



General Assembly

Distr.: General
9 March 2020
English
Original: Spanish

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session, 12–16 August 2019

Opinion No. 43/2019, concerning Amaya Eva Coppens Zamora (Nicaragua)*

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 33/30.
2. In accordance with its methods of work (A/HRC/36/38), on 9 May 2019 the Working Group transmitted to the Government of Nicaragua a communication concerning Amaya Eva Coppens Zamora. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language,

* A partially dissenting individual opinion by Sètondji Roland Adjovi is appended to this opinion.



religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Amaya Eva Coppens Zamora is a national of Nicaragua and Belgium. She was born in October 1994 and is a human rights defender and one of the leaders of the Movimiento Estudiantil 19 de Abril de León (León April 19 University Movement), which is part of the Coordinadora Universitaria por la Democracia y la Justicia (Coalition of Universities for Democracy and Justice). She is also a medical student at the National Autonomous University of Nicaragua in León.

Background

5. The source indicates that Ms. Coppens Zamora participated in protests against the Government's reform of the Nicaraguan social security and pension systems. On 18 April 2018, she and other protesters were allegedly persecuted and beaten by the police and pro-government groups.

6. On 20 April 2018, university students began protesting in response to the violent acts of repression that had allegedly taken place in the preceding days in León and Managua. The source reports that riot police used tear gas and attacked the protesters. The students took refuge in León Cathedral. Ms. Coppens Zamora was among them, but, after leaving the Cathedral, was accompanied home by a group of activists, before a fire broke out at the University Centre of the National University.

7. According to the information received, from that point forward, Ms. Coppens Zamora participated in student protests against the police and government repression. When the Movimiento Estudiantil 19 de Abril de León was founded, Ms. Coppens Zamora became one of its leaders and its spokesperson.

8. On 4 May 2018, Ms. Coppens Zamora travelled to Managua to protest against the expulsion of several students who received boarding grants. The students had allegedly been told that they would lose their grants if they did not join pro-government groups. Many refused and consequently lost their grants. This was Ms. Coppens Zamora's first public appearance as a leader of the student movement.

9. According to the source, the student movement organized several protests at the University and in the streets of Managua throughout the month of May 2018. On 30 May 2018, during the Mother's Day march, Ms. Coppens Zamora read out a statement by the student movement in support of those whose children had lost their lives during the protests and resulting acts of repression of the preceding days.

10. On 12 June 2018, students' associations, social movements, business leaders and journalists decided to call a strike in the city of León. Ms. Coppens Zamora read out a statement by the student movement in support of the strike.

11. According to the information received, the level of repression in León intensified in response to the latest wave of protests, and so-called "death trucks" transporting armed men in masks were deployed throughout the city to terrorize the population. In response to the deployment of these "death trucks", students and many others in León began to construct roadblocks to prevent the trucks from gaining access to certain neighbourhoods. These roadblocks were dismantled in the course of violent attacks by paramilitary groups and the police, and a great number were removed during the so-called "clean-up operation".

12. Ms. Coppens Zamora allegedly participated in all these civil demonstrations as a spokesperson and active protester and helped other inhabitants of the city of León to set up roadblocks. The source specifies that Ms. Coppens Zamora did not carry a firearm during any of the demonstrations.

13. According to the source, Ms. Coppens Zamora and many other student leaders were forced to abandon their homes in early May to protect themselves from persecution and threats. She was subjected to increasingly intense intimidation, particularly from July onward, and her family also began to receive threats.

14. The source alleges that the criminal prosecution of student leaders and the attacks carried out against them crystallized into a clear pattern of repression, particularly from June onward. In late August, several leaders of the student movement were detained, including three students who were apprehended on 25 August 2018. That day, Ms. Coppens Zamora called for their release, in her capacity as the spokesperson for the student movement.

