

**General Assembly**

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**Human Rights Council  
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary  
Detention at its seventy-third session (31 August-4 September  
2015)****No. 26/2015 regarding Gerardo Ernesto Carrero Delgado, Gerardo  
Rafael Resplandor Veracierta, Nixon Alfonzo Leal Toro, Carlos  
Pérez and Renzo David Prieto Ramírez (Bolivarian Republic of  
Venezuela)**

1. The Working Group on Arbitrary Detention was established by the former Commission on Human Rights by its resolution 1991/42. The mandate of the Working Group was then clarified and extended by the Commission by its resolution 1997/50. The Human Rights Council assumed the mandate by its decision 1/102 and extended it for three years by its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years by resolution 24/7 of 26 September 2013.

2. Acting in accordance with its methods of work (A/HRC/30/69), on 30 June 2015 the Working Group transmitted a communication to the Government of the Bolivarian Republic of Venezuela regarding Gerardo Ernesto Carrero Delgado, Gerardo Rafael Resplandor Veracierta, Nixon Alfonzo Leal Toro, Carlos Pérez and Renzo David Prieto Ramírez. The Government has not responded 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 the detainee) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

## Submissions

### *Communication from the source*

4. Mr. Carrero, a Venezuelan national born on 21 July 1988, is a criminology student at Táchira Catholic University and lives in San Cristóbal (Táchira State). He was arrested on the morning of 8 May 2014 in front of the country office of the United Nations Development Programme (UNDP), located on Francisco de Miranda Avenue in the Los Palos Grandes neighbourhood, Chacao Municipality (Caracas).

5. The source claims that Mr. Carrero was arrested by officers of the Bolivarian National Guard (GNB) who did not produce an arrest warrant issued by a public authority. He was arrested during an operation to dislodge an encampment of 350 tents set up by students in front of the UNDP office in order to demand the release of political prisoners and protest against government policies. Mr. Carrero was arrested together with 120 other students. The encampment was broken up using excessive violence. During the operation, headed by the Ministry of the Interior and Justice, the police officers carried handguns and rifles. After his arrest, Mr. Carrero was subjected to a toxicology test, whose results were negative.

6. According to the source, Mr. Carrero was brought before the judge of the 48th procedural court of the Caracas Metropolitan Area, who ordered him to be remanded into custody as a preventive measure. Mr. Carrero was charged with the offences of minor drug trafficking (art. 149 (1) of the Drugs Act), attempted obstruction of a public thoroughfare (art. 357 of the Criminal Code), incitement to civil disobedience (art. 285 of the Criminal Code) and conspiracy (art. 286 of the Criminal Code).

7. The police reported that at the time of the arrest, Mr. Carrero was carrying 36.6 grams of cocaine. According to the source, neither Mr. Carrero nor the three other occupants of the tent were drug users or traffickers. On 19 May 2014, his detention was appealed before the Appeals Court of the Criminal Justice Circuit of Caracas; the appeal has yet to be adjudicated. The proceedings are in the trial phase, but the hearing has been postponed a number of times.

8. In the submission, the source notes that Mr. Carrero was taken to the headquarters of the Bolivarian National Intelligence Service (SEBIN), located in Plaza Venezuela (Caracas). In August 2014, he was placed in isolation in a cell measuring two by three metres in the part of the cell block known as “The Tomb” (*La Tumba*), located in the basement of the police premises, five storeys below ground. The cells in “The Tomb” are permanently lit such that detainees can no longer distinguish between day and night.

9. In August 2014, Mr. Carrero went on hunger strike to protest his detention and that of other political prisoners. From 9 p.m. to 9 a.m. on the night of 21 August 2014, he was handcuffed, tied up and tortured by the Director of the Service, Carlos Calderón, who beat him with a baton for several hours.

