

Opinion No. 18/2017

concerning Yon Alexander Goicoechea Lara (Bolivarian Republic of Venezuela)

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/30/69), on 21 December 2016 the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Yon Alexander Goicoechea Lara. The Government replied to the communication later than the deadline, on 7 March 2017. 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) (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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Yon Alexander Goicoechea Lara was born in Caracas on X November XXXX; he is a Venezuelan political leader and attorney. He was one of the main leaders of the Venezuelan student movement in 2007 and played a prominent role in the rejection of the constitutional reform of that same year, which was being promoted by the then president Hugo Chávez. In 2008, Mr. Goicoechea was awarded the Milton Friedman Prize for Advancing Liberty by the Cato Institute of the United States of America. He founded the non-governmental organization Futuro Presente, which is dedicated to leadership training and the promotion of democratic values among young Venezuelans.

5. Mr. Goicoechea was president of the Youth Institute of the Caracas Metropolitan Area Mayor's Office during the first mandate of Mayor Antonio Ledezma. He later undertook and completed a master's degree in energy law at Columbia University in the United States. In 2016, he returned to the Bolivarian Republic of Venezuela and became the leader of the political party Voluntad Popular, which is known for its criticism of the Government. This has cost the party the arrest of several of its leaders. Mr. Goicoechea is married and is the father of two children.

6. The source reports that, on 29 August 2016, at approximately 9:30 a.m., Mr. Goicoechea was intercepted by two white vans on the Pardos del Este motorway, at the crossing of the La Trinidad residential development, from which eight armed, plain-clothed individuals emerged, subsequently forcing him into one of the vehicles. The arrest was made without presentation of an arrest warrant and was therefore assumed to be a kidnapping. The source notes that the Constitution of the Bolivarian Republic of Venezuela (art. 44 (1)) establishes as a general principle that, in keeping with the human right to liberty of person, all arrests must be carried out by means of a warrant, except in case of flagrante delicto, for which no evidence has been provided in this case.

7. At 2 p.m. on the same day (29 August 2016), the mayor of the municipality of El Hatillo reported the disappearance of Mr. Goicoechea, stating that he was presumed to have been arrested by public officials of the General Directorate of Military Counter-Intelligence and of the Bolivarian National Intelligence Service (SEBIN).

8. Also on that day (29 August 2016), the political party in power (Partido Socialista Unido de Venezuela), in a partisan political rally in the State of Barinas, announced that the leader of the Voluntad Popular party, Mr. Goicoechea, had allegedly been arrested. The source notes that this was a political statement, which, despite being the only information available at the time, was perceived as unofficial because it had not been based on facts provided by an authorized State body (public prosecutor, police officer or judicial authority).

9. The source reports that on the evening of 29 August 2016, Mr. Goicoechea's relatives and lawyers went to various agencies of the police, the judicial branch and the Public Prosecution Service, none of which provided any information to suggest that Mr. Goicoechea had been arrested or was awaiting trial. At 11 p.m. on 29 August 2016, Mr. Goicoechea's relatives and lawyers received unofficial information to the effect that he was allegedly being detained at SEBIN headquarters in El Helicoide (Caracas). However, this information was inconsistent with that provided several hours earlier by the same law enforcement agency, which had denied that Mr. Goicoechea had been taken into custody.

10. The source also notes that, up to that point in time, there had been no personal or telephone contact whatsoever between Mr. Goicoechea and his family or lawyers. The source notes that Mr. Goicoechea's family had not been able to confirm reports concerning his whereabouts, since, at that point, they had not had any contact with him. Mr. Goicoechea's family and friends used his Twitter account to denounce that situation.

11. Similarly, up to that point, his lawyers did not have any official information concerning his whereabouts, the reasons for his arrest, the legal basis for his arrest by law enforcement agents or the status of his personal safety. This situation persisted even after his defence counsel lodged the respective complaints with the Public Prosecution Service, the national criminal courts and the Ombudsman's Office.

