



General Assembly

Distr.: General
21 November 2014
English
Original: Spanish

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventieth session, 25–29 August 2014

No. 29/2014 (Bolivarian Republic of Venezuela)

Communication addressed to the Government on 19 June 2014

Concerning: Juan Carlos Nieto Quintero

No response has been received from the Government.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010 and a further three-year period in its resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. 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

3. Juan Carlos Nieto Quintero, retired captain of the Bolivarian National Guard and Director of a private security company, was arrested on 2 April 2014 at the Plaza Las Américas shopping centre in El Cafetal, Caracas, by three persons who identified themselves as Military Intelligence Directorate agents and was taken to a National Guard command post in the Maripérez district of Caracas. Mr. Nieto Quintero was arrested in front of his wife, Bethzaida, and his 2-year old daughter. His wife was held at gunpoint by his captors.

4. He was subsequently transferred to other military facilities, where he was allegedly tortured for almost 30 hours in an attempt to force him to reveal the names of anti-government officers in the National Guard. The torturers spoke with an accent from another South American country, and Mr. Nieto Quintero allegedly recognized the voice of a lieutenant commander he had trained with. The torturers' questions reportedly focused on the political views of Captain Caguaritano Scott, General Baduel and an officer known as "El Llanero".

5. According to the source, Military Intelligence Directorate agents, posing as kidnappers, phoned the family of Mr. Nieto Quintero and demanded a ransom of 200,000 bolívares (approximately US\$ 31,780) for his release. They made a total of eight calls from the numbers 0424-1004853, 0424-2741566 and 0424-2255682.

6. On 4 April 2014, Mr. Nieto Quintero was taken to the military hospital in Caracas to be treated for head trauma, bruising, bleeding and other serious injuries sustained as a result of the torture he suffered during his detention.

7. The source affirms that the doctors who treated Mr. Nieto Quintero signed a medical certificate detailing the injuries he had suffered. However, Military Intelligence Directorate officials sought out other doctors, who had not examined Mr. Nieto Quintero, and ordered them to sign medical certificates stating that he was in good health and could return to the detention centre.

8. Mr. Nieto Quintero was subsequently removed from the hospital and taken to a Military Intelligence Directorate detention centre, where he was denied access to medical treatment and medicines. He is currently reportedly detained at the Military Police headquarters in Fuerte Tiuna.

9. The source adds that only when he was in the military hospital in Caracas was Mr. Nieto Quintero presented with an arrest warrant for the alleged crime of military rebellion, issued by the judge of the Third Military Tribunal.

10. According to the source, the sole reason for detaining Mr. Nieto Quintero was to force him, including through the use of torture, to reveal the names of anti-government officers in the National Guard. His detention is therefore arbitrary.

11. Allegedly, no arrest warrant issued by a court or relevant authority was presented at the time of his arrest, nor was he informed of the alleged charges against him or where he was being taken. Violence was used against him and his pregnant wife during the arrest, which took place in front of the couple's 2-year old daughter.

12. The source expresses serious concern regarding the physical and psychological integrity of this individual, given that he was allegedly subjected to torture that resulted in head trauma, bruising, bleeding and other serious injuries. The torture inflicted reportedly involved electric shocks to the testicles and chest, cigarette burns, and blows to the face and other parts of the body with rifle butts. He is said to have been given no medical treatment or medicines for the injuries he sustained as a result of the torture.

Response from the Government

13. The Working Group on Arbitrary Detention forwarded the communication to the Government of the Bolivarian Republic of Venezuela on 19 June 2014 requesting a detailed and timely response to these allegations that clarified the legal justification for the arrest and continued detention of Juan Carlos Nieto Quintero. The Working Group regrets that the Government failed to respond to the communication. Given that the Government did not refute the veracity of the information presented by the source, the Working Group accepts the information presented to be, prima facie, reliable.

Discussion

14. On 2 April 2014, Juan Carlos Nieto Quintero was arrested at the Plaza Las Américas shopping centre in El Cafetal, Caracas, by three Military Intelligence Directorate agents and was taken to a National Guard command post in the Maripérez district of Caracas. Mr. Nieto Quintero was not informed of the reasons for his arrest, nor the charges against him, as provided for in article 9, paragraph 2, of the International Covenant on Civil and Political Rights.

15. Mr. Nieto Quintero is a retired captain of the Bolivarian National Guard who, along with his brother Javier Nito Quintero, was subjected to political persecution between 2000 and 2011 for having exercised the right to freedom of expression in order to criticize the Government, in particular the participation of non-nationals in the country's army. The two brothers were tried by court-martial for the crime of military rebellion and were found innocent. However, Javier Nieto Quintero was imprisoned and, after serving his sentence, sought asylum in the United States of America. Juan Carlos Nieto Quintero, in turn, left the armed forces.