Detention and the initial stage of the proceedings

15. Ms. Coppens Zamora was arrested together with a colleague on 10 September 2018, at approximately 5 p.m., in the city of León, during a raid on a house in the neighbourhood of the Church of la Recolectión. The arrest was carried out by around 20 armed individuals in civilian clothing, many of whom were hooded, together with uniformed police officers, who did not present an arrest warrant.

16. According to the source, the police indicated at the time of arrest that Ms. Coppens Zamora and her colleague were being arrested in flagrante delicto because they had been caught with firearms and ammunition. However, the witnesses to the raid claim that they did not see the police take any weapons from the house. No arrest or search warrant was presented at the time of the arrest and the detainees' lawyers and families were not informed of the arrest until the following day. The families were not officially informed of the arrest but found out about it the next day from other members of the student movement.

17. Ms. Coppens Zamora and her colleague were transported in a truck to the departmental offices of the Frente Sandinista de Liberación Nacional (Sandinista National Liberation Front) and then to El Chipote Legal Cooperation Directorate in Managua. She had no contact with her family or a lawyer during her stay in the Directorate. The source alleges that it later transpired that Ms. Coppens Zamora had been beaten during questioning.

18. According to the information received, a detention order was issued indicating that Ms. Coppens Zamora had been arrested in flagrante delicto for the offence of illegal possession of a weapon. The receipt of items seized during the raid states that Ms. Coppens Zamora was found with a .25 calibre pistol with eight bullets in the clip, a small box containing 13 shotgun cartridges, a mobile telephone and several banknotes in local and foreign currency, among other things. According to this receipt, the objects seized during the raid were linked to an act of terrorism, assault and the illegal carrying of a weapon.

19. However, the source indicates that while the receipt was written on 10 September 2018, it was not signed by the officers responsible for the custody of evidence until 12 and 13 September. Ms. Coppens Zamora's family and lawyer only found out about her arrest from members of the student movement on 11 September. For nine days following her arrest, Ms. Coppens Zamora was held in incommunicado detention and was therefore not permitted to communicate with her lawyer or her family.

20. On 12 September 2018, Ms. Coppens Zamora was publicly named in the media when the police announced that charges had been brought against her. A police spokesperson read out the preliminary charges, which included allegations that she had participated in starting the fires that occurred on 20 April 2018, had committed terrorist offences and had been caught illegally carrying a weapon.

21. The source reports that on 12 September 2018, without having been allowed to contact her lawyer or having been presented before a judge, Ms. Coppens Zamora was charged with terrorism offences, illegal possession or carrying of firearms and ammunition, abduction and serious assault, aggravated robbery and obstruction of public services (Criminal Code, arts. 394, 401, 163, 152, 224 and 327) in relation to events that allegedly occurred on 20 April 2018, 23 May 2018, 3 June 2018 and 10 September 2018.

22. The source adds that the prosecution of Ms. Coppens Zamora followed a similar pattern to that of other recognizable leaders of the protests and of student and other movements, who were arrested without a warrant and presented before a judge only after the legally established deadline, and whose lawyers and families were not informed of their hearings.

23. The source indicates that these hearings are held before the courts in Managua, despite falling under the jurisdiction of the León District Criminal Court. The source reports that, in order to be able to attend the hearings, the families of the accused are forced to wait at the court until oral notification of the proceedings is given or informal sessions are held in the courtroom, 10 minutes before the opening of the session. This is the only time they are allowed in the courtroom.

24. On 18 September 2018, at 11.40 a.m., during Ms. Coppens Zamora's first appearance before a court, her father was allowed to enter the courtroom and speak with her for five minutes, for the first time since her arrest. Ms. Coppens Zamora's lawyer missed her first appearance because of a misunderstanding.

25. On 20 September 2018, at 4 a.m., Ms. Coppens Zamora was transferred to La Esperanza women's prison, where, at the time of the submission of this information by the source, she was being held in pretrial detention.

