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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020

#### Opinion No. 57/2020 concerning Juan Pablo Saavedra Mejías (Bolivarian Republic of Venezuela)\*

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. 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 15 April 2020 the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Juan Pablo Saavedra Mejías. The Government requested an extension of the deadline for its response. The request was granted, and the response was submitted on 15 July 2020. 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).

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\* Seong-Phil Hong did not participate in the discussion of the present case.



## Submissions

### *Communication from the source*

4. Juan Pablo Saavedra Mejías, a Venezuelan national born on 5 September 1964, is a colonel in the Bolivarian Air Force, which forms part of the Bolivarian National Armed Forces. At the time of his arrest, Mr. Saavedra was head of the contracts division of the Air Force Procurement Office.

#### (a) Detention

5. According to the source, on 20 May 2018, Mr. Saavedra was in his office at the headquarters of the Air Force General Command at Generalísimo Francisco de Miranda Air Base (La Carlota) in Caracas. At approximately 10 p.m., a general officer arrived and told him to go to another office, where he found the officer who was his direct supervisor at the time, along with the division general, who at that time was the Director of Air Force Logistics, and the then senior air force commanders, including the Chief of Staff, the Inspector and the Commander-in-Chief of the Air Force. Four officials from the Directorate General for Military Counter-Intelligence were also present. They were wearing civilian clothes and bulletproof vests and carrying rifles and pistols. They were not displaying official identification and their faces were covered. The four officials told Mr. Saavedra to accompany them to their headquarters to discuss a situation with an officer under their command.

6. The source reports that Mr. Saavedra was subsequently taken in a white van, which bore no registration plates or identification, to the headquarters of the Directorate General for Military Counter-Intelligence, located in the Boleíta Norte district of Caracas. Upon arrival at the Directorate General's headquarters, the officials covered their faces, handcuffed Mr. Saavedra and placed a hood over his head so that he could not see. The source emphasizes that he was not told at the outset that he was being detained, and at no time was he shown an arrest warrant.

#### (b) Pretrial detention, indictment and trial

7. According to the source, Mr. Saavedra was detained at the Directorate General for Military Counter-Intelligence for nine days, during which he received no information from officials concerning the investigations that were reportedly being conducted and was denied all communication and assistance, whether from lawyers or members of his family. He was subjected to psychological abuse, and threats were made against his family's safety. The officials from the Directorate General abused him physically, kicking him in the back, abdomen and face and leaving him in pain owing to previous surgery on his spine. On some days, his face was covered so that he could not see, and his hands were handcuffed behind his back.

8. The source notes that, during the nine days he was held in these conditions, he was denied access to the bathroom and given very little food and water. Sometimes the officials did not wear hoods, but at other times they covered their faces while they were interrogating him.

9. The source reports that, on 29 May 2018, nine days after his arrest, Mr. Saavedra was brought before the Military Due Process Court of First Instance of the Military Criminal Judicial District for the Caracas Metropolitan Area. On 30 May 2018, by order of the Court, he was transferred to the National Centre for Military Detainees at Ramo Verde Prison.

10. The source also reports that, at the time of his transfer to the Court for the arraignment hearing, Mr. Saavedra was allowed to appoint a private lawyer. Until that point, he had not been informed of the reason for his arrest or given access to the case file in order to properly exercise his right to a defence.

11. He was charged with the offences of treason, mutiny, instigating a military rebellion and crimes against military decorum, as provided for in articles 464 (25) and (26), 888, 481, 565, 389 and 390 (1) of the Organic Code of Military Justice. The source notes that in none of the judicial proceedings has Mr. Saavedra's individual conduct been matched to the

charges against him. He is a commissioned officer in an administrative post and has no troops at his command.

12. According to the source, in June 2018, Mr. Saavedra filed an appeal against his pretrial detention, claiming that his rights to be presumed innocent, to a defence and to due process had been violated insofar as no evidence had been submitted to substantiate the existence of the offences with which he had been charged and there was no individualized and coherent account of any elements proving his alleged involvement in the commission of these offences.

