



General Assembly

Distr.: General
18 July 2018
English
Original: Spanish

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018

Opinion No. 32/2018 concerning Ángel Machado, Luis Aguirre, Alberto Cabrera, Wuilly Delgadillo, Romer Delgado, José Gregorio González, Dehlor De Jesús Lizardo, Nirso López, Pedro Marval, Antonio Medina, Arcilo Nava Suárez, Geovanny Nava Suárez, Kendry Parra, Jesled Rosales, Franklin Tovar, Ender Victa and Kiussnert Zara (Bolivarian Republic of Venezuela)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. 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 33/30.
2. In accordance with its methods of work (A/HRC/36/38), on 19 January 2018 the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Ángel Machado and 16 other individuals. The Government requested an extension of the deadline for submitting its response. 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. Ángel Machado, Alberto Cabrera, Antonio Medina, Kendry Parra, Dehlor De Jesús Lizardo, Pedro Marval, Romer Delgado, Kiussnert Zara, Jesled Rosales, Nirso López, Franklin Tovar, Wuilly Delgadillo and José Gregorio González are all Venezuelan nationals, of legal age, ranging in ages from 26 to 42, who reside in Zulia State. Mr. Machado is a municipal councillor in Maracaibo, a lawyer, politician and political coordinator of the Voluntad Popular party in Zulia. The other individuals are part of Mr. Machado's team in Zulia.

5. Ender Victa, Luis Aguirre, Geovanny Nava and Arcilo Nava are also Venezuelan nationals, of legal age, ranging in ages from 24 to 29, who reside in Zulia State. All four are activists for the Voluntad Popular party in Zulia.

Case of Mr. Machado and his team

6. On 26 July 2017, Mr. Machado, along with his team and activists from Voluntad Popular, took part in a protest against the convening of the National Constituent Assembly by the President. The protest consisted in a 48-hour strike during which some streets and avenues were blocked by protesters. Mr. Machado and his team were arrested during the protest, without being shown a warrant, by at least 30 officers of the Bolivarian National Guard.

7. At the time, Mr. Machado was with his press team and a group of motorcyclists who had been hired to transport recording equipment and whose motorcycles bore white banners with the word "press" on them.

8. For several hours following the arrests, no information was provided as to where Mr. Machado and the 12 members of his team had been taken. Contact was made with the detainees only after they had been held for nine hours. They had been taken to the Zone 11 Command in Zulia State, where they were kept under an open tent on the premises of the Urban Security Unit. The source notes that the premises do not have any sanitation facilities or running water and are equipped only with plastic chairs. The detainees shared the space with over 80 people on the first night and they were not permitted to wash themselves, change their clothing or eat sufficiently.

9. On 28 July 2017, after spending 48 hours in these conditions, described by the source as deplorable, the detainees were transferred to Zulia Military Court. A hearing was held at around 4 p.m., presided over by Military Judge No. 18 for procedural matters, a Navy lieutenant, despite the fact that the detainees were civilians and that civilians cannot be tried by a military court under domestic law. At the hearing, the military prosecutor moved for the detainees to be charged with the offences of mutiny, assault of a military guard, and insulting and disrespecting the Armed Forces; the motion was approved.

10. The source notes that spokespersons for the governing party did not wait for a definitive sentence to be handed down before drawing conclusions as to the guilt of the accused. Indeed, the vice-president of the Partido Socialista Unido de Venezuela and member of the National Assembly stated publicly on his television programme that "two right-wing councillors had been arrested for acts of terrorism in Zulia State".

11. On the night of 29 July 2017, the detainees were transferred from the military court to the cell block of the Zone 11 Command, a confined space without ventilation or windows, measuring 25 m². At the time, 50 people were being held in this space, lying one on top of another on the floor. Owing to the limited space, some people were even forced to remain standing for the entire night. As a consequence of the lack of water and sanitation

facilities, several of the detainees developed scabby skin lesions. There were only two buckets, one for solid waste and the other for liquid waste.

12. Despite the fact that the military court order had designated the military pretrial detention centre in Santa Ana, Táchira State, as the place of detention, the detainees were taken, without prior notification of their lawyers, to Occidente prison in Santa Ana.

