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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020

Opinion No. 21/2020 concerning 16 persons (Nicaragua)

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 42/22.

2. In accordance with its methods of work (A/HRC/38/36), on 16 December 2019 the Working Group transmitted to the Government of Nicaragua a communication concerning Amaya Eva Coppens Zamora, Atahualpa Yupanqui Quintero Morán, Derlis Francisco Hernández Flores, Hansel Amaru Quintero Gómez, Ivannia del Carmen Álvarez Martínez, Jesús Adolfo Tefel Amador, Jordán Irene Lanzas Herrera, José Dolores Medina Cabrera, María Margarita Hurtado Chamorro, Marvin Samir López Ñamendiz, Melvin Antonio Peralta Centeno, Neyma Elizabeth Hernández Ruiz, Olga Sabrina Valle López, Roberto Andrés Buchting Miranda, Wendy Rebeca Juárez Avilés and Wilfredo Alejandro Brenes Domínguez. 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).

Submissions

Communication from the source

4. Amaya Eva Coppens Zamora is a national of Nicaragua and Belgium, born on 31 October 1994. She is a medical student and a feminist activist and is involved in the student movement as a member of the Coordinadora Universitaria por la Democracia y la Justicia (Coalition of Universities for Democracy and Justice) and the Articulación de Movimientos Sociales de Nicaragua (Organization of Social Movements of Nicaragua). She was arbitrarily detained on 10 September 2018 for her involvement in anti-government protests and released on 11 June 2019 under an amnesty law.¹

5. Atahualpa Yupanqui Quintero Morán is a Nicaraguan national, born on 17 November 1992. She is a graphic designer, activist and member of the Organization of Social Movements of Nicaragua. She is co-founder of the digital media site “Política Hora Cero”, on which she has spoken out against the Government’s policies.

6. Derlis Francisco Hernández Flores is a Nicaraguan national, born on 21 December 1987. He is a graphic designer, human rights activist and member of the Unidad Nacional Azul y Blanco (Blue and White National Unity). He has been actively involved in anti-government protests since April 2018.

7. Hansel Amaru Quintero Gómez, is a Nicaraguan national, born on 29 August 1989. He is an industrial engineer and a member of the Organization of Social Movements of Nicaragua. He has protested actively against government policy and repression since April 2018.

8. Ivannia del Carmen Álvarez Martínez is a Nicaraguan national, born on 16 June 1982. She has a degree in psychology and is a human rights defender. She is a member of the political council of the Blue and White National Unity and the Organization of Social Movements. Since April 2018 she has been actively involved in anti-government protests.

9. Jesús Adolfo Tefel Amador is a Nicaraguan national, born on 6 May 1986. He is an industrial engineer and a member of the Alianza Cívica por la Justicia y la Democracia (Civic Alliance for Justice and Democracy) and the political council of the Blue and White National Unity. Since April 2018 he has been actively involved in anti-government protests.

10. Jordán Irene Lanzas Herrera is a Nicaraguan national, born on 13 July 1997, and works roasting chickens.

11. José Dolores Medina Cabrera Cabrera is a Nicaraguan national, born on 14 August 1992. He is a publicist and co-founder of the digital media site “Política Hora Cero”, on which he has spoken out against the Government’s policies.

12. María Margarita Hurtado Chamorro is a Nicaraguan national, born on 1 October 1980. She works in marketing and advertising, is a human rights defender and was a member of the Movimiento de Acción Estudiantil (Student Action Movement). She is a contributor to *El Nuevo Diario* and has actively participated in anti-government protests since April 2018.

13. Marvin Samir López Ñamendiz is a Nicaraguan national, born on 15 November 1994, and works as a bricklayer’s assistant.

14. Melvin Antonio Peralta Centeno is a Nicaraguan national, born on 25 November 1986. He is a law student and a member of the Movimiento Mi Nicaragua Libre (My Free Nicaragua Movement) and the Blue and White National Unity and has been actively involved in anti-government protests since April 2018.

15. Neyma Elizabeth Hernández Ruiz is a Nicaraguan national, born on 6 March 1994. She is an activist and a member of the Organization of Social Movements and the Blue and White National Unity. Since April 2018 she has been actively involved in anti-government protests.

¹ Opinion No. 43/2019.

16. Olga Sabrina Valle López is a Nicaraguan national, born on 4 January 1991. She is an industrial engineer, a feminist activist, a member of the Organization of Social Movements of Nicaragua and a human rights defender and has actively participated in anti-government protests.

17. Roberto Andrés Buchting Miranda is a Nicaraguan national, born on 25 January 1988. He is a student of economics and a member of the Coalition of Universities for Democracy and Justice and the Organization of Social Movements. He has protested actively against government policy and repression since April 2018.

18. Wendy Rebeca Juárez Avilés is a Nicaraguan national, born on 21 October 1991. She has a degree in business administration and is co-founder of the student organization Fuerza Estudiantil Nicaragüense (Nicaraguan Student Force) and a member of the Construímos Nicaragua (Let's Build Nicaragua) political platform. Since April 2018 she has been actively involved in the protests and has spoken out against government policy.

