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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventieth session, August 25-29, 2014

Number 26/2014 (Bolivarian Republic of Venezuela)

Communication addressed to the Government on February 27, 2014

Concerning Leopoldo López

The Government replied to the communication of the Working Group on April 28, 2014

The State is a Party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 24/7 of September 26, 2013. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human

Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

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

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

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. On February 18, 2014, Mr. Leopoldo López, the national coordinator of the political party Popular Will, was arrested in Caracas under a prison order issued, he says, irregularly.

4. According to the information received, on February 2, 2014 in Chacaíto, the capital city, a mass meeting took place in order to discuss possible institutional exits to the crisis facing the country. It was agreed then to accompany the Venezuelan students in a national protest called for the Day of Youth, February 12, 2014, in the Plaza Venezuela. The students made a call for non-violent and peaceful demonstration, supported by various social sectors and political movements. On February 12, thousands of Venezuelans rallied in Plaza Venezuela. The demonstration in the capital was accompanied by other similar demonstrations in major cities throughout the country. During the demonstrations, the demonstrators asked for the release of the young people arrested the previous days in the states of Táchira, Mérida and Nueva Esparta.

5. It is confirmed that Mr. López participated as speaker at the beginning of the demonstration, stating the nonviolent character of the street protests. He pointed out that the citizen's protest was being carried out within the scope of the Constitution. The demonstration should have culminated in front of the the headquarters of the Public Ministry in Carabobo Park, where the office of the Prosecutor General of the Republic is located, in order to demand the freedom of all those who were detained in the previous days for participating in peaceful protests. According to the source, they arrived at the headquarters of the Prosecutor's Office in peace and without violence. At the end of the demonstration, the students withdrew from the place without any irregular situation occurring.

6. At the completion of the demonstration, however, there were attacks by the police and vigilante-armed groups allied to the Government, known as “*Colectivos*”. The facade of the headquarters of the Public Prosecutor's Office was damaged and several nearby students were attacked. As a result, university student Mr. Bassil Alejandro Dacosta Frías, 23 years old, died in the Hospital Vargas. A member of the “*Colectivos*,” Mr. Juan Montoya, was also killed as a result of shooting of firearms. Three people were injured.

7. It was reported that more than 70 people were arrested that day. The Attorney General confirmed the names of the dead and injured, and immediately blamed the political actors. Mr. López was considered responsible for the acts of violence by government authorities. According to the source, multiple photos and videos taken spontaneously by volunteers with cell phones proved that it was not the protesters who caused the violent acts, and that security officials did not act diligently in order to prevent them. The President of the National Assembly, in a statement after the events, blamed Mr. López and the Congresswoman María Corina Machado for the violent events, calling them murderers. The Chancellor of the Republic accused Mr. López, through the social media network Twitter, of being the mastermind of the killings. These and other statements of authorities and officials have been issued without having had any advanced investigation by the Attorney General's Office.

8. Mr. López, Ms. Machado, and the Metropolitan Mayor of Caracas, Mr. Antonio Ledezma, gave a press conference to express their concern over the events that occurred. They said that the unusual absence of security forces on the demonstration route and its inaction against the acts of violence could be part of an elaborate plan with the approval of government authorities.

9. The provisional Judge of the Preliminary Proceedings Court 16 of Caracas, Ms. Ralenys Tovar Guillén, accepted a request that would allow the public prosecutor's Office to detain Mr. López and ordered the Bolivarian intelligence service (SEBIN) to apprehend him immediately. The Order, No. 007-14, ordered his capture for a large number of offences, which include association to commit a crime; incitement to commit an offence; public intimidation; lighting a public building on fire; damage to public property; serious injury; murder and terrorism. These crimes exceeded, together, the maximum penalty established in the Venezuelan legal system, which is of 30 years in prison.