26. According to the information received, on 10 October 2018, during the initial hearing, Ms. Coppens Zamora's lawyer raised the defence that the court lacked jurisdiction and that a number of procedural irregularities relating to due process had occurred before his appointment that undermined the minimum guarantees to which all defendants are entitled, including the right to be heard by a judge duly appointed by law. According to the source, under the domestic law of Nicaragua, if the arrest and alleged offences occurred in León, the judicial proceedings fall under the jurisdiction of the León District Criminal Court, not the courts in Managua. Ms. Coppens Zamora's lawyer also requested that the hearings be made public, as required by law.

27. On 17 October 2018, in a public hearing on the defence put forward by Ms. Coppens Zamora's lawyer, the judge allegedly denied the lawyer's requests that the case be heard by another court and that the hearings be made public. Ms. Coppens Zamora was required to remain in prison, and oral proceedings were scheduled for 10 December 2018.

28. On 26 October 2018, Ms. Coppens Zamora and her cellmates were allegedly subjected to physical and psychological assault by 25 prison guards. According to the source, the alleged events occurred when the director of the prison called one of the cellmates for an "interview". When the cellmate refused to go, 25 hooded prison guards dressed in black allegedly began to beat her "savagely" with their batons.

29. According to the information received, the detainees were punished for indiscipline by being locked out of their cells, subjected to illegal searches during which their belongings – including food, perfume and cosmetics – were stolen, stripped naked and forced to do squats, and left without access to natural light for a whole month. On 11 November 2018, the Inter-American Commission on Human Rights requested the adoption of precautionary measures in respect of Ms. Coppens Zamora and her cellmates.

30. The source claims that Ms. Coppens Zamora's hearings were intentionally rescheduled by the authorities to confuse her defence counsel. Such was the case for the proceedings scheduled for 10 December 2018, which were rescheduled for 3 January 2019. The trial and the sentencing date were scheduled for 28 February 2019, then rescheduled for 1 April 2019. At the end of March, the date of the trial was changed again to coincide with the dates of the trials of other political prisoners who had been arrested shortly after she had.

31. According to the information submitted, in January 2019 a delegation of members of the European Parliament visited El Chipote and La Esperanza prisons during a country visit to Nicaragua. They met with Ms. Coppens Zamora and other detainees in La Esperanza, where they discovered and later publicly described the harsh conditions in which the prisoners were being held. The source alleges that in retaliation for the criticism of the

Government made by the prisoners to the European delegation, some of Ms. Coppens Zamora's cellmates were subjected to violent reprisals by the prison guards.

32. Between 25 February and 13 March 2019, Ms. Coppens Zamora and some of her cellmates went on hunger strike in protest against the poor detention conditions in La Esperanza and the solitary confinement of a journalist friend. They began their hunger strike on the first day of negotiations on the crisis between the Government and the Alianza Cívica por la Justicia y la Democracia (Civic Alliance for Justice and Democracy). The strikers indicated that, in this context, they felt like pawns in a game being played by those in political and economic power. The hunger strike was temporarily suspended on 13 March.

33. At the time of the source's submission, Ms. Coppens Zamora was still in detention in La Esperanza women's prison. The source alleges that Ms. Coppens Zamora was being held in cruel conditions; for example, there was a lack of medical care, the conditions of detention did not meet basic requirements and she shared her cell with 14 other women. The women were vulnerable in the prison and reported multiple instances of abuse of authority and repeated physical and psychological attacks by the prison guards.

34. The source reports that the women should have been allowed to receive visits every 15 days according to the prison's internal regulations but were only allowed visits every 21 days. During such visits there were usually two or three prison guards keeping watch nearby. The source also indicates that the food was inadequate and that, owing to the prison's location near a volcanic field, there was a high concentration of sulphur in the water.

35. Although Ms. Coppens Zamora developed health problems, her access to medical care was fairly limited and she was denied her blood pressure medication. She was also subjected to significant psychological harm.

