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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 101st session, 11–15 November 2024

Opinion No. 70/2024 concerning Nancy Elizabeth Henríquez James (Nicaragua)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council 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 9 August 2024 the Working Group transmitted to the Government of Nicaragua a communication concerning Nancy Elizabeth Henríquez James. The Government has not replied to the communication. 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).

* Mumba Malila did not participate in the discussion of the case.

¹ [A/HRC/36/38](#).



1. Submissions

(a) Communication from the source

4. Nancy Elizabeth Henríquez James is a Nicaraguan national born on 6 August 1962. Ms. Henríquez James is an Indigenous woman and President of Yapti Tasba Masraka Nanih Aslatakanka (Children of Mother Earth United) (YATAMA), an Indigenous organization based on the Atlantic coast. She also serves as a deputy for the Costa Caribe Norte autonomous region.

i. Context

5. According to the source, Ms. Henríquez James was arrested against the backdrop of a serious worsening of the sociopolitical and human rights crisis. Numerous international human rights organizations have concluded that, in Nicaragua, there is a systematic and widespread pattern of political persecution (involving arbitrary detention) of those who are considered to be political opponents of the Government or dissenting voices.²

6. Starting in May 2021, according to the source, the Government arbitrarily detained hundreds of persons, including seven potential candidates for the country's presidency, members of opposition parties, journalists and human rights defenders. These persons were charged and convicted upon the conclusion of legal proceedings in which due process was not followed. On 9 February 2023, the Government released and exiled 222 persons who had been deprived of their liberty for political reasons, stripping them of their Nicaraguan nationality.

7. In its first report, which was submitted to the Human Rights Council on 7 March 2023, the Group of Human Rights Experts on Nicaragua concluded that these alleged instances of arbitrary detention and other serious crimes committed by the Nicaraguan Government since 2018 constitute crimes against humanity.³ In addition, in its latest report, the Group indicated that it had reasonable grounds to believe that the crimes against humanity of imprisonment and deportation had been perpetrated in Nicaragua and that those crimes were perpetrated in the context of a discriminatory policy to systematically persecute and silence real or perceived opponents, intentionally implemented from the highest levels of government, which constitutes *prima facie* the crime against humanity of persecution on political grounds.⁴

8. According to the source, YATAMA and its members, including Ms. Henríquez James, have been the target of political persecution. The organization was founded in 1970 to restore the territorial rights of Indigenous Peoples along the Caribbean coast of Nicaragua and promote communal self-government through a form of community democracy based on the practices and customs of Indigenous Peoples and people of African descent. Starting in 1990, YATAMA participated in elections as an association funded by public donations, in line with the provisions of the 1990 and 1996 electoral laws. On 24 January 2000, a new electoral law (Act No. 331) was published in the Official Gazette. Under this new law, only organizations that were legally recognized as political parties were permitted to participate in elections; associations funded through public donations were thereby excluded. The source states that, while YATAMA was not set up in the same way as traditional political organizations of Indigenous Peoples, it had been set up as a political party and was recognized as such.

9. The source reports that the Supreme Electoral Council subsequently excluded YATAMA from the upcoming elections, creating a series of obstacles to prevent it from participating in the electoral process. The case reached the Inter-American Court of Human Rights, which, in 2005, issued a judgment concluding that the State was internationally responsible for the violation of the political rights of YATAMA.⁵

² See the conference room paper containing the detailed conclusions of the Group of Human Rights Experts on Nicaragua, available at www.ohchr.org/en/hr-bodies/hrc/ghre-nicaragua/index, paras. 444 and 519; and [A/HRC/55/27](#), para. 85.

³ See the conference room paper containing the detailed conclusions of the Group of Human Rights Experts on Nicaragua, available at www.ohchr.org/en/hr-bodies/hrc/ghre-nicaragua/index.

⁴ [A/HRC/55/27](#), para. 85.

⁵ *Yatama v. Nicaragua*, judgment of 23 June 2005, paras. 124 ff.

10. During the sociopolitical crisis of 2018, YATAMA once again positioned itself as a political opponent of the current Government. In the general elections held on 6 November 2021, Ms. Henríquez James was re-elected to the National Assembly as a substitute deputy. In April 2023, she stood in for the main deputy when he excused himself from the National Assembly to participate in the session of the Permanent Forum on Indigenous Issues being held in New York that month. The deputy used his statement in the interactive dialogue to denounce the situation of Indigenous Peoples and people of African descent in Nicaragua. The Government subsequently denied the deputy entry into the country, which meant that he was forced to re-enter through the land border with Honduras.

11. The source alleges that the deputy and Ms. Henríquez James were arrested under false pretences less than 48 hours apart. The deputy was arrested at his residence on 29 September 2023. Ms. Henríquez James was arrested on 1 October 2023 in Managua. On 29 September, the Nicaraguan Telecommunications and Postal Institute ordered the closure of two community radio stations in Bilwi, both of which were managed by YATAMA. On 3 October 2023, the Supreme Electoral Council revoked the legal status of YATAMA, accusing the party of treason under Act No. 1055. The members of YATAMA were not notified of this revocation.

ii. Arrest and detention

12. According to the source, Ms. Henríquez James was arrested at around 4 p.m. on 1 October 2023 at the entrance of the residential complex Las Delicias, located in Las Américas 2 (Managua).

