



General Assembly

Distr.: General
17 October 2024
English
Original: Spanish

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 100th session, 26–30 August 2024

Opinion No. 31/2024 concerning Argelia Margarita Infante Nares and Yoeimer Alexair Hurtado Infante (Bolivarian Republic of Venezuela)

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,¹ on 8 June 2023 the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Argelia Margarita Infante Nares and Yoeimer Alexair Hurtado Infante. The Government replied to the communication on 6 September 2023. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).



1. Submissions**(a) Communication from the source**

4. Argelia Margarita Infante Nares is a national of the Bolivarian Republic of Venezuela and a housewife.

5. Yoeimer Alexair Hurtado Infante is Ms. Infante Nares' son, a national of the Bolivarian Republic of Venezuela and a sergeant major of the third class in the Bolivarian National Guard. They live together in a house located in the area of Las Vueltas, Peña de Mota, in the parish of Altigracia de Orituco, municipality of José Tadeo Monagas, Guárico State.

(i) Context

6. The source states that Ms. Infante Nares and Mr. Hurtado Infante were arrested on 24 April 2022 at their residence by officers of the National Anti-Extortion and Kidnapping Unit, on account of their alleged links to the criminal gang known as "Tren del Llano".

7. Their arrests were made in the context of "Operation Thunder", the goal of which was to uncover the whereabouts of collaborators with and accomplices of Tren del Llano. The operation began on 20 April 2022, when approximately 800 officers from various security forces arrived in Altigracia de Orituco. Hours before the operation began, the town experienced a communications blackout that lasted several hours. On that day, dozens of raids were carried out on the homes of local business owners and campesinos. In the first week of the operation, more than 40 arrests were made.

8. The source states that the officers arrived in civilian vehicles and forcibly entered homes without a search warrant, destroyed and stole property, separated family members, including children from their parents, made death threats and demanded that residents provide the names of local criminals.

(ii) Arrests and criminal proceedings

9. According to the source, on 24 April 2022 at approximately 10.30 p.m., 18 officers of the National Anti-Extortion and Kidnapping Unit, masked and without identification, surrounded the Infante family's house. In the house at the time were Ms. Infante Nares and her eldest son, Mr. Hurtado Infante, who, as a third sergeant major in the Bolivarian National Guard, was in Altigracia de Orituco for two weeks of leave. Other family members, including children, were also in the house.

10. According to the source, seven officers broke down the door, entered the house and threw Ms. Infante Nares and a member of her family to the floor. Then, two officers forced her out of the house onto the patio, grabbing her arm and pulling her by the hair. While Ms. Infante Nares was on the floor, the officers insulted her and demanded she tell them the whereabouts of another member of her family who, according to the authorities, was in a romantic relationship with a member of Tren del Llano. They then interrogated another member of the family, who told them that the family member in question was currently abroad.

11. The source alleges that the officers demanded that one member of the family hand over his mobile telephones and then searched Mr. Hurtado Infante's bag. They also searched the house for other items. An officer asked Mr. Hurtado Infante if he had ever been in trouble with the courts, to which he replied that his legal trouble had been resolved and that he had the release order to prove it. The source adds that, in reply, the officer exclaimed "look here, I will eliminate you, if you are lying to me, I will tear you apart" and raised his rifle as if to shoot. A member of Mr. Hurtado Infante's family immediately stepped in front of him, but one officer knocked him to the ground and another placed his boot on his head. After this, the officers left the house with Mr. Hurtado Infante and threw him to the ground, kicked him and sent him to look for clothes because he was in his underwear. That night, both Ms. Infante Nares and Mr. Hurtado Infante were arrested, on the grounds, according to the officers, that they both had police records.

12. According to the source, the officers robbed the Infante family. Among the items stolen were Mr. Hurtado Infante's motorcycle, civilian and military clothing, personal documents such as his identity cards, driver's licences and cards, mobile telephones and money. The confiscation of these items was not recorded in the chain of custody. On 25 April 2022, Ms. Infante Nares and Mr. Hurtado Infante were transferred to the headquarters of the National Police in the city of San Juan de los Morros, capital of Guárico State. One of their relatives went the headquarters but was told by officials that Ms. Infante Nares and Mr. Hurtado Infante were not there.

13. The source argues that, for three days, this relative searched for Ms. Infante Nares and Mr. Hurtado Infante in other police headquarters but could not find them. Later, an officer told the relative that Ms. Infante Nares and Mr. Hurtado Infante were indeed at the headquarters of the Bolivarian National Police and that the family should bring them food because they had not eaten in days.

14. The source adds that, on 26 April 2022, a member of the family reported the incident to Municipal Prosecutor's Office No. 1 of Altavracia de Orituco, which refused to register the complaint, claiming that the matter was not within its jurisdiction. The complaint was ultimately registered by Prosecutor's Office No. 21 in the city of San Juan de los Morros.

15. In San Juan de los Morros, Ms. Infante Nares and Mr. Hurtado Infante were in the custody of Prosecutor's Office No. 16. Officials at this office told a member of their family that they were to be transferred to the city of Caracas, because all cases relating to the events that had occurred in Altavracia de Orituco were being processed in Caracas.

16. The source alleges that, on 2 May 2022, the officials of Prosecutor's Office No. 16 informed this same relative that he had to pay \$200 for Ms. Infante Nares and Mr. Hurtado Infante to be transferred to Caracas. The relative had to sell his few belongings and borrow money to cover the cost of the transfer. Ms. Infante Nares and Mr. Hurtado Infante were detained for approximately 12 days at the headquarters of the Bolivarian National Police.