10. On February 16, 2014, in the early morning, officials of different security forces of the State, including the National Guard (military) and the Directorate General of Counter-intelligence Military (DGCIM), in the beginnings of a manhunt, entered irregularly the dwelling of Mr. López, the home of his parents, and the premises of his political party. The officers did not carry a search warrant and only showed a copy of the arrest warrant. In the house of the parents of Mr. López, in which his father, mother, and wife were present, more than 20 officers arrived in four cars, heavily armed and wearing their uniforms. They blocked access to the streets of the residence at two points, preventing neighbors from approaching the residence. They did not permit access to the lawyers.

11. On February 18, 2014, a group gathered in the Plaza Brión, in the Chacao Municipality of Caracas. It is claimed that a large number of agents of security forces, the majority belonging to the Anti-Riot Group of the Bolivarian National Police, prevented access to the mentioned plaza.

Mr. López was present and spoke to the protesters. Afterward, he shared a few words with his wife at the line of security that the National Guard had erected. Mr. López was then detained by several military, who proceeded to lead him into a tank and transfer him to the Air Military Base of Francisco de Miranda, known as "La Carlota". From there he was transferred by helicopter to the Military Base Fort Tiuna.

12. Mr. López appeared before Metropolitan Area Preliminary Proceedings Court 16, led by the provisional Judge Mrs. Ranelys Tovar Guillén. The judge ordered his detention in the military jail of the Center of Accused Soldiers (CENAPROMIL), known as the Ramo Verde prison, the detention center for retired or active soldiers.

13. The source says that Mr. López is being held in a military detention center in inhuman conditions and in a cell with little access to light that is quite cold. Located in a mountainous area, the penitentiary is cold and Mr. López has not been provided appropriate shelter or clothing. The bathroom is in deplorable conditions, with no door allowing privacy. There is clear evidence that a fire took place in the hall entrance to the cell and one can note that the area has not been repaired, as there are traces of soot, burned lamps and black walls.

14. The Metropolitan Area Preliminary Proceedings Court 25 declined jurisdiction in favor of the Preliminary Proceedings Court 16. Four new parts or sections, which provided new elements that affected the effectiveness of Mr. López's defense, were included in the record. The attorneys of Mr. López requested a deferral, which was denied.

15. Finally, the hearing took place on February 19, 2014 at 22:30 hours. The judge issued the ratification of the custodial sentence of freedom, and confirmation of a prequalification that Public Prosecutor's Office decided.

16. The source says that the current detention of Mr. López is framed in a context of harassment and persecution over the last 10 years ago. These include more than 20 penal procedures and multiple investigations, which have been initiated by various organs of public power. Among these cases, the source highlights the arbitrary imposition of political ineligibility on account of administrative penalties, that have impeded access to public service for more than six years as well as numerous complaints and opened criminal proceedings.

17. On January 5, 2010, the Inter-American Commission on Human Rights concluded that the political sanctions against Mr. López violated the American Convention on Human Rights and sent a lawsuit against the State to the Inter-American Court of Human Rights.

18. On September 1, 2011, the Inter-American Court of Human Rights rendered its judgment,¹ concluding "the State is responsible for the violation of the right to be elected (...), in relation to the obligation to respect and guarantee the rights established in article 1.1 of the American Convention on Human Rights". The judgment recognizes the violation of Mr. López's political rights; the irregularities in the proceedings taken place against him and orders the restitution of

¹ Inter-American Court of Human Rights. López Mendoza vs. Venezuela, Sep. 1, 2011 (Merits, reparations and costs), Series C, No. 233.

his political rights. Although the mentioned judgment is obligatory for the State, according to its commitments to the American Convention and its own domestic law, on October 17, 2011, through its judgment No. SSC 1547 / 2011, the Supreme Court of Justice of Venezuela declared the ruling of the Inter-American Court unenforceable.

19. Also, on February 15, 2013 the Public Prosecutor's Office summoned Mr. López to appear on February 28, 2013 in order to be charged for the alleged crimes of trafficking in influence and generic misappropriation.

