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Opinion No. 30/2014 (Bolivarian Republic of Venezuela)

Communication addressed to the Government of the Bolivarian Republic of Venezuela on 18 June 2014

Concerning Daniel Omar Ceballos Morales

The Government has not replied to the communication from the Working Group.

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 clarified and extended the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision No. 2006/102 and extended it for a three-year period by its resolution 15/18 of 30 September 2010. The mandate was extended for a further three-year period in resolution 24/7 of 26 September 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 their sentence or despite an amnesty law applicable to them) (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);

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(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial 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 status; political or other opinion; gender; sexual orientation; disability or other status, and aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Daniel Omar Ceballos Morales is a Venezuelan national who was elected mayor of the city of San Cristóbal, Táchira State, on 8 December 2013. On 19 March 2014, he was arrested in Caracas by officers of the Bolivarian Intelligence Service (SEBIN) who were heavily armed and wearing hoods, and failed to show an arrest warrant.

4. According to the source, Mr. Ceballos Morales' arrest took place in the context of the student protests that began in San Cristóbal on 4 February 2014 in protest against the lack of security in universities. On 5 March 2014, Juan Ernesto Garantón Hernández, a Venezuelan national acting in his own name, filed with the Constitutional Chamber of the Supreme Court of the Bolivarian Republic of Venezuela an application for the protection of collective and diffuse interests "in accordance with the provisions of article 26 of the Constitution of the Bolivarian Republic of Venezuela and pursuant to the provisions of article 146 et seq. of the Organic Act on the Supreme Court of Justice" against the mayors of Baruta and El Hatillo boroughs, Gerardo Blyde and David Smolansky. At the same time Mr. Garantón Hernández requested an unnamed precautionary measure by virtue of which the respondents were ordered to guarantee free movement and passage in their respective boroughs.

5. On 12 March 2014, the Constitutional Chamber issued judgement No. 135, in which it granted precautionary protection (*amparo*) and ordered the mayors named in the ruling to comply with five instructions related to their mayoral duties to guarantee freedom of movement, ensure security and protect the environment. Specifically, the precautionary ruling provided that, within the boroughs in which they exercised their mayoral duties, they should:

(a) Carry out all actions and use all material and human resources necessary to ensure that obstacles that might impede the free movement of persons and vehicles are not placed on public thoroughfares, to immediately remove all such obstacles and to keep highways and adjoining areas free from waste, rubbish and any other item that might be used to obstruct urban thoroughfares;

(b) Comply with their traffic management duties and thus guarantee adequate and safe movement on the public thoroughfares of their boroughs;

(c) Protect and maintain environmental conditions and keep streets and residential buildings clean;

(d) Issue their respective municipal police forces with the instructions necessary to ensure effective compliance with the provisions of article 44 of the Organic Act on the Police Service and the Bolivarian National Police Force;

(e) Roll out crime prevention and monitoring activities and, insofar as their powers allow, foster local community liaison strategies and procedures that enhance communication and interaction with local residents and institutions, with a view to securing

and consolidating social peace, harmonious coexistence, the enjoyment of rights and respect for the law.

6. On 14 March 2014, the civil society association Frente Nacional de Abogados Bolivarianos (National Front of Bolivarian Lawyers) requested that this precautionary measure should be extended to the mayors of other Venezuelan municipalities in which public protests had been taking place and causing the closure of public thoroughfares. Among others, the association requested that the precautionary measure should be extended to the mayor of San Cristóbal, Daniel Omar Ceballos Morales.

7. On 17 March 2014, the Constitutional Chamber extended the precautionary measure to the mayor of San Cristóbal:¹

“For the reasons explained, the Constitutional Chamber of the Supreme Court, administering justice in the name of the Republic by authority of the law, hereby orders the Secretariat of the Constitutional Chamber to summon, by any means, the citizens Ramón Muchacho, mayor of the municipality of Chacao in Miranda State; Daniel Ceballos, mayor of the municipality of San Cristóbal in Táchira State; Gustavo Marcano, mayor of the municipality of Diego Bautista Urbaneja in Anzoátegui State, and Eveling Trejo de Rosales, mayor of the municipality of Maracaibo in Zulia State, as respondents in this case.

