



General Assembly

Distr.: General
4 March 2019
English
Original: Spanish

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-third session, 19–23 November 2018

Opinion No. 86/2018 concerning Arístides Manuel Moreno Méndez (Bolivarian Republic of Venezuela)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.
2. In accordance with its methods of work (A/HRC/36/38), on 16 May 2018, the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Arístides Manuel Moreno Méndez. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation,



disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mr. Moreno Méndez is a Venezuelan citizen born on 31 December 1960. His usual place of residence is the Altamira neighbourhood in the municipality of Chacao, State of Miranda, Bolivarian Republic of Venezuela. The source reports that Mr. Moreno Méndez is a businessman who, owing to his experience, contacts and training, contributed to efforts to establish a dialogue between the Venezuelan opposition political coalition and the Government.

5. According to information received, on 22 June 2017, police officers attached to the Strategic Investigations Department of the Bolivarian National Intelligence Service (SEBIN) entered Mr. Moreno Méndez's home.

6. The SEBIN officers did not produce a search warrant issued by a judicial authority. The case file was subsequently found to include a request from National Military Prosecutor's Office No. 2 and a search warrant supposedly granted by a military judge, both of which were backdated.

7. According to the source, the alleged warrant is based on a police report containing information obtained from anonymous individuals, who indicate that the house was being used to conceal weapons and uniforms belonging to the Bolivarian National Armed Forces, along with objects used in "violent demonstrations" held in the city of Caracas. The source maintains that none of this is true. The source states that there is no link between Mr. Moreno Méndez and the events described in the report, in which there is no mention of the residence or the objects planted there by SEBIN officers during the raid.

8. According to the testimonies of people arrested during the operation, on entering the building, the SEBIN officers did not present any document resembling a search warrant. Moreover, the police records drawn up in relation to the operation were not signed by Mr. Moreno Méndez, who is a resident of the building, by the other people arrested during the process or by the other individuals who were in the residence at the time of the raid. The records also reveal inconsistencies with regard to the time of the inspection and the person who allowed access to the building. In addition, they show that people who lacked court authorization and whose position of authority cannot be confirmed entered Mr. Moreno Méndez's home.

9. The source adds that 18 of the 19 officers who carried out the raid are named in the alleged warrant that emerged after the event. The raid was conducted in the presence of two other high-ranking officers who are also not named, either in the warrant or in the records of the operation. The records drawn up by the officers in relation to the raid and the registers for the collection and submission of the alleged evidence name a person other than the 18 mentioned in the warrant, identified only as Cristóbal Tirado, who was not on the list of persons authorized to carry out the raid and whose position cannot be verified.

10. The source indicates that this unauthorized person sent evidence to the Military Prosecutor's Office that, according to the records of the raid themselves, was never gathered from the residence. This evidence is reportedly part of the body of evidence that was used to substantiate the pretrial detention of Mr. Moreno Méndez, his indictment by the Office and the current pursuit of criminal proceedings against him.

11. The source states that, during the raid, Mr. Moreno Méndez, who is a resident of the building and who used his home only to host meetings of political leaders opposed to the Government, was arrested arbitrarily. It is reported that neither Mr. Moreno Méndez nor his residence were mentioned in the records of the raid. Moreover, it is claimed that the officers who entered the property took away a large number of personal possessions belonging to Mr. Moreno Méndez and his daughters, in addition to four vehicles present at the site. At the time of arrest, no arrest warrant issued by a judicial authority was produced.

12. On 25 June 2017, the President of the Republic asserted, in public statements broadcast by Venezolana de Televisión (the Venezuelan Television Corporation), that Roberto Picón, who had also been arrested in Mr. Moreno Méndez's home during the operation, was a computer hacker tasked with sabotaging the National Constituent Assembly elections scheduled for 30 July 2017.

13. According to the information received, on 26 June 2017, after the expiry of the 48-hour deadline prescribed by the Constitution for bringing a detained person before a judge, Mr. Moreno Méndez was arraigned.