19. Wilfredo Alejandro Brenes Domínguez is a Nicaraguan national, born on 3 February 1979, and is a businessman.

20. The source reports that, on the morning of 14 November 2019, 10 mothers of political prisoners began a hunger strike at the church of San Miguel Arcángel, in the city of Masaya, demanding the release of their family members. In response, members of the Special Operations Department of the National Police surrounded the church, preventing others from entering or leaving. Immediately thereafter, the mayoral authorities of Masaya cut off the church's water and electricity supply, affecting those who were still in the church.

21. It is reported that that night, young members of the Blue and White National Unity, accompanied by other social leaders and people from the city of Masaya, showed up in front of the church with bottles of water and medicine that they wanted to give to the hunger strikers. The police who cordoned off the area denied them permission to do so and ordered them to leave. However, some of the young people managed to get several bottles of water through the church gates.

22. According to the information received, after having handed over the bottles of water and medicines to the striking mothers and leaving the church, as they were driving through the city of Masaya in a convoy of four vehicles, the young people were intercepted and arrested by the police.

23. The source notes that, of the 16 persons arrested, two – Ms. Coppens Zamora and Mr. Brenes Domínguez – had already been prosecuted for acts that took place in the context of the April 2018 protests and had subsequently been released. Ms. Coppens Zamora was charged on 18 September 2018 with the crimes of terrorism, kidnapping, illegal possession of firearms and others. At that time the judge admitted the charges and ordered her pretrial detention. She was subsequently released on 11 June 2019, under an amnesty law, after being held in prison for almost nine months without trial. Mr. Brenes Domínguez was arrested on 4 January 2019 and was held in prison for more than four months without being charged before a judge. He was released on 20 May 2019, but was summoned to the police station on 12 August for questioning in connection with the explosion of a handmade explosive device; he claimed to have had nothing to do with the explosion, but was arrested on 22 August 2019 and released two days later.

24. The source adds that 13 of the young detainees are members of the Blue and White National Unity, a coalition of civil society movements and organizations, activists, human rights defenders, students and organized citizens that is calling for democratic change in the country. In addition to this group, Mr. Brenes Domínguez, Mr. Lanzas Herrera and Mr. López Ñamendiz were also arrested. They are young people from the city of Masaya who arrived at the San Miguel church on their own, but, according to the charge sheet, were travelling with the 13 others at the time of their arrest.

25. According to the information received, several of the persons were beaten by the police during their arrest. Upon arrival at the police station in Masaya, Ms. Coppens Zamora was severely beaten by an officer, leaving bruises on both arms and her right side. In addition, she had abrasions on her wrists from the extremely tight handcuffs. Given this situation, at the preliminary hearing, her legal counsel requested a forensic medical assessment. The judge agreed and sent an official request to the Institute of Forensic Medicine.

26. It is also reported that Ms. Valle López was severely beaten on her right arm by the police during her transfer from Masaya to Managua and was injured on her wrists by the handcuffs. Mr. Peralta Centeno was beaten by a riot police officer as he was being loaded into the police van. In addition, at the time of the transfer, Ms. Hurtado Chamorro was hit in the mouth by the police. Mr. Lanzas Herrera and Mr. Brenes Domínguez received blows to their arms. The source alleges that this shows a violation of the principle of proportionality and an excessive use of police force.

27. On 17 November 2019, the Assistant Public Prosecutor of Managua filed charges and requested the opening of proceedings against the 16 detainees for the crimes of illicit arms trafficking to the detriment of public security.

28. On 18 November 2019, the second-in-command of the National Police's Department of Judicial Assistance presented the 16 detained persons at a press conference, all dressed in the blue uniform worn in Nicaraguan prisons. The police described them as members of a criminal gang who were planning an attack on public buildings and said that they had hijacked three cars and a van in which weapons and explosives were found. The police emphasized that Ms. Coppens Zamora and Mr. Brenes Domínguez had criminal records for terrorism and other serious crimes.

29. On the same day, 18 November, the preliminary hearing was held in the Fifth District Criminal Court of the Managua District. The 16 arrested individuals were formally charged with the crime of illicit arms trafficking. At the hearing, the defence lawyers argued for exceptions to the judge's competence, since the competent judge was the one in the place where the events had taken place – in Masaya – and not in Managua. They also pointed out that the arrests were arbitrary, as the police officers had not shown any warrants and the individuals had not been caught in flagrante delicto. It was also alleged that the individuals had not been brought before the competent judge within 48 hours of their arrest, in violation of their constitutional rights. In this regard, the judge decided not to admit the defence's arguments. In addition, the defence lawyers requested that the detainees' relatives be allowed to enter the courtroom; this request was also denied. At the request of the defence, arrangements were made for the lawyers to visit their clients in El Nuevo Chipote detention centre. However, the defence lawyers were not allowed to visit their clients in the police detention centre.

30. At the time the complaint was filed, the source reported that the 16 individuals were being held in El Nuevo Chipote detention centre. Ms. Coppens Zamora and Mr. Brenes Domínguez were in punishment cells for the first days of their detention; the former was transferred to a group cell on 18 November, after the preliminary hearing, while the latter was transferred to a group cell on 19 November.