12. At 8 a.m. on 31 August 2017, Mr. Goicoechea's legal representatives returned to SEBIN headquarters in El Helicoide (Caracas), given that Mr. Goicoechea was presumed to have been arbitrarily deprived of his liberty there. However, the source states that the officials of that law enforcement agency denied on that occasion that Mr. Goicoechea was or had at any time been detained in the compound. The source notes that this was what led to the idea that Mr. Goicoechea might have been subjected to enforced disappearance at the hands of State officials.

13. Upon the expiration of the 48-hour deadline prescribed by the Constitution for presentment of a detained person before a judge, Mr. Goicoechea had still not been brought before any judicial authority. His defence counsel consequently lodged an urgent application for a writ of habeas corpus before the appropriate legal authorities, lodging it also before the office of the prosecutor specializing in fundamental rights that is attached to the Public Prosecution Service and before the Ombudsman's Office.

14. The source states that, since more than 56 hours had elapsed since Mr. Goicoechea's arrest and detention, and since there continued to be no information available concerning his whereabouts, his case could be regarded as a temporary enforced disappearance, as defined by the Working Group on Enforced or Involuntary Disappearances.

15. After more than 56 hours since the time of his arbitrary arrest, Mr. Goicoechea was finally brought before a judicial authority, on the night of 31 August 2016, at which time his family and defence counsel were first able to have contact with him and confirm his whereabouts (SEBIN, El Helicoide, Caracas). However, his hearing before a judge, which is required by law, was not held at that time because the Public Prosecution Service had requested its deferral, which had been granted by the court. The hearing was postponed by 48 hours.

16. According to the source, the deferral of the hearing was granted on 31 August 2016, and the hearing was conducted on the afternoon of 2 September 2016, at which time Mr. Goicoechea's defence counsel was informed of the charges against Mr. Goicoechea and the type of legal proceeding implemented. At this hearing, the Public Prosecution Service laid formal charges against Mr. Goicoechea and requested his pretrial detention. This accusation and request were granted in full by the procedural court, which, in addition, dismissed the claims of arbitrary detention and due process violations lodged by Mr. Goicoechea and his defence counsel.

17. While being escorted to appear in court for the first time on the night of 31 August 2016, Mr. Goicoechea described the conditions in which he had been detained for the 56 hours of his enforced disappearance. The source reports that Mr. Goicoechea's prison cell at the SEBIN compound (El Helicoide, Caracas) measured 2 m by 1.5 m and had a small barred window measuring 20 cm x 30 cm that was placed at a height of 2 m and looked out on to an internal corridor. Mr. Goicoechea had no access to sunlight, and his cell was infested with roaches. It was very cold in the cell. Mr. Goicoechea was held incommunicado, given that he was not allowed any form of communication with his family or his lawyers. He was not allowed to go to the toilet when necessary, and when he was allowed to do so, the other prisoners were locked in their cells in order to prevent them from having any contact with him. Black bags were used to block his view through the small internal window of his cell. Despite this situation, he was forced to sign a document stating that his rights had been respected. He signed the document under coercion and the threat of being kept in solitary confinement for additional days or even months if he failed to do so.

18. The source adds that, on 2 September 2016 at 7 p.m., at the conclusion of the hearing, Mr. Goicoechea was transferred back to the SEBIN headquarters, El Helicoide, and from that date until 7 September 2016 he was held incommunicado from his family and defence counsel, given that he was not allowed to have visitors. His family and defence counsel had no information concerning his physical integrity. They reported this situation to the local authorities but did not receive any response. They also had no information as to whether the authorities at the facility where Mr. Goicoechea was imprisoned were providing him with the medicines he needs on a daily basis to control his chronic blood pressure condition or whether they were doing so according to the appropriate schedule.

19. Mr. Goicoechea was held in the conditions described previously for nine days, from 29 August 2016 to 7 September 2016, in the cell at the SEBIN El Helicoide facility. On 7 September 2016, he was transferred to an office space in the same prison facility.

20. The source explains that, on the night of 6 September 2016, Mr. Goicoechea was transferred to an L-shaped internal office of SEBIN in El Helicoide, where he remains to this day. The office has a small mattress on the floor where Mr. Goicoechea sleeps, a small case where he keeps his belongings, a table and chairs, and a window that provides partial and indirect sunlight, looks out on to the police parking lot of the prison facility and is usually kept closed by the officials. He is allowed to use the toilet when necessary. In short, Mr. Goicoechea has access to restricted sunlight and to a toilet, and is severely restricted with regard to going out to the courtyard and speaking with other prisoners. In this office, Mr. Goicoechea is deprived of social contact most of the time, since he is prohibited from interacting or communicating with other prisoners in the prison facility 24 hours a day.