13. Once at the prison, the detainees' hair was cropped and their beard shaved. Regarding the initial detention conditions: (a) the detainees were forced to practise close-order drills; (b) family visits were authorized only every two weeks; (c) they were denied conjugal visits; (d) they were continuously subjected to searches during which they were naked and required to squat; and (e) they were continuously subjected to punishment, including strenuous exercises during which they were forced to shout slogans such as "Here nobody badmouths Chávez" and "If trouble starts, I'm with Maduro". If they failed to shout the slogans, the punishment was stepped up; on one occasion, they were even forced to stand immobile in the sun for over four hours, with their heads turned to the left. In addition, their diet was poor, consisting of a portion of rice and water, a single cornmeal roll or just a piece of cheese. On one occasion, the 12 detainees were held for 48 hours in a punishment cell known as "La Máxima", a small, dark and isolated space without any light or noise, where they were given no water or food.

14. On 17 August 2017, they were transferred to the military pretrial detention centre in Santa Ana, where they thought the detention conditions would be better. However, owing to the overcrowding, the detainees did not have cells or any space to store their belongings. Consequently, most of them spent the night in the kitchen or hallways, forced to wait until lights out to sleep on the floor.

15. On 18 September 2017, the case of Mr. Machado and his team was referred to the head judge of the Judicial Circuit Court of Zulia State, whose office assigned the case to the Thirteenth Procedural Court of First Instance on 26 September 2017. The Thirteenth Procedural Court requested that the cases be reassigned, since all the cases for which jurisdiction had been declined by the military courts had been sent to it. The head judge of the Judicial Circuit Court examined the request and ordered the case to be reassigned.

16. On 28 September 2017, the case was reassigned to the First Procedural Court. The arraignment was scheduled for 25 October 2017. On that occasion, the accused were charged with five offences: resisting authority, blocking the public highway, possession of explosive devices, public incitement to commit an offence and aggravated verbal abuse of a public official. Mr. Machado was also charged with the offence of rebellion. The judge upheld the entirety of the Public Prosecution Service's application and ordered that the accused be remanded into custody.

17. The source stresses that the fact that the military courts handed over the case to the ordinary criminal courts does not compensate for the serious alleged violations inasmuch as the detainees remained subjected to military discipline at the detention centre.

18. On 29 November 2017, the applications for alternative precautionary measures were granted with regard to 12 of the detainees but not Mr. Machado. The measures obtained included house arrest, a ban on leaving the country and the obligation to report to the court. The source emphasizes that these measures considerably restrict personal freedom and in no way offset the arbitrariness of the detention or put an end to the arbitrary proceedings still hanging over them, since there is still a risk that the precautionary measures could be revoked at any time.

19. Mr. Machado remained detained at the military prison in Santa Ana, where he was obliged to prepare and cook his own meals every day and received supplies only twice a week. Mr. Machado was released on 16 December 2017 when the First Procedural Court ordered an alternative measure to deprivation of liberty.

Case of the four Voluntad Popular activists

20. On 4 July 2017, Ender VICTA and Luis Aguirre were arrested by the police without a warrant. Both individuals are leading figures in Voluntad Popular. They were subsequently handed over to the Bolivarian National Guard and brought before a military court, namely,

the Tenth Military Procedural Court, where they were charged with mutiny and assault of a military guard.

21. Following the arrest, no steps were taken to safeguard the health of either individual despite the fact that they were in poor health. The first has HIV and the other was suffering from rectal bleeding, a fact of which the Military Court was aware.

22. Mr. Victa and Mr. Aguirre were detained for approximately four months in the detention facilities of Unit 114, Second Company, of the Bolivarian National Guard, located in the town of La Villa del Rosario, Zulia State. The facilities were small and severely overcrowded and had no ventilation, light or toilets, which made for a highly unsanitary situation. Both detainees presented with serious clinical symptoms that would have warranted medical treatment onsite or even transfer to a treatment centre. For this reason, a petition for conditional release on humanitarian grounds was filed with and granted by the court.