17. On 4 May 2022, Ms. Infante Nares and Mr. Hurtado Infante were transferred to Caracas, brought before the courts with national jurisdiction over terrorism-related offences and charged with the offences of criminal association, illicit arms trafficking and terrorism, as defined in the Organic Act on Organized Crime and the Financing of Terrorism.

18. According to the source, the officers claimed that Mr. Hurtado Infante was at home with a group of seven others and that, upon entering his house, they searched the patio and found six shotgun barrels, six shotgun buttstocks and a tube of ammunition. At the end of the arraignment, the court ordered that he be placed in pretrial detention.

19. According to the source, Ms. Infante Nares is being charged as part of a criminal case involving six other women and a minor she does not know. The source adds that the lawyers handling the case are public defenders, since the court did not agree to the appointment of private defence counsel.

20. The initial hearing was held on 4 August 2022. After negotiating with the Prosecutor's Office, and on the condition of pleading guilty, Ms. Infante Nares was charged only with the offence of criminal association, to which she admitted in order to obtain an early release. Consequently, Ms. Infante Nares was sentenced to 5 years in prison. In December 2022, the public defender filed the documentation requested by the judge of Criminal Sentence Court No. 8 of the Caracas Metropolitan Area in order to obtain her release from prison on a conditionally suspended sentence.

21. Despite this, on 28 December 2022, a member of the family reported that the sentencing court had demanded \$3,000 to process the release of Ms. Infante Nares from prison before 24 December – a demand which the family member rejected. According to the source, Mr. Hurtado Infante did not plead guilty to the charges brought against him and his case was therefore brought before Trial Court of First Instance No. 1, which has exclusive national jurisdiction over cases involving terrorism-related offences. The source adds that the trial has been deferred six times.

22. Ms. Infante Nares is deprived of her liberty at the centre for the control and protection of detainees at the El Valle headquarters of the National Police Force, in the municipality of

Libertador in the Capital District. Mr. Hurtado Infante is deprived of his liberty at the detention centre of the Bolivarian National Police commonly referred to as “Zone 7” in Boleíta, Chacao municipality, Miranda State.

23. The source states that the public defenders have not provided the family of Ms. Infante Nares and Mr. Hurtado Infante with copies of their case files. It adds that a relative had to make copies of these files at a cost of \$60.

(iii) *Legal analysis*

24. The source contends that the detention of Ms. Infante Nares and Mr. Hurtado Infante is arbitrary and falls within categories I, III and V of the categories identified by the Working Group.

a. Category I

25. The source bases its arguments on article 9 of the Covenant, principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 44 of the Constitution.

26. According to the source, during security operations, the State often alters police records to justify arrests allegedly made in flagrante delicto, in order to legitimize its actions and create a legal basis for these arrests. This pattern has been identified in multiple reports issued by international organizations² and has been seen in several cases involving arrests made during Operation Thunder.

27. As is evident from the facts, the arrests of Ms. Infante Nares and Mr. Hurtado Infante were not ordered by a judge or made in flagrante delicto, but rather were the result of an abuse of power by officers of the National Anti-Extortion and Kidnapping Unit, who, without a search warrant, broke into the residence of the Infante family, arrested Ms. Infante Nares and Mr. Hurtado Infante and subsequently detained them with the help of officers of the Bolivarian National Police, who alleged that Mr. Hurtado Infante had been found at home with a group of seven others and that they had found six shotgun barrels, six shotgun buttstocks and a tube of ammunition. However, according to the source, in reality, Mr. Hurtado Infante was resting on leave from his duties as third sergeant major in the Bolivarian National Guard.

28. The source recalls that the independent international fact-finding mission on the Bolivarian Republic of Venezuela noted that pretrial detention orders were issued as a routine, rather than as an exceptional measure, and without providing sufficient or appropriate justification. The mission also noted that it has reasonable grounds to believe that prosecutors and judges play key roles in arbitrary detention by upholding arrest warrants, pretrial detention orders and criminal charges based on facts and supporting evidence that do not involve criminal acts or allow for the role of the defendant in the commission of the alleged offence to be specifically determined. It adds that, in some cases, detentions or charges have been sustained on the basis of illegally obtained, manipulated or fabricated evidence, including evidence obtained through torture or coercion.³

29. The source alleges that Ms. Infante Nares and Mr. Hurtado Infante were subjected to enforced disappearance. According to the jurisprudence of the Working Group, incommunicado detention amounts to prima facie enforced disappearance, which has been universally condemned as a denial of the purposes of the Charter of the United Nations and a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and constitutes a particularly aggravated form of arbitrary detention.⁴

30. The source adds that the Working Group has also established that incommunicado detention and enforced disappearance restrict the rights to have access to a lawyer of one’s choosing, to be brought promptly before a judicial authority and to challenge the lawfulness

² A/HRC/45/33, para. 115.

³ A/HRC/48/69, paras. 112 and 113.

⁴ Opinions No. 76/2017, para. 59, and No. 19/2019, para. 34.

of the detention before a judge, which in turn implies a violation of article 9 of the Universal Declaration of Human Rights and article 9 (3) of the Covenant.

31. The source argues that Ms. Infante Nares and Mr. Hurtado Infante were subjected to enforced disappearance by officers of the Bolivarian National Police from the moment of their arrest. At the very least, their family had no knowledge of their whereabouts for three days, because officials claimed that they were not being held at the place where members of the family came to look for them. As a result, they went without food for three days. Even after Ms. Infante Nares and Mr. Hurtado Infante had been detained and brought before the competent court, their relatives were unable to visit them for several weeks.

