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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-second session, 20–24 August 2018

Opinion No. 49/2018 concerning José Vicente García Ramírez (Bolivarian Republic of Venezuela)

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 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 4 May 2018 the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning José Vicente García Ramírez. On 4 July 2018, the Government made a request for additional time to respond to the communication, which was granted. The Government sent information relating to the case on 3 August 2018, and this information was transmitted to the source for additional comments, which were received on 16 August 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. José Vicente García Ramírez, born in 1985, is a Venezuelan politician who is a member of the political party Voluntad Popular and the coalition Mesa de la Unidad Democrática. He was elected chief municipal councillor of San Cristóbal in 2013.

5. The source reports that, before Mr. García Ramírez was deprived of his liberty, he had played a leading role in a number of domestic and international protests. In 2015, he went on hunger strike in the Vatican City to protest about the situation of political prisoners in his country. In 2016, he took part in a protest held before the regional seat of the National Electoral Council in Táchira State to demand answers from the national authorities about the date by which signatures must be collected from the 20 per cent of the country's registered voters required for a presidential recall referendum. In the same year, in front of the headquarters of the Bolivarian National Intelligence Service, he protested against the abuses and persecution suffered by the political leaders of Voluntad Popular.

6. On 18 October 2016, at approximately 9 a.m., Mr. García Ramírez was on his way to work at the municipal council when he was arrested by intelligence officers.

7. Mr. García Ramírez's family members were wholly unaware of his whereabouts during the hours following his arrest. They received news of him only when the Governor of Táchira State posted a message to his Twitter account stating that the country's intelligence agency had captured the young San Cristóbal councillor José Vicente García in possession of military weapons, grenades and vests. This message was reportedly accompanied by a picture of a handcuffed Mr. García Ramírez, flanked by two intelligence officers, standing with his face uncovered behind a table on which grenades and military uniforms were laid out.

8. At 6 p.m. on the same day, members of Mr. García Ramírez's family received a call from him, and he let them know that he was being held in the San Cristóbal offices of the Intelligence Service and that ammunition and military uniforms had been planted on him. The source contends that planting evidence has been a *modus operandi* often used to incriminate opposition politicians and critics of the Government.

9. On 20 October 2016, 48 hours after having been arrested, Mr. García Ramírez was brought before First Instance Procedural Court No. 8 of the Criminal Court Circuit of Táchira State. At the hearing, the prosecution stated that there was no substantiated evidence of the suspect's guilt. As a consequence, the prosecutor requested that the suspect be given an alternative to deprivation of liberty. He suggested a ban on leaving the country. The judge, however, ordered that Mr. García Ramírez be deprived of his liberty – in violation of the adversarial principle, according to the source – and that he be held in the Intelligence Service's San Cristóbal headquarters.

10. The source alleges that Mr. García Ramírez was subjected to cruel and degrading treatment at the Intelligence Service's headquarters: the authorities kept him handcuffed to a chair for more than 24 hours and held a gun to his head, pretending to shoot, as they questioned him.

11. On 21 October 2016, Mr. García Ramírez's wife went to the Intelligence Service's headquarters to take him food and personal necessities. On her arrival, however, officials informed her that he was not there, as he had been transferred to the Intelligence Service's national headquarters on Plaza Venezuela in Caracas. She immediately set off for Caracas. At the Intelligence Service's headquarters on Plaza Venezuela, she was informed by police officers that Mr. García Ramírez was not there. For the next five days, Mr. García Ramírez's family members had no news of him and did not know where he was being held.

12. The source reports that, on 21 and 22 October 2016, Mr. García Ramírez was being held at the Intelligence Service's headquarters on Plaza Venezuela in a place known as "the Tomb", a solitary confinement cell four floors below ground level. According to the source, Mr. García Ramírez was subjected to torture and cruel and degrading treatment since there is no natural light in this cell and, apart from a green button on the wall with which to summon the jailer, no colours other than white. The bed is a cement slab, the air conditioning is on very high, the temperature is very low and the lights are blindingly white and never turned off.

13. On Saturday, 22 October 2016, the First Vice-President of the ruling party, Member of Parliament Diosdado Cabello, spoke publicly about Mr. García Ramírez's case. "[García Ramírez]", he stated:

"is merely a pawn in the plans, but he has information that we have to tell the country about. This man participated in the 'La Salida' [way out] plan in 2014, works closely with Daniel Ceballos, fled to Cúcuta [Colombia] when there were a few arrests and took part in paramilitary drills there. He's like Pérez Venta, the Butcher. ... He was going to hand those seized grenades over to members of criminal gangs so they could use them against police and government buildings in Táchira State, the way they did with Molotov cocktails in 2014."

14. On 23 October 2016, Mr. García Ramírez was transferred to the Intelligence Service's facility in the building known as El Helicoide, also in Caracas. On arrival, he was handcuffed to a chair for an entire night of questioning by the Intelligence Service's National Director, who asked the same questions asked by his agents in San Cristóbal.

