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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020

Opinion No. 39/2020 concerning Kevin Roberto Solís (Nicaragua)*

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. 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 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 16 April 2020 the Working Group transmitted to the Government of Nicaragua a communication concerning Kevin Roberto Solís. 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).

* Seong-Phil Hong did not participate in the discussion of the present case.



Submissions

Communication from the source

4. Kevin Roberto Solís is a national of Nicaragua who was born in 1998. He lives in Managua and is a law student and activist. Mr. Solís is related to a member of the Civic Alliance for Justice and Democracy.

5. The source reports that Mr. Solís had previously been subjected to arbitrary detention in September 2018. According to the source, he was apprehended on 20 September 2018 for his active participation in the protests that began in Nicaragua in April 2018. He was prosecuted for the offences of obstruction of public services and illegal carrying and use of firearms and sentenced to 23 months in prison. After spending more than six months in prison, he was released on 4 April 2019 under a family cohabitation order.

6. According to the information received, on 3 February 2020, Mr. Solís and dozens of other young persons, participated in a flash mob-style picket near the main entrance of the Central American University. During the event, the participants noticed someone, who they believed to be an infiltrator, taking photographs of them. The same person later told a media outlet that he had been assaulted by the youths and accused them of having stolen his wallet.

7. On 5 February, wanted posters featuring photographs of the young persons who had participated in the picket, including Mr. Solís, appeared close to the university and on social media networks. Mr. Solís reported on social media that he had been informed that a warrant had been issued for his arrest.

(a) Detention

8. The source indicates that Mr. Solís was arrested at approximately 11.30 a.m. on 6 February 2020 close to the southern entrance to the university. He was intercepted by a number of individuals dressed in civilian clothes who got out of a black crew cab pickup truck and forced him into the vehicle. They did not show him a court order for his arrest or proof of any other type of decision issued by a public authority, nor did they inform him of the reason or legal basis for his arrest. The source points out that, for reasons that have not been explained, the arrest report cited in the brief prepared by the Public Prosecution Service states that the arrest was made at 6.01 p.m. on 6 February.

(b) Charge and pretrial detention

9. On 8 February 2020, the Assistant Prosecutor of Managua filed an indictment and requested the opening of proceedings against Mr. Solís and two other persons alleged to be co-authors of the offence of aggravated robbery.

10. On the same day, a preliminary hearing was held in the Tenth District Criminal Court of the Managua Judicial District, and Mr. Solís was formally charged with the offence of aggravated robbery. At the hearing, the judge admitted the charge and imposed pretrial detention as a precautionary measure for the duration of the proceedings, with no possibility of replacing it with an alternative measure. He also ordered the arrest of the other two university students accused of the same offence. Mr. Solís was kicked in the face by the police guards involved in his transfer from the court following the preliminary hearing. On 12 February 2020, he was transferred to La Modelo prison, where he is currently being held.

11. The initial hearing took place on 19 February 2020. At the hearing, the Public Prosecution Service formally presented the brief on the exchange of information and evidence. Representatives of the Public Prosecution Service reiterated that the Service had at its disposal statements, police investigation reports, documentary evidence and material evidence and requested that this evidence be admitted, that the accused be committed for trial and that the proposed witnesses and experts be summoned. The defence requested that the brief on the exchange of information and evidence not be admitted and that the Public Prosecution Service be given five days to present better evidence, on the grounds that the alleged aggravated robbery had reportedly occurred in a busy area of the university and that the victim's statement was therefore not sufficient. In addition, the defence argued that,

since article 231 of the Code of Criminal Procedure had not been adhered to, the investigation had been conducted unlawfully. Article 231 states that arrests must be made by the police and that police chiefs can issue search and arrest warrants. The defence also requested the substitution of the precautionary measure imposed on Mr. Solís and the issuance of an order requiring the Legal Cooperation Directorate to provide evidence and hand over the video in order to ensure the exercise of an effective defence.

12. The judge considered that there was sufficient evidence to determine that Mr. Solís had likely participated in the offence and sent the case to a public oral trial, with a provisional date of 13 March 2020. He also maintained the precautionary measure and ordered the Evidence Unit of the Legal Cooperation Directorate to provide the defence with a copy of the video that the Public Prosecution Office intended to use as documentary evidence.