31. The cell in which Ms. Coppens Zamora was held had no sunlight or ventilation. The cell had two concrete bunk beds with cloth mattresses. Both mattresses were mouldy, which provoked an asthma attack on the night of 15 November, resulting in her being rushed to one of the prison's medical posts. In the cell, there was a basin with water for bathing, which was filled through a tap that flowed directly into the basin, but the tap could only be opened from the outside of the cell, which meant she had no control over when the tap was opened or closed. When Ms. Coppens Zamora was placed in the punishment cell, she was not provided with water, nor was she provided with any throughout the following day.

32. Additionally, Mr. Peralta Centeno and Mr. Hernández Flores were taken out of their cells during the night for several hours and were questioned about who they had met with, what they had done and what barricades they had participated in, among other things.

33. The source reports that several of the detainees have health conditions that require specialized care. Ms. Coppens Zamora has hypertension and asthma. On the night of 15 November, her health deteriorated because the guards did not give her the blood pressure pills her parents had brought her that morning. Mr. Hernández Flores has hypertension, Mr. Medina Cabrera Cabrera has anxiety problems and Ms. Hernández Ruiz has hyperthyroidism and heart problems and was recently hospitalized for facial paralysis. Ms. Juárez Avilés vomited blood in court on 18 November during the preliminary hearing and was treated by the doctor at the judicial complex who suggested that she should be referred to a hospital as a matter of urgency; her family and lawyers learned that she had been taken to the Carlos Roberto Huembes police hospital. However, the families of all the detainees still do not know the details of their detained relatives' state of health.

34. The source alleges that the detention of the 16 persons is arbitrary under category I. It claims that the police never showed an arrest warrant or stated that the arrests were made on the grounds of flagrante delicto; in addition, at the time of the arrest, the police beat up several of the individuals in question. None of the 16 individuals were informed of the reasons for their arrest, of the judicial channels for challenging the legality of the deprivation of their liberty, or of their right to have access to a lawyer of their choice. This conduct by the authorities amounts to a violation of article 9 (2) of the Covenant and principles 7 and 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. It is also argued that it contravenes the Constitution of Nicaragua itself, article 33 (1) of which establishes that: “detention may only be carried out by written order of the competent judge or of the authorities expressly empowered by law, except in cases of flagrante delicto”.

35. It is claimed that none of the 16 persons arrested was brought before a judge promptly and within the time limit, i.e. within the 48 hours provided for in the Constitution. In view of this delay, on 17 November 2019, the lawyers filed an appeal with the Office for the Reception and Distribution of Cases and Documents. On the same day, the Prosecutor’s Office filed charges of illicit arms trafficking and requested pretrial detention. The source alleges that the police officers acted in the absence of judicial oversight, which amounts to a violation of principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

36. The source recalls that judicial oversight of detention is a fundamental safeguard of personal liberty and is necessary in ensuring the legality of detention. The absence of judicial oversight constitutes a violation of the right to be promptly brought before a judicial authority and to challenge the legality of the detention before a judge. In this regard, incommunicado detention is a violation of article 9 (4) of the Covenant, in addition to the right to an effective remedy under article 2 (3) of the Covenant and article 8 of the Universal Declaration of Human Rights.

37. According to the information received, the 16 persons arrested were charged with illicit arms trafficking to the detriment of the public security of the Nicaraguan population and were automatically placed in pretrial detention, as a result of the legal requirement arising from Act No. 952, which amended article 565 of the Criminal Code, indicating that cases of illicit arms trafficking must be subject to pretrial detention. Article 44 of Act 745 on Enforcement, Privileges and Judicial Oversight of Criminal Sanctions establishes the same. The source considers it important to point out that this type of serious crime carries automatic pretrial detention, which is used in Nicaragua to punish human rights defenders, journalists and all those who speak out against the Government, for exercising their rights to freedom of expression and peaceful assembly.

38. The source recalls 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.

39. The source is of the view that the detention of the 16 individuals is also arbitrary under category II. It points out that, at the time of the arrest, they were bringing water to a group of mothers of political prisoners who were in a church in Masaya. The arrest was made by the same group of police officers who besieged the church, preventing anyone from entering or leaving, while electricity and water had been cut off.

40. The 16 individuals have taken a critical public stance against the actions of the Government and have taken an active stand in denouncing the alleged serious human rights violations that have been committed in the country since April 2018. The source indicates that, prior to these arrests, some had already been victims of harassment, persecution and even detention on various occasions, as in the case of Ms. Coppens Zamora and Mr. Brenes Domínguez.

41. The source is of the view that the detention of these individuals is related to their exercise of their freedom of opinion and expression and their critical stand against the current Government. The authorities violated the right of the 16 detainees to freedom of opinion and expression as enshrined in articles 19 of the Universal Declaration of Human Rights and the Covenant. Freedom of expression is an indispensable requirement for the full development of the person and constitutes the foundation stone for every free and democratic society. It is also the basis for the enjoyment of other human rights, such as freedoms of assembly and

association and the exercise of the right to political participation, as set forth in articles 20 and 21 of the Universal Declaration of Human Rights and articles 21, 22 and 25 of the Covenant.

42. In addition, it is alleged that the detention is arbitrary under category III. The source claims that the 16 individuals are being held in the police detention centre known as El Nuevo Chipote, in conditions that endanger their physical and psychological integrity.

43. Ms. Coppens Zamora and Mr. Brenes Domínguez were held in isolation in punishment cells for the first few days of their detention. The source argues that this incommunicado detention regime violated their right to challenge the legality of the detention before a court, as provided for in article 9 (4) of the Covenant. This continued treatment violates the right to contact with the outside world, as set out in rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and principles 15, 19 and 20 of the Body of Principles.

