

PETITION TO
UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

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HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of
JOSÉ MARÍA LEYES
Citizen of the Plurinational State of Bolivia

v.

The Plurinational State of Bolivia

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7, and 33/30.¹

Submitted By:

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May 6, 2019

¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights” pursuant to UN General Assembly Resolution 60/251, G.A. Res. 60/251, ¶ 6 (Mar. 15, 2006), has further extended the mandate through Resolutions 6/4, 15/18, 20/16, 24/7, and 33/30.

INTRODUCTION

As set forth below, the Plurinational State of Bolivia (Bolivia) is arbitrarily depriving José María Leyes of his liberty for political reasons. Leyes, the mayor of the city of Cochabamba, was arrested and detained on April 20, 2018 and later suspended from his official duties prior to any conviction on false corruption charges. Leyes was initially accused of rigging a municipal bidding process so that a specific company would win a contract to provide backpacks and school supplies for schoolchildren in 2018 (Mochilas I). Less than two months later, he was additionally charged with rigging a similar bidding process for a contract to provide backpacks and school supplies for schoolchildren in 2017 (Mochilas II). In reality, the Bolivian government is detaining and prosecuting Leyes because of his outspoken criticism and opposition political activity, which violates his rights to freedom of expression, freedom of association, and political participation under the Bolivian Constitution and the International Covenant on Civil and Political Rights (ICCPR).

As a popular mayor from the Democrat Social Movement (Democrat) party – the main challenger to President Evo Morales’ left-wing Movement for Socialism (MAS) party – Leyes is one of several prominent Democrat leaders whom the MAS has targeted with fabricated criminal charges in recent years with the help of a politicized judiciary.² The timing of Leyes’ arrest and prosecution is no coincidence – Bolivia is holding a presidential election this year, and Leyes was one of the leading candidates for the Democrat nomination. Moreover, Leyes has been an outspoken critic of the Government generally and of President Morales’ attempts to stay in power specifically. The Bolivian Constitution limits the president to two terms in office, but Morales has sought to circumvent this, first by holding a constitutional referendum in 2016 to allow him to serve an additional term, and when that failed, challenging the term limits in court. As many expected, the Constitutional Tribunal, whose judges Morales personally appointed,³ struck the term limits down.⁴ Before his arrest, Leyes had campaigned strongly against this ruling and Morales’ drive for a fourth consecutive term. Thus, by imprisoning Leyes, the Government has precluded a strong political rival from contesting the upcoming election and silenced a vocal critic.

The arbitrary nature of Leyes’ imprisonment is evident from the absurd allegations against him. According to the Government, Leyes rigged two bidding processes to benefit company owners he didn’t know and without receiving any benefit for doing so – neither of the indictments assert that Leyes had ever met or contacted the company owners or that he was paid by them or received any other benefit. Leyes’ involvement in the bidding processes consisted only of authorizing them to begin and signing the final contracts, which he did only after the municipal Qualifying Commission and multiple municipal legal advisors assured him that the contracts and bidding processes had been vetted and met all legal requirements. While the bidding processes were unfolding, Leyes had no knowledge of their alleged irregularities.

The political nature of Leyes’ detention is further demonstrated by the serious due process violations that have marred the proceedings against him. Both the President and Vice-President of Bolivia have publicly claimed Leyes is guilty, violating his right to the presumption of innocence. In addition, the Government has punished judges who have ruled in Leyes’ favor – three judges have been suspended thus far, and one of them is currently facing criminal charges – violating his right to an independent and impartial tribunal. He is also being detained in violation of his right to the presumption of bail.

Given the above, it is hereby requested that the attached Petition be considered a formal request for an Opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reconfirmed by Resolutions 2000/36 and 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, 24/7, and 33/30.

² BOLIVIA 2018 HUMAN RIGHTS REPORT, U.S. DEP’T OF STATE, 2019, at 6, *available at* <https://www.state.gov/documents/organization/289520.pdf> (noting that “The government sometimes used the judicial system for political purposes, taking legal action against several opposition members and critics of the government”).

³ Francisco Toro, *The Cynicism of Evo Morales’s Reelection Bid in Bolivia*, WASHINGTON POST, Jan. 4, 2019, *available at* https://www.washingtonpost.com/opinions/2019/01/04/cynicism-evo-morales-reelection-bid-bolivia/?noredirect=on&utm_term=.6b701e0cd03a.

⁴ *Evo Morales: El Tribunal Electoral de Bolivia lo Habilita Como Candidato Presidencial Tras Haber Perdido el Referéndum por la Reección*, BBC NEWS, Dec. 5, 2018, *available at* <https://www.bbc.com/mundo/noticias-america-latina-46450251> [in Spanish].

QUESTIONNAIRE FOR JOSÉ MARÍA LEYES

I. IDENTITY

1. **Family name:** Leyes Justiniano
2. **First name:** Marvell José María
3. **Sex:** Male
4. **Birth date:** July 17, 1977
5. **Nationality:** The Plurinational State of Bolivia
6. **(a) Identity document (if any):** Passport
(b) Issued by: The Plurinational State of Bolivia
(c) On (date): April 5, 2013
(d) No.: 4588127
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):**
Mayor of the Municipal Government of Cochabamba; member and leader of the Democrat Social Movement, an opposition political party
8. **Address of usual residence:** Calle Azahar #19, Urbanización El Mirador, Zona Norte, Cochabamba, Bolivia

II. ARREST

1. **Date of arrest:** Leyes was first arrested on April 20, 2018, at 5:45 p.m., in Mochilas I. On June 6, 2018, at 6:05 p.m., he was arrested in Mochilas II.
2. **Place of arrest (as detailed as possible):** Both of Leyes' arrests occurred at the office of the Special Prosecutor's Office for Corruption Crimes.
3. **Forces who carried out the arrest or are believed to have carried it out:** The Bolivian Police's Special Task Force in the Fight Against Crime (FELCC) unit.
4. **Did they show a warrant or other decision by a public authority:** On both occasions, Leyes was shown an arrest warrant.
5. **Authority who issued the warrant or decision:** The Special Prosecutor's Office for Corruption Crimes issued both warrants.
6. **Reasons for the arrest imputed by the authorities:** On both occasions, Leyes was not informed of the reason for his arrest at the time of the arrest. For Mochilas I, Leyes was informed after being detained that the Special Prosecutor's Office was charging him with five counts of corruption. For Mochilas II, the same office charged him with additional counts of corruption the day after his arrest, but it never officially notified him of this.
7. **Legal basis for the arrest including relevant legislation (if known):** In both cases, Leyes has been charged under Article 146 ("Undue Use of Influences"), Article 150 ("Negotiations Incompatible with the Exercise of Public Functions"), Article 154 ("Breach of Duties"), Article 221 ("Contracts Harmful to the State"), and Article 224 ("Antieconomic Conduct") of the Bolivian Criminal Code.

III. DETENTION

1. **Date of detention:** April 20 – November 28, 2018 and November 29, 2018 – Present
2. **Duration of detention (if not known, probable duration):** Since April 20, 2018 (with the exception of one day)
3. **Forces holding the detainee under custody:** From April 20–21, 2018, and on June 6, 2018, Leyes was held by the Special Task Force in the Fight Against Crime. At all other times up until November 28, 2018, he was under house arrest enforced by the Bolivian Police. Since November 29, 2018, he has been held by the authorities at San Antonio prison.
4. **Place of detention (indicate any transfer and present place of detention):**

April 20–21, 2018: FELCC Headquarters (*Laguna Alalay*)
April 21 – June 6, 2018: House arrest with police custody
June 6, 2018: FELCC Police Station (*Estación Policial Integral Norte*)
June 6–8, 2018: Hospital leave from *Estación Policial Integral Norte*
June 8 – November 28, 2018: House arrest with police custody
November 29, 2018 – Present: San Antonio Prison

Authorities that ordered the detention: The First Court of Criminal Instruction and Against Violence Against Women ordered Leyes’ house arrest on April 21, 2018 in Mochilas I. The First Court of Anti-Corruption and Violence Against Women ordered Leyes’ pretrial detention in prison on November 29, 2018 in Mochilas II. The Second Court of Anti-Corruption and Violence Against Women ordered Leyes’ pretrial detention in prison on March 22, 2019, under Mochilas I.

5. **Reasons for the detention imputed by the authorities:** The judges found that there was a risk that Leyes would flee and/or obstruct the investigation.
6. **Relevant legislation applied (if known):** In Mochilas I, Leyes is being detained pursuant to Criminal Procedure Code Articles 235(2) and 235(4) (in relation to (2)), which authorize pretrial detention where there is a risk the accused will influence individuals in the case directly or through intermediaries, respectively. In Mochilas II, Leyes is being detained pursuant to Article 235(4) (in relation to (2)), as well as Article 234(8), which authorizes pretrial detention where there is a risk the accused will flee based on prior criminal activity.

CIRCUMSTANCES OF THE ARREST AND DETENTION OF JOSÉ MARÍA LEYES

I. Statement of Facts

A. Biography of Leyes

José María Leyes was born on July 17, 1977, in Cochabamba, Bolivia. A lawyer by profession, he graduated from the Universidad del Valle in Cochabamba with postgraduate degrees in constitutional and tax law.⁵ Early in his career, he became involved in Bolivian politics, hosting a televised political analysis program – *Contrapesos* – until October 2007. In 2010, he ran for Governor of the Department of Cochabamba, placing second of four contenders.⁶ Later, in 2013, Leyes, along with other prominent Bolivian political leaders, founded the center-right Democrat Social Movement political party. In December 2015, Leyes ran as the Democrat candidate for Mayor of the Municipal Government of Cochabamba and was elected into office with 56% of the vote for a five-year term ending in 2020.⁷ He is married with three young children.

B. History of Politically-Motivated Persecution

Leyes has long been a vocal critic of President Evo Morales’ government and Morales’ Movement for Socialism (MAS) party. Since becoming mayor, Leyes has frequently denounced the Government’s attacks on Democrats and other opposition leaders, insisting that “[t]here is a permanent political persecution against the opposition . . . which has been increasing . . . due to the [relative] loss of power of the ruling party [T]hey will try to pare us down, because they are losing popular support.”⁸ Leyes has also repeatedly criticized the Government’s actions through Twitter and other media. As a result, Leyes became a primary

⁵ *José María Leyes Justiniano*, COCHABAMBA: GOBIERNO DE LA CIUDAD, accessed Mar. 15, 2019, available at <http://www.cochabamba.bo/application/index/biografia> [in Spanish].

