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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 38/2024 concerning Niurka Mariana Mota Belisario, Leonardo Javier Fernández Estanga, Pedro Domingo Díaz Díaz and Jean Pierre Pages Evans (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 13 July 2023 the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Niurka Mariana Mota Belisario, Leonardo Javier Fernández Estanga, Pedro Domingo Díaz Díaz and Jean Pierre Pages Evan. The Government replied to the communication on 12 October 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,

¹ [A/HRC/36/38](#).



or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

1. Submissions

(a) Communication from the source

4. Niurka Mariana Mota Belisario is a national of the Bolivarian Republic of Venezuela, works as a customs administration official and manages a family member's mixed farming business. She was 26 years old at the time of her arrest.

5. Leonardo Javier Fernández Estanga is a national of the Bolivarian Republic of Venezuela and works as a bricklayer. He was 31 years old when arrested.

6. Pedro Domingo Díaz Díaz is a national of the Bolivarian Republic of Venezuela and works as a taxi driver. He was 42 years old at the time of his arrest.

7. Jean Pierre Pages Evans is a national of the Bolivarian Republic of Venezuela and works as a taxi driver. He was 43 years old at the time of his arrest.

(i) Context

8. The source states that Ms. Mota Belisario, Mr. Fernández Estanga, Mr. Pages Evans and Mr. Díaz Díaz were arrested between 20 and 23 April 2022 during "Operation Thunder" in the parish of Altagracia de Orituco, in the municipality of José Tadeo Monagas, Guárico state. They were all registered under the same criminal case, with the file No. MP-245550.

9. On 14 and 15 April 2022, as part of Holy Week celebrations, the mayor's office of the municipality of José Tadeo Monagas organized recreational activities at the Guanapito coastal resort, located in the parish of Altagracia de Orituco, very close to the base of operations of the criminal gang known as "Tren del Llano". Despite the presence of local authorities, several heavily armed individuals, allegedly members of Tren del Llano, showed up at the site to enjoy the facilities. Days later, the authorities deployed Operation Thunder, the purpose 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 Altagracia de Orituco.

10. The source notes that hours before the operation began, the town experienced a communications blackout that lasted several hours. On that day, dozens of illegal raids were carried out on the homes of local business owners and farmers. In the first week of the operation, more than 40 arrests were made.

11. The source claims that, in some cases, people were subjected to torture and cruel treatment with the aim of coercing them into making statements and/or incriminating other suspects. The source also states that the officers arrived in several civilian vehicles and forcibly entered homes without search warrants, destroyed and stole personal property, separated family members, including children, from one another, and used death threats to try to convince residents to provide the names of local criminals. Women were forced to undress and show their private parts in front of dozens of male officials. There was also evidence of cases of enforced disappearance.

(ii) Arrests and criminal proceedings

Niurka Mariana Mota Belisario

12. According to the source, on 23 April 2022, members of Ms. Mota Belisario's family were enjoying a coffee at her home while she was bathing. Officers entered the home without a search or arrest warrant and stated that they were conducting a special operation. The officers identified themselves as members of the Special Action Forces. However, their badges read "DCDO", the Spanish-language abbreviation used by the Directorate against Organized Crime.

13. The officers entered the bathroom with their weapons and forcibly removed Ms. Mota Belisario from the shower with her hands in the air. There were no female officers taking part

in the operation. They entered her bedroom, searched it and took US\$ 700 in cash, as well as several mobile telephones. Ms. Mota Belisario was forced to dress while the officers kicked her and shouted “you are coming with us, we are going to kill you”. On leaving the house, the officers also took a white 2005 Chevrolet Luv-D-Max pickup truck.

14. The source claims to have knowledge of a screenshot showing a list of persons from Altagracia de Orituco, with the letterhead of the Strategic Intelligence Directorate; the persons on the list are allegedly individuals arrested by State forces. This list includes the name of Ms. Mota Belisario, who is described as a “collaborator” and the “partner of Primo de Mataguaca”.²

Leonardo Javier Fernández Estanga

15. According to the source, on 20 April 2022, eight officers of the National Anti-Extortion and Kidnapping Unit entered the home of Mr. Fernandez Estanga at 7 p.m., without showing a warrant. Mr. Fernandez Estanga was at home with his family, and the officials remained there for approximately one hour without letting anyone in or out. They asked if any of the inhabitants of the house knew the members of the Tren del Llano gang.

16. The officials asked Mr. Fernandez Estanga for his identity card, but the card was damaged because, as a bricklayer, he often gets wet. When Mr. Fernandez Estanga presented his identity card to the officers of the National Anti-Extortion and Kidnapping Unit, they claimed that it was a forgery, threw him to the ground, photographed him as if he were a criminal and took him away, claiming that he had to give a statement. A family member stated that the officers did not specify where they were taking him.