23. Similarly, brothers Geovanny David Nava Suárez and Arcilo Josué Nava Suárez, both Voluntad Popular activists, were arrested by the Bolivarian National Intelligence Service (SEBIN) on 19 July 2017. They were delivering dairy products in the 5 de Julio area of Libertad parish when they were arrested by at least eight armed intelligence officers, who put them into a vehicle and drove them to SEBIN headquarters. No warrant was produced at the time of the arrest.

24. Two days after being arrested, they were brought before the Tenth Military Procedural Court, where they were charged with the offences of mutiny and theft of Armed Forces property. They were remanded into custody at the military pretrial detention centre in Santa Ana, Táchira State, which, as described above, is an overcrowded military prison where the food situation and treatment are inhuman. Like Mr. Machado and his team, they were forced to practise close-order drills and prepare their own meals.

25. After spending more than two months in these conditions, Mr. Victa and Mr. Aguirre were arraigned on 4 October 2017 and the Nava Suárez brothers on 5 October 2017. Both hearings ended in a decision to impose the alternative measure of house arrest, a finding that the court lacked jurisdiction and the referral of the case to the ordinary criminal courts.

26. The source points out that those decisions do not compensate for the violations inherent in either the arbitrary detention to which the men were subjected initially, the hearing by the military court of a case habitually dealt with by the ordinary courts, or the dire conditions they had to endure in the military prison. Moreover, they remain on conditional release or under house arrest, which equate to arbitrary deprivation of liberty.

Categories I, II, III and V

27. In the present case, the source notes that the detention of the councillor, his team and the four Voluntad Popular activists clearly comes under categories I, II, III and V.

28. Regarding category I, the source claims that all the individuals were arrested in a manner that breached the relevant conditions under Venezuelan law, which establishes that a person can be arrested only pursuant to an arrest warrant issued by the competent judge or if caught in flagrante delicto. However, there is no evidence of: (a) any arrest warrant against Mr. Machado, his team or the party's four activists; or (b) their being caught in the act of committing an offence at the time of their arrest.

29. The source adds that Mr. Machado, his team and the four Voluntad Popular activists were charged with offences under the Code of Military Justice, which can only be attributed to military personnel. Yet, none of them is a member of the Armed Forces; therefore, they could not have committed the offences with which they were charged. In view of these claims, the source asserts that the detention of Mr. Machado, his team and the four activists was carried out without any legal basis whatsoever, in violation of article 9 of the Covenant and the Universal Declaration of Human Rights.

30. As for how category II applies to the facts of the case, the source indicates that the detention of Mr. Machado, his team and the Voluntad Popular activists was motivated by

the exercise of their human rights. There is a causal relationship between their political activism and their deprivation of liberty. Accordingly, the source claims that the detention was the consequence of the exercise of the freedoms of opinion, expression, assembly, association and political participation as protected in articles 19 to 21 of the Covenant and 19, 21 and 25 of the Universal Declaration of Human Rights.

31. Concerning category III, the source indicates that international norms on the right to a fair trial were not observed. The pretrial detention was ordered by a military court, which does not satisfy the requirements of jurisdiction and impartiality or have the legal authority to hear civilian cases. The source stresses that the military court judges and prosecutors are appointed and dismissed by the executive branch. In view of this, the source claims that the detention of Mr. Machado, his team and the Voluntad Popular activists was in breach of the guarantees set forth in article 14 of the Covenant and those referred to in articles 10 and 11 of the Universal Declaration of Human Rights.

32. Lastly, as regards category V, the source points out that the detention of Mr. Machado and his team, as well as that of the four party activists, should not be seen as an isolated event. The individuals are members of Voluntad Popular, an opposition political party known for its criticism of the Government, on account of which its leaders have been persecuted and even publicly branded as terrorists on repeated occasions. They have even been threatened with prison, and these have not been idle threats, as witnessed by the present case. The source notes that the persecution of Voluntad Popular's leaders has reached unprecedented levels and has even been acknowledged by the Inter-American Commission on Human Rights, which, for the first time in its history, granted precautionary measures to a political party. Nevertheless, the Government has continued to hound, bar from office and arrest leaders of Voluntad Popular in a pattern of political persecution designed to silence dissidence and opposition. Accordingly, the source claims that the deprivation of liberty amounted to discrimination on political grounds and therefore breached international law, in particular articles 3 and 26 of the Covenant and articles 1 and 7 of the Universal Declaration of Human Rights.