15. According to the source, Mr. García Ramírez was kept in a cell in El Helicoide, which is known as Guantánamo and used to hold dangerous common criminals (murderers, rapists, kidnappers and paramilitary and guerrilla fighters), until 26 October 2016. The source indicates that 47 prisoners were crammed into this cell, which measured 4 by 5 metres, was infested with bugs and had little light and no toilet. Everyone had to urinate in cans and defecate in bags, in full view of everyone else.

16. On 27 October 2016, Mr. García Ramírez's wife received a call from him letting her know that he was being held in the Intelligence Service's El Helicoide facility. His family and his lawyers could not see him until a month later, however: throughout this period, the authorities kept him in isolation and did not allow him to receive visits.

17. The source indicates that, on 20 December 2016, the Procedural Court examining the case issued an order (No. SJ22BOL2016020735) for Mr. García Ramírez's release. The Court stated in its order that it had become necessary to impose a precautionary measure as an alternative to pretrial detention, in accordance with articles 242 (3), (4) and (6) and 244 of the Code of Criminal Procedure.

18. However, the Intelligence Service, which is attached to the Office of the Vice-President and answers to the executive, has not complied with the Court's release order and continues to deprive Mr. García Ramírez of his liberty to this day.

19. On 20 January 2017, according to the source, an application for *amparo*, including a writ of habeas corpus, was submitted to Court No. 31 of the Caracas Metropolitan Area. The Court admitted the application on 22 January 2017. However, on 23 March 2017, after initially having admitted the *amparo* application, the Court then declared it to be inadmissible.

20. On 13 June 2017, Mr. García Ramírez's lawyer filed another application for *amparo* – this time for a violation of his client's fundamental rights during the proceedings against him – with First Instance Procedural Court No. 8 of Táchira State. The Court had yet to rule on this application as of the date on which Mr. García Ramírez's case was submitted to the Working Group. On 20 June 2017, Mr. García Ramírez's lawyer filed a complaint of unlawful deprivation of liberty with the Public Prosecution Service's Fundamental Rights Directorate.

21. According to the information provided by the source, Mr. García Ramírez is still being held at the Intelligence Service's El Helicoide facility in a 5-metre-square cell

without natural light or fresh air. The food he has been given has generally come from his family, as the food provided by the prison is either contaminated or insufficient. Mr. García Ramírez sleeps in a bunk that gives him serious back trouble. In general, the source notes, the conditions are poor, the water is polluted, there are foul smells and bug infestations and the pipes are old and full of waste. He has remained in the same 5-metre-square cell for the duration of his detention. He has been able to exercise only twice, and only six times in the past three months has he seen the sun.

22. The source reports that Mr. García Ramírez is in poor health. In October 2016, soon after having been admitted to El Helicoide, he contracted scabies. As the conditions of the prison, which does not offer its inmates ongoing medical care, are inadequate, his family took responsibility for his treatment. His back problems have not been attended to.

Working Group's categories of arbitrary detention

23. The source argues that the detention of Mr. García Ramírez falls within categories I, II, III and V of the Working Group's categories of arbitrary detention.

24. It falls within category I, the source contends, because there is no legal basis justifying the arrest and detention. No court, according to the source, had issued a warrant for the arrest of Mr. García Ramírez nor was he arrested in flagrante delicto. The source also contends that the Intelligence Service's refusal to comply with the release order issued by the court hearing the case is yet another reason to consider the detention arbitrary for want of a legal basis.

25. With regard to category II, the source argues that Mr. García Ramírez remains deprived of his liberty as a direct result of exercising his fundamental rights to political participation and freedom of expression. According to the source, Mr. García Ramírez identifies himself as being a member of an opposition political party, Voluntad Popular, and, as a municipal councillor, he has been particularly critical of the Government for the number of political prisoners it has taken and for its practice of arbitrarily arresting and detaining its opponents and critics. This activism has made him a target of State repression. The source indicates that Mr. García Ramírez was detained to silence him and thus to put an end to his criticism and political opposition. In the source's view, persecuting Mr. García Ramírez for expressing his political opinions openly and without restraint goes against the very nature of the Covenant, as challenging the Government and the people in the political positions of the greatest importance does not warrant censure or persecution.

26. In connection with category III, the source states that the arrest and detention constitute violations of the right to due process, namely, the rights to be presumed innocent, to be brought before a court within a reasonable period of time, not to be subjected to cruel, inhuman or degrading treatment or punishment and to be afforded effective judicial protection in particular.

27. With regard to the violation of the right to be presumed innocent, the source highlights that authorities such as the State Governor and the First Vice-President of the governing party made public statements condemning Mr. García Ramírez for crimes that no court had ruled on. Mr. García Ramírez's right to be presumed innocent was also violated when, still in the investigation phase and before formally presenting him to the courts, intelligence officers photographed him with the weapons and explosives that had allegedly been seized.

28. In connection with the right to be brought before a court within a reasonable period of time, the source reiterates that Mr. García Ramírez was disappeared, that he was not brought before a judge within 48 hours of his arrest and that his family members were unaware of his whereabouts for 90 hours.