44. In addition, the source adds that police officers took Mr. Peralta Centeno and Mr. Hernández Flores out of their cells and interrogated them for long periods of time in the middle of the night. It is recalled that statements obtained under torture or other cruel, inhuman or degrading treatment may not be invoked as evidence in any proceedings except those investigating allegations of torture and/or ill-treatment. This reaffirms the State party's obligation as a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and reaffirms articles 7 and 14 of the Covenant and the Human Rights Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

45. The source claims that some of the 16 persons detained have bruises from having been beaten by the police at the time of their arrest and/or have medical prescriptions that require special attention, which is not being provided by the prison authorities. Mr. Hernández Flores has hypertension, Mr. Medina Cabrera Cabrera has anxiety problems, and Ms. Hernández Ruiz has hyperthyroidism and heart problems and was hospitalized a month ago due to problems with facial paralysis. Ms. Coppens Zamora also has hypertension and asthma.

46. These conditions of detention are alleged to be in violation of principles 6 and 33 of the Body of Principles, article 7 of the Covenant, and articles 2, 11 and 12 of the Convention against Torture, among others. Treatment and conditions of detention must guarantee the right of every person to a fair and impartial trial, including the presumption of innocence. It is argued that persons subjected to cruel, inhuman or degrading treatment during their detention and trial do not have the means and tools necessary to prepare their judicial defence and such treatment makes a fair trial with due process impossible.

47. The source emphasizes that none of the 16 persons deprived of their liberty were informed by the authorities of the reasons for their arrest or promptly informed of the charges against them, and they were not able to contact a lawyer they trusted from the moment of their arrest. They were also not guaranteed private communication with their lawyer and were not allowed to see their criminal case files in a timely manner. It was not until minutes before the preliminary hearing took place that the detainees were allowed to speak to their defence counsels. It is claimed that this prevented them from preparing their defence, in clear violation of articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) of the Covenant. Similarly, it is alleged that principle 9 of the Body of Principles, which provides that persons deprived of their liberty shall have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, was not respected.

48. The source reports that the authorities arrested the 16 persons and placed them in pretrial detention on the basis of the legal imposition of article 1 of Act No. 952, amending article 565 of the Criminal Code, which stipulates that cases of illicit arms trafficking must be subject to pretrial detention; article 44 of Act No. 745 establishes the same. The source argues, however, that ordering the measure of pretrial detention without an individual analysis justifying such a need constitutes premature punishment that violates the principle of presumption of innocence, enshrined in article 11 of the Universal Declaration of Human Rights, article 14 (2) of the Covenant and principle 36 (1) of the Body of Principles. The source stresses that pretrial detention is a precautionary measure that should only be used to ensure that criminal proceedings are carried out, but it cannot be ordered at the beginning of the trial, when the guilt of the accused has not yet been established. 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.

49. On 18 November 2019, the National Police convened a press conference at which it presented the 16 individuals, all wearing blue uniforms, to the media and publicly accused them of being a criminal gang with plans to carry out attacks on public buildings. In addition, it was mentioned that at the time of their arrest, firearms were found in their vehicles. The police referred specifically to Ms. Coppens Zamora and Mr. Brenes Domínguez, stating that they already had criminal records for terrorism and other serious crimes. The source considers that it is important to remember that these statements were made on the same day that the 16 arrested persons were brought before a judge for the first time.

50. The source indicates that the right to the presumption of innocence obliges State institutions to treat the accused as innocent until a conviction is passed, which means refraining from making public statements ascribing guilt. However, it is claimed that the police authorities made public statements on the criminal responsibility of the 16 persons arrested, even before the preliminary hearing had taken place; in other words, when it was not even certain that the judge would admit the Public Prosecutor's Office's charges and order their pretrial detention. The 16 individuals were portrayed as criminals through the government media, as if they had already been convicted, which is why the source alleges a violation of article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.

Government reply

51. The Working Group transmitted the information contained in the communication sent by the source to the Government on 16 December 2019, requesting it to provide detailed information on the case by 14 February 2020. The Working Group regrets that it did not receive a timely response to the communication from the Government. In the absence of a response from the Government to the communication submitted by the source, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

Deliberations

52. The Working Group notes that the 16 individuals were released on 30 December 2019, under the family cohabitation regime, with severe restrictions on their freedom of movement. Under paragraph 17 (a) of its methods of work, the Working Group may render an opinion notwithstanding the release of the persons concerned. The detainees were allegedly subjected to serious violations of their human rights. Furthermore, the release was ordered unilaterally by decision of the organs of the executive branch, before the judgment of the court of first instance had been handed down, and without the endorsement of the court trying the case; the judicial proceedings are still in progress, which could lead to a subsequent prison sentence. The Working Group therefore considers it important to render an opinion on the present case.

53. 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, then the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.² In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

Category I

54. The Working Group received information from the source, which was not contradicted by the Government, that on the morning of 14 November 2019, 10 mothers went on hunger strike at the San Miguel Arcángel church in the city of Masaya to demand the release of their family members, who were in prison for political reasons and that, in

² A/HRC/19/57, para. 68.

response, members of the police surrounded the building to prevent anyone from entering or leaving. At the same time, the authorities cut off the church's water and electricity supply.

