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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 44/2020 concerning Antonia de la Paz Yolanda Turbay Hernando (Bolivarian Republic of Venezuela)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 23 December 2019 the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Antonia de la Paz Yolanda Turbay Hernando. On 20 February 2020, the Government requested an extension of the deadline for its response. The request was granted, and the response was submitted on 23 March 2020. 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. Antonia de la Paz Yolanda Turbay Hernando is a Venezuelan and Spanish national, born in 1953. She lives in El Recreo Parish in the municipality of Libertador in the Capital District of the Bolivarian Republic of Venezuela. She is a practising family lawyer. She was 65 years old when she was deprived of her liberty.

(a) Arrest

5. According to the submissions, Ms. Turbay Hernando was arrested in her home at approximately 4.40 p.m. on 26 June 2019. When the arrest was made, some half a dozen armed officials of the Bolivarian National Intelligence Service (SEBIN), which answers to the Office of the Vice-President, went to her home. They arrived in a marked Intelligence Service vehicle and other vehicles without any official insignia.

6. The source indicates that the persons who arrested Ms. Turbay Hernando did not present an arrest warrant, judicial decision, summons or any other legal document to justify depriving her of her liberty.

7. According to the submissions, the officials invited Ms. Turbay Hernando to accompany them to Intelligence Service premises to make a statement in connection with an investigation into a man's recent escape from his home located in a street adjoining Ms. Turbay Hernando's residence. As she had no objections, Ms. Turbay Hernando agreed to go with them. After getting into the vehicle in which they were supposedly taking her to make her statement, an official inside the vehicle told her that she was under arrest and proceeded to confiscate her mobile telephones.

8. The source notes that Ms. Turbay Hernando was driven directly to Intelligence Service premises at El Helicoide. From that point on, she was subjected to continuous questioning during which she was asked trick questions in an attempt to implicate her in events of which she had – and still has – no knowledge. Ms. Turbay Hernando spent the night of 26 June 2019 on a chair where she was being questioned and was later assigned to a cell. That night, her neighbours and friends went to both known Intelligence Service premises in Caracas – namely, those in Plaza Venezuela and El Helicoide – but no information on her whereabouts or status was provided to them.

9. According to the source, Ms. Turbay Hernando's name was entered in police logs on 27 June 2019 – in other words, 24 hours after her arrest. The reasons for her arrest remained unknown until 30 June 2019, when she was brought before Supervisory Court of First Instance No. 36 of the Caracas Metropolitan Area.

(b) Charge and pretrial detention

10. On 30 June 2019, before the Supervisory Court of First Instance, the Public Prosecution Service charged Ms. Turbay Hernando with the offence of abetting an escape under article 264 of the Criminal Code. The source notes that the arraignment hearing should have taken place within 48 hours of arrest.

11. According to the source, pretrial detention was ordered by the Supervisory Court on 30 June 2019.

12. The source further notes that Ms. Turbay Hernando has been held at the Intelligence Service premises in El Helicoide since 26 June 2019. From Wednesday 26 to Sunday 30 June 2019, she was held incommunicado. Starting on 30 June, she was permitted to receive visits from friends and family and from her legal defence team twice a week.

13. The source also notes that the place of detention lacks running water for personal use, which, like food to supplement her diet, clothing for personal use, sleepwear, utensils and

personal hygiene products, has to be supplied to her by her loved ones. The cell is shared with 11 other women.

14. According to the source, the reason put forward by Office No. 66 of the Public Prosecution Service for continuing to hold Ms. Turbay Hernando was that, because she was involved with the escape of a man who was serving his sentence under house arrest, she abetted the escape of a prisoner, an offence provided for in article 265 of the Criminal Code.

(c) Release order

15. The source notes that at the arraignment hearing, the Public Prosecution Service drew attention to a technical examination reportedly conducted by the Intelligence Service of Ms. Turbay Hernando's mobile telephones. According to the source, Supervisory Court of First Instance No. 36 found the detention of Ms. Turbay Hernando invalid but did not provide the hearing record. Moreover, there has been no access to file No. 36C-19.460-19 since the first week of August 2019 because the Court has not made it available to the parties or the public. In that context, and given that punishment for the offence that Ms. Turbay Hernando was accused of is 1 to 2 years' imprisonment, at the hearing, the Court granted her conditional release provided that she had two guarantors.

