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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 81st session (17 to 26 April 2018)

Opinion No. 14/2018 concerning Gustavo Alejos Cámbara (Guatemala)

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

2. In accordance with its methods of work (A/HRC/36/38), on 24 January 2018 the Working Group transmitted to the Government of Guatemala a communication concerning Gustavo Alejos Cámbara. The Government replied to the communication on 9 April 2018. 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. Gustavo Adolfo Alejos Cámbara is a Guatemalan businessman, born in 1966, and living in the town of Fraijanes. From 2008 to 2012, he served as private secretary in the Office of the President of the Republic of Guatemala.

5. On 27 October 2015, a warrant for the arrest of Mr. Alejos Cámbara was issued by the Sixth Criminal Court of First Instance of Guatemala. The warrant was issued following an investigation instigated by the Public Prosecution Service into the supposed existence of a criminal organization engaged in unlawfully obtaining contracts put out to public tender by bribing public servants. The affair became publicly known as the “Health Contractors” (*Comerciantes de la Salud*) case.

6. The source reports that when police officers and representatives of the Public Prosecution Service went to Mr. Alejos Cámbara’s residence on 27 October 2015, he was not at home. On returning home and finding the arrest warrant, he contacted his lawyers and asked them to accompany him to the Sixth Criminal Court. The lawyers said that they would first attend the court themselves and obtain details of the charges against him so that an appropriate defence could be prepared. In the meantime, Mr. Alejos Cámbara remained at home. However, after hearing nothing further from his lawyers, he decided to hand himself in to the court.

7. According to the source, Mr. Alejos Cámbara voluntarily surrendered himself to the Sixth Criminal Court on 28 December 2015 and from this date onwards has been deprived of his liberty. On the day after he turned himself in, his lawyers announced that they would no longer be defending him, since they had allegedly received threats from third parties.

8. After surrendering himself to the court, Mr. Alejos Cámbara was immediately transferred to the male detention centre in zone 17 of the premises of the Mariscal Zavala Military Brigade in Guatemala City. He remained there until 2 January 2016, when he was transferred to the remand centre for men in Fraijanes. However, because certain individuals who had kidnapped Mr. Alejos Cámbara in 2003 were serving their sentences in the Fraijanes detention centre, he was returned to the Mariscal Zavala centre on 10 January 2016.

9. The source indicates that, after being indicted in the proceedings initiated in December 2015, on 3 June 2016 Mr. Alejos Cámbara received a further summons, this time from High-Risk Crime Court B. In these new criminal proceedings, he was charged with illicitly funding a political party. The new proceedings came to be publically known as the “State Co-optation by Financiers” (*Cooptación del Estado — Financistas*) case. In the proceedings in question, there were 19 persons accused of the same offence, but Mr. Alejos Cámbara was the only one to have a pretrial detention order issued against him.

10. On 27 November 2016, Mr. Alejos Cámbara was again transferred to the Fraijanes detention centre, allegedly because he had received death threats in the Mariscal Zavala prison. However, following an *amparo* petition submitted on the grounds that his life was endangered by sharing a prison with his former kidnappers, on 9 December 2016, he was returned to the Mariscal Zavala detention centre.

11. The source reports that in June 2017, Mr. Alejos Cámbara’s defence counsel requested a review of his pretrial detention because he had been held for over a year without trial and article 268 of the Code of Criminal Procedure established a maximum of one year for detention on remand. The worrying state of Mr. Alejos Cámbara’s health provided further grounds for review: more than 10 medical examinations had shown his life to be at risk due to chronic arterial hypertension and this condition could not be treated in the detention centre as no specialist cardiologist was available.

12. Even though the judge presiding over the investigation by the Sixth Criminal Court noted that procedural risks were no longer a factor and that the aim of the criminal proceedings was not to bring about the death of the accused, the source recounts that an alternative to pretrial detention was denied.

13. In the face of the Court's refusal, on 26 July 2017, Mr. Alejos Cámbara's defence counsel filed a constitutional *amparo* petition. On 25 September 2017, the Third Chamber of the Court of Appeal dealing with criminal matters granted Mr. Alejos Cámbara provisional *amparo*, releasing him from prison on health grounds. The Chamber ruled that keeping Mr. Alejos Cámbara in detention, and thereby denying him access to appropriate medical treatment when 15 doctor's reports had indicated that his life was at risk, was a violation of his fundamental rights.