13. The source indicates that, during the six days that Mr. Solís was detained in El Chipote prison, he was kept in solitary confinement. The source alleges that Mr. Solís was tortured in El Chipote by an officer known as Commissioner Pacheco. He was physically assaulted on three occasions. He was woken up early in the morning and water was poured on him, and officers threatened to poison his food and pretend he had died by suicide. They also threatened to take him to La Modelo prison and leave him at the mercy of common criminals to do whatever they wanted with him.

14. He was transferred to La Modelo prison on 12 February 2020 and is being held, together with 14 persons accused of ordinary offences, in a cell designed for 5 persons. He has been threatened with physical assault and lengthy imprisonment. As a way to demand his release, Mr. Solís began a hunger strike on 25 February 2020.

(c) Alleged human rights violations

(i) Category I: legal basis

15. The source maintains that Mr. Solís's detention is arbitrary under category I because it lacks a legal basis. The source claims that the police never showed an arrest warrant or explained the reasons for the arrest. At the time of his arrest, Mr. Solís was informed neither of the reasons for his detention, nor of the judicial channels for challenging the legality of the deprivation of liberty, nor of his right to have access to a lawyer of his choosing. On the afternoon of the day he was arrested, members of his family went to the Legal Cooperation Directorate to find out whether he was being held there, but were told that no information could be provided to them. Representatives of civil society made unofficial enquiries and were assured that Mr. Solís was being held by the police, but were told that no confirmation of his whereabouts could be provided because he was under interrogation. It was not until the day after his arrest, at approximately 10 a.m., that police officials from the Legal Cooperation Directorate confirmed to Mr. Solís's family that he was being held on their premises.

16. The source claims that this conduct on the part of the authorities violates article 9 (2) of the Covenant and principles 7 and 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), and that it also contravenes the Constitution, article 33 (1) of which establishes that "detention may be carried out only by written order of the competent judge or of the authorities expressly empowered by law, except in cases of flagrante delicto".

17. The source further asserts that Mr. Solís was automatically placed in pretrial detention in application of the legal requirement arising from Act No. 952, which amended article 565 of the Criminal Code; this article stipulates that pretrial detention must be imposed in cases of aggravated robbery. Article 44 of Act 745 on Enforcement, Privileges and Judicial Oversight of Criminal Sanctions establishes the same requirement. Pretrial detention is thus automatically imposed for this type of serious offence and is being used in Nicaragua to criminalize human rights defenders, journalists, university students and all those who speak out against the Government. The source points out that, in this case, the judge did not examine the manner in which the arrest was carried out, and also failed to make a full and objective assessment of the account of the events set out in the indictment. The source recalls that automatically ordering pretrial detention, without a case-by-case

examination of its necessity, is contrary to article 9 (3) of the Covenant and demonstrates the lack of a legal basis for the detention. The source claims that, even when detention is carried out in conformity with national legislation, it must also be consistent with the relevant provisions of international law.

(ii) Category II: fundamental rights and freedoms

18. The source alleges that Mr. Solís's detention is arbitrary under category II because he is being detained as a result of his exercise of rights and freedoms guaranteed by the Universal Declaration of Human Rights and the Covenant.

19. According to the source, Mr. Solís's arrest is directly linked to his participation in the flash mob-style picket at the Central American University on 3 February 2020. The source maintains that Mr. Solís has publicly criticized the actions of the Government and actively denounced the serious human rights violations that have allegedly been committed in the country since the crisis began in April 2018. The source maintains that, prior to his current detention, Mr. Solís had already been subjected to arbitrary detention and an irregular trial. He was apprehended on 20 September 2018 and held for more than 50 days without being brought before a judge, before being prosecuted for the offences of obstruction of public services and illegal carrying and use of firearms and sentenced to 23 months in prison. After spending 6 months and 11 days in detention, he was released on 4 April 2019 under a family cohabitation order. After his release from prison, the Amnesty Act was applied to him in a procedural decision issued on 27 June 2019.