Pedro Domingo Díaz Díaz

17. The source claims that Mr. Díaz Díaz was arrested by the National Anti-Extortion and Kidnapping Unit on 21 April 2022 while working his shift as a taxi driver. That day, prior to his arrest, at approximately 8.30 a.m., Mr. Díaz Díaz was briefly detained and subjected to extortion by officers of the National Anti-Extortion and Kidnapping Unit, because he did not have any documentation with him. The officers demanded that he give them the money he had earned that day and that he buy bread and drinks for them in exchange for their letting him go and continue his work. Once Mr. Díaz Díaz had purchased the items the officers had requested, they detained him again. At 11 a.m., Mr. Diaz Diaz’s family stopped hearing from him.

Jean Pierre Pages Evans

18. The source claims that Mr. Pages Evans was arrested on 20 April 2022 by officers of the Directorate for Criminal Investigation and the Directorate against Organized Crime. The officers first detained a member of his family after accosting her in her vehicle and forcing her into the back seat while one officer took the wheel.

19. On the way from the premises of his commercial business – a liquor store – to his home, Mr. Pages Evans received a telephone call; the person on the other end of the line told him “we are in your van, your relative is in the back, and the van is full of officers”. Mr. Pages Evans went to the location given by the officers and, upon exiting his vehicle, was immediately detained by them. The officers took his telephone and wallet, which contained his documents, handcuffed him and even took US\$ 900 he had been carrying to pay some suppliers. They released his relative, took him into custody and impounded his two vehicles, without indicating where they were going.

20. According to the source, Ms. Mota Belisario, Mr. Fernandez Estanga, Mr. Diaz Diaz and Mr. Pages Evans, after being arrested, were taken to the headquarters of the National Anti-Extortion and Kidnapping Unit on the outskirts of Altagracia, where they remained for at least a day. They were then transferred to San Juan de Los Morros, in the state of Guárico, where the guards made members of their families pay for food, drinks, sleeping mats and personal hygiene and cleaning items.

² A member of the El Tren del Llano gang.

21. Subsequently, an attempt was made to organize an arraignment hearing before the due process courts in San Juan de Los Morros; however, the judge declined to try the defendants on the ground that he lacked material jurisdiction, instead referring the case to the courts with jurisdiction over terrorism, located in Caracas, in the Capital District.

22. The source adds that on 26 April 2022, Ms. Mota Belisario, Mr. Fernández Estanga, Mr. Díaz Díaz and Mr. Pages Evans were brought before the courts of the Palace of Justice in Caracas. They were not allowed to designate trusted lawyers and were assigned a public defender instead. The judge accepted the initial classification of the offences and ordered that the accused be placed in pretrial detention on the premises of the Bolivarian National Police in El Valle, in the case of Ms. Mota Belisario, and La Yaguara, in the case of Mr. Fernández Estanga, Mr. Díaz Díaz and Mr. Pages Evans, both of which are located in the Capital District.

23. The Public Prosecution Service filed formal charges on 10 June 2022 against all four individuals detained, grouping them together in case No. MP-245550, for the offences of terrorism, criminal association and illicit trafficking of arms and ammunition, as defined in the Organic Act on Organized Crime and the Financing of Terrorism. Ms. Mota Belisario was also charged with the offence of trafficking in persons.

24. According to the source, the four individuals were charged and brought to trial in case No. 01JT^o-072-22 before Trial Court of First Instance No. 1, which has exclusive national jurisdiction to hear cases involving terrorism. The opening of the trial was postponed 12 times; once the trial had begun, the hearings were postponed twice more. The trial finally began on 19 May 2023 and three hearings have been held.

25. The source notes that Ms. Mota Belisario remains deprived of liberty on the premises of the Bolivarian National Police in El Valle, where she is allowed out in the sun. Ms. Mota Belisario is reliant on food provided by her family, who are able to visit her regularly and send her money to buy food.

26. The source adds that Mr. Pages Evans was placed on house arrest and regularly appears before the courts when summoned. He is awaiting trial.

27. The source states that Mr. Fernández Estanga has suffered from epilepsy since childhood and must take medication on a daily basis but is not taking it in prison. The source adds that, since December 2022, Mr. Fernández Estanga has been imprisoned on the premises of the Bolivarian National Police in San Agustín del Norte, in the Capital District. His family does not live in Caracas, so they have not been able to visit him regularly. Moreover, as they have limited means, they cannot send him money for food; he therefore depends on what the State or his cellmates give him.

28. According to the source, Mr. Díaz Díaz has been imprisoned on the premises of the Bolivarian National Police in San Agustín del Norte since 20 September 2022. The source adds that Mr. Díaz Díaz suffers from a heart condition and has a bacterial infection and a seven-centimetre stone in one of his kidneys. On 19 July 2022, his private defence counsel filed a request for a procedural concession on humanitarian grounds before Due Process Court No. 31 (Due Process Court of First Instance No.1, which has jurisdiction over cases involving terrorism) given his kidney disease. This request was received by the Truth and Justice Commission. On 13 August 2022, Mr. Díaz Díaz's relatives received an email from the Forensic Expertise Division of the Public Prosecution Service, which is attached to the Caracas Metropolitan Area Chief Prosecutor's Office, requesting his personal information in relation to the processing of the procedural concession request.