Discussion

33. 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.

34. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹ In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

35. The Working Group received convincing information from the source, unchallenged by the Government, that Ángel Machado, Alberto Cabrera, Antonio Medina, Kendry Parra, Dehlor De Jesús Lizardo, Pedro Marval, Romer Delgado, Kiussnert Zara, Jesled Rosales, Nirso López, Franklin Tovar, Wuilly Delgadillo, José Gregorio González, Ender Victa, Luis Aguirre, Geovanny Nava Suárez and Arcilo Nava Suárez are members of the Voluntad Popular party in Zulia State. Mr. Machado is a municipal councillor in Maracaibo.

36. The Working Group accepts that Luis Aguirre, Geovanny David Nava Suárez, Arcilo Josué Nava Suárez and Ender Victa are activists for Voluntad Popular.

Category I

37. The source informed the Working Group that, on 4 July 2017, Ender Victa and Luis Aguirre were arrested by police officers without a warrant. They were later handed over to the Bolivarian National Guard and brought before the military authorities.

¹ See A/HRC/19/57, para. 68.

38. Similarly, on 19 July 2017, brothers Geovanny David Nava Suárez and Arcilo Josué Nava Suárez, both activists for Voluntad Popular, were arrested by the Bolivarian National Intelligence Service (SEBIN) as they were delivering dairy products in the 5 de Julio area of Libertad parish. At least eight armed SEBIN officers put them into a vehicle and drove them to SEBIN headquarters, without producing a warrant.

39. The Working Group considers that, on 26 July 2017, Mr. Machado was with Alberto Cabrera, Antonio Medina, Kendry Parra, Dehlor De Jesús Lizardo, Pedro Marval, Romer Delgado, Kiussnert Zara, Jesled Rosales, Nirso López, Franklin Tovar, Wuilly Delgadillo and José Gregorio González and other Voluntad Popular activists when they were arrested during a protest against the President's convening of the National Constituent Assembly. The Working Group notes that, at the time of their arrest, Mr. Machado and his team were not committing any offence that warranted detention on the grounds that they had been caught in flagrante delicto. Moreover, the arrests were not based on a warrant issued by a competent authority in connection with an investigation or criminal proceedings against the persons being deprived of their liberty. The Working Group also considers that the detainees were not informed of the reasons for their deprivation of liberty at the time of arrest or shown a summons issued by a competent authority.

40. In the light of the foregoing, the Working Group finds that the detention of Mr. Machado and his team breaches articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant, making it arbitrary under category I.

Category II

41. The Working Group has received no information from the Government regarding the basis or reasons for the detention of Mr. Machado, his team and Ender Victa, Luis Aguirre, Geovanny David Nava Suárez and Arcilo Josué Nava Suárez, who were deprived of their liberty while peacefully taking part in a demonstration, for engaging in political activities, for expressing their opposition to government decisions or for their political engagement in the opposition party Voluntad Popular. Therefore, the Working Group finds that their detention was motivated by their exercise of human rights and fundamental freedoms protected under international law, specifically articles 19, 21, 22 and 25 of the Covenant. The Working Group notes that the restrictions on those rights, which were exercised peacefully, are not among the exceptions provided for under international human rights law.

42. In the light of the above, the Working Group finds that the detention of Ángel Machado, Luis Aguirre, Alberto Cabrera, Wuilly Delgadillo, Romer Delgado, José Gregorio González, Dehlor De Jesús Lizardo, Nirso López, Pedro Marval, Antonio Medina, Arcilo Nava, Geovanny Nava, Kendry Parra, Jesled Rosales, Franklin Tovar, Ender Victa and Kiussnert Zara was arbitrary under category II inasmuch as it was motivated by the exercise of rights enshrined in articles 19 to 21 of the Universal Declaration of Human Rights and articles 19, 21, 22 and 25 of the Covenant.