20. The source is of the view that Mr. Solís's detention is related to the exercise of his right to freedom of opinion and expression and his criticism of the current Government. The source argues that the authorities violated Mr. Solís's right to freedom of opinion and expression as enshrined in article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.

(iii) Category III: due process

21. The source further argues that Mr. Solís's detention is arbitrary under category III because of the non-observance of international standards relating to the right to a fair trial, as set out in the Universal Declaration of Human Rights and relevant international instruments.

22. The source claims that Mr. Solís was held in isolation in a punishment cell at El Chipote. He remains deprived of his liberty in La Modelo prison and is being held, together with 14 persons accused of ordinary offences, in a cell designed for 5 persons. The source stresses that his conditions of detention endanger his physical and psychological integrity, as he is frequently threatened by the authorities and has even been physically assaulted by them. The source argues that the incommunicado detention regime violates his right to challenge the legality of the detention before a court, as provided for in article 9 (4) of the Covenant. The ongoing treatment of Mr. Solís violates his right to have contact with the outside world under rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principles 15, 19 and 20 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

23. According to the source, while Mr. Solís was at El Chipote he was subjected to interrogation by police officers for extended periods of time on several occasions. During the interrogations, the officers forced him to tell them everything he knew about the protests at the Central American University and the individuals who organized and funded them. His interrogators told him that he had to remember every detail and that the blows to his body were "just a warm-up". They also demanded that he explain his relationship with members of his family active in civil society organizations. They told him that, if he did not tell them everything he knew, they would poison his food, and that he should remember that in prison it was easy to make a death look like suicide. They also constantly threatened to transfer him to the prison system and place him with common criminals to do whatever they wanted with him. They also offered to release him if he provided assurances that he would no longer participate in the protests, would avoid criticizing the Government and would denounce other university students who continued to demonstrate. The source claims that the psychological torture has continued in La Modelo prison, where Mr. Solís is

currently being held. For example, the guards regularly tell him that it is easy to fake a suicide in the prison.

24. Statements obtained as a result of torture or other cruel, inhuman or degrading treatment may not be invoked as evidence in any proceedings, except those investigating allegations of torture and/or ill-treatment. The source recalls the obligations of Nicaragua as a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and cites articles 7 and 14 of the Covenant and the provisions of the Human Rights Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

25. The beatings and threats that Mr. Solís suffered while he was in El Chipote and the threats and ill-treatment that continue to be directed at him in La Modelo prison, as well as the refusal to allow him visits from his family for a whole month, constitute conditions of detention that allegedly contravene article 7 of the Covenant, principles 6 and 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the provisions of articles 2, 11 and 12 of the Convention against Torture. Prisoner treatment and conditions of detention must be aligned with the relevant international provisions in order to guarantee the right of every person to a fair and impartial trial, including the presumption of innocence. The source argues that persons subjected to cruel, inhuman or degrading treatment during their detention and trial do not have the means and tools necessary to prepare their judicial defence and that such treatment makes a fair trial with due process impossible.

26. The source alleges that Mr. Solís was not informed by the authorities of the reasons for his arrest, was not promptly informed of the charges against him and was not able to contact a lawyer he trusted from the moment of his arrest. Furthermore, he was not guaranteed private communication with his lawyer and was thus denied timely access to his criminal case file. At 8 a.m. on 24 February 2020, his lawyer arrived at La Modelo prison, where Mr. Solís had already registered her on the visitors' list. When she identified herself and requested a visitor's card, she was denied entry. At approximately 11 a.m., the lawyer asked again to visit Mr. Solís and was told to stop asking and that only his family would be allowed entry. However, his family members were also denied entry and told that they would be allowed to visit Mr. Solís only once he had spent 21 days in the prison.

27. On 26 February 2020, Mr. Solís's lawyer submitted a request to the Tenth District Criminal Court of the Managua Judicial District for a letter authorizing her to be allowed to meet with her client in La Modelo prison. No such letter has been provided. On the same day, the lawyer also submitted a request to the Public Prosecution Office for copies of all the investigative material being offered as evidence against her client. She did not receive the copies until 4 March. According to the source, this prevented her from preparing a defence, in clear violation of articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) of the Covenant. Similarly, principle 9 of the Body of Principles, which provides that persons deprived of their liberty have the right to legal assistance from a lawyer of their choosing at any time during their detention, including immediately after their arrest, was not respected. The source claims that the detainee was not allowed to speak to his lawyer until minutes before the preliminary hearing began.