32. The source adds that the detention of Ms. Infante Nares is arbitrary since, despite the fact that she has been granted a plea bargain, the judge has not ordered her release, the processing of which has been made subject to a bribe.

33. According to the source, after negotiating with the Prosecutor's Office, Ms. Infante Nares admitted to one of several charges against her in order to obtain an early release. She did this because of the pressure exerted on her by her own public defender, who warned her that if she did not avail herself of this option, she would run the risk of being convicted of several more offences at trial, since the arrests made during Operation Thunder were direct orders from the President of the Bolivarian Republic of Venezuela.

34. The five-year prison sentence handed down to Ms. Infante Nares entitles her to the procedural concession of "conditional suspension of the enforcement of the sentence". This concession is automatically applied to persons who meet the conditions set out in articles 482 et seq. of the Organic Code of Criminal Procedure. However, the sitting judge of Sentence Enforcement Court No. 8 for the Caracas Metropolitan Area has not ordered her release because the Ministry of People's Power for Prison Administration has not conducted a psychosocial test to ensure that she meets the criteria for the lowest security risk classification. This is an excuse stemming from corruption and the absence of the rule of law, as amounts of up to \$3,000 must be paid to the judicial authorities in order to undergo this psychosocial test.

35. According to the source, more than nine months have passed since Ms. Infante Nares agreed to the plea bargain in exchange for a procedural concession, yet her release has not been ordered. According to the source, this situation violates article 257 of the Constitution.

b. Category III

36. The source mentions that a recent anti-corruption operation undertaken by the Bolivarian Republic of Venezuela has revealed the existence of corruption schemes by officials of the justice system, which has led to a lack of impartiality in criminal proceedings.

37. The source argues that the detention of Ms. Infante Nares and Mr. Hurtado Infante is part of a pattern deployed by officials of the justice system in criminal proceedings. Even though Ms. Infante Nares pleaded guilty to the only charge against her in order to obtain an early release, she continues to be deprived of her liberty owing to the fact that the judge of Sentence Enforcement Court No. 8 for the Caracas Metropolitan Area is demanding \$3,000 from her relatives in order to process her release. The source also states that when Ms. Infante Nares and Mr. Hurtado Infante were detained in San Juan de los Morros, the officials of Prosecutor's Office No. 16 demanded \$200 from their relatives to pay for their transfer to Caracas to be tried.

38. The source argues that impartiality has been undermined by the co-opting of the judiciary by other public powers. Evidence of this is the fact that Operation Thunder, in which Ms. Infante Nares and Mr. Hurtado Infante were arrested, was carried out on the basis of an alleged presidential order. The source therefore claims that article 14 (1) of the Covenant has been violated in the present case.

39. The source recalls that article 14 (2) and (3) (c) of the Covenant provides that everyone charged with a criminal offence shall have the right to be presumed innocent and to be tried without undue delay. It adds that, according to the jurisprudence of the Working Group, there is a relationship between the right to be heard and the right to be presumed innocent, in that both imply that accused persons have the right to present relevant evidence and testimony for

their defence and that evidence and witnesses alike should be examined by the parties to the trial.

40. In the present case, the organs of the justice system have not recognized the right to the presumption of innocence, since from the moment the criminal proceedings against Mr. Hurtado Infante began, he was deprived of liberty without having been found guilty, being placed in pretrial detention. The purpose of this measure is to undermine his innocence by subjecting him to prolonged confinement resulting from procedural delays, which is evidenced by the fact that his trial has been deferred six times since the beginning of the trial phase. The source mentions that this has prevented Mr. Hurtado Infante from submitting evidence and giving testimony relevant to his defence.

41. The source alleges that the pretrial detention of Mr. Hurtado Infante is also contrary to general comment No. 35 (2014) of the Human Rights Committee, in which the Committee states that extremely prolonged pretrial detention may also jeopardize the presumption of innocence.

42. The source refers to article 14 (3) (b) of the Covenant, which provides that, during the trial, all persons charged with a criminal offence are entitled to minimum guarantees, in full equality, in particular the right to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing.

43. The independent international fact-finding mission on the Bolivarian Republic of Venezuela has noted the existence of a practice by judges of denying accused persons the right to counsel of their choice at the initial appearance or subsequent investigation phase. It has also noted that, even when defendants were able to secure representation of their choosing, their ability to prepare an adequate defence was hindered in various ways.

44. While it is true that Ms. Infante Nares and Mr. Hurtado Infante were assigned a public defender, this is the case because the judge of the procedural court denied them the possibility of appointing trusted counsel. This situation has undermined their ability to prepare an adequate defence, since they are unable to communicate effectively with their counsel.

45. The source concludes that, in the present case, there has been a violation of the due process guarantees enshrined in article 14 (1), (2) and (3) (b) and (c) of the Covenant.

c. Category V

46. The independent international fact-finding mission to the Bolivarian Republic of Venezuela has noted the commission by the security forces of arbitrary arrests and detentions during security operations aimed at combating crime. Moreover, certain behaviours or patterns by the security forces have been identified, such as a pattern of carrying out these operations primarily in low-income urban neighbourhoods.⁵

47. The source argues that the arrests of Ms. Infante Nares and Mr. Hurtado Infante are part of a pattern used by the security forces in security operations, which is rooted in discrimination on the basis of social status and economic position resulting from poverty.

48. The source adds that the Infante family were targeted by officers of the National Anti-Extortion and Kidnapping Unit during Operation Thunder because they live in a low-income area with social ties to criminal activity, namely the Peña de Mota area of the Altagracia de Orituco parish. It also indicates that this situation was used as a pretext by the officers to link Ms. Infante Nares and Mr. Hurtado Infante with members of the Tren del Llano gang and thus to arrest them so that they could later be charged with terrorism-related offences.