16. According to the source, as Ms. Turbay Hernando lives alone in the Bolivarian Republic of Venezuela and has no family, her defence lawyers requested a review of the condition that had to be met for her to be released. On 26 July 2019, the Supervisory Court of First Instance No. 36 granted the request to pursue the case without pretrial detention, lifted the guarantor requirement and, in communication No. 736-19, ordered the Director of the Intelligence Service to release Ms. Turbay Hernando, an order that was not followed.

(d) Allegations of human rights violations

17. The source submits that the arrest and detention of Ms. Turbay Hernando were arbitrary and that she was never shown a judicial order or any other legal document at the time of her arrest because none existed. Furthermore, Ms. Turbay Hernando was registered in police logs 24 hours after her arrest, a delay during which a criminal case was mounted against her, and she was not brought before a judge for arraignment within the 48 hours required under article 236 of the Code of Criminal Procedure.

18. According to the source, it is for this reason that Ms. Turbay Hernando's lawyers challenged the validity of her detention at the arraignment hearing. Although the Court found the detention invalid, the content of the hearing record remains unknown, in violation of the rights to a defence and due process enshrined in article 9 of the Covenant and in articles 44 and 49 of the Constitution on the rights to liberty and due process.

19. The source notes that a release order was issued by the Court but has been openly disregarded by the Intelligence Service, the organization that arrested Ms. Turbay Hernando and has kept her detained.

20. As a result, her lawyers petitioned for habeas corpus on 2 August 2019. The body competent to hear the petition (case No. 17C-S-878-19) is the Supervisory Court of First Instance No. 17 of the Caracas Metropolitan Area.

21. The Court transmitted a first letter (No. 0945-19) to the Director of the Intelligence Service on 5 August 2019, containing a request for him to indicate within 24 hours whether Ms. Turbay Hernando was being held at Intelligence Service premises and, if so, whether the Intelligence Service had received the release order issued by Supervisory Court No. 36. On 12 August 2019, in the absence of a response, Supervisory Court No. 17 transmitted a second letter (No. 0974-19), repeating the content of the first letter. On 19 August 2019, Ms. Turbay Hernando's defence lawyers submitted to Supervisory Court No. 17, which was hearing the habeas corpus petition, a letter signed by Ms. Turbay Hernando dated 17 August 2019, informing them that she had been detained at Intelligence Service premises in El Helicoide since 26 June 2019 and remained deprived of her liberty owing to the failure to comply with the release order.

22. On 19 August 2019, her lawyers submitted the letter to Supervisory Court No. 17, which had not issued a ruling or taken any legal action to enforce the release order – the

statutory deadlines to issue a legal ruling had expired. Ms. Turbay Hernando is thus a victim of what amounts to a violation of article 9 of the Covenant and of the right to a defence and due process guarantees, also provided for in articles 44 and 49 of the Constitution.

23. The source concludes that Ms. Turbay Hernando remains arbitrarily detained and that her detention falls under categories I, III, and V.

(i) Category I: Legal grounds

24. Regarding category I, the source submits that it is clearly impossible to invoke any legal grounds justifying the arrest. Ms. Turbay Hernando was arrested without a judicial order or being caught in flagrante delicto, thus leading Supervisory Court No. 36 to rule that she should not be detained. However, the Court's ruling has not led to Ms. Turbay Hernando's release; accordingly, the failure of the Intelligence Service to release her violates domestic law. The source claims that there is no legal basis, in the Constitution or domestic law, to justify the arbitrary detention of Ms. Turbay Hernando.

(ii) Category III: Due process

25. With regard to category III, the source submits that the 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, is of such gravity as to give the deprivation of liberty of Ms. Turbay Hernando an arbitrary character.

26. The source notes that the detention is based on judicial proceedings that are clearly political in nature and that it furthers the narrative regarding the alleged escape of another political prisoner that the Government and the ruling party have pushed in the media.

