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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-sixth session, 18–22 November 2019

Opinion No. 75/2019 concerning Roberto Eugenio Marrero Borjas (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 42/22.

2. In accordance with its methods of work (A/HRC/36/38), on 9 July 2019, the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Roberto Eugenio Marrero Borjas. The Government requested an extension of the deadline for its response. The request was granted, and the response was submitted on 8 October 2019. 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. Mr. Marrero is a Venezuelan lawyer and a graduate of Santa María University in Caracas. A specialist in constitutional law, he has also studied at the University of Salamanca in Spain. He is one of the founders and national leaders of the political party Voluntad Popular. Between 2008 and 2012, he was the director of the Mayor's Office in the municipality of Baruta, and in 2016 and 2017 he held the position of Secretary of the National Assembly.

5. According to the source, between 2013 and 2015 Mr. Marrero was also an elected councillor in the municipality of Baruta, Miranda State. He was a list candidate in Monagas State in the 2015 parliamentary elections, but his registration was cancelled by the National Electoral Council. In 2014 and 2015, he acted as defence lawyer for the opposition leader and national coordinator of Voluntad Popular.

6. The source also reports that Mr. Marrero was appointed Chief of Staff to the President of the National Assembly on 8 February 2019.

7. The source reports that, on 15 March 2019, on the basis of and in compliance with an order issued on the same date by the Bolivarian National Intelligence Service, acting prosecutors from Public Prosecution Service Office No. 67 with full jurisdiction at the national level and No. 83 with national jurisdiction over money-laundering and financial offences ordered the launch of an investigation and requested a judge at Special Supervisory Court of First Instance No. 1 with national jurisdiction over cases involving terrorism-related offences to issue search and arrest warrants in respect of Mr. Marrero.

8. The source states that, on 20 March 2019, the judge, who also has competence to adjudicate on cases involving offences related to corruption or organized crime, issued an arrest warrant for Mr. Marrero and a search warrant for his apartment and that of one of his colleagues.

9. The source reports that, on 21 March 2019, at approximately 2 a.m., a delegation of 150 intelligence officers arrived at the apartment building in Caracas where Mr. Marrero and his colleague were both at home.

10. Mr. Marrero's colleague heard noises outside his home and saw the intelligence officers there. The officers then entered the building by force and gained entry to his apartment. Mr. Marrero's colleague proceeded to show his credentials and identify himself as a deputy of the National Assembly. Nevertheless, the officers threw him face down on the floor and one of them placed his full weight on his shoulder to prevent him from moving. Once he was immobilized on the floor and the whole apartment had been searched, prosecutors entered the house and asked him where Mr. Marrero lived.

11. Meanwhile, several officers were entering and leaving the property. They conducted a thorough search of the property and then questioned him regarding the whereabouts of Mr. Marrero. Although the officers were in uniform, they were not carrying identification and their faces were covered.

12. Mr. Marrero's colleague was not allowed to make phone calls for some time until the officers released him. They then showed him a court order and told him that prosecutors from the Public Prosecution Service were involved in the proceedings. He was allowed to read the search warrant, which indicated his home address but not his name. The order had been requested by the prosecutors and granted by a judge at Court No. 3 with national jurisdiction over cases involving terrorism-related offences.

13. The officers then entered Mr. Marrero's apartment and confined him to one part of it while the property was searched. They immediately claimed to have found weapons and a grenade, and the prosecutors and the witnesses they had brought with them then entered the properties. Mr. Marrero was arrested. As he was being taken away by police officers, he

accused the agents of having planted two rifles and a grenade at the property. Before he was arrested, he also sent a voice message in which he stated that he was being arrested. According to unofficial information, Mr. Marrero is being held at El Helicoide, the headquarters of the Bolivarian National Intelligence Service.

14. The source reports that, in order to adhere to the 48-hour deadline established by law, the arraignment hearing should have begun on Friday, 22 March 2019. However, the judge at Court No. 1 with national jurisdiction over cases involving terrorism-related offences was absent from the court. Mr. Marrero was transferred to the courthouse and brought before a court different from the one that issued his arrest warrant. For that reason, the court declined jurisdiction and the hearing was suspended. Subsequently, on 25 and 26 March, the hearing was further suspended owing to a national blackout. The arraignment hearing finally took place on 28 March 2019, six days after Mr. Marrero's arrest. The source indicates that the prosecutors assigned to the hearing have previously been involved in cases of persecution against political opposition figures.