10. According to the source, Mr. Carrero’s health deteriorated markedly as a result of the ill-treatment to which he was subjected, and he needed urgent medical and

dental care. He was forced to repair a broken tooth himself using home-made glue. Witnesses who saw him at hearings before the judge state that his arms were covered in bruises and pus. The source maintains that there is serious cause for concern about Mr. Carrero's life and physical and psychological integrity.

11. The source contends that there is not a single expert statement or piece of evidence in the case file demonstrating that Mr. Carrero committed or was complicit in the offences of which he stands accused. There is no causal relationship proving that he committed or was involved in minor drug trafficking. The only document in the file is the police report drawn up at the time of arrest, in which the officers assert that Mr. Carrero was carrying 36.6 grams of cocaine.

12. Mr. Resplandor, a Venezuelan national born on 8 August 1990, is an engineering student in industrial maintenance at Gran Mariscal de Ayacucho University (Barcelona campus) and lives in the municipality of Simón Bolívar (Anzoátegui State). He was arrested on 8 May 2014 in front of the country office of UNDP.

13. On 10 May 2014, Mr. Resplandor was brought before the judge of the 48th procedural court of the Caracas Metropolitan Area, who ordered him to be remanded into custody as a preventive measure. Mr. Resplandor was charged with the offences of possession of incendiary substances (art. 296 of the Criminal Code), obstruction of a public thoroughfare, conspiracy, incitement to civil disobedience and use of adolescents to commit an offence (art. 264 of the Child and Adolescent Protection Act).

14. Mr. Resplandor is currently being held at the premises of the Bolivarian National Intelligence Service located in El Helicoide (Caracas).

15. The source contends that there is not a single expert statement or piece of evidence in the case file demonstrating that Mr. Resplandor committed or was complicit in the offences of which he stands accused. There is no causal relationship proving that he possessed or was involved in the possession of incendiary substances. The only document in the file is the police report drawn up at the time of arrest, in which the officers assert that gasoline was confiscated from Mr. Resplandor.

16. On 19 May 2014, his detention was appealed before the Appeals Court of the Criminal Justice Circuit of Caracas; the appeal has yet to be adjudicated.

17. Mr. Leal, a Venezuelan national born on 15 November 1989, is a businessman and political leader and resides in Sucre parish (Miranda State, Caracas). He was arrested on 8 May 2014 in front of the country office of the UNDP by heavily armed officers of the Bolivarian National Guard who did not produce any judicial order. The arrest took place in the context of the aforementioned eviction operation by the police (see para. 5 above).

18. On 10 May 2014, Mr. Leal was brought before the judge of the 48th procedural court of the Caracas Metropolitan Area, who ordered him to be remanded into custody as a preventive measure. The prosecutor charged him with the offences of obstruction of a public thoroughfare and incitement to civil disobedience.

19. According to the source, Venezuelan law stipulates that, in order for a person to be remanded into custody, the charges that have been declared admissible by the court must carry a penalty of at least 10 years' imprisonment, which is not the case in this situation. On 19 May 2014, Mr. Leal's detention was appealed before the Appeals Court of the Criminal Justice Circuit of Caracas; the appeal has yet to be adjudicated. The trial hearing has been postponed a number of times.

20. Mr. Pérez, a 59-year-old Venezuelan national, is a businessman and resides in El Valle parish (Libertador Municipality, Caracas). He was arrested on 8 May 2014 by

officers of the Bolivarian National Guard who did not produce an arrest warrant. The arrest took place in the context of the aforementioned eviction operation by the police (see para. 5 above).

21. The prosecutor charged Mr. Pérez with the offences of obstruction of a public thoroughfare, conspiracy, use of adolescents to commit an offence and incitement to civil disobedience.

22. The source contends that there is not a single expert statement or piece of evidence in the case file demonstrating that Mr. Pérez committed or was complicit in the offences of which he stands accused. Moreover, the penalty for the offences of obstruction of a public thoroughfare and incitement to civil disobedience is less than 10 years' imprisonment; therefore, the remand order by the judge is null and void. Consequently, Mr. Pérez's detention is arbitrary. The trial hearing has been postponed a number of times.

