

Opinions adopted by the Working Group on Arbitrary Detention at its 97th session, August 28 to September 1, 2023

Opinion no. 46/2023, regarding Jean Alain Rodríguez Sánchez (Dominican Republic)

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. 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 last extended the mandate of the Working Group for three years in its resolution 51/8.
2. In accordance with its working methods, the Working Group transmitted a communication regarding Jean Alain Rodríguez Sánchez to the Government of the Dominican Republic on May 5, 2022. The Government responded after the established deadline, August 3, 2022. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group considers the deprivation of liberty arbitrary in the following cases:
 - a) When it is manifestly impossible to invoke any legal basis that justifies it (such as the maintenance of a person in prison after having served his sentence or despite an amnesty law that applies 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, with respect to the States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - c) When the non-observance, total or partial, of the international standards 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 severity that it confers arbitrary deprivation of liberty (category III);
 - d) When asylum seekers, immigrants or refugees are subject to prolonged administrative detention without the possibility of administrative or judicial examination or appeal (category IV);
 - e) When the deprivation of liberty constitutes a violation of international law because it involves discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or another condition, which leads or may lead to ignoring the principle of equality of human beings (category V).

I. Information received

a) Communication from the source

4. Jean Alain Rodríguez Sánchez is a national of the Dominican Republic, he is 46 years old, married and a lawyer by profession. He served as Attorney General of the Dominican Republic. He is currently detained in the Najayo prison, in that country.

i. Context

1. Mr. Rodríguez Sánchez was appointed Attorney General of the Dominican Republic in August 2016. In December of the same year, he ordered the initiation of an investigation into bribery of Dominican officials by the Brazilian company Odebrecht, for 92 million US dollars. Joined.
2. In December 2016, Brazil, the United States of America and Switzerland signed an agreement with the company Odebrecht, through which said company admitted having paid bribes to obtain the award of works in 12 countries, including the Dominican Republic. In January 2017, Mr. Rodríguez Sánchez, then Attorney General of the Republic, reported the beginning of the investigation.
3. In February 2017, Mr. Rodríguez Sánchez signed a cooperation agreement with Odebrecht, in which representatives of this company admitted having paid 92 million dollars in bribes to officials, and for which they agreed to pay 184 million dollars to the Dominican Republic.
4. On May 29, 2017, Mr. Rodríguez Sánchez presented the results of the investigation and arrest requests against 14 people, including businessmen, politicians, officials and a lawyer. Among them were officials who then belonged to the government party and officials who belonged to the opposition party.
5. On June 7, 2017, preventive detention was issued against ten people involved in the Odebrecht case in the Dominican Republic. These measures were later replaced.
6. On May 23, 2017, a judge (who is currently the Attorney General), requested by letter to the President of the Supreme Court of Justice that, in the event that the Odebrecht process reached the Supreme Court of Justice, not be considered for any participation either as a Special Investigative Judge or as a member of the plenary session, for being a friend of one of the accused. However, on July 6, 2017, she appeared in the Criminal Court to preside over a hearing of defendants in the Odebrecht case.
7. At the end of Mr. Rodríguez Sánchez's term as Attorney General, in 2020, the new president of the Dominican Republic appointed the aforementioned judge as the new Attorney General, who assumed office in August 2020.

ii. Arrest and detention

8. On June 24, 2021, Mr. Rodríguez Sánchez prepared to leave the Dominican Republic on a four-day trip. However, the plane's takeoff was suspended and passengers were informed that due to a technical failure they would have to disembark and wait for a new aircraft. After several hours of waiting, Mr. Rodríguez Sánchez was informed by an official from the National Department of Investigation that he could not leave the country on instructions from the Attorney General's Office, without a court order.
9. On June 28, 2021, the new Attorney General admitted the serious violation of fundamental rights against Mr. Rodríguez Sánchez, in what she described as an "abuse."

10. That same June 28, Mr. Rodríguez Sánchez reported being a victim of persecution, reiterated that he was at the disposal of the authorities and stated that he had not been informed of an investigation against him.
11. After Mr. Rodríguez Sánchez made such a public complaint, on June 28, at the request of the Attorney General's Office, a search of his home was carried out and even the home of other members of his family was intervened, in a disproportionate act. Despite this, Mr. Rodríguez Sánchez did not receive notification of the existence of an investigation against him or a summons to appear before the Attorney General's Office.
12. Given the lack of official notification or information, on June 29, 2021, Mr. Rodríguez Sánchez voluntarily decided to visit the offices of the Attorney General's Office, where he was detained, without being summoned, called or interrogated previously. and without being offered the details of what he is accused of or why he was arrested.
13. On June 29, 2021, the current Attorney General, publicly, recused herself from hearing the case of Mr. Rodríguez Sánchez. However, she continues in the operational and functional direction of the Attorney General's Office and is the hierarchical superior of the prosecutors acting in the procedure. The Attorney General allegedly assigned the case to a Prosecutor with a biased stance against Mr. Rodríguez Sánchez.
14. It is highlighted that officials of the State of the Dominican Republic have orchestrated a public discredit campaign against Mr. Rodríguez Sánchez, through public statements by the Prosecutor and his constant appearances before the media, which denotes the spirit to harm him. The police authorities who carried out the transfer from the prison to the court headquarters have used special forces and multiple vehicles, they placed a helmet and ballistic protection vest on him, exposing him as a highly dangerous criminal.
15. Defense lawyers have constantly denounced the existence of penal populist maneuvers as a State policy to keep Mr. Rodríguez Sánchez deprived of liberty, in violation of domestic law norms and to the detriment of fundamental rights.