15. According to the source, the arraignment hearing began on 28 March 2019. At the hearing, the prosecutors stated that Mr. Marrero and others had been brought before the court because they were accused of the offences of treason, conspiracy and abuse of power, punishable under articles 128, 132 and 213 of the Criminal Code respectively, and the offences of money-laundering, criminal association and concealment of weapons of war and explosives, punishable under articles 35, 37 and 38 of the Act on Organized Crime and the Financing of Terrorism. In response, the defence claimed that the proceedings were void owing to the irregular nature of the actions taken following the issuance of the search and arrest warrants, as well as the improper execution of the search of the property.

16. On 28 March 2019, the judge in the case, at Special Supervisory Court No. 1 with jurisdiction over cases involving terrorism-related offences and offences related to corruption and organized crime, declared that, among the preliminary charges laid by the Public Prosecution Service, she would accept only those relating to the offence of conspiracy, punishable under article 132 of the Criminal Code, and the offences of money-laundering, criminal association and concealment of weapons of war and explosives, punishable under articles 35, 37 and 38 of the Act on Organized Crime and the Financing of Terrorism. She also ordered Mr. Marrero to be held in pretrial detention at the facilities of the Bolivarian National Intelligence Service. The source notes that the decision was disclosed on 14 June 2019.

17. On 6 June 2019, Mr. Marrero's lawyers challenged the criminal prosecution concerning the charges filed by acting prosecutor No. 39 of the Caracas Metropolitan Area and assistant prosecutor No. 73 (E) with national jurisdiction over cases of money-laundering and financial offences in connection with the offence of conspiracy, punishable under article 132 of the Criminal Code, and the offences of concealment of weapons of war and explosives, money-laundering and criminal association, punishable under articles 38, 35 and 37 of the Act on Organized Crime and the Financing of Terrorism respectively. The source notes that the proposed indictment did not meet the requirements of article 308, specifically those set out in paragraphs 2, 3 and 4, which state that indictments must include a clear, precise and detailed account of the offences with which the accused is charged. The source adds that the Public Prosecution Service has a binding obligation to provide such an account. On 17 June 2019, Mr. Marrero's lawyers appealed the decision of 28 March 2019, disclosed on 14 June 2019, ordering his placement in pretrial detention. The lawyers claimed, *inter alia*, that the judge had simply accepted the charges on the general basis of "sufficient pieces of evidence", without specifying what those pieces of evidence might prove with regard to responsibility for or participation in the commission of the offences. They also argued that the judge had not substantiated the claim that there was a risk of flight.

18. On 18 June 2019, the Procedural Court of Caracas issued an oral order for Mr. Marrero to stand trial. It also ordered him to remain in detention. The corresponding reasoned decision has not yet been issued.

19. The source notes that a number of officials, including the Minister for Interior Affairs, Justice and Peace, the Attorney-General, the Minister of People's Power for

Communication and Information and the President, have made statements stigmatizing Mr. Marrero and describing him as a criminal.

20. The source also notes that Mr. Marrero's lawyers have not been able to gain access to the records held in the prosecution file. The source explains that the file, which should contain records of all aspects of the investigation, is confidential. According to the source, since the investigative proceedings are being conducted at the request of the intelligence services, it must be the political police, rather than the Prosecution Service, that are investigating the allegations.

21. Mr. Marrero's lawyers have had access only to the file held by the court, which contains a record of the court proceedings. However, the source notes that, despite there being a legal requirement for it to do so, the court has not given a reasoned decision with regard to the detention order issued in respect of Mr. Marrero. The factual and legal elements the Court considered when ordering his detention therefore remain unknown, and consequently it has not been possible to challenge his deprivation of liberty.

22. The source emphasizes that Mr. Marrero was held incommunicado at the headquarters of the Bolivarian National Intelligence Service until 13 May 2019, when he was permitted a visit from family members after spending 52 days without being able to communicate with them. On the same date, he was permitted to make contact with his lawyers. According to the source, intelligence officers told Mr. Marrero's lawyers that he was not allowed visitors, but did not provide them with a coherent response when they protested.