29. The source claims that, to date, Mr. Díaz Díaz has not benefited from humanitarian relief despite the fact that his lawyer attended a meeting with the Truth and Justice Commission, sentence enforcement prosecutors and the Attorney General of the Republic at the headquarters of the Public Prosecution Service on 16 August 2022 to establish a working group tasked with resolving requests for procedural concessions. Moreover, his health has worsened. On 27 September 2022, he was transferred to Dr. Pérez Carreño Hospital for emergency intravenous treatment to relieve kidney pain. He was discharged from hospital on 3 October 2022.

30. With regard to the internal complaints filed by the relatives of the detained individuals, the source states that, in February 2023, the relatives of Mr. Díaz Díaz, Mr. Fernández Estanga and Ms. Mota Belisario attended a meeting with officials from National Prosecutor's Office No. 80, which specializes in human rights cases. Ms. Mota Belisario and Mr. Fernández Estanga filed complaints with this office under file No. MP-183662-2022. The family of Mr. Díaz Díaz filed a detailed document with the prosecutor's office highlighting his detention conditions and alleged torture, requesting protection measures for him and his family and asking for investigative procedures to be carried out in that regard and considered in the context of the prosecutorial investigation.

31. The source states that, to date, none of these complaints has been conclusively resolved and no official has faced criminal charges.

(iii) *Legal analysis*

32. The source argues that the detention of the four individuals falls within categories I and III of the Working Group's categories of arbitrary detention.

a. *Category I*

33. The source bases its argument on article 9 of the Covenant, principle 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 44 of the Constitution.

34. The source alleges that, in the present case, there were no grounds for detention under domestic or international law, since the persons concerned were not caught committing an offence in flagrante delicto or arrested on the basis of a warrant issued by a court.

35. According to the source, the police officers deployed as part of Operation Thunder did not have judicial authorization to conduct arrests or searches, and the objective of the operation, according to publicly available information, was to capture members of the Tren del Llano gang. However, this objective was not respected and the operation resulted in a series of human rights violations against the inhabitants of Altagracia de Orituco. People who had no affiliation with the gang were arrested on unlawful grounds, and the manner, time and place of these arrests were altered by the officers involved.

36. The source adds that the witnesses called for the four individuals testified that the arrests had taken place while the individuals were at home or at work and that there could therefore be no grounds on which it might reasonably be argued that the authorities were responding to an offence. There was also no evidence of arrest warrants having been issued by a judicial authority at the time of the arrests, rendering them arbitrary. There is thus no evidence whatsoever to justify the arrest of and subsequent refusal to release the four individuals or impose non-custodial measures.

37. The source notes that the four individuals were charged with the offences of illicit trafficking of weapons of war, terrorism and criminal association and were linked to the Tren del Llano gang without there being any evidence that they had committed those offences or that they were associated with the gang. There is also no evidence of any previous investigation by the Public Prosecution Service that could support the claim that they were associated with or had participated in criminal gang activity.

38. The source adds that the only explanation given by the arresting officers during the arrests of the four individuals, and the arrests of the other workers and merchants of Altagracia de Orituco over the same period, was that they were acting on orders from the Ministry of People's Power for Internal Relations, Justice and Peace.

39. The source concludes that the detention of the four individuals was not justified by a clear, precise and detailed account of the facts that could substantiate the claim that they were responsible for or involved in any crime. They were thus arrested and placed in pretrial detention without sufficient evidence on which it might reasonably be argued that they were involved in criminal conduct or that detention was strictly necessary.

b. Category III

40. The source claims that, in accordance with article 9 (3) of the Covenant, read in conjunction with article 44 (1) of the Constitution and article 264 of the Code of Criminal Procedure, all persons deprived of their liberty must be brought promptly and without delay before a judge, who must rule on the legality of the detention.

41. The right of the accused to be tried without undue delay, in accordance with article 14 (2) of the Covenant, is not only designed to avoid keeping persons too long in a state of uncertainty about their fate, but also to serve the interests of justice.³

42. The source refers to the jurisprudence of the Human Rights Committee and the Working Group, according to which article 9 (3) of the Covenant requires that, in criminal cases, any person arrested or detained must be brought promptly before a judge or other officer authorized by law to exercise judicial power. That requirement applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it.⁴

43. The source adds that the Working Group has established that a person who is arrested and detained must be brought before a judge within 48 hours of arrest and that any further delay must be absolutely exceptional and justified by the particular circumstances of the case.⁵ Moreover, oversight of the detention must be carried out by a judicial authority with the necessary independence to review its legality.⁶

44. The source states that article 175 of the Code of Criminal Procedure provides that:

Arrests made in violation of the provisions of the Constitution of the Bolivarian Republic of Venezuela, the present Code, legislation and the international treaties, conventions or agreements signed and ratified by the Bolivarian Republic of Venezuela shall be deemed null and void and consequently the court shall order unconditional release and the immediate referral of the case to the Public Prosecution Service for the purpose of initiating an investigation into the annulled arrest.