⁶ *Id.*

⁷ *Id.*

⁸ *José María Leyes: ‘En un Año y Medio Ya Tengo Nueve Procesos,’* EJU!, Oct. 30, 2016, available at <http://eju.tv/2016/10/jose-maria-leyes-en-un-ano-y-medio-ya-tengo-nueve-procesos/> [in Spanish].

target for the Government. Over the course of several years, Government officials have filed over a dozen baseless criminal complaints against him.⁹

The criminal cases that led to his current detention – Mochilas I and Mochilas II – are clearly politically motivated. Two weeks before a MAS official filed the criminal complaint in Mochilas I that led to his initial arrest, Leyes was in Europe and met with members of the EU Parliament, staff of the Office of the UN High Commissioner for Human Rights, and Spanish government officials. In those meetings, Leyes discussed the state of democracy in Bolivia, human rights violations in the country, and the Government’s refusal to honor the legally-binding¹⁰ 2016 Referendum in which Bolivians voted against allowing Evo Morales to run for a fourth term as president.¹¹ The Government criticized Leyes for undertaking this advocacy.¹² Furthermore, just days before Leyes’ arrest, the Democrats released an audio recording allegedly revealing a plot by the MAS to get rid of Leyes through a recall referendum or judicial proceedings.¹³ In the recording, a prominent MAS politician and another man allegedly discussed strategies to get rid of Leyes, with one of the men explaining that President Morales had “returned from The Hague kicking in doors . . . for Leyes,” because, during the meetings in Europe, Leyes had criticized the president for overriding the results of the 2016 Referendum. One of the men allegedly added, “As President . . . what is [Evo] going to do? . . . Destroy him Evo has all the power.”¹⁴

C. Arrest and Detention

Leyes is currently detained pursuant to charges filed by the Public Ministry of Bolivia accusing him of rigging bidding processes to acquire backpacks in both 2017–2018 (Mochilas I) and 2016–2017 (Mochilas II). The Ministry of Justice and the Attorney General’s Office are also prosecuting both cases.

The criminal complaint in Mochilas I was filed by Municipal Councilwoman Rocío Molina from the MAS party on April 3, 2018. The complaint alleged that Leyes had been involved in an irregular bidding process to acquire over 90,000 backpacks and other school supplies, including pens, pencils, and erasers, earlier that year.¹⁵

The criminal complaint in Mochilas II was filed by Diego Jiménez, the Vice-Minister of Transparency and the Fight Against Corruption – part of the Ministry of Justice – on April 26, 2018. The complaint accuses Leyes of organizing an irregular bidding process, “with the same *modus operandi*,” to acquire over 90,000 backpacks and school supplies in 2016–2017.¹⁶

1. Arrest and Imposition of Precautionary Measures in Mochilas I

⁹ *Id.* and Laura Manzaneda, *Cochabamba. Alcalde Leyes Denuncia Persecución Política del MAS*, EJU!, Oct. 8, 2016, available at <http://eju.tv/2016/10/cochabamba-alcalde-leyes-denuncia-persecucion-politica-del-mas/> [in Spanish].

¹⁰ *Órgano Electoral Ratifica el Carácter Vinculante del Referendo del 21F*, EL DEBER, Apr. 13, 2018, available at <https://www.eldeber.com.bo/bolivia/Organo-electoral-ratifica-el-caracter-vinculante-del-referendo-del-21F-20180413-9490.html> [in Spanish].

¹¹ *Costas, Leyes y Ortiz Hablan del 21F con Diputados del Parlamento Europeo*, OPINIÓN.COM.BO, Mar. 21, 2018, available at <http://www.opinion.com.bo/opinion/articulos/noticias.php?a=2018&md=0321&id=248646> and *Alcalde Leyes Justifica Campaña Sobre el 21F Durante el Viaje a La Haya*, EJU!, Mar. 26, 2018, available at <http://eju.tv/2018/03/alcalde-leyes-justifica-campana-sobre-el-21f-durante-el-viaje-a-la-haya/> [in Spanish].

¹² *Demócratas Terminan “Gira” en Europa por el 21F y el Gobierno Critica*, LOS TIEMPOS, Mar. 24, 2018, available at <http://www.lostiempos.com/actualidad/pais/20180324/democratas-terminan-gira-europa-21f-gobierno-critica> [in Spanish] and *Gobierno Acusa a la Oposición de Propiciar Campaña Política en La Haya*, NOTICIAS FIDES, Mar. 16, 2018, available at <https://www.noticiasfides.com/nacional/politica/gobierno-acusa-a-la-oposicion-de-propiciar-campana-politica-en-la-haya-386474> [in Spanish].

¹³ *Demócratas Acusan al MAS de Organizar un “Complot” Contra Leyes*, LOS TIEMPOS, Apr. 16, 2018, available at <http://www.lostiempos.com/actualidad/pais/20180416/democratas-acusan-al-mas-organizar-complot-contra-leyes> [in Spanish].

¹⁴ Pablo Cambará & Ruy D’Alencar, *Demócratas Acusan al MAS de Planear un Golpe para ‘Tumbar’ a Leyes*, EL DEBER, Apr. 16, 2018, available at <https://www.eldeber.com.bo/bolivia/Democratas-acusan-al-MAS-de-planear-un-golpe-para-tumbar-a-Leyes-20180416-9271.html> [in Spanish].

¹⁵ Melissa Revollo, *Molina Denuncia a Leyes por Caso Mochilas y Presenta 10 Pruebas*, OPINIÓN.COM.BO, Apr. 4, 2018, available at <http://www.opinion.com.bo/opinion/articulos/noticias.php?a=2018&md=0404&id=250107> [in Spanish].

¹⁶ Rubén Ariñez, *Mochilas II: Gobierno Ahora Denuncia a Leyes por ‘Ajustar’ Otra Licitación en 2016*, LA RAZÓN, Apr. 26, 2018, available at http://204.11.233.100/ciudades/Mochilas_II-Gobierno-denuncia-Leyes-ajustar-licitacion-mochilas-China_0_2917508267.html [in Spanish].

On the afternoon of April 20, 2018, Leyes, accompanied by his lawyers, went to the office of the Special Prosecutor's Office for Corruption Crimes (FEPDC) – part of the Public Ministry – to provide a statement regarding the criminal complaint Councilwoman Molina had filed earlier that month. Leyes had requested the FEPDC take his statement once it opened an investigation. But upon arriving at the FEPDC on April 20, Leyes' lawyers advised him not to make a statement.¹⁷ Earlier that day, there was a hearing in which the Tribunal unsealed some of the evidence against him, but it did not have time to unseal the rest. Therefore, because the defense had not yet been able to evaluate all the alleged evidence against him, Leyes' counsel advised him to refrain from making a statement at that time.

Once Leyes indicated he would not provide a statement, four FEPDC prosecutors issued a warrant for his arrest.¹⁸ The prosecutors failed to inform Leyes of the reasons for his arrest; one of them simply told him, "I'm sorry Mr. Mayor, but I'm only following orders." Several agents from the Bolivian Police's Special Forces in the Fight Against Crime (FELCC) unit – already present at the FEPDC office – then handcuffed Leyes and escorted him out of the office. Outside, he was met with thousands of supporters, who had gathered there to support their mayor.¹⁹ The FELCC agents led Leyes through the crowds into a police bus, firing tear gas to clear the protestors.²⁰

The FELCC agents took Leyes to their headquarters, where they held him in a cell for the next 20 hours. There, Leyes was informed that the FEPDC prosecutors had charged him with five counts of corruption based on Councilwoman Molina's criminal complaint. The FELCC agents prohibited Leyes' lawyers from entering his cell and did not allow Leyes to use his cell phone to contact his family. The agents did not inform his family of his detention. In addition, several agents entered his cell and attempted to interrogate him. Because he did not have a lawyer present, Leyes refused to answer their questions.

The next day, Leyes was taken to the *Estación Policial Integral (EPI) Norte* police station for a hearing on precautionary measures. The Anti-Corruption Tribunal should have presided over the hearing, but because it was a Saturday, the judge at *EPI Norte* presided over it.

During the hearing, Judge Luis Pérez found that Leyes was a flight risk based on Criminal Procedure Code (CPC) Article 234(10),²¹ which indicates that an accused who is an "effective danger to society" is a flight risk. According to the judge, Leyes was an "effective danger to society" because he was capable of mobilizing unruly crowds of supporters, which created a risk to individuals in the vicinity of such gatherings.

The judge also determined that there was a risk that Leyes would obstruct the investigation – specifically, that he would be able to "negatively influence participants, witnesses or experts . . . to provide false testimony or adopt uncooperative behavior" (CPC Article 235(2)).²² The judge reasoned that, "by virtue of [his position]" as mayor, Leyes could influence municipal employees involved in the case, and that this risk "would persist until the execution of the sentence." The judge also found, as an additional risk of obstruction, that Leyes could destroy or modify evidence through intermediaries (CPC Article 235(4) in relation to (1)).²³ This was based on unsubstantiated claims by the Public Ministry that Leyes had ordered municipal employees to erase the hard drives of municipal computers prior to their being searched. In reality, Leyes had ordered an internal investigation of the Mochilas case, and the municipal employee in charge of this had merely made backups of the computers, which were provided to the Public Ministry.

Based on these alleged risks, Judge Pérez ordered house arrest with police custody and bail of Bs. 200,000 (US \$29,000). The judge further prohibited Leyes from commenting on the criminal investigation,

¹⁷ Lorena Amurrio Montes, *Tras Ser Detenido Leyes Recordó a la Gente y a la Prensa: "Se los Dije" al Ser Llevado a Celdas*, LOS TIEMPOS, Apr. 21, 2018, available at <http://www.lostiempos.com/actualidad/cochabamba/20180421/ser-detenido-leyes-recordo-gente-prensa-se-dije-al-ser-llevado-celdas> [in Spanish].

¹⁸ Paulo Cuiza, *Leyes se Abstiene de Declarar y la Fiscalía Ordena su Aprehensión por el Caso Mochilas*, LA RAZÓN, Apr. 20, 2018, available at http://www.la-razon.com/ciudades/Fiscalia-aprehension-alcalde-Leyes-Mochilas_0_2913908629.html [in Spanish].

¹⁹ *Fiscalía Determina la Aprehensión de Alcalde de Cochabamba*, RADIOFIDES.COM, Apr. 20, 2018, available at <https://www.radiofides.com/es/2018/04/20/fiscalia-determina-la-aprehension-de-alcalde-de-cochabamba/> [in Spanish].

²⁰ *Tras Ser Detenido Leyes Recordó a la Gente y a la Prensa: "Se los Dije" al Ser Llevado a Celdas*, *supra* note 17.

²¹ Criminal Procedure Code of the Plurinational State of Bolivia, Mar. 25, 1999, at Art. 234(10), available at http://tsj.bo/wp-content/uploads/2014/03/3.-Codigo_Penal_y_Procedimiento_Penal.pdf [in Spanish] [hereinafter Criminal Procedure Code].

²² *Id.*, at Art. 235(2).

²³ *Id.*, at Art. 235(4) in relation to (1).

entering any municipal office, or speaking with any municipal employee. These latter two restrictions prevented Leyes from fulfilling his official duties as mayor. As a result, on April 24, 2018, Councilwoman Molina and two other Councilmen from the MAS party asked the Municipal Council to appoint an interim mayor to replace him – despite Leyes having never been convicted of any crime.