14. However, the source reports that the Seventh Criminal Court (which took up the proceedings after the Sixth Court recused itself) failed to convene the hearing at which the provisional *amparo* decision should have been enforced and an alternative to preventive detention agreed, in breach of the rule established under article 50 of the *Amparo* Act. The Public Prosecution Service then appealed the decision before the Constitutional Court, which revoked the provisional *amparo* order.

15. According to the source, the constitutional *amparo* proceedings continued and, on 2 November 2017, the Third Chamber of the Court of Appeal issued a ruling granting Mr. Alejos Cámbara *amparo* on a definitive basis because his health and life were in jeopardy.

16. Accordingly, on 3 December 2017, in the second criminal proceedings concerning the so-called "State Co-option by Financiers" case, the judge ruled that an alternative to pretrial detention should be agreed for Mr. Alejos Cámbara. The source asserts that this decision was taken after an analysis of Mr. Alejos Cámbara's case had found that in all probability no offence had been committed and that, moreover, his state of health made it advisable that he return home to receive the specialized medical treatment he needed.

17. However, according to the source, Mr. Alejos Cámbara was not released from pretrial detention because the Sixth Criminal Court, which was hearing the "Health Contractors" case, rejected his application for release from prison and upheld the precautionary decision of 27 June 2017.

18. The source alleges that Mr. Alejos Cámbara has been held under a pretrial detention order for more than two years even though he has not been found guilty of any crime. The source argues that Mr. Alejos Cámbara's right to liberty and security of person, his right not to be subjected to arbitrary detention and his right to be guaranteed a fair and impartial trial in conditions of equality, and in particular his right to be presumed innocent, have all been violated, constituting a breach of articles 9 and 14 of the International Covenant on Civil and Political Rights.

19. The source affirms that in the present case there is no valid legal basis for the detention, which places the case within category I of the categories of arbitrary detention. This claim is underpinned by two criteria: firstly, article 268 of the Code of Criminal Procedure, which prohibits pretrial detention of more than 365 days (one year), in accordance with articles 14 and 46 of the Constitution; and, secondly, the decision of the Third Chamber of the Court of Appeal, which granted constitutional *amparo* to Mr. Alejos Cámbara, ordered his release so as to protect his health and life, ruled that his fundamental rights had been violated and ordered that an alternative to pretrial detention be agreed.

20. In addition, the source alleges a violation of international norms relating to the right to a fair trial, which would imply that the detention is arbitrary under category III. In this connection, the source claims a violation of the principle of presumption of innocence, given that Mr. Alejos Cámbara has been deprived of his liberty without conviction for more than two years when national legislation permits detention on remand for no more than 365 days. The source adds that the investigating authorities held press conferences to make the accusations known to the public, thereby attaching stigma to the two criminal cases and creating such opprobrium that it is taken as a given that Mr. Alejos Cámbara committed the offences for which he is being tried and that, consequently, as an offender, he should be in prison. A reward of 100,000 quetzales, advertised on posters displayed throughout Guatemala City, was offered to any member of the public who could provide information on the whereabouts of Mr. Alejos Cámbara.

21. Lastly, the source asserts that detention in the present case is discriminatory, thus placing it in category V. In support of this claim, he argues that the persecution of Mr.

Alejos Cámbara is motivated by the political role he performed as private secretary in the Office of the President and that he is being pursued through the courts and deprived of his liberty for this reason.

Response from the Government

22. On 24 January 2018, the Working Group communicated the source's allegations to the Government of Guatemala, requesting that it reply before 26 March 2018. The Government sent its reply to the source's allegations on 26 March 2018.

23. The Government informed the Working Group that Mr. Alejos Cámbara was implicated in three criminal proceedings.

24. In the "Health Contractors" case (file No. M3542/2014/8, case No. 01080-2015-00222 before the Seventh Criminal Court), a criminal organization engaged in acts of corruption within the Guatemalan Social Security Institute was under investigation. The investigation had revealed a network of contract negotiators who served as the first point of contact with suppliers seeking to take part in tender processes and who manipulated the process in such a way that the contract was awarded to the supplier in return for an illegal commission, all in seeming legality. The organization had influence over staff of the Institute, from the highest levels down to middle-ranking officials, and was also able to influence appointments to the Institute. Mr. Alejos Cámbara was implicated in this latter activity, both personally and through three legal entities to which he was connected.