Category III

43. The Working Group wishes to note that the prosecution and imprisonment of persons for exercising their human rights is contrary to the international obligations of States parties. Nevertheless, given the source's claims that due process was violated during the proceedings, the Working Group will examine the arguments, although not before pointing out that the persons concerned should not have been prosecuted in the first place, in keeping with the findings in the previous section.

44. The Working Group received information, which has not been challenged by the Government, that Ender Victa and Luis Aguirre were charged before a military court with the offences of mutiny and assault of a military guard on 4 July 2017. On 21 July 2017, Geovanny David Nava Suárez and Arcilo Josué Nava Suárez were brought before a military court where they were charged with the offences of mutiny and theft of Armed Forces property. On 28 July 2017, Mr. Machado and his team were brought before Zulia Military Court, where they were charged with mutiny, assault of a military guard and insulting and disrespecting the Armed Forces.

45. According to the information submitted to the Working Group, which was not refuted by the Government, all the detainees in this case were transferred to military facilities to serve the pretrial detention ordered by the military courts.

46. The Working Group recalls that the detention of civilians by the Venezuelan military authorities is an issue that it has already dealt with in previous opinions.² As stated previously, the trial of civilians by judges who are under military command is an irregularity.³ In the Working Group's view, one of the main benefits of civilian judges is their impartiality and independence, which military judges generally lack because they are required to follow orders given by superior officers and because they are appointed by the executive branch. Thus, the separation of powers is not guaranteed in the exercise of this judicial function, which must be independent and impartial.

47. The Working Group has noted in its jurisprudence that placing civilians under the jurisdiction of military prosecutors and courts breaches obligations contained in both the Universal Declaration of Human Rights and the Covenant. The military courts cannot be considered as "competent, independent and impartial", within the meaning of article 14 (1) of the Covenant.⁴ In addition, the Working Group believes that military courts should only be competent to try military personnel for military offences and are precluded from trying cases in which the accused or the victims are civilians. Moreover, the Working Group has established that the offences of rebellion, sedition or attack against a democratic regime, where committed by civilians, should not be tried by military courts.⁵

48. The Working Group is of the view that the military authorities are not competent to order the detention of civilians. Therefore, the detention of Mr. Machado and his team, ordered by a military court in respect of civilians, violates the detainees' human right to a fair trial as established in articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant.

49. The Working Group notes that, between September and December 2017, all the detainees in the present case were referred by the military authorities, after they had declined jurisdiction, to the civilian judicial authorities. At hearings before the civilian courts, the charges were amended and the precautionary measures were commuted to house arrest, bans on leaving the country or the obligation to report to the court.

50. The Working Group received information that the arraignment of Mr. Victa and Mr. Aguirre took place on 4 October 2017, while that of the Nava Suárez brothers took place on 5 October 2017. At the former, the men were granted the alternative precautionary measure of house arrest, whereas at the latter, jurisdiction was declined and the case was referred to the ordinary criminal courts. On 25 October 2017, the new civilian judge hearing the case of Mr. Machado and his team charged them with five offences: resisting authority, blocking the public highway, possession of explosive devices, public incitement to commit an offence and aggravated verbal abuse of a public official. Mr. Machado was also charged with rebellion and remanded into pretrial detention. On 29 November 2017, the applications for non-custodial precautionary measures were granted with regard to 12 of the detainees but not Mr. Machado. The measures handed down included house arrest, bans on leaving the country and the obligation to report to the court. On 16 December 2017, Mr. Machado was granted an alternative to deprivation of liberty.

51. The Working Group also received information from the source, unrefuted by the Government, about statements made by the vice-president of the Partido Socialista Unido de Venezuela and member of the National Assembly about two right-wing councillors having been arrested for acts of terrorism in Zulia State, in violation of the right to the presumption of innocence of the detainees in question.

52. The Working Group considers that placing all the individuals named in the present case in pretrial detention on the order of a military court violated their right to be tried by

² See opinion No. 84/2017.

³ See A/HRC/27/48, paras. 66 and 70, as well as opinions No. 30/2017 and No. 44/2016.