13. On 4 July 2018, National Military Prosecutor's Office No. 9 filed an indictment with Military Due Process Court No. 1 in Caracas. In the indictment, Mr. Saavedra was charged with having committed the military offences of instigating a military rebellion and crimes against military decorum. The document also contained a request for the charges of treason and mutiny to be dismissed. The Prosecutor's Office set out the "evidence" on the basis of which it considered Mr. Saavedra responsible for the above-mentioned offences.

14. The source notes that this same evidence was used as a basis to prove the criminal responsibility of Mr. Saavedra's co-defendants, but that officials failed to demonstrate how the evidence proved his involvement in any of the above-mentioned offences. The source states that the only piece of evidence containing a specific reference to Mr. Saavedra is investigation report No. DGCIM-DEIPC-AIP-337-2018 of 21 May 2018, which states that:

As a result of one of the calls intercepted during the investigation relating to case file No. DGCIM-DEIPC-UEC-AIF-0076-2018, it was possible to demonstrate that [name redacted] had a conversation with Colonel Juan Pablo Saavedra and [name redacted], which provided the evidence required in order to issue arrest warrants for those implicated in the present investigation of Colonel Juan Pablo Saavedra and [name redacted].

15. In addition, the source indicates that the only accusation made by the Prosecutor's Office against Mr. Saavedra is, according to the indictment filed on 4 July 2018 by National Military Prosecutor's Office No. 9 with Military Due Process Court No. 1 in Caracas, that:

He was allegedly seeking to instigate a group of subordinate officers to join the conspiratorial movement. These actions took the form of an attempt to undermine the very foundations of the Bolivarian National Armed Forces, including obedience, discipline and subordination, and are reflected in all the evidence gathered during the investigation.

16. According to the source, in August 2018, Mr. Saavedra's lawyer submitted a brief containing objections and a request to nullify the indictment. The lawyer argued that although the commission of various unlawful acts had been attributed to Mr. Saavedra, the indictment did not contain a clear, precise and detailed description of the acts of which the Public Prosecution Service had accused him and on the basis of which he was considered to be responsible for the offences for which he was due to be prosecuted. This omission constituted a violation of his constitutional rights to due process and to a defence. The lawyer also submitted other challenges and objections to the evidence presented by the Public Prosecution Service, as well as a request to discharge Mr. Saavedra and release him immediately and an application for alternative measures to deprivation of liberty to be agreed should he not be released.

17. According to the information received, the preliminary hearing began on 11 December 2018 and concluded on 20 December 2018. However, it was not until 25 February 2019 that Military Due Process Court No. 1 in Caracas issued a decision dismissing the requests for the release of Mr. Saavedra and his co-defendants and for alternative measures to pretrial detention to be agreed and admitting the indictment submitted by the Prosecutor's Office. Consequently, the preventive measures imposed on Mr. Saavedra and other co-defendants at the Ramo Verde National Centre for Military Detainees remained in place. In the decision, the Court also granted the request to prosecute the defendants. Official notice of the decision was issued on 7 May 2019.

18. On 20 May 2019, an appeal was lodged against the decision of 25 February 2019 issued by Military Due Process Court No.1 of the Military Judicial District. The appeal states

that the decision did not provide a reasoned explanation of the grounds for the charges laid against Mr. Saavedra and his co-defendants.

19. According to the source, for many months the Court was under the control of the Courts Inspectorate, without issuing rulings, and the trial was paralysed from February to December 2019. In January 2020, the case was transferred to the Trial Court, but the appeals have not been settled.

20. The source reports that, on 12 November 2019, a brief was submitted to the Martial Court of the Military Criminal Judicial District with a copy of a document dated October 2019 containing requests for Mr. Saavedra to be taken to the Dr. Carlos Arévalo Military Hospital for examination by a specialist and any necessary laboratory and radiology tests, and for him to receive appropriate health assessments and treatment in order to alleviate his severe physical pain and prevent his ailments from worsening and causing irreversible damage owing to his poor overall health, significant weight loss and age (55 years).

21. On 17 November 2019, a provisional medical report was issued by the Directorate General for Health at the Dr. Vicente Salías Military Hospital, recommending that Mr. Saavedra should undergo a medical examination.