21. The source adds that the office in which Mr. Goicoechea is kept is accessed 24 hours a day by officers of the Service, who use it continuously to carry out their usual tasks related to monitoring police procedures. As a result, Mr. Goicoechea has no privacy at any time of the day and is subjected to constant interruptions in the early hours of the morning, which often make it impossible for him to sleep.

22. According to the source, on 30 September 2016, Mr. Goicoechea was allowed to go out to the courtyard in order to breathe fresh air for the first time since his detention. This particular outing lasted an hour, during which he was filmed by a SEBIN agent from a distance of less than 1 m as a form of harassment. Several days later, on Sunday, 2 October 2016, and on Friday, 7 October 2016, Mr. Goicoechea was allowed to go out to the courtyard, in both cases for 30 minutes, while being filmed and subjected to harassment. This situation has continued to this day in similar conditions.

23. Beginning on Wednesday, 7 September 2016, after the ninth day of his imprisonment, Mr. Goicoechea's relatives were allowed to visit him in El Helicoide. On 8 September 2016, his legal team was given access to their client. The source reports that, since the time Mr. Goicoechea has been allowed visits from his family and lawyers, these visits have been carried out in the same office where he is being kept, which means that there is no privacy, since they take place in the presence of officials working in that office.

24. On Monday, 6 September 2016, the mayor of the municipality of El Hatillo, together with leaders and deputies of the Voluntad Popular party, joined Mr. Goicoechea's family in publicly denouncing Mr. Goicoechea's conditions of detention, in the areas surrounding El Helicoide.

25. Mr. Goicoechea's family has also continuously denounced the obstacles imposed on them each time they visit him, specifying that the SEBIN officials responsible for monitoring visits have refused to record their names in the register of detainees' visiting family members, so that whenever they decide to visit Mr. Goicoechea, they are required to wait without any justification for one or two hours until the order is given for them to come in and see him, thereby arbitrarily curtailing the time available for the visit.

26. Furthermore, the source reports that, for more than a month, SEBIN prevented the swearing in of an additional defence lawyer for Mr. Goicoechea, a situation that persists to this day.

27. The source adds that Mr. Goicoechea was diagnosed with systemic arterial hypertension at the age of 18. This condition can create any of a number of cardiac or cerebrovascular complications if not treated properly. For this reason, Mr. Goicoechea must take a specific medicine every day without fail in order to control his blood pressure, and it is also advisable for his blood pressure to be measured regularly in order to detect any fluctuations. Until now, he has been given his pill on a regular basis, thanks to the fact that his family has been able to bring him his medications in a timely manner. Nevertheless, Mr. Goicoechea has not been able to be examined by a doctor of his choice, and no information is available as to whether, when he is placed in solitary confinement, his treatment is administered properly.

28. On 20 October 2016, the court responsible for ensuring compliance with criminal procedure that was in charge of the case issued an order for Mr. Goicoechea's release, thereby granting a request made by his defence counsel. The release order it issued consists of a non-custodial preventive measure that is in conformity with the Code of Criminal Procedure.

29. According to the source, this release was ordered because the statutory period of 45 calendar days, within which the prosecution must present its conclusive decision following the investigation, expired on 17 October 2016, without any charges having been brought against Mr. Goicoechea. Consequently, his defence counsel requested his release, in accordance with article 250 of the Code of Criminal Procedure, which provides that, if the judge decides to maintain the order of pretrial detention during the initial phase of proceedings, the prosecutor is required to lay, suspend or, if necessary, drop charges within 45 days of the judge's decision, and if that period expires and the prosecutor has not laid charges, the detainee is released.

30. The source reports that all legal requirements and formalities for executing the release order for release have been fulfilled, thereby providing legally for the immediate release of Mr. Goicoechea. However, as of the date of the transmission of the communication, Mr. Goicoechea was still in custody.

