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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-ninth session (21-25 August 2017)

Opinion No. 52/2017 concerning Gilbert Alexander Caro Alfonzo (Bolivarian Republic of Venezuela)

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Council assumed the mandate of the Commission pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/30/66), on 5 May 2017 the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Gilbert Alexander Caro Alfonzo. The Government requested an extension on 3 July 2017 in order to submit information to the Working Group; this was granted with a deadline of 4 August 2017. The Government did not reply to the communication in a timely fashion. 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 the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law 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, and which aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Gilbert Alexander Caro Alfonzo was born in Caracas in 1974 and is the alternate deputy for the state of Miranda in the National Assembly. He was arrested on 11 January 2017 by the Bolivarian National Intelligence Service (SEBIN) in the state of Carabobo and is now in the 26 July prison in the state of Guárico.

5. According to information received, in 1994 Mr. Caro was sentenced to 20 years' imprisonment for a crime he denies having committed. He was on parole for the last 10 years of the sentence, and during that time he took part in rehabilitation and social reintegration schemes. In 2014 he completed his sentence and was eligible for public office. On 6 December 2015 he was elected alternate deputy in electoral district 4 in the state of Miranda. According to the source, the background to this case is one of continuous systematic political persecution of members of the opposition parties in the Bolivarian Republic of Venezuela, in particular Mr. Caro's party, Voluntad Popular (Will of the People).

6. According to information received, Mr. Caro was arrested at the Guacera toll station on the Central Region highway, while travelling in a Peugeot car. The SEBIN officials produced no search or arrest warrant yet proceeded to search the vehicle, which, according to the source, contained nothing of criminal significance. However, the authorities reportedly later claimed to have found a gun, some cartridges and explosives. These items were allegedly placed there by SEBIN in order to incriminate Mr. Caro.

7. The source claims that Mr. Caro was not informed of the reason for his arrest, was not brought before a court within 48 hours and was not charged in accordance with articles 44 and 373 of the Code of Criminal Procedure. Moreover, his parliamentary immunity had not been lifted following a preliminary hearing on the merits of the case in accordance with article 200 of the Constitution and article 115 of the Act on the Supreme Court. On the day of his arrest he was taken to SEBIN headquarters in the town of Naguanagua in Carabobo state and then to barracks No. 21 of the Army's Armoured Brigade. On 21 January 2017 he was transferred to the 26 July prison in San Juan de los Morros, Guárico state, where he is believed to have been since then.

8. On 11 January 2017, the day of Mr. Caro's arrest, the Vice-President of the Republic is reported to have made a lengthy public statement containing a series of detailed allegations supposedly implicating Mr. Caro in what was said to be a terrorist plot to destabilize the country. The same day, in the television programme "Con el Mazo Dando", the first chair of the party of Government spoke out in public against Mr. Caro, censuring him and denying his parliamentary immunity.

9. On 12 January 2017, the Minister of People's Power for Internal Affairs, Justice and Peace gave a press conference at which he repeated the allegations supposedly implicating Mr. Caro in terrorist activities and destabilization. On 14 and 18 January 2017, the President of the Republic is also reported to have made public statements attacking and accusing Mr. Caro. At the time of receipt of the communication the source reported that no comment had yet been forthcoming from the competent officials of the Attorney General's Office, much less any ruling by the courts, on the evidence against Mr. Caro.

10. On 17 January 2017 Mr. Caro's attorney filed for habeas corpus in order to obtain a court hearing on his client's deprivation of liberty. Under the Amparo Act, a decision should have been handed down within 72 hours, but no ruling on the application had been received as of the date of receipt of the communication. The source reports that the only right Mr. Caro has been able to exercise is that of access to a lawyer, on 23 January 2017, when his lawyer was able to see him for 30 minutes, under supervision.

11. According to the source there are fears for Mr. Caro's safety and physical integrity. On 22 January 2017 a photo circulating on Twitter showed Mr. Caro with his head shaved, allegedly a means of suppressing his personality and undermining his human dignity. On 23 January 2017, with no justification, the Minister of People's Power for Prison Administration ordered him to be placed in solitary confinement for 20 days, thereby denying him access to his lawyer and to a number of National Assembly deputies who attempted to visit him.