iii. Judicial proceedings

16. According to the source, on June 30, 2021, one day after the deprivation of liberty of Mr. Rodríguez Sánchez, the Attorney General's Office asked a judge to issue a measure of personal coercion against him.
17. The Judge summoned the parties to an oral hearing on July 2, 2021, which was postponed and finally took place from July 10 to 12. During the development of the event, Mr. Rodríguez Sánchez's presentation, when he tried to exercise his right to be heard before a judge, was abruptly and systematically interrupted by the Prosecutor's Office. Mr. Rodríguez Sánchez was prevented from testifying in relation to events reported by the Attorney General's Office.

18. During the hearing to review the precautionary measure, Mr. Rodríguez Sánchez was prevented, at the time of his presentation, from making any comment in relation to a public deed that the Attorney General's Office had presented as alleged evidence against him. . Additionally, he was restricted to exclusively making a general declaration of his roots in the country. Mr. Rodríguez Sánchez tried to explain his innocence, but was prevented from doing so by the representative of the Attorney General's Office and under the order of the Judge of the Tenth Investigative Court in office of the Judicial Office of Permanent Attention Services of the National District .
19. On July 13, 2021, the Judge ordered to maintain the deprivation of liberty of Mr. Rodríguez Sánchez in the Najayo Hombres correctional prison.
20. The source expresses great concern about the fact that Mr. Rodríguez Sánchez is kept in the aforementioned prison, surrounded by prisoners who are there due to legal actions carried out by him during his tenure as an official of the judicial system. Due to the high danger of the other prisoners, the life and personal integrity of Mr. Rodríguez Sánchez is in serious and imminent danger, to which is added the progressive deterioration of his health.
21. During the development of the procedure related to the precautionary detention measure, on August 9, 2021, the defense lawyers filed an ordinary appeal, based on the serious violations of Mr. Rodríguez Sánchez's right to be heard and in the detriment to his right to be tried in freedom before an autonomous, independent and impartial judge.
22. On September 8, 2021, the hearing of the appeal presented by the defenders of Mr. Rodríguez Sánchez was held before the Criminal Chamber of the Court of Appeal of the National District. On that occasion, the Prosecutor again carried out another episode of serious infringement of the rights of the defense, by interrupting and obstructing the statement of Mr. Rodríguez Sánchez. At the end of the hearing, a ruling was issued by the Court of Appeal through which the challenged resolution was confirmed, expressly recognizing the violation of the rights of the defense. However, it was considered that said violation was corrected after the oral intervention of Mr. Rodríguez Sánchez had been allowed.
23. Against this judicial resolution, the defense filed an appeal, in which the complaint of the violation of the right to be heard and the distortion of the body of evidence was reiterated. The ruling of the Court of Appeals recognized the violation of the fundamental right to defense, which cannot be validated by acts of the parties to the process or third parties involved. This serious procedural defect can only be corrected by declaring absolute nullity and repeating the act, rendering null and void the procedural actions and judicial decisions issued as a consequence of the null act.
24. In addition to this, the source reports that in Mr. Rodríguez Sánchez's home, where other members of his family reside, including minors, death threats have been made, such as flower arrangements of cemetery. Likewise, property was stolen from inside his home by unknown persons. More serious was the murder, by gunshots, of Mr. Rodríguez Sánchez's bodyguard and trusted personnel. It is indicated that his family lives under permanent anguish and that,

although the corresponding complaints have been filed, no response has been obtained from the State or protection measures.

iv. Legal analysis

25. According to the source, Mr. Rodríguez Sánchez was arbitrarily detained and his case falls within categories I, III and V of the Working Group.

a. Category I

30. It is alleged that Mr. Rodríguez Sánchez's right to leave the country has been violated, through an immigration alert from the Attorney General's Office without a prior court order, in an act that has marked the beginning of a pattern of systematic violations of his fundamental rights.

31. Article 12, paragraphs 2 and 3, of the Covenant establishes the right to leave the country, without restrictions other than those provided for by law. This right is contemplated in article 46 of the Constitution.

32. Mr. Rodríguez Sánchez could only be restrained from his freedom, including his freedom of movement, by prior court order, as required by article 40, paragraph 1, of the Constitution. The act of preventing Mr. Rodríguez Pérez from leaving the country on June 24, 2021 was arbitrary, as it was ordered by the Attorney General's Office and executed by the immigration authorities.

33. The source highlights that, in October 2020, Mr. Rodríguez Sánchez left the country and returned, which demonstrates his willingness to maintain his residence and roots in the Dominican Republic. The Attorney General's Office began an investigation related to alleged irregularities that occurred during Mr. Rodríguez Sánchez's tenure as Attorney General and initiated an investigation behind his back. He was not informed of the existence of the procedure nor was he called to present a statement, all of which makes his defense impossible.