27. According to the source, there was no legal basis for the arrest and the delay in bringing Ms. Turbay Hernando before the competent authorities was part of a systematic pattern of behaviour in politically motivated judicial proceedings. Moreover, the unjustified delay in complying with the release order issued by the competent judicial authority means that Ms. Turbay Hernando has been subjected to penalties outside the law, in violation of the presumption of innocence.

28. Ms. Turbay Hernando has been the subject of an order of immediate release since 26 July 2019, which the authorities holding her – namely, the Bolivarian National Intelligence Service – have not complied with. All of the foregoing violates articles 9 and 11 of the Universal Declaration of Human Rights and principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, whereby arrest, detention or imprisonment may only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

29. The source claims that a serious violation of Venezuelan law was committed insofar as article 44 of the Constitution stipulates that no one may remain in detention after a release order has been issued by the competent authority or after a sentence has been served.

30. The source submits that these particulars point to a violation of international law on the grounds of discrimination against a particular social group – people who are politically troublesome – and that the aim is to prevent them from exercising and enjoying equal access to their human rights.

(iii) Category V: Discrimination

31. Concerning category V, the source submits that the deprivation of liberty of Ms. Turbay Hernando constitutes a violation of international law on the grounds of discrimination based on her status as a member of a specific social group that aims towards or can result in ignoring the equality of human beings.

32. In this connection, the source emphasizes that, under international law, Ms. Turbay Hernando enjoys the following rights: (a) the right not to be subjected to arbitrary arrest, detention or exile; (b) the right in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of a person's rights and obligations and of any criminal charge against him or her; (c) the universal right, when charged with a penal offence,

to be presumed innocent until proved guilty according to law in a public trial at which a person has had all the guarantees necessary for his or her defence; and (d) the universal right not to be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed or to be imposed a heavier penalty than the one that was applicable at the time the penal offence was committed (Universal Declaration of Human Rights, arts. 9, 10 and 11).

33. In addition, the source notes that there is evidence of the Government's discriminating against persons considered politically troublesome. The source submits that the Government punishes the expression of political ideas inconsistent with those of the regime, as well as legitimate and peaceful protest, and inappropriately restricts the rights to freedom of expression and assembly.

Response from the Government

34. The Working Group transmitted the source's allegations to the Government on 23 December 2019 and requested that it submit a response by 21 February 2020. The Government requested an extension of this deadline and was given until 23 March 2020 to reply. The Government submitted its response on 23 March 2020.

35. In its response, the Government noted that Ms. Turbay Hernando was arrested in connection with criminal proceedings initiated against her for her alleged involvement in the offence of abetting the escape of a person who, by judicial decision, was deprived of his liberty and placed under house arrest. The person was serving a sentence for accessory to aggravated homicide and personal injuries in connection with the order he had given to the police corps under his command, when he was Director of Citizen Security, to kill or injure scores of people during the attempted coup d'état against President Hugo Chávez Frías.

36. The Government also noted that Ms. Turbay Hernando was arrested on 26 June 2019 by officials of the Bolivarian National Intelligence Service after a number of pieces of evidence pointing to her involvement in the escape had been collected, including field observations and telephone records.

37. Furthermore, the actions in the case were carried out by the Intelligence Service, acting as a criminal investigation body, in keeping with article 113 of the Code of Criminal Procedure and articles 4 (3), (5) and (10) of the Regulation on the Bolivarian National Intelligence Service.¹

38. The Government further notes that, on 30 June 2019, Ms. Turbay Hernando was brought before Supervisory Court of First Instance of the Criminal Circuit No. 36 of the Caracas Metropolitan Area for the purpose of the arraignment hearing provided for in article 236 of the Code of Criminal Procedure.

39. The Government indicates that, at the hearing, the prosecution formally charged Ms. Turbay Hernando with the offence of abetting the escape of a prisoner under article 264 of the Criminal Code.

40. The Government argues that Ms. Turbay Hernando's detention is fully compliant with the provisions of the Constitution, the Covenant and other applicable instruments.