On May 4, 2018, Leyes appealed Judge Pérez’s ruling to the Third Criminal Chamber, arguing that the precautionary measures infringed upon his right to political participation since they prevented him from functioning as mayor. He suggested that the ban on contacting municipal employees be amended to prohibit contact only with those employees involved in the case. Unfortunately, though the Third Criminal Chamber overturned the flight risk, it upheld both obstruction risks and all precautionary measures. As a result, the Municipal Council proceeded to appoint an interim mayor.²⁴

Following these events, many Democrat politicians denounced Leyes’ detention as politically motivated.²⁵ Leyes himself accused the MAS of trying to remove him and replace him with a mayor “who will defend the MAS”²⁶ because he demanded that the results of the constitutional referendum be given effect – and that Morales be prohibited from running in the 2019 election. A Democrat leader subsequently called Leyes “the first martyr of the [referendum].”²⁷

In a troubling development, the Government publicly affirmed Leyes’ guilt. On May 7, 2018, the Vice-President of Bolivia declared in a televised interview on Red Uno that Leyes’ attitude towards the proceedings “demonstrates [his] relative complicity.” He also stated:

[Upon being arrested,] Leyes should have resigned [The Democrats] should have told [Leyes] to temporarily resign [as mayor] and demonstrate his innocence [Instead,] they have protected him as a party [and] said that this is political persecution when it is [actually] theft. It has been clearly demonstrated there has been theft in Cochabamba in the name of children Far from supporting a transparent investigation, [the Democrats] put up a smokescreen to stop the investigation [and] turn [Leyes] into a political martyr. But a person involved in stealing from children cannot be a martyr No one should defend a person involved in acts of corruption.²⁸

The Vice-President also stated there had been theft in the 2016–2017 bidding process, though at that point no one had been charged in Mochilas II.

The President of Bolivia also affirmed Leyes’ guilt. In an interview with the *El Deber* newspaper published on September 4, 2018, President Morales was asked to compare the accusations of corruption against Leyes and those against the mayor of Santa Cruz, who is a MAS ally. President Morales responded, “[The accusations] cannot be compared. The mayor’s office in Cochabamba was the Democrats’ coffer. It’s a complicated case, if the Democrats [win the presidency,] all Bolivia will become a coffer for the right-wing Democrats. Fortunately, this has been thwarted.” He also claimed, “Leyes steals [money] but does not [even] do public works.”²⁹

2. Arrest in Mochilas II

²⁴ Christian Burgos, *Karen Suárez Asume Como Alcaldesa Suplente de Cochabamba*, LOS TIEMPOS, May 4, 2018, available at <http://www.lostiempos.com/actualidad/cochabamba/20180504/karen-suarez-asume-como-alcaldesa-suplente-cochabamba> [in Spanish].

²⁵ *Costas Acusa a Morales de Una “Acción Antidemocrática” Contra Leyes*, LOS TIEMPOS, Apr. 17, 2018, available at <http://www.lostiempos.com/actualidad/cochabamba/20180417/costas-acusa-morales-accion-antidemocratica-contra-leyes> [in Spanish].

²⁶ Melissa Revollo, *José María Leyes Suma Más de 2.900 horas en Prisión, Pero Sin Condena*, OPINIÓN.COM.BO, Mar. 31, 2019, available at http://www.opinion.com.bo/opinion/informe_especial/2019/0331/suplementos.php?id=16248 [in Spanish].

²⁷ Los Tiempos Bolivia, *Costas: José María Leyes es el Primer Mártir Político del 21F*, YOUTUBE, Apr. 23, 2018, available at <https://www.youtube.com/watch?v=vhcfStrdoTk> [in Spanish].

²⁸ José Suárez, *07052018 Alvaro García Linera en Que No Me Pierda Uno*, YOUTUBE, May 8, 2018, available at <https://www.youtube.com/watch?v=17PNoB3-C8Y&feature=youtu.be> (starting at 41:30) [in Spanish].

²⁹ Pablo Ortiz, *Evo Acusa a Demócratas de Usar la Alcaldía de la Llajta como su ‘Caja’*, EL DEBER, Sept. 4, 2018, available at <https://www.eldeber.com.bo/bolivia/Evo-acusa-a-Democratas-de-usar-la-Alcaldia-de-la-Llajta-como-su-caja--20180904-0003.html> [in Spanish].

Shortly after Leyes was placed under house arrest for Mochilas I, the Vice-Minister of Transparency filed the criminal complaint against Leyes in Mochilas II. The Public Ministry then opened an investigation into Mochilas II and ordered Leyes to provide a statement at the FEPDC office on June 6, 2018.

On the afternoon of June 6, Leyes went to the FEPDC office, accompanied by his lawyers. However, he declined to provide a statement. After this occurred, the same four FEPDC prosecutors from Mochilas I issued a warrant for his arrest and took him into custody. The prosecutors failed to inform him of the reason for the arrest. They initially told him he could remain at home until his hearing for precautionary measures in Mochilas II, given he was already under house arrest.³⁰ But as he left the FEPDC office, FELCC agents informed him he would be taken to a cell at *EPI Norte* instead.³¹

Soon after arriving at *EPI Norte*, Leyes began experiencing severe health complications, including a strong headache and alarmingly high blood pressure.³² Despite this, FELCC agents entered his cell and attempted to interrogate him without a lawyer present. One of these agents even brought in another detainee inside Leyes' 1.5 x 1.5 meter cell, warning Leyes that the detainee was a dangerous criminal and that if Leyes wanted to be transferred to another cell, he would have to answer their questions truthfully. Leyes remained silent. After approximately six hours, the agents authorized his transfer to a medical clinic for immediate care, where he remained until his hearing on precautionary measures two days later.

3. Joining and Separation of Mochilas I and Mochilas II

On June 8, 2018, during Leyes' hearing on precautionary measures in Mochilas II, Judge Sara Céspedes of the Anti-Corruption Tribunal joined Mochilas I and II into a single criminal proceeding under CPC Article 67(1).³³ Given that the two cases had identical charges, mostly the same co-defendants, and the same subject matter, this was appropriate.

With the proceedings joined, the judge should have applied the existing order in Mochilas I for house arrest and other precautionary measures to the joined proceedings. But the prosecution, which was requesting pretrial detention in custody, preempted this determination. It had a Government doctor evaluate Leyes, who was still in poor health, and on the basis of that evaluation, it requested the hearing be postponed. Though Leyes was not consulted, Judge Céspedes complied with the request, postponing the hearing until June 11, 2018.

In the meantime, however, the Public Ministry and Ministry of Justice appealed Judge Céspedes' decision to join the two cases, and the Attorney General's Office filed a separate motion with Judge Céspedes requesting that she annul that decision. The Public Ministry also in real time opened a criminal investigation against Judge Céspedes for alleged malfeasance in joining the cases.³⁴ The Ministry ordered her to provide a statement at the Ministry's office at the exact time as the rescheduled Mochilas hearing. As a result, the hearing was postponed indefinitely.³⁵

Judge Céspedes responded to the Public Ministry's summons but publicly defended her ruling, stating, "At no point in time did I emit a resolution contrary to law."³⁶ Nevertheless, two days after she provided her statement, the Public Ministry issued a warrant for her arrest and she was taken into custody.³⁷

³⁰ Melissa Revollo, *Mochilas: Leyes Vuelve a Ser Aprehendido y Es Internado de Urgencia*, OPINIÓN.COM.BO, June 7, 2018, available at <http://www.opinion.com.bo/opinion/articulos/noticias.php?a=2018&md=0607&id=256765> [in Spanish].

³¹ *Id.*

³² *Id.*

³³ Criminal Procedure Code, *supra* note 21, at Art. 67(1) (two proceedings can be joined "[i]f the charged [crimes] have been committed . . . by various persons in different places or times, [or] if there was a mediated agreement between them").

³⁴ *Fiscalía Inicia Investigación Contra la Juez del Caso Mochilas y la Convoca a Declarar*, LOS TIEMPOS, June 11, 2018, available at <http://www.lostiempos.com/actualidad/cochabamba/20180611/fiscalia-inicia-investigacion-contra-juez-del-caso-mochilas-convoca> [in Spanish].

³⁵ Mariela Cossio, *Jueza Ratifica su Decisión de Unir los Casos Mochilas, Pese a Acusación de Prevaricato*, OPINIÓN.COM.BO, June 12, 2018, available at <http://www.opinion.com.bo/opinion/articulos/noticias.php?a=2018&md=0612&id=257193> [in Spanish].

³⁶ *Id.*

³⁷ *Cochabamba: Protestan por Aprehensión de Jueza*, CORREO DEL SUR, June 14, 2018, available at http://correodelsur.com/seguridad/20180614_cochabamba-protestan-por-aprehension-de-jueza.html [in Spanish] and *Aprehenden a la Jueza del Caso Mochilas y Sufre una Descompensación*, LOS TIEMPOS, June 13, 2018, available at

The Cochabamban Magistrates' Association strongly condemned the Government's actions, calling them an "attack against [judicial] independence."³⁸ It expressed serious concern that the Government had resorted to taking criminal action against Judge Céspedes simply because she issued a ruling it did not like. The next day, at her hearing on precautionary measures, Judge Céspedes was released but temporarily suspended from her judicial duties.³⁹ Two weeks later, while presiding again over the Mochilas case, she attempted to recuse herself from the case, citing the ongoing criminal investigation against her,⁴⁰ but a superior tribunal rejected her recusal.⁴¹ She thus continued to preside over the Mochilas case.

Meanwhile, on August 10, the First Criminal Chamber rejected the Public Ministry and Ministry of Justice's joint appeal of Judge Céspedes' decision to join the Mochilas cases. The First Criminal Chamber held that the appeal was inadmissible because, under Bolivian law, rulings to join or separate proceedings are not subject to appeal. However, a month later, on September 13, Judge Céspedes – once again presiding over the case – now inexplicably reversed her earlier decision. The day before she was transferred to a different court, she granted the motion by the Attorney General's Office requesting that she annul her original decision to join the proceedings; thus, Mochilas I and II were separated as the Government wanted. In December, Judge Céspedes was removed as a judge permanently as a result of the criminal proceedings against her, which are still ongoing.⁴²

Leyes appealed the decision to separate the cases, arguing that the Government coerced Judge Céspedes into doing so. This appeal remains pending. In the meantime, Mochilas I and II have continued to advance separately in the Anti-Corruption Tribunal.