16. Furthermore, Mr. Nieto Quintero was arrested using a disproportionate amount of force and was taken to a military facility where he suffered torture, consisting of electric shocks to the testicles and chest, cigarette burns, and blows to the face and other parts of the body with rifle butts, for over 30 hours. The torturers sought to extract information from Mr. Nieto Quintero regarding the political views of a certain General, a Captain and an officer of the National Guard. As a result of the torture, Mr. Nieto Quintero was taken to the military hospital in Caracas on 4 April 2014 to receive treatment for head trauma, bruising, bleeding and other serious injuries. The role of the Working Group is not to legally establish whether Mr. Nieto Quintero was a victim of torture; however, the information seems to imply, prima facie, a potential violation of article 10 of the International Covenant on Civil and Political Rights, closely linked to articles 9 and 14 of the Covenant.

17. While Mr. Nieto Quintero was in the military hospital in Caracas, he was presented with a warrant for his arrest issued by the judge of the Third Military Tribunal for the alleged crime of military rebellion. Mr. Nieto Quintero was subsequently detained in a

military detention centre, after which he was moved to the Military Police headquarters in Fuerte Tiuna.

18. The Working Group shares the opinion of the Inter-American Court of Human Rights to the effect that the application of military jurisdiction should be restricted exclusively to serving military officers, which excludes retired military officers and civilians. The Court has recognized this principle, including in a case against the Bolivarian Republic of Venezuela.¹ Similarly, the Human Rights Committee has stated that “the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned”² and contravenes the provisions of the international obligations of the State. The Working Group, therefore, considers that subjecting Mr. Nieto Quintero — as a civilian and former military officer — to a military trial violates his right to be tried by a competent court, pursuant to article 14, paragraph 1, of the International Covenant on Civil and Political Rights.

19. In the light of the above, the Working Group considers that the detention of Mr. Nieto Quintero is arbitrary on the grounds that the Government of the Bolivarian Republic of Venezuela failed to invoke any legal basis justifying his deprivation of liberty. The arrest of Mr. Nieto Quintero was seemingly prompted by his past comments about and criticisms of the military, particularly in regard to the participation of non-nationals in the decision-making processes of that institution.

20. Furthermore, the detention of Mr. Nieto Quintero qualifies as arbitrary given the gravity of the non-observation of the international norms relating to the right to a fair trial provided for in articles 9 and 14 of the International Covenant on Civil and Political Rights. According to the information provided, which has not been disputed by the Government of the Bolivarian Republic of Venezuela, the arrest of Mr. Nieto Quintero was carried out by persons who, *prima facie*, did not have the legal authority or legal grounds to do so. Moreover, this deprivation of liberty was not conducted in accordance with the law or established procedure. Mr. Nieto Quintero was not informed of the reasons for his arrest or the charges against him, nor was he brought immediately before a criminal court; instead he was notified by a military court, in contravention of the provisions of the international obligations of the Bolivarian Republic of Venezuela. As aforementioned, Mr. Nieto Quintero is a military officer who is not actively serving in the armed forces, and should therefore be tried by civilian courts.

Disposition

21. In the light of the foregoing, the Working Group considers that the detention of Juan Carlos Nieto Quintero is arbitrary, falling within categories I and III of its methods of work. It therefore calls for the immediate release of this individual and recommends that he be fully compensated for having been arbitrarily detained.

22. Pursuant to the information received from the source, which has not been disputed by the Government of the Bolivarian Republic of Venezuela, regarding the violation of the

¹ Inter-American Court of Human Rights. *Usón Ramírez v. Venezuela*, preliminary objections, merits, reparations and costs, Ruling of 20 November 2009, Series C, No. 207, para. 111. See also *Cesti Hurtado v. Peru*, merits, Ruling of 29 September 1999, Series C, No. 56, para. 151; *Palamara Iribarne v. Chile*, merits, reparations and costs, Ruling of 22 November 2005, Series C, No. 135, para. 139.

² General Comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32), para. 22.

rights of Mr. Nieto Quintero to humane treatment, inherent respect for his dignity³ and freedom from torture during and subsequent to his arrest, the Working Group decides, in accordance with paragraph 33 (a) of its working methods, to transmit the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for consideration and appropriate action.

[Adopted on 28 August 2014]

³ See the Committee's General Comment No. 8 on right to liberty and security of persons, No. 13 on administration of justice and No. 21 on humane treatment of persons deprived of their liberty.