The scope of the precautionary constitutional protection order contained in decision No. 135 of the Chamber of 12 March 2014 is hereby extended and, accordingly, the Chamber orders the citizens Ramón Muchacho, mayor of the municipality of Chacao in Miranda State; Daniel Ceballos, mayor of the municipality of San Cristóbal in Táchira State; Gustavo Marcano, mayor of the municipality of Diego Bautista Urbaneja in Anzoátegui State; and Eveling Trejo de Rosales, mayor of the municipality of Maracaibo in Zulia State, within the municipalities in which they exercise their mayoral duties, to:

(a) Carry out all actions and use all material and human resources necessary to ensure that obstacles that might impede the free movement of persons and vehicles are not placed on public thoroughfares, to immediately remove all such obstacles and to keep highways and adjoining areas free from waste, rubbish and any other item that might be used to obstruct urban thoroughfares;

(b) Comply with their traffic management duties and thus guarantee adequate and safe movement on the public thoroughfares of their municipalities;

(c) Protect and maintain environmental conditions and keep streets and residential buildings clean;

(d) Issue their respective municipal police forces with the instructions necessary to ensure effective compliance with the provisions of article 44 of the Organic Act on the Police Service and the Bolivarian National Police Force;

(e) Roll out crime prevention and monitoring activities and, insofar as their powers allow, foster local community liaison strategies and procedures that enhance communication and interaction with local residents and institutions, with a view to securing and consolidating social peace, harmonious coexistence, the enjoyment of rights and respect for the law.

This order shall be published, recorded and executed.”

¹ The decision can be consulted at: www.tsj.gov.ve/decisiones/scon/marzo/162024-137-17314-2014-14-0194.html.

8. The decision was issued on 18 March 2014. Just two days later, on 20 March 2014, the Constitutional Chamber summoned Mr. Ceballos to a constitutional hearing for alleged failure to comply with the decision. The assumption that he had failed to comply was based on a supposedly widely known fact reported in the press. In other words, just two days after ordering the measure, the Constitutional Chamber was acting — solely on the basis of information in the press — as if his failure to comply with the order was a matter of common knowledge. The order issued by the Constitutional Chamber read as follows:

“Whereas Mr. Daniel Ceballos, mayor of the municipality of San Cristóbal in Táchira State, was notified of the judgement on 18 March 2014.

Whereas the press has published information from which it may be seen that Mr. Daniel Ceballos, mayor of the municipality of San Cristóbal in Táchira State, has failed to comply with the constitutional order issued in judgement No. 135 of 12 March 2014, the scope of which was extended to Mr. Ceballos by virtue of judgement No. 137 of 17 March 2014, which failure to comply this Chamber considers to be a matter of common knowledge (see judgement No. 98 of 15 March 2000).

Whereas the Organic Act on the Protection of Constitutional Rights and Guarantees establishes no specific procedure for conducting a preliminary assessment of possible instances of failure to comply with a protection order with a view to their possible submission to the competent authority.

...

This Chamber believes that, to determine the existence or otherwise of the alleged failure to comply with the precautionary protection order issued, the procedure most likely to ensure that justice is done is the procedure established for constitutional protection orders, and for this reason, in accordance with the provisions of article 26 of the Organic Act on the Protection of Constitutional Rights and Guarantees, hereby summons Daniel Ceballos, mayor of the municipality of San Cristóbal in Táchira State to a public hearing to be held within ninety-six (96) hours of official receipt of notification, in order to present any evidence that might serve in his defence.

...

After the hearing, the Chamber may issue an immediate decision, in which case it shall communicate the decision orally and publish it within the next five (5) days, or it may defer the hearing by a period not under any circumstances exceeding forty-eight (48) hours, if it believes that certain evidence may be key to its ruling on the case and must therefore be presented and appraised.

If contempt of court is proved, the Constitutional Chamber shall impose a penalty in accordance with the provisions of article 31 of the Organic Act on the Protection of Constitutional Rights and Guarantees and shall refer its decision for execution to a first instance enforcement judge of the corresponding criminal court circuit.”