13. The source claims that officers from the National Police took Ms. Henríquez James to that location under false pretences, leading her to believe that they were going to provide her with information about the deputy. At the time of her arrest, Ms. Henríquez James was accompanied by two members of her family, one of whom was a minor.

14. The three of them were first put in a private utility vehicle. The police then arrived and transferred them to district 3. Ms. Henríquez James was placed in a cell, while her two family members were locked in a room for approximately five hours, after which a police officer returned them to the residence where one of them lived.

15. According to the source, Ms. Henríquez James's family does not know for how long she remained in the cell. Her family was prohibited from having any contact with her for two weeks, after which State agents telephoned one of her relatives and told her to come to the women's prison known as La Esperanza to bring food and personal hygiene products for Ms. Henríquez James.

16. The source asserts that the police subjected Ms. Henríquez James to verbal violence, intimidating her by making threats against her minor relative. The police officers shouted and intimidated Ms. Henríquez James and her minor relative, telling him that they would put him in the cell with her if he did not stop crying.

17. It was still not known almost two months after Ms. Henríquez James had been detained whether the Public Prosecution Service had brought formal charges against her or what evidence it had to hold and prosecute her. As a result, the 90-day limit for holding an individual without charge, as provided for in the Act amending and supplementing the Code of Criminal Procedure of 2021 (Act No. 1060), had been exceeded.

18. According to the source, Ms. Henríquez James was tried behind closed doors. While her family tried to engage a defence lawyer from the outset of her detention, the authorities prevented the lawyer from doing his job and even threatened to strike him off if he took on the case.

19. The source states that Ms. Henríquez James was sentenced to 8 years' imprisonment and, according to the information that could be obtained, was charged with the crimes of spreading fake news to the detriment of the State of Nicaragua and society and undermining national integrity. The source adds that the State authorities never informed the family of this process and that neither the family nor a legal representative has been allowed to attend any of the hearings or been given access to the court file or the judgment.

20. According to the source, the Vice-President of Nicaragua stated that the arrest of the main opposition leaders was part of “the justice that the Nicaraguan people have asked for, locating the criminals and terrorists and people who have denigrated Nicaragua all over the world, people who are ‘the lowest of the low’”.

21. The source submits that statements of this kind have played a key role in the conviction of Ms. Henríquez James in a judicial system that is co-opted by the executive authorities and that they increase the risk that detained persons may face attacks by the State agents that keep them in custody.

22. The source states that requests for precautionary and provisional measures were submitted to the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, respectively, and that both these requests were granted. There is no record, however, of the State’s responding to any of the Commission’s requests.⁶

iii. *Conditions of detention*

23. According to the source, Ms. Henríquez James was initially held incommunicado for two weeks, after which she was allowed to receive visits of barely 30 minutes’ duration on 15 and 27 October, 1 and 23 November and 13 December 2023. It became clear during the visits that there had been a serious deterioration in the physical and mental health of Ms. Henríquez James, who, in addition to being an older person, has several chronic conditions, including high blood pressure, gastritis and recurrent migraines, and is extremely thin and very emaciated owing to her deficient diet.

24. According to the source, Ms. Henríquez James has been suffering from panic and anxiety attacks and is in a state of despair. The prison authorities have failed to provide her with medical treatment or medication to address her gastritis, allergies and severe migraines, which have worsened.

25. The source submits that Ms. Henríquez James is being held in solitary confinement and that her outings to the yard for fresh air are contingent on arbitrary and whimsical decisions by prison staff.

26. On 13 December 2023, visits from her family were suspended without any justification. They did not resume until 25 April 2024, on which day the authorities allowed her to receive a two-hour family visit. The visits are always monitored by the prison authorities, with the intimidating presence of the guards preventing Ms. Henríquez James from providing specific details about the severity of the conditions in which she is being held. Furthermore, she is expressly prohibited from communicating with her family in Miskito, which is her Indigenous language.

iv. *Legal analysis*

27. The source submits that Ms. Henríquez James’s detention constitutes arbitrary deprivation of liberty under categories I, II, III and V of the Working Group.

a. *Category I*

28. The source argues that the National Police failed to show a search or arrest warrant or indicate why Ms. Henríquez James had been detained. In fact, she was arrested under false pretences in an unreasonably violent manner. This violence was, in addition, perpetrated against an especially vulnerable older person. Ms. Henríquez James was not informed of the reasons for her detention, the judicial remedies for contesting the legality of her deprivation of liberty or her right to a lawyer of her choosing. Furthermore, her family members were never informed of the location to which she was going to be transferred. The transfers were carried out in unofficial vehicles, as she was transported in a private utility vehicle

⁶ Inter-American Commission on Human Rights, precautionary measure No. 812-23; and Inter-American Court of Human Rights, provisional measures, resolution of 1 February 2024, available at https://corteidh.or.cr/docs/medidas/yatama_se_02.pdf.