22. On 18 November 2019, a brief was submitted to the Military Due Process Court of First Instance of the Military Criminal Judicial District of the Caracas Metropolitan Area, requesting that Mr. Saavedra be transferred to the Dr. Carlos Arévalo Military Hospital for examination by a specialist doctor, any necessary laboratory and radiology tests and appropriate health assessments and treatment to alleviate his severe physical pain and prevent his ailments from worsening and causing irreversible damage owing to his poor overall health, significant weight loss and age. This should have triggered a basic general examination in compliance with the legal and constitutional norms set forth above.

23. On 18 November 2019, a brief was submitted to the President of the Martial Court and the Military Criminal Judicial District containing a copy of the brief presented in November to Military Due Process Court of First Instance No. 1 of the Military Criminal Judicial District of the Caracas Metropolitan Area.

24. The source notes that nine members of the Armed Forces of the Bolivarian Republic of Venezuela, including Mr. Saavedra, were deprived of their liberty by order of Military Due Process Court No.1 in Caracas on the basis of their alleged involvement in planning a coup d'état known as Operation Armageddon.

25. The source explains that, according to a report drafted by the Directorate General for Military Counter-Intelligence, the military officers were accused of seeking to hinder the presidential elections of 20 May 2018 and assassinate the President. They were therefore detained at the Directorate General for Military Counter-Intelligence for the offences of treason, instigating a rebellion and attempted assassination of the President.

26. The source submits that Mr. Saavedra's detention falls under categories I, II, III and V.

(i) Categories I and III: legal basis and due process

27. With regard to categories I and III, the source argues that Mr. Saavedra was arrested on 20 May 2018 without being shown a warrant. During a meeting with senior air force officials, several persons wearing hoods and civilian clothing entered the office, covered his face and arrested him without any explanation.

28. The source argues that, under international law and Venezuelan domestic law, a warrant is required for an arrest to be made, except in cases of flagrante delicto. In the present case, this requirement was not met, and Mr. Saavedra's detention therefore does not comply with either Venezuelan law (category I) or international human rights law with regard to fair trial (category III).

29. The source also argues that, in Venezuelan legislation, the legal time limit for bringing a person before a due process court after arrest is 48 hours. However, Mr. Saavedra did not appear in court until nine days after his arrest, considerably exceeding the legal time limit.

The source concludes that, as a consequence, Mr. Saavedra's detention is arbitrary under category I.

30. Furthermore, according to the source, in the nine days before he appeared in court, Mr. Saavedra was not allowed access to his relatives or lawyers. This situation of incommunicado detention made it difficult for his lawyers to obtain access to the information they needed in order to mount a defence. The source points out that not allowing Mr. Saavedra access to a lawyer exacerbated the arbitrary nature of his detention under category III.

31. According to the source, a confession obtained under torture or cruel, inhuman or degrading treatment should be understood to be invalid, in accordance with article 7 of the Covenant and article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Officials from the Directorate General for Military Counter-Intelligence threatened Mr. Saavedra and subjected him to psychological and physical abuse before he appeared in court on 29 May 2018. The ill-treatment was inflicted with the intention of extracting a confession from him. As a result, the source concludes that Mr. Saavedra's detention is arbitrary under categories I and III.

32. The source also notes that not only was Mr. Saavedra's defence team prevented from having contact with him, but also it was not until 29 May 2018 that it was granted access to the file and the items of evidence on the basis of which Mr. Saavedra was investigated and charged and which were used by the Court to justify his pretrial detention. As a result, the source argues that the detention should be considered arbitrary under category III.

33. Lastly, the source notes that, in the trial proceedings, no reason has been given for Mr. Saavedra's continued detention. Neither the charge sheet nor the indictment nor any other procedural document issued by the Military Prosecutor's Office or the military jurisdictional authorities provide individualized reasons explaining the attribution of criminal responsibility to Mr. Saavedra. It is impossible to discern the possible extent of his involvement in the events or the reasons why he is presumed to have been involved. The only reference to his supposed involvement is the claim that he participated in a telephone call which was allegedly intercepted. According to the source, the justification for Mr. Saavedra's deprivation of liberty has not been made clear. The source claims that this situation represents a violation of the guarantee of a fair trial and that the detention should therefore be considered arbitrary.