49. Another relevant factor indicative of discrimination was that, during the arrests, the officers rummaged through their belongings and identified a release order issued by a criminal court. This situation caused the officials to act violently against several members of the family, accusing them of being confessed criminals despite the fact that the order was for a release on the ground that the Prosecutor's Office had found no incriminating evidence.

⁵ A/HRC/48/69, para. 6 (a).

(b) Response from the Government

50. The Working Group, in accordance with its methods of work, transmitted the source's allegations to the Government of the Bolivarian Republic of Venezuela on 8 June 2023 and requested it to submit a response by 7 August 2023. The Government requested, and was granted, an extension of the deadline for providing its response. The Working Group received the Government's response on 6 September 2023, within the established deadline.

51. The Government, in its response, states that the criminal proceedings against Ms. Infante Nares and Mr. Hurtado Infante are related to their alleged collaboration with Tren del Llano. The Government indicates that both persons were arrested on 26 April 2022 by properly uniformed and duly identified officers of the Criminal Investigations Directorate of the Bolivarian National Police Force, who were deployed as part of the security operation "Operation Thunder 2022", conducted in Guárico State with the aim of preventing criminal activity by Tren del Llano.

52. The arrests took place when the police officers identified two individuals (the Silva Beroes sisters),⁶ whom they ordered to stop, but who attempted to flee from the officers, which led to a chase that ended at the home of Ms. Infante Nares and her son, Mr. Hurtado Infante.

53. The Government claims that, while searching the home, the police, in the presence of two witnesses, found a white bag made of synthetic material containing five double shotgun barrels, 10 16-mm shotgun barrels, eight wooden shotgun grips, a pair of high-precision binoculars, 40 pieces of 7.62 mm by 39 mm calibre ammunition and a smoke grenade. A motorcycle was found at the rear of the house.

54. The Government states that, hours later, Ms. Infante Nares and Mr. Hurtado Infante turned up at the house, indicating that they lived there. In view of the discovery of items and materials of criminal interest that might implicate them in the commission of offences, both citizens were arrested in flagrante delicto by the police officers.

55. The Government cites the relevant national legal provisions authorizing this type of search and arrest and the search of the aforementioned house; in accordance with the provisions of the Organic Code of Criminal Procedure, such action is permitted when it concerns persons who are being pursued with a view to their arrest. The Government insists that the persons being pursued for having ignored the police's order to stop sought refuge in the house.

56. After their arrest, both Ms. Infante Nares and Mr. Hurtado Infante were immediately brought to the headquarters of the National Anti-Extortion and Kidnapping Unit. They were subsequently transferred to the National Forensic Medicine and Science Service for forensic medical examinations, then to the profiling suite of the Scientific, Criminal and Forensic Investigation Unit to establish their full identity and filiation details. The arrests were registered in court record No. CNPB-005-041GUINV-SP-GD-000659-2022. The Government has attached to its submission two records that establish that both persons detained were in good health and had no injuries.

57. The Government states that, when police records were consulted, it was found that both persons had criminal records. Ms. Infante Nares had been arrested in December 2020 for arms trafficking, while Mr. Hurtado Infante had been arrested in December 2020 for arms trafficking and again in November 2010 for premeditated murder.

58. The Government insists that the arrests were made in flagrante delicto, in accordance with article 44 of the Constitution and article 234 of the Organic Code of Criminal Procedure.

59. The persons detained were notified by the National Police officers of the reasons for their arrest and of their rights, as shown in the two annexes provided by the Government.

⁶ See opinion No. 54/2023.

60. Records of this notification are also attached, bearing the legible signatures of both citizens, in compliance with the standards of the Human Rights Committee, which has clarified that “oral notification of reasons for arrest satisfies the requirement” of notification.⁷

61. The Government states that the proceedings in the present case were carried out by the Criminal Investigations Directorate of the Bolivarian National Police Force, acting as a criminal investigation body, and that both arrests were made by persons authorized to carry out arrests by virtue of the powers conferred on them by law.

62. The Government explains that, on 27 April 2022, both detained persons were brought before State and Municipal Procedural Criminal Court of First Instance No. 3 in San Juan de los Morros, Guárico State, for an arraignment hearing, as required by article 236 of the Organic Code of Criminal Procedure. They were brought before a judge within 48 hours of their arrest. The other two persons involved in the case (the Silva Beroes sisters)⁸ were also present at this hearing.

63. At the arraignment hearing, the defendants indicated that they did not have private counsel, so the Court swore in a public defender to assist them. The Government rejects the source’s claims in this regard, as there was no impediment to the appointment a private defence lawyer at the hearing.

64. The Government indicates that, at the hearing, the Court decided, in accordance with articles 71 and 80 of the Code of Criminal Procedure, to defer jurisdiction over the case to the duty procedural court for the Caracas Metropolitan Area with national competence in cases of terrorism-related offences because the case involved the alleged commission of offences against public order, which are defined in the Act on Disarmament and Arms and Munitions Control and the Act on Organized Crime and the Financing of Terrorism.

65. The Government affirms that, during the aforementioned hearing, neither Ms. Infante Nares, nor Mr. Hurtado Infante, nor their defence counsel reported the human rights violations they claim to have occurred during their detention, which have now suddenly been reported and described, for the first time, before the Working Group.