34. Mr. Rodríguez Sánchez, on the morning of June 29, 2021, announced that he would appear before the Attorney General's Office. In the afternoon, the Attorney General's Office requested an arrest warrant against him, without having notified him of the existence of the investigation.

35. On June 28, 2021, in the afternoon, the Interim Coordinating Judge of the Investigative Courts of the National District in her duties as Investigating Judge authorized the Attorney General's Office to arrest the victim, despite having no evidence of that the person under investigation had been notified or summoned to testify and that he had not appeared.

36. Article 223 of the Criminal Procedure Code contemplates the summons of the accused with a precise indication of the attributed fact and the object of the act, which was not carried out.

37. It is alleged that this circumstance violated the right of Mr. Rodríguez Sánchez to know the facts for which he is being investigated, to be provided with a defense attorney and to proceed to defend himself from the initial acts of the investigation. The materialization of said arrest warrant under such conditions constitutes an arbitrary detention.

38. The source indicates that the detention of Mr. Rodríguez Sánchez was completed on June 29, 2021, when he voluntarily appeared before the Attorney General's Office, without being aware that an arrest warrant had been issued against him hours before.

39. On the night of June 30, 2021, the Attorney General's Office wrote to the Interim Coordinating Judge of the Investigative Courts of the National District, in order to request preventive detention. The hearing was set for July 2, was postponed, and was finally held from July 10 to 12, 2021.

40. It is alleged that Mr. Rodríguez Sánchez was arrested on June 29, 2021 and was presented before the Judge on July 10, 11 days after his deprivation of liberty. That was the first opportunity that he had to appear before the Judge and try to exercise his right to be heard, a right that was also violated during the act.

41. The Covenant provides, in article 9, paragraph 3, for the right of the detained person to be brought without delay before a judge. This right is regulated in the Constitution, in article 40, paragraph 5, which establishes that "[a]ny person deprived of his liberty will be submitted to the competent judicial authority within forty-eight hours of his arrest or arrest. freedom. The competent judicial authority will notify the interested party, within the same period, of the decision issued for this purpose." Article 95, paragraph 7, of the Criminal Procedure Code establishes the right of the accused to be presented before the judge or the public prosecutor without delay and always within the deadlines established by said code.

42. This right to be brought before a judge without delay materializes only when the detainee is personally brought before a competent judge, and is not guaranteed by the simple sending of the request for a measure of personal coercion by the Attorney General's Office. The Code of Criminal Procedure establishes "being presented", this implies direct contact of the accused/judge, it can be in person or by telepresence, as long as audiovisual contact is guaranteed between the parties to the act, including the representation of the Attorney General's Office and the Defense Council of the State.

43. The source indicates that the Constitution and criminal procedural rules provide for a maximum period of 48 hours for the effective presentation of the detainee before the judge. In the case of Mr. Rodríguez Sánchez, said deadline expired, since having been detained on June 29, 2021, he should have been presented before the judge through an oral hearing no later than July 1. Holding the presentation ceremony after 11 days of his deprivation of liberty has violated the right to be presented before the judge without delay, therefore, his detention is arbitrary.

b. Category III

44. It is reported that during the development of the first hearing before the Interim Coordinating Judge of the Investigative Courts of the National District, held between July 10 and 12, 2021, during the presentation of Mr. Rodríguez Sánchez, on the 12th July, he was subjected to acts of coercion and pressure by the representative of the Attorney General's Office, which prevented him from being heard by the Judge. According to the source, the Judge, far from preventing the violation of the accused's right to defense, consented to it by issuing a ruling that prevented Mr. Rodríguez Sánchez from his right to defense.

45. The source claims that Mr. Rodríguez Sánchez's right to be heard with due guarantees by a competent, independent and impartial tribunal has been violated in accordance with the provisions of article 14, paragraph 1, of the Covenant, read together with the Articles 102 and 103 of the Criminal Procedure Code of the Dominican Republic, which grant the accused the right to testify at

any time during the procedure and establish the judge's duty to allow him to testify as many times as he expresses interest in doing so.

46. This violation of Mr. Rodríguez Sánchez's fundamental rights has been argued by his defenders as a reason for nullity of the procedure and the State authorities have recognized the violation of this right and have considered that it has been corrected by the subsequent intervention of the accused. during the procedure. This, without taking into consideration that the violation of the rights of the accused, concerning his assistance and representation, can only be remedied or corrected by declaring the act null and void and its repetition under conditions of effective protection of the rights of the parties. of the criminal process.

47. Article 9, paragraphs 1 and 2, of the Covenant provides that no one may be deprived of his liberty, except for reasons established by law and in accordance with the procedure established therein, and that any person detained shall be informed, at the time of her arrest, of the reasons for it, and notified, without delay, of the accusation made against her.

48. According to the source, the circumstances of Mr. Rodríguez Sánchez's detention violate national and international rules of due process. He was arrested by surprise, he had not been summoned or informed of the accusations against him previously. Therefore, he did not have detailed knowledge of the reason why he was detained or that there was an investigation against him.

