

# No. 47/2013 (Bolivarian Republic of Venezuela)

## Communication addressed to the Government on 13 May 2013

### Concerning Antonio José Rivero González

#### The Government replied to the communication on 7 June 2013. The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by 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 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex), 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. Antonio José Rivero González, a Venezuelan national, native of Los Teques, Miranda State, born on X June XXXX, single, a retired army general and engineer, former Director of Civil Defence under the Government of President Hugo Chávez Frías, leading member of the political party Voluntad Popular (Popular Will), which is a member of the opposition coalition Mesa de la Unidad

Democrática (Democratic Unity Round Table) that supported the candidacy of Henrique Capriles in the recent presidential election, was arrested on 27 April 2013 in Caracas by officers of the Bolivarian National Intelligence Service (SEBIN).

4. Mr. Rivero's arrest took place after he had been invited to hold a meeting with SEBIN officials by General Miguel Rodríguez Torres, Minister of People's Power for Internal Affairs, Justice and Peace, who was a classmate of his in the military academy. Mr. Rivero voluntarily went to SEBIN headquarters with the intention of meeting the aforementioned officials. When he arrived, however, he was arrested. His arrest was made without a proper warrant, nor was he caught in flagrante delicto. The source asserts that it was a de facto, arrest conducted in an arbitrary manner.

5. With the aim, according to the source, of giving the arrest a semblance of legality, arrest warrant No. 001-13 was subsequently produced, having been issued by the Second Court of First Instance with investigative powers and national jurisdiction in the area of counter-terrorism, based in the criminal court circuit of the Caracas Metropolitan Area, under provisional judge Pablo José Fernández Mora.

6. According to the source, Mr. Rivero's arrest took place in the context of incidents of harassment and attacks against civil servants, media workers, political and social activists, human rights defenders and protest participants.

7. During the first two days of his detention Mr. Rivero did not have access to his lawyers, who were not informed of the reason for his arrest and were denied access to the arrest warrant until the start of the hearing.

8. According to the source, this individual's arrest is politically motivated. Days before his arrest, official media outlets had apparently accused him of taking part in a conspiracy to overthrow the new Government of President Nicolás Maduro.

9. On 29 April 2013, Rossana Álvarez Ramos and Luis Eduardo Trocelis Baptista, 21st deputy prosecutors of the Public Prosecution Service with full competence at the national level, issued an indictment against Mr. Rivero on charges of public incitement to hatred, provided for and punishable under article 285 of the Criminal Code, and criminal association, provided for and punishable under article 37 of the Organized Crime and Financing of Terrorism Act, in accordance with article 4, paragraph 9, and article 27 of the Act. These offences are punishable under Venezuelan criminal law by 6 to 10 years' imprisonment.

10. According to the source, it can be seen from the initial records of the investigation, specifically the police report and the text of the arrest warrant, that the only alleged evidence against this individual is a video confiscated by police officers from the American journalist Timothy Hallet Tracy, in which Mr. Rivero appears speaking to a student. All that the confiscated video shows is Mr. Rivero talking to the student about how to protect himself in the event of violence during protests against the election results. Specifically, he advises the student to cover his head with a pan in the event of bottles or stones being thrown.

11. On the sole basis of this video, which shows an act that is not a criminal offence, the court rejected the request for unconditional release submitted by Mr. Rivero's defence lawyers and instead ordered pretrial detention. Provisional judge Fernández Mora also ordered the continuation of the criminal investigation and accepted the initial classification of the offences.

12. The judge based his decision on the consideration that the investigation might be undermined if Mr. Rivero was released and that there was risk that he might flee and evade justice.

13. The source asserts that for criminal association or malicious intent to exist, three or more persons must be involved. In the absence of three persons, the provisional judge deemed that Mr. Rivero's membership of a political party was enough to meet the three-person legal requirement.

14. From the moment of his arrest, Mr. Rivero declared a hunger strike as a means of protesting his detention. His 81-year-old mother has also gone on hunger strike.