25. The Sixth Court of First Instance for Criminal, Drug Trafficking and Environmental Offences therefore issued a warrant for Mr. Alejos Cámbara's arrest for unlawful association, influence peddling and persistent recourse to active bribery. On 27 October 2015, his home and two of his offices were searched, but he was not to be found. Searches were subsequently conducted at his home and in Sololá department. On 28 December 2015, Mr. Alejos Cámbara handed himself in to the Sixth First Instance Court.

26. After examining the facts, the Public Prosecution Service decided that there was a risk of the defendant absconding or attempting to obstruct the course of justice for the following reasons:

(a) Mr. Alejos Cámbara worked as private secretary in the Office of the President of the Republic of Guatemala from 2008 to 2012. The political and economic influence he exerted over public servants, which he used to force them to commit unlawful acts to the detriment of the State, was brought to light by means of phone tapping.

(b) He remained in hiding, evading justice, for two months.

(c) A document found at his home set out a defence strategy, which he had been preparing prior to his arrest, that revealed he intended to make contact with various institutions, including the Public Prosecution Service, the International Commission against Impunity in Guatemala, the ordinary courts, the Supreme Court, the Constitutional Court, the press, public opinion and civil society.

27. The Government recounts that, in view of this situation, the judge decided that procedural risks were present and ordered pretrial detention. The Public Prosecution Service is of the view that procedural risks remain a factor in both cases and that the original reasons for issuing the pretrial detention order still pertain. Mr. Alejos Cámbara and his defence counsel availed themselves of all procedural means available to challenge the order, including recourse to constitutional *amparo* proceedings. In addition, six hearings were called to review the order, but the review request was declared inadmissible.

28. According to the Government, Mr. Alejos Cámbara was placed in pretrial detention after procedural risks of the kind described in articles 262 and 263 of the Code of Criminal Procedure were found to exist. The decision was thus founded in law and did not violate constitutional rights. As the Constitutional Court has established in a number of rulings, pretrial detention is not at odds with presumption of innocence.

29. The intermediate stage hearing begun on 16 September 2016 but was interrupted and suspended when Mr. Alejos Cámbara was granted provisional *amparo* by the Court of

Appeal dealing with offences of femicide, on the basis of the change of indictment and other lines of defence.

30. This situation prolonged the criminal proceedings — a result deliberately sought by Mr. Alejos Cámbara’s defence counsel, who then expressly requested a suspension. This meant that the proceedings to date were invalidated and, in June 2017, it was necessary to start new proceedings.

31. To safeguard his right to health, from 7 March to 21 July 2017, Mr. Alejos Cámbara was interned in a health centre.

32. When the intermediate stage hearing was finally held, respecting Mr. Alejos Cámbara’s right to health, the judge in charge of the investigation allowed him to attend the hearing accompanied at all times by a nurse. Subsequently, the hearings were suspended and were conducted by video conference from the hospital.

33. By order of the supervising judge, the judicial authority thus respected Mr. Alejos Cámbara’s right to health, even in the absence of an expert opinion from the National Institute of Forensic Science attesting to his need to remain in a hospital of his choice. He nonetheless remained in hospital for four months to receive treatment for his condition.

34. On 27 June 2017, a hearing to review the detention order was held before the Seventh Court of First Instance for Criminal, Drug Trafficking and Environmental Offences at which the defence team invoked Mr. Alejos Cámbara’s health problems as grounds for revoking the order even though such grounds are not listed under article 277 of the Code of Criminal Procedure as a basis for reviewing custodial measures. In hearings of this type, it is the accused who must prove that the original reasons for the pretrial detention order no longer pertain. The request for review was disallowed on the grounds that, in the court’s view, the risk that the defendant would abscond or attempt to obstruct the course of justice had not abated. Mr. Alejos Cámbara’s defence counsel filed a petition for constitutional *amparo* against this ruling, which was heard before the Third Chamber of the Court of Appeal for Criminal, Drug Trafficking and Environmental Offences (file No. 011185-2017-48). On 31 July 2017, the Chamber decided against granting provisional *amparo*, deeming it inadvisable in the circumstances. Upon the repeated request of the defence team, on 25 September 2017 the Chamber changed its ruling and granted provisional *amparo*, giving precedence to the right to health and ordering the supervising judge to take the measures necessary to safeguard the defendant’s health. However, the Public Prosecution Service appealed the provisional *amparo* ruling and the Constitutional Court overturned the decision.