55. The Working Group has been convinced that, despite the police siege, a group of young people who support democratic change in the country, human rights defenders, social leaders and inhabitants of the city of Masaya expressed their support for and solidarity with the mothers on hunger strike by providing bottles of water and medicine.

56. In this context, Amaya Eva Coppens Zamora, Atahualpa Yupanqui Quintero Morán, Derlis Francisco Hernández Flores, Hansel Amaru Quintero Gómez, Ivannia del Carmen Álvarez Martínez, Jesús Adolfo Tefel Amador, Jordán Irene Lanzas Herrera, José Dolores Medina Cabrera Cabrera, María Margarita Hurtado Chamorro, Marvin Samir López Namendiz, Melvin Antonio Peralta Centeno, Neyma Elizabeth Hernández Ruiz, Olga Sabrina Valle López, Roberto Andrés Buchting Miranda, Wendy Rebeca Juárez Avilés and Wilfredo Alejandro Brenes Domínguez were arrested by the police while they were driving in a convoy of four vehicles after participating in the expressions of support for the mothers of the political prisoners.

57. The Working Group has stated that persons who are arrested must not only be informed, at the time of arrest, of the reasons for their arrest,³ but also of the judicial avenue for challenging the lawfulness of the deprivation of their liberty.⁴ The reasons given for the arrest must include not only the general legal basis of the arrest but also factual specifics indicating the substance of the complaint and the wrongful act committed. These reasons are understood to be the official basis for the arrest, not the subjective motivations of the arresting officer.⁵ The Working Group considers that in order for a deprivation of liberty to have a legal basis, it is not sufficient simply for there to be a law pursuant to which an arrest can be made. The authorities must invoke that legal basis and apply it to the circumstances of the case through a judicial order.⁶

58. In addition, the Working Group considers that persons deprived of their liberty are entitled to be informed by the authorities, at the time of their arrest, of their right to be assisted by a lawyer of their own choosing.⁷ Persons deprived of their liberty also have the right to be informed promptly of the charges against them.⁸

59. In this regard, the Working Group has been convinced that, at the time of the arrest, the police officers did not inform the individuals of the reasons for their arrest and did not show arrest warrants. In addition, the Working Group notes that the 16 individuals were doing charitable work, providing solidarity and assistance by giving water to the mothers who were demonstrating, so this could hardly be considered a violent action or one that incited violence. The 16 individuals were not arrested for committing a crime in flagrante delicto.

60. Similarly, the Working Group received convincing information that the 16 individuals were brought before a judge after the 48-hour period required by law. The Working Group notes that it was not until 17 November 2019 that the Assistant Prosecutor of Managua brought charges and requested the opening of proceedings against the 16 detainees, without the Government having submitted any information on the criminal conduct allegedly attributed to them, or any evidence to support it.

61. The Working Group also received convincing information about the application of automatic pretrial detention against the 16 persons arrested in the present case on charges of carrying weapons.

62. The Working Group recalls that, in its opinion No. 1/2018, it examined this matter in detail and concluded that mandatory pretrial detention is in violation of article 9 (3) of the International Covenant on Civil and Political Rights, which stipulates that detention pending

³ Covenant, art. 9 (2).

⁴ 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 (A/HRC/30/37), principle 7. Right to be informed.

⁵ *Ibid.*

⁶ Opinions No. 46/2019, No. 33/2019, No. 14/2019, No. 9/2019, No. 53/2018, No. 46/2018, No. 36/2018, No. 10/2018 and No. 38/2013.

⁷ A/HRC/30/37, principle 9. Assistance by legal counsel and access to legal aid.

⁸ Covenant, art. 9 (2).

trial should be the exception rather than the rule and must be based on an individualized determination that it is reasonable and necessary.⁹

63. The Working Group considers that automatic pretrial detention for specified offences deprives detainees of their right to seek alternatives to detention, such as bail, and violates the right to be presumed innocent under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant. The imposition of pretrial detention for specified offences reverses the presumption of innocence, as persons accused of those offences are automatically detained, without there being a balanced consideration of alternatives to detention. The Working Group wishes to emphasize that international standards, in particular article 9 (3) of the Covenant, do not preclude the imposition of pretrial detention in certain circumstances. However, they do stipulate that such detention may be ordered only once a judicial authority has carried out an individualized assessment of the case.

64. The Working Group considers that automatically ordering the pretrial detention of the 16 individuals, without a case-by-case examination of its necessity, is contrary to article 9 (3) and (4) of the Covenant and demonstrates the lack of a legal basis for the detention.

65. In the light of the above, the Working Group is of the opinion that the detention of the 16 individuals by the authorities was arbitrary under category I.