14. The arraignment took place in Caracas before Procedural Court No. 3 of the Military Criminal Court Circuit and was presided over by a military judge, who was requested to decline jurisdiction in favour of the ordinary courts, since Mr. Moreno Méndez is a civilian, and subjecting him to military jurisdiction violates his constitutional rights to due process, the natural judge, the independence and impartiality of the judiciary and liberty and integrity of the person, as recognized in the Universal Declaration of Human Rights and the Covenant.

15. The source reports that there, before the military court, Mr. Moreno Méndez was charged with treason, rebellion and the theft of items belonging to the Bolivarian National Armed Forces, which are all offences under the Code of Military Justice.¹ The military court also remanded Mr. Moreno Méndez in custody as a preventive measure and ordered him to be held at the SEBIN headquarters at El Helicoide.²

16. The decision made by the military judge was the result of a request from National Military Prosecutor's Office No. 2, which submitted as evidence only electronic equipment that was not in the building when the raid took place and whose content and ownership are unknown, an alleged fragmentation grenade of unverified authenticity and an anonymous document from 2003 whose content has nothing to do with the acts attributed to Mr. Moreno Méndez. According to the source, the records drawn up in relation to the inspection and the testimonies of witnesses contradict the registers of the chain of custody of physical evidence; the objects mentioned and the photographs taken demonstrate that the items seized had been planted.

17. The source states that, from when Mr. Moreno Méndez was arrested on 22 June 2017 to when he was brought before the military court on 26 June 2017: (a) there was no official information concerning the place where he was being held; (b) he was not allowed to communicate with his family or his trusted counsels; (c) nor was he officially notified of the offences for which he was being held; and (d) despite requesting the presence of lawyers, he was subjected to lengthy interrogations in which SEBIN officers used video cameras, recorders and other technological devices. The interrogations began during the raid, at which time his lawyer was denied access to the residence. Subsequently, and during his detention, the interrogations continued, and he was able to meet with his lawyer only after having been detained for more than 70 days at the SEBIN headquarters at El Helicoide.

18. When Mr. Moreno Méndez was brought before the military judge, a request was made to declare his detention null and void, a complaint was filed about the inconsistencies in the investigation and the judge was asked to decline jurisdiction and order Mr. Moreno Méndez's release. However, these requests were rejected by the military judge.

19. The source also highlights that that measure was taken by a civil criminal court that was assigned the case after the Criminal Cassation Division of the Supreme Court had heard and ruled on the case ex officio on 6 October 2017 and had decided to transfer it to the criminal courts by judgment No. 403 of 16 November 2017, which was presented by the President of the Supreme Court. To date, Mr. Moreno Méndez continues to be subjected to severe restrictions of his personal liberty.

¹ Imputed crimes: treason, rebellion and the theft of items belonging to the Bolivarian National Armed Forces. Articles 464 (25), 486 (4) and 570 (1), respectively, of the Code of Military Justice.

² Basis for the arrest warrant: article 234 of the Code of Criminal Procedure. Basis for the detention order: article 236 of the Code.

20. The source reports that, on 7 December 2017, once the case was already before the ordinary criminal courts, a petition was filed to review the pretrial detention order against Mr. Moreno Méndez.

21. On 22 December 2017, the criminal judge in charge of State Control Court of First Instance No. 36 of the criminal judicial circuit in the judicial district of the Caracas Metropolitan Area ruled that the pretrial detention order should be substituted with a non-custodial preventive measure allowing Mr. Moreno Méndez to be tried while at liberty, subject to: (a) a requirement to report to the Court every two weeks; (b) a prohibition against making statements to the media; (c) a prohibition against participating in public demonstrations; and (d) an irregular order to appear before the Truth and Justice Commission of the National Constituent Assembly. The measure took effect on 23 December 2017. The source maintains that these severe restrictions of Mr. Moreno Méndez's personal liberty are occurring in a context of non-existent judicial independence and under a constant threat of the measure being revoked.