35. On 7 December 2017, the Appeals Chamber, acting in the capacity of constitutional court of *amparo*, granted *amparo* to Mr. Alejos Cámbara, who was then summoned to appear before the Constitutional Court. The decision of this high court is the only decision still pending.

36. In respect of the “State Co-option” case (file No. M3542/2015/12, agency 1; case No. 01054-2015-00017, First High-Risk Crime Court B), the Public Prosecution Service had instigated an investigation into the illicit electoral funding of a political party and had established that Mr. Alejos Cámbara had made contributions to the party campaign which were channelled through various businesses in order to conceal their destination. He transferred money through companies that were found to have no commercial activity and to exist only on paper, and whose sole purpose, at the time of the events in question, was to pump resources into the election campaign, disguising the source of the funds so as to keep contributions to the political party anonymous. The Government gives details of the amounts of the alleged contributions as well as the names of the receiving companies.

37. On 3 June 2016, Mr. Alejos Cámbara was summoned to appear before First Instance High-Risk Crime Court B to answer charges of illicit electoral funding under case No. 0174-2015-00017. Since procedural risks were deemed to exist, a new pretrial detention order was issued.

38. On 7 March 2017, First High-Risk Crime Court B authorized Mr. Alejos Cámbara’s transfer to the Multimédica Ambulatory Hospital. He remained there until 20 July 2017, on which date an opinion delivered by a team of forensic doctors attached to the National

Institute of Forensic Sciences established that his condition no longer required his continued hospitalization and he was therefore ordered to return to prison.

39. On 3 December 2017, the High-Risk Crime Court agreed an alternative to detention, citing the principle of equality without giving further reason.

40. In the third case, known as the “Transurbano” case (file No. M3542/2015/12, case No. 01054-2015-00017, Eleventh Criminal Court of First Instance), the investigation focused on events that took place following the December 2008 decision of the Committee for the Improvement of Public Transport to introduce a pre-payment system for the capital city’s buses. The investigation reconstructed and analysed the fraudulent mechanisms used by public and private sector actors to misappropriate USD 35 million of State money.

41. The investigators examined various documents, legislative provisions, witness statements, emails and other forensic evidence, administrative procedures and financial records and funds were traced from the State accounts to their final destination (purchase of machinery and private account deposits).

42. The investigation also found cash payments being made into the Guatemalan banking system. One of the beneficiaries of these cash payments, the Government indicates, then transferred the money to Mr. Alejos Cámbara, who used it to purchase shares.

43. At the arraignment hearing held on 23 February 2018, Mr. Alejos Cámbara was charged with fraud and laundering money and other assets.

44. On 1 March 2018 an indictment was issued under this third case for fraud and laundering money and other assets. A pretrial detention order was also issued.

45. The Government refers to the source’s statement concerning the two months that went by before Mr. Alejos Cámbara handed himself in. On his lawyers’ recommendation, Mr. Alejos Cámbara spent this period at home preparing an appropriate defence, but, having heard nothing further from his defence team, he then decided to surrender himself personally to the court. The Government points out, firstly, that it is not certain that the accused remained at home, since, although his house and other buildings connected to him were placed under surveillance and searched on a number of occasions in the period during which he was in hiding, he was not to be found at the place where he claims to have been, nor at the gym where he alleges he was on the day that he managed to escape the arrest warrant. Secondly, the Government notes that Mr. Alejos Cámbara apparently remained in hiding for the time necessary to prepare his defence. In this connection, it notes that the procedure for taking preliminary statements is designed to ensure that both the accused and the defence counsel are fully cognizant of the facts and the evidence held by the prosecution, and that there is therefore no reason to remain in hiding for over two months in order to avoid this process. During the hearing at which the preliminary statement is taken, the public prosecutor enumerates the items of evidence one by one, thereby guaranteeing their oral presentation, and the counsel has the opportunity to request the interview’s suspension to allow the defence time to examine the files. Lastly, regarding the lack of communication from Mr. Alejos Cámbara’s lawyers, the Government notes that, if this highly unlikely assertion were to be true, they would hardly have accompanied him when he appeared before the court, would not have stayed with him throughout the process and would not have participated in the hearing at which he made his preliminary statement. The Government maintains that Mr. Alejos Cámbara understood his obligation to hand himself in immediately and that he could have requested the services of a public defender.