45. The source alleges that, despite the foregoing, the four individuals were not shown an arrest warrant or discovered committing a crime in flagrante delicto, which could have justified their arrest; nor were they brought before the courts within a reasonable period of time. Moreover, officers altered the manner, place and time of the arrests in some police records.

46. The source claims that while the four individuals were detained between 20 and 23 April 2022, it was not until 26 April 2022 that their detention was ordered by the Caracas court with jurisdiction in cases involving terrorism, exceeding the 48-hour period in which they should have been brought before a judge in accordance with article 44 (1) of the Constitution; they were thus deprived of this judicial safeguard. The source adds that the Venezuelan authorities contravened national and international regulations, since it was the duty of the judge during the arraignment hearing, in application of judicial oversight, to declare the proceedings null and void and order unconditional release.

47. The source also claims that none of the conditions for pretrial detention had been met, since there was no evidence to implicate the four individuals in any criminal act. However, to date, they remain in detention (or, in the case of Mr. Pages, under house arrest). This clearly constitutes a violation of their right to effective judicial protection and points to an absence of judicial oversight by the court after their arrest.

48. The source concludes that these facts amply illustrate the failure of the Bolivarian Republic of Venezuela to comply with its obligation to respect and ensure due judicial oversight of the arbitrary detention of the four individuals, in violation of articles 9 and 14 of the Covenant and principles 11 and 37 of the Body of Principles for the Protection of All

³ *Fa'afete v. New Zealand* (CCPR/C/114/D/1909/2009), para. 5.4.

⁴ Human Rights Committee, general comment No. 35 (2014), and opinion No. 78/2018, paras. 75 and 76.

⁵ Opinions No. 31/2020, para. 45, and No. 76/2019, para. 38.

⁶ Opinions No. 41/2020, para. 60, and No. 33/2020, para. 75.

Persons under Any Form of Detention or Imprisonment. This clearly demonstrates the total or partial non-observance of the international norms relating to the right to a fair trial.

49. The source invokes multiple violations of the rights of the four individuals that render their detention arbitrary under category III.

(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 13 July 2023 and requested it to submit a response by 11 September 2023. The Government requested an extension of the time limit for its response, which was granted. The Working Group received the Government's response on 12 October 2024, within the established deadline.

51. In its response, the Government points out that the four individuals are currently deprived of liberty on the basis of a court order, in the context of criminal proceedings against them for their alleged involvement in the commission of the offences of concealment of criminal activity, terrorism, criminal association and illicit trafficking of weapons and ammunition, which are defined in Venezuelan law.

52. The pretrial detention of the four individuals was requested by the Public Prosecution Service, in exercise of its powers under the Constitution and the Code of Criminal Procedure, before Due Process Court of First Instance No.1 with national jurisdiction over cases involving terrorism.

53. Pursuant to the request of the Public Prosecution Service, on 20 April 2022, Due Process Court No.1 with jurisdiction over cases involving terrorism issued arrest warrants No. 009-22 against Mr. Díaz Díaz, No. 030-22 against Ms. Mota Belisario, No. 033-22 against Mr. Pages Evans and No. 036-22 against Mr. Fernández Estanga. Copies of these documents have been attached to the Government's response.

54. The Government explains that, in the Bolivarian Republic of Venezuela, the Public Prosecution Service may request the imposition of custodial measures, including pretrial detention, but it is the court hearing the case that adopts the corresponding decision, either granting or denying the measure requested, in accordance with the law. The Government reproaches the Working Group for its misinterpretation of article 9 (3) of the Covenant.

55. The Government states that, on 21 April 2022, the four individuals were apprehended by fully uniformed and duly identified officers of the Bolivarian National Police Force on the basis of warrants issued prior to their arrest. They were all informed of the reasons for their arrest and of their rights.

56. Mr. Díaz Díaz and Mr. Pages Evans were arrested separately at Bolivarian National Police checkpoints in the state of Guárico. Both Mr. Díaz Díaz and Mr. Pages Evans were in their vehicles at the time; during the search of these vehicles, it was discovered that both had arrest warrants issued against them for the alleged commission of serious offences. Mr. Fernández Estanga and Ms. Mota Belisario were arrested at their homes by officers of the Bolivarian National Police, who had been informed of the arrest warrants issued against the aforementioned citizens and proceeded to carry out the arrests ordered by the court without delay.

57. The detained individuals were taken to the National Forensic Medicine and Science Service for forensic medical examinations once compliance with the procedures set out in national legislation and article 9 (1) of the Covenant had been ensured. The Government maintains that the arrests were carried out by the National Police Force, in its role as a criminal investigation body, in accordance with article 113 of the Code of Criminal Procedure and the Organic Act on the Police Service and the Bolivarian National Police Force.