22. The source argues that the substitution of the pretrial detention order with a non-custodial preventive measure allowing Mr. Moreno Méndez to be tried while at liberty, on condition that he report to the Court every two weeks and refrain from making statements to the media and participating in public demonstrations, though ordered by the competent judge, does not meet the criteria of persuasiveness or reasonableness required for the pursuit of criminal proceedings against Mr. Moreno Méndez, bearing in mind the evidential inconsistencies and the rights violations and irregularities that occurred during the proceedings before the military and ordinary criminal courts, added to the lack of jurisdiction of both the Attorney General's Office and the ordinary criminal courts to conduct investigations and institute criminal proceedings on the basis of offences under military law.

23. The source maintains that Mr. Moreno Méndez has been arbitrarily deprived of his liberty from the time of his arrest until 22 December 2017 and, since then, through the use of non-custodial preventive measures, for the following reasons.

24. The source stresses that Mr. Moreno Méndez was arrested in violation of the relevant conditions set forth in law, whereby a person may be arrested only if there is a warrant to that end issued by a competent judge or he or she is caught in flagrante delicto. However, there is no evidence of there having been an arrest warrant against Mr. Moreno Méndez or that he was caught in flagrante delicto when he was arrested, in violation of the conditions set forth in law for arresting a person.

25. According to the source, the pretrial detention order was also issued in violation of the legal requirements for remanding someone in custody. The law establishes that detention may be ordered only when there is substantiated evidence that the suspect was involved in a crime. However, the military prosecutor sought to demonstrate that Mr. Moreno Méndez was involved in attempts to change, violently, the republican form of government in the country and attack the Bolivarian National Armed Forces, basing herself on elements that provide no evidence of his having participated in such activities. In fact, the decision was based on electronic equipment whose ownership and content are unknown and an anonymous document from 2003 that bears no relation to any of the acts attributed to Mr. Moreno Méndez.

26. The source adds that the same applies with regard to the offence of theft of items belonging to the Bolivarian National Armed Forces, which was also attributed to Mr. Moreno Méndez. In this case, the decision was made on the sole basis of an alleged fragmentation grenade of unverified authenticity and ownership that was found in the building.

27. Moreover, Mr. Moreno Méndez was accused exclusively of offences under the Code of Military Justice, which relate to duties that can be infringed only by military officials, yet Mr. Moreno Méndez is not a member of the Bolivarian National Armed Forces. The source submits that, as a result, it was not possible for him to have committed the offences attributed to him.

28. The source concludes that it is clearly impossible to invoke any legal basis justifying the deprivation of liberty, which therefore falls within category I.

29. In addition, according to the source, Mr. Moreno Méndez was in his home, which he had offered to social and political opposition leaders as a venue for meetings aimed at reaching political agreements, in the light of the complicated situation in the country. In other words, Mr. Moreno Méndez was arrested while and for legitimately exercising his rights to assembly and freedom of political expression.

30. Thus, on 22 June 2017, Mr. Moreno Méndez was arrested while and for legitimately exercising his right to freedom of political expression and his right of peaceful assembly (Universal Declaration of Human Rights, arts. 19–20 and Covenant on Civil and Political Rights, arts. 19 and 21). Indeed, Mr. Moreno Méndez, exercising his right to freedom of expression and political opinion, had made his residence available as a meeting place for Venezuelan political opposition leaders when he was arrested arbitrarily by SEBIN and then subjected to military jurisdiction. The source therefore invokes category II.

31. The source further maintains that the pretrial detention was ordered by a court that fails to satisfy the conditions of competence and impartiality. Mr. Moreno Méndez's detention was ordered by a military court, which has no jurisdiction to try civilians. According to the source, the court does not meet the requirements of independence and impartiality because its judges are ultimately appointed and removed by the President of the Republic. Prior to the reasons for Mr. Moreno Méndez's arrest becoming known, the President himself publicly accused him of devising a plan to foil the elections scheduled for 30 July 2017.

32. The source argues that, like other military regulations, the Code of Military Justice imposes, *inter alia*, blind obedience and even treats as punishable offences acts or conduct that do not warrant any punishment and establishes unacceptable criteria for discrimination among citizens.