29. The source contends that the manner in which Mr. García Ramírez was treated by intelligence officers when they kept him handcuffed for more than 24 hours and put a gun to his head as they interrogated him was a violation of his right not to be subjected to cruel, inhuman or degrading treatment or punishment.

30. Similarly, in respect of the absence of effective judicial remedies, the source states that on 20 January 2017 Mr. García Ramírez's lawyer filed a writ of habeas corpus that did

not have the expected result, as Mr. García Ramírez remains deprived of his liberty despite being in possession of an order for his release.

31. Lastly, according to the source, the detention of Mr. García Ramírez falls within category V of the Working Group's categories of arbitrary detention because he is being detained and persecuted for his political views, as a member and leader of an opposition political party. The source concludes that to deny Mr. García Ramírez his rights to due process, personal liberty and bodily integrity is to subject him to discrimination.

Response from the Government

32. The Government indicated that Mr. García Ramírez is a Venezuelan citizen, holder of identity card No. V-17.057.162, who was elected chief councillor of the municipality of San Cristobal, in Táchira State, in 2013.

33. On 18 October 2016, according to the Government, Mr. García Ramírez was arrested by the Bolivarian National Intelligence Service in flagrante delicto, specifically while in possession of military weapons, grenades and uniforms of the Bolivarian National Armed Forces. He was transferred to the Intelligence Service's local headquarters in San Cristobal, in Táchira State, where he was detained.

34. On 20 October 2016, Mr. García Ramírez was brought before First Instance Procedural Court No. 8 of the Criminal Court Circuit of Táchira State. The Court ordered him to be held in pretrial detention in the Intelligence Service's San Cristóbal headquarters. He was later transferred to its national headquarters in Caracas.

35. On 2 June 2018, the Court ordered Mr. García Ramírez to be given an alternative to deprivation of liberty, in application of article 242 of the Code of Criminal Procedure, which states that:

“Provided that the allegations that gave rise to pretrial court-ordered deprivation of liberty can reasonably be addressed through the application of a measure that is less onerous for the accused, the competent court, ex officio or at the request of the Public Prosecution Service or of the accused, shall impose in its place, by means of a reasoned decision, one or more of the following measures:

1. House arrest in the accused's home or in the custody of another person, without monitoring of any sort or with such monitoring as ordered by the court;
2. Placement under the care or supervision of a person or institution;
3. A requirement to report regularly to the court or court-appointed authority;
4. A prohibition on leaving the country, the place of residence or an area specified by the court without authorization;
5. A prohibition on going to specific meetings or places;
6. A prohibition on communicating with specific persons, as long as the prohibition does not adversely affect the accused's right of defence;
7. Immediate removal from the home if the accused lives with the victim and is accused of attacks against women or children or sexual offences;
8. Posting of bail of a suitable amount by the accused him- or herself or by another person, in keeping with the principle of proportionality, in the form of a cash deposit, securities, the guarantee of two or more appropriate persons or real collateral;
9. Any other precautionary or preventive measure that the court, by reasoned order, deems appropriate or necessary.

If the accused is already subject to an alternative to pretrial detention, the court must assess the essence of the new offence, the accused's previous conduct and the extent of the damage before granting another alternative measure.

In no case may the accused be granted three or more such measures simultaneously.”

36. Mr. García Ramírez has been free since 2 June 2018 by virtue of the alternatives to detention agreed by the court hearing the case.

37. According to the Government, the detention of Mr. García Ramírez is compatible with article 44 of the Constitution of the Bolivarian Republic of Venezuela, which empowers the police to detain persons caught in the act of committing crimes defined in and punished under the country's laws. This article states that:

“Personal liberty is inviolable, and as a consequence:

1. No one may be arrested or detained without a court order, unless he or she is caught in flagrante delicto. In such cases, he or she shall be brought before a judicial authority within 48 hours of the arrest. He or she shall remain free during the trial, except under the circumstances provided for by law and assessed by the judge hearing the case.”

38. The Government also points out that Mr. García Ramírez was arrested while in possession of weapons of war and military uniforms. He was therefore arrested, in the Government's view, in flagrante delicto, as provided for in article 248 of the Code of Criminal Procedure, which states that:

“For the purposes of this chapter, a crime that is being or has just been committed will be considered a flagrant crime. A crime leading to the pursuit of the suspect by the police or the victim or an immediate public outcry, or a crime committed just before the suspect is caught at the scene of the crime or in the vicinity thereof while in possession of weapons, tools or other items providing grounds to believe that he or she is the perpetrator, will also be considered a flagrant crime.

In such cases, and provided that the crime warrants imprisonment, all authorities shall be under an obligation to apprehend the suspect, and any private individual shall be permitted to do so, turning him or her over to the nearest authority, which shall make him or her available to the Public Prosecution Service.”

39. Similarly, the Government reports that Mr. García Ramírez was placed at the disposal of the judicial authorities within the time frame set out in the law and that he was later ordered into pretrial detention in strict compliance with article 373 of the Code of Criminal Procedure, which states that:

“Within 12 hours of the arrest, the individual or authority making the arrest shall make the arrested person available to the Public Prosecution Service, which, within 36 hours, shall bring him or her before the competent due process judge to explain the particulars of the arrest and request use of either the ordinary or summary procedure, depending on the case, and either the imposition of a custodial measure or the release of the arrested person. The latter case does not rule out further appropriate action.