4. Modification of Precautionary Measures in Mochilas I

After Judge Céspedes separated the proceedings, Leyes filed a petition with Judge Marisol García – who replaced Judge Céspedes – to modify the precautionary measures in Mochilas I to allow him to resume his duties as mayor. On September 28, Judge García rejected this petition, upholding both obstruction risks and all precautionary measures. However, on October 22, the Third Criminal Chamber ruled on appeal that Judge García had failed to substantiate the continued existence of the obstruction risks and ordered Leyes' petition to be reviewed again. Despite this, on November 9, Judge Iver Gonzales – who replaced Judge García – again rejected the petition. Judge Gonzales clarified that Leyes was free to work under house arrest, but refused to lift the precautionary measures preventing Leyes from resuming his official duties. The judge insisted that Leyes could "work any job except that of mayor."⁴³

However, on November 23, 2018, the Second Criminal Chamber, on appeal, overturned Judge Gonzales' ruling and released Leyes from house arrest. The Second Criminal Chamber emphasized that the right to work was protected under both domestic and international law. It also overturned one of the obstruction risks – that Leyes would obstruct justice through intermediaries⁴⁴ – on the basis of evidence the defense had previously submitted (which prior judges had disregarded) proving that the municipal computers

<http://www.lostiempos.com/actualidad/cochabamba/20180613/emiten-orden-aprehension-contrajueza-del-caso-mochilas-sufre> [in Spanish].

³⁸ Katuska Vásquez, *Magistrados Denuncian Penalización de sus Fallos Tras Aprehensión de su Colega*, LOS TIEMPOS, June 14, 2018, available at <http://www.lostiempos.com/actualidad/cochabamba/20180614/magistrados-denuncian-penalizacion-sus-fallos-aprehension-su-colega> [in Spanish].

³⁹ Mabel Montaña (TJC): "La Jueza Sara Céspedes Continuará con el Proceso de las Mochilas Chinas," KANDIRE, June 17, 2018, available at <https://www.kandire.bo/18555-Mabel-Montana--TJC--La-jueza-Sara--Cespedes-continua-con-el-proceso-de-las-mochilas-chinas.html> [in Spanish].

⁴⁰ *Jueza Céspedes Sigue con el Caso Mochilas Tras Rechazo de Excusa*, OPINIÓN.COM.BO, July 5, 2018, available at <http://www.opinion.com.bo/opinion/articulos/noticias.php?a=2018&md=0705&id=259463> [in Spanish].

⁴¹ *Id.*

⁴² *El Consejo de la Magistratura Destituye a Sara Céspedes, Juez que Conoció los Casos Mochilas I y 2*, ATB, Dec. 11, 2018, available at <https://www.atb.com.bo/seccion/sociedad/el-consejo-de-la-magistratura-destituye-sara-c%C3%A9spedes-juez-que-conoci%C3%B3-los-casos> [in Spanish].

⁴³ *Juez: "José María Leyes Puede Trabajar de Todo Menos de Alcalde,"* LOS TIEMPOS, Nov. 10, 2018, available at <http://www.lostiempos.com/actualidad/cochabamba/20181110/juez-jose-maria-leyes-puede-trabajar-todo-menos-alcalde> (emphasis added) [in Spanish].

⁴⁴ Criminal Procedure Code, *supra* note 21, at Art. 235(4) in relation to (1).

Leyes had allegedly ordered to be erased had actually been turned over to the Public Ministry. The Second Criminal Chamber upheld the second obstruction risk – that Leyes could personally influence others to give false testimony⁴⁵ – but determined that less restrictive measures could mitigate this risk. Specifically, Leyes would be prohibited from contacting any municipal employees involved in the case against him, which would allow him to resume his duties as mayor. Inexplicably, though, the Court also imposed new restrictions on Leyes – he would be prohibited from “making written or spoken statements to the press on Government authorities of all ranks in order to prevent damaging their image, vulnerability, and honorability”; “speaking on the legality or illegality of the judicial proceedings taking place”; or “attending or appearing at protests of any nature.”

Immediately after the hearing, the Vice-Minister of Transparency announced that the Ministry of Justice would pursue legal action against the two judges from the Second Criminal Chamber that had released Leyes from house arrest.⁴⁶ The Vice-Minister claimed their ruling was unjustified, irresponsible, and illegal; he also insisted that if Leyes “ends up fleeing or eliminating evidence [this would be] the exclusive responsibility” of these judges.⁴⁷ A few days later, the Minister of Justice asked the Magistrates’ Council to take disciplinary measures against the judges, claiming that they had acted “for dark, petty, and sectarian ends.”⁴⁸ The Magistrates’ Council, largely dominated by judges chosen by or previously affiliated with the Morales regime,⁴⁹ complied⁵⁰ and suspended both judges.⁵¹

Meanwhile, though the Second Criminal Chamber’s ruling should have taken immediate effect, the police officers enforcing Leyes’ house arrest refused to let him go. It was not until Leyes filed a habeas corpus petition with the Tribunal of Guarantees, and the Tribunal granted the petition, that he was finally released from house arrest. Leyes was released on November 28 and resumed his official duties that day.⁵² However, his return as mayor was short-lived, as he was sent to prison the very next day in Mochilas II.

5. Imposition of Precautionary Measures in Mochilas II

As mentioned previously, Leyes’ appeal of the separation of Mochilas I and II has not been resolved. Nevertheless, Judge Gonzales of the Anti-Corruption Tribunal scheduled a hearing on Leyes’ precautionary measures in Mochilas II for November 16, 2018. For a variety of reasons, this was rescheduled four times within a two-week period. On November 26, Judge Gonzales rescheduled the hearing for just three days later despite the fact that Leyes was then hospitalized with severe stomach pain. This prompted the defense to file a complaint with the Magistrates’ Council, noting that Judge Gonzales had scheduled hearings requested by the defense several months out due to an alleged backlog of cases, yet rescheduled the various hearings on precautionary measures immediately.

The hearing on precautionary measures finally took place on November 29, 2018 – the day after Leyes was released from house arrest in Mochilas I. Though the defense again requested Judge Gonzales

⁴⁵ *Id.*, at Art. 235(2).

⁴⁶ Jessica Vargas, *Transparencia Iniciará Acción Penal Contra Vocales que Revocaron la Detención Domiciliaria de Leyes*, LOS TIEMPOS, Nov. 23, 2018, available at <http://www.lostiempos.com/actualidad/cochabamba/20181123/transparencia-iniciara-accion-penal-contra-vocales-que-revocaron> [in Spanish].

⁴⁷ *Id.*

⁴⁸ *Gobierno Pide Procesar a Vocales que Liberaron a José María Leyes*, EL POTOSÍ, Nov. 26, 2018, available at https://elpotosi.net/nacional/20181126_gobierno-pide-procesar-a-vocales-que-liberaron-a-jose-maria-leyes.html [in Spanish].

⁴⁹ WORLD REPORT 2019: BOLIVIA, HUMAN RIGHTS WATCH, 2019, available at <https://www.hrw.org/world-report/2019/country-chapters/bolivia> (noting that “[i]n December 2017, voters elected high court judges and members of the Magistrate’s Council from lists created by the Plurinational Assembly, where the Morales’s Movement for Socialism party has a two-thirds majority” and that “more than half of the elected judges and officials had worked for the Morales administration”).

⁵⁰ *Magistratura Inicia Proceso Contra Vocal que Levantó Detención de Leyes*, LOS TIEMPOS, Nov. 26, 2018, available at <http://www.lostiempos.com/actualidad/cochabamba/20181126/magistratura-inicia-proceso-contra-vocal-que-levanto-detencion-leyes> [in Spanish].

⁵¹ *Leyes se Aferra a Ser Alcalde; Concejo Esquiva Designación*, LOS TIEMPOS, Dec. 1, 2018, available at <http://www.lostiempos.com/actualidad/cochabamba/20181201/leyes-se-aferra-ser-alcalde-concejo-esquiva-designacion> [in Spanish].

⁵² Pablo Cambará, *José María Leyes Vuelve a la Alcaldía de Cochabamba y lo Agradece de Rodillas*, EL DEBER, Nov. 28, 2018, available at <https://www.eldeber.com.bo/bolivia/Leyes-agradece-de-rodillas-el-volver-a-su-despacho-en-la-Alcaldia-20181128-8608.html> [in Spanish].

postpone the hearing pending the resolution of its appeal regarding the separation of Mochilas I and II, Judge Gonzales denied this request.

Judge Gonzales then determined that Leyes was a flight risk based on CPC Article 234(8),⁵³ which lists “prior or reiterated criminal activity” as a factor to be considered. Specifically, the judge held that the pending charges in Mochilas I and II, and other criminal complaints against Leyes that had not led to charges, demonstrated “reiterated criminal activity.” Of course, this wrongly presumed Leyes’ guilt on his other pending charges.

The judge also determined that there was a risk that Leyes could obstruct the investigation by influencing others, through intermediaries, to give false testimony or refuse to cooperate (CPC Article 235(4) in relation to (2)).⁵⁴ This determination was based on hearsay statements by co-defendant Christian Siles claiming that he was intimidated and influenced by other municipal employees (Siles’ statements are discussed in more detail in the Presumption of Bail section of the Legal Analysis, below).

As a result, the judge then ordered pretrial detention for Leyes in the San Antonio prison in Cochabamba.

6. Revocation of Freedom in Mochilas I

On March 22, 2019, the Anti-Corruption Tribunal issued a new order finding that pretrial detention was justified based on a risk of obstruction. Specifically, the Tribunal found that there was a risk that Leyes would influence participants, witnesses or experts to provide false testimony or adopt uncooperative behavior – both directly himself (CPC Art. 235(2)) and through intermediaries (CPC 235(4) in relation to (2)). The direct risk was based only on his position at mayor – that is, the Tribunal assumed that because he is mayor, he would influence municipal employees to provide false testimony or refuse to cooperate with the investigation. The finding that he could influence others through intermediaries was based on a declaration by co-defendant Fedra Cors, who alleged that Leyes’ sister and lawyer, acting on Leyes’ behalf, expressed support and offered to arrange a lawyer for her and other municipal employees if they were asked to provide statements in the Mochilas cases.

Soon after this decision, the chief prosecutor of Cochabamba announced in a televised interview that the Mochilas I investigation is scheduled to end in June 2019 and that at that point, the Public Ministry should be prepared to request that the case proceed to trial.

7. Conditions of Detention and Current Status

While under house arrest, Leyes and his family suffered verbal and psychological abuse at the hands of police officers. On one occasion, the officers knocked on the door of Leyes’ residence before dawn and made his whole family walk outside the house. On another, they took photographs of his three young children in swimming suits. One of the case prosecutors even asked the officers to report on the activities of Leyes’ children.

Leyes is currently facing criminal charges under three other baseless indictments. While precautionary measures have not been put into place for these charges, Leyes could be detained under these indictments in the future.

D. Alleged Violations of Bolivian Law

In both Mochilas I and II, Leyes has been charged with violating the following articles of the Bolivian Criminal Code: “undue use of influences” (Article 146); “negotiations incompatible with the exercise of public functions” (Article 150); “breach of duties” (Article 154); “contracts harmful to the state” (Article 221); and “antieconomic conduct” (Article 224).⁵⁵ For the reasons discussed below in the Category II and III

⁵³ Criminal Procedure Code, *supra* note 21, at Art. 234(8).

⁵⁴ *Id.*, at Art. 235(4) in relation to (2).