20. On February 10, 2014, without any court order or other written document, Mr. López was prevented from boarding a domestic flight.

21. According to the source, the detention of Mr. López violates his right to personal liberty recognized in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, to which the Bolivarian Republic of Venezuela is party. It is also violates Article 3 of the Universal Declaration of Human Rights and of Article 9 of the International Covenant on Civil and Political Rights. By the mere fact of exercising his political rights in a legitimate form, Mr. López has been victim of systematic, premeditated, and public persecution by different authorities, which include the use of the criminal courts, and threats, for months, of prison. It has stigmatized him and it has criminalized the peaceful protest.

22. The source added that a person's right to the presumption of innocence has been violated as well. Such a presumption is broken each time a different authority, particularly the Executive Branch or the security forces, accuse Mr. López, personally and directly, of being responsible for acts that he did not commit. On several occasions, it has threatened to send Mr. López to prison without having any prior investigation done.

23. The source recalls that it is the duty and faculty of the Judiciary, not the Executive Branch, to determine the guilt of a person and not in the heat of political statements. That determination should be done after fair and impartial judicial proceedings, which respect all the guarantees in favor of the accused.

24. Also Article 14 of the International Covenant on Civil and Political Rights has been violated, says the source, due to the unequal treatment that has been given to the case of this person, by subjecting him to an military arrest; having transferred him to military bases, and jailed him in a military prison.

25. The above highlights the arbitrary nature of the detention of Mr. López. There is no legal basis, according to the source, which establishes the conduct of this person in the free exercise of his rights, as a criminal offence; it seeks to accuse him of crimes he has not committed, only because of his status as leader and leading opposition politician, diverting the attention of the search to the real culprits that committed the acts of violence that resulted in deaths and attacks. The arrest warrant against Mr. López, dictated by a temporary judge and therefore vulnerable to the pressures of political power, demonstrates the use of numerous criminal types of dubious application to the specific case, in which it argues for Leopoldo's supposed, actual responsibility.

26. The source adds that the detention of this person was due to facts framed within the exercise of the human right to freedom of opinion and thought; to freedom of expression; to the right of assembly and of association; to peaceful protests; to freedom of expression and the right of all human beings to participate in their country's political affairs. All of these rights are enshrined in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights and in the Constitution of the Bolivarian Republic of Venezuela. Thus to express, to have an opinion, to congregate, to organize, to meet and to protest freely and peacefully, are actions protected by the above-mentioned international instruments.

27. Additionally – the source says – Mr. López is the victim of a political persecution that uses judicial means, criminalizes protests and that is oriented to indict him for crimes he clearly did not commit. In its prejudice, it has arbitrarily raided without judicial authorization his home, the residence of his parents and the premises of his political party.

28. The continuing detention of Mr. López should equally be deemed arbitrary, since the custodial measure of his liberty awaiting trial is not justified, given that there has been nothing that demonstrates any risk of his fleeing the country or that the accused may hinder criminal investigations, as required by the Venezuelan legal system. Mr. López's voluntary surrender of himself, says the source, proves this.

29. The source concludes that the international human rights community has the duty to protect people, not only from the violations suffered and consummated; but equally, in serious situations that may cause grave, irreparable damage. One of the purposes of these above-mentioned international instruments is to prevent the consummation of human rights violations.

Response from the Government

30. The Government gave a response to the communication of the Working Group on April 28, 2014.

31. The Government says that Mr. López and Ms. María Corina Machado called for a demonstration for February 12 2014, which they called “The Exit,” in order to enable the more radical opposition groups and overthrow President Nicolás Maduro Moros. Violence and attacks occurred as well at certain regional locations, which included physical attacks to people and public and private property. The Government emphasizes the systematic destruction of educational and health infrastructure and damages to the collective unity of the nation.