9. The constitutional hearing began at 1.30 p.m. on 25 March 2014. At the hearing, the defence team was given only 10 minutes to present its case against the allegations of non-compliance. It was able to submit only such evidence as could be presented in a short space of time, thus relieving the court of the need to rule on certain items of the requested evidence that were essential to determining whether or not there had been an act of non-compliance. Lastly, the defence team was allowed only five minutes for rebuttal arguments.

10. When the adversarial section of the hearing was over, the judges retired to deliberate without even taking the case file with them and without reviewing the evidence presented

by the defence. After approximately 40 minutes, they announced their decision. The judges of the Constitutional Chamber issued their ruling orally. The ruling stated that Mayor Daniel Ceballos was in contempt of court for failing to comply with a precautionary measure requiring him to remove all barricades set up by university students in the city under his jurisdiction. Mr. Ceballos was therefore sentenced to 12 months' imprisonment and dismissal from his mayoral office. The grounds or rationale for the judgement have not to date been made known. Furthermore, neither the convicted party nor his lawyers have been provided with the text of the judgement. Under Venezuelan law, the Constitutional Chamber is required to publish its judgements within five days. This deadline has long passed.

11. On 20 February 2014, a criminal complaint against Mayor Ceballos was filed by the Movimiento Nacional de Abogados Socialistas (National Movement of Socialist Lawyers) of Táchira State. By virtue of this complaint, at 5.30 p.m. on 19 March 2014, Prosecutor No. 73 of the National Office of the Public Prosecution Service telephoned the Procedural Courts of Táchira State to request that they should issue a warrant for the arrest of Mayor Daniel Ceballos.

12. Just an hour later, at 6.30 p.m., Mr. Ceballos was arrested without any warrant being shown. Lawyers who were with the mayor at the time asked the authorities to show an arrest warrant issued by a judge, as required under Venezuelan criminal law. However, without saying a word and armed with rifles, the SEBIN agents proceeded to arrest the mayor and remove him by force, stating that he was being taken to the SEBIN headquarters in the El Helicoide building in Caracas.

13. Two hours later, Mr. Ceballos was forced to get out of a vehicle in a parking area, where the agents pointed rifles at him and recorded him on video. Against his will, he was subsequently forced to sign a document stating that he had been read his rights at the time of his arrest. At 11 p.m. he arrived at the SEBIN headquarters.

14. Mr. Ceballos' lawyers and the leaders of his political party, Voluntad Popular, presented themselves at the SEBIN headquarters, where intelligence agents denied that they were holding him. Thus, Mr. Ceballos' status was effectively that of a disappeared detainee.

15. Subsequently, on 21 March 2014, Mr. Ceballos' lawyers were granted access to the legal file. The file shows that the warrant for Mr. Ceballos' arrest was issued irregularly, after he had been arrested. In addition, it does not contain the detention order allegedly issued by the Third Procedural Court of Táchira State. Mr. Ceballos was brought before the Criminal Procedural Courts of the Caracas Metropolitan Area (the Second Procedural Court). The judge declined jurisdiction and ordered that Mr. Ceballos and his case should be immediately transferred to Táchira State, to be heard before the natural judge. At the hearing, the public prosecutor charged Mr. Ceballos with alleged acts of civil rebellion (an offence of a political nature provided for in article 143.1 of the Criminal Code) and conspiracy (a criminal offence provided for in article 286 of the Criminal Code).

16. However, the Second Procedural Court's order to transfer the trial and Mr. Ceballos to the jurisdiction of Táchira State was ignored by the executive authorities.

17. On 24 March 2014, the Criminal Cassation Chamber of the Supreme Court, at the request of the Public Prosecution Service, opened the case in Caracas. On 28 March 2014, almost 8 days after his arrest, Mr. Ceballos was again brought before the Procedural Courts, for the hearing that should have taken place within 48 hours of his arrest. At this hearing, the public prosecutor confirmed the charges, noting that the offences were assumed to have been committed because Mayor Ceballos had allegedly called for the public to repudiate the Government. The prosecutor approved the detention request, indicating that since Mr. Ceballos lived in San Cristóbal, a border state, he constituted a flight risk, as provided for in article 259 of the Code of Criminal Procedure. Additionally, since Mr. Ceballos was a well-

known figure who could influence the residents of the city, he was in a position to impede the investigation, a situation also covered in article 259 of the Code.