⁵⁵ Criminal Code of the Plurinational State of Bolivia, Mar. 10, 1997, at Arts. 146, 150, 154, 221, 224, *available at* http://tsj.bo/wp-content/uploads/2014/03/3.-Codigo_Penal_y_Procedimiento_Penal.pdf [in Spanish] [hereinafter Criminal Code].

Legal Analysis, it is patently clear that **all the allegations against Leyes are completely false and politically motivated.**

The Mochilas I and II indictments accuse Leyes of directly and indirectly instructing municipal employees to rig the respective bidding processes to ensure the winning bids were awarded to two specific companies, both owned by the same individuals: María René Ramírez and her husband, René Juan de Dios Morales. In Mochilas I, these two individuals and ten other municipal employees have also been indicted. In Mochilas II, Ramírez, Morales, and nine other municipal employees have been indicted. Eight of the co-defendants (including Leyes) are the same in Mochilas I and II. However, only Leyes and Morales (the businessman) are currently imprisoned; the other co-defendants are either under house arrest or free.

1. Timeline and Allegations in Mochilas II

The 2016–2017 contracting process to acquire backpacks and other school supplies was launched on November 23, 2016, after Leyes authorized it earlier that month. It was the second year the municipal government had undertaken such a process.

Besides authorizing the contracting process and signing the final contract, as will be described below, Leyes was not personally involved in the bidding. Instead, he designated Diego Moreno, the Administrative and Finance Secretary, as “Responsible for the Process of Acquisition” (RPC). Moreno directly oversaw the process, along with other municipal employees, including José Padilla, the General Coordination Director, and Marcos Cuevas, the Municipal Secretary for Human Development. Other employees involved in the process included the Municipal Director for Human Development, Rolando Nogales; the Director of the Department of Education, José Bascopé; and a technical engineer, Christian Siles. Prior to the launch of the bidding process, Nogales, Bascopé, and Siles were personally responsible for writing up the Background Document for the bidding, including the timeline for the bidding, the methodology that would be used to evaluate bid proposals, and the precise technical specifications for the requested materials, including quantity, quality, and suggested price range.

The Mochilas II indictment alleges that Moreno and Padilla ordered municipal employees, on Leyes’ behalf, to rig the bidding to ensure that Morales and Ramirez’s company – *Asociación Accidental El Norte* – would receive the winning bid. It claims Padilla provided various sheets of technical specifications for the materials to Siles, who included them in the Background Document, and that *El Norte* had access to this information before it was made publicly available. *El Norte* allegedly bought the backpacks from a Chinese company three days before the bidding was launched and the specifications were publicly available.⁵⁶

El Norte was the only company to submit a bid proposal, offering 91,300 backpacks and school supplies for around Bs. 12.6 million (US \$1.79 million). But due to an apparent manufacturing error in the backpacks, which Padilla allegedly noticed after receiving a sample from *El Norte*, Moreno apparently convened a meeting with Padilla, Nogales, and Siles, in which he ordered Nogales and Siles to amend the technical specifications. According to Siles, Moreno allegedly rebuked Padilla, telling him, “You can’t do anything the boss orders you to do right.” Such a hearsay statement from a co-defendant with a clear motive to lie and shift blame has little evidentiary value. On December 21, 2016, Moreno annulled the bidding process, and the next day he launched a second one with the new specifications, allegedly amended to conform to *El Norte*’s sample. In the new process, *El Norte* was again the only company to present a bid, with its delivered product matching the new specifications exactly.

Before awarding the contract, Leyes reviewed an evaluation of *El Norte*’s bid by a Qualifying Commission made up by municipal employees. The evaluation recommended that Leyes award the bid to *El Norte*. Leyes further reviewed two reports prepared by municipal legal counsel, which concluded that *El Norte*’s bid and the bidding process fulfilled all legal requirements and recommended awarding the bid to *El Norte*. Following this advice, Leyes signed a contract with *El Norte* on January 31, 2017 for the purchase of the backpacks. In February 2017, he delivered the backpacks to the schoolchildren, free of charge, and the municipal government paid *El Norte* in full.

⁵⁶ *Mochilas II: Gobierno Ahora Denuncia a Leyes por ‘Ajustar’ Otra Licitación en 2016*, supra note 16.

2. Timeline and Allegations in Mochilas I

The 2017–2018 contracting process to acquire backpacks and other school supplies was launched on November 28, 2017. Most of the municipal employees in charge of the 2016–2017 process were also in charge of the 2017–2018 process.

The Mochilas I indictment alleges that Morales and Ramírez again had access to the requested materials’ technical specifications before the bidding was launched. Morales has since claimed that Padilla had approached him to submit a bid again for the 2017–2018 process and that Padilla and Siles had emailed him the specifications before the bidding.⁵⁷ With this information, Morales allegedly ordered the school supplies from a Chinese company in August 2017 and the backpacks in October.

In her original complaint, Councilwoman Molina claimed that the municipal government had bought the backpacks from the company with the most expensive bid proposal at six times their alleged value,⁵⁸ but the Government has since dropped the claim of a price markup. But in Mochilas I, Morales and Ramírez’s company – *Asociación Accidental 26 de Febrero* – was not the only one to submit a bid proposal. Besides its proposal to provide 91,085 backpacks and school supplies for around Bs. 12.5 million (US \$1.77 million), *Rostel Ofishop* submitted a proposal for around Bs. 12 million (US \$1.7 million) and *Ventas Lina* submitted one for around Bs. 11 million (US \$1.56 million). However, the Qualifying Commission disqualified these two companies on technical and other grounds.

As in the prior year, Leyes reviewed the Qualifying Commission’s evaluation, as well as two reports by municipal legal counsel, before signing the contract. The Qualifying Commission and legal counsel recommended that Leyes award the bid to *26 de Febrero*. Therefore, on January 26, 2018, Leyes signed the contract with them. However, though Leyes delivered the backpacks to schoolchildren in February 2018, the municipal government did not pay *26 de Febrero*. On April 10, 2018, in light of allegations of irregularities in the bidding process, Leyes ordered the municipal government to suspend the payment to *26 de Febrero* pending the results of the investigation.

II. LEGAL ANALYSIS

For the reasons set forth below, the detention of José María Leyes constitutes an arbitrary deprivation of liberty under Categories II and III as set forth by the UN Working Group on Arbitrary Detention (Working Group). Bolivia acceded to the International Covenant on Civil and Political Rights (ICCPR) on August 12, 1982. Furthermore, under Article 256(I) of the Bolivian Constitution, where the human rights treaties to which Bolivia is a state party “declare rights more favorable than those contained in the Constitution,” the treaties “shall have preferential application.”⁵⁹

A. Category II: Detention Based on the Exercise of Fundamental Rights and Freedoms

A detention is arbitrary under Category II when it results from the exercise of fundamental rights and freedoms protected by international law.⁶⁰ Leyes’ detention is arbitrary under Category II because it results from the exercise of his rights to freedom of expression, freedom of association, and political participation, as discussed below.

1. The Government Is Detaining Leyes Because He Exercised His Right to Freedom of Expression

⁵⁷ *Id.*

⁵⁸ *Molina Denuncia a Leyes por Caso Mochilas y Presenta 10 Pruebas*, *supra* note 15.

⁵⁹ CONSTITUCIÓN POLÍTICA DEL ESTADO, Art. 256(I), Feb. 7, 2009, available at https://www.oas.org/dil/esp/Constitucion_Bolivia.pdf [in Spanish] [hereinafter *BOLIVIAN CONSTITUTION*] (an English translation is available at https://www.constituteproject.org/constitution/Bolivia_2009.pdf).

⁶⁰ Specifically, a Category II deprivation of liberty occurs “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13–14 and 18–21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18–19, 21–22 and 25–27 of the International Covenant on Civil and Political Rights.” *Methods of Work of the Working Group on Arbitrary Detention*, Human Rights Council, U.N. Doc. A/HRC/36/38, July 13, 2017, at ¶ 8(b).

Article 19(2) of the ICCPR and Article 19 of the Universal Declaration of Human Rights guarantee the right to freedom of expression.⁶¹ This right is also enshrined and protected in Article 21(5) of the Bolivian Constitution.⁶² The UN Human Rights Committee has explained that individuals must be allowed to “criticize or openly and publicly evaluate their Governments without fear of interference or punishment.”⁶³ The UN Special Rapporteur on Freedom of Opinion and Expression has similarly stated that discussion of government policies, political debate, and reporting on human rights, government activities, and government corruption can never be restricted.⁶⁴ In addition, the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms – which the Working Group has previously cited⁶⁵ – reiterates that “everyone has the right . . . [t]o communicate with non-governmental or intergovernmental organizations.”⁶⁶

Leyes’ detention is the direct result of his outspoken criticism of the Bolivian government. The criminal complaint against him in Mochilas I, which led to his initial arrest, was filed by Municipal Councilwoman Rocío Molina (a member of the ruling MAS party) on April 3, 2018 – less than two weeks after he met with members of the EU Parliament in Brussels (March 21), the staff of the Office of the UN High Commissioner for Human Rights in Geneva (March 22), and Spanish government officials in Madrid (March 24). During these meetings, he discussed the state of democracy in Bolivia, human rights violations in the country, and the Government’s refusal to respect the 2016 Referendum in which Bolivians voted against allowing Evo Morales to run for a fourth term as president. These meetings, including their topics of discussion, were widely reported in the media.⁶⁷ More generally, Leyes is an outspoken and well-known government critic, and in the weeks before the first criminal complaint was filed, he repeatedly spoke out against the Government and organized civic strikes to defend the constitutional referendum.⁶⁸ In addition, the week of Leyes’ arrest, the Democrats released an audio recording in which, according to them, a MAS official and another man asserted that President Morales was determined to get rid of Leyes because Leyes had criticized the president during the meetings in Europe for overriding the results of the 2016 Referendum.⁶⁹ According to one of these men, Morales was going to “destroy” Leyes.”⁷⁰

The Working Group has repeatedly inferred retaliation when there is suspicious timing similar to this. For example, three Nigerians were arrested on August 4, 1995 after testifying to the Commonwealth Human Rights Committee the month before; the Working Group found their detention to be arbitrary because it was

⁶¹ International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 52 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, at Art. 19(2) [hereinafter ICCPR] and Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, *adopted* 1948, at Art. 19 [hereinafter Universal Declaration].

⁶² BOLIVIAN CONSTITUTION, *supra* note 59, at Art. 21 (“Bolivians have the following rights . . . (5) To freely express and disseminate thoughts and opinions by any means of oral, written or visual communication, individually or collectively.”).

⁶³ *Benhadj v. Algeria*, Communication No. 1173/2003, U.N. Doc. CCPR/C/90/D/1173/2003, U.N. HUMAN RIGHTS COMMITTEE, *adopted* July 20, 2007, at ¶ 8.10.

⁶⁴ Frank La Rue, REPORT OF THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION, U.N. Doc. A/HRC/14/23, Apr. 20, 2010, at ¶ 81(i), *available at* <https://undocs.org/A/HRC/14/23>.