23. Mr. Prieto, a Venezuelan national born on 11 March 1987, is a physical education student at the Liberator Experimental Teacher-training University and habitually resides in the Monterrey residential complex (San Cristóbal, Táchira State). He was arrested at 3.30 p.m. on 10 May 2014 on Las Mercedes main road, between Mucuchíes and Nicolás Copérnico streets (Baruta Municipality, Miranda State), by approximately 30 agents of the National Intelligence Service and the General Directorate of Military Counterintelligence (DGCIM) who fired at a group of students. The agents did not identify themselves or produce an arrest warrant.

24. Mr. Prieto was transferred to facilities of the National Intelligence Service, where he was questioned without being permitted to have a lawyer present. Intimidation and psychological violence were used during the police questioning, in violation of constitutional safeguards, in particular the right to a defence.

25. On 12 May 2014, Mr. Prieto was brought before the judge of the 27th procedural court of the Caracas Metropolitan Area, who ordered him to be remanded into custody as a preventive measure. The prosecutor accused him of the offences of complicity in undermining security on a public thoroughfare (art. 357 (1) of the Criminal Code, in conjunction with art. 84.1), association with intent to commit an offence (art. 37 of the Organized Crime and Financing of Terrorism Act) and complicity in the unlawful manufacturing of explosive weapons (art. 39 of the Criminal Code, in conjunction with art. 84.1).

26. On 19 May 2014, his detention was appealed before the Appeals Court of the Criminal Justice Circuit of Caracas; the appeal has yet to be adjudicated. The procedure is in the trial phase, but the hearing has been postponed a number of times.

27. Mr. Carrero, Mr. Leal and Mr. Prieto are currently being held at the headquarters of the Bolivarian National Intelligence Service in Venezuela Square (Caracas). Mr. Resplandor and Mr. Pérez are being held at the Service's facilities in El Helicoide.

28. In all cases, pleas have been submitted and objections have been raised against the charges laid by the Public Prosecution Service, with a request that detention be replaced by a lesser preventive measure. The courts have rejected the requests.

29. The source claims that these five individuals have been detained in retaliation for exercising their right to freedom of opinion, expression, assembly, association and participation in the country's political life, as enshrined in articles 7, 13, 14 and 18 to 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22 and 25 to 27 of the International Covenant on Civil and Political Rights.

30. The source considers that these are clear cases of discrimination on grounds of political opinion, resulting in the violation of the principle of equal enjoyment of human rights.

31. The source contends that it is manifestly impossible to invoke any legal grounds to justify the arrest and detention for more than one year of these individuals. In addition, their rights to the presumption of innocence, to due process and to a defence have been violated.

32. The source further contends that such unlawful practices are increasingly being used against those who disagree with government policies and against political opponents. These five individuals have been charged with offences simply for having exercised their right to disagree. Protests are criminalized by charging protesters with the offence of association with intent to commit an economic crime. The accused are left completely defenceless because they are denied the fundamental guarantee of a fair trial. The procedural judges, prosecutors and Ombudsman's Office, instead of declaring this type of detention and other practices as illegal and arbitrary, are condoning the criminalization of dissent.

#### *Response from the Government*

33. The Government has not replied to the communication transmitted to it or requested an extension of the deadline for doing so. The Working Group regrets the Government's lack of cooperation and accordingly renders its opinion on the basis of the allegations submitted, which it considers *prime facie* as valid.

34. In addition, given that the source's submissions have not been countered by the Government, although it has been given the opportunity to do so, the Working Group renders the following opinion based on all the information compiled, and in accordance with rule 15 of its methods of work.

### **Discussion**

#### *Arbitrary detention of Mr. Carrero*

35. The Working Group, on the basis of the information received, which the Government of the Bolivarian Republic of Venezuela has not refuted, has taken note of the fact that Mr. Carrero was arrested in the early morning of 8 May 2014 by officers of the Bolivarian National Guard who failed to produce an arrest warrant issued by a public authority. Mr. Carrero was arrested during an operation to dislodge a 350-tent encampment set up by students in front of the country office of the United Nations Development Programme (UNDP) in order to demand the release of political prisoners and protest against government policies. Mr. Carrero was arrested along with 120 other students. The encampment was cleared out using excessive force.