58. The detained individuals were brought before a judge within 48 hours, as required by law. Those who stated that they did not have a lawyer were assigned a public defender. Those who indicated that they had their own lawyers received legal counsel from those lawyers as soon as they had been sworn in as required by law.

59. The Government is surprised to hear, for the first time, in proceedings before the Working Group, the allegation that unlawful acts were committed against these four

individuals. The only one of these four who asked the judge to grant him access to medical treatment was Mr. Díaz Díaz, and this access was granted.

60. On 23 April 2022, the four individuals were brought before State and Municipal Criminal Due Process Court of First Instance No. 5 of the Guárico Criminal Court Circuit, to take part in an oral arraignment hearing and were thus brought before a judge within 48 hours of their arrest.

61. Before the hearing began, Mr. Díaz Díaz and Mr. Fernández Estanga stated before the court that they had appointed private defence counsel, and the Court proceeded to swear in their trusted lawyers. Ms. Mota Belisario and Mr. Pages Evans stated that they did not have private defence counsel, so a public defender was appointed to assist them, in accordance with the rules of due process and the legitimate right to a defence. Evidently, contrary to the claims made by the source, there was no impediment to the appointment of private defence counsel.

62. The courts declined jurisdiction because the acts were associated with terrorism; the case was therefore brought before Special Due Process Court of First Instance No. 1, which has national jurisdiction over cases of terrorism-related offences and in cases involving corruption and organized crime, pursuant to article 373 of the Code of Criminal Procedure.

63. Following this transfer of jurisdiction, an arraignment hearing was held on 27 April 2022. The competent court in the case agreed to follow the ordinary procedure and to keep Ms. Mota Belisario, Mr. Díaz Díaz, Mr. Pages Evans and Mr. Fernández Estanga in pretrial detention at the National Women's Correctional Institute, in the case of Ms. Mota Belisario, and the Rodeo III pretrial detention centre in the Capital Region, in the remaining cases. It also ordered a full medical evaluation for Ms. Mota Belisario, Mr. Díaz Díaz and Mr. Fernández Estanga in order to safeguard their right to health. The individuals underwent a medical examination prior to detention.

64. On 19 May 2022, the court in the case ordered a change in the place of detention of Mr. Pages Evans, placing him under house arrest.

65. At the preliminary hearings, which were carried out in accordance with the law, the charges filed by the Public Prosecution Service against Ms. Mota Belisario for the offences of financing terrorism, trafficking in persons and criminal association and against Mr. Díaz Díaz and Mr. Fernández Estanga for the offences of terrorism, illicit trafficking of weapons of war and criminal association were fully admitted by the court.

66. The Government states that, over the course of the trial and to date, the trial court has convened 15 public oral hearings on 31 January 2023, 16 February 2023, 15 May 2023, 17 May 2023, 22 May 2023, 31 May 2023, 7 June 2023, 14 June 2023, 20 June 2023, 6 July 2023, 12 July 2023, 19 July 2023, 26 July 2023, 2 August 2023 and 9 August 2023. However, the hearings scheduled for 31 January 2023, 16 February 2023, 17 May 2023, 22 May 2023, 31 May 2023, 14 June 2023 and 12 July 2023 had to be suspended for various reasons.

67. In its response, the Government insists that none of these cases of detention falls within categories I or III of the categories identified by the Working Group and that they should therefore not be admitted for consideration by the Working Group.

(c) Additional comments from the source

68. The Working Group transmitted the Government's response to the source on 13 October 2023 and requested any final comments and observations, which were received on 27 October 2023.

69. In its response, the source provided further details on the circumstances in which the persons mentioned in the case were detained, reiterating its individual account of the facts of each case.

70. The source informed the Working Group of the current status of the criminal proceedings, gave the details of interviews conducted with the Prosecutor's Office and the General Directorate of Fundamental Rights of the Public Prosecution Service and provided information about the health and detention conditions of the detained individuals. The source

also reiterated its request that the detentions be declared arbitrary under categories I and III of the categories identified by the Working Group.

2. Discussion

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

72. 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.⁷

73. 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 characteristics previously considered and resolved by the Working Group.⁸

74. After a very 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

75. The Working Group recalls that a detention is arbitrary under category I if it lacks legal basis. International law on the right to liberty of person includes the right to be presented with an arrest warrant or judicial order (or an equivalent document)⁹ to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

76. In the consideration of other cases in previous sessions,¹⁰ the Working Group has become aware of the impact of the persecution and repression of the Tren del Llano gang by the Bolivarian National Guard, consisting in efforts to discover their whereabouts and proceed to their capture, has meant for Altigracia de Orituco. The Working Group is also aware that this locality is very close to the base of operations of the aforementioned gang.

77. The Working Group is also alarmed by the report of the murder of 26 persons allegedly linked to this gang, especially since 17 of them were killed in Altigracia de Orituco during operations carried out by the Special Action Forces and the Bolivarian National Guard in the state of Guárico.