31. The source concludes that the serious violations of Mr. Goicoechea's human rights, in particular his rights to liberty of person, due process, freedom of expression and freedom of association, amount to violations on the part of the Government of international human rights treaties signed and ratified by the Bolivarian Republic of Venezuela, as well as of the Constitution itself and of the minimum standards of procedure set forth in the domestic law. Among others, there has been an

infringement of articles 9, 11 (1), 19 and 20, of the Universal Declaration of Human Rights; articles 9 (1), 14 (2) and (3) (b) and (c), 19 and 22, of the International Covenant on Civil and Political Rights; articles 7 (1) and (2), 8 (2) (b) and (d), 13 (1) and 16, of the American Convention on Human Rights; article 11 of the Inter-American Convention on Forced Disappearance of Persons; articles 4 and 26 of the American Declaration on the Rights and Duties of Man; articles 44 (1) and (2), 49 (2), 52 and 57, of the Constitution of the Bolivarian Republic of Venezuela; and articles 1, 8, 10, 119 (6) and (7), and 127, of the Code of Criminal Procedure.

32. The source concludes that the detention of Mr. Goicoechea is arbitrary under categories I, II, III and V of the categories applied by the Working Group.

Response from the Government

33. The Working Group did not receive a response from the Government within the time limit of 60 days, which had been set at 22 February 2017, nor did it receive any expression by the Government of its desire for an extension of the time limit or the reasons for requesting one in order to reply to the communication from the source, as provided for in paragraph 16 of the methods of work.

Discussion

34. Even though no response was received from the Government prior to the expiry of the time limit, the Working Group has decided to render the present opinion on the basis of all the information it has obtained, in conformity with paragraph 16 of its methods of work. To that effect, the Working Group will consider as prima facie credible the allegations made by the source that are not inconsistent with the rest of the information available to it for its consideration of the case.

35. Yon Alexander Goicoechea Lara was born in Caracas on X November XXXX; he is a Venezuelan political leader, founder of a civil society organization and attorney. He has held public office and is a member of the leadership of the opposition political party Voluntad Popular, several of whose leaders have been arbitrarily deprived of their liberty.

36. The Working Group understands that, on 29 August 2016, at approximately 9.30 p.m., Mr. Goicoechea was intercepted by two white vans, from which eight armed plain-clothed individuals emerged, subsequently forcing him into one of the vehicles. This arrest was carried out without Mr. Goicoechea being shown an arrest warrant. Immediately thereafter, he was driven to a SEBIN facility, where he was taken into custody in the building known as El Helicoide (Caracas). In view of the fact that the Government was unable to invoke any legal basis as justification for Mr. Goicoechea's arrest, the Working Group considers that this is a case of arbitrary detention under category I of its methods of work.

37. The Working Group understands that Mr. Goicoechea was brought before a judicial authority on the night of 31 August 2016, when he had contact for the first time with his defence counsel and family members. After having been postponed, the required hearing took place on the evening of 2 September 2016, at which time criminal charges were laid against Mr. Goicoechea.

38. The Working Group recalls that, in accordance with applicable international law, all arrested persons have the right to be informed, at the time of arrest, of the reasons for their arrest and promptly informed of any charges against them. This implies that, when the authorities are unable to inform an individual, at the time of arrest, of the charges against him or her, including the legal basis for them, because, for example, of the circumstances in which the arrest was carried out, they must do so within the next few hours at the most.¹ The Working Group agrees with the following statement of the Human Rights Committee that "one major purpose of requiring that all arrested persons be informed of the reasons for the arrest is to enable them to seek release if they believe that the reasons given are invalid or unfounded. The reasons must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim. The 'reasons' concern the official basis for the arrest, not the subjective motivations of the arresting officer."²

39. The Working Group also recalls that all persons have the right to be assisted by a lawyer of their choice at any time during their detention, including immediately after being arrested. The authorities, in turn, have the obligation to inform persons of this right as from the moment of their arrest and to ensure their effective exercise of it.³

40. Based on the information available to it for examining the present case, the Working Group is of the view that Mr. Goicoechea was not promptly informed of any charge or accusation against him, nor was he granted access to his lawyer as from the time immediately following his arrest. Instead, this access was not granted until several days later. In addition to contravening articles 9 to 11 of the Universal Declaration of Human Rights, and 9 and 14 of the International Covenant on Civil and Political Rights, the foregoing constitutes a failure to observe 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 under category III of the methods of work.