18. Mr. Ceballos' defence team argued that there was no need for a detention order since, pursuant to the judgement of the Constitutional Chamber of the Supreme Court, Mr. Ceballos was already deprived of his liberty and was serving a 12 months' prison sentence in the military prison of Ramo Verde. However, Procedural Judge No. 25 approved the detention order and ignored the defence team's arguments.

19. The source claims that, in ordering Mr. Ceballos' imprisonment for a term of 12 months, the Constitutional Chamber of the Supreme Court has, on its own initiative, created a set of legal circumstances liable to restrict human rights relating to the enjoyment of personal liberty and the exercise of the right to participation in political life. The offence of contempt of court is intended to penalize cases of failure to comply with final judgements concerning constitutional protection (*amparo*), whereas this case relates simply to the alleged failure to comply with a precautionary measure that does not address the merits or constitute an order for constitutional protection. This offence is defined in article 31 of the Organic Act on the Protection of Constitutional Rights and Guarantees, which establishes that: "Any person who fails to comply with the constitutional protection (*amparo*) order issued by the judge shall receive a prison sentence of between six (6) and fifteen (15) months."

20. The Constitutional Chamber has adopted a broad interpretation of a criminal provision (art. 31) so as to be able to limit an individual's fundamental rights, which is forbidden in a democratic system governed by the rule of law. Offences should always be interpreted in a restrictive manner. Pursuant to this broad interpretation, a precautionary measure has been afforded the scope of a final judgement. Only with this unlawfully broad interpretation was it feasible to deprive Mr. Ceballos of his liberty. The source claims that Mr. Ceballos was convicted for failing to comply with a precautionary measure, whereas the law is intended to punish contempt of protection orders, not of precautionary measures. There is therefore no justification under Venezuelan law for the arrest or conviction of Mr. Ceballos.

21. With regard to the criminal proceedings still under way against Mr. Ceballos in relation to the offences of rebellion and conspiracy, the source believes that there is no legal basis whatsoever for characterizing his conduct as an offence. The intention is to charge Mr. Ceballos with these offences because of his status as an opposition party leader, criminalizing opinions and statements that are normal as part of the political process in a State governed by the rule of law. In a democratic society, these fundamental rights are protected by freedom of expression.

22. According to the source, Mr. Ceballos' detention is arbitrary. It is entirely politically motivated and attributable only to the fact that he has effectively exercised his human rights to freedom of thought, opinion, expression, peaceful assembly and protest, association, political assembly and participation in the public affairs of his region and country, all of which are established in articles 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights, ratified by the Bolivarian Republic of Venezuela.

23. The highest governmental authorities, including the President of the Republic, have made numerous public statements issuing threats against all who oppose the Government, and especially against the political party, Voluntad Popular, of which Mr. Ceballos is a member. After Mr. Ceballos' detention, the Minister of Internal Affairs declared that: "Justice has been done".

24. According to the source, in the Bolivarian Republic of Venezuela, the principle of the separation of powers is barely observed, since the vast majority of judges and

prosecutors are on temporary contracts. As a result, magistrates, judges and prosecutors are subject to directives issued by the executive branch.

25. The source claims that Mr. Ceballos was arrested and continues to be detained solely because he took part in peaceful opposition activities against government mismanagement and the serious socioeconomic situation facing the country. Therefore, the source concludes, Mr. Ceballos has been deprived of his freedom to exercise lawfully the human rights enshrined in articles 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights.

26. The source states that Mr. Ceballos' detention also constitutes a political punishment for the residents of San Cristóbal, who voted overwhelmingly (more than 75 per cent) in favour of his policies, and that the authorities are therefore violating not only the right to vote but also the right to be elected and the right to participate in public affairs through elected representatives. Thus, according to the source, the Constitutional Chamber of the Supreme Court has demonstrated scant concern for the will of the people, as expressed through the ballot box.