The due process judge shall rule on the request made by the Public Prosecution Service within 48 hours of the arrested person's appearance.

If the due process judge finds that the requirements mentioned in the preceding article have been met, and if the prosecution has thus requested, he or she shall order that the summary procedure be used and forward the record of the proceedings to the trial court, which shall order a public trial to be held with the next 10 to 15 days.

In this case, the prosecutor and the victim shall file the charges with the trial court no later than five days before the start of the trial so that the defendant is aware of the arguments and can prepare his or her defence; in all other matters, the ordinary rules of procedure shall be followed.

Otherwise, the judge shall order that the ordinary procedure be followed and shall so state in the record drawn up for this purpose.”

40. The Government states that the description above makes it clear that the detention of Mr. García Ramírez is fully in line with the Covenant, in which it is acknowledged that a person may be deprived of his or her personal liberty on grounds established by law.

41. According to the Government, in view of the above, the detention of Mr. García Ramírez cannot be regarded as falling within category I of the Working Group's categories of arbitrary detention because he was detained in flagrante delicto, as provided for in article 44 of the Constitution and articles 248 and 373 of the Code of Criminal Procedure. In other words, there is a legal basis justifying the detention.

42. It is also impossible to view the detention of Mr. García Ramírez as falling within category II, as it resulted not from his exercise of rights recognized by the Universal Declaration of Human Rights and the Covenant but from his possession of weapons of war and military uniforms, which is punishable by law.

43. The Government stresses that Mr. García Ramírez's membership of a political party opposed to the Government and his previous political activism are not sufficient to prove that his detention is a consequence of his exercise of rights recognized in international instruments.

44. Similarly, the detention of Mr. García Ramírez cannot be regarded as falling within category III of the Working Group's categories of arbitrary detention, as the process of law that began following his arrest has unfolded in full observance of the norms relating to the right to a fair trial established in the Universal Declaration of Human Rights and other international instruments ratified by the Bolivarian Republic of Venezuela.

45. In addition, the detention of Mr. García Ramírez cannot be considered arbitrary under category IV, as it is wholly unrelated to asylum, refugee or immigration proceedings.

46. Likewise, the detention of Mr. García Ramírez does not constitute a violation of international law on the grounds of discrimination since he was taken into custody for the alleged commission of crimes defined in Venezuelan law without any consideration being given to his personal situation or status. The Government reiterates that a person's status as a member of a political party opposed to the national Government does not, on its own, prove that the person has been detained for discriminatory reasons. The detention of Mr. García Ramírez cannot therefore be considered arbitrary under category V.

47. In the light of the information and explanations it has provided, the Government requests that the present case be brought to a close and that the information herein be brought to the attention of the Human Rights Council.

Additional comments from the source

48. The source transmitted comments and observations on the Government's response on 16 August 2018. In relation to category I, the source notes that, in its response, the Government failed utterly to acknowledge that Mr. García Ramírez has had a court release order since 20 December 2016 and that, from this date until 2 June 2018, he was deprived of his liberty with no justification. His release was ordered because the order to place him in pretrial detention lapsed when the Public Prosecution Service failed to file charges.

49. The source adds that consideration should be given to article 44 of the Constitution, invoked by the State in its response. This article states that personal liberty is inviolable and that, as a consequence, no person will remain in detention after a release order has been issued by the competent authority or upon completion of a sentence.

50. The source concludes that the Government was unable to deny the arbitrariness of Mr. García Ramírez's detention from 20 December 2016, when the court ordered his release because the prosecution had failed to file charges, until 2 June 2018, when the National Constituent Assembly's Commission for Truth, Justice, Peace and Public Tranquillity issued an order for his release that was executed.

51. The source notes that the Government's response suggests it is of the view that Mr. García Ramírez's release on 2 June 2018 absolves it of responsibility under international law for the time he spent in arbitrary detention. This argument cannot be admitted, as keeping a victim in pretrial detention after a court orders his or her release becomes

arbitrary the moment the order is issued. The arbitrary nature of the detention cannot be remedied simply by ending the deprivation of liberty, as responsibility under international law is incurred as soon as the treaty is breached.

52. In this regard, the source notes that, under article 2 (1) of the Covenant, States parties are required to respect the rights recognized in the Covenant and that, as a consequence, in the event of non-compliance the offending State should immediately incur responsibility under international law.

53. The source submits that keeping a person in pretrial detention arbitrarily is a direct violation of article 2 (1) of the Covenant, read in conjunction with article 9, that does not cease to be a violation until the person is no longer arbitrarily detained.¹

54. The source concludes that, despite his later release, the State party is still responsible under international law for the arbitrary and unlawful detention of Mr. García Ramírez from 20 December 2016 to 2 June 2018.