41. The Government notes that Ms. Turbay Hernando has, at all times, been assisted by a defence lawyer, who has defended her rights and interests. It also notes that the defence team

¹ Under article 113 of the Code of Criminal Procedure, officials accorded such status by law and any other officials who must discharge investigative functions established in the Code are considered members of police bodies responsible for conducting criminal investigations. Article 4 of the Regulation on the Bolivarian National Intelligence Service states:

The Bolivarian National Intelligence Service has the following competences: ... (3) Lead and execute intelligence and counter-intelligence efforts in the civilian sphere in view of the stability and security of the nation ... (5) Combat, together with other bodies and entities responsible for the defence of the nation, corruption and enemy action in the various forms taken by organized crime ... (10) The additional competences assigned to it by law, other legal instruments or the President or Vice-President of the Republic.

has applied for the relevant remedies under domestic law, thus guaranteeing her right to due process.

Additional comments from the source

42. In the source's final comments, it is noted that the Government's submission omits the fact that, on 26 July 2019, the Court issued a release order in respect of Ms. Turbay Hernando, which was upheld in August 2019. The source submits that the release order has not been executed by the Bolivarian National Intelligence Service, which answers to the Office of the Vice-President. Ms. Turbay Hernando is being held at its premises in El Helicoide and, what is more, incommunicado, as she is not authorized to make calls or receive visits from her lawyers on account of quarantine rules introduced in response to coronavirus disease.

43. The source submits that the situation constitutes a serious violation of Ms. Turbay Hernando's human rights in addition to obvious arbitrary detention amounting to kidnapping.

44. The source notes that, owing to Ms. Turbay Hernando's dual Spanish and Venezuelan nationality, the Embassy of Spain in the Bolivarian Republic of Venezuela is aware of the situation. Despite the Ambassador's efforts, Ms. Turbay Hernando remains arbitrarily imprisoned.

45. The source submits that Ms. Turbay Hernando remains imprisoned for political purposes – namely, to blame her for the escape of a high-profile political prisoner, the current security adviser to the so-called acting Government of Venezuela led by Juan Guaidó. The source further submits that Ms. Turbay Hernando bears no responsibility whatsoever for that situation.

Discussion

46. The Working Group thanks the parties for their initial communication and subsequent contributions to the resolution of the present case.

47. 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. Mere assertions that lawful procedures have been followed will not be sufficient to rebut the source's allegations.²

(i) Category I

48. The Working Group notes that both the source's allegations and the Government's response are consistent with regard to the fact that Ms. Turbay Hernando was not arrested in *flagrante delicto*. The Government claims that the Intelligence Service officials who arrested Ms. Turbay Hernando did so "after collecting a number of pieces of evidence pointing to her involvement in the escape, including field observations and telephone records". However, the source notes that the arrest was not based on a judicial order, a claim the Government did not refute in its response.

49. Article 9 (1) of the Covenant establishes that everyone has the right to liberty and security of person and that no one may be subjected to arbitrary arrest or detention. Furthermore, the article stipulates that no one may be deprived of their liberty except on such grounds and in accordance with such procedure as are established by law.

50. The Working Group notes in this regard that article 44 (1) of the Constitution of the Bolivarian Republic of Venezuela establishes that personal liberty is inviolable and that, therefore, no one may be arrested or detained without a judicial order, unless in *flagrante delicto*.

51. The Working Group recalls that the requirement to present an arrest warrant helps ensure that detention is effectively overseen by the judicial authorities and is inherent in the

² See A/HRC/19/57, para. 68.

right to liberty and security of person and the ban on arbitrary deprivation of liberty under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the Covenant. Thus, for deprivation of liberty to have a legal basis, it is not sufficient that there be a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant and other procedures that must include disclosure of the reasons for the arrest and prompt notification of any charges.³

52. Ms. Turbay Hernando was not arrested on the basis of a judicial order or in flagrante delicto. Accordingly, the Working Group considers her arrest arbitrary under category I, in violation of article 9 (1) of the Covenant.