28. Lastly, the source argues that the authorities arrested Mr. Solís and placed him in pretrial detention on the basis of the legal requirement contained in the relevant article of Act No. 952, which amended article 565 of the Criminal Code. However, ordering pretrial detention without an individual analysis justifying its necessity constitutes advance punishment that violates the principle of presumption of innocence enshrined in article 11 of the Universal Declaration of Human Rights, article 14 (2) of the Covenant and principle 36 (1) of the Body of Principles, as well as article 34 (1) of the Constitution. The exceptional nature of pretrial detention requires an individual case-by-case analysis of the necessity and proportionality of the deprivation of personal liberty. Thus, even where pretrial detention is automatically provided for by law, it must also be in conformity with international law and not, therefore, immune from scrutiny.

Response from the Government

29. On 16 April 2020, the Working Group transmitted the allegations from the source to the Government and requested a response by 16 June 2020, including detailed information

clarifying the factual and legal grounds for Mr. Solís's detention and explaining how it was compatible with the international human rights obligations of Nicaragua. The Working Group called on the Government to ensure Mr. Solís's physical and mental integrity.

30. The Working Group regrets that the Government did not respond to the communication within the time limit. The Government did not request an extension of the deadline for its reply, as provided for in the Working Group's methods of work. The Government has not provided a substantive response to the Working Group's communications in recent years. The Working Group urges the Government to engage constructively with it on all allegations relating to the arbitrary deprivation of liberty.

31. 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.

Discussion

32. 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 *prima facie* credible allegations made by the source.

(i) Category I

33. The Working Group finds that, in the present case, there is *prima facie* evidence showing that Mr. Solís, a law student at the Central American University, was arrested at approximately 11 a.m. on 6 February 2020 by persons in civilian clothes and forced into a crew cab pickup truck. The direct background to this arrest was the participation of Mr. Solís, a student activist, in a flash mob-style picket at the University on 3 February 2020. On 5 February, wanted posters featuring photographs of the young persons who had participated in the picket, including Mr. Solís, appeared close to the university and on social media networks.

34. At the time of his arrest, the persons who forced Mr. Solís into the pickup truck did not identify themselves and did not inform him of the reason for his arrest. The Working Group notes that, in the present case, Mr. Solís was not arrested in *flagrante delicto*¹ and the persons who arrested him were dressed in civilian clothes. The legal requirement for the issuance of an arrest warrant by a competent judge or an authority expressly empowered by law² was not met, and the Government did not provide information to justify the manner in which the arrest was made.³

35. Furthermore, the Working Group notes that between 11 a.m. and 6.01 p.m. on 6 February 2020, when his arrest was recorded, Mr. Solís was removed from the protection of the law and was technically subjected to enforced disappearance. The Working Group recalls that enforced disappearance violates numerous substantive and procedural provisions of the Covenant and constitutes a particularly aggravated form of arbitrary detention.⁴ For approximately seven hours, Mr. Solís's right to security of person was flagrantly violated.

36. Under article 9 of the Covenant, which is binding on Nicaragua, everyone has the right to liberty and security of person, no one may be subjected to arbitrary arrest or detention, and no one may be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. Article 9 also provides that

¹ Opinion No. 9/2018, para. 38.

² Article 33 (1) of the Constitution states that an arrest can be made only on the basis of a written order issued by the competent judge or an authority expressly empowered by law, except in cases of *flagrante delicto* (Constitution of the Republic of Nicaragua and Incorporated Reforms, *La Gaceta, Diario Oficial* No. 32, 18 February 2014).

³ Opinions No. 36/2018, para. 40; No. 53/2018, para. 65; and No. 14/2019, para. 59.