⁶⁵ *Li Hai v. China*, Opinion No. 19/1999, U.N. Doc. E/CN.4/2000/4/Add.1, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Sept. 16, 1999, at ¶ 10(a).

⁶⁶ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144, *adopted* Dec. 9, 1998, at Art. 5(c), *available at* <https://www.un.org/ruleoflaw/files/N9977089.pdf>.

⁶⁷ *Costas, Leyes y Ortiz Hablan del 21F con Diputados del Parlamento Europeo*, *supra* note 11 and *Alcalde Leyes Justifica Campaña Sobre el 21F Durante el Viaje a La Haya*, *supra* note 11.

⁶⁸ *See, e.g.*, Tweet by José María Leyes (@JoseMariaLeyes), TWITTER, Mar. 28, 2018, 4:25 am, *available at* <https://twitter.com/JoseMariaLeyes/status/978956258043719682> (“The Masista Justice frees men sentenced to 30 years in jail for murder, who walk free in the streets, while other innocents are detained or imprisoned without even having a sentence just because they think different from the MAS. #BoliviaSaidNo!!!”) [in Spanish]; Tweet by José María Leyes (@JoseMariaLeyes), TWITTER, Feb. 26, 2018, 3:18 pm, *available at* <https://twitter.com/JoseMariaLeyes/status/968264020955451395> (“My solidarity with Mayor Eduardo Merida, a totally political trial, that only seeks to remove an authority elected by his people. Force Edward.”) [in Spanish]; and Tweet by José María Leyes (@JoseMariaLeyes), TWITTER, Feb. 21, 2018, 4:07 pm, *available at* <https://twitter.com/JoseMariaLeyes/status/966464460360749061> (“Congratulations #Cochabamba, again we hear our voice demanding respect for the 21F and the citizen vote. Cochabamba said NO”) [in Spanish].

⁶⁹ *Demócratas Acusan al MAS de Organizar un “Complot” Contra Leyes*, *supra* note 13.

⁷⁰ Pablo Cambará & Ruy D’Alencar, *Demócratas Acusan al MAS de Planear un Golpe para ‘Tumbar’ a Leyes*, *supra* note 14.

“solely motivated by their appearance before the . . . Committee.”⁷¹ In another case, a Saudi student was arrested nine months after attending a training seminar abroad on human rights; the Working Group found the student’s detention to be arbitrary because “[t]he only interpretation of the timing of his arrest and continued detention is that the arrest took place immediately after his attendance at a human rights seminar . . . and in connection with his activities as a human rights defender.”⁷²

The connection between Leyes’ detention and his criticism of the Government is further demonstrated by one of the precautionary measures imposed on him in Mochilas I – he was prohibited from November 23, 2018 to March 22, 2019 from making any written or oral statements regarding government authorities, attending protests, or speaking about the legality or illegality of the judicial proceedings taking place. And even after these prohibitions were lifted, the Government has prevented him from holding a press conference on his case.⁷³ The Government clearly seeks to silence him using trumped-up criminal charges.

Therefore, the Government is violating Leyes’ right to freedom of expression under ICCPR Article 19(2) and his detention is arbitrary under Category II.

2. The Bolivian Government Is Detaining Leyes Because He Exercised His Rights to Freedom of Association and to Political Participation

Article 22(1) of the ICCPR, Article 20(1) of the Universal Declaration, and Article 21(4) of the Bolivian Constitution guarantee the right to freedom of association.⁷⁴ Article 25 of the ICCPR, Article 21 of the Universal Declaration, and Article 26(I) of the Bolivian Constitution protect the right to political participation.⁷⁵ The Working Group has found violations of both of these rights and declared detention to be arbitrary where an individual is detained as a result of their involvement in opposition politics. For example, in *Tran Thi Thuy v. Viet Nam*, the Working Group, citing ICCPR Articles 22 and 25, found the detention to be arbitrary because “the Petitioners were arrested and convicted due to their association with the Viet Nam Reform Party, an opposition party.”⁷⁶ Furthermore, in *Musallam Mohamed Hamad al-Barrak v. Kuwait*, the Working Group found a violation of ICCPR Article 25 because the detainee was imprisoned to “prevent[] [him] from exercising his right to participate in public affairs.”⁷⁷

Leyes is being detained as a direct result of his association and involvement with the opposition Democrat Social Movement party. In fact, he was one of the party’s founders, and is currently one of the party’s leaders. The connection between Leyes’ opposition political activity and his current detainment is demonstrated by the fact that, since he was elected mayor, a variety of government officials have initiated over a dozen baseless criminal complaints against him. In addition, President Morales has made disparaging and politicized comments about Leyes and the Democrats, declaring in an interview that the “[t]he mayor’s

⁷¹ *Meschack v. Nigeria*, Opinion No. 2/1996, U.N. Doc. E/CN.4/1997/4/Add.1, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted May 22, 1996, at ¶¶ 5–6.

⁷² *Ali Khassif Saïd Al Qarni v. Saudi Arabia*, Opinion No. 41/2011, U.N. Doc. A/HRC/WGAD/2011/41, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Sept. 2, 2011, at ¶ 11.

⁷³ *Falta de un Trámite Impide que Leyes Dé Conferencia de Prensa en la Cárcel*, LOS TIEMPOS, Apr. 11, 2019, available at <http://www.lostiempos.com/actualidad/cochabamba/20190411/falta-tramite-impide-que-leyes-conferencia-prensa-carcel> [in Spanish].

⁷⁴ ICCPR, *supra* note 61, at Art. 22(1); Universal Declaration, *supra* note 61, at Art. 20(1); and BOLIVIAN CONSTITUTION, *supra* note 59, at Art. 21(4).

⁷⁵ ICCPR, *supra* note 61, at Art. 25 (protecting the right “To take part in the conduct of public affairs” and “To have access, on general terms of equality, to public service in his country”); Universal Declaration, *supra* note 61, at Art. 21 (“1. Everyone has the right to take part in the government of his country 2. Everyone has the right to equal access to public service in his country.”); and BOLIVIAN CONSTITUTION, *supra* note 59, at Art. 26(I) (“All citizens have the right to participate freely in the formation, exercise and control of political power, directly or through their representatives, individually or collectively.”).

⁷⁶ *Tran Thi Thuy v. Viet Nam*, Opinion No. 46/2011, U.N. Doc. A/HRC/WGAD/2011/46, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted September 2, 2011, at ¶¶ 20–21; *see also Sannikov v. Belarus*, Opinion No. 14/2012, U.N. Doc. A/HRC/WGAD/2012/14, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted May 4, 2012, at ¶ 40 (finding detention to be arbitrary and finding violations of, *inter alia*, ICCPR Articles 22 and 25 where the detainee “was deprived of his liberty because of his activities in opposition to the Government”) and *Yndamiro Restano Diaz v. Cuba*, Opinion No. 12/1993, U.N. Doc. E/CN.4/1994/27, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Apr. 29, 1993, at ¶ 6(f) (“To act as head of a political opposition movement . . . is simply lawful exercise of the rights to freedom of expression and opinion and to political association . . .”).

⁷⁷ *Musallam Mohamed Hamad al-Barrak v. Kuwait*, Opinion No. 20/2017, U.N. Doc. A/HRC/WGAD/2017/20, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Apr. 24, 2017, at ¶ 47.

office in Cochabamba was the Democrat's coffer [I]f the Democrats [win the presidency,] all Bolivia will become a coffer for [them].”

The Government's intention to prevent Leyes from participating in public affairs is clear from several additional facts. First, the Vice-President explicitly declared on a news channel that Leyes should have resigned due to the charges he is facing. Second, immediately after Leyes was arrested – on the very next business day – Councilwoman Molina and two other MAS Councilmen asked the Municipal Council to replace Leyes as mayor, despite his not being convicted of any crime. Third, the precautionary measures against Leyes were clearly meant to removing him from office – in Mochilas I, the Tribunal prohibited Leyes from entering any municipal office or contacting any municipal employee, which prevented him from fulfilling his duties as mayor and led the Municipal Council to replace him with an interim mayor. (These precautionary measures were in effect for over seven months, from April 20, 2018 until they were struck down on appeal on November 23, 2018.) While these measures were in effect, the Anti-Corruption Tribunal explicitly stated that Leyes “can work any job *except* that of mayor.” Furthermore, the Tribunal declared that the alleged obstruction risk which prompted it to impose these measures would persist until the execution of a sentence – meaning Leyes would be precluded from fulfilling his official duties for the remainder of his term as mayor. Fourth, as mentioned above, soon before Leyes' arrest, the Democrats released an audio recording seemingly revealing a plot by the MAS and President Morales to get rid of Leyes.

Leyes' detention and prosecution fits into a broader pattern of Government persecution of political opponents and politicians who dare to criticize it. For example, Bolivia's UN Country Team has noted that “The accumulation of judicial proceedings against members of the political opposition and ex-public servants is cause for concern.”⁷⁸ The US State Department's 2018 human rights report on Bolivia noted that there were numerous pending cases against opposition politicians and government critics – for example, 40 open cases targeting the mayor of La Paz, Luis Revilla and 30 against Ernesto Suarez, former prefect of Beni.⁷⁹ The report also highlighted “multiple cases against the governor of Santa Cruz, Ruben Costas; the governor of La Paz, Feliz Patzi; the mayor of El Alto, Soledad Chapeton; former presidents Jorge Tuto Quiroga and Carlos 20; the mayor of Tarija, Rodrigo Paz; and the leader of the National Unity opposition party, Samuel Doria Medina.”⁸⁰

Because Leyes' detention violates his rights to freedom of association and political participation under ICCPR Articles 22(1) and 25, his detention is arbitrary under Category II.

B. Category III: Violation of Due Process Rights

The Working Group considers a deprivation of liberty to be arbitrary under Category III “[w]hen 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.”⁸¹ As the Bolivian government has violated numerous procedural requirements under both domestic and international law in the cases against him, Leyes' ongoing detention is arbitrary under Category III.

1. The Bolivian Government is Detaining Leyes in Violation of His Right to the Presumption of Bail

The ICCPR contains a presumption against pretrial detention. Article 9(3) states that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody.”⁸² The Human Rights Committee has explained that pretrial detention “must be based on an individualized determination that it is reasonable and

⁷⁸ COMPILATION PREPARED IN ACCORDANCE WITH PARAGRAPH 15 (B) OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1 AND PARAGRAPH 5 OF THE ANNEX TO COUNCIL RESOLUTION 16/21: PLURINATIONAL STATE OF BOLIVIA, OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, U.N. Doc. A/HRC/WG.6/20/BOL/2, Aug. 18, 2014, at ¶ 48.

⁷⁹ BOLIVIA 2018 HUMAN RIGHTS REPORT, *supra* note 2, at 6.

⁸⁰ *Id.*

⁸¹ *Methods of Work of the Working Group on Arbitrary Detention*, *supra* note 60, at ¶ 8(c).