36. The source notes that Ms. Coppens Zamora benefited from slightly preferential treatment because of her dual nationality. For example, unlike other detainees, she was occasionally allowed to attend medical consultations in the prison for her blood pressure problems. However, only the judge hearing her case has been granted access to her health reports and the results of her medical tests, and neither her lawyer nor her parents have received any information regarding her state of health.

The source's allegations

37. According to the complaint submitted by the source, the detention of Ms. Coppens Zamora is arbitrary because there is no legal basis for it (category I); because it resulted from the exercise of rights or freedoms guaranteed by international human rights law (category II); because of the non-observance of international norms relating to the right to a fair trial (category III); and because it is based on discriminatory grounds (category V).

38. The source alleges that the arrest and detention of Ms. Coppens Zamora are illustrative of a pattern of serious human rights violations committed in Nicaragua in the context of the peaceful protests that began on 18 April 2018. The brutal repression of the citizens who have attended protests against the Government has been accompanied by threats, harassment and smear campaigns against human rights defenders, priests, students, journalists and others who have expressed support for the protests.

39. The source indicates that according to reports by the Inter-American Commission on Human Rights and the Office of the United Nations High Commissioner for Human Rights, between 18 April 2018 and January 2019 more than 325 persons were killed; more than 2,000 persons were injured; more than 700 persons (809 according to the Inter-American Commission on Human Rights) were detained, many of them tortured; and 300 health professionals were dismissed.

40. In this context, the source alleges that since the beginning of the sociopolitical crisis in April 2018, Ms. Coppens Zamora, a human rights defender and leader of the student movement, has been the victim of violations of the fundamental rights to freedom of association, peaceful assembly and freedom of expression, which are protected by articles

12, 19, 20, 21 and 22 of the Universal Declaration of Human Rights and articles 17, 18, 19, 21 and 22 of the Covenant.

41. The source reiterates that on 10 September 2018, Ms. Coppens Zamora was arrested in the city of León by around 20 armed individuals in civilian clothing, many of whom were hooded like paramilitary soldiers, together with uniformed police officers. The officers and armed individuals did not present a warrant for the arrest or the raid.

42. The source indicates that article 95 of the Code of Criminal Procedure provides that detainees have the right to communicate with their families within three hours of their arrest and to be informed of the reasons for their arrest. In the case of Ms. Coppens Zamora, neither her lawyer nor her family were notified of her arrest until the following day. For nine days following her arrest, Ms. Coppens Zamora was held in incommunicado detention in El Chipote prison and was thus not permitted to communicate with her lawyer or her family. Article 256 of the Code of Criminal Procedure provides that detainees must be presented before a judge within 48 hours of their arrest, a right which in Ms. Coppens Zamora's case was also violated, since her preliminary hearing was held on 18 September 2018, one week after her arrest.

43. The source also claims that Ms. Coppens Zamora's constitutional rights were violated during the proceedings and that due process guarantees necessary for her defence, such as the right to an impartial and independent trial and the principle of the presumption of innocence, have been ignored. Article 2 and the final paragraph of article 95 of the Code of Criminal Procedure provide that any person charged with a criminal offence has the right to be presumed innocent and treated as such throughout the proceedings brought against him or her; these provisions are underwritten by article 34 (1) of the Constitution of Nicaragua.

44. The source alleges that in Ms. Coppens Zamora's case the above-mentioned constitutional principle and provisions of the Code of Criminal Procedure have been violated by the judicial authorities and by the executive branch, in the form of the Ministry of the Interior, through the national police and the prison system, since she was treated like a convicted criminal before her public oral trial had even begun. The act of publicly presenting and portraying Ms. Coppens Zamora in the government-controlled media as a criminal, to the detriment of her reputation and the principle of the presumption of innocence, constitutes a violation of articles 26 (3) and 34 of the Constitution, which provide that everyone has the right to respect for their honour and reputation and to the minimum guarantees of due process, respectively.