12. The source maintains that Mr. Caro's detention is arbitrary under categories I, II, III and V of the Working Group's methods of work. First, it has not been possible to provide any lawful grounds for Mr. Caros' detention since there has been no preliminary hearing on the merits and there are no criminal acts that might indicate that he is guilty of any offence (Constitution, art. 200; Code of Criminal Procedure, arts. 44 and 373), as is duly attested in the accusation submitted by the Attorney General's Office (category I). Second, the source claims that the detention is a consequence of the exercise of the right to political participation enshrined in article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant, by someone who is a social leader and an opponent of the Government (category II)

13. Third, the source alleges a violation of international obligations relating to the right to a fair trial, namely: the failure to hold a preliminary hearing on the merits in order to lift parliamentary immunity; denial of the right to the presumption of innocence; failure to draw up charges and thereby inform the person of the reasons for his arrest; non-observation of the right to be brought before a court; lack of access to proper legal assistance, such as to allow the time and facilities to prepare a defence; and the ineffectiveness of the habeas corpus application submitted by his lawyers (category III). Lastly the source claims that the case must be seen in the context of persecution and deprivation of liberty on discriminatory grounds, i.e., Mr. Caro's political position as member and leader of a party opposed to the Government.

Government reply

14. The Working Group wrote to the Government on 5 May 2017, indicating that it expected a reply by 4 July 2017. The Government requested an extension, which was granted with a deadline of 4 August 2017. The Government did not reply until 8 August 2017. The reply is late and the Working Group cannot accept it as submitted on time.

Discussion

15. In the absence of a timely reply from the Government, the Working Group has decided to render the present opinion, in accordance with paragraph 15 of its methods of work.

16. 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 of breach of international rules on arbitrary detention, the burden of proof is deemed to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has not refuted the allegations in a timely fashion.

17. In that context, the Working Group found that Mr. Caro, alternate member of the Voluntad Popular political party, was arrested on 11 January 2017 by officers of the Bolivarian National Intelligence Service (SEBIN) in the state of Carabobo after searching his car without producing a warrant to do so. In the course of the search the SEBIN officers supposedly found a firearm, ammunition and explosives, which were then used to justify the deprivation of liberty of Mr. Caro "in flagrante delicto".

18. The Working Group received convincing information, which was not contested by the Government, to the effect that Mr. Caro was not brought before a judge within 48 hours of arrest, as provided for by the Code of Criminal Procedure.

19. Furthermore, the Working Group was convinced that the authorities of the Bolivarian Republic of Venezuela did not guarantee Mr. Caro the right to a lawyer of his choice immediately after arrest, but only more than ten days later, and that he was permitted

only one 30-minute interview, which was not confidential. It finds that the State party thereby violated the right to have adequate time and facilities for the preparation of a defence and to communicate with counsel of one's choice, as stipulated in article 14 of the Covenant. The Human Rights Committee has stated in its jurisprudence, which the Working Group endorses, and in its general comments, that accused persons "must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing".¹ This right implies that the accused shall be granted "prompt access to counsel". Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. Furthermore, lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter."²

20. In addition, the Working Group wishes to recall that article 14 of the Covenant considers that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. In this regard, the Working Group found that the Bolivarian Republic of Venezuela violated that right inasmuch as, on the day of the arrest and the day after, the Ministry of People's Power for Internal Affairs, Justice and Peace at a press conference, and the Vice-President of the Republic in the programme "Con el mazo dando",³ publicly implicated Mr. Caro in an alleged terrorist plot to destabilize the country and declared him guilty of the offence of illegal possession of firearms and explosives, punishable under the Act on Disarmament and Arms and Munitions Control. The Human Rights Committee has established that "all public authorities have a duty to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused."⁴

21. In light of the foregoing, the Working Group is of the opinion that the Government violated international standards relating to the right to a fair trial to such an extent that Mr. Caro's detention may be deemed arbitrary under category III.

22. The Working Group wishes to recall that under certain circumstances imprisonment and other forms of severe deprivation of physical liberty in violation of internationally recognized standards may constitute crimes against humanity.⁵

23. In recent years, the Working Group has repeatedly expressed its views on multiple arbitrary arrests of persons because they belong to the political opposition to the Government, or because they have exercised their rights to freedom of opinion, of expression, of association, of assembly or of political participation.⁶ In the Working

¹ General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 32.