⁴ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 17. See also A/HRC/16/48/Add.3 and Opinions No. 6/2020, para. 43, and No. 5/2020, para. 74.

anyone who is arrested must be informed of the reasons for the arrest at the time of apprehension and must be promptly informed of any charges against him or her.

37. The Working Group has consistently pointed out in its jurisprudence that this means that all persons must be informed from the outset of the reasons for their arrest and of the judicial means of challenging its legality.⁵ The reasons given for the arrest must include not only the general legal basis of the arrest but also factual specifics indicating the substance of the complaint and the wrongful act committed.⁶ These reasons are understood to be the official basis for the arrest, not the subjective motivations of the arresting officer.⁷

38. Persons deprived of their liberty have the right to be informed by the authorities, at the time of arrest, of their right to a lawyer of their own choosing. They also have the right to be informed promptly of the charges against them.⁸ Neither of these rights were respected in the present case.

39. The Working Group also notes that, contrary to the requirement of article 9 (3) of the Covenant, which stipulates that the detention of persons awaiting trial should not be the general rule, automatic pretrial detention was applied to Mr. Solís. The Working Group emphasizes that, in its Opinion No. 1/2018, it examined this matter in detail and concluded that mandatory pretrial detention violates article 9 (3) of the Covenant, which stipulates that detention pending trial should be the exception rather than the rule and must be based on an individualized determination that it is reasonable and necessary.⁹

40. In the present case, the Working Group considers that automatically ordering the pretrial detention of Mr. Solís, without an examination of its necessity, is contrary to article 9 (3) of the Covenant and demonstrates the lack of a legal basis for the detention.

41. Consequently, the Working Group considers the detention of Mr. Solís to be arbitrary under category I.

(ii) Category II

42. The Working Group notes that Mr. Solís was arrested in a specific context. Prior to being deprived of his liberty, Mr. Solís had participated in a flash mob-style picket on 3 February 2020. Furthermore, Mr. Solís had previously been detained in September 2018, also following his participation in anti-Government protests. He was granted conditional release in April 2019. The source alleges that Mr. Solís's detention was due to his participation in public demonstrations and his expression of anti-Government views. The source argues that his deprivation of liberty was punishment for those actions, which constitute an exercise of human rights including freedom of opinion, expression, assembly and association and participation in public affairs, all of which are protected under international law.

43. The Working Group notes that this is not the first case in which it has been informed of the alleged arbitrary detention of Government opponents. On the contrary, since 2018, when Mr. Solís was first arrested, the Working Group has increasingly received information about arrests of demonstrators at public protests or demonstrations criticizing the Government.¹⁰

44. The Working Group emphasizes that despite being given the opportunity, the Government did not deny the allegations made by the source. The source has presented a case that demonstrates the link between Mr. Solís's activities, in the exercise of his human rights, and his deprivation of liberty in retaliation for his criticism of and opposition to the Government. Consequently, the Working Group also considers that Mr. Solís's detention resulted from the exercise of rights or freedoms guaranteed under articles 19, 20 and 21 of the Universal Declaration of Human Rights and, in respect of States parties, under articles 19, 21, 22 and 25 of the Covenant and is therefore arbitrary under category II.

⁵ Opinions No. 46/2019, para. 51, and No. 10/2015, para. 34.

⁶ General comment No. 35, para. 25.

⁷ Opinion No. 17/2020, para. 74.

⁸ *Ibid.*, para. 75.

⁹ General comment No. 35, para. 38.

¹⁰ Opinions No. 16/2019, No. 19/2019, No. 43/2019, No. 17/2020 and No. 21/2020.

(iii) Category III

45. In the light of the findings made in relation to category II, in which it concluded that the detention is the result of the exercise of human rights, the Working Group finds that there was no basis for a criminal trial. However, since the trial in question did in fact take place, and in view of the allegations made by the source, the Working Group will proceed to determine whether, in the course of the judicial proceedings, due process guarantees were respected.