45. The source also reports that the proceedings took place in Managua, despite the fact that the alleged events supposedly occurred in the city of León, as did the arrest. This constitutes a breach of the right to be heard by a judge duly appointed by law, in violation of article 34 (2) of the Constitution and article 22 (1) of the Code of Criminal Procedure. Ms. Coppens Zamora was not allowed visits from her lawyer and neither she nor her family were duly informed regarding her case or the charges brought against her. The public oral trial, which was initially scheduled for 10 December 2018, had still not taken place when the present complaint was submitted, having been rescheduled more than three times.

46. The source indicates that the proceedings are being handled through the complex case procedure, which has doubled their processing time. Moreover, the duration of the investigation was left to the discretion of the national police and the Public Prosecution Service, which may have delayed the proceedings by six months to a year or more.

47. From 20 September 2018 until the date of the receipt of the present allegations, Ms. Coppens Zamora was in pretrial detention in La Esperanza women's prison. The conditions of her detention violated articles 3, 5 and 25 of the Universal Declaration of Human Rights, article 7 of the Covenant, article 95 of the Constitution and article 4 of the Criminal Code, among other provisions. There have been reports of physical and psychological assault by guards, a lack of medical care, visiting restrictions and detention conditions that do not meet basic requirements.

Response from the Government

48. On 9 May 2019, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide detailed information regarding the case of Ms. Coppens Zamora, to clarify the legal basis for her detention and to comment on its compatibility with the international human rights obligations of Nicaragua by 8 July 2019. The Working Group also requested the Government to safeguard the integrity of Ms. Coppens Zamora.

Discussion

49. The Working Group regrets that it did not receive a response from the Government in the present case. The Government did not request an extension of the deadline for its reply. In the absence of a response from the Government to the communication submitted by the source, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

50. The Working Group learned that 56 persons imprisoned for offences against public safety and the peace, including Ms. Coppens Zamora, were released in June 2019 pursuant to the adoption of the Amnesty Act in Nicaragua.¹ Despite the release of Ms. Coppens Zamora and since the Amnesty Act does not seem to provide that the criminal records of the persons released should be cleared of the offences of which they were charged, and in view of the fact that the present case is illustrative of the widespread situation of detention in Nicaragua, the Working Group, in accordance with paragraph 17 (a) of its methods of work, decided to proceed to determine whether the deprivation of liberty of Ms. Coppens Zamora was arbitrary.

51. 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.² In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

Category I

52. The Working Group has stated that anyone who is arrested must not only be informed, at the time of arrest, of the reasons for their arrest,³ but also of the judicial avenue for challenging the lawfulness of the deprivation of their liberty.⁴ The reasons given for the arrest must include not only the general legal basis of the arrest but also factual specifics indicating the substance of the complaint and the wrongful act committed. These reasons are understood to be the official basis for the arrest, not the subjective motivations of the arresting officer.⁵

53. Moreover, in the view of the Working Group, persons deprived of their liberty have the right to be informed by the authorities, at the time of arrest, of their right to counsel of

¹ Act No. 996, the Amnesty Act, adopted by the National Assembly on 8 June 2019 and published in *La Gaceta Diario Oficial* No. 108 of 10 June 2019.

² See A/HRC/19/57, para. 68.

³ Covenant, art. 9 (2).

⁴ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex), Principle 7 (Right to be informed).

⁵ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 25.

their own choosing.⁶ Persons deprived of their liberty also have the right to be informed promptly of the charges against them.⁷

54. In its jurisprudence, the Working Group has concluded that a person is considered to have been arrested in flagrante delicto when he or she is deprived of liberty during or immediately after the commission of an offence or is arrested in hot pursuit moments after the alleged offence has been committed.⁸

55. Furthermore, in the view of the Working Group, incommunicado detention restricts the detainee's rights to counsel of his or her own choosing, to be presented before a judicial authority without delay, and to challenge the lawfulness of his or her detention before a judge, in violation of article 9 of the Universal Declaration of Human Rights and article 9 (3) of the Covenant.⁹

56. The Working Group notes that according to the information received, which was not refuted by the Government, Ms. Coppens Zamora was arrested on 10 September 2018 in the city of León during a raid on a house in the neighbourhood of the Church of la Recolectión. The Working Group is convinced that the arrest was carried out by several armed individuals in civilian clothing, many of whom were hooded, together with uniformed police officers.