33. Consequently, military judges are not independent or impartial, since their conduct is governed by the principle of obedience that stems from the oath that they take at the beginning of their careers, and it is this lack of independence and autonomy that has prompted European and Latin American democracies to reject the application of military justice to civilians. It is alleged that the norms of the Code of Military Justice are blatantly incompatible with the Constitution and international standards and should be suspended, even *ex officio*, by all judges of the Republic, in accordance with the duty to uphold the supremacy of the Constitution (Constitution, arts. 7 and 334).

34. The source claims that, as a result, the application of military justice to civilians constitutes a serious violation of the constitutional and human rights to due process, the natural judge, the independence and impartiality of the judiciary and liberty and integrity of the person. Thus, in accordance with article 25 of the Constitution, such acts are null and void, and should immediately be suspended and stripped of legal effect, and the public officials who order or implement them should be held liable and may not invoke superior orders in their defence (Constitution, art. 25).

35. The source further argues that the greatest violation of due process is that the prosecution of Mr. Moreno Méndez began in military courts, which apply different rules from ordinary courts and seriously impede the exercise of an effective defence. Rather than being struck down, the military court proceedings were accepted and validated, and the trial continues.

36. The source also indicates that, following his arrest, Mr. Moreno Méndez was not allowed access to his family or lawyers until the brief meeting that he had with his legal representatives during his arraignment on 26 June 2017. The lawyers were unable to effectively provide Mr. Moreno Méndez with information concerning his case, discuss his defence or give specific legal advice.

37. Being held *incommunicado* and denied access to lawyers meant that Mr. Moreno Méndez could not enlist their services to challenge the decision ordering his detention or to prepare a proper defence against the charges that he faces and that formed the basis for his

indictment, his detention and the non-custodial preventive measure currently imposed on him.

38. The source claims that, as a result, international norms relating to the right to a fair and impartial trial have been seriously violated, which gives the deprivation of liberty an arbitrary character and causes it to fall within category III.

39. As to category V, the source maintains that Mr. Moreno Méndez's detention is an example of discriminatory treatment by the State against Venezuelan citizens on account of their holding a political opinion that is independent or critical of the Government.

40. The source asserts that Mr. Moreno Méndez is a private businessman committed to social responsibility who, despite not engaging directly in political activism, was arrested for his possible collaboration in the search for agreements aimed at overcoming the crisis in the Bolivarian Republic of Venezuela. The source states that this is not an isolated case; it has occurred against a backdrop of systematic persecution of serious, critical or independent leaders, who are among many individuals to have been arbitrarily deprived of their liberty by the Government.

Response from the Government

41. The Working Group transmitted the allegations set out in the preceding paragraphs to the Government on 16 May 2018.

42. In accordance with paragraph 15 of its methods of work, the Working Group requested the Government to reply within 60 days from the date of transmission of the communication. However, in accordance with paragraph 16, if the Government wishes an extension of the time limit, it may request a further period of a maximum of one month.

43. The Working Group did not receive a request from the Government for an extension of the time limit for submitting a response to the allegations transmitted to it, and when the established time limit elapsed, the Government had not replied to the communication.

Discussion

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

45. 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). In the present case, the Government has chosen not to challenge the allegations made by the source, which are, *prima facie*, credible.

46. The Working Group finds that Mr. Moreno Méndez was arrested on 22 June 2017 by SEBIN officers during a raid on his home. It also received credible information to the effect that, on the day, Mr. Moreno Méndez was not shown a search warrant issued by a judicial authority, informed of the reasons for his arrest or presented with any document issued by a competent authority to justify the arrest.

47. Based on the information available to it in the processing of the present case, the Working Group notes that it was not until several days into Mr. Moreno Méndez's spell in detention at the SEBIN headquarters at El Helicoide that he was brought before a military court. During this spell (22–26 June 2017), Mr. Moreno Méndez was not allowed to communicate with his family and was not officially notified of the offences for which he was being held, and he was able to meet with his chosen lawyer only 70 days after his arrest.