55. With regard to category II of the Working Group's categories of arbitrary detention, the source notes that the Government failed to mention the pattern of political persecution of the opposition – and of the Voluntad Popular party of which Mr. García Ramírez is a member in particular – witnessed in the Bolivarian Republic of Venezuela since 2012, or Mr. García Ramírez's exercise of the rights mentioned under category II, not least the rights to freedom of expression and political participation, provided for in articles 19 and 21 of the Universal Declaration of Human Rights and articles 19 and 25 of the Covenant.

56. That source states that, in connection with the systematic political persecution of the opposition party Voluntad Popular, the events described below should be taken into account.

57. Starting in 12 February 2014 and fuelled by growing insecurity, economic decline and the erosion of political freedoms in the country, there were a number of anti-government protests, begun by students and backed by the leaders of major opposition political parties critical of the mismanagement of the economy and the suspension of constitutional guarantees.

58. On 13 February 2014, shortly after a press conference given by the political coordinator of Voluntad Popular, a group of 12 people bearing high-calibre firearms and identified as officers from the General Directorate of Military Counter-Intelligence appeared at the party's headquarters and entered without a warrant, claiming that they were carrying out an operation, which involved asking where the political coordinator was. After searching the entire office, they withdrew, threatening the people there and saying they would be back for them.

59. The source points out that, on 18 February 2014, the political leader of Voluntad Popular was arrested by the State party's police because he had called for anti-government protests on 12 February 2014.

60. From this point onwards, according to the source, to address the wave of anti-government protests, the State party adopted a strategy designed to threaten, stigmatize, criminalize, harass and hound through the media both the leadership of the opposition and any other persons who demonstrated their dissatisfaction publicly. The country's President said that the protests against him were the work of "fascist groups that are promoting hatred, intolerance and violence" and that "coup-plotting fascism is defeated by enforcing the law vigorously and with the help of a mobilized and triumphant people".

61. On 17 February 2014, a group of four people bearing firearms and dressed in plain clothes burst into Voluntad Popular's headquarters. Later, the source reports, the headquarters were visited by members of the National Guard, who tried to force their way

¹ On ongoing human rights violations involving personal liberty, see the following judgments of the Inter-American Court of Human Rights: *Radilla Pacheco v. Mexico*, judgment of 23 November 2009, paras. 139 and 145; *Gelman v. Uruguay*, judgment of 24 February 2011, para. 73; and *Velásquez Rodríguez v. Honduras*, judgment of 29 July 1988, para. 149.

in. On being denied entry for want of a warrant, they released pepper spray into the building and thus made their way in, searching several offices and seizing equipment containing internal video recordings, telephones and hard drives.

62. The source also notes that, on 28 March 2014, Voluntad Popular's headquarters in Zulia State were burned by mobs. Later, on 30 April 2014, the party headquarters located in the Indio Mara sector of Maracaibo were again attacked, and electronic and other equipment was taken.

63. On 10 January 2015, the Minister of Communes and Social Movements, Elías Jaua, stated that the leaders of the "La Salida" (way out) campaign launched on 23 January 2014, which escalated into a wave of protests on 12 February, were trying to use a national strike to incite violence and made a direct reference to Voluntad Popular by mentioning its chief spokesperson, who had in the past stated: "We have no choice but to commit frankly and openly to getting rid of this Government by raising awareness and taking to the streets. The Constitution offers a number of means to achieve this goal – a constitutional congress, an amendment, a recall or resignation – but all of them require the most important thing: the people's determination to find a way out of this disaster."

64. On 25 February 2015, the source reports, the Venezuelan President denounced two alleged terrorist attacks in Táchira and Zulia States allegedly committed with a view to generating "a wave of anxiety, distress and violence in the country". The President recounted that in Maracaibo, in Zulia State, "a group of 20 hooded people belonging to Voluntad Popular had seized a truck full of medicine and set it alight".

65. On 8 September 2016, a representative of Voluntad Popular at the time serving as mayor of the municipality of El Hatillo was abused and harassed by officers of the national police.

66. The source asserts that, in this period and up until 2017, the State prosecuted several Voluntad Popular leaders and ordered their detention for no reason other than their expressing dissent and being members of this political party.

67. A Voluntad Popular member of parliament was also unlawfully stripped of his parliamentary immunity by the Supreme Court in 2017. The Inter-American Commission on Human Rights condemned this ruling and the breakdown of the constitutional and democratic order in the Bolivarian Republic of Venezuela, and once again called the attention of the State party to "the need to guarantee for its citizens and for organized political groups the right to political participation and to freedom of expression without fear of reprisals, allowing and encouraging pluralistic, broad and robust public debate".²

68. In October 2017, the Venezuelan Vice-President announced that an alleged Voluntad Popular member had been arrested for executing a supposed terrorist plan.

69. The source notes that, more recently, the President accused Voluntad Popular of plotting to kidnap the former President of the Central Bank of Venezuela.

70. The source concludes that these incidents throw into sharp relief the Government's systematic attacks, facilitated by its reliance on arbitrary detention, on the country's political opposition and the leaders of Voluntad Popular in particular.