23. Based on the foregoing, the source submits that Mr. Marrero's detention falls under categories II, III and V of the categories identified by the Working Group as constituting arbitrary detention.

24. The source states that Mr. Marrero, a leader of the Voluntad Popular party and the Chief of Staff to the President of the National Assembly, was arrested because of his exercise of the rights to political participation and freedom of expression, specifically because he is a member of the Voluntad Popular party and the right-hand man of the President of the National Assembly. The source maintains that Mr. Marrero's detention violates articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant and is therefore arbitrary under category II.

25. The source also lists the elements that allegedly give rise to the violations of due process and the right to a defence in the present case and asks the Working Group to find that Mr. Marrero's detention contravenes the provisions of articles 10 and 11 of the Universal Declaration of Human Rights, as well as articles 9 and 14 of the Covenant, and is therefore arbitrary under category III.

26. Firstly, the source points out that the criminal investigation order drawn up by the intelligence services describes certain acts as amounting to criminal conduct and gives instructions to the Public Prosecution Service. This is in contravention of the provisions of article 266 of the Code of Criminal Procedure, which limits police activity to necessary and urgent procedures aimed at identifying and locating the alleged perpetrators of the acts of which the police have become aware.

27. Contrary to Venezuelan law, the order contains instructions for the Public Prosecution Service to launch an investigation and request search and arrest warrants in respect of Mr. Marrero. The source argues that the inspector from the intelligence services who was in charge of the case usurped the functions entrusted to prosecutors.

28. In the opinion of the source, the police investigation report was thus invalid and should have been set aside and annulled. The source claims that the improper proceedings laid the foundation for violations by the Public Prosecution Service.

29. In addition, the source points out that the judge at Special Supervisory Court of First Instance No. 1 with national jurisdiction over cases involving terrorism-related offences should first have ruled on the validity of the request for deprivation of liberty and ensured that the Public Prosecution Service had complied with the requirements of article 236 of the Code of Criminal Procedure. However, contrary to the obligations inherent to the role of a

supervisory judge, she intentionally failed to insist on such requirements, proceeded to decide that the prosecutors had complied with them and issued the arrest warrant against Mr. Marrero.

30. The source also maintains that the manner in which the police search procedure was conducted violates due process guarantees applicable in the Bolivarian Republic of Venezuela. The judge granted the request for a warrant to search for weapons on the basis of the assertions of a single intelligence officer who did not attach to the request any evidence that illegal items were present at the property. The source recalls that, in past opinions rendered on arbitrary arrests made by authorities of the Bolivarian Republic of Venezuela, the Working Group has found that it is common for weapons to be planted in the vehicles or homes of dissidents or members of opposition political parties to provide a justification for their arrest.

31. The source also notes that senior government officials presented Mr. Marrero to the public as if he had committed a crime, even though he had not been charged, let alone convicted. In the source's view, Mr. Marrero's right to be presumed innocent, as enshrined in article 14 (2) of the Covenant, has thus been violated.

32. The source also points out that, in order to adhere to the 48-hour deadline established by law, the arraignment hearing should have begun on Friday, 22 March 2019. However, it did not take place until 28 March 2019, six days after Mr. Marrero's arrest.

33. On 28 March 2019, the judge of Special Supervisory Court No. 1 with jurisdiction over cases involving terrorism-related offences ordered Mr. Marrero to be placed in detention for the offences of conspiracy, criminal association, money-laundering, concealment of weapons and abuse of power. The source argues that that decision was inappropriate, since at the arraignment hearing he had been charged with conspiracy, criminal association, money-laundering, abuse of power and concealment of weapons. He was not charged with the offence of treason, which appeared on the arrest warrant, and the charge of abuse of power was not accepted because there was no evidence in the file indicating that he had been involved in such conduct.

34. On 13 May 2019, at which point Mr. Marrero had been in detention for approximately 50 days, he was permitted to see his lawyers and family members for the first time. The source maintains that Mr. Marrero's right to be assisted by a lawyer of his choosing was thus violated, hindering his ability to exercise his right to defend himself against the accusations he was facing. The source notes that article 14 (3) (b) of the Covenant establishes the rights to have adequate time and facilities for the preparation of a defence and to communicate with counsel of one's own choosing. Detainees should be made aware of these rights at the time of arrest and, immediately following their arrest, should be able to obtain legal assistance in an appropriate setting where they can hold private and confidential discussions with their legal representative.