48. The Working Group wishes to recall that everyone has the right to be informed, at the time of arrest, of the reasons for their arrest and to be promptly informed of any charges against them.³

49. The Working Group has also indicated that everyone should be informed not only of the reasons justifying the deprivation of liberty but also of the judicial avenue to challenge the lawfulness of the deprivation of liberty.⁴ Moreover, persons who are detained have the right to be informed by the arresting authority, upon apprehension, of their right to a lawyer of their choice.⁵ The Working Group considers that:

The factual and legal basis for the detention shall be disclosed to the detainee and/or his or her representative without delay so as to provide adequate time to prepare a challenge. Disclosure includes a copy of the detention order, access to and a copy of the case file, in addition to the disclosure of any material in the possession of the authorities or to which they may gain access relating to the reasons for the deprivation of liberty.⁶

50. In the light of the foregoing, the Working Group observes that Mr. Moreno Méndez was arrested without a warrant and was not caught in flagrante delicto, that, in the first few days thereafter, the Venezuelan authorities were unable to invoke any legal basis justifying his detention and that he was not allowed access to judicial channels to verify the lawfulness of the deprivation of liberty, which renders his detention arbitrary under category I.

51. In addition to the irregularities identified in determining that the detention was arbitrary under category I, the Working Group was persuaded that Mr. Moreno Méndez's pretrial detention was confirmed by a military due process judge, but also that the military criminal case file was found to include a search request from a military prosecutor and a search warrant granted by a military court. Moreover, Mr. Moreno Méndez was accused of treason, rebellion and the theft of items belonging to the Bolivarian National Armed Forces, which are all offences under the Code of Military Justice.

52. The Working Group also learned that, on 22 December 2017, a civil court imposed a non-custodial preventive measure requiring Mr. Moreno Méndez to report to the court every two weeks and refrain from making statements to the media or participating in public demonstrations. The Working Group was persuaded that, in issuing its decision, the civil court drew on documentary sources that included those related to the proceedings instituted by the aforementioned military authorities.

53. The Working Group has indicated in its jurisprudence that the trial of civilians in military courts or for offences that can be committed only by military personnel and the detention of civilians by military authorities are violations of both the Universal Declaration of Human Rights and the Covenant, as will be explained below.

54. The Working Group further notes that Mr. Moreno Méndez's pretrial detention was ordered by a military court on the basis of proceedings brought by military institutions and that Mr. Moreno Méndez was held in detention for several months, in grave violation of the right to be tried by an independent and impartial tribunal. Subsequently, a civil court imposed a non-custodial preventive measure that is fundamentally flawed, in that the records and documentation underpinning it were originally produced by military courts and, insofar as they relate to a civilian, were vitiated from the outset. In other words, the proceedings in question prevent the civil proceedings that were used to justify the non-custodial preventive measure from being considered impartial and independent.

55. The Working Group has indicated that military courts should be incompetent to, inter alia, try civilians, including in the event of rebellion, sedition or any offence that

³ Article 9 (2) of the Covenant.

⁴ A/HRC/30/37, principle 7. Right to be informed.

⁵ Ibid., principle 9. Assistance by legal counsel and access to legal aid.

⁶ Ibid., guideline 5. Right to be informed, para. 56.

jeopardizes a democratic regime.⁷ For the Working Group, one of the core values of civilian judges is their independence, which military judges generally lack because they are bound to comply with the orders of a superior. The Working Group has stated that a military court cannot be considered a “competent, independent and impartial tribunal”, as defined in article 14 (1) of the Covenant.⁸

56. Under applicable international law, all persons suspected of, or charged with, an offence have the right to be presumed innocent until proved guilty beyond reasonable doubt. In this respect, the Human Rights Committee has indicated that:

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 undermining the presumption of innocence.⁹

57. The Working Group received reliable information regarding statements made in the media by the President of the Republic on 25 June 2017 in which he referred to the arrest of a group of people including Mr. Moreno Méndez as the thwarting of an electoral conspiracy aimed at sabotaging the election of 30 July that year. Following the arrest, Mr. Moreno Méndez was accused of multiple crimes; to date, his guilt has still not been established beyond all reasonable doubt. Consequently, the Working Group considers that the right to the presumption of innocence under article 14 (2) of the Covenant was not respected.