27. Mr. Ceballos' detention is also arbitrary because the guarantees of the right to a defence and the right to due process have not been respected. His right to be tried by a competent judge (the natural judge) has also been violated, in that the Constitutional Chamber acted as a criminal court rather than a constitutional court, without having legally established authority for doing so. The judges acted and took decisions more like public prosecutors than judges. Furthermore, the natural seat of judgement for Mr. Ceballos and his case is in Táchira State.

28. Mr. Ceballos was punished for allegedly committing an offence by a constitutional body that was not competent to do so rather than by a criminal court, without any prior criminal investigation being conducted and even without a criminal indictment being issued by the Public Prosecution Service. No criminal judge heard the case for the prosecution because no case was presented.

29. In the present case, the Constitutional Chamber has acted as prosecutor and criminal judge simultaneously, clearly exceeding the scope and limits of its powers, which are restricted to constitutional matters.

30. The Constitutional Chamber has in the past described the procedure for prosecution of the offence in question in the following terms:

“It is the responsibility of the Constitutional Chamber to determine which court should hear the aforementioned charge, to which end it notes that:

Article 57 of the Code of Criminal Procedure currently in force stipulates that territorial jurisdiction in respect of a criminal case is determined by the place in which the offence or misdemeanour was committed. Similarly, article 64 of the Code stipulates that because of the subject matter involved it is for the procedural court to ensure that due process guarantees are respected, to order any measures of restraint that may be appropriate, to hold the preliminary hearing and to conduct the guilty plea procedure.

Pursuant to articles 285 and 284 of the Code, complaints related to indictable offences should be initiated through the Public Prosecution Service or the police authorities, which should, in turn, notify the Attorney General's Office, and, in accordance with article 292 of the Code, the complaint shall be submitted to a judge in writing.

As noted above, in the present case it is a question of determining which criminal court has jurisdiction to hear a complaint of contempt of an order for protection

(*amparo*), which is characterized as an indictable offence in article 31 of the Organic Act on the Protection of Constitutional Rights and Guarantees.

This being the case, on the basis of the above, this Chamber believes that the court competent to hear the present complaint of contempt of a protection order is a first instance procedural court of the Criminal Judicial Circuit of Mérida State, and specifically Procedural Court No. 2 of the Criminal Judicial Circuit, which declined to hear the case on 13 March 2000.”²

31. The Constitutional Chamber has likewise in the past stated that, according to the Constitution and the law, the power to impose criminal penalties for the offence of contempt of court rests with an ordinary criminal judge of the jurisdiction in which the offence is alleged to have been committed (in this case, Táchira State). It is likewise a prerequisite that an indictment has first been issued by the Public Prosecution Service, as the body entitled to initiate criminal proceedings, and that the indictment has been preceded by an impartial criminal investigation conducted by the Public Prosecution Service.

32. The source maintains that the Constitutional Chamber violated article 285 of the Venezuelan Constitution on the responsibilities of the Public Prosecution Service, usurping the constitutional powers of the Public Prosecution Service and ignoring the requirement for an impartial criminal investigation to be conducted and following the investigation for an objective and duly reasoned indictment to be issued.³ It violated the same article with regard to the criminal courts. It is important to note in this connection that article 24 of the Venezuelan Code of Criminal Procedure establishes that: “Criminal proceedings shall be conducted by the Public Prosecution Service of its own motion, subject to the exceptions set forth in the Constitution of the Bolivarian Republic of Venezuela and the law.”

33. In addition, article 58 of the Code stipulates that: “The territorial jurisdiction of the courts shall be determined by the place in which the offence or misdemeanour is committed.”

34. The Constitutional Chamber violated all constitutional and criminal procedural rules applicable to the case, including its own precedents,⁴ in that it acted as a criminal court without having the competence to do so, usurping the investigative and prosecutorial powers of the Public Prosecution Service and the judicial powers of the country’s criminal courts. This resulted in a clear violation of the legally established right to be tried by a competent judge (the natural judge).