15. The source indicates that Mr. Rivero enjoyed a brilliant military career, having achieved the rank of brigadier general at the age of 46. He was retired from service for having reported the presence of over 300 soldiers from a third country in Venezuela, and for his involvement in defence policies and the organization of the Armed Forces. He was then made subject to preventive measures: he was prohibited from leaving the country, required to appear before military courts every fortnight, and

prohibited from speaking publicly about the case, all of which measures Mr. Rivero scrupulously respected.

16. The source expresses concern regarding Mr. Rivero's physical and psychological integrity and the use of detention for persons who participated peacefully in the political protests held in the wake of the presidential election. The source insists that the authorities must respect the legitimate exercise of the rights to freedom of opinion, expression and association.

17. The source holds that there is no legal basis for classifying Mr. Rivero's behaviour as an offence. The detention of this individual cannot be deemed attributable to any of the criminal offences imputed to him. The conduct shown in the edited video, in which Mr. Rivero can be seen advising a young person on how to protect himself from stones and bottles during a protest, is not criminalized under any law.

18. The source adds that the detention of this individual is motivated by acts that form part of the exercise of the human rights to freedom of opinion, expression, association and peaceful protest and demonstration. These rights are enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Constitution of the Bolivarian Republic of Venezuela. Mr. Rivero's right to protest against foreign interference in his country, to defend the territorial sovereignty of the Bolivarian Republic of Venezuela in the face of the presence and activity of soldiers from other States, to demonstrate and to protest and express disagreement with election results in a free and peaceful manner are acts protected by the aforementioned international instruments.

19. Moreover, Mr. Rivero was arrested without a warrant, the one that was subsequently issued did not specify the offences with which he was charged, he was not arrested in flagrante delicto and the right of his defence lawyers to information was seriously violated. According to the source, this constitutes a serious infringement of international procedural principles and standards regarding the right to a fair and impartial trial.

20. The source adds that the norm establishing that detainees must be brought promptly before a judge following their arrest was not respected.

21. The source also points out that the judge is provisional and the prosecutors are employed on an interim basis. In other words, they are appointed in the absence of any competitive process and do not enjoy job stability. Consequently, they do not meet the conditions of impartiality and independence that international standards require.

22. Neither the existence of any offence nor Mr. Rivero's responsibility has been established, there is no danger of flight or risk that the defendant might hinder criminal investigations.

23. The source concludes that Mr. Rivero's detention is arbitrary.

#### *Response from the Government*

24. In its reply, for which the Working Group expresses its appreciation, the Government maintains that there was an arrest warrant for Mr. Rivero dated 27 April 2013, requested by the Public Prosecution Service and addressed to the Second Court of Investigation of Caracas because of alleged links to the violent acts that occurred after the elections on 14 April 2013.

25. It adds that the charges brought were for public incitement to hatred and criminal association, which are offences under the Criminal Code and the Organized Crime and Financing of Terrorism Act. With that in mind, the Second Court of Investigation of the Caracas Metropolitan Area ordered pretrial detention for this individual.

26. The Government adds that on 17 May 2013 the circuit judge ordered Mr. Rivero's conditional release, and that on 31 May 2013 the measure was replaced by the prohibition against leaving the metropolitan area or the country and the requirement to sign in every eight days.

#### *Comments from the source*

27. The source has not commented on the Government's report.

#### **Discussion**

28. There are three fundamental discrepancies between the sets of information supplied by the source and by the Government, having to do with: (a) whether or not there was an arrest warrant existed for Mr. Rivero, a retired general and current leader of the political opposition to the

Government elected in April 2013; (b) whether Mr. Rivero had access to his lawyers from the outset of the proceedings against him; (c) the reasons for depriving the defendant of his liberty.