58. Article 14 (3) (b) of the Covenant establishes the right to “have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”. Persons should be informed of this right upon apprehension, and, immediately thereafter, legal aid should be provided in an appropriate setting where the privacy and confidentiality of legal counsel-detainee communications are ensured.¹⁰

59. Based on the information received, the Working Group notes that Mr. Moreno Méndez was not granted access to a lawyer of his choosing immediately after his arrest or even shortly thereafter, but weeks later. This constitutes a violation of Mr. Moreno Méndez’s rights to be assisted by a lawyer of his choice, properly prepare his defence and challenge the lawfulness of his detention before a judge.

60. All of the foregoing amounts to a partial non-observance of the international norms relating to the right to a fair trial that are contained in articles 9 and 10 of the Universal Declaration of Human Rights and 9 and 14 of the Covenant, and is of such gravity as to give the deprivation of liberty an arbitrary character under category III.

61. The Working Group observes that the detention described in the present case is not the first to be carried out by the authorities of the Bolivarian Republic of Venezuela against political opponents, human rights defenders and persons who criticize the authorities’ actions.¹¹

⁷ A/HRC/13/30, para. 68 (a) and (c).

⁸ A/HRC/27/48, paras. 68 and 69.

⁹ General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30.

¹⁰ A/HRC/30/37, principle 9.

¹¹ Opinions Nos. 32/2018 (Ángel Machado, Luis Aguirre, Alberto Cabrera, Wully 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); 52/2017 (Gilbert Alexander Caro Alfonso); 37/2017 (Braulio Jatar); 18/2017 (Yon Alexander Goicoechea Lara); 27/2015 (Antonio José Ledezma Díaz); 26/2015

62. In the present case, the Working Group was persuaded that the detention of Mr. Moreno Méndez forms part of a State practice of depriving Venezuelan citizens of their liberty for contributing to the expression of political dissent, which it considers to be a violation of international law in that it stems from discrimination on the ground of political opinion, in contravention of articles 2 and 26 of the Covenant and 2 and 7 of the Universal Declaration of Human Rights and thus constituting arbitrary detention under category V.

63. In recent years, the Working Group has repeatedly expressed its views on multiple arbitrary arrests of political opponents of the Government and individuals who have exercised their rights to freedom of opinion, expression, association, assembly or political participation. In the Working Group's view, this is an attack by the Government on its political opponents or part of a systematic attempt to deprive them, particularly those who are seen as opponents of the regime, of their physical freedom, in violation of fundamental rules of international law, including the Universal Declaration of Human Rights and the Covenant. The Working Group wishes to recall that, under certain circumstances, imprisonment and other severe forms of deprivation of liberty in violation of internationally recognized standards may constitute crimes against humanity.¹²

64. 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

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

The deprivation of liberty of Arístides Manuel Moreno Méndez, being in contravention of articles 2, 7, 9 and 10 of the Universal Declaration of Human Rights and articles 2, 9, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

66. The Working Group requests the Government to take the steps necessary to remedy the situation of Mr. Moreno Méndez 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 Covenant.

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

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

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

¹² Opinions Nos. 37/2011, para. 15; 38/2011, para. 16; 39/2011, para. 17; 4/2012, para. 26; 47/2012, paras. 19 and 22; 34/2013, paras. 31, 33 and 35; 35/2013, paras. 33, 35 and 37; 36/2013, paras. 32, 34 and 36; 38/2012, para. 33; 48/2013, para. 14; 22/2014, para. 25; 27/2014, para. 32; 34/2014, para. 34; 35/2014, para. 19; 44/2016, para. 37; 32/2017, para. 40; 33/2017, para. 102; and 36/2017, para. 110.

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

Follow-up procedure

70. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Moreno Méndez has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Moreno Méndez;
- (c) Whether an investigation has been conducted into the violation of Mr. Moreno Méndez's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Bolivarian Republic of Venezuela with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

71. 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.

72. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

73. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.¹³

[Adopted on 23 November 2018]

¹³ See Human Rights Council resolution 33/30, paras. 3 and 7.