66. Pursuant to article 373 of the Organic Code of Criminal Procedure, Special Procedural Court of First Instance No. 4, which has national jurisdiction over cases of terrorism-related offences and in cases involving corruption and organized crime, conducted the ninth hearing, following a transfer of jurisdiction, on 16 May 2022. At the hearing, both defendants again stated that they did not have private counsel and were appointed counsel by the State in accordance with the law. During the hearing, neither the defendants nor their counsel made any complaints regarding the manner in which the criminal proceedings were being conducted.

67. The Government indicates that the court in the case accepted the initial classification of the offences of terrorism, criminal association and illicit trafficking of arms and ammunition brought by the Public Prosecution Service against Ms. Infante Nares and Mr. Hurtado Infante. The court dismissed the charge of conspiracy.

68. The Government also indicates that the court in the case agreed to follow the ordinary procedure and to hold Ms. Infante Nares in pretrial detention at the National Women’s Correctional Institute and to hold Mr. Hurtado Infante in pretrial detention at the “Rodeo II” pretrial detention centre in the Capital Region. It also ordered that they both undergo a full medical evaluation in order to safeguard their right to health.

69. The Government claims that, in deciding to order pretrial detention, the court carefully considered whether the conditions for this custodial measure had been met, including whether a punishable act that warrants deprivation of liberty had been committed, whether there was substantiated evidence that the defendants had participated in the commission of a punishable act and whether it could reasonably be presumed, based on an evaluation of the particular circumstances of the case, that there was a risk of flight or of obstruction of the search for the truth in a specific investigation.

⁷ Human Rights Committee, general comment No. 35 (2014), para. 26.

⁸ See opinion No. 54/2023.

70. The Government emphasizes that Ms. Infante Nares decided, without any pressure whatsoever, during the preliminary hearing, to plead guilty to the charges brought against her, pursuant to article 375 of the Organic Code of Criminal Procedure. In view of this freely made admission of guilt, the judge sentenced Ms. Infante Nares to 5 years' imprisonment.

71. Before Special Procedural Court of First Instance No. 4, which has national jurisdiction over cases of terrorism-related offences, Mr. Hurtado Infante, free from any constraint or coercion, decided not to plead guilty; the Court therefore ordered that the measure of pretrial detention be maintained and that an oral, public trial be held.

72. The Government explains that, in 2004, the Supreme Court of Justice – the highest court in the country – adopted decision No. 2004-0217 of 22 November 2004, in which it was decided that terrorism-related cases should be heard only by specific procedural courts in order to increase specialization. Therefore, in the present case, the fundamental principle and essential requirement established in article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant has been met.

73. The Government states that Ms. Infante Nares is currently serving her sentence at the centre for the control and protection of female detainees at the “El Valle” headquarters of the Bolivarian National Police. Mr. Hurtado Infante remains detained by judicial decision at the “Zona 7” centre for the control and protection of male detainees, a facility managed by the Bolivarian National Police located in Boleíta.

74. During the criminal proceedings, Ms. Infante Nares pleaded guilty to the offences of which she had been charged by the Public Prosecution Service. The Government informs the Working Group that it rejects the claims made by the source in this regard, since the use of the special procedure applicable to guilty pleas does not at any time imply that the person concerned is to be immediately released on the basis of a conditional suspension of the enforcement of the sentence. In order for a conditional suspension to be granted, the requirements set out in the Organic Code of Criminal Procedure must be met, including the need to be determined to pose a minimal security risk following an assessment conducted by an expert panel appointed by the Ministry of People's Power for Prison Administration. Ms. Infante Nares is currently passing through the various stages of this process and has not yet undergone the assessment necessary for her to regain her freedom.

75. The Government states that at no point does the State or its institutions charge for any of these procedures and wishes to make clear that the Ministry of People's Power for Prison Administration is responsible for the proper application of psychosocial testing, in accordance with the law.

76. The Government rejects the claim that the detained individuals were discriminated against for any reason, since their detention was ordered on the basis of their alleged commission of offences defined in and punishable by law, without regard to their personal situations and in compliance with articles 1 and 7 of the Universal Declaration of Human Rights and articles 2 and 26 of the Covenant.

(c) Additional comments from the source

77. The Working Group transmitted the Government's response to the source on 6 September 2023 and requested any final comments and observations, which were received on 21 September 2023.

78. In its additional comments, the source contests the claim that the persons apprehended were arrested in flagrante delicto during the pursuit of Silva Beroes sisters (who are the subject of opinion No. 54/2023), since in its response to the Working Group in the case concerning the Silva Beroes sisters, the Government stated that the sisters were arrested on 27 April 2022, that is, one day after the date indicated in its response in the present case. The Government also stated, in its response in the former case, that the arrest of the sisters took place at their residence, not at the residence of the family of Ms. Infante and Mr. Hurtado Infante. The source adds that the Government did not annex in its response the procedural records to which it refers and in which the arrests in flagrante delicto were registered, despite the fact that the burden of proof rests on the State.

79. The source states that the independent international fact-finding mission on the Bolivarian Republic of Venezuela has referred to these illegal searches and detentions, noting that they occur regularly and do not comply with legal provisions.⁹ It recently referred to such violations in the context of Operation Thunder 2022, noting that the relatives of those detained reported that the authorities had carried out searches without warrants and arbitrary detentions,¹⁰ during which the security forces planted fake incriminating evidence against the detained persons in order to justify the claim that they had been caught in flagrante delicto.

80. In its additional comments, the source presents a lengthy analysis of the overall situation in the Bolivarian Republic of Venezuela, as well as an account of the illegitimate acts committed in the framework of security operations aimed at combating crime. It also describes acts of harassment and persecution against the family of Ms. Infante and Mr. Hurtado Infante and attaches a copy of a complaint submitted in relation to these acts to the Directorate for Fundamental Rights of the Public Prosecution Service.