46. Regarding the claim that Mr. Alejos Cámbara surrendered to the court voluntarily and that his defence team withdrew from the case, the Government asserts that it is incorrect to describe Mr. Alejos Cámbara’s surrender as voluntary, given that an international arrest warrant (Red Notice) had been issued against him and a financial reward had been offered for information on his whereabouts. It was because of this official pressure that he decided to surrender himself to the court. The notion that he surrendered voluntarily was invoked on numerous occasions to support his requests for release, but the various judges of the different courts refused these requests, as the claim was far removed from reality. As regards the threats allegedly received by his lawyers, no record, report or complaint exists. On the other hand, the case file does attest to the number of times Mr.

Alejos Cámbara has changed his line of defence, according to where he felt his best interest lay.

47. In respect of the transfers between detention centres, the Government states that such transfers fall within the remit of the prison system and, in this case, were carried out following complaints of corruption inside the system. Contrary to the source's claims, the State took precautionary action and, when alerted to the potential risk, transferred the accused to a special place of detention where he remains to the present date.

48. Regarding the "State Co-option" case, the Government states that Mr. Alejos Cámbara was sent to prison with 33 other defendants connected to the trial by various offences. It stresses that precautionary pretrial detention is ordered not on the basis of the crime committed but when there is a risk of the accused absconding or attempting to obstruct the course of justice. According to the Government, these factors were duly considered by the judge and the accused was free to avail himself of any of the appeal mechanisms available under national law if he did not agree with the decision.

49. In relation to Mr. Alejos Cámbara's state of health, the Government recounts that he was hospitalized for over four months in the hospital of his choice while his condition stabilized. During this period, he took part in hearings organized from the hospital via videoconference and was allowed to attend hearings in person accompanied by nurses and in a wheelchair, for his greater convenience. Some sessions were suspended when he declared himself tired, all in order to safeguard his health. It was only after the National Institute of Forensic Sciences declared the accused to be clinically stable and no longer in need of medical supervision that Mr. Alejos Cámbara was returned to the detention centre, where he nevertheless continued for a time to benefit from nursing care.

50. Regarding the source's claim that article 268 of the Code of Criminal Procedure limits pretrial detention to a maximum period of one year, the Government replies that the source failed to point out that the same article allows for this period to be extended as many times as necessary. Mr. Alejos Cámbara was himself partly to blame for the slow progress made in the case, in that he initiated a series of extraneous legal actions not only before the ordinary courts but also before the Constitutional Court. The indictment hearing opened in September 2016 and at the very moment that his defence counsel was about to address the court, Mr. Alejos Cámbara announced that he had been granted provisional *amparo* and requested a stay of proceedings until a definitive *amparo* decision was reached, thereby delaying the trial for almost a year.

51. The Government reports that, in its ruling on case file No. 2535-2016 of 14 September 2016, the Constitutional Court indicated that, while certain reasonable delays might be permitted in the course of a trial, the supervising judge should ensure that the case is resolved rapidly and efficiently, respecting, to the extent possible, the legally established deadlines. In line with the foregoing, the parties are under an obligation not to obstruct the course of justice by filing groundless appeals or inadmissible requests, which not only impact negatively on the justice system but are also detrimental to their own right to liberty.

52. With regard to the source's assertion that, in June 2017, the supervising judge announced that procedural risks were no longer present, the Government replies, firstly, that the judge in question was not in fact the official supervising judge, and secondly, that the judge did not state that the procedural risks no longer existed, but rather that they had changed. According to the Government, what happened during the hearing in question was that the defence, taking advantage of an alternate judge being in charge, advanced a trumped-up argument inappropriate to an intermediate phase of the proceedings, alleging the innocence of the accused and requesting a review of the pretrial detention order on that basis. In his summing up, the judge concluded that procedural risks still persisted and for this reason refused the request.

53. The Government stresses that the source provides no detail as to how Mr. Alejos Cámbara managed to avoid arrest for more than two months and that it was only after the issue of an international arrest warrant, the offer of a reward and the appearance of articles and posters bearing his picture that he decided to turn himself in. It states that Mr. Alejos Cámbara's defence did not deny that he sought to remain hidden. It also alleges that the source has not proved that the accused's political, social and economic network no longer

constitutes a risk for the trial given that, during searches of his home, investigators found, among other items, documents setting out a strategy for exerting undue influence within various State institutions, including at the highest level of the judiciary.