(ii) Categories II and V: discrimination

34. With regard to categories II and V, the source maintains that Mr. Saavedra's detention is part of the Government's systematic practice of depriving political opponents, 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 Covenant. The acts attributed to Mr. Saavedra, and in connection with which he is still being held, pertain to his perceived involvement in alleged political offences in the context of a military operation reportedly intended to overthrow the President in 2018. The perception that Mr. Saavedra belongs to an opposition group has led to his trial being conducted in the manner described above.

*Response from the Government*

35. On 15 April 2020, the Working Group transmitted the allegations from the source to the Government, requesting that it submit a response before 15 June 2020. On 15 June 2020, the Government requested an extension of this deadline and was given until 15 July 2020 to reply. The Government submitted its response on 15 July 2020. The Government noted that Mr. Saavedra, a lawyer, is a serving military officer with the rank of colonel in the Bolivarian Air Force. In 2006, he served as an alternate military judge (resolution No. DD 034769) in the Military Criminal Judicial Circuit.

36. The Government reports that Mr. Saavedra was arrested in the context of criminal proceedings brought against him for his alleged involvement in the commission of the offences of instigating a military rebellion, conspiracy to mutiny and crimes against military decorum. The Government also points out that the criminal proceedings against Mr. Saavedra

relate to his alleged links with movements that conspired to take action to destabilize the country in the run-up to the presidential elections of 20 May 2018.

37. The Government adds that the criminal investigation was conducted by National Military Prosecutor No. 9 and that the pieces of evidence gathered include police investigation report No. DGCIM-DEIPC-AI-337-2018, dated 21 May 2018 and issued by the Investigations Division in the Special Office for Criminal Investigations of the Directorate General for Military Counter-Intelligence. The report places on record Mr. Saavedra's alleged links to acts constituting offences punishable under military criminal law.

38. The Government denies that Mr. Saavedra was arrested on the date claimed by the source. It asserts that Mr. Saavedra was arrested in strict compliance with arrest warrant No. 056-2018 of 27 May 2018 issued by the competent court. It also affirms that, at the time of the arrest, officials informed Mr. Saavedra of the reasons for his arrest and of his rights as a suspect, as set out in the report of notification of the rights of suspects dated 28 May 2018, which bears Mr. Saavedra's signature and fingerprints. Furthermore, the Government notes that Mr. Saavedra's lawyer has not at any time queried the signature and fingerprints on the notification report or raised concerns about them.

39. The Government states that, on 27 May 2018, following the results of an investigation, Military Prosecutor's Office No. 9 asked Military Due Process Court No. 1 to issue an arrest warrant for Mr. Saavedra in connection with his alleged commission of the military offences provided for in the Organic Code of Military Justice, namely treason, provided for in article 464 (25) and punishable under article 465 in conjunction with articles 467 and 170; instigating a military rebellion, provided for in and punishable under article 481; mutiny (conspiracy to mutiny), provided for in and punishable under articles 488, 489 (4) and 495; and crimes against military decorum, provided for in and punishable under article 565.

40. The Government also points out that, in response to the request submitted by the Prosecutor's Office, also on 27 May 2018, Military Due Process Court No. 2 issued the arrest warrant, by reasoned decision, in accordance with article 236 of the Code of Criminal Procedure.<sup>1</sup>

41. The Government also reports that the investigation relating to the present case was conducted by the Directorate General of Military Counter-Intelligence acting as a criminal investigation body appointed by the court hearing the case, in accordance with article 113 of the Code of Criminal Procedure and article 3 (4) and (5) of the Directorate's Organic Regulations.<sup>2</sup>

42. The Government notes that after his arrest, Mr. Saavedra underwent a forensic medical examination, following which he was found to be in good general health.