49. According to article 9, paragraph 3, of the Covenant, preventive detention must be exceptional and of short duration, and release must be favored when measures exist to guarantee the presence of the accused at the trial and the execution of the sentence. By prolonging preventive detention, the presumption in favor of a free trial increases.

50. Article 9, paragraph 3, of the Covenant requires that a reasoned judicial decision examine the merits of pre-trial detention in each case. This provision also establishes that freedom may be subordinated to guarantees that ensure the appearance of the accused at the trial, or at any time during the procedural proceedings and, where appropriate, for the execution of the ruling. Preventive detention should be an exception in the interests of justice.

51. According to the source, in the Dominican criminal procedure preventive detention is considered as the last option and the absence of roots in the country constitutes a basis for its origin. Several of those investigated in the same case for which Mr. Rodríguez Sánchez is being investigated have been allowed to be investigated under house arrest.

52. In order to keep Mr. Rodríguez Sánchez detained, the judicial authority indicated that he represented a risk of withdrawing from the process, due to the high profile of the institutional function that he previously performed. It is alleged that the status of a former public official cannot be considered an indication of a presumption of flight risk, which places former State officials in a disadvantageous position due to discrimination.

53. The performance of a public function constitutes part of the personal, family, economic and professional roots, which, combined with the absence of social danger, makes the issuance of an arrest warrant for the purposes of subjection to criminal proceedings unfeasible. It is alleged that what happened in this case violates Mr. Rodríguez Sánchez's right to be tried in freedom.

54. Likewise, given that he was exercising a private professional activity lacking authority or a position of power, Mr. Rodríguez Sánchez has no capacity to hinder the investigation.

55. It is alleged that the judicial authorities and the Attorney General's Office did not take into consideration the conditions required by the Dominican criminal law, which urge the judge to take into account especially the roots in the country, which is determined by the domicile, the settlement of family, work and the facilities to leave the country or remain hidden; as well as the attitude adopted by the accused during the procedure, to the extent that it indicates his willingness to submit or not to criminal prosecution.

56. Mr. Rodríguez Sánchez has roots in the Dominican Republic, where he has his usual domicile, his family resides and he served as Attorney General. Therefore, the Dominican Republic is the center of his activities.

57. It would not be easy for Mr. Rodríguez Sánchez to leave the country or remain hidden because he is easily recognizable by any citizen and because of the great security deployment to which he would probably be subjected, as he is currently subjected in each country. of judicial transfers, which also goes against their right to the presumption of innocence and against their human dignity.

58. In the opinion of the source, the attitude demonstrated by Mr. Rodríguez Sánchez, even before the start of the procedure, has been one of complete transparency with justice. Mr. Rodríguez Sánchez appeared before the Attorney General's Office voluntarily with the intention of collaborating with justice.

59. The Inter-American Court of Human Rights has addressed the presumption of risk of flight concluding that a detailed examination of the specific circumstances of the case must be applied, the component elements of the risk of flight must also be established using reasonable arguments and concrete evidence must be provided. that supports the presumption of escape. In the absence of these elements, the detention of Mr. Rodríguez Sánchez is arbitrary in accordance with the norms of international human rights law.

60. The source alleges that the criteria of competence, impartiality and independence, and, in general, the guarantees of a fair trial required of judges are also applicable to prosecutors, since they perform an essential task in the administration of justice and in the fight against crime.

61. The source emphasizes that prosecutors have the duty to carry out their duties impartially, firmly and promptly, to respect and protect human dignity and to defend human rights. Among their obligations is that of acting objectively. The source underlines the relevance of the active role of prosecutors in criminal procedure, including the initiation of a procedure, the investigation of crimes, supervision of the legality of proceedings, supervision of the execution of judicial rulings and the exercise of other functions as representatives of the public interest.

62. The source alleges that, in the case of Mr. Rodríguez Sánchez, the criterion of impartiality required of prosecutors has not been met before the start of the process, for example, with the arbitrary order given by the Attorney General's Office of the Dominican Republic. of violating Mr. Rodríguez Sánchez's right to freedom of movement, preventing him from traveling with his family.

63. The source mentions that the Prosecutor, who intervenes during the criminal process as Deputy Attorney General and Director of Prosecution of said entity, was the protagonist of public and notorious criticism against Mr. Rodríguez Sánchez during his management as Attorney General, by refusing to participate in the public competition for the replacement of the 33 court attorneys carried out by the Superior Council of the Public Ministry.

64. It is alleged that the impartiality of the Attorney General's Office is questionable when taking into account some factors, such as the deep friendly relationship between the Attorney General and the former Minister of Public Works, under whose management most of the works of the company Odebrecht, and that was accused and accused by Mr. Rodríguez Sánchez.

65. It is indicated that, in March 2019, the then judge and now Attorney General competed to continue in the Supreme Court of Justice, but the National Council of the Judiciary decided that she did not meet the conditions to remain as a member.