² Supreme Court, Constitutional Chamber, judgement No. 673 of 26 March 2002 available at: www.tsj.gov.ve/decisiones/scon/Marzo/673-260302-00-1112.htm. This interpretation has been upheld without opposition in the Bolivarian Republic of Venezuela, including prior to the entry into force of the Constitution of 1999. See in this regard Supreme Court, Political and Administrative Chamber, judgement of 7 November 1995, case of Rafael Aníbal Rivas Ostos.

³ Article 285:

“The Public Prosecution Service shall have the following responsibilities:

3. To order and conduct criminal investigations of indictable acts in order to record any circumstances of their commission that may affect the status and liability of the offenders and other participants and secure any material evidence directly or indirectly related to the commission of such acts.

4. To bring criminal actions on behalf of the State in cases in which the request of a party is not required, with such exceptions as may be provided for by law.

5. To bring such actions as may be appropriate to enforce any civil, labour, military, criminal, administrative or disciplinary liability that may be incurred by public officials in the exercise of their duties.”

⁴ See note 3 above.

35. Furthermore, the criminal trial on the charge of civil rebellion and conspiracy was in violation of the right to be tried by a competent tribunal, and contrary to the procedural rules established in the Code of Criminal Procedure. In this case, the Criminal Chamber decided to hold the trial in a court in Caracas, even though, pursuant to the procedural rules, the case should have been heard in a court in San Cristóbal.

36. The trial was also in violation of the fundamental principle of presumption of innocence enshrined in article 14 of the Covenant, inasmuch as Mr. Ceballos was treated as a criminal by the Public Prosecution Service. The President of the Republic and other high-ranking State officials have made numerous public statements denouncing Mr. Ceballos, affirming his alleged guilt.⁵ In addition, the judicial authorities have treated him as if he were guilty from the start of the present proceedings.

37. The trial was also in violation of the right to have adequate time and facilities for the preparation of his defence, in that Mr. Ceballos was subjected to an extremely hasty and summary trial, during which he was not given sufficient time to mount a proper and adequate defence in accordance with the law, taking into account, furthermore, that he was detained in a military prison during the entire length of time available to him for the preparation of his defence. On 20 March 2014, Mr. Ceballos was summoned to a hearing to be held on 25 March 2014. At this hearing he was convicted and sentenced to imprisonment.

38. The right to submit evidence to prove the innocence of the defendant was also violated in this case. The Constitutional Chamber blocked the presentation of the evidence planned by the defence team in an arbitrary manner, without justification, ultimately allowing the defence to present only a few of the items of evidence that it intended to present, and this was aggravated by the fact that very few of these items were properly appraised by the court in its judgement.

39. Lastly, the criminal conviction handed down by the Constitutional Chamber of the Supreme Court also violated the right to a second hearing and the right to appeal against the judgement, in that Mr. Ceballos was not tried by the competent court but by the Supreme Court, the highest court of the country, whose judgements are binding for all the bodies and courts of the Republic. There was thus no possibility for him to appeal or to submit the conviction for judicial review by a higher court.

40. The source concludes by requesting that the Working Group ask the Government of the Bolivarian Republic of Venezuela to provide immediate precautionary protection and calling for Mr. Ceballos' immediate release.

⁵ See the following videos:

- *Nicolás Maduro Daniel Ceballos*, broadcast on 23 February 2014, www.youtube.com/watch?v=V_m5TpsxJzs; broadcaster: Noticias Venezuela;
- *Maduro Daniel Ceballos te va a llegar tu hora* (Maduro Daniel Ceballos, your time is up), broadcast on 24 February 2014, www.youtube.com/watch?v=CbnDkjwuYiQ; broadcaster: SOSVenezuela2014;
- *Capturado el alcalde de San Cristóbal, Daniel Ceballos, por delito de rebelión y violencia* (Mayor of San Cristóbal, Daniel Ceballos, detained on charges of rebellion and stoking violence), broadcast on 19 March 2014, www.youtube.com/watch?v=ebunx9-xdlg; broadcaster: Apolinar Rea;
- Press conference with Minister Rodríguez Torres about prisoners Daniel Ceballos and Enzo Sacarano, broadcast on 20 March 2014, www.youtube.com/watch?v=eJxHKsCxjPQ; broadcaster: sucreranda Hugo Chávez Venezuela.