32. The Government states that the Public Ministry requested in the Preliminary Proceedings for Court 16 in Caracas to arrange for the arrest of Mr. López by the Commission for the following crimes: arson under Article 343 of the Penal Code; damages to public property, under Article 474, and also under Article 83 of the same code; public incitement to commit crimes under Article 285 of the concerned code; conspiracy to commit an offense under Article 37 of the Organic Law Against the Organized Crime and Financing of Terrorism, with the aggravating circumstances found under Articles 27 and 29, Ordinals 3 and 7 of the aforementioned law.

33. Mr. López, according to the Government, made calls for violence and disregard of the legitimately constituted Government. He personally incited hatred and violence among the inhabitants, creating a situation of tension and aggression. This inspired a group of people to attack the headquarters of the Public Ministry and set fire to the property of the Body of Scientific, Penal, and Criminal Investigations. The Government reports that the case against Mr. López is currently under investigation.

34. The Government claims that arbitrary arrests of any kind have not occurred in Venezuela. Nor has any person been arrested for having participated in demonstrations in a peaceful manner. Those who have been arrested have been for their involvement in violent acts, which pose a threat to the rights of personal integrity, free transit, public and private property, and a healthy environment.

35. According to a report from the office of the Public Defense, which the Government attaches in its reply, Mr. López and Ms. María Corina Machado “assumed the visible face of the call for the demonstration of February 12, 2014, raising a call to their followers to ignore democratic channels.” “Mr. López called on February 2, 2014 for a mass exit to the streets on February 12 throughout the nation, with the aim of pressing for a way out of the legitimately constituted Government.”

36. The Government claims that President Nicolás Maduro Moros was elected democratically by the majority of Venezuelans in an electoral process verified by both national political actors and international representatives. Nevertheless, Mr. López has made calls to disregard the legitimately constituted government, by means of calling for the departure or forced resignation of the President of the Republic of Venezuela, something that is not provided for in Constitution of the Republic. For this purpose, he personally incited hate and violence, creating a situation of tension and aggressiveness that unleashed a wave of violence nationwide.

Comments from the source

37. The source presented comments and observations in response to the Government’s reply on May 24, 2014. According to the source, the Government, in its response, did not provide any information that contradicts the submitted allegations, therefore the veracity of the allegations has been demonstrated. Mr. López has forcefully opposed the current government and his work is based on political critique and dissent. This is the cause and the motive of the political persecution that he suffers.

38. According to the source, the information provided by the Government refers to other aspects and are not directly related to the facts discussed in particular. The Government confirms the information provided by the source that Mr. López is being prosecuted for the crimes of setting fire to a public building, damage to public property, incitement to commit crimes and conspiracy to commit a criminal offense. These crimes do not conform to the arguments that are maintained by the person who is deprived of his liberty.

39. The Government criminalizes the opinion and the political expression of Mr. López, under the pretense that they qualify as crimes. The proceedings of the State do not even express the

time, place, and manner in which the supposed discursive expressions of Mr. López have impacted the materialization of any crime.

40. The source states that in the narrative of the events presented by the Public Ministry in the indictment, it is observed that Mr. López's action is produced through the expression of his ideas and legitimate political thoughts through different media and public speeches. From the expressions presented by Mr. López two relevant aspects can be observed: the formulation of criticism to the actual government and a call to civil protest. For the existence of a democratic society, the possibility to be able to express oneself freely, and to allow dissent, debate, and confront ideas is fundamental. The allegations for which Mr. López is accused do not correspond to international standards in the field of freedom of speech.

41. The source adds that the Public Ministry has never determined the conditions or factual detail of the alleged "persuasion and induction" of which Mr. López is accused. It does not establish which were the instigating speeches or which expressions could possibly transgress the bounds of the domestic legal order. Related to the crime of "public incitement to commit a crime", it establishes neither which legitimate authority nor which specific law Mr. López called to disobey. Related to the crime of "association," it does not indicate to which type of crime it refers to, nor does it mention the time, place, and manner of Mr. López's alleged belonging to such a group.