⁸² ICCPR, *supra* note 61, at Art. 9(3).

necessary . . . for such purposes as to prevent flight, interference with evidence or the recurrence of crime.”⁸³ Furthermore, Bolivia’s Criminal Procedure Code states that “[p]ersonal liberty . . . can only be restricted when it is indispensable to assure . . . the development of the process.”⁸⁴

As a threshold matter, there is not enough evidence of Leyes’ guilt to subject him to pretrial detention. Article 233(1) of Bolivia’s Criminal Procedure Code explicitly requires “sufficient evidence” of guilt as a precondition for pretrial detention.⁸⁵ However, the evidence against Leyes fall far short of this standard. In fact, the prosecution has presented no physical or direct evidence linking Leyes to the crimes with which he has been charged. The *only* evidence the Government has presented against Leyes thus far is: (1) the fact that Leyes authorized the bidding processes at issue; (2) the fact that Leyes signed both final contracts; and (3) hearsay statements by co-defendants claiming they received orders from Moreno and Padilla, who they say purported to act on Leyes’ behalf, as well as statements from Padilla himself. Regarding (1) and (2), neither demonstrates any wrongdoing by Leyes. In particular, neither indicates that Leyes was aware of the alleged irregularities in the bidding processes, nor that he ordered Moreno and Padilla to rig the bidding. As mayor, Leyes signed over a thousand contracts each year for similar bidding processes; it was simply not possible for him to personally oversee them all. He therefore relied on other municipal employees tasked with conducting due diligence. Prior to signing each of the contracts at issue, Leyes reviewed the municipal Qualifying Commission’s evaluation, as well as two reports from municipal legal counsel, all of which recommended that Leyes sign the contract. The municipal legal counsel also certified, before the contracts were awarded, that each bid and bidding process met all legal requirements. Based on this, Leyes, in good faith, signed each contract. Regarding (3), a few hearsay statements by co-defendants – who clearly have a motive to lie and shift blame – is hardly “sufficient evidence” of guilt. Furthermore, Padilla has given conflicting statements. He first declared that he did not know whether Leyes took decisions in the process and that he had never carried out a payment on Leyes’ behalf. But he later stated that Leyes was aware of all information regarding the bidding processes and that Leyes had ordered him to receive a payment from Morales for awarding his company the 2017 contract (a claim Leyes strongly denies). Yet the prosecution has not presented evidence about this claim or even accused Leyes with receiving any money himself from these two bidding processes.

Apparently aware that it cannot prove that Leyes knew about the irregularities in the bidding processes or that he was directly involved, the Government has asserted a theory of strict liability. Bolivian law states that “recurring” bidding processes are under the “exclusive responsibility” of the mayor,⁸⁶ and the Government insists in the Mochilas indictments that this means that Leyes is criminally responsible for any malfeasance in the bidding process committed by anyone whatsoever, even if he did not know about it and was not involved in any way. This interpretation ignores the fact that some of the crimes that Leyes is charged with explicitly require *mens rea*, “knowing” participation.⁸⁷ Furthermore, the Government’s interpretation is simply wrong – “exclusive responsibility” refers to a designation of authority, not criminal liability. In fact, the Municipal Comptroller’s Office initiated an independent audit of the 2016–2017 bidding before the Mochilas criminal complaints were filed; on the basis of this audit, the Municipal Council recently found, on March 19, 2019, that Leyes had *administrative* responsibility only for authorizing a “recurring” bidding process but not for any other irregularity. It also found he had no *criminal* responsibility in the process.

Beyond this threshold issue, the Government’s asserted justifications for Leyes’ pretrial detention fail

⁸³ *General Comment 35 on Article 9: Liberty and Security of Person*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/GC/35, Dec. 16, 2014, at ¶ 38; *see also Teymur Akhmedov v. Kazakhstan*, Opinion No. 62/2017, U.N. Doc. A/HRC/WGAD/2017/62, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Aug. 25, 2017, at ¶ 41 (“[P]retrial detention must be an exceptional measure and as such should be justified in each individual case and assessed by a competent, independent judge . . .”).

⁸⁴ Criminal Procedure Code, *supra* note 21, at Art. 221.

⁸⁵ Criminal Procedure Code, *supra* note 21, at Art. 233(1); *see also Leiva v. Venezuela*, Inter-Am. Court of Human Rights, Nov. 17, 2009, at ¶ 111, *available at* http://www.corteidh.or.cr/docs/casos/articulos/seriec_206_ing.pdf (pretrial detention can only be imposed where there is “sufficient evidence to allow reasonable supposition that the person committed to trial has taken part in the criminal offense under investigation”).

⁸⁶ Decreto Supremo N° 0181 [Supreme Decree 01818], EVO MORALES AYMA, at Art. 18, *available at* <https://www.minsalud.gob.bo/images/Documentacion/normativa/DS181.pdf> [in Spanish] (“Exceptionally and under exclusive responsibility of the [mayor], a recurring contracting process for goods and general services can begin . . .”) [in Spanish].

⁸⁷ Criminal Code, *supra* note 55, at Art. 221 (“The public official who *knowingly* concludes contracts to the detriment of the State or entities . . . will be sanctioned with deprivation of liberty from one to five years.”) (emphasis added).

to meet the requirements of domestic and international law. Under Article 233(2) of the Criminal Procedure Code, pretrial detention is permissible only if there is “sufficient” evidence that an accused will flee or obstruct the investigation.⁸⁸ The Government has not provided sufficient evidence that Leyes will do either.

Leyes is currently detained pursuant to pretrial detention orders issued in both Mochilas I and Mochilas II. The original detention order in Mochilas I occurred on April 21, 2018. After two appellate decisions striking down parts of that order, the Anti-Corruption Tribunal issued a new detention order in Mochilas I on March 22, 2019. This order found that pretrial detention was justified based on the risk that Leyes would influence participants, witnesses, or experts to provide false testimony or adopt uncooperative behavior – both directly himself (CPC Article 235(2)) and through intermediaries (CPC Article 235(4), in relation to (2)). The direct risk was based only on his position as mayor – that is, the Tribunal *assumed* that because he is mayor, he would influence municipal employees to provide false testimony or refuse to cooperate with the investigation. This falls far short of an *individualized* determination – this reasoning would justify the pretrial detention of any mayor, or even any government employee in a position of authority. The European Court of Human Rights, in a similar case, held that a Russian mayor was improperly subjected to pretrial detention because the domestic courts “linked [his] liability to obstruct justice to his status as the mayor . . . and the fact that a number of witnesses in the criminal case were his former subordinates working for the . . . mayor’s office.”⁸⁹ The European Court of Human Rights emphasized that, for purposes of pretrial detention, “it [does] not suffice merely to refer to his official authority.”⁹⁰

The finding that there was a risk that Leyes would influence others through intermediaries was based on a declaration by Fedra Cors, who stated that she and other municipal employees were summoned to a meeting with Leyes’ sister and his lawyer. At the meeting, the sister and lawyer allegedly stated that they were representing Leyes, that they had come to show their support in relation to the investigation into the bidding processes, that those present should not worry, and that the sister and lawyer would provide any help necessary, including arranging an attorney in case any of the employees were called to provide a statement in the investigation. There is strong reason to doubt Cors’ account – Leyes’ sister stated in a sworn declaration that she does not know Cors, and one of the other individuals allegedly at that meeting stated in a declaration that she simply was not there. However, even if the meeting happened exactly as Cors has alleged, there was nothing improper – as Mayor, Leyes is entitled to express support for municipal employees and help arrange legal representation. This hardly constitutes “sufficient” evidence of obstruction.

The detention order in Mochilas II was issued on November 29, 2018. It found that pretrial detention was warranted because (1) Leyes is a flight risk, and (2) there is a risk that he will influence others involved in the case through intermediaries (CPC Article 235(4), in relation to (2)). The flight risk determination was based on “prior criminal activity” – the pending charges in Mochilas I and other alleged criminal activity that has not been charged. Courts that have subsequently upheld this determination have also referenced charges from other baseless indictments that were filed after the November 29 order. This fails the “reasonableness” requirement of pretrial detention because it is not reasonable (or even logical) to assume that prior *allegations* of criminal activity makes someone a flight risk (even though domestic law specifically lists it as a basis for designating someone as a flight risk⁹¹). More generally, under international law, prior criminal activity (recidivism) cannot serve as a primary basis for pretrial detention,⁹² and even in situations where it may be considered, “in no instance should recidivism be examined on the basis of police records or any other documents other than final judgments enacted by the competent courts.”⁹³ However, none of Leyes’ alleged

⁸⁸ Criminal Procedure Code, *supra* note 21, at Art. 233(2); *see also Khodorkovskiy v. Russia*, App. No. 5829/04, Eur. Ct. H.R., May 31, 2011, at ¶ 182 (to justify pretrial detention, the State must show “relevant and sufficient reasons to justify the continued detention”) (internal quotation marks omitted); *Recommendation 13 on the Use of Remand in Custody, the Conditions in Which It Takes Place and the Provision of Safeguards Against Abuse*, COUNCIL OF EUROPE, adopted Sept. 27, 2006, at ¶ 7 (there must be “substantial reasons”); and REPORT ON THE USE OF PRETRIAL DETENTION IN THE AMERICAS, INTER-AMERICAN COMM’N ON HUMAN RIGHTS, Dec. 30, 2013, at ¶ 137 (the State must “establish the existence of the applicable requirements for pretrial detention, clearly and duly grounded, in each specific case”).

⁸⁹ *Makarov v. Russia*, App. No. 15217/07, Eur. Ct. H.R., Mar. 12, 2009, at ¶ 129.

⁹⁰ *Id.*, at ¶ 130.

⁹¹ Criminal Procedure Code, *supra* note 21, at Art. 234(8).

⁹² REPORT ON THE USE OF PRETRIAL DETENTION IN THE AMERICAS, *supra* note 88, at ¶ 157 (“[A]ssuming that [recidivism] alone constitutes procedural risk [for pretrial detention] would be contrary to the principle of the presumption of innocence.”).

⁹³ *Id.*

prior criminal activity have resulted in criminal convictions, and therefore he should not have been designated as a flight risk. In fact, the Anti-Corruption Tribunal itself ruled in *Mochilas I* (on March 22, 2019) that Leyes' pending charges and the other uncharged conduct do not constitute "prior criminal activity" and therefore cannot be used to demonstrate that he is a flight risk.

The Tribunal's finding that there was a risk that Leyes would influence others through intermediaries was based on hearsay statements by co-defendant Christian Siles. Siles alleged that, after the criminal complaint was filed in *Mochilas I*, two municipal employees (Luz Rojas and Andrea Garcia) approached him and said, "You fucked up." The Tribunal did not explain in its detention order why this constitutes influencing Siles, or how this incident is at all connected to Leyes. Moreover, it is not clear that this incident actually occurred – Rojas provided a declaration stating that this never happened. In fact, in the very same detention order finding that this incident occurred, the Tribunal also took note of Rojas' declaration and found that this incident did *not* occur (and used this finding to reject an additional basis for pretrial detention under CPC Article 235(5)). Siles further claimed that, on several occasions, staff from the municipal Human Resources Department sat next to him and threatened him; however, this was not connected to Leyes in any way. Finally, Siles asserted that, at one point, another co-defendant asked him to switch out his cell phone for a new one and said that this was being done "on the mayor's orders." This hearsay statement by one co-defendant, relayed by another co-defendant – both who have motive to lie to protect themselves – hardly constitutes "sufficient" evidence of Leyes' influencing others that would justify pretrial detention.