2. Deliberations

81. The Working Group thanks the source and the Government for their submissions.

82. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹¹

83. Given the discrepancies in the facts as reported by the source and the Government in its response, and in accordance with the Working Group's practice, it is up to the Working Group to determine which version of the facts it considers most credible on the basis of the information provided. The Working Group notes that the source has provided a detailed and coherent account of the circumstances of the detentions and the case, an assessment strengthened by the fact that the current case is backed up by another case involving similar actions, procedures and circumstances.¹² The Working Group takes note of its previous opinions on similar situations in the Bolivarian Republic of Venezuela.¹³

84. After a detailed assessment of the evidence presented and claims made by both the source and the Government, in which it compared the circumstances, retraced the clear and detailed sequence of events as described by both parties and examined the value of each piece of evidence submitted, the Working Group has reached the following opinion.

(a) Category I

85. The Working Group has not been convinced that the detention of Ms. Infante Nares and Mr. Hurtado Infante was lawful, as the account of the events contains elements that, in the Working Group's view, are not convincing. The Government states that the National Police were pursuing other persons and that, in the course of that pursuit, they arrived at a house, which they raided in the absence of its legitimate owners. The owners showed up at the house several hours later and were arrested by the police, because the officers found several weapons during the raid. For the Working Group, it is not acceptable that a home be raided during the pursuit of third parties or that police officers remain in that home for several hours and then arrest the legitimate inhabitants, since it is clear from the account given that the police were not even aware whose home it was, among other inconsistencies.

86. Moreover, while the Government states that Ms. Infante Nares and Mr. Hurtado Infante were arrested on 26 April 2022, the source states that the date of arrest was 24 April 2022. The Working Group notes that, according to the arrest reports, the arrests took place on the previous Saturday, which would be 23 April 2022 (as the reports are dated 28 April 2022).¹⁴ These inconsistencies cast doubt on the reliability of the dates given by the

⁹ A/HRC/48/69, paras. 60 and 84.

¹⁰ A/HRC/54/57, para. 94.

¹¹ A/HRC/19/57, para. 68.

¹² See opinion No. 54/2023.

¹³ See opinion No. 14/2024.

¹⁴ See <https://ultimasnoticias.com.ve/noticias/general/juzgaran-por-terrorismo-a-18-del-tren-del-llano/>.

Government and its account of the arrests. In contrast, the source's account and statements are consistent and accurate and contain specific reference points. On this basis, the Working Group considers that the source's indication of the date of the arrest is more credible than that of the Government.

87. The source therefore maintains that the detentions were arbitrary under category I, because neither Ms. Infante Nares nor Mr. Hurtado Infante were shown arrest warrants issued by a judge or arrested in flagrante delicto. On the contrary, these detentions were the result of an abuse of power by officers of the National Anti-Extortion and Kidnapping Unit who, without sufficient supporting documentation, raided the residence of the Infante family, arrested Ms. Infante Nares and Mr. Hurtado Infante and subsequently detained them with the support of National Police officers, alleging that they had found six shotgun barrels, six shotgun buttstocks and a tube of ammunition, but without any documentation to support this claim, as the Working Group has already deduced.

88. The Government claims that the arrests were made after it was discovered, through the consultation of police records, that Ms. Infante Nares and Mr. Hurtado Infante had criminal records. It insists that both arrests were made in flagrante delicto, in accordance with its legislation.

89. The Working Group recalls that, under international law, arrests and detentions require legal authorization to be lawful. The Working Group has established that the authorities must invoke the legal basis and apply it to the circumstances of the case. This is typically done through an apprehension or arrest warrant, or an equivalent document.¹⁵ The reasons for arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual details to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.¹⁶

90. Detained persons have the right to be promptly informed of the charges against them. This is inherent in article 9 of the Universal Declaration of Human Rights and principles 2 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. These provisions also require that the procedures for carrying out legally authorized deprivation of liberty should be established by law and that States parties should ensure compliance with them, including by specifying when an arrest warrant is required. If these procedures are not respected, a detention is arbitrary and seriously undermines the ability to conduct a proper legal defence.

91. After examining the records provided by the Government, the Working Group has deduced that they were issued after the fact, such that the detention of the aforementioned citizens could not have been carried out in flagrante delicto or in compliance with the requirements set out in articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant, or with those contained in general comment No. 35 (2014) of the Human Rights Committee (para. 33) and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (para. 33).¹⁷ On this factual basis, the Working Group is of the view that the detention of Ms. Infante Nares and Mr. Hurtado Infante lacks legal basis.

92. The source argues that Ms. Infante Nares and Mr. Hurtado Infante were subjected to enforced disappearance by officers of the Bolivarian National Police from the moment of their arrest. At the very least, their family had no knowledge of their whereabouts for three days, because officials claimed that they were not being held at the place where members of the family came looking for them (San Juan de los Morros, Guárico State). As a result, they were unable to eat during that time. Even after Ms. Infante Nares and Mr. Hurtado Infante had been detained and brought before the competent court, their relatives were unable to visit them for several weeks.

93. The Working Group notes with concern that, according to its jurisprudence, incommunicado detention amounts to a prima facie enforced disappearance, which has been

¹⁵ Opinion No. 4/2023, para. 64.

¹⁶ Opinion No. 85/2021, para. 69.

¹⁷ Opinions No. 3/2018, para. 43, and No. 10/2018, para. 46.

universally condemned as a denial of the purposes of the Charter of the United Nations, a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and a particularly aggravated form of arbitrary detention.¹⁸ The Government has not contested these circumstances, stating only that all activities and procedures were carried out in accordance with the law.