71. According to the source, the offensive against Voluntad Popular mounted by the State party has been so intense that the precautionary measures the Inter-American Commission granted to party members have been extended to cover their families and lawyers, who, as the Commission noted, have been subjected to threats and harassment for no reason other than their close ties to the party's leaders.³

² See press release 041/17. Available at www.oas.org/en/iachr/media_center/PReleases/2017/041.asp.

³ See extension of precautionary measure 335/14 of 12 October 2015 in favour of the wives of Leopoldo López and Daniel Ceballos, Lilian Tintori and Patricia Gutiérrez, and their children; and resolution 18/2016 of 1 April 2016 extending precautionary measure 335/14 in favour of Juan Carlos Gutiérrez and Ana Leonor Acosta, who are lawyers for Leopoldo López and Daniel Ceballos.

72. The source contends that political dissent, and specifically the dissent engaged in by the leaders of Voluntad Popular, the political party of which Mr. García Ramírez is a member, is clearly being criminalized.

73. With regard to Mr. García Ramírez's exercise of his rights to freedom of expression and political participation, another issue that the Government failed to address in its response, the source emphasizes the circumstances set out below.

74. Before being arbitrarily detained by the State party, Mr. García Ramírez played a leading role in various domestic and international demonstrations.

75. In 2015, spurred into action by the situation of political prisoners in his country, he went on hunger strike in the Vatican City.

76. In 2016, he took part in a protest before the regional seat of the National Electoral Council in Táchira State to demand answers from the national authorities as to the date by which expressions of support for a presidential recall referendum must be collected from 20 per cent of the country's registered voters. In the same year, in front of the headquarters of the Bolivarian National Intelligence Service, he staged a protest against the abuses and persecution suffered by other political leaders of Voluntad Popular.

77. It is thus clear that, before he was detained, Mr. García Ramírez was engaged in constant political activity and criticized a number of high-ranking State officials, causing them to take an intense dislike to him that culminated in his being prosecuted, a practice that, as noted above, is the Government's traditional response to political dissent, and the dissent expressed by Voluntad Popular in particular.

78. Adding weight to this assertion is the inability of the public prosecutor responsible for the criminal investigation targeting Mr. García Ramírez to file charges against him, which led to the inevitable reversal of the order to place him in pretrial detention – yet another point that the Government failed to address in its response.

79. For these reasons, the source considers that the Government has been unable to satisfactorily refute the claim that Mr. García Ramírez was detained for exercising his rights to freedom of expression and political participation, a motive that makes his detention arbitrary under category II of the Working Group's categories of arbitrary detention.

80. With regard to category III, the source notes that the Government failed to address the alleged violation of the right to be presumed innocent established in article 14 (2) of the Covenant and in article 49.2 of the Constitution of the Bolivarian Republic of Venezuela.

81. The source contends that the intelligence officers who apprehended Mr. García Ramírez effectively placed him on public display by releasing a photograph showing him handcuffed, with his face uncovered, standing in front of a table on which grenades and military uniforms were laid out. Later, the Governor of Táchira posted this picture to his account on Twitter, a social network, together with a message stating that State intelligence officers had captured the young San Cristóbal councillor José Vicente García and found him in possession of military weapons, grenades and vests.

82. According to the source, the Government also failed to mention the statements made by the person then a member of parliament for and Vice-President of Partido Socialista Unido de Venezuela, the governing party, who asserted that Mr. García Ramírez had been involved in the "La Salida" plan in 2014; that he worked closely with the former mayor of the municipality of San Cristóbal in Táchira State; that he had fled to Cúcuta after there had been a few arrests and had taken part in paramilitary drills there; and that he had planned to give members of criminal gangs grenades for them to use on Táchira State police facilities and government buildings.

83. The source stresses that this conduct made Mr. García Ramírez appear guilty of an offence into which no official investigation had been conducted, in clear violation of both the judicial right to be presumed innocent and the country's laws, including article 286 of the Code of Criminal Procedure, for example, which states that:

“All records of the proceedings of investigations shall be withheld from third parties. The records may be consulted only by the suspect, his or her lawyer, the victim, whether or not he or she has filed a complaint, or a representative of the victim granted special power of attorney. This provision notwithstanding, the officials involved in the investigation and the persons who for any reason are informed of the proceedings carried out as the investigation is conducted are under an obligation to maintain confidentiality.”

84. The source concludes that in their public statements, the officials identified above prejudged Mr. García Ramírez, in that the corresponding judicial investigations had yet to take place, and thereby violated his right to be presumed innocent and, by extension, article 14 (2) of the Covenant. This violation means that his detention falls within category III of the Working Group’s categories of arbitrary detention, a conclusion the Government did not see fit to dispute.

85. With regard to category V, the source maintains that the Government again fails to address the entire pattern of political discrimination to which Voluntad Popular has been subjected in recent years and Mr. García Ramírez’s specific party activism in particular.

86. It is therefore untrue that Mr. García Ramírez’s status as a member of an opposition political party is the sole grounds for the claim that he was deprived of his liberty for political reasons. On the contrary, the claim rests on an accumulation of empirical observations of the actions taken by the State party to combat this specific political organization and the work done by the victim as a member of the organization.