29. The source claims that the actions of the Nicaraguan authorities constitute a violation of article 9 (2) of the Covenant, principles 7 and 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court and principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

30. The source argues that there is no evidence that Ms. Henríquez James was brought before the competent judge within the 48-hour period provided for in the Nicaraguan Constitution or that her detention was reviewed with all the guarantees of due process. Consequently, the Nicaraguan police officers acted without judicial oversight, in violation of article 9 (3) of the Covenant.

31. The source recalls that the Working Group has stated that judicial oversight of detention is a fundamental safeguard of personal liberty and is necessary in ensuring the legality of detention.⁷ The absence of such oversight gives rise to a violation of the rights of the detained person to have access to a lawyer of his or her own choosing, to be brought promptly before a judicial authority and to challenge before a judge the legality of the detention.⁸

32. The source states that Act No. 1060 reforming the Code of Criminal Procedure provides for the extension to 90 days of the period during which a person may be detained without judicial oversight or the filing of formal charges. This delay is in itself contrary to the standards of international human rights law. In 2021 and 2022, the Public Prosecution Service issued press releases announcing the organization of so-called hearings for the protection of constitutional guarantees, which failed to offer all the minimum guarantees of due process. During these hearings, it was alleged that the detained persons were being investigated for non-compliance with Act No. 1055 on the Defence of the People's Rights to Independence, Sovereignty and Self-Determination for Peace. Those persons were automatically placed in pretrial detention, in contravention of international human rights law.

33. The source adds that, in the present case, there is no evidence that the special hearing for the protection of constitutional guarantees was even held, which means that it remains unknown on what grounds Ms. Henríquez James was detained and whether formal charges have been filed against her. The source recalls that the Working Group has established that automatically ordering pretrial detention, without a case-by-case examination of its necessity, is contrary to article 9 (3) of the Covenant and demonstrates the lack of a legal basis for the detention. Even when a person is detained in conformity with national legislation, the detention must also be consistent with the relevant provisions of international law.⁹

b. Category II

34. The source alleges that the authorities detained Ms. Henríquez James for exercising her freedom of expression and right to political participation. Ms. Henríquez James is a member of YATAMA, an Indigenous organization and political opposition party, and spoke out to politically denounce the alleged human rights violations committed by the current Government. Ms. Henríquez James also exercised her right to participate in public affairs in very restrictive contexts.

35. According to the source, the authorities violated Ms. Henríquez James's political rights under articles 19, 20 and 25 of the Covenant by arbitrarily revoking the legal status of her party and arresting her. Her political rights and those of the Miskito People under article 20 of the United Nations Declaration on the Rights of Indigenous Peoples were also violated.

36. The source recalls that the Human Rights Committee states that article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. The source argues that these rights give rise to the obligation of States Parties to adopt such

⁷ Opinion No. 79/2017, para. 49.

⁸ Opinion No. 19/2019, para. 34.

⁹ Opinions No. 79/2017, para. 50, and No. 1/2018, paras. 59 and 60.

legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy them.¹⁰

37. The source submits that freedom of expression is an indispensable requirement for the full development of the person and the cornerstone of any free and democratic society. In its general comment No. 34 (2011) (paras. 2 and 9), the Human Rights Committee establishes that no person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions, thereby protecting all forms of opinion, including opinions of a political nature.

38. The source alleges that the revocation of the party's legal status, the closure of the radio stations and the arrests of Ms. Henríquez James and the other deputy within a 48-hour period occurred after the deputy had travelled to New York to participate in a forum.

39. According to the source, the foregoing clearly points to the Government's intention to retaliate against the party and its members, which it viewed as an opposition group, with the aim of preventing them from participating in the conduct of the country's public affairs, in particular the upcoming elections.

c. Category III

40. According to the source, the Government of Nicaragua violated Ms. Henríquez James's rights by failing to treat her with respect for the inherent dignity of the human person. The family visits fall short of the minimum standards, since most of them have lasted barely 30 minutes and have been held under intimidating surveillance. Ms. Henríquez James has not been allowed to receive correspondence or calls and is being held in solitary confinement.

41. The source recalls that the Working Group has stated that the incommunicado detention regime violates the right to challenge the legality of the detention before a court, as provided for in article 9 (4) of the Covenant.¹¹ Moreover, when such treatment is continuous, it contravenes the right to have contact with the outside world under rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principles 15, 19 and 20 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹²

42. It has been widely documented that persons in Nicaragua who have been deprived of their liberty for political reasons have been subjected to acts of torture and other cruel, inhuman or degrading treatment or punishment. Ms. Henríquez James is likely to be at risk given that she has also been detained for such reasons.

43. The source recalls that the Working Group has indicated that statements obtained under torture or other cruel, inhuman or degrading treatment may not be invoked as evidence in any proceedings except those involving investigations into allegations of torture and/or ill-treatment.¹³

44. The source states that Ms. Henríquez James is an older person of 61 years of age and that, as a result, she is in a position of greater vulnerability and is more susceptible to health problems. Ms. Henríquez James has health issues that require treatment, and it is not known whether she is receiving the necessary care. She is also at risk of being subjected to specific violations of her rights on the basis of her gender.