46. The Working Group has already concluded that, during Mr. Solís's arrest, his right to be informed promptly of the reasons for his arrest was not respected and he was not shown an arrest warrant at the moment of apprehension. In addition, Mr. Solís was held incommunicado and denied access to his lawyer and was therefore unable to ask a court to verify the legality of his detention. As mentioned above, the Working Group also found that Mr. Solís was placed in automatic pretrial detention, which contravenes the right to be presumed innocent. All of these factors breach articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. The Working Group will therefore proceed to analyse the further violations of due process in the present case.

47. The Working Group emphasizes that all persons charged with a criminal offence have the right to be informed promptly and in detail in a language that they understand of the nature and cause of the charges against them, as well as the right to have adequate time and facilities for the preparation of their defence and to communicate with a lawyer of their own choosing.¹¹ A person's right to be informed promptly of the nature of the charges against him or her and the basis for them may be satisfied by stating the charges orally, provided that they are later confirmed in a written document that indicates both the applicable law and the facts on which the charges are based.¹²

48. The Working Group takes note of the source's allegations concerning the irregular and prolonged interrogations to which Mr. Solís was subjected, in inadequate conditions, without his lawyer present and after periods of solitary confinement. Violence and threats to kill him and members of his family were used in these interrogations, during which he was pressurized into providing incriminating information about persons involved in the protests. These facts, which were not contradicted by the Government, reveal a violation of the guarantee set forth in article 14 (3) (g) of the Covenant and might constitute a violation of the provisions of the Convention against Torture.

49. As regards the right to a defence lawyer and to adequate time and facilities to prepare a defence, detained persons must have prompt access to lawyers, be able to communicate privately with them in conditions that guarantee the confidentiality of their communications,¹³ have adequate time to prepare their defence¹⁴ and be provided with access to the file containing all documents, evidence and other materials that the prosecution intends to submit to the court.¹⁵

50. In the case of Mr. Solís, the Working Group considers that he was denied essential guarantees of due process. The Working Group notes that he was denied access to his lawyer from the time of his arrest. In addition, his lawyer was given access to the file just moments before Mr. Solís was due to appear in court. Therefore, the Working Group considers that his lawyer was unable to prepare an adequate defence for him.¹⁶ Mr. Solís did not have adequate time and facilities to prepare a defence as required under article 14 (3) (b) of the Covenant. This was not a minor violation of due process; on the contrary, it had a clear impact on Mr. Solís's due process rights.

51. In the light of the foregoing considerations concerning violations of the guarantees of due process, the Working Group concludes that, in the case of Mr. Solís, the non-observance of international standards relating to the right to a fair and impartial trial, as recognized in articles 9, 10 and 11 of the Universal Declaration of Human Rights and

¹¹ Article 14 (3) (d) of the Covenant.

¹² General comment No. 32, para. 31.

¹³ Ibid., para. 34.

¹⁴ Ibid., para. 32.

¹⁵ Ibid., para. 33.

¹⁶ A/HRC/30/37, principle 12, para. 20; guidelines 5, 8 and 11, paras. 56, 67 and 76.

articles 9 and 14 of the Covenant, is of such gravity as to render the deprivation of liberty arbitrary under category III.

52. As regards the allegations of torture or other cruel, inhuman or degrading treatment, the Working Group refers the relevant information to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for possible consideration.

53. The Working Group would welcome the opportunity to engage constructively with the Government in addressing its concerns surrounding arbitrary deprivation of liberty. Given that a significant amount of time has passed since it last visited Nicaragua in May 2006, the Working Group considers that this would be an appropriate time for it to conduct another visit.

Disposition

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

The deprivation of liberty of Kevin Roberto Solís, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

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

56. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Solís immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure his immediate release.

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

58. The Working Group also recommends that the Government examine the extent to which Act No. 952, which amended article 565 of the Criminal Code to legally require the automatic imposition of pretrial detention in cases of aggravated robbery, is compatible with article 9 (3) of the Covenant.

59. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture, for appropriate action.

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

Follow-up procedure

61. 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. Solís has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Solís;
- (c) Whether an investigation has been conducted into the violation of Mr. Solís'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 Nicaragua with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

62. 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.

63. 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.

64. The Working Group notes 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.¹⁷

[Adopted on 24 August 2020]

¹⁷ See Human Rights Council resolution 42/22, paras. 3 and 7.