Category II

66. The Working Group emphasizes that, under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant, everyone has the right to freedom of expression, which includes the right to impart information and ideas of all kinds, whether orally or in any other form. The exercise of this right may be subject only to such restrictions as are expressly established by law and necessary to ensure respect for the rights or reputations of others, or to protect national security, public order, or public health or morals.¹⁰

67. The Working Group is of the view that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person and constitute the foundation stone for every free and democratic society.¹¹ They form a basis for the full enjoyment of a wide range of other human rights, such as the right to political participation, as set forth in article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant.¹²

68. The importance of freedom of expression is such that no Government may infringe other human rights on the basis of a person's actual or perceived opinions, whether of a political, scientific, historical, moral, religious or any other nature. Consequently, categorizing the peaceful expression of an opinion as an offence is not compatible with the Universal Declaration of Human Rights or the Covenant, and nor is it permissible for persons to be harassed, intimidated or stigmatized, arrested, detained, tried or imprisoned, on account of their opinions or the expression thereof.¹³

69. In the present case, the Working Group is convinced that the 16 individuals were arrested after they brought water to a group of mothers of political prisoners who were in the San Miguel Arcángel church in Masaya, and that the arrest was made by the police officers who had set up a blockade to prevent anyone from entering or leaving the church. The act that led to the arrest of the 16 individuals was their support of a peaceful demonstration, which called for the release of a group of people who were allegedly being deprived of their liberty for political reasons. In this regard, the Working Group considers that such activity amounts to the exercise of the right to freedom of opinion, expression and political participation, as well as the defence and promotion of the right to personal liberty, which are protected by the Universal Declaration of Human Rights and the Covenant.

⁹ Opinions No. 64/2019, No. 53/2018, No. 16/2018, No. 1/2018, No. 24/2015 and No. 57/2014; A/HRC/19/57, paras. 48 to 58 and Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 38.

¹⁰ Opinion No. 58/2017, para. 42.

¹¹ General comment No. 34 (2011) on freedoms of opinion and expression, para. 2.

¹² Ibid., para. 4.

¹³ Ibid., para. 9.

70. Similarly, the Working Group is aware that the detained individuals have campaigned for democratic change and the defence of human rights and that they are critical of the Government. Furthermore, the Working Group recalls that 2 of the 16 persons detained (Ms. Coppens Zamora and Mr. Brenes Domínguez) had already been arbitrarily deprived of their liberty for incidents that occurred in the context of the April 2018 protests, as acknowledged in opinion No. 43/2019.

71. In the present case, the Working Group is convinced that the detention of the 16 persons was a consequence of the exercise of their freedom of opinion and expression, as well as of their critical stance towards the Government, through support for the mothers who went on hunger strike to demand the release of their imprisoned family members.¹⁴

72. Therefore, the Working Group considers that the detention of the 16 individuals, after they had exercised their freedom of opinion and expression, as well as their right to participate in public affairs, by supporting the cause of the striking mothers, is contrary to articles 19 and 21 of the Universal Declaration of Human Rights and articles 19 and 25 of the Covenant, which makes it arbitrary under category II.

Category III

73. In the light of the findings made in relation to category II, in which it concluded that the detention results from the exercise of the rights to freedom of opinion and expression, the Working Group considers the pretrial detention and the trial to be disproportionate and unjustified. However, since criminal proceedings were initiated, and in view of the claims made by the source and the lack of response from the Government, the Working Group will proceed to analyse whether, in the course of the judicial proceedings, the fundamental components of a fair, independent and impartial trial were respected.

74. As stated above, the Working Group is convinced that during the arrest of the 16 persons, the rights to be immediately informed of the reasons for the arrest, to be brought promptly before a judge, to have access to a court to verify the lawfulness of the detention and not to be subjected to automatic pretrial detention were not respected, in contravention of article 9 of the Covenant.

75. Article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant recognize the right of all persons charged with a criminal offence to be presumed innocent. This right imposes a number of obligations on all State institutions to treat persons accused of a criminal offence as innocent until they have been found guilty.

76. In the view of the Working Group, as well as that of the Human Rights Committee, this right carries an obligation for all authorities, including the executive branch, to refrain from prejudging the outcome of a trial, which means abstaining from making public statements affirming the guilt of the accused.¹⁵

77. The Inter-American Court of Human Rights has stated that:

The right to be presumed innocent requires that the State refrain from informally convicting a person or making public declarations regarding his or her guilt, thereby shaping public opinion, so long as the person's guilt has not been proven according to law. This right can be violated by the judges in charge of the proceedings or indeed by other public authorities, who therefore have a duty to exercise discretion and caution when making public statements regarding criminal proceedings before the person has been tried and a judgment has been made.¹⁶

¹⁴ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (General Assembly resolution 53/144).

¹⁵ General comment No. 32 (2007) of the Human Rights Committee on the right to equality before courts and tribunals and to a fair trial, para. 30. See also *Kozulina v. Belarus* (CCPR/C/112/D/1773/2008), para. 9.8.

¹⁶ Inter-American Court of Human Rights, *Pollo Rivera et al. v. Peru*, para. 177. See also *Tibi v. Ecuador*, para. 182; *J. v. Peru*, paras. 244–247. Similar language appears in the findings of the European Court of Human Rights in the cases of *Allenet de Ribemont v. France*, para. 41; *Daktaras v. Lithuania*, para. 42; *Petyo Petkov v. Bulgaria*, para. 91; *Peša v. Croatia*, para. 149; *Gutsanovi v.*

78. 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.¹⁷ Public statements by officials violate the right to the presumption of innocence of a person when they hold him or her responsible for a crime for which he or she has not yet been tried, thereby attempting to convince the public to believe them guilty and prejudging the assessment of the facts by the competent judicial authority.¹⁸