Response from the Government

41. Because the Government of the Bolivarian Republic of Venezuela has not disputed the veracity of the information submitted by the source, the Working Group accepts the information as reliable, *prima facie*.

Discussion

42. Daniel Omar Ceballos Morales was mayor of the municipality of San Cristóbal (Táchira). He was elected in December 2013 and is a member of the opposition political party Voluntad Popular. According to the source, the mayor took part in political activities that accused the Government of mismanagement and of creating the serious socioeconomic situation that the country is experiencing.

43. High-ranking State officials and representatives of the party of President Nicolás Maduro have made public statements denouncing those who oppose the Government and particularly those politically active within Voluntad Popular.

44. Mr. Ceballos was arrested on 19 March 2014 in Caracas by SEBIN agents who did not inform him of the reasons for his arrest and did not show a warrant. Mr. Ceballos' detention — as reported by the source and not disputed by the State — is founded on two irregular judicial proceedings, as described below.

45. The first of these entailed Mr. Ceballos' arrest for the alleged offence of contempt of a precautionary protection order, as follows:

(a) As noted in paragraphs 4 and 5 of this Opinion, the Constitutional Chamber of the Supreme Court of the Bolivarian Republic of Venezuela received a request for the protection of collective and diffuse interests against certain Venezuelan mayors and issued an unnamed precautionary measure requiring the mayors to guarantee security, free passage and movement, to safeguard the environment and to instruct their police officers to prevent crime and ensure social peace in their respective municipalities. This measure was extended, as indicated in paragraphs 6 and 7, to other mayors, including the mayor of San Cristóbal, Daniel Ceballos, who was notified accordingly on 18 March 2014;

(b) On 19 March 2014, the mayor of San Cristóbal was arrested and deprived of his liberty by the State intelligence agency, SEBIN, without being informed of the reasons for his arrest – a situation that remains unchanged to this day. The day after his arrest, the Constitutional Chamber summoned Mr. Ceballos to a hearing for allegedly having failed to comply with the precautionary measure;

(c) At the hearing, which took place on 25 March 2014, the defence team was given only 10 minutes to present its arguments against the contempt charge brought by the Constitutional Chamber. This was insufficient time to present all the planned evidence. In addition, the defence team was allowed only five minutes for rebuttal arguments. The judges decided to convict Mr. Ceballos of the offence of contempt of court. He was sentenced to 12 months' imprisonment and dismissed from the office of mayor. Five months after the oral judgement was issued, the Constitutional Court has yet to issue a written version, even though, under the law of the Bolivarian Republic of Venezuela, a written judgement should be published within five days of the oral judgement being pronounced;

(d) The hearing was called in response to reports published in the media, but, as stated in paragraphs 8 and 19 of this Opinion, the legal justification cited was the Organic Act on the Protection of Constitutional Rights and Guarantees. This law refers to "constitutional protection orders" and, as noted by the source, not to "precautionary protection" measures;

(e) The source informed the Working Group that the Constitutional Chamber has itself indicated that jurisdiction to punish the offence of contempt of court lies with an ordinary criminal judge in the place in which the offence was allegedly committed and that an indictment issued by the Public Prosecution Service is thus also required. Furthermore, according to the source, the Code of Criminal Procedure stipulates that the territorial jurisdiction of the courts is determined by the place in which the offence or misdemeanour has been committed.⁶ Pursuant to the Code, the municipal procedural courts of first instance are competent to hear cases involving publicly prosecutable offences that carry a maximum sentence of no more than 8 years' imprisonment.⁷ Therefore, the competent judicial bodies in Mr. Ceballos' case were the Public Prosecution Service, a procedural court in Táchira State and a trial court in Táchira State.