78. The Working Group considers that in an operation of this type, which has been mentioned by both the source and the Government, aimed at repressing criminal activity by the Tren del Llano organized gang, during which police officers were deployed to the village, it is improbable that the officers acted with the necessary patience and diligence to comply with the legal formalities required to make lawful arrests, namely, to present an arrest warrant and inform the arrested persons of their rights. This is illustrated by the fact that, in its response, the Government states that all those arrested were taken to the premises of the National Anti-Extortion and Kidnapping Unit.

⁷ A/HRC/19/57, para. 68.

⁸ See opinion No. 54/2023.

⁹ Opinion No. 88/2017, para. 27. In cases of arrests made in *flagrante delicto*, it is not generally possible to obtain a warrant.

¹⁰ See opinion No. 54/2023.

79. The Working Group notes that the source clearly establishes the circumstances of the arrests, providing a detailed and coherent account supported by witness statements that the Government does not refute or disprove, which negatively affects the reliability of its narrative. This is compounded by the fact that, in its response, the State indicates that the individuals in question were arrested during Operation Thunder and, although the Government has attached copies of the orders to detain these persons, it has presented no evidence or proof linking them to the charges filed.

80. The Working Group notes that the source clearly specifies the manner in which the arrests took place. Ms. Mota Belisario was arrested while she was bathing. The officers, who identified themselves as members of the Special Action Forces, although their badges read “DCDO”, the Spanish-language abbreviation for the Directorate against Organized Crime, entered her home without a search or arrest warrant and stated that they were on a special operation looking for her. They forced her out of the shower with her hands in the air, even though all the officers were men, searched the house and took US\$ 700 in cash, as well as mobile telephones. They forced her to get dressed while kicking her and shouting that she was to come with them and that they were going to kill her. Upon leaving the house, they also took a white 2005 Chevrolet Luv-D-Max pickup truck.

81. Mr. Fernández Estanga was at home with his family when eight officers of the National Anti-Extortion and Kidnapping Unit entered his house at approximately 7.00 p.m., without showing a judicial warrant. The officers asked if any of the inhabitants of the house knew the members of the Tren del Llano gang. They also asked Mr. Fernández Estanga for his identity card; however, when he presented it, they noticed that it was damaged, the damage being due to the fact that he is a bricklayer and often gets wet. The officers of the National Anti-Extortion and Kidnapping Unit claimed that his identity card was a forgery, threw him to the ground, photographed him as if he were a criminal and took him away claiming that he had to give a statement, without telling him where they were taking him.

82. The source claims that Mr. Díaz Díaz was arrested by the National Anti-Extortion and Kidnapping Unit while he was working his shift as a taxi driver. The officers asked him for the money he had earned while working and demanded he buy bread and drinks in exchange for their letting him go on his way and continue working, since Mr. Díaz Díaz did not have any documentation with him. They initially let him go only to arrest him a few hours later; his family did not hear from him again.

83. Mr. Pages Evans was arrested by officers of the Directorate for Criminal Investigation and the Directorate against Organized Crime. Initially, a relative of his was detained while he was at his place of work. The officers telephoned him and told him that they were in his truck, with his relative, so he followed the instructions they gave him; upon his arrival at the indicated place, the officers detained him, released his relative, handcuffed him and took his telephone, his documents and US\$ 900 that he had been carrying to pay some suppliers. They took him into custody and impounded his two vehicles, without telling them where they were going.

84. The Working Group is not persuaded that the detention of the four individuals was carried out legally, as the account of the events contains elements that, in the view of the Working Group, are not convincing. These include warrantless searches and the general persecution of inhabitants and widespread public disorder that resulted from the raid carried out on the town as part of Operation Thunder. With regard to the searches that took place, the Working Group wishes to emphasize that it is unclear whether any evidence was found and, if it was, whether it was subsequently presented in the judicial proceedings against the defendants. Such conduct by law enforcement officers again demonstrates that the authorities’ failure to follow proper procedures contributed to the arbitrary nature of the arrests.

85. The Working Group notes that police officers deployed as part of Operation Thunder did not have judicial authorization to make arrests or carry out searches. The objective of the operation, according to publicly available information, was to capture members of the Tren del Llano gang. Based on the statements made in this case, as well as in previous cases that the Working Group has considered, the Working Group is inclined to give greater credence to the claim that the operation resulted in a series of human rights violations against the

inhabitants of Altigracia de Orituco, since some of them were killed and persons who did not belong to the gang were arrested.

86. The Working Group is therefore convinced that the detentions were arbitrary under category I, because the four individuals were not 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 having sufficient supporting documentation, raided their homes or detained them by means of deception or in the course of their daily work.

87. The Working Group reiterates that detained persons have the right to be promptly informed of the charges against them. This is inherent in article 9 (2) of the Covenant, 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.¹¹ If these procedures are not respected, a detention is arbitrary and seriously undermines the ability to conduct a proper legal defence.