29. With regard to the first point, the Working Group understands from the source's account that Mr. Rivero was summoned to make a statement to the Bolivarian National Intelligence Service (SEBIN), which he accepted. When he reached the headquarters, he was arrested, and only later was he shown the arrest warrant, which, according to the source, was issued afterwards. In the Working Group's view, it is not possible to determine whether the arrest warrant was issued before or after the deprivation of liberty; nevertheless it is reasonable to think that the warrant might have been ordered as a result of the very statements that the defendant was making at that moment. During his appearance on 27 April 2013, Mr. Rivero gave a statement regarding the incidents cited by the Government, after which he was shown the arrest warrant issued by the judge of the Second Court of First Instance with investigative powers and national jurisdiction in the area of counter-terrorism of Caracas.

30. The source states the absence of a lawyer, that persisted during the first two days of detention, that the lawyer was denied access to information regarding the reasons for the arrest warrant, and that the lawyer was not shown the warrant, which, in the Working Group's opinion, constitutes a serious breach of the human right to a defence, guaranteed by article 14 paragraph 3 (b), of the International Covenant on Civil and Political Rights, and by principles 11, 12, 15, 17, 18, 23, 25, 32 and 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The violation of the human right to a defence in criminal cases amounts to non-observance of the international norms relating to the right to a fair trial, and is of such gravity as to give the deprivation of liberty an arbitrary character, in accordance with the terms of category III of the Working Group's methods of work.

31. As to the reasons for the deprivation of liberty, the source contends that it is due to Mr. Rivero's membership of the political party Voluntad Popular, which is part of the opposition coalition Mesa de la Unidad Democrática, of which Mr. Rivero is a leading member and which supported the opposition candidate in the presidential election of April 2013. The Government, meanwhile, maintains that it was because of his alleged involvement in acts of violence - on which it does not elaborate - as well as public incitement to hatred and criminal association, offences provided for and punishable under article 37 of the Organized Crime and Financing of Terrorism Act.

32. The extreme ambiguity of the charges brought against a leading member of a political party opposed to the Government allows the Working Group to consider that the detention stemmed from Mr. Rivero's political affiliation. The charges of "involvement in acts of violence" (unspecified), "public incitement to hatred" and "criminal association", with no decision on, or explanation of, the material fact of which he is accused, leave the Working Group no option but to conclude that the deprivation of this individual's liberty results from the legitimate exercise of the human rights to freedom of opinion, expression, assembly, association and participation in public affairs, which are guaranteed under articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 18, 19, 20, 21 and 25 of the International Covenant on Civil and Political Rights.

33. The facts set out in the preceding paragraph constitute a denial of the aforementioned human rights, in accordance with category II of the categories applied by the Working Group to consideration of the cases submitted to it. The deprivation of Mr. Rivero's liberty results from the exercise of his rights to freedom of opinion, expression, association, assembly and political participation in the public affairs of the country.

34. The Working Group believes that replacing the measures of deprivation of Mr. Rivero's liberty with conditional release, and later with a prohibition against leaving the metropolitan area of Caracas or the country and the requirement to appear and sign in every eight days, without prejudice to compliance with article 9, paragraph 3, of the Covenant, has the same arbitrary character as the deprivation of liberty.

#### **Disposition**

35. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The actual deprivation of liberty of Antonio José Rivero González from 27 April to 31 May 2013, in addition to the restrictions placed on his personal freedom, namely the order of conditional release of 17 May 2013, the prohibition against leaving the metropolitan area of Caracas or the country and the requirement to sign in every eight days, ordered by the competent tribunal on 31 May 2013, constitute arbitrary deprivation of liberty, in accordance with categories II and III of the Working Group's methods of work.

36. Accordingly, the Working Group recommends that the Government of the Bolivarian Republic of Venezuela:

- (a) Order the termination of proceedings against Antonio José Rivero González and the end of his unconditional release, and order his immediate release without restrictions;
- (b) Grant the individual in question just compensation for the damages caused by the violation of his rights.

[Adopted on 18 November 2013]