43. In addition, the Government indicates that, on 29 May 2018, Mr. Saavedra was transferred to Military Due Process Court No. 1 of the Military Criminal Judicial District for

<sup>1</sup> The relevant portion of article 236 states that at the request of the Public Prosecution Service, the due process judge can order the pretrial detention of the accused, provided that the existence of the following has been proven: a punishable act warranting a custodial sentence in respect of which criminal proceedings are clearly not time-barred; substantiated evidence that the accused has been the perpetrator of or participated in the commission of a punishable act; and a reasonable presumption, having regard to the specific circumstances of the case, that the accused might abscond or obstruct efforts to establish the truth in respect of a specific element of the investigation. The due process judge will decide on the request within 24 hours. If the requirements set out in the article for the appropriateness of pretrial detention are found to have been met, the judge will issue an arrest warrant for the person in respect of whom the measure has been requested.

<sup>2</sup> Article 113 of the Organic Code of Criminal Procedure states that the police bodies involved in criminal investigations are the officials to whom the law accords such status and any other official who is required to perform the investigative functions established by the Code. The relevant portion of article 3 of the Organic Regulations of the Directorate General of Military Counter-Intelligence states that the Directorate: "4. Exercises, within its areas of competence, the functions of a support body for criminal investigations in accordance with the Organic Code of Criminal Procedure and the Organic Code of Military Justice. 5. Carries out any arrests that may occur as a result of the investigations for which it is responsible."

the Caracas Metropolitan Area for the oral arraignment hearing, under the provisions of article 236 of the Organic Code of Criminal Procedure.<sup>3</sup>

44. The Government notes that, at the oral arraignment hearing, Mr. Saavedra was assisted and represented by a trusted lawyer of his choosing. The Government also states that, at the hearing, the judge in the case gave Mr. Saavedra, as the accused, the opportunity to testify in his own defence as he saw fit. The Government adds that at no time did he complain to the judge about the allegations made by the source to the Working Group concerning alleged irregularities in his detention or the alleged acts of torture, physical abuse and psychological ill-treatment.

45. The Government maintains that, after hearing the parties, Military Due Process Court No. 1 granted the request for pretrial detention submitted by National Military Prosecutor's Office No. 9 in respect of Mr. Saavedra for the offences with which he was charged and ordered him to be held at the National Centre for Military Detainees.

46. The Government adds that the preliminary hearing was held on 12 December 2018 in accordance with the provisions of article 309 of the Organic Code of Criminal Procedure, and points out that at the hearing Mr. Saavedra exercised his right to a defence.

47. The Government reports that after hearing the parties at the preliminary hearing, the Court in the case admitted in full the indictment prepared by the Public Prosecution Service regarding the offences with which Mr. Saavedra was charged and upheld his pretrial detention. The Government notes that the decision was taken on 20 December 2018 and not on the date indicated by the source.

48. In addition, the Government states that the proceedings have reached the public oral trial stage, in accordance with article 314 of the Organic Code of Criminal Procedure, and that Mr. Saavedra is being held in the facilities of the National Centre for Military Detainees. His detention conditions meet international standards. The Government notes that, in September 2019, Mr. Saavedra was interviewed at the Centre by officials from the Office of the United Nations High Commissioner for Human Rights in the Bolivarian Republic of Venezuela.

(i) Category I

49. The Government argues that by virtue of the details set out above, Mr. Saavedra's detention cannot be considered as arbitrary under category I, as it was carried out on the basis of an order issued by a competent court and there is therefore a legal basis for the detention.

50. The Government stresses that there is no evidence whatsoever to support the source's allegations that Mr. Saavedra was detained before an arrest warrant was issued. On the contrary, it claims to have sent the Working Group a copy of the report of notification of the rights of suspects, duly bearing Mr. Saavedra's signature and fingerprints, which records the date of his arrest as 28 May 2018. The Government also notes that at no time has Mr. Saavedra's lawyer queried the signature and fingerprints on the notification report or raised concerns about them. Neither has Mr. Saavedra himself raised the matter before the Court hearing the case.

(ii) Category II

51. The Government claims that Mr. Saavedra's detention cannot be considered arbitrary under category V. It notes that the source does not provide any evidence to support the claims made in this regard and merely states that the offence is "political in nature" and that his arrest is allegedly the result of his political opinion.

<sup>3</sup> The relevant portion of article 236 provides that within 48 hours of the arrest, the accused must be brought before the judge for the arraignment hearing, in the presence of the parties and, where applicable, of the victim. The judge will decide whether to maintain the measure imposed or replace it with a less onerous one. If the judge agrees to maintain the measure of pretrial detention during the preparatory phase, the prosecutor must present the indictment, request the dismissal of the case or, if appropriate, set aside the charges within 45 days following the judicial decision.