41. The Working Group notes that, on 20 October 2016, the court authorized to ensure compliance with criminal procedure that was in charge of the case issued a release order for Mr. Goicoechea (who had been arrested on 29 August), consisting of a non-custodial preventive measure, in conformity with article 250 of the Code of Criminal Procedure. The order was issued taking into account the expiry on 17 October 2016 of the statutory deadline of 45 calendar days within which the Public Prosecution Service must submit its decision following investigation, including the possibility of the laying of charges against Mr. Goicoechea. The failure to submit such a decision entailed the obligation to immediately release the detainee.

42. This order by the court means that the entire duration of Mr. Goicoechea's deprivation of liberty is to be considered as arbitrary, since it is impossible to invoke any legal basis justifying the lawfulness of his detention. The Working Group is of the view that Mr. Goicoechea's detention is arbitrary under category I of its methods of work.

43. In recent years, the Working Group has repeatedly expressed its views concerning numerous instances of the arbitrary detention of a person for having exercised his or her human rights in the Bolivarian Republic of Venezuela, such as the right to freedom of opinion and expression, the rights to freedom of association and of assembly, and the right to political participation.⁴ In the opinion of the Working Group, this amounts to a systematic practice on the part of the Government of depriving political opponents of their physical liberty, in contravention of fundamental standards of international law, such as those contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

44. On the basis of the information available to it, including the cases referred to previously, the Working Group considers that Mr. Goicoechea's detention by the Government is arbitrary under category V of its methods of work, inasmuch as it is based on political opinion, expressed through membership in the Voluntad Popular political party, which is contrary to international laws prohibiting discrimination and therefore violates the principle of the equality of human beings.

Disposition

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

The deprivation of liberty of Yon Alexander Goicoechea Lara, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

46. The Working Group requests the Government of the Bolivarian Republic of Venezuela to take the steps necessary to remedy the situation of Mr. Goicoechea 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.

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

Follow-up procedure

48. 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 follow-up action taken on the recommendations made in the present opinion, including:

- (a) Whether Mr. Goicoechea has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Goicoechea;
- (c) Whether an investigation has been conducted into the violation of Mr. Goicoechea's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Bolivarian Republic of Venezuela with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

49. 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.

50. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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 will 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.

51. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.⁵

[Adopted on 24 April 2017]

¹See A/HRC/WGAD/2016/57, para. 107.

²CCPR/C/GC/35, para. 25.

³United 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, principle 9.

⁴Opinion nos. 27/2015 (Antonio José Ledezma Díaz); 26/2015 (Gerardo Ernesto Carrero Delgado, Gerardo Rafael Resplandor Veracierta, Nixon Alfonso Leal Toro, Carlos Pérez and Renzo David Prieto Ramírez); 7/2015 (Rosmit Mantilla); 1/2015 (Vincenzo Scarano Spisso); 51/2014 (Maikel Giovanni Rondón Romero and 316 others); 26/2014 (Leopoldo López); 29/2014 (Juan Carlos Nieto Quintero); 30/2014 (Daniel Omar Ceballos Morales); 47/2013 (Antonio José Rivero González); 56/2012 (César Daniel Camejo Blanco); 28/2012 (Raúl Leonardo Linares); 62/2011 (Sabino Romero Izarra); 65/2011 (Hernán José Sifontes Tovar, Ernesto Enrique Rangel Aguilera and Juan Carlos Carvallo Villegas); 27/2011 (Marcos Michel Siervo Sabarsky); 28/2011 (Miguel Eduardo Osío Zamora); 31/2010 (Santiago Giraldo Florez, Luis Carlos Cossio, Cruz Elba Giraldo Florez, Isabel Giraldo Celedón, Secundino Andrés Cadavid, Dimas Oreyanos Lizcano and Omar Alexander Rey Pérez); and 10/2009 (Eligio Cedeño).

⁵See Human Rights Council resolution 24/7, paras. 3 and 7.