54. The Government states that, contrary to the source's assertion, and as is clear from the order itself, provisional *amparo* was not granted to Mr. Alejos Cámbara so that he could be released from detention but rather to provide temporary protection to guarantee his right to health. In application of the constitutional order, and in accordance with the relevant legislation, the supervising judge called on the National Institute of Forensic Sciences to assess Mr. Alejos Cámbara's health. The Institute pronounced him to be clinically stable and indicated that he could be treated as an outpatient without putting his life at risk.

55. The Government maintains that the source wrongly interprets the court ruling in alleging a failure to comply with the provisional *amparo* order. However, the court reported the actions undertaken in application of the provisional *amparo* order and recorded all related information. It is not true that the judge did not allow the hearing to be held: it was held, and the National Institute of Forensic Sciences' assessment was duly requested, resulting in the events recounted above.

56. Since Mr. Alejos Cámbara was placed in pretrial detention, nine hearings have been held to review the order in the "Health Contractors" case and at least two hearings have been held in the "State Co-option" case.

57. On 12 October 2015, the National Civil Police received a warrant for the arrest of Mr. Alejos Cámbara for unlawful association, influence peddling and active bribery, signed by the Sixth Court of First Instance for Criminal, Drug Trafficking and Environmental Offences (ref. No. C-01080-2015-00222).

58. On 24 February 2016, an official letter signed by the Sixth Court of First Instance for Criminal, Drug Trafficking and Environmental Offences was received from the General Directorate of the National Civil Police, containing the information that, on 28 December 2015, Mr. Alejos Cámbara had of his own accord placed himself in the hands of the above court and that, in so doing, he had regularized his legal situation.

59. Official letter No. 849-2018/Jurídico/JSDDLDP/oa, of 14 March 2018, signed by the Director General of the Prison System, contained the information that Mr. Alejos Cámbara was being held at the detention centre located in zone 17 of the premises of the First Brigade of the Mariscal Zavala Infantry, Guatemala City and that, to protect his physical integrity, he had been separated from other inmates and placed in the isolation wing, with permanently assigned prison officers.

60. In official letter No. 1064-2018, of 9 March 2018, the Medical Assessor attached to the Medical Services Coordination Unit and the Deputy Director of Social Rehabilitation reported that Mr. Alejos Cámbara had been assessed on 9 March 2018.

61. On 5 January 2016, Mr. Alejos Cámbara was transferred to the constitutional rehabilitation pretrial detention centre for men in Pavoncito, Fraijanes, in accordance with article 8 of the Prison System Act, and article 6 of its regulations, on the authority of the Director General of the Prison System.

62. On 8 January 2016, he was moved from the constitutional rehabilitation remand centre for men in Pavoncito, Fraijanes, and interned for a second time in the zone 17 detention centre, by order of the Sixth Court of First Instance for Criminal, Drug Trafficking and Environmental Offences, Department of Guatemala.

63. On 24 November 2016, Mr. Alejos Cámbara was returned to the constitutional rehabilitation remand centre for men in Pavoncito, Fraijanes, by order of the judge of the First Instance High-Risk Crime Court D.

64. On 10 December 2016, Mr. Alejos Cámbara was interned for the third time in the zone 17 Mariscal Zavala detention centre, by order of the presiding judge of the Third Chamber of the Criminal Court of Appeal dealing with offences of femicide and other forms of violence against women and sexual violence.

65. The Government reports that Mr. Alejos Cámbara is currently being held in zone 17 of the Mariscal Zavala detention centre.

66. The Government concludes by stating that the Ministry of the Interior, acting through the General Directorate of the Prison System and its related bodies, complied with the orders given by the relevant authorities in respect of Mr. Alejos Cámbara, in accordance with its mandate under article 36 of the Act on the Executive Branch of Government. This article establishes that the Ministry shall be responsible for formulating policies, for implementing and enforcing the legal regime for maintaining peace and public order and the security of persons and property, guaranteeing rights, and executing judicial orders and decisions, enforcing immigration laws and for endorsing the appointments of ministers of state, including the appointment of the next Minister of the Interior.