## (iii) Category III

52. The Government maintains that Mr. Saavedra's detention cannot be considered arbitrary under category III, since the judicial proceedings have been carried out in full compliance with the guarantees of the right to due process recognized in articles 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant, as well as the other human rights treaties binding on the Bolivarian Republic of Venezuela. The Government indicates that not only was Mr. Saavedra's arrest based on a court order, but at the time of the arrest, he was notified of the reasons for it and of his rights as a suspect. The Government adds that Mr. Saavedra underwent a forensic medical examination and was never subjected to torture or cruel, inhuman or degrading treatment.

53. In addition, the Government notes that Mr. Saavedra was brought before the competent military court the day after his arrest, i.e. within 48 hours as established by Venezuelan law. During the hearing, Mr. Saavedra was also assisted by a lawyer of his choice. The Government indicates that the lawyer was given access to the contents of the case file from the moment it was received in court, i.e. less than 24 hours after Mr. Saavedra's arrest.

## (iv) Category V

54. Lastly, the Government adds that Mr. Saavedra's detention cannot be classified as arbitrary under category V as it does not under any circumstances constitute a violation of international human rights law on grounds of political discrimination. The Government alleges that Mr. Saavedra's arrest was the result of an investigation that uncovered his possible links to activities that constitute criminal offences under the Venezuelan legal system.

*Additional comments from the source*

55. The Working Group transmitted the Government's response to the source on 20 July 2020. The source submitted final comments and observations on the Government's response on 4 August 2020.

56. In the final observations, the source argues that it is untrue that Mr. Saavedra was arrested on 28 May 2018, and confirms that the arrest took place on 20 May 2018. In this regard, the source submits several pieces of evidence to support this claim: (a) a record of detention, issued on 15 July 2019 by the National Centre for Military Detainees, which states that Mr. Saavedra was deprived of his liberty on 20 May 2018; (b) press releases and news posts from social media networks stating that the arrest reportedly took place before 28 May 2018; and (c) evidence that around the time of Mr. Saavedra's arrest, the practice of detaining individuals without arrest warrants was widespread, as verified by the Office of the United Nations High Commissioner for Human Rights.<sup>4</sup>

57. Against that backdrop, the source stresses that Mr. Saavedra was not informed of the reasons for his arrest. He first appeared in court nine days after his detention, rather than 24 hours, as the Government claims. The source also points out that during those nine days, he did not have access to a lawyer and was held incommunicado. His lawyer was prevented from having contact with him and did not have access to the case file until 29 May 2018.

58. The source also adds that the Government did not provide specific and individualized reasons to justify his detention. Furthermore, the source reports that although Mr. Saavedra had a lawyer of his choosing later on during the proceedings, they were not provided with the necessary time or conditions to meet confidentiality.

59. The source points out that it has been widely reported that the intelligence services, including the Directorate General for Military Counter-Intelligence, have been responsible for arbitrary detentions and the ill-treatment and torture of political opponents and their relatives.<sup>5</sup>

<sup>4</sup> A/HRC/44/20.

<sup>5</sup> A/HRC/41/18.



60. Lastly, the source points out that Mr. Saavedra's detention is discriminatory because he is perceived as being a political opponent.

### Discussion

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

62. In determining whether Mr. Saavedra's deprivation of liberty is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal 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 assertions that lawful procedures have been followed will not be sufficient to rebut the source's allegations.<sup>6</sup>

#### (i) Category I

63. In the present case, the source alleges that Mr. Saavedra was deprived of his liberty on 20 May 2018, without a court order, and was held incommunicado for nine days. The Government states that the warrant was issued on 27 May 2018 and that Mr. Saavedra was arrested on that date.

64. Having analysed all the available information, the Working Group notes that, contrary to the Government's allegations, there is *prima facie* evidence that Mr. Saavedra was arrested without an arrest warrant on 20 May 2018. The source has submitted, and the Government has not refuted, a record of detention issued on 15 July 2019 by the National Centre for Military Detainees, which states that Mr. Saavedra was arrested on 20 May 2018.