36. Mr. Carrero was brought before the judge of the 48th procedural court of the Caracas Metropolitan Area, who ordered him to be remanded into custody as a preventive measure on the charges of minor drug trafficking, attempted obstruction of a public thoroughfare, incitement to civil disobedience and conspiracy. The police accused Mr. Carrero of carrying 36.6 grams of cocaine. Neither Mr. Carrero nor the other three occupants of the tent are drugs users or traffickers. The Working Group assumes, based on the State's failure to respond, that the case file does not contain any evidence demonstrating that Mr. Carrero committed or was complicit in the offences of which he stands accused and that there is no causal relationship proving that he committed or was complicit in the offence of minor drug trafficking. Consequently, the Working Group considers that Mr. Carrero's detention is arbitrary, intended to prevent him from expressing his ideas and opinions on political prisoners and against

government policies in front of the UNDP office, and thereby breaching articles 18 to 21 and 24 of the International Covenant on Civil and Political Rights.

37. Mr. Carrero was taken to the headquarters of the Bolivarian National Intelligence Service, where he was placed in isolation in a cell measuring two by three metres. The cells in the area called “The Tomb” are continuously lit, preventing detainees from distinguishing between day and night. During the night of 21 August 2014, Mr. Carrero was handcuffed, tied up and subjected to torture at the hands of the Director of the Service, Carlos Calderón, who beat him with a baton for a number of hours. His health has deteriorated markedly as a result of the ill-treatment and he needs urgent medical and dental care. In the light of the credible information the Working Group has received regarding the acts of torture and cruel, inhuman or degrading treatment inflicted on Mr. Carrero, and in accordance with its methods of work, it will transmit the information to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for him to handle in accordance with his own methods of work.

*Arbitrary detention of Mr. Resplandor*

38. Mr. Resplandor was also arrested on 8 May 2014 in front of the UNDP country office. He was brought before the judge of the 48th procedural court of the Caracas Metropolitan Area, who ordered him to be remanded into custody as a preventive measure on the charges of possession of incendiary substances, obstruction of a public thoroughfare, conspiracy, incitement to civil disobedience and use of adolescents to commit an offence. According to the information submitted by the source, which was not refuted by the State, the case file does not contain any conclusive evidence of the offences or of Mr. Resplandor’s alleged responsibility in them, nor is there any causal relationship proving that he possessed or was involved in the possession of incendiary substances. Mr. Resplandor is currently incarcerated at the facilities of the Bolivarian National Intelligence Service in El Helicoide.

39. In the light of the foregoing, the Working Group considers that Mr. Resplandor’s detention is arbitrary, intended to prevent him from expressing his ideas and opinions on political prisoners and against government policies in front of the UNDP office, thereby breaching articles 18 to 21 and 24 of the Covenant.

*Arbitrary detention of Mr. Leal*

40. Mr. Leal was arrested on 8 May 2014 in front of the UNDP country office by heavily armed officers of the Bolivarian National Guard who did not produce any judicial order. The arrest took place in the context of the aforementioned eviction operation.

41. Mr. Leal was accused of the offences of obstruction of a public thoroughfare and incitement to civil disobedience. The Working Group notes that, according to information provided by the source, which the Government has not refuted, Venezuelan law stipulates that, in order for a person to be remanded into custody, the charges that have been declared admissible by the court must carry a penalty of at least 10 years’ imprisonment, which is not the case with the charges against this person.

42. Given the above, the Working Group considers that Mr. Leal’s detention is arbitrary, intended to prevent him from expressing his ideas and opinions on political prisoners and against government policies in front of the UNDP office, thereby breaching articles 18 to 21 and 24 of the Covenant.