45. Ms. Henríquez James has a severe shoulder injury that she incurred before her detention, which is not being treated and is being made worse by the mattress in her cell. The source alleges that these conditions of detention violate principles 6 and 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 7 of the Covenant.¹⁴

¹⁰ Human Rights Committee, general comment No. 25 (1996).

¹¹ Opinion No. 79/2017, para. 49. See also [A/54/426](#), para. 42, [A/HRC/13/39/Add.5](#), para. 156, and Human Rights Committee, general comment No. 35 (2014), para. 35.

¹² Opinion No. 79/2017, para. 65.

¹³ See opinion No. 61/2017.

¹⁴ Opinion No. 66/2018, para. 57.

46. The source argues that the Government violated Ms. Henríquez James's rights by preventing her from preparing her defence. She was neither informed by State authorities of the reasons for her arrest nor promptly told of the charges or evidence against her. Furthermore, she was unable to contact the lawyers she trusted from the moment of her arrest, in violation of article 101 of the Code of Criminal Procedure. She was not guaranteed private communication with her lawyer, and no timely access to her criminal case files was provided.

47. The source reports that, until 2022, information on the legal action taken against detained persons was provided through communiqués issued by the police and the Public Prosecution Service, which were the sole sources of such information. In 2023, however, the authorities stopped issuing these communiqués, meaning that there is no information on the proceedings against the victim referred to in this communication. The foregoing is contrary to the provisions on making judicial proceedings public contained in article 34 of the Constitution and the laws governing criminal proceedings. This lack of transparency prevented Ms. Henríquez James from preparing her defence, in violation of the right of defence provided for in articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) of the Covenant and in breach of principle 9 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹⁵

48. According to the source, the Government violated Ms. Henríquez James's rights by not presuming her innocent. In view of the absence of information, and based on the other proceedings conducted against persons previously deprived of their liberty for political reasons, it can be assumed that, as far as the detention of Ms. Henríquez James is concerned, the authorities relied on Act No. 1060, which empowers the Public Prosecution Service to request an extension of the investigation period to up to 90 days before filing charges, during which time the individual concerned is kept in judicial detention without any real and effective judicial oversight.

49. The source recalls that, as the Working Group has already indicated, the exceptional nature of pretrial detention requires an individual case-by-case analysis of the necessity and proportionality of the deprivation of personal liberty. Thus, even where pretrial detention is automatically provided for by law, it must also be in conformity with international law and not, therefore, immune to scrutiny.¹⁶

50. According to the source, such a situation amounts to the imposition of pre-emptive penalties that violate the principle of the presumption of innocence enshrined in article 11 of the Universal Declaration of Human Rights, article 14 (2) of the Covenant, principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 34 (1) of the Constitution of Nicaragua.

51. The source alleges that the public statements made by the highest authorities violate the presumption of innocence and put the life and personal safety of Ms. Henríquez James at risk. These public statements automatically stigmatize any person who has been deprived of his or her liberty for being considered an opposition political figure or a dissenting voice by the current Government. The foregoing constitutes a violation of the right to be presumed innocent.¹⁷ Any act of this type is incompatible with article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.¹⁸

52. The source recalls that the Working Group has determined that statements publicly condemning the accused person before a sentence has been passed violate the presumption of innocence and constitute undue interference that undermines the independence and impartiality of the court.¹⁹ Public statements by officials violate a person's right to be presumed innocent when they identify the person as being responsible for a crime for which he or she has not yet been tried, as such statements may lead the public to believe that the

¹⁵ Opinion No. 16/2019, para. 41.

¹⁶ Opinion No. 1/2018, para. 64.

¹⁷ Human Rights Committee, general comment No. 32 (2007), para. 30, and opinion No. 19/2019, para. 45.

¹⁸ Opinion No. 19/2019, para. 46.

¹⁹ See opinions No. 90/2017, No. 76/2018 and No. 89/2018.

person is guilty and can influence or prejudge the assessment of the facts by the judicial authority.²⁰

d. Category V

53. The source alleges that the detention of Ms. Henríquez James fits into a pattern of systematic and widespread political persecution of members of political opposition parties, human rights defenders and individuals who criticize the actions of the authorities.²¹ Since the crisis of 2018, the systematic practice of persecuting individuals on the basis of their political opinions and depriving them of their liberty has been observed. The use of incommunicado detention, the harassment of family members and the irregularities that have occurred since the arrests should serve as evidence that the authorities are doing everything in their power to completely eliminate any hint of political opposition, make an example of the detainees and send a message to their opponents. In this regard, the Inter-American Commission on Human Rights issued a communiqué in which it expressed concern about the events reported in the present case, stating that they reflect a repressive strategy that is being applied by the Nicaraguan Government to consolidate a regime based on the concentration of power and on violations of the democratic system, silencing government critics including Indigenous communities (especially ahead of regional elections scheduled for 2024).²²

54. The source argues that, for these reasons, the detention of Ms. Henríquez James is discriminatory and directly related to her status as an opponent of the Government. The State also arbitrarily revoked the legal status of the party to which she belongs. This action by the State is, according to the source, contrary to articles 2 and 26 of the Covenant and articles 1 and 7 of the Universal Declaration of Human Rights.²³

(b) **Response from the Government**

55. On 9 August 2024, the Working Group transmitted the allegations from the source to the Government in accordance with its methods of work. The Working Group requested the Government to provide, by 8 October 2024, detailed information on the situation of Ms. Henríquez James, clarifying the legal and factual grounds for her detention and explaining how it is compatible with the obligations of Nicaragua under international human rights law and, in particular, the treaties ratified by the State.