57. The Working Group is persuaded that during the arrest the officers did not present an arrest or search warrant issued by a competent authority and that Ms. Coppens Zamora was not arrested after having been caught committing an offence in flagrante delicto, immediately after the commission of an offence or in hot pursuit.

58. The Working Group is convinced that Ms. Coppens Zamora was presented before a judge one week after her arrest, not within 48 hours of the arrest. The Working Group thus notes that the preliminary hearing was held one week after the arrest.

59. The Working Group is convinced by the information received that the family of Ms. Coppens Zamora became aware of her arrest the day after it occurred and that Ms. Coppens Zamora was held in incommunicado detention for nine days following her arrest and was thus unable to communicate with her lawyer or her family, in violation of article 9 of the Covenant.

60. In the light of the above, the Working Group considers the detention of Ms. Coppens Zamora to be arbitrary in accordance with category I of its methods of work.

Category II

61. The Working Group emphasizes that everyone has the right to freedom of expression, which includes the right to impart information and ideas of all kinds, whether orally or in any other form. In addition, the Working Group reiterates that the exercise of this right may be subject to restrictions that are expressly provided for by law and are necessary to ensure respect for the rights or reputation of others, or for the protection of national security or of public order, health or morals.¹⁰

62. The Working Group is of the view that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person and constitute the foundation stone for every free and democratic society.¹¹ Both freedoms are the basis for the effective exercise of a wide range of human rights, such as the right to

⁶ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex), Principle 9 (Assistance by legal counsel and access to legal aid).

⁷ Covenant, art. 9 (2).

⁸ See opinions No. 13/2019, para. 53; No. 9/2018, para. 38; No. 36/2017, para. 85; No. 53/2014, para. 42; No. 46/2012, para. 30; No. 67/2011, para. 30; and No. 61/2011, paras. 48–49. See also E/CN.4/2003/8/Add.3, paras. 39 and 72 (a).

⁹ Opinion No. 53/2016, para. 47.

¹⁰ Opinion No. 58/2017, para. 42.

¹¹ General comment No. 34, para. 2.

political participation, as set forth in article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant.¹²

63. The importance of freedom of opinion is such that no government may impair other human rights on the basis of a person's actual or perceived opinions, whether of a political, scientific, historical, moral, religious or any other nature. Consequently, it is incompatible with the Universal Declaration of Human Rights and the Covenant to criminalize the holding of an opinion; equally, the harassment, intimidation or stigmatization of a person, including arrest, pretrial detention, trial or imprisonment for reasons of the opinions he or she may hold, are not permitted.¹³

64. In the light of the information received, the Working Group is convinced that Ms. Coppens Zamora is a human rights defender and one of the leaders of the Movimiento Estudiantil 19 de Abril de León, which is part of the Coordinadora Universitaria por la Democracia y la Justicia, and that she participated in the protests, strikes and civil demonstrations of April, May and June 2018.

65. The Working Group is convinced that Ms. Coppens Zamora has openly criticized the Government through protests, strikes and civil demonstrations and that she carried out activities in support of the student movement of spring 2018. The Working Group is also convinced that the detention of Ms. Coppens Zamora was carried out in order to prevent her from expressing her opinions and attending meetings and protests.

66. In the light of the foregoing, the Working Group considers that the detention of Ms. Coppens Zamora was carried out in violation of the fundamental rights to freedom of opinion, association, peaceful assembly and freedom of expression, guaranteed by articles 19, 20, 21 and 22 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant, which renders it arbitrary under category II of the Working Group's methods of work.