94. The Working Group agrees with the source's statement that incommunicado detention and enforced disappearance restrict the rights of the person detained to have access to a lawyer of his or her choosing and to be brought promptly before a judicial authority, which in turn implies a violation of article 9 of the Universal Declaration of Human Rights and article 9 (3) of the Covenant. The Working Group has decided to refer the present case to the Working Group on Enforced or Involuntary Disappearances for appropriate action.

95. The Working Group stresses that article 9 (3) of the Covenant requires that anyone arrested be brought promptly before a judge, while article 9 (4) provides that the detained person has the right to challenge the legality of his or her detention before a court. Judicial oversight of detention is a fundamental safeguard of personal liberty¹⁹ and is essential to ensuring that detention has a legal basis. In this sense, 48 hours is normally sufficient to meet the requirement of article 9 (3) of the Covenant to bring the detainee before a judge "without delay". Any delay longer than 48 hours must remain absolutely exceptional and be justified under the specific circumstances.²⁰

96. The Working Group notes that neither Ms. Infante Nares nor Mr. Hurtado Infante was promptly brought before a court and that they were unable to challenge the lawfulness of their detention, as the first judicial authority declined jurisdiction in favour of a specialized court. As a result, both persons had to wait for a new hearing, which took place on 16 May 2022. In the light of the foregoing, the Working Group has not been convinced that the detained persons were brought before a court within 48 hours of their arrest or that their right to challenge the lawfulness of their detention before a court was respected.

97. The Working Group therefore concludes that Ms. Infante Nares and Mr. Hurtado Infante were denied the effective right to bring an action before a court to challenge the legality of their initial detention, contrary to articles 8 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant and principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. They were also held outside the protection of the law for the first few days of their detention, in violation of article 6 of the Universal Declaration of Human Rights.²¹

98. Accordingly, the Working Group concludes that multiple violations of article 9 of the Covenant and article 9 of the Universal Declaration of Human Rights have been committed, rendering the detention of both individuals arbitrary under category I.

(b) Category III

99. The Working Group adheres to the international human rights law principles according to which every person has the right to respect for the fundamental elements of a fair, independent and impartial trial in the course of proceedings instituted against him or her and will therefore proceed to examine the facts on that basis.

100. The source argues that, although it is true that Ms. Infante Nares and Mr. Hurtado Infante were assigned a public defender, this is the case because the judge of the procedural court denied them the possibility of appointing trusted counsel. This situation has undermined their ability to prepare an adequate defence, since they are unable to communicate effectively with their counsel, in violation of the due process guarantees enshrined in articles 14 (1), (2) and (3) (b) and (c) of the Covenant. However, the Government points out that when the detained persons stated that they did not have lawyers, the Court swore in two public

¹⁸ Opinions No. 76/2017, para. 59, and No. 19/2019, para. 34.

¹⁹ [A/HRC/30/37](#), para. 3.

²⁰ Opinion No. 56/2019, para. 80.

²¹ Opinions No. 76/2017, para. 58, and No. 61/2020, para. 70; and [A/HRC/29/26/Add.2](#), para. 108.

defenders to assist them, in full compliance with the rules of due process and the right to a defence.

101. The source also claims that the public defender and the families did not receive copies of the court files relating to the case. Although the Working Group notes that the law *per se* does not require that copies of case files be provided, it strongly emphasizes that access to relevant documents and evidence is required to ensure the realization of the rights enshrined in article 14 (3) (b) of the Covenant. This is consistent with general comment No. 32 (2007) of the Human Rights Committee, in which the Committee states that adequate means of conducting the defence should include access to documents and other evidence, including all materials that the prosecution plans to offer in court against the accused or that are exculpatory. The Government, however, claims that, from the moment of their detention until the present time, Ms. Infante Nares and Mr. Hurtado Infante have had full contact with their defence lawyers, who have been able to represent properly them throughout the process.

102. Having analysed the statements made by the source, the Working Group has not been convinced that the lawyers did not have access to the case files, since it is clear that the requests made of and agreements reached with the authorities are the result of an adequate, timely and well-prepared defence.

103. The Working Group is aware that both defendants reside in the area of Las Vueltas, Peña de Mota, Altagracia de Orituco parish, in the municipality of José Tadeo Monagas, Guárico State, where the police allege that the criminal activity was committed. However, both defendants were transferred to Caracas, because all cases relating to Altagracia de Orituco were being processed there.

104. In its jurisprudence, the Working Group has repeatedly stated that, where national law expressly assigns competence to the court of the jurisdiction where an offence was allegedly committed, it is a violation of the right to be tried by the competent or duly appointed judge for a person accused of an offence committed in one jurisdiction to be tried by a court in another jurisdiction.²² However, the Government has explained that all crimes classified as terrorism, once the judge has determined that this is the case, must be tried according to a special procedure. In the present situation, the judge ceded jurisdiction to special judges located elsewhere. Therefore, the Working Group is not convinced by the source's claim in this regard.

105. According to the source, after negotiating with the Prosecutor's Office, Ms. Infante Nares admitted to one of several charges against her in order to obtain an early release. She did this because of the pressure exerted by her own public defender, who warned her that, if she did not avail herself of this option, she would run the risk of being convicted of several more offences at trial, since the arrests made within the framework of Operation Thunder were direct orders from the President of the Bolivarian Republic of Venezuela. The source argues that the five-year prison sentence imposed on Ms. Infante Nares entitles her to the procedural concession of "conditional suspension of the enforcement of the sentence". This concession is automatically applied to persons who meet the conditions set out in articles 482 et seq. of the Organic Code of Criminal Procedure.