35. Lastly, the source notes that Mr. Marrero's detention is part of a pattern of arrests ordered by the authorities of the Bolivarian Republic of Venezuela in respect of members of opposition political parties, human rights defenders and persons who criticize the authorities.

36. The source thus maintains that the deprivation of liberty of Mr. Marrero constituted a violation of international law because he was deprived of his liberty as a result of discrimination on the basis of his political opinion and his status as a member of Voluntad Popular, an opposition political party, in breach of articles 2 and 26 of the Covenant and articles 1 and 7 of the Universal Declaration of Human Rights. According to the source, Mr. Marrero's detention is arbitrary under category V.

Response from the Government

37. On 9 July 2019, the Working Group transmitted the source's allegations to the Government and asked it to provide a response before 9 September 2019. The Government requested an extension of this deadline and was given until 9 October 2019 to reply. The Government submitted its response on 8 October 2019.

38. The Government indicates that Mr. Marrero was arrested on 21 March 2019 on suspicion of offences provided for in Venezuelan law in respect of planning and carrying out acts intended to cause political destabilization. In the course of the criminal proceedings against him, Mr. Marrero had been charged with the offence of conspiracy, punishable under article 132 of the Criminal Code, and the offences of money-laundering, criminal association and concealment of weapons of war, explosives and ammunition, punishable under articles 35, 37 and 38 respectively of the Act on Organized Crime and the Financing of Terrorism.

39. The Government states that the criminal investigation in question was initiated on the basis of a police report in which the Counterintelligence Directorate of the Bolivarian National Intelligence Service attested that a Venezuelan citizen had made arrangements to bring a shipment of rifles and explosive material across the border from Colombia using unpaved routes and had paid for the shipment in cash in Colombia using foreign currency.

40. The Government also reports that the preliminary investigations conducted by the Venezuelan State security bodies found that Mr. Marrero was allegedly engaged in the recruitment of individuals from a number of Central and South American countries to carry out violent acts against the institutions of the Bolivarian Republic of Venezuela.

41. Based on the results of the investigation, on 15 March 2019, the Public Prosecution Service requested Special Supervisory Court No. 1 with national jurisdiction to issue an arrest warrant in respect of Mr. Marrero and a search warrant in respect of his phone. On 20 March 2019, the court issued the requested arrest and search warrants.

42. On 21 March 2019, during the search authorized by the court, Mr. Marrero was arrested at his home by a delegation from the intelligence services, in execution of the above-mentioned arrest warrant. The arrest was made in the presence of prosecutors from the Public Prosecution Service and a number of witnesses.

43. According to the Government, at the time of his arrest Mr. Marrero was informed of the reasons for it and notified of his rights. He was immediately transferred to the national headquarters of the Bolivarian National Intelligence Service in Caracas.

44. In accordance with article 44 of the Constitution, which states that a person must be brought before a court within 48 hours of arrest, on 23 March 2019 Mr. Marrero was brought before the supervisory court that was first on the rota in the Judicial District of the Caracas Metropolitan Area.

45. The Government reports that the supervisory court declared that it was not competent to hear the case and ceded jurisdiction to Special Supervisory Court of First Instance No. 1.

46. On 25 March 2019, Mr. Marrero was transferred to Special Supervisory Court of First Instance No. 1, in accordance with the procedure set out in article 373 of the Code of Criminal Procedure. The hearing could not take place owing to force majeure, namely a large-scale power failure affecting 17 states in the country. For the same reason, the hearing could not take place on the following two days.

47. On 28 March 2019, the hearing was held and Special Supervisory Court of First Instance No. 1 ordered pretrial detention in accordance with the provisions of articles 236 and 237 of the Code of Criminal Procedure, on the basis that there was sufficient evidence to presume that Mr. Marrero posed a flight risk.

48. The preliminary hearing in respect of Mr. Marrero took place before the court on 17 June 2019. The court accepted the charges submitted by the Public Prosecution Service and ordered Mr. Marrero to stand trial. The court also ordered him to remain in pretrial detention.