*Arbitrary detention of Mr. Pérez*

43. Mr. Pérez was detained in the context of the aforementioned eviction operation by police on 8 May 2014 in front of the UNDP country office by officers of the Bolivarian National Guard who did not produce an arrest warrant. The prosecutor charged him with the offences of obstruction of a public thoroughfare, conspiracy, use of adolescents to commit an offence and incitement to civil disobedience.

44. The source has provided the Working Group with convincing information, which the State has not refuted, indicating that the case file does not contain any evidence of the offences with which Mr. Pérez has been charged or of his responsibility in them. In addition, the remand order by the judge is not applicable to the offences attributed to him.

45. In the light of the foregoing, the Working Group considers that Mr. Pérez's detention is arbitrary, intended to prevent him from expressing his ideas and opinions on political prisoners and against government policies in front of the UNDP office, thereby breaching articles 18 to 21 and 24 of the Covenant.

*Arbitrary detention of Mr. Prieto*

46. Mr. Prieto was arrested on 10 May 2014 by approximately 30 agents of the Bolivarian National Intelligence Service and the General Directorate of Military Counter Intelligence who fired at a group of students. The agents did not identify themselves or produce an arrest warrant.

47. Mr. Prieto was transferred to the facilities of the Bolivarian National Intelligence Service, where he was questioned without being permitted to have a lawyer present. Intimidation and psychological violence were used during the police questioning, in violation of constitutional safeguards, in particular the right to a defence. These acts constitute violations of the rights enshrined in article 14 of the Covenant.

48. Mr. Prieto was brought before the judge of the 27th procedural court of the Caracas Metropolitan Area, who ordered him to be remanded into custody as a preventive measure. The prosecutor accused him of the offences of complicity in undermining security on a public thoroughfare, association with intent to commit an offence and complicity in the unlawful manufacturing of explosive weapons. The source submitted information, not refuted by the Government, that Mr. Prieto was detained in retaliation for exercising his right to freedom of opinion, expression, assembly, association and participation in the country's political life, thereby making his detention arbitrary, in violation of articles 18 to 20 and 24 of the Covenant.

49. The State has not put forward the slightest basis for detaining Mr. Carrero, Mr. Resplandor, Mr. Leal, Mr. Pérez and Mr. Prieto. The Working Group finds that their rights under articles 7 to 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights have been violated. The Working Group also finds that their detention is arbitrary, being in retaliation for their having exercised their rights under articles 7, 13, 14 and 18 to 21 of the Universal Declaration and articles 18 to 20 and 24 of the Covenant.

**Disposition**

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

The detention of Gerardo Ernesto Carrero Delgado, Gerardo Rafael Resplandor Veracierta, Nixon Alfonso Leal Toro, Carlos Pérez and Renzo David Prieto Ramírez is arbitrary and falls under categories I, II and III of the categories

applicable to the consideration of the cases submitted to the Working Group in keeping with its methods of work.

51. Given the above, the Working Group recommends that the Government of the Bolivarian Republic of Venezuela immediately release these five individuals and award them full, comprehensive and appropriate reparation for the harm and injury incurred.

52. Given the number of opinions it has previously issued regarding cases of detention in the Bolivarian Republic of Venezuela (see opinions Nos. 10/2009, 31/2010, 27/2011, 28/2011, 62/2011, 65/2011, 28/2012, 56/2012, 47/2013, 26/2014, 29/2014, 30/2014, 51/2014, 1/2015, 7/2015 and 27/2015), the Working Group urges the Government to take all the necessary steps to fulfil its recommendations and to guarantee the right of all Venezuelans and persons living under Venezuelan jurisdiction not to be arbitrarily deprived of their liberty.

53. The Working Group further urges the Government to accept the request for an official mission to the country with a view to forging a constructive dialogue and setting up appropriate effective measures to ensure that the right not to be arbitrarily deprived of liberty is enforced.

*[Adopted on 3 September 2015]*

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