87. For this reason, it must be concluded that the Government fails to show that the detention of Mr. García Ramírez was not political or discriminatory in nature. The source therefore reaffirms the view that the arbitrariness of the detention falls within category V.

Discussion

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

89. The Government reported that Mr. García Ramírez was released on 2 June 2018. In accordance with rule 17 (a) of its methods of work, however, the Working Group decided to use its regular procedure to process the case and render the present opinion.

90. 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.⁴

91. From the information submitted by the parties, the Working Group has been able to establish that Mr. García Ramírez is a member of the party Voluntad Popular and that he was elected chief councillor of the municipality of San Cristóbal in 2013. The Working Group has also received convincing information about the demonstrations in which Mr. García Ramírez took part in his country and abroad.

Category I

92. The Working Group is convinced by the claim that, on 18 October 2016, Mr. García Ramírez was detained by officers of the Bolivarian National Intelligence Service, on the Service’s premises, for allegedly possessing weapons of war, grenades and vests.

93. The Working Group received no information that would allow it to conclude that the detention was the result of a court order or that the offence was committed in flagrante. In its response, the Government claimed simply that Mr. García Ramírez was detained in

⁴ See A/HRC/19/57, para. 68.

flagrante delicto, failing to specify where he was detained or how he came to be found in possession of the weapons for which his arrest was apparently warranted.

94. In this case, by failing to provide evidence that would prove that Mr. García Ramírez was arrested in flagrante delicto, the Government missed an opportunity to justify the detention. The Working Group is also convinced by the claim that Mr. García Ramírez was not informed, at the time of arrest, of the reasons for his deprivation of liberty and was not shown a warrant issued by a competent authority. In past opinions rendered on arbitrary arrests made by authorities of the Bolivarian Republic of Venezuela, the Working Group has found that it is common for weapons to be planted in the vehicles or homes of dissidents or members of opposition political parties to provide a justification for their arrest.⁵

95. The Working Group is therefore of the view that the detention of Mr. García Ramírez falls within category I of its categories of arbitrary detention.

96. The Working Group also noted that, on 20 December 2016, the court issued a release order providing for the use of an alternative to detention but that the order was not executed until 2 June 2018. Accordingly, there was no legal basis for the detention of Mr. García Ramírez during this period and, for this reason also, the detention is arbitrary under category I.

Category II

97. The Working Group is convinced by the claim that the detention of Mr. García Ramírez was prompted by his exercise of the rights to political participation and freedom of expression, specifically as a member of the party Voluntad Popular, and that he was initially deprived of his freedom without an arrest warrant and for an offence not shown to have been committed in flagrante. The Working Group finds that Mr. García Ramírez was detained for exercising his right to freedom of expression and, as a member of a political party, for taking active part in the public affairs of his country, in violation of articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant. His detention therefore falls within category II of the Working Group's categories of arbitrary detention.

Category III

98. The Working Group is also convinced by the claim that senior government officials presented Mr. García Ramírez to the public as if he had committed a crime, even though he had not been charged, let alone convicted. His right to be presumed innocent, enshrined in article 14 (2) of the Covenant, has thus been violated.

99. The Working Group wishes to note that the Human Rights Committee has stated that:

“Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage

⁵ See opinions No. 52/2017 concerning Gilbert Alexander Caro Alfonzo and No. 26/2015 concerning Gerardo Ernesto Carrero Delgado, Gerardo Rafael Resplandor Veracierta, Nixon Alfonzo Leal Toro, Carlos Pérez and Renzo David Prieto Ramírez.

undermining the presumption of innocence. Furthermore, the length of pretrial detention should never be taken as an indication of guilt and its degree.”⁶

100. The Government did not refute the source’s claims that Mr. García Ramírez was not allowed to meet with his lawyers and members of his family until a month after he was arrested. Mr. García Ramírez’s right to be assisted by a lawyer of his choosing was thus violated, a violation that also made it harder for him to exercise his right to defend himself against the accusations he was facing. The Working Group recalls that article 14 (3) (b) of the Covenant states that everyone has the right “to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”.

101. The Working Group is of the view that everyone who is arrested should be informed of this right at the time of arrest and that legal assistance should be provided immediately thereafter, in an appropriate space fitted out to ensure that conversations between the detained person and his or her legal representative remain private and confidential.⁷

102. Mr. García Ramírez was also not brought before a court until 90 hours after his arrest, in violation of article 9 of the Covenant, which recognizes that everyone has the right to be promptly informed of the charges against him or her, to be brought promptly before a judge and to be tried within a reasonable time, none of which occurred in this case.

103. In light of the foregoing, the Working Group finds that the detention of Mr. García Ramírez constitutes a violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant and therefore falls within category III of its categories of arbitrary detention.

104. In addition, the source submitted credible information about the torture and other cruel, inhuman or degrading treatment to which Mr. García Ramírez was subjected while he was interrogated by intelligence officers and on the harsh conditions in which he was held, in particular with regard to food, overcrowding and hygiene. The Working Group is therefore referring this matter to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health for their consideration and possible action.