53. In addition, the source alleged that Ms. Turbay Hernando was not informed, at the time of arrest, that she was being arrested or notified of the reasons for her arrest. The Government did not deny the failure to inform Ms. Turbay Hernando of the reasons for her arrest as it was happening. Article 9 (2) of the Covenant mandates that “anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”. This was not done in Ms. Turbay Hernando’s case. The Working Group has established that arresting a person without immediately informing the person of the reasons for the arrest is considered arbitrary.⁴

54. Moreover, Ms. Turbay Hernando was not brought before a judge within 48 hours of her arrest. Under article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge must be brought promptly before a judge. In this regard, the Working Group points out that the Human Rights Committee has noted that 48 hours should be sufficient to bring a detainee before a judge, as required under article 9 (3) of the Covenant. Venezuelan law is in line with this obligation: both article 44 (1) of the Constitution and article 236 of the Code of Criminal Procedure cited by the Government in its response require that a person be brought before a judge within no more than 48 hours of arrest. Ms. Turbay Hernando’s right to be brought before a judge was violated nonetheless.

55. In addition, the Working Group notes that the submissions of the source and the Government both state that Ms. Turbay Hernando was arrested at her home on 26 June 2019 and was not brought before a court until four days later. During this period, she was held incommunicado and questioned at the premises of the Bolivarian National Intelligence Service in El Helicoide. The Working Group has established that holding a person incommunicado, without bringing him or her before a judge following arrest, prevents the judicial authority from appropriately verifying the lawfulness of the detention in accordance with article 9 (2) of the Covenant and puts the means of challenging the deprivation of liberty, which are provided for in article 9 (3), out of the detainee’s reach.⁵ There was thus no legal basis for the detention, thereby rendering it arbitrary under category I.

56. Lastly, even when Ms. Turbay Hernando was brought before Supervisory Court of First Instance No. 36 of the Caracas Metropolitan Area, which issued a decision on 26 July 2019 ordering her immediate release conditional on her offer of an alternative guarantee to appear, the chief of the Bolivarian National Intelligence Service did not comply. The Working Group finds this situation particularly worrying: the failure of a security official to comply with a judicial order of release, issued by a competent authority, is a flagrant violation of the rule of law. Judicial orders of release must be executed immediately; maintaining the person in detention is considered arbitrary and an obvious violation of article 9 (1) of the Covenant.⁶

57. On 4 June 2020, when the Working Group received the source’s final comments, and throughout its consideration of the case, Ms. Turbay Hernando remained detained. Her

³ Opinion No. 41/2019, para. 29.

⁴ Opinions No. 46/2019, para. 51, and No. 10/2015, para. 34.

⁵ Opinions No. 5/2020, para. 75, No. 16/2020, para. 62, No. 24/2020, para. 96, and No. 64/2020, paras. 74 and 76.

⁶ General comment No. 35 (2014) on liberty and security of person, paras. 22 and 41, and opinions No. 8/2020, para. 53, No. 9/2011, para. 38, No. 7/2011, paras. 15–17, No. 3/2011, para. 20, No. 3/2010, para. 6, No. 21/2007, para. 19, and No. 5/2005, para. 19.

detention, which has been ongoing since 26 June 2019, is also arbitrary under category I, as the release order issued by the competent court has not been executed.

(ii) Category III

58. With regard to the category III claims, which concerned violations of due process, the Working Group notes that, in the case under consideration, it has already determined that fundamental norms were not observed, notably those regulating Ms. Turbay Hernando's arrest and the initial stage of her detention. Furthermore, although her release was ordered by a judge, the judicial order has not been executed. Therefore, it is impossible to believe that the rules of due process have been followed from the start of this case, as following such rules would imply complying with judicial orders.

59. Whether the international norms governing the process are observed – and they must be observed for a trial to be fair – determines whether detention is arbitrary under category III of the Working Group's categories of arbitrary detention. In this case, the violations of due process guarantees had a strong negative impact on the initial phase of the criminal trial and were so significant as to make it impossible to believe that Ms. Turbay Hernando will later receive a fair, independent and impartial trial, as required under article 14 of the Covenant. In this context, the Working Group considers that the violations identified thus far have been of such gravity as to give the detention an arbitrary character under category III.