46. The second irregular judicial procedure was the criminal case brought against Mr. Ceballos on charges of rebellion and conspiracy on the basis of the following facts, reported by the source and not contested by the State:

(a) On 20 February 2014, a criminal complaint against Mr. Ceballos was filed by the Movimiento Nacional de Abogados Socialistas of Táchira State. On 19 March 2014, Mr. Ceballos was arrested without being shown a warrant or being informed of the reasons for his arrest. Heavily armed individuals removed Mr. Ceballos by force;

(b) Mr. Ceballos was taken to the SEBIN offices in Plaza Venezuela, forced to get out of the vehicle in the parking area and surrounded by agents pointing rifles at him, all whilst being recorded on video. Against his will, he was forced to sign a document stating that he had been read his rights at the time of his arrest. At the SEBIN headquarters, known as the El Helicoide building, Mr. Ceballos' lawyers were refused information about where he was being detained, despite having been told that he would be held in that building. They later learned that Mr. Ceballos had been transferred from the SEBIN headquarters to a military facility known as Ramo Verde;

(c) On 24 March 2014, at the request of the Public Prosecution Service, the Criminal Cassation Chamber of the Supreme Court opened the criminal case in which Mr. Ceballos was charged with two offences in Caracas, even though jurisdiction to hear the case lay elsewhere, with the municipality of San Cristóbal, Táchira State. On 28 March 2014, Mr. Ceballos was brought before the Procedural Court for the hearing that should have taken place within 48 hours of his arrest. At this hearing, the public prosecutor confirmed the charges, noting that the offences were assumed to have been committed because Mayor Ceballos had allegedly called for the public to repudiate the Government. At this time Mr. Ceballos was still being detained in Ramo Verde military prison.

47. Mr. Ceballos' detention in a military compound appears to have been ordered for discriminatory reasons on the basis of his membership of a certain political party and his political views. The Working Group concurs with the views expressed by the Human Rights Committee and recognizes that States have an obligation to ensure that "To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends."⁸

⁶ Code of Criminal Procedure, art. 58.

⁷ *Ibid.*, art. 65.

⁸ Human Rights Committee. General comment No. 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, para. 11.

48. The Constitution of the Bolivarian Republic of Venezuela establishes that citizen security bodies are civilian in nature (art. 332). For this reason the involvement of the armed forces in the detention of civilians does not seem justified. In the opinion of the Working Group, this constitutional provision is consistent with the views expressed by the Inter-American Commission on Human Rights in its Report on Citizen Security and Human Rights. The Inter-American Commission recommended that States of the region should: “In the domestic legal system, draw a clear distinction between national defence 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.”⁹

49. In another report, with which the Working Group also concurs, the Commission wrote that: “States need to guarantee that penitentiaries are ran 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.”¹⁰

50. In the light of the above, the Working Group considers that the detention of Mr. Ceballos is arbitrary, in that its aim was to force him to cease exercising his right to freedom of opinion and expression and his right to participation in political life as a mayor belonging to an opposition party, in exercise of the rights recognized in articles 19 and 25 of the International Covenant on Civil and Political Rights.

51. The Working Group likewise considers that the detention of Mr. Ceballos was arbitrary because the Bolivarian Republic of Venezuela failed to comply with the international standards relating to fair trial set out in articles 9 and 14 of the International Covenant on Civil and Political Rights, in that Mr. Ceballos was tried for the offence of contempt of court by the Constitutional Chamber of the Supreme Court and not by a competent court on the basis of an indictment issued by the Public Prosecution Service. Furthermore, in these proceedings, Mr. Ceballos was denied the right to have adequate time to prepare his defence and present evidence, and was also denied the right to a second hearing and to appeal against the judgement. With regard to the charges on the offences of rebellion and conspiracy, his right to be tried before a competent, natural judge was also violated, in this case for territorial reasons.

Disposition

52. In the light of the foregoing, the Working Group considers that the detention of Daniel Omar Ceballos Morales constitutes arbitrary detention, falling within categories II and III of the categories used by the Working Group in accordance with its methods of work. The Working Group therefore recommends that the Government of the Bolivarian

⁹ Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights* (OEA/Ser.L/V/II. Doc. 57, 31 December 2009), specific recommendation No. 10.

¹⁰ Inter-American Commission on Human Rights, *Report on the Human Rights of Persons Deprived of Liberty in the Americas* (OEA/Ser.L/V/II, Doc. 64, 31 December 2011), para. 193.

Republic of Venezuela should immediately release Daniel Omar Ceballos Morales and provide comprehensive reparation for the damage caused by his detention.

[Adopted on 28 August 2014]