65. Furthermore, the Working Group notes that, in addition to the findings set out in its own jurisprudence,<sup>7</sup> in a recent report the Office of the United Nations High Commissioner for Human Rights also described the widespread practice in the Bolivarian Republic of Venezuela of arrests without a judicial warrant and noted that at the time of arrest, no warrant is usually presented and individuals are not informed of the reason for their arrest. In several cases, arrest warrants have been issued retroactively, sometimes with falsified dates. Most of the arrests were made by members of the Directorate General for Military Counter-Intelligence and the Bolivarian National Intelligence Service.<sup>8</sup>

66. Given the absence of a court order at the time of Mr. Saavedra's deprivation of liberty on 20 May 2018, the Working Group considers that he could not have been informed of the reasons for his arrest. The Government has been able to establish only that there was no legal basis for the arrest until 27 May 2018.

67. Mr. Saavedra was not arrested on the basis of a warrant or because he was caught in the act of committing a crime. In its jurisprudence, the Working Group has consistently found that an offence is flagrant if the accused is either apprehended during the commission of a crime or immediately thereafter, or is arrested in hot pursuit shortly after a crime has been committed.<sup>9</sup> In the present case, Mr. Saavedra was in his office when officials from the Directorate General for Military Counter-Intelligence, dressed in civilian clothing, told him to accompany them to their headquarters to discuss a situation with one of the officers under their command. In the view of the Working Group, Mr. Saavedra was clearly not arrested in *flagrante delicto*.

68. The Working Group concludes that, by failing to issue an arrest warrant informing Mr. Saavedra of the reasons for his arrest, the Government has not taken the necessary steps

<sup>6</sup> A/HRC/19/57, para. 68.

<sup>7</sup> Opinions No. 18/2020, No. 20/2020, No. 39/2019, No. 40/2019, No. 75/2019, No. 80/2019, 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 10/2009.

<sup>8</sup> A/HRC/44/20, para. 45.

<sup>9</sup> Opinion No. 9/2018, para. 38.

to establish a legal basis for his detention. His deprivation of liberty is therefore arbitrary under category I and violates article 9 (1) of the Covenant.

69. The Working Group notes that article 9 (2) of the Covenant provides that any person who is arrested must be informed immediately both of the reasons for his or her arrest and of the charges against him or her. This did not happen in the case of Mr. Saavedra. The Working Group, in its jurisprudence, has ruled that detention without notification of the reasons for it is also arbitrary.<sup>10</sup>

70. The Working Group also notes that Mr. Saavedra was held in solitary confinement for nine days at the Directorate General for Military Counter-Intelligence. He did not appear before a judge until nine days after he was deprived of his liberty. In the Working Group's view, incommunicado detention impedes and violates the right of individuals to be brought promptly before a judge, as well as their right to appeal to a court to decide as soon as possible on the lawfulness of the detention and to order release if the detention is unlawful, as recognized in article 9 (3) and (4) of the Covenant.<sup>11</sup> The Working Group also recalls the Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, which establish the importance of a review, by an independent and impartial court, of the arbitrariness and legality of the deprivation of liberty, as a means of safeguarding the right protected by article 9 of the Covenant.<sup>12</sup>

71. In addition, the Working Group considers that the incommunicado detention to which Mr. Saavedra was subjected prevented him from exercising his right to an effective judicial remedy to challenge his detention and request protection from the possible violation of his right to personal liberty. The Working Group considers that this right, which is enshrined in article 8 of the Universal Declaration of Human Rights and in article 2 (3) of the Covenant, was violated in the present case.

72. Consequently, the Working Group considers Mr. Saavedra's detention to be arbitrary under category I.

(ii) Category III

73. With regard to the claims concerning due process, the Working Group notes that the right to defence is a fundamental right which is central to the notion of a fair trial. In this regard, the Working Group notes that article 14 (3) (b) provides that accused persons must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing.