56. The Working Group regrets that the Government has not submitted a response or requested an extension in accordance with paragraph 16 of the Working Group's methods of work.²⁴

2. **Discussion**

57. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

58. In determining whether the deprivation of liberty of Ms. Henríquez James is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international human rights law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.²⁵ In the present case, the Government has chosen not to challenge the allegations made by the source.

59. The source has argued that the detention of Ms. Henríquez James is arbitrary and falls within categories I, II, III and V. The Working Group will proceed to examine these categories.

²⁰ See www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/243.asp.

²¹ Opinions No. 17/2020, para. 65, No. 21/2020, para. 24, and No. 39/2020, para. 43.

²² See www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/243.asp.

²³ Opinion No. 41/2018, para. 28.

²⁴ [A/HRC/36/38](#).

²⁵ [A/HRC/19/57](#), para. 68.

(a) Category I

60. The source maintains that the detention of Ms. Henríquez James is arbitrary under category I because it lacks a legal basis. The source sets the complaint against the backdrop of the serious democratic and political crisis in Nicaragua. This situation has also been examined by the Group of Human Rights Experts on Nicaragua, which concluded that the alleged instances of arbitrary detention and other serious crimes committed by the Nicaraguan Government since 2018 constitute crimes against humanity.²⁶

61. In the general elections held on 6 November 2021, Ms. Henríquez James was re-elected to the National Assembly as a substitute deputy. In April 2023, she stood in for the main deputy when he excused himself from the National Assembly to participate in the session of the Permanent Forum on Indigenous Issues in New York. The deputy used his statement in the interactive dialogue to denounce the situation of Indigenous Peoples and people of African descent in Nicaragua. The Government is said to have subsequently denied the deputy entry into the country, which meant that he was forced to re-enter through the land border with Honduras.

62. Against that backdrop, the source alleges that the main deputy and Ms. Henríquez James were arrested under false pretences less than 48 hours apart. The deputy was arrested at his residence on 29 September 2023. Ms. Henríquez James was arrested on 1 October 2023 in Managua.

63. According to the source, Ms. Henríquez James was detained at around 4 p.m. at the entrance of the residential complex Las Delicias in Managua by officers from the National Police, who took her there under false pretences, leading her to believe that they were going to provide her with information about the aforementioned deputy. At the time of her arrest, Ms. Henríquez James was accompanied by two members of her family, one of whom was a minor. In addition, according to the source, the police subjected Ms. Henríquez James to verbal violence, frightening her with threats about what they could do to her minor relative. The police officers shouted at and intimidated Ms. Henríquez James and her minor relative, telling him that they would put him in the cell with her if he did not stop crying.

64. The Working Group notes the source's assertions that, at the time of the arrest, Ms. Henríquez James was neither presented with an arrest warrant nor informed of her rights and was led under false pretences to the location from which she was initially transferred to an unknown destination. It was not known for almost two months after Ms. Henríquez James had been detained whether the Public Prosecution Service had brought formal charges against her or what evidence it had to hold and prosecute her. As a result, the 90-day limit for holding an individual without charge, as provided for in the Act amending and supplementing the Code of Criminal Procedure of 2021 (Act No. 1060), had been exceeded. The Government has not replied to the source's allegations, despite having been given the opportunity to do so. The Working Group recalls that, under international law, the authorities must invoke the legal basis for an arrest and apply it to the circumstances of the case, from which it follows that the accused person is entitled to be presented with an arrest warrant or court order (or equivalent document)²⁷ in order to ensure the exercise of effective oversight 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 of liberty under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.²⁸

65. The Working Group considers that, in order to invoke a legal basis for deprivation of liberty, the authorities should have informed Ms. Henríquez James of the reasons for her arrest at the time it was made. By failing to do so, they violated article 9 of the Universal

²⁶ See the conference room paper containing the detailed conclusions of the Group of Human Rights Experts on Nicaragua, available at www.ohchr.org/en/hr-bodies/hrc/ghre-nicaragua/index.

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

²⁸ Opinion No. 3/2018, para. 43, and Human Rights Committee, general comment No. 35 (2014), para. 33.

Declaration of Human Rights and article 9 (2) of the Covenant and ensured that the arrest had no legal basis.

66. According to the source, Ms. Henríquez James was initially held incommunicado for two weeks. She was subsequently allowed to receive short visits of 30 minutes' duration on different dates in October, November and December 2023. On 13 December 2023, however, the visits from her family were suspended without any justification. They did not resume until 25 April 2024, on which day the authorities allowed her to receive a two-hour family visit. The source alleges that the visits are always monitored by the prison authorities and that Ms. Henríquez James has been unable to provide specific details about the severity of the conditions in which she is being held owing to the intimidating presence of the guards. In addition, the source states that Ms. Henríquez James is being held in solitary confinement and has limited opportunities to go into the yard for fresh air.