49. The Government emphasizes that the conditions in which Mr. Marrero is being held meet the applicable international standards, including with regard to access to sanitation facilities.

50. The Government also maintains that it has at all times respected all the rights and guarantees to which Mr. Marrero is entitled as a defendant, in accordance with the Universal Declaration of Human Rights and other applicable international instruments.

51. The Government concludes that Mr. Marrero's detention cannot be considered arbitrary under category II, as it is not a result of, nor is it related to, the exercise of his rights under articles 19, 20 and 21 of the Covenant.

52. The Government explains that the criminal proceedings are designed to punish Mr. Marrero for his unlawful conduct rather than his public opinions. According to the Government, Mr. Marrero's conduct amounts to an offence under the Criminal Code, as well as under the Act on Organized Crime and the Financing of Terrorism, and he is being prosecuted in a fair trial accompanied by all constitutional guarantees of due process.

53. Similarly, the Government notes that Mr. Marrero's detention cannot be considered arbitrary under category III, since the judicial proceedings have been conducted in full compliance with the guarantees of the right to due process as set forth in articles 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant.

54. The Government explains that the criminal proceedings were launched on the basis of the results of the investigations carried out by the intelligence services under articles 115 and 266 of the Code of Criminal Procedure. The decision regarding whether there is sufficient evidence to initiate criminal proceedings rests with the Public Prosecution Service.

55. Furthermore, the Government states that, contrary to the claims of the source, Special Supervisory Court of First Instance No. 1 did examine in detail whether the requirements set out in the criminal procedure regulations had been met before proceeding to issue the arrest warrant requested by the Public Prosecution Service. Similarly, the search warrant was issued in accordance with the provisions of article 196 onward of the Code of Criminal Procedure.

56. Moreover, Mr. Marrero was brought before a supervisory court within 48 hours of his arrest. The fact that the hearing was not held until 28 March 2019 does not constitute a violation of due process, since the court was not in session from 23 to 27 March owing to a situation of force majeure that affected almost the entire country. Mr. Marrero's pretrial detention has been applied in accordance with the provisions of article 236 of the Code of Criminal Procedure.

57. The Government also maintains that the authorities' public announcement of Mr. Marrero's arrest does not constitute a violation because the Public Prosecution Service had authorized the dissemination of the information. Mr. Marrero was assisted at all times by a lawyer of his choosing.

58. Lastly, the Government states that Mr. Marrero's detention does not constitute a violation of international human rights law on grounds of discrimination on the basis of his political opinion and membership of an opposition party and cannot therefore be classified as arbitrary under category V. His detention was imposed in connection with alleged offences of conspiracy, concealment of weapons and money-laundering.

Additional comments from the source

59. The Working Group transmitted the Government's response to the source on 8 October 2019. The source submitted final comments and observations on the Government's response on 21 October 2019.

60. In the final observations, the source states that it is clear that Mr. Marrero, a leader of the Voluntad Popular party and Chief of Staff to the President of the National Assembly, was arrested because of his exercise of the rights to political participation and freedom of expression, in particular because of his position as a member of the Voluntad Popular party and the right-hand man of the President of the National Assembly. The source cites interviews with senior intelligence officers describing direct orders from the President instructing them to commit abuses, including arbitrary detentions and the planting of evidence to incriminate opponents.

61. The source notes that in recent years, the Working Group has repeatedly expressed views on multiple arbitrary arrests of political opponents of the Government or persons who have exercised their rights to freedom of opinion, expression, association or assembly or their right to political participation.

62. The source also argues that the Government's claims of compliance with international standards with respect to due process guarantees have not been substantiated. Firstly, the Government has not submitted the investigation report of 15 March 2019, which was the sole basis for the prosecutors' request for the arrest and search warrants, as well as for the judge's decision of 20 March 2019 to issue those warrants.

63. The criminal investigation report of 15 March 2019 does not contain a clear, precise and detailed description of the acts attributed to Mr. Marrero that would make it possible to ascertain how, when and where he performed those acts, with a view to determining whether the account is true, or at the very least whether the reported events actually occurred.

64. The source highlights the irregularities in the search of Mr. Marrero's home and the launch of the investigation, the delay in holding the arraignment hearing, the absence of a reasoned argument for the pretrial detention order, the violation of the presumption of innocence and Mr. Marrero's lack of access to his lawyers, his family members and the case file.