42. The lack of motivation, clarity, imprecision, and absence of any evidence of the attributed facts undermine the right of Mr. López to a defense and the rights of due process. Without a clear, precise, and detailed expression of the imputed facts, his right to defense is violated. To deprive him of his freedom while not having determined whether a crime was committed is to violate his presumption of innocence.

43. The source states that this judicial case is one that presents enormous bias of those who have handled the filing of the case: the Body of Scientific, Penal, and Criminal Investigations (CICPC), which is under the Ministry of Popular Power for Interior Relations, Justice and Peace, which is directly under the President of the Republic of Venezuela. The Ministry was declared as a victim in the written indictment. The investigation is thereby marked by lack of transparency, objectivity and impartiality. The CICPC has declared itself as a victim and consequently has an obvious interest in the case and relies directly on the Executive Power hierarchically. Nevertheless, it provided the Public Ministry with 80 of the 120 evidences provided by the indictment. The Ministry, for its part, has provided evidence from its officials. Likewise, it has refused on two occasions to perform investigative work proposed by the defense. Additionally, the source mentions that the linguistics experts designated by the Ministry are affiliated with the government.

44. The source informs that provisional judge, Ralenys Tovar Guillen, was replaced by another provisional judge, Adriana López, a replacement that motivated the indefinite suspension of the scheduled court date.

45. The source concludes that Mr. López is kept in a condition of isolation; he has no contact with other detainees and no privacy of communications. His communications with his lawyers

are read and subject to inspection and his participation in religious activities is restricted.

Deliberations

46. The Working Group respects the indubitable actions of the thousands of Venezuelans who gathered in different plazas throughout Caracas on February 12, 2014. The demonstrations in the capital city were accompanied by other similar protests in the country. During the protests the release of detained students was requested.

47. The Constitution of the Bolivarian Republic of Venezuela recognizes the human right to protest. The Caracas protest should have finished across from the headquarters of the Public Ministry, where they would demand that the authorities release the detainees. The arrival to the Prosecutor's office was peaceful and without violence. Nevertheless, after the protest concluded, armed gangs attacked the protesters, killing two and wounding three, which the source attributes to the para-police groups, but the government attributes to violent protestors.

48. The government has tried to blame these events on Mr. López and Mrs. Machado, including the deaths, arson, and damage to public and private property. They deny any allegations, and on the contrary expressed concern over the lack of police to protect the protesters.

49. As a demand of the Public Ministry, the provisional judge of the Preliminary Proceedings Court 16 of Caracas ordered the arrest of Mr. López for several crimes cited by the source.

50. In a new protest on February 18, 2014, Mr. López appeared and publically handed himself over to the political and military forces to be arrested. He was taken to a military base, to be presented to a competent judge. Later, other charges were filed against him, which was an additional obstacle for his defense. The Court denied his lawyers a deferral on the court date in order to study the new charges. On the court date, the judge confirmed the preventive arrest.

51. The Working Group observes that prior to events, Mr. López had already suffered retaliations and been subject to over twenty legal processes involving sanctions, as a result he was forbidden from taking part in any political activities in any administrative capacity, as was mentioned previously in this Opinion. This prohibition from participating in public matters of the country was the subject of the Decision of the Inter-American Court of Human Rights, a sentence that the Supreme Court of Justice found unenforceable.

52. None of the expressed facts have been denied by the government in their response, nor does their response contradict the introduced allegations. The government did not clarify to what extent Mr. López could cause the arson or damages of which he is accused. It does not specify which expressions of his speech could motivate these grave events or induce the commission of the same. While referring to the crime of illicit association, it does not specify to which illegal group it refers.

53. Not only has the right to the presumption of innocence of this person been impacted, but also their right to adequate defense, by the vagueness of the formulated charges and by the censorship of communications between the detainee and his counsel.