67. The Working Group reiterates that subjecting the detainee to incommunicado detention places her outside the protection of the law,²⁹ which is a *prima facie* form of arbitrary detention and constitutes a violation of articles 6, 8, 10 and 11 of the Universal Declaration of Human Rights³⁰ and principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

68. In paragraph 35 of its general comment No. 35 (2014), the Human Rights Committee states that incommunicado detention that prevents prompt presentation before a judge inherently violates article 9 (3) of the Covenant.

69. The Working Group concludes that Ms. Henríquez James's detention is arbitrary because it lacks a legal basis and falls within category I.

(b) Category II

70. The source alleges that the authorities detained Ms. Henríquez James for exercising her freedom of expression and right to political participation. According to the source, Ms. Henríquez James is a member of YATAMA, an Indigenous organization and political opposition party, and is reported to have expressed political views denouncing the alleged human rights violations committed by the current Government. She has also exercised her right to participate in the country's public affairs.

71. According to the source, YATAMA was founded in 1970 to restore the territorial rights of Indigenous Peoples along the Caribbean coast of Nicaragua and promote communal self-government through a form of community democracy based on the practices and customs of Indigenous Peoples and people of African descent.

72. The source reports that YATAMA and its members have been the target of political persecution as a result of the fact that, starting in 1990, the organization participated in elections as an association funded by public donations, in line with the provisions of the 1990 and 1996 electoral laws. The organization then established itself as a political party in order to meet the requirements of a new law stipulating that only political parties could participate in elections.

73. The source informs the Working Group that the Supreme Electoral Council excluded YATAMA from the upcoming elections by creating a series of obstacles to prevent it from participating in the electoral process. The case reached the Inter-American Court of Human Rights, which, in 2005, issued a judgment concluding that the State was internationally responsible for the violation of the political rights of YATAMA (see para. 9).

74. As a result of her firm political defence of the human rights of Indigenous Peoples and, in particular, her outspoken opposition to the regime, Ms. Henríquez James was, as stated above, arrested under false pretences in Managua on 1 October 2023. The Government, acting through the Nicaraguan Telecommunications and Postal Institute, also ordered the closure of two community radio stations in Bilwi, both of which were managed by YATAMA. Subsequently, on 3 October 2023, the Supreme Electoral Council revoked the

²⁹ A/HRC/16/48/Add.3, paras. 29–32, and E/CN.4/1996/38, para. 55 (English only).

³⁰ Opinions No. 46/2017, para. 22, No. 93/2017, para. 48, and No. 10/2018, para. 48.

legal status of YATAMA, accusing the party of treason under Act No. 1055. The members of YATAMA were not notified of this revocation.

75. Against this backdrop, the source claims that Ms. Henríquez James's rights to freedom of expression and opinion under article 19 of the Covenant, her right to peaceful assembly under article 21 of the Covenant and her right to political participation under article 25 of the Covenant were violated. The Government has not responded to these claims.

76. The Working Group notes with concern that Ms. Henríquez James was sentenced to 8 years' imprisonment in a context of political repression of the opponents of the ruling party. In this context, the Government arbitrarily detained hundreds of persons, including seven potential candidates for the country's presidency, members of opposition parties, journalists and human rights defenders.

77. The source informs the Working Group that these individuals were charged and convicted upon the conclusion of legal proceedings in which due process was not followed, as noted in the report submitted to the Human Rights Council by the Group of Human Rights Experts on Nicaragua (see para. 7).

78. The freedoms of opinion, expression, assembly and peaceful protest are the cornerstone of any free and democratic society. These freedoms are the basis for the effective exercise of a wide range of human rights set forth in articles 19–21 of the Universal Declaration of Human Rights and articles 19, 21, 22 and 25 of the Covenant. In the absence of a response from the Government, the Working Group finds that Ms. Henríquez James was detained and proceedings were initiated against her precisely because of her work to promote freedom of expression, association and assembly and that the detention and proceedings prevented her from participating in the political and democratic life of her country.

79. In its jurisprudence, the Working Group has consistently established that deprivation of liberty is arbitrary when the authorities have detained a person to prevent him or her from participating in public life, for example by initiating criminal proceedings that make it impossible for a political leader to hold or seek a position of political or popular representation.³¹

80. The Working Group is deeply concerned about the persistent harassment, intimidation, threats and arrests to which Ms. Henríquez James has reportedly been subjected. It also reiterates that it applies a heightened standard of review in cases where freedom of expression and opinion is restricted or where social activists or human rights defenders are involved, as in the case of Ms. Henríquez James.

81. The Working Group once again reminds the Government of Nicaragua that, in its general comment No. 25 (1996), the Human Rights Committee has clearly established that citizens also take part in the conduct of public affairs by exerting an influence on them, either through debate and dialogue with their representatives or through their capacity for organization. This participation is supported by ensuring freedom of expression, assembly and association. Noting the essential link between the rights to freedom of expression, assembly and association, the Committee also underscores that freedom of association, including the right to form and join organizations and associations concerned with the political and public affairs of the State, is an essential adjunct to the rights protected by general comment No. 25 (1996).