Category III

67. In the light of its findings in relation to category II, in which it was concluded that Ms. Coppens Zamora's detention resulted from the exercise of the rights to freedom of opinion, expression, assembly and peaceful protest, the Working Group considers the pretrial detention and prosecution of Ms. Coppens Zamora to be disproportionate and unjustified. Nevertheless, since proceedings took place and Ms. Coppens Zamora could have been punished with a potentially long prison sentence, and in view of the claims made by the source and the lack of a response from the Government, the Working Group decided to analyse whether, during the course of the judicial proceedings, the fundamental elements of a fair, independent and impartial trial were respected.

68. As noted above, the Working Group is convinced by the claim that, during her detention, Ms. Coppens Zamora's rights to be informed without delay of the reasons for her detention, to be notified without delay of the detention order issued against her, not to be held in incommunicado detention, to be presented before a judge without delay and to have the lawfulness of her detention reviewed by a court were not respected, in violation of article 9 of the Covenant.

Presumption of innocence

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

70. In the view of the Working Group, as well as that of the Human Rights Committee, this right carries an obligation for all public authorities, including the executive branch, to

¹² Ibid., para. 4.

¹³ Ibid., para. 9.

refrain from prejudging the outcome of a trial, which means abstaining from making public statements affirming the guilt of the accused.¹⁴

71. Moreover, the Inter-American Court of Human Rights has stated:

The right to be presumed innocent requires that the State refrain from informally convicting a person or making public declarations regarding his or her guilt, thereby shaping public opinion, so long as the person's guilt has not been proven according to law. This right can be violated by the judges in charge of the proceedings or indeed by other public authorities, who therefore have a duty to exercise discretion and caution when making public statements regarding criminal proceedings before the person has been tried and a judgment has been made.¹⁵

72. The Working Group has determined that statements publicly condemning the accused person before a sentence has been passed violate the principle of presumption of innocence and constitute undue interference that undermines the independence and impartiality of the court.¹⁶

73. The Working Group has repeatedly indicated that the public statements of officials violate the right to presumption of innocence if such statements declare persons guilty of an offence for which they have not yet been tried, thereby attempting to convince the public to believe them guilty and prejudging the assessment of the facts by the competent judicial authority.¹⁷

74. The Working Group received credible information from the source that was brought to the attention of the Government and was not refuted, according to which various public authorities treated Ms. Coppens Zamora as if she were a convicted criminal before her public oral trial had begun, and that these authorities also publicly presented and portrayed Ms. Coppens Zamora as a criminal in the media, in violation of article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.

Competent, impartial and independent tribunal

75. According to article 14 (1) of the Covenant, everyone is entitled to a fair hearing by a competent, independent and impartial tribunal in the determination of any criminal charge brought against him or her. The Working Group considers that the requirement of impartiality demands that judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that promote the interests of the parties. The tribunal must also appear to a reasonable observer to be impartial.¹⁸

76. In this regard, the Working Group has repeatedly stated in its jurisprudence that the criminal prosecution of persons accused of offences committed in a particular territory by courts located in another jurisdiction constitutes a violation of the right to a hearing before a competent court duly appointed by law if national legislation expressly attributes competency to the jurisdiction that corresponds to the place in which the offence is alleged to have been committed.¹⁹

¹⁴ General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30. See also *Kozulina v. Belarus* (CCPR/C/112/D/1773/2008), para. 9.8.