Category V

105. The Working Group is of the opinion that the detention described in this case is not the first to be ordered by the authorities of the Bolivarian Republic of Venezuela against members of opposition political parties, human rights defenders and critics of the authorities’ actions.⁸

⁶ General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30.

⁷ A/HRC/30/37, principle 9, paras. 12 to 15.

⁸ See opinions No. 32/2018 concerning Ángel Machado, Luis Aguirre, Alberto Cabrera, Wuilly Delgadillo, Romer Delgado, José Gregorio González, Dehlor De Jesús Lizardo, Nirso López, Pedro Marval, Antonio Medina, Arcilo Nava Suárez, Geovanny Nava Suárez, Kendry Parra, Jesled Rosales, Franklin Tovar, Ender Victa and Kiussnert Zara, No. 52/2017 concerning Gilbert Alexander Caro Alfonzo, No. 37/2017 concerning Braulio Jatar, No. 18/2017 concerning Yon Alexander Goicoechea Lara, No. 27/2015 concerning Antonio José Ledezma Díaz, No. 26/2015 concerning Gerardo Ernesto Carrero Delgado, Gerardo Rafael Resplandor Veracierta, Nixon Alfonzo Leal Toro, Carlos Pérez and Renzo David Prieto Ramírez, No. 7/2015 concerning Rosmit Mantilla, No. 1/2015 concerning Vincenzo Scarano Spisso, No. 51/2014 concerning Maikel Giovanni Rondón Romero and 316 others, No. 26/2014 concerning Leopoldo López, No. 29/2014 concerning Juan Carlos Nieto Quintero, No. 30/2014 concerning Daniel Omar Ceballos Morales, No. 47/2013 concerning Antonio José Rivero González, No. 56/2012 concerning César Daniel Camejo Blanco, No. 28/2012 concerning Raúl Leonardo Linares, No. 62/2011 concerning Sabino Romero Izarra, No. 65/2011 concerning Hernán José Sifontes Tovar, Ernesto Enrique Rangel Aguilera and Juan Carlos Carvallo Villegas, No. 27/2011 concerning Marcos Michel Siervo Sabarsky, No. 28/2011 concerning Miguel Eduardo Osío Zamora, No. 31/2010 concerning Santiago Giraldo Florez, Luis Carlos Cossio, Cruz Elba Giraldo

106. In this case, the deprivation of liberty of Mr. García Ramírez constituted a violation of international law since he was deprived of his liberty on the grounds of discrimination based on his political opinion and his status as a member of Voluntad Popular, an opposition political party, in breach of articles 2 and 26 of the Covenant and articles 2 and 7 of the Universal Declaration of Human Rights. His detention therefore falls within category V of the Working Group's categories of arbitrary detention.

107. In recent years, the Working Group has repeatedly expressed views on multiple arbitrary arrests of political opponents of the Government or people who have exercised their rights to freedom of opinion, expression, association, assembly or political participation. Such persecution, in the Working Group's view, is an attack or systematic practice engaged in by the Government to deprive political opponents of their physical freedom, particularly those who are seen as opponents of the regime, in violation of fundamental rules of international law, including the Universal Declaration of Human Rights and the Covenant. The Working Group notes that, in some circumstances, imprisonment and other severe forms of deprivation of physical liberty that violate internationally accepted norms may constitute crimes against humanity.⁹

108. In the light of the recurrent pattern of arbitrary detention identified by this international human rights mechanism in recent years, the Government is urged to consider inviting the Working Group to make an official country visit. 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

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

The deprivation of liberty of José Vicente García Ramírez, being in contravention of articles 2, 7, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

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

111. The Working Group considers that, taking into account all the circumstances of the case and in accordance with international law, victims of arbitrary detention are entitled to seek and receive reparation from the State, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The Working Group requests the Government to accord Mr. García Ramírez appropriate reparation.

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

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

Florez, Isabel Giraldo Celedón, Secundino Andrés Cadavid, Dimas Oreyanos Lizcano and Omar Alexander Rey Pérez and No. 10/2009 concerning Eligio Cedeño.

⁹ See opinions No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 47/2012, paras. 19 and 22; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 38/2012, para. 33; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 44/2016, para. 37; No. 32/2017, para. 40; No. 33/2017, para. 102; and No. 36/2017, para. 110.

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

Follow-up procedure

115. 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 compensation or other reparations have been made to García Ramírez;
- (b) Whether an investigation has been conducted into the violation of Mr. García Ramírez's rights and, if so, what the outcome of the investigation was;
- (c) 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;
- (d) Whether the present opinion has been disseminated through all available means and as widely as possible;
- (e) Whether any other action has been taken to implement the present opinion.

116. 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.

117. The Working Group requests the source and the Government to provide the above-mentioned 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.

118. The Working Group notes 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.¹⁰

[Adopted on 22 August 2018]

¹⁰ See Human Rights Council resolution 33/30, paras. 3 and 7.