60. In addition, the Working Group notes that article 14 (2) of the Covenant stipulates that every person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. In this case, the failure to execute the judicial order of release is a serious violation of the presumption of innocence and, hence, of article 14 of the Covenant in that Ms. Turbay Hernando was subjected to punitive imprisonment without having been found guilty of a criminal offence or ordered into pretrial detention by a judge.

61. Furthermore, although Ms. Turbay Hernando has had legal representation, her lawyers have been unsuccessful in their efforts to have due process respected. Accordingly, the Working Group cannot but consider that the incommunicado regime to which Ms. Turbay Hernando was subjected at the beginning of her detention had a negative impact on the ability of her defence team to prepare arguments, gather evidence and advocate adequately for her rights and interests before the Court before, during or after the arraignment hearing.

62. In the light of these considerations, the Working Group finds that the failure to respect due process in Ms. Turbay Hernando's case is of sufficient gravity as to give her deprivation of liberty an arbitrary character under category III.

(iii) Category V

63. The source argued that Ms. Turbay Hernando's deprivation of liberty is based on a discriminatory policy and constitutes a violation of international law. The source indicated that the detention was discriminatory because it was based on her being a member of a specific social group. However, the source did not explain why the detention should be deemed to infringe the principle of gender equality or adduce any elements enabling the Working Group to conduct the relevant examination under category V. While the Working Group has identified a pattern of arbitrary deprivation of liberty of members of the political opposition, human rights defenders and persons critical of the authorities' actions in the Bolivarian Republic of Venezuela,⁷ the source did not explain how this case fits into that pattern. Therefore, it is impossible to make any determinations in relation to category V.

(iv) Final considerations

64. The Working Group has commented repeatedly in recent years on multiple cases of arbitrary detention in the Bolivarian Republic of Venezuela.⁸ In the Working Group's view,

⁷ Opinion No. 18/2020, para. 102.

⁸ See opinions No. 18/2020, No. 20/2020, No. 39/2019, No. 40/2019, No. 75/2019, No. 80/2019, No. 86/2018, No. 49/2018, No. 41/2018, No. 32/2018, No. 52/2017, No. 37/2017, No. 18/2017, No. 27/2015, No. 26/2015, No. 7/2015, No. 1/2015, No. 51/2014, No. 26/2014, No. 29/2014, No.

this systematic practice amounts to an attack by the Government intended to deprive persons of their liberty without respect for their fundamental human rights, in violation of the norms of international law, including those enshrined in the Universal Declaration of Human Rights and the Covenant. The Working Group wishes to recall that, under certain circumstances, systematic imprisonment and other forms of deprivation of liberty in violation of relevant international standards may constitute crimes against humanity.

65. In the light of the recurrent pattern of arbitrary detention identified in recent years, the Government of the Bolivarian Republic of Venezuela, currently a member of the Human Rights Council, should consider inviting the Working Group to make an official country visit. The Working Group has repeatedly requested an invitation to visit the country since 2011, most recently on 2 October 2019. Such visits are an opportunity for the Working Group to engage in direct constructive dialogue with the Government and with 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.

Disposition

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

The deprivation of liberty of Antonia de la Paz Yolanda Turbay Hernando, being in contravention of articles 3, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 (1) to (3) and 14 (2) of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

67. The Working Group requests the Government of the Bolivarian Republic of Venezuela to take the steps necessary to remedy the situation of Ms. Turbay Hernando 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.

68. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Turbay Hernando immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group urges the Government to take urgent action to ensure her immediate release.

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

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

Follow-up procedure

71. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Ms. Turbay Hernando has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Turbay Hernando;
- (c) Whether an investigation has been conducted into the violation of Ms. Turbay Hernando's rights and, if so, the outcome of the investigation;

30/2014, No. 47/2013, No. 56/2012, No. 28/2012, No. 62/2011, No. 65/2011, No. 27/2011, No. 28/2011, No. 31/2010 and No. 10/2009.

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

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

72. 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.

73. 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.

74. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁹

[Adopted on 25 August 2020]

⁹ See Human Rights Council resolution 42/22, paras. 3 and 7.