74. In this regard, the Working Group notes that, owing to his placement in incommunicado detention, Mr. Saavedra was not able to contact a lawyer until nine days after his arrest. Even once he was able to meet with his lawyer, he was not provided with a confidential setting or the necessary conditions in which to prepare his defence.<sup>13</sup> Furthermore, the source has established that Mr. Saavedra's lawyer could not obtain access to the file or to the documents setting out the reasons for his arrest prior to his appearance before the judge. The Government failed to demonstrate that such access was guaranteed without restriction. The Working Group therefore considers that there has been a violation of the guarantee of adequate means to prepare one's defence and the ability to communicate with one's defence counsel, as set out in article 14 (3) (b) of the Covenant.

75. In addition, the Working Group notes that in its response, the Government did not provide information on specific behaviour attributed to Mr. Saavedra, that is, the specific acts he performed, as an individual, in the commission of the offences of which he is accused. Specific acts attributed to the individual must be described in the justification for the indictment, and accused persons must be informed of the details of them under the terms of article 14 (3) (a) of the Covenant. This is a fundamental element in the exercise of a defence.

<sup>10</sup> Opinions Nos. 46/2019, para. 51, and No. 10/2015, para. 34.

<sup>11</sup> See Opinion No. 40/2019, para. 118.

<sup>12</sup> A/HRC/30/37, principle 6.

<sup>13</sup> Ibid, Principle 9 and Guideline 8.

76. The Working Group also notes the source's credible allegations that, prior to his appearance in court on 29 May 2018, officials from the Directorate General for Military Counter-Intelligence psychologically and physically abused Mr. Saavedra and threatened his family's safety. The Government did not rebut these allegations. The source reports that the abuse was intended to elicit a confession from Mr. Saavedra. In the Working Group's opinion, a person who is subjected to ill-treatment, threats and pressure to plead guilty prior to being brought before a court cannot adequately exercise his or her defence or do so on an equal footing. Such defects at the beginning of the proceedings make it difficult for Mr. Saavedra to receive a fair, independent and impartial trial on an equal footing. This contributes to the conclusion that there has been a violation of the specific guarantees of due process set out in article 14 of the Covenant. The Working Group has decided to refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

77. In the present case, the Working Group considers that the violations of the right to a defence are of such gravity as to give Mr. Saavedra's detention an arbitrary character under category III.

(iii) Categories II and V

78. The Working Group has considered the source's allegations under categories II and V and concludes that it has no information which would allow it to find the deprivation of liberty of Mr. Saavedra arbitrary on the basis of the criteria established under these categories.

(iv) Final observations

79. In recent years, the Working Group has repeatedly issued Opinions on multiple cases of arbitrary detention in the Bolivarian Republic of Venezuela.<sup>14</sup> In the Working Group's view, this amounts to a systematic practice by the Government of depriving individuals of their liberty without upholding their fundamental human rights, in violation of fundamental rules of international law, including those enshrined in the Universal Declaration of Human Rights and the Covenant. The Working Group wishes to recall that, under certain circumstances, systematic imprisonment and other forms of deprivation of liberty in violation of relevant international standards may constitute crimes against humanity.

80. In the light of the above, the Government of the Bolivarian Republic of Venezuela, currently a member of the Human Rights Council, should favourably consider inviting the Working Group to conduct an official visit to the country. The Working Group has requested an invitation to visit the Bolivarian Republic of Venezuela on several occasions since 2011, the most recent request being dated 2 October 2019. Such visits are an opportunity for the Working Group 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 underlying reasons for arbitrary detention.

### Disposition

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

The deprivation of liberty of Juan Pablo Saavedra Mejías, being in contravention of articles 3, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

82. The Working Group requests the Government of the Bolivarian Republic of Venezuela to take the steps necessary to remedy the situation of Mr. Saavedra without delay and bring it into conformity with the relevant international norms, including those set out in

<sup>14</sup> See Opinions No. 18/2020, No. 20/2020, No. 39/2019, No. 40/2019, No. 75/2019, No. 80/2019, 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.

the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

83. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Saavedra immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure his immediate release.

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

85. 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, for appropriate action.

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

#### **Follow-up procedure**

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

88. 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.

89. 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.

90. The Working Group notes 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>15</sup>

*[Adopted on 28 August 2020]*

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<sup>15</sup> See Human Rights Council resolution 42/22, paras. 3 and 7.