79. In the present case, the Working Group received convincing information that, on 18 November 2019, the second-in-command of the National Police's Department of Judicial Assistance presented the 16 detained persons at a press conference, all dressed in the blue uniform worn in Nicaraguan prisons. At the event, the police pointed out that the individuals were members of a criminal gang planning to commit attacks against public buildings, and that weapons and explosives had been found in the four vehicles in which they were travelling. The police emphasized that Ms. Coppens Zamora and Mr. Brenes Domínguez had criminal records for terrorism and other serious crimes, despite the fact that they had been released under an amnesty law.¹⁹

80. In addition, as shown above, the authorities ordered the automatic pretrial detention of the 16 individuals on charges of the crime of illicit arms trafficking. In this respect, the Working Group considers that ordering the measure of pretrial detention without an individual analysis justifying such a need constitutes premature punishment that violates the principle of presumption of innocence, enshrined in article 11 of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.

81. The Working Group considers that the right to be presumed innocent, as recognized in articles 11 and 14 of the Covenant, was violated when the 16 individuals were presented to the media as guilty, wearing prisoners' uniforms, and the police authorities made statements concerning their presumed criminal liability and the automatic application of pretrial detention.

82. The Working Group also points out that all persons charged with a criminal offence have the right to be informed promptly and in detail in a language that they understand of the nature and cause of the charge against them, as well as to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing.²⁰ The Working Group emphasizes that persons charged with a criminal offence have the right to be assisted and defended by counsel of their own choosing.²¹

83. Like the Human Rights Committee, the Working Group considers that the requirement that persons be informed promptly of the nature and cause of the charges against them may be satisfied orally, provided that the information is later confirmed in writing, that the applicable law is stated and that the facts on which the charge is based are described.²²

84. As regards the right to be assisted by counsel and to have adequate time and facilities for the preparation of a defence, the Working Group considers that accused persons must be given adequate time and facilities to this end. This means that they must be granted prompt access to counsel, the ability to communicate with their counsel privately and in conditions that ensure the confidentiality of their communication,²³ adequate time to prepare their defence²⁴ and access to the case file containing all the documents, evidence and other materials that the prosecution plans to offer in court.²⁵

Bulgaria, paras. 194–198; *Konstas v. Greece*, paras. 43 and 45; *Butkevičius v. Lithuania*, para. 53; *Khuzhin and Others v. Russia*, para. 96; *Ismoilov and Others v. Russia*, para. 161.

¹⁷ Opinions No. 90/2017, No. 76/2018 and No. 89/2018.

¹⁸ See opinions No. 6/2019 and No. 12/2019.

¹⁹ Act No. 996, the Amnesty Act, adopted by the National Assembly on 8 June 2019 and published in *La Gaceta Diario Oficial* No. 108 of 10 June 2019.

²⁰ Article 14 (3) (a) and (b) of the Covenant.

²¹ Article 14 (3) (d) of the Covenant.

²² General comment No. 32, para. 31.

²³ *Ibid.*, para. 34.

²⁴ *Ibid.*, para. 32.

²⁵ *Ibid.*, para. 33.

85. The Working Group also takes the view that:

The factual and legal basis for the detention shall be disclosed to the detainee and/or his or her representative without delay so as to provide adequate time to prepare the challenge. Disclosure includes a copy of the detention order, access to and a copy of the case file, in addition to the disclosure of any material in the possession of the authorities or to which they may gain access relating to the reasons for the deprivation of liberty.²⁶

86. In the present case, the Working Group is convinced that none of the 16 persons deprived of their liberty were informed by the authorities of the reasons for their arrest, they were not promptly informed of the charges against them, and they were not able to contact the lawyers they trusted from the moment of their arrest. They were also not guaranteed private communication with their lawyer and were not allowed to see their criminal case files in a timely manner.²⁷

87. In the Working Group's opinion, this implies that the authorities did not respect the right to have adequate time and facilities for the preparation of a defence, including access to a lawyer of their own choosing, in contravention of articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) of the Covenant.

88. Furthermore, according to article 14 (1) of the Covenant, everyone is entitled to a fair hearing by a competent, independent and impartial tribunal in the determination of any criminal charge brought. The Working Group considers that the requirement of impartiality demands that judges must not allow their judgment to be influenced by personal bias or prejudices, nor harbour preconceptions about the particular case before them, nor act in ways that promote the interests of the parties. The tribunal must also appear to a reasonable observer to be impartial.²⁸

89. In this regard, the Working Group has repeatedly stated that the criminal prosecution of persons accused of offences committed in a particular territory by courts located in another jurisdiction constitutes a violation of the right to a hearing before a competent court duly appointed by law if national legislation expressly attributes competency to the jurisdiction that corresponds to the place in which the offence is alleged to have been committed.²⁹

90. In the light of the information received, which was not refuted by the Government, the Working Group is convinced that, under the domestic law of Nicaragua, competency to hear a case falls to the court in whose jurisdiction the offence is alleged to have been committed. In this regard, the Working Group is aware that, while the detention and the alleged offences with which the individuals were charged were allegedly committed in Masaya, the preliminary hearing on 18 November was held before the Fifth District Criminal Court of the Managua district, where the 16 persons were formally charged with the offence of illicit arms trafficking. Therefore, the Working Group considers that the court that heard the case of the 16 persons was not the competent court; consequently, the right to be tried by the natural judge was violated, in contravention of article 14 (1) of the Covenant.