² Ibid., para. 34.

³ See https://www.youtube.com/watch?v=7Bnc2Cby_54.

⁴ General comment No. 32, para. 30.

⁵ See opinions Nos. 37/2011, para. 15, 38/2011, para. 16, and 39/2011, para. 17 (Syrian Arab Republic); Nos. 4/2012, para. 26, 47/2012, paras. 19 and 22, 34/2013, paras. 31, 33 and 35, 35/2013, paras. 33, 35 and 37, and 36/2013, paras. 32, 34 and 36 (Democratic People's Republic of Korea); Nos. 38/2012, para. 33, and 48/2013, para. 14 (Sri Lanka); Nos. 22/2014, para. 25, 27/2014, para. 32, and 34/2014, para. 34 (Bahrain); No. 35/2014, para. 19 (Egypt); No. 44/2016, para. 37 (Thailand); and Nos. 32/2017, para. 40, 33/2017, para. 102, and 36/2017, para. 110 (Iraq).

⁶ Opinions Nos. 37/2017 (Braulio Jatar); 18/2017 (Yon Alexander Goicoechea Lara); 27/2015 (Antonio José Ledezma Díaz); 26/2015 (Gerardo Ernesto Carrero Delgado, Gerardo Rafael Resplandor Veracierta, Nixon Alfonso Leal Toro, Carlos Pérez and Renzo David Prieto Ramírez); 7/2015 (Rosmit Mantilla); 1/2015 (Vincenzo Scarano Spisso); 51/2014 (Maikel Giovanni Rondón Romero and 316 others); 26/2014 (Leopoldo López); 29/2014 (Juan Carlos Nieto Quintero); 30/2014 (Daniel Omar Ceballos Morales); 47/2013 (Antonio José Rivero González); 56/2012 (César Daniel Camejo Blanco); 28/2012 (Raúl Leonardo Linares); 62/2011 (Sabino Romero Izarra); 65/2011 (Hernán José Sifontes Tovar, Ernesto Enrique Rangel Aguilera and Juan Carlos Carvallo Villegas); 27/2011 (Marcos Michel Siervo Sabarsky); 28/2011 (Miguel Eduardo Osío Zamora); 31/2010 (Santiago Giraldo Florez, Luis Carlos Cossio, Cruz Elba Giraldo Florez, Isabel Giraldo Celedón, Secundino Andrés Cadavid, Dimas Oreyanos Lizcano and Omar Alexander Rey Pérez); and 10/2009 (Eligio Cedeño).

Group's view, it is an attack or systematic practice on the part of the Government to deprive political opponents of their physical freedom, particularly the members of the Voluntad Popular political party, in violation of fundamental rules of international law, including the Universal Declaration of Human Rights and the Covenant.

24. On the basis of the information available to it, including the opinions referred to above, the Working Group considers that Mr. Caro's detention by the Government is arbitrary under category V, inasmuch as it is based on political opinion as expressed through membership in the Voluntad Popular political party, which is contrary to international law prohibiting discrimination on such grounds and therefore violates the principle of the equality of human beings.

25. Lastly, in light of the recurrent pattern of arbitrary detention identified by international human rights mechanisms in recent years, the Government may wish to consider inviting the Working Group to make a country visit. Such visits are an opportunity for the Working Group to engage in direct dialogue with the Government concerned and with 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.

Decision

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

The deprivation of liberty of Gilbert Alexander Caro Alfonzo is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. It falls under categories III and V.

27. The Working Group requests the Government of the Bolivarian Republic of Venezuela to take the necessary steps to remedy the situation of Mr. Caro without delay and bring it into conformity with the relevant international standards, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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

Follow-up procedure

29. 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 follow-up action taken on the recommendations made in this opinion, including on:

- (a) Whether Mr. Caro has been released and, if so, on what date;
- (b) Whether compensation or other reparation has been granted to Mr. Caro;
- (c) Whether an investigation has been conducted into the violation of Mr. Caro'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 Government with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

30. 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 to indicate whether further technical assistance is required, for example, through a visit by the Working Group.

31. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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.

32. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.⁷

[Adopted on 23 August 2017]

⁷ See Human Rights Council resolution 24/7, paras. 3 and 7.