66. According to the source, in said contest, letters were revealed from the then Attorney General of the Republic that questioned the assets of the judge and her connection with the former Minister of Public Works, as well as her connection with some cases of drug trafficking. persecuted in the country.

67. The source alleges that, although the Attorney General does not personally handle the accusation, the Attorney General of the Nation has the power to appoint and remove officials reporting to her; directly assume investigations and processes, freely assign and move its officials in investigations and processes, as well as determine the criteria and position of the Prosecutor's Office. This implies that the prosecutors are subordinate to the Attorney General, although he does not intervene personally, he does so through the mediation of lower level officials who depend on him and owe him functional obedience.

68. As an example of the preconceived bias against Mr. Rodríguez Sánchez, the source indicates that, during the hearing to review the precautionary measure, he was constantly interrupted by the Prosecutor's Office, which prevented him from testifying, which directly affected your right to defense.

69. Furthermore, the source highlights that the Attorney General's Office has failed to fulfill its duty to provide Mr. Rodríguez Sánchez's defenders with the information they requested in relation to the investigation being carried out against him. It is alleged that this not only constitutes another violation of Mr. Rodríguez Sánchez's right to defense, but also shows that the only interest of the Attorney General's Office is to keep him in detention, it is not intended to investigate the facts and obtain the truth.

70. Mr. Rodríguez Sánchez is detained in the Najayo prison, surrounded by people who he investigated as Attorney General, for which he contributed to his imprisonment or who are associates of those whom he investigated. He has been placed in a common cell, which they have called maximum security, but which is located in the same cell and enclosure as 800 other inmates.

71. Among these 800 inmates are convicted drug traffickers who were arrested by order of Mr. Rodríguez Sánchez and who have threatened him. There are also other defendants accused of

money laundering and drug trafficking, linked to a criminal organization that Mr. Rodríguez Sánchez investigated when he was Attorney General.

72. The source highlights the case of an individual who was identified in August 2018 by the United States Department of State as the leader of an international drug trafficking network and other crimes, which include money laundering and trafficking. people. On December 2, 2019, this person was captured by the Colombian Police and the Attorney General's Office, in an operation coordinated with Mr. Rodríguez Sánchez, then Attorney General of the Republic. As of this date, this individual has published several audios on social media indicating threats against the person who, at the time, organized and managed to capture him.

73. Additionally, on the same floor and with access to Mr. Rodríguez Sánchez during the day is an accused of murder, whose extradition Mr. Rodríguez Sánchez requested to the United States of America.

74. It is indicated that the public function that Mr. Rodríguez Sánchez performed places him in a situation of special vulnerability, finding himself in constant danger within the prison. This is not preferential or special treatment, but rather the State has the duty to guarantee his right to life and personal integrity.

75. According to the information received, the inmates of that prison have easy access to Mr. Rodríguez Sánchez, they also cook and serve his food (since he is not allowed to obtain his food from outside). For the source, this not only violates the United Nations Standard Minimum Rules for the Treatment of Prisoners, the American Convention on Human Rights and the Covenant, but also constitutes a conscious risk taken by the State to expose Mr. Rodríguez Sánchez to a possibly fatal danger, without any measure having been taken to protect it.

76. The source claims that when a pattern of persecution against a single person is confirmed, for example, in cases in which an individual is attacked on multiple occasions through arrests, acts of violence or threats, it is indicative of discrimination. Such discrimination exists in the case of Mr. Rodríguez Sánchez, who was repeatedly attacked even before his arrest.

77. The source alleges that on June 26, 2021, their right to free transit was restricted because, under orders from the Attorney General's Office, they were not allowed to leave the country, without identifying who had issued said arbitrary order.

78. The source recalls that the Working Group has held that discrimination and harassment based on occupation is an emerging category of discrimination and may form the basis of arbitrary detention under category V.

79. In the case of Mr. Rodríguez Sánchez, it is alleged that his detention is arbitrary in accordance with category V, given the retaliation that has materialized, by members of the State, through judicial harassment, due to the work that Mr. Rodríguez Sánchez carried out during the legitimate exercise of his profession as Attorney General.

80. The source indicates that the policies that Mr. Rodríguez Sánchez implemented against corruption—which led to the indictment of some—or his firm belief in transparent selection processes—which led to the disqualification of others from their positions in the judicial

institutions— were the reasons that motivated the actors to undertake retaliation against Mr. Rodríguez Sánchez. Therefore, these reasons are political in nature.

81. It is added that another indication that an arrest may be due to political discrimination is if the detainee is treated by the authorities in a way that reveals a prejudiced attitude. For example, through statements about the detainee or behavior towards him that reflect a discriminatory attitude. It is alleged that this has been demonstrated with the statements issued by the different actors involved in the process, the comments and decisions of the judges, as well as the prison conditions of Mr. Rodríguez Sánchez.

82. The source adds that a persecution was also unleashed against other officials and former officials of the Attorney General's Office. For example, the suspension of the Attorney General and the Director of Prosecution of the Attorney General's Office was carried out. Likewise, in the same matter, an arrest warrant has been issued against the person who served as Head of the Office of the Attorney General during the administration of Mr. Rodríguez Sánchez, under the same conditions of arbitrary persecution. Persecutions against specific groups also represent an example of political persecution.