65. Specifically, the source alleges that in order to adhere to the 48-hour deadline established by law, the arraignment hearing should have begun on Friday, 22 March 2019. However, the judge at Special Supervisory Court of First Instance No. 1 with national jurisdiction over cases involving terrorism-related offences was absent from the court. At the same time, Mr. Marrero was transferred to the courthouse and brought before a court different from the one that had issued his arrest warrant. For this reason, the court declined jurisdiction and the hearing was suspended. On 25 and 26 March, the hearing was subsequently suspended owing to a national blackout. The arraignment hearing was finally held on 28 March 2019, six days after Mr. Marrero's arrest. The source recalls that the Human Rights Committee has stated that, when delays are caused by a lack of resources, to the extent possible States should allocate sufficient budgetary resources.¹

66. The source also argues, *inter alia*, that on several occasions Mr. Marrero's lawyers have been unable to obtain access to the records in the file held by the Prosecution Service. Furthermore, it was not until 13 May 2019, after 52 days of not being able to communicate with his family, that Mr. Marrero was allowed a family visit and was able to have contact with his lawyers. On that occasion, intelligence officers told Mr. Marrero's lawyers that he was not allowed visitors, but did not provide them with a coherent response when they protested.

Discussion

67. The Working Group thanks the parties for their initial communication and subsequent contributions to the resolution of the present case.

68. 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, the Covenant and the relevant international legal instruments, in accordance with its methods of work.

69. 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. Mere

¹ General comment No. 35 (2014) on liberty and security of person, para. 30.

assertions that lawful procedures have been followed will not be sufficient to rebut the source's allegations.²

70. On the basis of the information submitted by the parties, the Working Group has been convinced that Mr. Marrero was one of the founders of the political party Voluntad Popular. He has been a municipal civil servant and has held leadership positions in his party, including as a popular representative and a parliamentary candidate. Since February 2019, he has served as Chief of Staff to the President of the National Assembly.

71. The Working Group has been convinced that on 15 March 2019, prosecutors requested the courts to issue search and arrest warrants in respect of Mr. Marrero. The warrants were issued on 20 March 2019 and the search and Mr. Marrero's subsequent arrest were carried out the following day.

Category II

72. 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. In addition, the Working Group reiterates that 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 or of public order, health or morals.³

73. 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 foundation stone for every free and democratic society.⁴ They form a 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.⁵

74. The importance of freedom of opinion is such that no government may infringe other human rights on the basis of a person's actual or perceived opinions, whether of a political, scientific, historical, moral, religious or any other nature. Criminalizing the holding of an opinion is therefore incompatible with the Universal Declaration of Human Rights and the Covenant. Neither is it permissible to harass, intimidate or stigmatize a person, including through the use of arrest, pretrial detention, trial or imprisonment, because of his or her opinions.⁶

75. In addition, freedom of opinion and freedom of expression form the basis for the full enjoyment of a wide range of other human rights, for example, the right to participate in the conduct of public affairs, to vote and to be elected.⁷

76. The Working Group has been convinced that Mr. Marrero was deprived of his liberty due to his exercise of the rights to political participation and freedom of expression, in particular because of his membership of the Voluntad Popular party and his position as the right-hand man of the President of the National Assembly, in contravention of articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant, and that his detention is therefore arbitrary under category II.

Category III

The right to be tried without undue delay

77. The Covenant recognizes the right of everyone charged with a criminal offence to be tried without undue delay.⁸ The Working Group, like the Human Rights Committee,

² A/HRC/19/57, para. 68.

³ Opinion No. 58/2017, para. 42.

⁴ General comment No. 34 (2011) on freedoms of opinion and expression, para. 2.

⁵ Ibid., para. 4.

⁶ Ibid., para. 9.

⁷ Article 25 of the Covenant.