88. Bearing in mind that article 9 (2) of the Covenant provides that anyone who is arrested must be informed, at the time of arrest, of the reasons for his or her arrest and must be promptly informed of any charges against him or her, and that the Working Group has also previously stated that, in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case. This is typically done¹² through an arrest warrant or a court order (or an equivalent document).¹³ The Working Group reiterates that 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 clarify the substance of the complaint, such as the wrongful act and the identity of an alleged victim, which does not appear to have taken place in the present case.

89. The Working Group points out that the detained persons were not brought promptly before the competent court and were unable to challenge the legality of their detention. While it has already taken a position on the claims made in the Government's response, the Working Group has not been convinced that the detained persons were brought before a court within 48 hours of their arrest, nor that their right to challenge the legality of their detention before a court was respected. The source adds that, on 26 April 2022, the four individuals were brought before the courts of the Palace of Justice in Caracas, were not allowed to designate trusted lawyers and were assigned a public defender instead. The judge accepted the initial classification of the offences and ordered that the accused be placed in pretrial detention in the headquarters of the Bolivarian National Police in El Valle, in the case of Ms. Mota Belisario, and in La Yaguara, in the case of Mr. Fernández Estanga, Mr. Díaz Díaz and Mr. Pages Evans, both places being located in the Capital District.

90. The Public Prosecution Service filed formal charges on 10 June 2022 against the four individuals for the offences of terrorism, criminal association and illicit trafficking of arms and ammunition, as defined in articles 37, 38 and 52 of the Organic Act on Organized Crime and the Financing of Terrorism. Ms. Mota Belisario was also charged with the offence of trafficking in persons as defined in article 41 of the Act. It follows from the foregoing that the rights of the four individuals to a defence and to effective judicial oversight of their detention were infringed upon.

91. The Working Group reiterates that article 9 (3) of the Covenant provides that any person arrested shall be brought promptly before a judge, while article 9 (4) states that the person must have the right to challenge the lawfulness of his or her detention before a court. Judicial oversight of detention is a fundamental safeguard of personal liberty and is essential to ensuring that detention has a legal basis. In this regard, 48 hours is ordinarily sufficient to

¹¹ Human Rights Committee, general comment No. 35 (2014), para. 23.

¹² Opinions No. 30/2018, para. 39; No. 3/2018, para. 43; and No. 88/2017, para. 27.

¹³ Opinions No. 18/2023, para. 93, and No. 30/2017, paras. 58 and 59.

satisfy the requirement under article 9 (3) to bring a detainee “promptly” before a judge following arrest and any delay must be absolutely exceptional and justified under the circumstances.

92. The Working Group cannot ignore the fact that the detained individuals were not brought before the competent court following their detention. It follows that the individuals were denied the effective right to challenge the legality of their initial detention before a court, 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.

93. Consequently, the Working Group considers that the detention of the four individuals lacks a legal basis, which renders it arbitrary under category I, as identified by the Working Group.

(b) Category III

94. 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.

95. The Working Group draws attention to the fact that article 14 of the Covenant establishes, *inter alia*, that, in the determination of any criminal charge against them, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal, and everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. Thus, the rules outlined enshrine what is known as due process of law; that is, the absolute minimum required to enable a person to defend their rights in a judicial or administrative proceeding.

96. 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. Moreover, 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. Mota Belisario, Mr. Fernández Estanga, Mr. Díaz Díaz and Mr. Pages Evans.

97. The source argues that the four individuals were unable to appoint a trusted lawyer during the trial, which meant that their defence could not be adequately prepared and that the due process guarantees enshrined in article 14 (1), (2) and 3 (b) and (c) of the Covenant were violated.

98. The Working Group notes, however, that the Government has provided a detailed explanation, stating that since the defendants did not have a local defence lawyer, they were represented by a public defender. This claim by the Government was not refuted by the source in its response to the Government’s comments. In the present case, the Working Group finds that the source has not demonstrated a violation in this respect.

99. The Working Group reiterates that, according to the Human Rights Committee, the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of the doubt and requires that persons accused of a criminal act must be treated in accordance with this principle.¹⁴

100. The source states that the right to the presumption of innocence has been violated in the cases of the four individuals, making their detention arbitrary under category III as defined in the Working Group’s methods of work.

101. The Working Group notes that the four individuals were arrested during what amounted to an indiscriminate raid by law enforcement on their town and were immediately

¹⁴ Human Rights Committee, general comment No. 32 (2007).

labelled and detained as persons with knowledge of or who had participated in the activities of the Tren del Llano gang, without evidence of any kind. They were taken to the police station without a court order, in violation of the principle of the presumption of innocence during investigations.

102. In its response, the Government did not refute the allegations that the detained individuals were immediately labelled as accomplices of or accessories to the Tren del Llano gang, but rather asserted that the officers who carried out the arrests were authorized to do so under national law and that the arrests made during Operation Thunder were therefore lawful under national and international law.