82. It is clear that the detention was imposed to prevent Ms. Henríquez James from expressing her opposition to the Government and participating in Nicaraguan public life, in violation of articles 19–21 of the Universal Declaration of Human Rights and articles 19, 21, 22 and 25 of the Covenant. In view of these circumstances, the Working Group decides to refer the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights

³¹ Opinions No. 24/2015, para. 44, No. 30/2015, paras. 39, 44 and 47, No. 33/2015, paras. 83–85, No. 36/2017, para. 108, No. 61/2018, para. 59, and [A/HRC/36/37](#), para. 48 (d). See also opinion No. 23/2021.

defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the rights of Indigenous Peoples.

83. The Working Group, after having carefully examined the information provided by the source, which has not been refuted by the Government, finds that Ms. Henríquez James's detention is arbitrary under category II.

(c) Category III

84. In the light of its findings in relation to category II, in which it was concluded that the detention of Ms. Henríquez James resulted from her exercise of the rights to freedom of opinion, expression and political participation and the active exercise of political rights in Nicaraguan society, the Working Group considers her pretrial detention and current legal situation to be disproportionate and unjustified. Nevertheless, given that criminal proceedings were instituted against her and that she has been sentenced to 8 years' imprisonment, and in view of the claims made by the source and the lack of a response from the Government, the Working Group will proceed to analyse whether, during the course of the judicial proceedings, the fundamental elements of a fair, independent and impartial trial were respected.

85. The source alleges that Ms. Henríquez James was not promptly informed of the charges against her or assisted by her lawyers despite her family's insistence. When it eventually proved possible to hire a lawyer for her, he took himself off the case after the authorities threatened to strike him off if he pursued it.

86. The Working Group notes the source's allegations that the trial and inquiries were conducted in secret, that Ms. Henríquez James never had legal assistance and that this seems to constitute a pattern of behaviour in the country in terms of how this category of cases is handled. This situation is compounded by the apparent obstacles created by the authorities and their refusal to provide information on the status and outcome of the proceedings. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance from a lawyer of their choice at any time during their detention, including immediately after their apprehension, and such access is to be provided without delay. As a result, the Working Group finds that Ms. Henríquez James's right to effective legal counsel was denied, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) and (3) (b) and (d) of the Covenant.

87. The Working Group notes the source's allegations, which have not been refuted by the Government, that the Vice-President of Nicaragua stated that the arrest of the main opposition leaders was part of "the justice that the Nicaraguan people have asked for, locating the criminals and terrorists and people who have denigrated Nicaragua all over the world, people who are 'the lowest of the low'".

88. Article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant recognize the right of everyone charged with a criminal offence to be presumed innocent. The Working Group has reviewed the allegations of the source in the light of paragraph 30 of the general comment No. 32 (2007) of the Human Rights Committee. The Working Group notes that 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. Moreover, the Working Group has determined that statements publicly condemning the accused person before a sentence has been passed violate the presumption of innocence and constitute undue interference that undermines the independence and impartiality of the court.³² According to the information provided by the source, which has not been refuted by the Government, Ms. Henríquez James has not enjoyed this right in this case.

89. The source submits that the public statements made by the Vice-President undermined the court's impartiality and that statements of this kind have played a key role in the

³² Opinions No. 90/2017, No. 76/2018 and No. 89/2018.

conviction of Ms. Henríquez James in a judicial system that is co-opted by the executive authorities and that they increase the risk that detained persons may face attacks by the State agents that keep them in custody.

90. Both the Human Rights Committee and the Working Group have highlighted the duty of all authorities to refrain from prejudging the outcome of a trial through public statements affirming the guilt of the accused.³³ This duty was not fulfilled in Ms. Henríquez James's case.

91. The source has informed the Working Group that requests for precautionary and provisional measures were submitted to the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, respectively, and that both these requests were granted. There is no record, however, of the State's responding to any of the Commission's requests (see para. 22).

92. The Working Group stresses that one of the fundamental guarantees of due process is the principle of legality, which includes: (a) the principle of non-retroactivity; (b) the prohibition against analogy; (c) the principle of certainty; and (d) the prohibition against uncodedified – that is, unwritten, or judge-made – criminal provisions. Accordingly, an act is punishable only if, at the time of its commission, it was the object of a valid, sufficiently precise, written criminal law to which a sufficiently certain sanction was attached.³⁴

93. The source informs the Working Group that, as the trial of Ms. Henríquez James was held behind closed doors, none of the associated hearings or proceedings was open to the public. By failing to respond, the Government has declined to take the opportunity to explain why these proceedings unfolded in a manner, in secret, that has a serious impact on the effective exercise of the right to a defence.