⁸ Art. 14 (3) (c).

considers that delays in criminal proceedings can be justified only by the complexity of the case or the behaviour of the parties: delays for any other reasons are incompatible with the Covenant and compromise the impartiality of a trial.⁹ In addition, the Human Rights Committee has stated that when such delays are caused by a lack of resources, to the extent possible States should allocate supplementary budgetary resources.¹⁰

78. The Working Group has previously stated that defendants have the right to be brought before a judge for trial without delay, and to have the legality of their detention reviewed.¹¹ The Working Group recognizes, as the Human Rights Committee has stated, that it is important for detainees to be physically present at this review. The physical presence of detainees also serves as a safeguard for their right to physical safety and security of person.¹²

79. The Working Group has been convinced that in order to adhere to the 48-hour deadline established by law, the arraignment hearing should have begun on Friday, 22 March 2019. However, the hearing was held six days later, on 28 March 2019, for various reasons not attributable to Mr. Marrero, namely that: (a) the competent judge was absent from court; (b) Mr. Marrero was transferred and brought before a court other than the one that issued the arrest warrant, leading the court to decline jurisdiction and suspend the hearing; and (c) on two separate days the hearing was suspended because of a nationwide blackout.

80. The Working Group found that Mr. Marrero's right to be tried without undue delay was violated, in contravention of article 14 (3) (c) of the Covenant.

Presumption of innocence

81. Article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant recognize the right of all persons charged with a criminal offence to be presumed innocent. This right imposes a number of obligations on all State institutions to treat persons accused of a criminal offence as innocent until they have been found guilty beyond any reasonable doubt. In the view of the Working Group, as well as that of the Human Rights Committee, this right carries an obligation for all public authorities, including of the executive branch, to avoid prejudging the outcome of a trial, which includes refraining from making public statements affirming the guilt of the accused.¹³

82. 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.¹⁴

83. The Inter-American Court of Human Rights has stated that:

The right to be presumed innocent requires that the State should not informally condemn a person or pass judgment on him or her publicly, thereby contributing to the formation of public opinion, before criminal liability has been established in accordance with the law. As this right might therefore be violated by trial judges or by other public authorities, they must exercise discretion and caution when making public statements about criminal proceedings before the accused has been tried and sentenced.¹⁵

⁹ General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 27.

¹⁰ Ibid.

¹¹ Opinion No. 78/2018, paras. 75–76.

¹² General comment No. 35, paras. 34 and 42.

¹³ General comment No. 32, para. 30. See also *Kozulina v. Belarus* (CCPR/C/112/D/1773/2008), para. 9.8.

¹⁴ Opinions No. 90/2017, No. 76/2018 and No. 89/2018.

¹⁵ *Pollo Rivera et al. v. Peru*, para. 177. See also *Tibi v. Ecuador*, para. 182, and *J. v. Peru*, paras. 244–247. Similarly, see European Court of Human Rights, *Allenet de Ribemont v. France*, para. 41; *Daktaras v. Lithuania*, para. 42; *Petkov v. Bulgaria*, para. 91; *Peša v. Croatia*, para. 149; *Gutsanovi v.*

84. The Working Group has reiterated that the public statements of high-ranking officials violate the right to be presumed innocent if such statements indicate that someone is guilty of an offence for which they have not yet been tried, thereby leading the public to believe them guilty and seeking to influence or prejudice the assessment of the facts by the competent judicial authority.¹⁶

85. The Working Group is aware that on 21 March 2019, the building where Mr. Marrero and his colleague lived was searched in an operation involving 150 intelligence officers.

86. The Working Group has been convinced that during the search, Mr. Marrero was confined to one area of his apartment. Mr. Marrero was arrested, and as he was being taken away by local police officers, he accused the agents of having planted two rifles and a grenade at the property. The Working Group has been convinced that the judge granted the request for a warrant to search for weapons on the basis of the assertions of a single intelligence officer who did not attach to the request any evidence of the presence of illegal items at the property.

87. In past opinions rendered on arbitrary arrests made by the authorities in the Bolivarian Republic of Venezuela, the Working Group has found that it is common for weapons to be planted in the vehicles or homes of dissidents or members of opposition political parties to provide a justification for their arrest.¹⁷

88. The Working Group has been convinced that senior government officials made public statements describing Mr. Marrero as having committed a crime.

89. For example, the Minister for Interior Affairs, Justice and Peace stated that Mr. Marrero had been arrested because of his leadership of a group that allegedly sought to create chaos in the country. In a press conference, the Minister made a statement indicating that a terrorist cell that was planning to carry out targeted attacks had been dismantled. According to his statement, the cell had hired mercenaries from Colombia and Central America to kill political leaders, military personnel and judges and to sabotage public services. The Minister indicated that Roberto Marrero was the direct leader of the groups.