103. The Working Group therefore concludes that the right to the presumption of innocence was violated for the four individuals, since the Government failed to provide evidence that could prove their guilt beyond reasonable doubt, in violation of article 11 of the Universal Declaration of Human Rights and article 14 of the Covenant.

104. The Working Group notes that the requirement of competence, independence and impartiality of the organs of justice is an absolute right, not subject to any exception, and that impartiality should be understood as a way of preventing judges from allowing their decisions to be influenced by personal bias or prejudice, or harbouring preconceptions about the particular case before them, or acting in ways that promote the interests of one of the parties to the detriment of another.

105. From the information provided by the source, the Working Group has learned that the four persons detained, who did not benefit from the presumption of innocence, were formally charged by order of the Public Prosecution Service as part of the same criminal case, with the file number No. MP-245550, for the offences of terrorism, criminal association and illicit trafficking in arms and ammunition, as defined in articles 37, 38 and 52 of the Organic Act on Organized Crime and the Financing of Terrorism. Ms. Mota Belisario was also charged with the offence of trafficking in persons as defined in article 41 of the Act.

106. These facts give the Working Group cause to question the independence and impartiality of the judicial authorities prosecuting the case, the clear absence of which is a violation of the norms governing access to justice, due process and the right to a fair and impartial trial and a breach of the obligation to grant legal remedies guaranteed by law as provided for in articles 3 and 9 of the Universal Declaration of Human Rights and principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

107. In view of the circumstances, the Working Group has decided to refer the present case to the Special Rapporteur on the independence of judges and lawyers for appropriate action.

108. The Working Group stresses that one of the fundamental guarantees of due process is the principle of legality. Charges that do not correspond to the reality of the facts fail to meet the requirement of legal certainty and enable guilt by analogy, as has been shown to have occurred in the case of the four individuals.

109. The Working Group draws attention to the procedural fault arising from the fact that the arraignment hearing against the four individuals was suspended 12 times, which interfered with their ability to prepare their defence.

110. Furthermore, the Working Group is gravely concerned about the conditions of detention and the health of the detained individuals. In that regard, the Working Group notes that Ms. Mota Belisario does not have access to food that meets her needs and relies on the food provided by her family or their ability to send her money to buy food. Mr. Fernández Estanga, whose family does not live in Caracas and therefore cannot visit him, suffers from epilepsy, does not have access to the food he needs and, since his family cannot send him money because of their limited means, relies on his cellmates for food and does not have access to his medication. The situation of Mr. Díaz Díaz is even worse, as he suffers from a heart condition and has a bacterial infection and a seven-centimetre stone in one of his kidneys. Relief of humanitarian grounds has been requested for Mr. Díaz Díaz, but no response has yet been received, despite several attempts to obtain one.

111. The Working Group wishes to reiterate the fact that the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has noted, in a report prepared pursuant to resolution 33/9 of the Human Rights Council,¹⁵ that, in contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life. Violations of the right to health emerge as both causes and consequences of confinement and deprivation of liberty. Furthermore, the Working Group wishes to emphasize that the denial of adequate medical treatment may constitute a form of torture.

112. Moreover, the Working Group reminds the Government that, under article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person and that endangering the health of detainees constitutes a violation of rules 24, 25, 27 and 30 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). In view of the foregoing, the Working Group has decided to refer the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

113. The information provided by the source, which is not adequately contested by the Government, has revealed that the ability of the four individuals to enjoy the right to a fair hearing, in accordance with international human rights rules, including article 14 of the Covenant, has been seriously undermined. Consequently, the above-mentioned violations of the right to a fair and just trial are of such gravity that they lead the Working Group to classify the detention of the four individuals as arbitrary under category III.

(c) 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.¹⁶ 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.¹⁷

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 recurrent pattern of arbitrary detention identified by this international human rights mechanism in recent years, the Government of the Bolivarian Republic of Venezuela 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 Niurka Mariana Mota Belisario, Leonardo Javier Fernández Estanga, Pedro Domingo Díaz Díaz and Jean Pierre Pages Evans, being in contravention of articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant, 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 the four individuals without

¹⁵ A/HRC/38/36, para. 18.

¹⁶ Opinions No. 73/2020, No. 57/2020, No. 44/2020, No. 20/2020, No. 18/2020, No. 81/2019, No. 80/2019, No. 75/2019, No. 40/2019, No. 39/2019, No. 13/2019, No. 86/2018, No. 72/2018, No. 49/2018, No. 41/2018, No. 32/2018, No. 24/2018, No. 87/2017, No. 84/2017, No. 52/2017, No. 37/2017 and No. 18/2017.

¹⁷ Opinion No. 47/2012, para. 22.

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 release the four individuals immediately 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 the four individuals 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 Special Rapporteur on the independence of judges and lawyers and to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

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 the four individuals;
- (b) Whether an investigation has been conducted into the violation of the rights of the four individuals 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 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.¹⁸

[Adopted on 30 August 2024]

¹⁸ Human Rights Council resolution 51/8, paras. 6 and 9.