91. In the light of the foregoing, the Working Group considers that the fair trial guarantees under articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant were partially seriously violated, which renders the detention arbitrary under category III.

92. In the light of the information and allegations made in the present case, the Working Group, in accordance with paragraph 33 (a) of its methods of work, refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders.

²⁶ A/HRC/30/37, guideline 5, right to be informed, para. 56.

²⁷ Opinions No. 70/2019, para. 79; No. 78/2018, paras. 78 and 79; No. 18/2018, para. 53; No. 89/2017, para. 56; No. 50/2014, para. 77 and No. 19/2005, para. 28 (b).

²⁸ General comment No. 32, para. 21.

²⁹ Opinions No. 43/2019, para. 77; No. 30/2014, para. 51; No. 28/2014, para. 46; No. 1/2015, paras. 31 and 34; No. 6/2019, para. 135 and No. 12/2019, para. 121.

93. Lastly, in order to allow the Working Group to establish a direct dialogue with all the authorities of the State (the executive, the legislature and the judiciary), representatives of civil society and detainees, with the aim of gaining a better understanding of the situation of deprivation of liberty in Nicaragua, the Working Group suggests that the Government may wish to consider inviting it to make a country visit, as requested in its notes verbales of 24 April and 21 November 2018. The Working Group recalls that on 26 April 2006 the Government extended an open invitation to the special procedures of the Human Rights Council and that its most recent visit to Nicaragua was from 15 to 23 May 2006.³⁰

Decision

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

The deprivation of liberty of Amaya Eva Coppens Zamora, Atahualpa Yupanqui Quintero Morán, Derlis Francisco Hernández Flores, Hansel Amaru Quintero Gómez, Ivannia del Carmen Álvarez Martínez, Jesús Adolfo Tefel Amador, Jordán Irene Lanzas Herrera, José Dolores Medina Cabrera Cabrera, María Margarita Hurtado Chamorro, Marvin Samir López Ñamendiz, Melvin Antonio Peralta Centeno, Neyma Elizabeth Hernández Ruiz, Olga Sabrina Valle López, Roberto Andrés Buchting Miranda, Wendy Rebeca Juárez Avilés and Wilfredo Alejandro Brenes Domínguez was arbitrary, being in contravention of articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 11, 14 and 19 of the International Covenant on Civil and Political Rights, and falls within categories I, II and III.

95. The Working Group requests the Government of Nicaragua to take the steps necessary to remedy the situation of Amaya Eva Coppens Zamora, Atahualpa Yupanqui Quintero Morán, Derlis Francisco Hernández Flores, Hansel Amaru Quintero Gómez, Ivannia del Carmen Álvarez Martínez, Jesús Adolfo Tefel Amador, Jordán Irene Lanzas Herrera, José Dolores Medina Cabrera Cabrera, María Margarita Hurtado Chamorro, Marvin Samir López Ñamendiz, Melvin Antonio Peralta Centeno, Neyma Elizabeth Hernández Ruiz, Olga Sabrina Valle López, Roberto Andrés Buchting Miranda, Wendy Rebeca Juárez Avilés and Wilfredo Alejandro Brenes Domínguez without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

96. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Amaya Eva Coppens Zamora, Atahualpa Yupanqui Quintero Morán, Derlis Francisco Hernández Flores, Hansel Amaru Quintero Gómez, Ivannia del Carmen Álvarez Martínez, Jesús Adolfo Tefel Amador, Jordán Irene Lanzas Herrera, José Dolores Medina Cabrera Cabrera, María Margarita Hurtado Chamorro, Marvin Samir López Ñamendiz, Melvin Antonio Peralta Centeno, Neyma Elizabeth Hernández Ruiz, Olga Sabrina Valle López, Roberto Andrés Buchting Miranda, Wendy Rebeca Juárez Avilés and Wilfredo Alejandro Brenes Domínguez and accord them an enforceable right to compensation and other reparations, in accordance with international law.

97. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the 16 detained individuals named and to take appropriate measures against those responsible for the violation of their rights.

98. In line with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders for appropriate action.

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

³⁰ A/HRC/4/40/Add.3.

Follow-up procedure

100. 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 Amaya Eva Coppens Zamora, Atahualpa Yupanqui Quintero Morán, Derlis Francisco Hernández Flores, Hansel Amaru Quintero Gómez, Ivannia del Carmen Álvarez Martínez, Jesús Adolfo Tefel Amador, Jordán Irene Lanzas Herrera, José Dolores Medina Cabrera Cabrera, María Margarita Hurtado Chamorro, Marvin Samir López Ñamendiz, Melvin Antonio Peralta Centeno, Neyma Elizabeth Hernández Ruiz, Olga Sabrina Valle López, Roberto Andrés Buchting Miranda, Wendy Rebeca Juárez Avilés and Wilfredo Alejandro Brenes Domínguez have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to the 16 detained individuals;

(c) Whether an investigation has been conducted into the violation of the rights of the 16 detained individuals 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.

101. 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.

102. 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.

103. The Working Group notes 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.³¹

[Adopted on 1 May 2020]

³¹ Human Rights Council resolution 42/22, paras. 3 and 7.