90. Shortly thereafter, the Attorney General's Office issued a statement confirming that Mr. Marrero was under investigation for an alleged assassination attempt against the President of the Republic. The President stated that the alleged terrorist group to which Roberto Marrero, a parliamentary deputy, was linked had intended to attack metro stations in Caracas, as well as barracks, military units and hospitals.

91. On 28 March 2019, the Attorney General threatened Mr. Marrero, stating that the "usurper's right-hand man" was already in custody in connection with the cases and the assassination attempt and that he would be sentenced accordingly within the framework of the law.

92. These statements were made despite the fact that no charges had yet been brought against Mr. Marrero, much less a sentence passed against him. The Working Group finds that his right to be presumed innocent, as enshrined in article 14 (2) of the Covenant, has thus been violated.¹⁸

Right to an adequate defence

93. Article 14 (3) (b) of the Covenant recognizes the right of every person to have adequate time and facilities for the preparation of a defence, which is an important guarantee of a fair trial and the principle of equality of arms.¹⁹ Adequate facilities for a

Bulgaria, paras. 194–198; *Konstas v. Greece*, paras. 43 and 45; *Butkevičius v. Lithuania*, para. 53; *Khuzhin and Others v. Russia*, para. 96; and *Ismoilov and Others v. Russia*, para. 161.

¹⁶ See Opinions No. 6/2019 and No. 12/2019.

¹⁷ See Opinions No. 49/2018, No. 52/2017 and No. 26/2015.

¹⁸ General comment No. 32, para. 30.

¹⁹ *Ibid.*, para. 32.

defence include, inter alia, early access to all materials, documents and other evidence that the prosecution plans to offer in court.²⁰

94. Detainees should be made aware of these rights at the time of arrest and, immediately following their arrest, should be able to obtain legal assistance in an appropriate setting where they can hold private and confidential discussions with their legal representative.

95. The Working Group found that Mr. Marrero was unable to meet with his lawyer until he had spent approximately 50 days in detention, which implies a violation of the right to counsel of his own choosing, which furthermore affects his right to defend himself against the charges brought against him.

96. The Working Group has been convinced that Mr. Marrero's lawyers have not been able to gain access to the records in the case file held by the Prosecution Service because the investigation is being directed by the intelligence services, whose work is secret.

97. The Working Group is aware that the factual and legal elements the Court considered when ordering his detention have therefore not been disclosed to Mr. Marrero's lawyers, and consequently it has not been possible to challenge his deprivation of liberty.

98. The Working Group has been convinced that the right to a defence has been violated in the present case and finds that Mr. Marrero's detention contravenes the provisions of articles 10 and 11 of the Universal Declaration of Human Rights, as well as articles 9 and 14 of the Covenant, and is therefore arbitrary under category III.

Category V

99. The Working Group is of the opinion that the detention described in this case is part of a series of arbitrary detentions ordered by the authorities in the Bolivarian Republic of Venezuela against members of opposition political parties, human rights defenders and persons who criticize the actions of the authorities.²¹

100. The Working Group has been convinced that Mr. Marrero's detention is part of a pattern of arrests ordered by the authorities of the Bolivarian Republic of Venezuela in respect of members of opposition political parties, including the Voluntad Popular party.

101. The deprivation of liberty of Mr. Marrero therefore constituted a violation of international law because he was deprived of his liberty on the grounds of discrimination based on his political opinion and his status as a member of the opposition political party Voluntad Popular, in breach of articles 2 and 26 of the Covenant and articles 1 and 7 of the Universal Declaration of Human Rights, rendering it arbitrary under Category V.

Disposition

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

The deprivation of liberty of Roberto Eugenio Marrero Borjas, being in contravention of articles 1, 7, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II, III and V.

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

²⁰ Ibid., para. 33.

²¹ See 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.

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

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

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

Follow-up procedure

107. 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. Marrero has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Marrero;
- (c) Whether an investigation has been conducted into the violation of Mr. Marrero's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of 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.

108. 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.

109. 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.

110. 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.²²

[Adopted on 21 November 2019]

²² See Human Rights Council resolution 42/22, para. 3.