Thus, the Government is violating Leyes' right to the presumption of bail under ICCPR Article 9(3).

2. The Bolivian Government Is Violating Leyes' Right to an Independent and Impartial Tribunal

ICCPR Article 14(1) guarantees the right of criminal defendants to "a fair and public hearing by a competent, independent and impartial tribunal."⁹⁴ The Universal Declaration and the Bolivian Constitution also protect this right.⁹⁵ In *Bahamonde v. Equatorial Guinea*, the UN Human Rights Committee noted that "a situation . . . where [the executive] is able to control or direct the [judiciary] is incompatible with the notion of an independent and impartial tribunal."⁹⁶ Furthermore, to ensure that they are not subject to outside influence, "Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures."⁹⁷

It is widely recognized the Bolivia's judiciary is not independent, but rather is subject to significant executive influence.⁹⁸ The UN Human Rights Committee, in its most recent Concluding Observations on Bolivia, expressed "concern [at] the continuing reports of widespread political interference . . . in the judicial system."⁹⁹ Freedom House has rated the independence of Bolivia's judiciary as one out of four (with four meaning the judiciary is totally independent), noting that "Bolivia stands as the sole country that appoints justices via popular elections" and that many judges "are nominated through a two-thirds vote in the legislature, which allows the MAS to dominate the candidate selection process and has produced a judiciary that favors the party."¹⁰⁰ Human Rights Watch has noted that "Bolivian authorities have arbitrarily dismissed

⁹⁴ ICCPR, *supra* note 61, at Art. 14(1).

⁹⁵ UDHR, *supra* note 61, at Art. 19 and BOLIVIAN CONSTITUTION, *supra* note 57, at Art. 120(I) ("Every person has the right to be heard by a competent, impartial and independent jurisdictional authority . . .").

⁹⁶ *Bahamonde v. Equatorial Guinea*, Communication No. 468/1991, U.N. Doc. CCPR/C/49/D/468/1991, U.N. HUMAN RIGHTS COMMITTEE, *adopted* Oct. 20, 1993, at ¶ 9.4.

⁹⁷ *General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, at ¶ 20.

⁹⁸ See Oliver Della Costa Stuenkel, *Bolivia's Democracy at Risk: What Role for External Actors?*, CARNEGIE ENDOWMENT FOR INT'L PEACE, June 20, 2017, available at <https://carnegieendowment.org/2017/06/20/bolivia-s-democracy-at-risk-what-role-for-external-actors-pub-71301> (noting that "the Morales government . . . exert[s] considerable influence over the judiciary") and WORLD REPORT 2019: BOLIVIA, *supra* note 49 (noting that "the Bolivian justice system . . . has been plagued by corruption, delays, and political interference for years").

⁹⁹ *Concluding Observations on the Third Periodic Report of the Plurinational State of Bolivia*, U.N. Doc. CCPR/C/BOL/CO/3, U.N. HUMAN RIGHTS COMMITTEE, Dec. 6, 2013, at ¶ 22.

¹⁰⁰ *Freedom in the World 2019: Bolivia*, FREEDOM HOUSE, accessed Apr. 11, 2019, available at <https://freedomhouse.org/report/freedom-world/2019/bolivia>.

almost 100 judges since 2017, seriously undermining judicial independence” and that “President Evo Morales has repeatedly rejected judicial independence as a key component of democracy.”¹⁰¹

The judiciary’s lack of independence and impartiality is evident in the proceedings against Leyes. In particular, the Government has punished judges who have ruled in Leyes’ favor. After Judge Céspedes joined Mochilas I and II into a single proceeding – a reasonable decision, given that the two cases had identical charges, nearly identical defendants, and the same subject matter – the Public Ministry opened a criminal investigation against Judge Céspedes for alleged malfeasance. She was later arrested and detained overnight. When she returned to the bench two weeks later in the Mochilas case, she attempted to recuse herself, given that she was being criminally investigated for a decision in that same case. However, a superior tribunal rejected her recusal. Thus, she was forced to continue presiding over the case even though she was clearly being intimidated by the Government. And this intimidation apparently worked – soon thereafter, Judge Céspedes annulled her original decision to join the proceedings and allowed them to proceed separately as the Government wanted (presumably, to give it two separate chances to convict Leyes). As a result of her allegedly wrongful actions in the Mochilas case, Judge Céspedes was stripped of her title and can never again work as a judge.

The Government also retaliated against the two appellate judges on the Second Criminal Chamber who released Leyes from house arrest on November 23, 2018. After that hearing, the Vice-Minister of Transparency announced that the Ministry of Justice would pursue legal action against them. A few days later, the Minister of Justice asked the Magistrates’ Council to take disciplinary measures against the judges, claiming they had acted “for dark, petty, and sectarian ends.” The Magistrates’ Council, largely dominated by judges chosen by or previously affiliated with the Morales administration, suspended both judges.

The Government has sent a clear message – any judge that rules in Leyes’ favor will face serious consequences. With this lingering threat, it now appears impossible for Leyes to receive a fair hearing or trial before an independent and impartial tribunal.

More generally, the judges hearing the cases against Leyes have acted with clear bias. According to the US State Department: “Leyes was suspended from office and brought to courts within hours of being accused of corruption, whereas cases involving MAS authorities often [take] years to proceed.”¹⁰² In addition, the trial judge in Mochilas II scheduled hearings requested by the defense with delays of up to several months, while scheduling hearings requested by the prosecution within a matter of days.

Therefore, the Government has violated Leyes’ right to an independent and impartial tribunal under ICCPR Article 14(1).

3. The Bolivian Government Violated Leyes’ Right to the Presumption of Innocence

Article 14(2) of the ICCPR, Article 11(1) of the Universal Declaration, and Article 116(I) of the Bolivian Constitution guarantee the right to the presumption of innocence.¹⁰³ This right imposes on the prosecution the burden to prove the charge, and requires that the accused has the benefit of doubt.¹⁰⁴ The Human Rights Committee has explained that media coverage that affirms the accused’s guilt, or portrays the accused in a way that undermines the presumption of innocence, must be avoided.¹⁰⁵ The Working Group has also reaffirmed this interpretation, finding a violation of the presumption of innocence in *Aguilar v. Bolivia*, where the Government used the detainee’s arrest to further official propaganda.¹⁰⁶

As previously noted, on May 7, 2018, the Vice-President stated in a televised interview that Leyes was involved in corruption. He stated that Leyes’ attitude towards the proceedings “demonstrates [his]

¹⁰¹ *Bolivia: Dozens of Judges Arbitrarily Dismissed*, HUMAN RIGHTS WATCH, Apr. 29, 2019, available at <https://www.hrw.org/news/2019/04/29/bolivia-dozens-judges-arbitrarily-dismissed>.

¹⁰² BOLIVIA 2018 HUMAN RIGHTS REPORT, *supra* note 2, at 17.

¹⁰³ ICCPR, *supra* note 61, at Art. 14(2); UDHR, *supra* note 61, at Art. 11(1); and BOLIVIAN CONSTITUTION, *supra* note 59, at Art. 116(I).

¹⁰⁴ *Human Rights Committee General Comment 32*, *supra* note 97, at ¶ 30.

¹⁰⁵ *Id.*

¹⁰⁶ *Aguilar v. Bolivia*, Opinion No. 12/2005, U.N. Doc. E/CN.4/2006/7/Add.1, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted May 26, 2005, at ¶¶ 9–10.

relative complicity” and referred to Leyes as “a person involved in stealing from children” and “a person involved in acts of corruption.” Similarly, on September 4, 2018, a prominent Bolivian journal published an interview in which President Morales stated that “Leyes steals.” And in April 2019, the chief prosecutor of Cochabamba stated that the Public Ministry should be prepared to request the Mochilas I case proceed to trial once the case investigation, despite not yet knowing the results of the investigation. These statements clearly violate Leyes’ presumption of innocence.

The grounds for pretrial detention listed by the Anti-Corruption Tribunal in Mochilas II further violate Leyes’ presumption of innocence. As discussed previously, in its November 29, 2018 detention order, the Tribunal found, among other things, that Leyes was a flight risk based on prior criminal activity, referring to the pending charges in Mochilas I and other alleged criminal activity that has not been charged. Thus, the Tribunal presumed that Leyes was guilty of this “prior criminal activity” despite the fact that he has not yet been tried or convicted. In fact, the same Tribunal, in Mochilas I, held on March 22, 2019 that the pending charges and the other, uncharged conduct cannot be used to demonstrate prior criminal activity or a risk of flight.

In addition, the Government has *de facto* suspended Leyes as mayor. The municipal council has appointed an interim mayor even though the Bolivian Constitutional Court has held that temporarily suspending a mayor pursuant to a criminal complaint is unconstitutional because it “constitute[s] a contravention of the state of innocence . . . and a sanction without a prior trial.”¹⁰⁷

Most recently, on May 5, 2019, Leyes’ wife Ingrid Lazaneo was blocked from boarding a flight from Santa Cruz Airport in Bolivia to Miami, Florida.¹⁰⁸ Initially she was shown a screen by migration police which said she was blocked from travel because “[h]er family members are engaged in an alleged act of corruption in Cochabamba.” But she was also illegally detained for four hours without a warrant and her luggage was also searched without a warrant. Without any justification or due process, Lazaneo’s right to free movement guaranteed under Article 13 of the UDHR and Article 12(2) of the ICCPR was denied on the basis of the allegations against her husband.

As a result, the Government has violated Leyes’ right to the presumption of innocence under ICCPR Article 14(2).

INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN

Leyes remains in detention today and is still suspended from his official duties as mayor. He is appealing the pretrial detention orders in Mochilas I and II, which are based on alleged flight and obstruction risks. Both cases are still being investigated and neither has yet proceeded to trial. His defense has also submitted a petition for precautionary measures to the Inter-American Commission on Human Rights.

¹⁰⁷ Sentencia Constitucional Plurinacional 2055/2012 [Constitutional Sentence 2055/2012], in Reference to Art. 128(II) (Tribunal Constitucional Plurinacional) (Bol.), *available at* <http://www.icees.org.bo/wp-content/uploads/2013/02/SENTENCIA-CONSTITUCIONAL-PLURINACIONAL-2055.pdf> [in Spanish].

¹⁰⁸ *Retienen a la Esposa de José María Leyes en el Aeropuerto de Viru Viru*, LOS TIEMPOS, May 5, 2019, *available at* <http://www.lostiempos.com/actualidad/cochabamba/20190505/retienen-esposa-jose-maria-leyes-aeropuerto-viru-viru>.