83. In the opinion of the source, the detention of Mr. Rodríguez Sánchez should be considered arbitrary, taking into account the pattern of conduct that shows that he is being specifically attacked for political reasons, which constitutes a violation of the right to non-discrimination. and equality before the law, in accordance with category V.

b) Government Response

84. In order to be able to issue an opinion on the case described, the Working Group, in accordance with its working methods, transmitted the allegations of the source to the Government of the Dominican Republic on May 5, 2022, and requested to present a response no later than July 4, 2022. The Working Group also requested detailed information on the case of Mr. Rodríguez Sánchez, so that the Government could clarify the legal and factual bases that justified his detention, as well as its compatibility with the international human rights obligations of the State. The Government provided its response on August 3, 2022. The Working Group regrets that the Government did not respond to the communication within the established deadline.

85. Despite the Government's late response, and on the basis of all the information it has received, the Working Group will proceed to issue an opinion on the arrest and detention of Mr. Rodríguez Sánchez, in accordance with paragraph 16 of their work methods.

II. Deliberations

86. The Working Group has established in its jurisprudence its way of proceeding in relation to evidentiary issues. If the source has presented a prima facie case of violation of international human rights law that constitutes arbitrary detention, the burden of proof should be understood to be on the Government should it wish to refute the allegations. Mere assertions that national legal procedures have been followed are not sufficient to refute the source's allegations.

87. The Working Group wishes to reaffirm that States have the obligation to respect, protect and realize all human rights and fundamental freedoms, including personal liberty, and that any national

law permitting the deprivation of liberty must be developed and implemented in accordance with relevant international standards established in the Universal Declaration of Human Rights and other applicable international instruments. Accordingly, even if a detention complies with national laws, regulations and practices, the Working Group has the right and obligation to evaluate judicial procedures and the law itself to determine whether the detention is also consistent with the provisions relevant aspects of international human rights law.

a) Category I

88. The Working Group recalls that a detention is considered arbitrary in category I if it lacks a legal basis. As has already been pointed out above, for a deprivation of liberty to have a legal basis, it is not enough that there is a law that can authorize the detention. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.

89. In the present case, Mr. Rodríguez Sánchez appeared, voluntarily, before the Attorney General's Office on June 29, 2021 and it was only then that he was detained, based on an arrest warrant that had apparently been previously issued. From the description presented by the source, and not challenged by the Government in a timely manner, it appears that Mr. Rodríguez Sánchez was not properly presented with this arrest warrant at the time of his arrest on June 29, 2021, nor was he. They explained the reasons for this (see paras. 15 and 16). However, international law on deprivation of liberty includes the right to an arrest warrant, which is procedurally inherent to the right to liberty and security of the person and the prohibition of deprivation of liberty. arbitrary, under articles 3 and 9, respectively, of the Universal Declaration of Human Rights, article 9 of the Covenant, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons Subjected to Any Form of Detention or Prison.

90. Any form of detention or imprisonment must be ordered by, or subject to the effective control of, a judicial or other authority in accordance with the law, whose status and tenure must offer the greatest possible guarantees of competence, impartiality, and independence, in accordance with principle 4 of the Set of Principles for the Protection of All Persons Subjected to Any Form of Detention or Imprisonment. In the present case, although it appears that an arrest warrant was issued against Mr. Rodríguez Sánchez, he was detained without being properly presented with said arrest and without being notified of the reasons why he was being detained.

91. The Working Group notes that article 9, paragraph 2, of the Covenant establishes two requirements for the benefit of persons deprived of their liberty: first, they shall be informed, at the time of arrest, of the reasons for the same; and, secondly, they will be informed of the charges against them. As the Human Rights Committee explains, one of the main objectives of requiring that all detained persons be informed of the reasons for their detention is to allow them to request release if they consider that the reasons given are invalid or unfounded. While oral notification of the reasons for the arrest satisfies the requirement, such information must be provided immediately after the arrest.

92. Therefore, the Working Group concludes that, although there was an arrest warrant issued against Mr. Rodríguez Sánchez before his arrest on June 29, 2021, the Government in its late response stated that said warrant was issued existed—, he was not properly notified of this arrest warrant or explained to him the reasons for his arrest at the time it occurred, which violates the first element of article 9,

paragraph 2, of the Covenant. Accordingly, the Working Group finds a violation of article 9, paragraph 2, of the Covenant and principle 7 of the United Nations Basic Principles and Guidelines on Remedies and Procedures relating to the Rights of Anyone Deprived of Liberty to appeal to a court.

93. Finally, as the Working Group has repeatedly argued, to establish that a detention is truly lawful, any detained person has the right to challenge the legality of his or her detention before a court, as provided for in article 9, paragraph 4, of the Pact. The Working Group wishes to recall that, in accordance with the United Nations Basic Principles and Guidelines on Remedies and Procedures relating to the Right of Everyone Deprived of Liberty to Recourse to a Court, the right to challenge the legality of detention before a court is an autonomous human right, which is essential to preserve legality in a democratic society. This right, which is in fact a peremptory norm of international law, applies to all situations of deprivation of liberty, and must be granted without undue delay.