106. However, despite the fact that Ms. Infante Nares agreed to the concession procedure, the sitting judge of Sentence Enforcement Court No. 8 for the Caracas Metropolitan Area has not ordered her release because the Ministry of People's Power for Prison Administration has not conducted a psychosocial test to ensure that she meets the criteria for the lowest security risk classification. The source adds that this is an excuse stemming from corruption and the absence of the rule of law, because amounts of up to \$3,000 must be paid to the judicial authorities in order to undergo this psychosocial test.

107. According to the source, more than nine months have passed since Ms. Infante Nares agreed to the plea bargain in exchange for a procedural concession, yet her release has not been ordered. However, the Government explains that the use of the special procedure applicable to guilty pleas does not at any time imply that the person concerned will be

²² Opinions No. 28/2014, para. 46, No. 30/2014, para. 51, No. 1/2015, paras. 31 and 34, No. 6/2019, para. 135, No. 12/2019, para. 121, No. 43/2019, para. 77 and No. 58/2021, para. 85.

immediately released on the basis of a conditional suspension of the enforcement of the sentence. In order for a conditional suspension to be granted, the requirements set out in the Organic Code of Criminal Procedure must be met, including the need to be determined to pose a minimal security risk through an assessment carried out by an expert panel appointed by the Ministry of People's Power for Prison Administration. The Government insists that the State and its institutions never charge a fee for this procedure.

108. Mr. Hurtado Infante did not admit the charges brought against him; his case was therefore before Trial Court of First Instance No. 1, which has exclusive national jurisdiction to hear cases involving terrorism-related offences. The source informs the Working Group that the trial has been deferred on six occasions and that Mr. Hurtado Infante remains in detention.

109. The Working Group recalls that, according to the Human Rights Committee in its general comment No. 32 (2007), the right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law. Article 14 of the Covenant aims at ensuring the proper administration of justice, and to this end guarantees a series of specific rights. These rights have been violated in the cases of Ms. Infante Nares and Mr. Hurtado Infante.

110. The Working Group draws attention to the procedural fault arising from the fact that Mr. Hurtado Infante's arraignment hearing has been suspended six times. In the case of Ms. Infante Nares, the Government has demonstrated that certain requirements must be met in order for the concession of conditional suspension of the execution of the sentence to be granted. According to the claims made by the source in its additional comments, the judicial authorities charge for the performance of the procedures that would allow for her release.

111. According to articles 9 (3) and 14 (3) (c) of the Covenant, anyone arrested or detained on a criminal charge is entitled to trial within a reasonable time and without undue delay. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was handled by the authorities.

112. In view of the foregoing, the Working Group concludes that some of the information provided by the source and not refuted by the Government indicates that the ability of Ms. Infante Nares and Mr. Hurtado Infante to benefit from international human rights standards relating to a fair trial without undue delay in accordance with article 14 of the Covenant was seriously undermined. The Working Group is thus of the view that the detention of Ms. Infante Nares and Mr. Hurtado Infante is arbitrary under category III.

(c) Category V

113. The source has indicated that the arbitrary detention of Ms. Infante Nares and Mr. Hurtado Infante also falls under category V, since it is grounded in their poverty. However, the Working Group has not been convinced that the arrests were made on the basis of any kind of discrimination.

(d) Concluding remarks

114. The present case is one of a number of cases brought before the Working Group in recent years concerning arbitrary detention in the Bolivarian Republic of Venezuela.²³ In the Working Group's view, this is indicative of a systematic practice of depriving people of their liberty while failing to respect their rights under international law. Widespread or systematic imprisonment, in violation of the rules of international law, might constitute crimes against humanity.²⁴

115. The Working Group would welcome the opportunity to work constructively with the Government to address problems concerning arbitrary detention and, in the light of the

²³ Opinions No. 73/2020, No. 57/2020, No. 44/2020, No. 20/2020, No. 81/2019, No. 80/2019, No. 75/2019, No. 40/2019, No. 39/2019, No. 86/2018, No. 72/2018, No. 49/2018, No. 41/2018, No. 32/2018, No. 87/2017, No. 84/2017, No. 52/2017 and No. 37/2017.

²⁴ Opinion No. 47/2012, para. 22.

recurrent pattern of arbitrary detention identified by this international human rights mechanism in recent years, the Government is urged to consider inviting the Working Group to make an official country visit. Such visits are an opportunity for the Working Group to engage in direct constructive dialogue with the Government and representatives of civil society, with the aim of better understanding the situation of deprivation of liberty in the country and the underlying reasons for arbitrary detention.

3. Disposition

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

The deprivation of liberty of Argelia Margarita Infante Nares and Yoeimer Alexair Hurtado Infante, being in contravention of articles 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

117. The Working Group requests the Government of the Bolivarian Republic of Venezuela to take the steps necessary to remedy the situation of Ms. Infante Nares and Mr. Hurtado Infante without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

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

119. The Working Group urges the Government of the Bolivarian Republic of Venezuela to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Infante Nares and Mr. Hurtado Infante and to take appropriate measures against those responsible for the violation of their rights.

120. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances.

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

4. Follow-up procedure

122. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether compensation or other reparations have been made to Ms. Infante Nares and Mr. Hurtado Infante;

(b) Whether an investigation has been conducted into the violation of the rights of Ms. Infante Nares and Mr. Hurtado Infante and, if so, the outcome of the investigation;

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

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

123. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

124. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action

would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as of any failure to take action.

125. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.²⁵

[Adopted on 30 August 2024]

²⁵ Human Rights Council resolution 51/8, paras. 6 and 9.