54. In the judgment of the Working Group, Mr. López's participation in a march for political reasons or the exercising of his right to freedom of expression during the same march, such as which took place on February 12, 2014, does not constitute an illicit justification for the deprivation of liberty of a speaker or participant. There are no elements that allow the concluding of a cause and effect relationship between the call for a political demonstration, speaking during the same demonstration, and the resulting deaths, wounds and material damage, which occurred regardless of said demonstration, which, additionally, already had concluded.

55. The detention of Mr. López in a military compound seems based on a motive of discrimination based on his political opinions. This Working Group agrees with the Human Rights Council and recognizes the obligation of States to ensure that "[...] In order to ensure the effective protection of detained persons, measures must be taken so that the prisoners are kept in officially recognized places of detention, and that their names and places of detention, as well as the names of the persons responsible for their detention are listed in records, available to the persons concerned, including relatives and friends."²

56. The Constitution of the Bolivarian Republic of Venezuela declares that the organs of citizen security are of a civilian character (Article 332), so it does not seem justifiable that the armed forces would participate in the detention of civilian citizens. The constitutional provision referred to, in the opinion of the Working Group, aligns with what is stated by the Inter-American Commission on Human Rights in its report on Citizen Security and Human Rights. The Inter-American Court has recommended to the countries of the region: "In the domestic legal system, draw a clear distinction between national defense as the function of the armed forces, and citizen security as a function of the police. Make it very clear that because of the nature of the situations they must deal with, the instruction and specialized training they receive, and the region's unfortunate history of military intervention into internal security affairs, the police have sole responsibility for the functions associated with prevention, deterrence and lawful suppression of violence, under the oversight of the legitimate authorities of a democratic government."³

57. In another report—that also aligns with the Working Group—the Commission has stated that, "States need to guarantee that penitentiaries are run and guarded by qualified, civilian staff, with civil servant status. That is to say, those functions must be entrusted to an independent security body independent of the military and police forces, and educated and trained in penitentiary issues. Those professionals must have been trained in programs, schools, or penitentiary academies established specifically for that purpose and pertaining to the institutional structure of the authority responsible for administering the penitentiary system."⁴

² Human Rights Committee, General Comment No. 20, para. 11.

³ Inter-American Commission of Human Rights. Report on Citizen Security and Human Rights, OEA/Ser. L/V/II, Doc.57, Dec. 31 2009, No. 10.

⁴ Inter-American Commission of Human Rights. Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser. L/V/II, Doc. 64, Dec. 31 2011, Original: Español, para. 193.

58. The Working Group considers that the deprivation of Mr. Leopoldo López's liberty, with the objective of restricting his political rights and by his being detained in a military prison, as well as his exercising his rights to freedom of thought and opinion, expression, association and politics, enshrined in Articles 18, 19, 20, and 21 of the International Covenant on Civil Rights and Political and in Articles 9,10, 18 to 21 of the Universal Declaration of Human Rights, it is arbitrary under Category II of the Group's methods of work.

59. The arrest of Mr. López on February 18 2014, having been executed without order from a judicial authority; having been extended for a period of more than six months; having exposed Mr. López to isolation; not having granted Mr. López provisional freedom subject to bail if necessary; and having imposed obstacles to the defense lawyers, including the censorship of their communications with the detainee, affects the right to a fair and impartial trial, the presumption of innocence, and due process. The foregoing constitutes a serious violation of the rules concerning the right to a fair trial contained in Articles 9 and 14 of the referred International Covenant.

Decision

60. In recognition of the above, the Working Group is of the opinion that the detention of Mr. Leopoldo López is an arbitrary detention according to categories II and III of its Methods of Work. Accordingly, it recommends to the Government of the Bolivarian Republic of Venezuela that it immediately free Mr. Leopoldo López and grant comprehensive reparation, including the compensation of his moral and compensatory character, as well as measures of satisfaction, which could be a public statement of apology in his favor.

[Approved August 26, 2014]