94. The Working Group recalls that, as noted by the Human Rights Committee, 48 hours is normally sufficient to satisfy the requirement to bring a detainee “without delay” before a judge or other official authorized by law after his or her arrest. Any delay longer than that mentioned must be absolutely exceptional and justified by the circumstances.

95. In the present case, Mr. Rodríguez Sánchez was detained on June 29, 2021, but did not have the opportunity to challenge the legality of his detention for almost two weeks, as he was not brought before a judge until July 10 2021, and the Government did not present reasons in a timely manner to justify this delay. The Working Group therefore finds that article 9, paragraph 4, of the Covenant has been violated.

96. The Working Group further considers that judicial supervision of detention is a fundamental safeguard of personal liberty and essential to ensuring that detention has a legal basis. Since Mr. Rodríguez Sánchez was unable to challenge his continued detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2, paragraph 3, of the Covenant was also violated.

97. Taking note of all of the above, the Working Group considers that the detention of Mr. Rodríguez Sánchez on June 29, 2021 is arbitrary and falls within category I.

b) Category III

98. The Working Group will now proceed to analyze whether the fundamental elements of a fair, independent and impartial trial have been respected during the course of the judicial procedure.

99. The right to a fair trial has been established, since the Universal Declaration of Human Rights, as one of the fundamental pillars of international law to protect people against arbitrary treatment. In that sense, every person has the right to be heard publicly in court, within a procedure in which the guarantees for his or her defense are respected, as well as to be tried by a competent, independent and impartial court.

100. The source has presented a series of allegations, which the Government has chosen not to address in a timely manner, relating to violations of Mr. Rodríguez Sánchez's right to the presumption of innocence. In particular, the Working Group is alarmed by the unrefuted accusations that both State officials and the Prosecutor made a series of public statements trying to discredit Mr. Rodríguez

Sánchez and that he was always transported with strong military escorts to present him as a dangerous criminal (see para. 18).

101. The Working Group wishes to emphasize that the presumption of innocence is one of the fundamental principles of a fair trial and, therefore, non-derogable, and guarantees that guilt cannot be presumed until the accusation has been proven beyond all reasonable doubt. This right, reflected in article 11, paragraph 1, of the Universal Declaration of Human Rights, and in article 14, paragraph 2, of the Covenant, applies at all stages of the procedure and the Working Group concludes that the rights were violated. rights of Mr. Rodríguez Sánchez under these provisions.

102. The source states that Mr. Rodríguez Sánchez's right to be tried in freedom has been violated. The source adds that the judicial authorities and the Attorney General's Office did not assess the specific circumstances of the case to determine the precautionary measure of preventive detention. Nor did the Attorney General's Office provide reasonable arguments regarding the possible risk of flight or provide concrete evidence to support the presumption of flight. For its part, the Government, in its late response, states that its domestic legislation establishes that preventive detention in complex cases such as this one, by virtue of the plurality of acts of the accused and because it involves organized crime against the State's assets. , is up to 18 months.

103. The Working Group emphasizes that, in accordance with article 9, paragraph 3, of the Covenant, any person arrested or detained on a criminal charge shall be brought without delay before a judge to exercise judicial functions so that preventive detention must be the exception and not the norm, and should be ordered for the shortest possible time. In other words, freedom is recognized in the Covenant as the fundamental consideration, with preventive detention being an exception. Therefore, this must be strictly based on an individualized determination that it is made because it is reasonable and necessary for purposes such as preventing escape, interference with evidence, or repetition of the crime.

104. The Working Group notes that preventive detention, in addition to being the exception and not the rule, and for the shortest possible period, must be based on an individual determination that it is reasonable and necessary to achieve the intended purposes. Courts must consider whether alternatives to pretrial detention, such as bail, would make detention unnecessary. To determine whether the elements justifying preventive detention are met, the Working Group examines whether the national courts have taken into account the particular circumstances of the person in question, but does not itself verify the existence of risks that require preventive detention.

105. The Working Group observes that, in the present case, the Government simply points to national legal provisions and the alleged complexity of the crime, but does not explain what circumstances specifically relevant to Mr. Rodríguez Sánchez justified his preventive detention since July 13 of 2021 and for the following 18 months.

106. The Working Group considers this period of time not only excessive but also violative of international standards and guarantees against arbitrary detention, contained in article 10 of the Universal Declaration of Human Rights and principle 11 of the Set of Principles for the Protection of All Persons Subjected to Any Form of Detention or Imprisonment. Said violation of the human rights of Mr. Rodríguez Sánchez also contravenes the standard indicated by the Human Rights Committee, when it has stated that in order not to be classified as arbitrary, the detention should not be prolonged

beyond the period for which the State party can provide an appropriate justification, which has been violated in this case.

107. In the present case, the requirements of article 9, paragraph 3, of the Covenant were not respected and, therefore, the Working Group considers that Mr. Rodríguez Sánchez's rights under this provision were violated.