94. The Working Group recalls that it is essential for all judicial proceedings to be public and conducted independently and impartially and wishes to remind the Government that, for a trial to satisfy the requirements of article 14 (1) of the Covenant, the tribunal must also appear to a reasonable observer to be impartial.³⁵

95. In the view of the Working Group, the flagrant violations of due process in this case are further proof that the court's actions are politically motivated. The Human Rights Committee recommended that the Government of Nicaragua eliminate all forms of interference by other branches of government in the judicial branch, ensure prompt, thorough, independent and impartial investigations into all reports of interference and corruption and prosecute and punish the persons responsible.³⁶

96. The Working Group also notes the source's claim that Ms. Henríquez James is an older person of 61 years of age who has various physical ailments, has been suffering from panic and anxiety attacks and reports being in a state of despair. The prison authorities have failed to provide her with medical treatment or medication to address her gastritis, allergies and severe migraines, which have worsened.

97. The Working Group is concerned about the deplorable and insalubrious conditions in which Ms. Henríquez James is being held, which are endangering her health and well-being and have caused her to experience drastic, severe weight loss. 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 Nelson Mandela Rules.

98. The Working Group recalls the principles outlined by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.³⁷ Such principles guarantee the right to health in the context of confinement and

³³ See opinion No. 40/2019.

³⁴ Opinion No. 10/2018, para. 50.

³⁵ Human Rights Committee, general comment No. 32 (2007), para. 21.

³⁶ CCPR/C/NIC/CO/4, para. 28 (a).

³⁷ A/HRC/38/36, para. 18.

deprivation of liberty, establishing that violations of the right to health interfere with fair trial guarantees and the enjoyment of the right to life.

99. The Working Group, noting the source's allegation, which has not been refuted by the Government, that the authorities have held Ms. Henríquez James incommunicado, allow her just one hour of sunlight a day and control her family visits, is convinced that Ms. Henríquez James is being subjected to torture and cruel, inhuman and degrading treatment. In addition to these conditions, Ms. Henríquez James is expressly prohibited from communicating with her family members or any other person in Miskito, which is her native Indigenous language.

100. The Working Group stresses that this conduct by the authorities could violate the absolute prohibition of torture as a peremptory norm of international law, as well as article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In view of the events described above, the Working Group finds that the violations linked to Ms. Henríquez James's conditions of detention significantly undermined her ability to properly defend herself. The Working Group has consistently concluded in its opinions that the inability of a person who is subjected to torture or other forms of ill-treatment or punishment to prepare an adequate defence for a trial that respects the equality of both parties before the judicial proceedings amounts to a violation of the right to a fair trial.³⁸

101. The Working Group therefore considers that serious violations of Ms. Henríquez James's fair trial guarantees under articles 10 and 11 of the Universal Declaration of Human Rights and articles 10 and 14 of the Covenant were committed, rendering her detention arbitrary under category III.

(d) Category V

102. According to the source, the detention of Ms. Henríquez James fits into a pattern of systematic and widespread political persecution of members of political opposition parties, human rights defenders and individuals who criticize the actions of the authorities. Since the crisis of 2018, the systematic practice of persecuting individuals for their political opinions and depriving them of their liberty has been observed. The Government has not challenged the claims, credible *prima facie*, made by the source.

103. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights. Thus, article 2 (1) of the Covenant sets out an obligation for each State Party to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind.

104. The Working Group considers the deprivation of liberty of Ms. Henríquez James to be arbitrary under category V, since her consistent work to publicly defend human rights and democracy, in particular in relation to Indigenous Peoples, means that she can be described as a human rights defender. The Working Group recalls that the right to hold and express opinions, including opinions that are not in accordance with official government policy, is protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.

105. In view, then, of the discrimination to which she has been subjected, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, the Working Group considers the detention of Ms. Henríquez James to be arbitrary under category V.

(e) Concluding remarks

106. In order to allow the Working Group to establish a direct dialogue with all State authorities, representatives of civil society and detained persons, with a view to gaining a better understanding of the situation of deprivation of liberty in the country, the Working

³⁸ Opinions No. 59/2019, para. 69; and No. 65/2022, para. 11.

Group would welcome the opportunity to conduct a visit to Nicaragua, as requested in its notes verbales of 24 April and 21 November 2018.

107. Moreover, the Working Group recalls that, on 26 April 2006, the Government of Nicaragua extended an open invitation to the special procedures of the Human Rights Council and that the Working Group's most recent visit to Nicaragua was from 15 to 23 May 2006.

3. Disposition

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

The deprivation of liberty of Nancy Elizabeth Henríquez James, being in contravention of articles 2, 7, 9–11 and 19–21 of the Universal Declaration of Human Rights and articles 2, 9, 10, 14, 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

109. The Working Group requests the Government of Nicaragua to take the steps necessary to remedy the situation of Nancy Elizabeth Henríquez James without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

110. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Henríquez James immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law.

111. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Henríquez James and to take appropriate measures against those responsible for the violation of her rights.

112. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the rights of Indigenous Peoples.

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

4. Follow-up procedure

114. 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 Ms. Henríquez James has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Henríquez James;
- (c) Whether an investigation has been conducted into the violation of Ms. Henríquez James's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Nicaragua with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

115. 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.

116. 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.

117. 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.³⁹

[Adopted on 15 November 2024]

³⁹ Human Rights Council resolution 51/8, paras. 6 and 9.