⁴ See A/HRC/27/48, para. 69.

⁵ Ibid.

an impartial and independent court. Furthermore, the Working Group is aware that Mr. Machado's right to the presumption of innocence was violated when he was identified by the vice-president of the Partido Socialista Unido de Venezuela and member of the National Assembly as being responsible for an offence before the judiciary had come to a verdict on his alleged criminal responsibility. The rights that have been breached are enshrined in articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant, thereby rendering the deprivation of liberty of Ángel Machado, Luis Aguirre, Alberto Cabrera, Wuilly Delgadillo, Romer Delgado, José Gregorio González, Dehlor De Jesús Lizardo, Nirso López, Pedro Marval, Antonio Medina, Arcilo Nava Suárez, Geovanny Nava Suárez, Kendry Parra, Jesled Rosales, Franklin Tovar, Ender Victa and Kiussnert Zaram arbitrary under category III.

Category V

53. The Working Group is of the view that the detentions described in the present case are not the first to be carried out by the authorities of the Bolivarian Republic of Venezuela against political opponents, human rights defenders and persons who criticize the authorities' actions. The Working Group has observed that there is a systematic practice of depriving people of their liberty in a manner that violates the fundamental norms of international law enshrined in the Universal Declaration of Human Rights and the Covenant.

54. Thus, the deprivation of liberty of Ángel Machado, Luis Aguirre, Alberto Cabrera, Wuilly Delgadillo, Romer Delgado, José Gregorio González, Dehlor De Jesús Lizardo, Nirso López, Pedro Marval, Antonio Medina, Arcilo Nava Suárez, Geovanny Nava Suárez, Kendry Parra, Jesled Rosales, Franklin Tovar, Ender Victa and Kiussnert Zara, constitutes a breach of international law by virtue of being discriminatory, in violation of articles 2 and 26 of the Covenant and articles 1 and 7 of the Universal Declaration of Human Rights, and is, accordingly, arbitrary under category V.

55. The Working Group recalls that, in some circumstances, imprisonment and other severe forms of deprivation of physical liberty that violate internationally accepted norms may constitute crimes against humanity.⁶

56. In recent years, the Working Group has repeatedly expressed its views on multiple arbitrary arrests of political opponents of the Government or individuals who have exercised their rights to freedom of opinion, expression, association, assembly or political participation.⁷ In the Working Group's view, this is an attack by the Government on its political opponents or part of a systematic attempt to deprive them, particularly those who are seen as opponents of the regime, of their physical freedom, in violation of fundamental rules of international law, including the Universal Declaration of Human Rights and the Covenant.

⁶ See opinions No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011 para. 17; No. 4/2012, para. 26; No. 47/2012, paras. 19 and 22; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 38/2012, para. 33; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 44/2016, para. 37; No. 32/2017, para. 40; No. 33/2017, para. 102; and No. 36/2017, para. 110.

⁷ Opinions No. 52/2017 (Gilbert Alexander Caro Alfonzo); No. 37/2017 (Braulio Jatar); No. 18/2017 (Yon Alexander Goicoechea Lara); No. 27/2015 (Antonio José Ledezma Díaz); No. 26/2015 (Gerardo Ernesto Carrero Delgado, Gerardo Rafael Resplandor Veracierta, Nixon Alfonzo Leal Toro, Carlos Pérez and Renzo David Prieto Ramírez); No. 7/2015 (Rosmit Mantilla); No. 1/2015 (Vincenzo Scarano Spisso); No. 51/2014 (Maikel Giovanni Rondón Romero and 316 others); No. 26/2014 (Leopoldo López); No. 29/2014 (Juan Carlos Nieto Quintero); No. 30/2014 (Daniel Omar Ceballos Morales); No. 47/2013 (Antonio José Rivero González); No. 56/2012 (César Daniel Camejo Blanco); No. 28/2012 (Raúl Leonardo Linares); No. 62/2011 (Sabino Romero Izarra); No. 65/2011 (Hernán José Sifontes Tovar, Ernesto Enrique Rangel Aguilera and Juan Carlos Carvallo Villegas); No. 27/2011 (Marcos Michel Siervo Sabarsky); No. 28/2011 (Miguel Eduardo Osó Zamora); No. 31/2010 (Santiago Giraldo Florez, Luis Carlos Cossio, Cruz Elba Giraldo Florez, Isabel Giraldo Celedón, Secundino Andrés Cadavid, Dimas Oreyanos Lizcano and Omar Alexander Rey Pérez); and No. 10/2009 (Eligio Cedeño).

