 November 2013, Series C No. 275, paras. 244–247.

<sup>23</sup> Opinions No. 90/2017, No. 76/2018 and No. 89/2018.

<sup>24</sup> Opinions No. 6/2019 and No. 12/2019.

<sup>25</sup> Human Rights Committee, general comment No. 32, para. 32.

<sup>26</sup> *Ibid.*, para. 33.

<sup>27</sup> Basic Principles on the Independence of the Judiciary, principle 11.

<sup>28</sup> *Ibid.*, principle 12.

<sup>29</sup> *Ibid.*, principle 13.

127. The Human Rights Committee, in its consideration of the fourth periodic report of the Bolivarian Republic of Venezuela, expressed concerns about the situation of the judiciary, with particular regard to its autonomy, independence and impartiality. It noted that only 34 per cent of judges are tenured, which means that the remainder have provisional status and that they can be appointed and removed on a discretionary basis.<sup>30</sup>

128. In the course of the review of the human rights situation in the Bolivarian Republic of Venezuela during the past two cycles of the universal periodic review, several delegations expressed concern about the lack of independence of the judiciary.<sup>31</sup>

129. In the course of both review cycles, it was recommended that the Bolivarian Republic of Venezuela should take immediate measures to ensure and uphold the full autonomy, independence and impartiality of judges; guarantee that they are free to operate without pressure or influence of any kind; and, in particular, remedy the provisional situation of judges as soon as possible.<sup>32</sup> The Working Group has set out its views on the subject in previous opinions concerning the Bolivarian Republic of Venezuela.<sup>33</sup>

130. In the present case, the members of the judiciary involved in the detention, in particular the judge of Specialized First Instance Supervisory Court No. 1, do not enjoy the independence and impartiality referred to in article 14 (1) of the Covenant.

131. Given that Mr. Requesens's detention was carried out in violation of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant, the Working Group considers it arbitrary under category III.

#### *Category V*

132. The Working Group is of the opinion that the detention described in the present case forms part of a series of arbitrary detentions carried out by the authorities of the Bolivarian Republic of Venezuela against members of opposition political parties, human rights defenders and persons who criticize the authorities' actions.<sup>34</sup>

133. Mr. Requesens's deprivation of liberty constituted a violation of international law because it was based on discrimination on the grounds of his political opinion and his membership of *Primero Justicia*, an opposition party. This contravenes articles 2 and 26 of the Covenant and articles 2 and 7 of the Universal Declaration of Human Rights, and thus constitutes arbitrary detention under category V.

134. In recent years, the Working Group has repeatedly expressed its views on multiple arbitrary arrests of persons because of their political opposition to the Government, or because they have exercised their rights to freedom of opinion, of expression, of association, of assembly or of political participation. In the Working Group's view, this is an attack by the Government on its political opponents or part of a systematic attempt to deprive them, particularly those who are seen as opponents of the regime, of their physical freedom, in violation of fundamental rules of international law, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Working Group wishes to recall that, under some circumstances, imprisonment and other severe forms of deprivation of physical liberty in violation of internationally accepted standards may constitute crimes against humanity.<sup>35</sup>

<sup>30</sup> CCPR/C/VEN/CO/4, para. 15.

<sup>31</sup> A/HRC/19/12, paras. 30, 88, 96.13, 96.14, 96.16 and 96.18–96.21; also A/HRC/34/6, paras. 102, 119, 133.46, 133.79, 133.133, 133.138, 133.154–133.160, 133.162–133.167 and 133.218.

<sup>32</sup> See A/HRC/WGAD/2015/27.

<sup>33</sup> Opinion No. 27/2015.

<sup>34</sup> Opinions No. 86/2018, No. 49/2018, No. 41/2018, No. 32/2018, No. 52/2017, No. 37/2017, No. 18/2017, No. 27/2015, No. 26/2015, No. 7/2015, No. 1/2015, No. 51/2014, No. 26/2014, No. 29/2014, No. 30/2014, No. 47/2013, No. 56/2012; No. 28/2012, No. 62/2011, No. 65/2011, No. 27/2011, No. 28/2011, No. 31/2010 and No. 10/2009.

<sup>35</sup> Opinions No. 37/2011, para. 15, No. 38/2011, para. 16, No. 39/2011, para. 17, (Syrian Arab Republic); No. 4/2012, para. 26, No. 47/2012, paras. 19 and 22, No. 34/2013, paras. 31, 33 and 35, No. 35/2013 paras. 33, 35 and 37, and No. 36/2013, paras. 32, 34 and 36, (Democratic People's Republic of Korea); No. 38/2012, para. 33, and No. 48/2013, para. 14, (Sri Lanka); No. 22/2014, para.

135. In the light of the recurrent pattern of arbitrary detention identified in recent years, the Government of the Bolivarian Republic of Venezuela is urged to consider inviting the Working Group to make an official country visit. Such visits are an opportunity to engage in direct constructive dialogue with the Government and representatives of civil society, with the aim of better understanding the situation of deprivation of liberty in the country and the reasons for arbitrary detention.

136. In the light of the information received about Mr. Requesens's health and his alleged ill-treatment while in detention, the Working Group, in accordance with paragraph 33 (a) of its methods of work, refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

### **Disposition**

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

The deprivation of liberty of Juan Carlos Requesens Martínez, being in contravention of articles 9, 10, 11, 18 and 19 of the Universal Declaration of Human Rights and articles 9, 4, 18 and 19 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

138. The Working Group requests the Government of the Bolivarian Republic of Venezuela to take the steps necessary to remedy the situation of Mr. Requesens 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.

139. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Requesens immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

141. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

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

### **Follow-up procedure**

143. 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. Requesens has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Requesens;
- (c) Whether an investigation has been conducted into the violation of Mr. Requesens's rights and, if so, the outcome of the investigation;

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25, No. 27/2014, para. 32, and No. 34/2014, para. 34, (Bahrain); No. 35/2014, para. 19, (Egypt); No. 44/2016, para. 37, (Thailand); and No. 32/2017, para. 40, No. 33/2017, para. 102, and No. 36/2017, para. 110, (Iraq).



(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Bolivarian Republic of Venezuela with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

144. 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.

145. 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 any failure to take action.

146. The Government should disseminate the present opinion among all stakeholders through all available means.

147. 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.<sup>36</sup>

*[Adopted on 14 August 2019]*

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<sup>36</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.