Further comments from the source

67. On 16 April 2018, the source submitted to the Working Group comments and observations on the Government's reply.

68. The source maintains that the case of Mr. Alejos Cámbara, who has been held on remand for over two years, violates international human rights standards that have been endorsed and ratified by Guatemala in more than 50 international instruments.

69. The source also points out that health services are a problem in detention centres in Guatemala, in that there is only one doctor to treat at least 8,000 persons deprived of their liberty and no emergency hospitalization service. This situation clearly poses a potentially fatal risk for Mr. Alejos Cámbara.

70. Noting that arbitrary detention had become the rule in Guatemala, as the Inter-American Commission on Human Rights confirmed during its August 2017 visit, the source maintains that the Government has not rebutted the complaint made on behalf of Mr. Alejos Cámbara.

71. The source also considers that the Government's reply fails to specify the reasons for which the courts continue to hold Mr. Alejos Cámbara on remand and to refuse an alternative to preventive detention, when his state of health has been verified through 17 legal medical reports to date.

Discussion

72. The Working Group has, in its jurisprudence, established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

73. In the present case, both the source and the Government report that, following an investigation, a warrant for the arrest of Mr. Alejos Cámbara was issued. However, Mr. Alejos Cámbara let approximately two months pass before handing himself in to the authorities. On his surrender, the judge ordered his detention on remand, on the grounds that there was a risk of his absconding or attempting to obstruct the course of justice.

74. The source argues that, under article 268 of the Code of Criminal Procedure, detention on remand may not exceed a period of one year. However, the Government points out that the same article, in a subparagraph that the source omits to mention, allows for this period to be extended when particular circumstances so justify.

75. The source also claims that there are no substantive reasons for detaining Mr. Alejos Cámbara on remand, and states that he should be at liberty while standing trial. With regard to this argument, the Government states that the judge who ordered his pretrial detention examined the factual and legal grounds for the decision. These were, firstly, that Mr. Alejos Cámbara did not hand himself in to the authorities when requested to do so, but instead sought to evade justice; and, secondly, that, during the search of his home, the authorities found detailed documentation revealing the accused's intention to interfere in the investigation by making use of his connections with the high authorities of the State.

76. According to the source, the delicate state of Mr. Alejos Cámbara's health is reason enough for the judge in charge of his case to be under an obligation to release him, out of common humanity, and to allow him to face his trial at liberty while receiving treatment for his medical condition. In reply, the Government supplies sufficient information to refute the source's argument, indicating that Mr. Alejos Cámbara was given access to medical treatment and health care and that, through pretrial detention, the authorities are able to ensure his presence in court without putting his life or health in jeopardy.

77. According to the source, Mr. Alejos Cámbara's right to liberty of person was violated by the court's failure to execute the *amparo* order granted in this favour. However, the Government points out that the said *amparo* order was a provisional measure authorizing a transfer for medical purposes, which had indeed taken place. The Government stresses that, contrary to the version advanced by the source, the purpose of the *amparo* order was not to grant unconditional release to Mr. Alejos Cámbara but to enable him to obtain treatment for his health problems.

78. Lastly, the source argues that the present case is one of political persecution, that in reality no offence has been committed and that, for this reason, there are no substantive grounds for Mr. Alejos Cámbara's detention on remand and the legal proceedings against him. In reply, however, the Government provides specific and detailed information on the bases of the investigation and the trial, which show that the Government's case has sufficient merit to bring criminal charges against Mr. Alejos Cámbara.

79. To conclude, while the source has presented a credible *prima facie* case of arbitrary deprivation of liberty, the Government has been able to provide specific and detailed information to refute all arguments on which the source bases the complaint. In addition, when the Government's reply was communicated to the source for further comment, the source failed to refute the arguments advanced by the Government in a specific, detailed and convincing manner.

Disposition

80. The Working Group, having examined all information received from the parties regarding Gustavo Adolfo Alejos Cámbara's detention, considers that the case is insufficiently substantiated to reach a conclusion. It has therefore decided to place the case on file, without prejudice to the possibility of taking further action.

81. In respect of the information received regarding Gustavo Adolfo Alejos Cámbara's state of health and the capacity of the national health system to care, in particular, for persons deprived of their liberty, the Working Group, in conformity with article 33 of its methods of work, has decided to forward the present opinion to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health for his consideration and possible action.