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

58. Lastly, in the light of the source's claims regarding the dire detention conditions (in terms of food, overcrowding and sanitation) and the inadequacy or absence of health care for the persons deprived of their liberty in the present case, the Working Group refers the case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for information and possible action.

Disposition

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

The deprivation of liberty of Ángel Machado, Luis Aguirre, Alberto Cabrera, Wuilly Delgadillo, Romer Delgado, José Gregorio González, Dehlor De Jesús Lizardo, Nirso López, Pedro Marval, Antonio Medina, Arcilo Nava Suárez, Geovanny Nava Suárez, Kendry Parra, Jesled Rosales, Franklin Tovar, Ender Victa and Kiussnert Zara, being in contravention of articles 1, 7, 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights and of articles 2, 9, 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.

60. The Working Group requests the Government to take the necessary steps to remedy the situation of the detainees 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.

61. The Working Group considers that, taking into account all the circumstances of the case and in accordance with international law, victims of arbitrary detention have the right to seek and receive reparation from the State, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Therefore, the Working Group requests the Government to award appropriate reparation to Ángel Machado, Luis Aguirre, Alberto Cabrera, Wuilly Delgadillo, Romer Delgado, José Gregorio González, Dehlor De Jesús Lizardo, Nirso López, Pedro Marval, Antonio Medina, Arcilo Nava Suárez, Geovanny Nava Suárez, Kendry Parra, Jesled Rosales, Franklin Tovar, Ender Victa and Kiussnert Zara and, where appropriate, to secure their immediate release.

62. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Machado, his team and the Voluntad Popular activists and to take appropriate measures against those responsible for the violation of their rights.

63. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to 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 torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the rights to freedom of peaceful assembly and of association for information and possible action.

Follow-up procedure

64. 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 Ángel Machado, Luis Aguirre, Alberto Cabrera, Wuilly Delgadillo, Romer Delgado, José Gregorio González, Dehlor De Jesús Lizardo, Nirso López, Pedro Marval, Antonio Medina, Arcilo Nava Suárez, Geovanny Nava Suárez, Kendry Parra,

Jesled Rosales, Franklin Tovar, Ender Victa and Kiussnert Zara have been released and, if so, on what date;

(b) Whether compensation or other reparation has been granted to Ángel Machado, Luis Aguirre, Alberto Cabrera, Wuilly Delgadillo, Romer Delgado, José Gregorio González, Dehlor De Jesús Lizardo, Nirso López, Pedro Marval, Antonio Medina, Arcilo Nava Suárez, Geovanny Nava Suárez, Kendry Parra, Jesled Rosales, Franklin Tovar, Ender Victa and Kiussnert Zara;

(c) Whether an investigation has been conducted into the violation of the rights of Ángel Machado, Luis Aguirre, Alberto Cabrera, Wuilly Delgadillo, Romer Delgado, José Gregorio González, Dehlor De Jesús Lizardo, Nirso López, Pedro Marval, Antonio Medina, Arcilo Nava Suárez, Geovanny Nava Suárez, Kendry Parra, Jesled Rosales, Franklin Tovar, Ender Victa and Kiussnert Zara and, if so, what the outcome of the investigation was;

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

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

65. 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.

66. The Working Group requests the source and the Government to provide the above 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. This follow-up procedure will enable the Working Group to keep the Human Rights Council informed of progress made in implementing its recommendations, as well as of any failure to take action.

67. The Government should disseminate the present opinion among all stakeholders through all available means.

68. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.⁸

[Adopted on 25 April 2018]

⁸ See Human Rights Council resolution 33/30, paras. 3 and 7.