108. The source has argued, and the Government did not refute, that Mr. Rodríguez Sánchez's ability to exercise his right to defend himself was negatively affected when he and his defense lawyers were not allowed to present their case freely and, in fact, , were systematically interrupted by the prosecution (see paras. 25 and 27), which was even later recognized by the court, although it did not provide a remedy for this (see para. 27). The Working Group therefore finds that article 14, paragraph 3 (b), of the Covenant has been violated.

109. The Working Group insists that the fact that both the Judge who ruled on the precautionary measure against Mr. Rodríguez Sánchez and the Criminal Chamber of the Court of Appeal of the National District did not provide a remedy against these infractions (see paras. 21 to 27) also constituted a violation of Mr. Rodríguez Sánchez's right to be heard by an impartial tribunal. This right is codified in article 14, paragraph 1, of the Covenant. The Working Group, therefore, cannot consider that the judicial authority in charge of the detention of Mr. Rodríguez Sánchez is independent and impartial when it has refused to examine, discuss and answer the allegations relating to arbitrary detention and appeals filed. Therefore, it is decided to refer this case to the Special Rapporteur on the independence of judges and lawyers.

110. Consequently, taking note of all the above, the Working Group concludes that the detention of Mr. Rodríguez Sánchez was the result of a process that seriously violated his right to a fair trial, enshrined in article 14 of the Covenant, and , therefore, was arbitrary and falls within category III.

c) Category V

111. The source has also alleged that the arrest and subsequent detention of Mr. Rodríguez Sánchez was discriminatory, an allegation that the Government has chosen not to challenge in a timely manner.

112. The Working Group takes note of the highly politicized context in which the detention of Mr. Rodríguez Sánchez took place, as well as the numerous public expressions of his guilt made by public officials and the Prosecutor and the fact that the courts did not allowed Mr. Rodríguez Sánchez to effectively exercise his right to defense, as has already been established above (see the analysis of category III). However, the Working Group is not convinced, based on all the data collected, that the arrest and detention of Mr. Rodríguez Sánchez was based on discrimination, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and article 2, paragraph 1, and article 26 of the Covenant.

d) Final Observations

113. Persons deprived of their liberty in penitentiary and prison establishments must be treated with the respect that the dignity of every human being deserves. Consequently, these people are holders, under equal conditions, of the same rights recognized as other members of society. This right is

enshrined in the Universal Declaration of Human Rights and the Covenant, as well as in the United Nations Standard Minimum Rules for the Treatment of Prisoners.

114. The Working Group expresses its concern that Mr. Rodríguez Sánchez has been kept in prison in a situation that put his life in danger, in clear violation of the instruments mentioned above.

III. Decision

115. In view of the above, the Working Group issues the following opinion:

The deprivation of liberty of Jean Alain Rodríguez Sánchez is arbitrary, since it contravenes articles 3, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 9, 10 and 14 of the International Covenant on Civil and Human Rights. Politicians, and falls into categories I and III.

116. The Working Group requests the Government of the Dominican Republic to take the necessary measures to remedy the situation of Mr. Jean Alain Rodríguez Sánchez without delay and bring it into conformity with relevant international standards, including those provided for in the Universal Declaration of Rights. Human Rights and the International Covenant on Civil and Political Rights.

117. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to immediately release Mr. Rodríguez Sánchez and grant him the effective right to obtain compensation and other remedies, in accordance with the international right.

118. The Working Group urges the Government to carry out a thorough and independent investigation into the circumstances surrounding the arbitrary deprivation of liberty of Mr. Rodríguez Sánchez and to take appropriate measures against those responsible for the violation of his rights.

IV. Follow Up Procedure

119. In accordance with paragraph 20 of its working methods, the Working Group requests the source and the Government to provide it with information on the follow-up measures taken in relation to the recommendations made in the present opinion, in particular:

- a) Whether Jean Alain Rodríguez Sánchez has been released and, if so, on what date;
- b) Whether compensation or other reparations have been granted to Jean Alain Rodríguez Sánchez;
- c) Whether the violation of the rights of Jean Alain Rodríguez Sánchez has been investigated and, if so, the result of the investigation;
- d) Whether legislative amendments have been approved or modifications have been made in practice to harmonize the laws and practices of the Dominican Republic with its international obligations in accordance with this opinion;
- e) If any other measure has been adopted to implement this opinion.

120. The Government is invited to inform the Working Group of any difficulties it may have encountered in the implementation of the recommendations made in this opinion and to indicate whether it requires additional technical assistance, for example through a visit by the Working Group.

121. The Working Group requests the source and the Government to provide the aforementioned information within six months from the date of transmission of this opinion. However, the Working Group reserves the right to undertake its own follow-up of the opinion if new concerns are brought to its attention in relation to the case. This monitoring procedure will allow the Working Group to keep the Human Rights Council informed of the progress made in implementing its recommendations, as well as, where appropriate, any deficiencies observed.

122. The Working Group recalls that the Human Rights Council has encouraged all States to collaborate with the Working Group, and has asked them to take into account its views and, if necessary, take appropriate measures to remedy the situation of persons arbitrarily deprived of liberty, and to inform the Working Group of the measures they have adopted.