¹⁵ Inter-American Court of Human Rights, *Pollo Rivera et al. v. Peru*, para. 177. See also *Tibi v. Ecuador*, para. 182; *J. v. Peru*, paras. 244–247. Similar language appears in the findings of the European Court of Human Rights in the cases of *Allenet de Ribemont v. France*, para. 41; *Daktaras v. Lithuania*, para. 42; *Petyo Petkov v. Bulgaria*, para. 91; *Peša v. Croatia*, para. 149; *Gutsanovi v. Bulgaria*, paras. 194–198; *Konstas v. Greece*, paras. 43 and 45; *Butkevicius v. Lithuania*, para. 53; *Khuzhin and Others v. Russia*, para. 96; and *Ismoilov and Others v. Russia*, para. 161.

¹⁶ Opinions No. 90/2017, No. 76/2018 and No. 89/2018.

¹⁷ See opinions No. 6/2019 and No. 12/2019.

¹⁸ General comment No. 32, para. 21.

¹⁹ See opinions No. 30/2014, para. 51; No. 28/2014, para. 46; No. 1/2015, paras. 31 and 34; No. 6/2019, para. 135; and No. 12/2019, para. 121.

77. In the light of the information received, which was not refuted by the Government, the Working Group is convinced that, as noted in paragraph 45 above, under the domestic law of Nicaragua the competency to hear a case falls to the court in whose jurisdiction the offence is alleged to have been committed. Moreover, the Working Group notes that Ms. Coppens Zamora's defence counsel argued that the court in Managua lacked jurisdiction, in other words that Ms. Coppens Zamora's right to be heard by a judge duly appointed by law had been violated, and that the alleged offences fell under the jurisdiction of the courts in León. However, this defence was rejected in a public hearing on 17 October 2018 (see para. 27 above); the Working Group did not receive any information from the Government explaining how this decision can be justified under applicable international law. Consequently, in the view of the Working Group, the court that heard Ms. Coppens Zamora's case did not have the jurisdiction to do so, and therefore her right to be heard by a judge duly appointed by law was not respected, in violation of article 14 (1) of the Covenant.

Adequate time and facilities for the preparation of a defence

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

79. The Working Group shares the view of the Human Rights Committee that a person's right to be informed promptly of the nature and cause of the charges against him or her may be satisfied orally, provided that the charges are later confirmed in writing and on the condition that the information provided indicates both the applicable law and the alleged facts on which the charges are based.²²

80. With regard to the right to defence counsel and to adequate time and facilities for the preparation of a defence, the Working Group is of the view that accused persons should have adequate time and facilities for that purpose, which implies that they should have prompt access to lawyers, are able to communicate privately with them in conditions that fully respect the confidentiality of their communications,²³ have adequate time to prepare their defence²⁴ and have access to the file containing all the documents, evidence and other materials that the prosecution plans to offer in court.²⁵

81. In addition, in the view of the Working Group:

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

82. The Working Group is convinced that Ms. Coppens Zamora's defence counsel was not able to communicate with her from the outset of her detention on 10 September 2018, especially while she was being held in incommunicado detention as mentioned above, or during her first appearance before the court on 18 September 2018, which constitutes a

²⁰ Covenant, art. 14 (3) (a) and (b).

²¹ Covenant, art. 14 (3) (d).

²² General comment No. 32, para. 31.

²³ Ibid., para. 34.

²⁴ Ibid., para. 32.

²⁵ Ibid., para. 33.

²⁶ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex), Guideline 5 (Right to be informed), para. 56.

violation of the rights of all persons to be assisted by counsel of their own choosing and to have adequate time and facilities for the preparation of their defence, as recognized in article 14 (b) and (d) of the Covenant.

Right to be tried without undue delay

83. The Covenant also recognizes the right of all persons charged with a criminal offence to be tried without undue delay.²⁷ The Working Group shares the view of the Human Rights Committee that delays in criminal proceedings can be justified only by the complexity of the case or the behaviour of the parties, and that delays for any other reason are incompatible with the Covenant and compromise the impartiality of a trial.²⁸

84. In the light of the information provided by the source, which was not refuted by the Nicaraguan authorities, the Working Group is convinced that several hearings – including the hearings scheduled for 10 December 2018, 3 January 2019, 28 February 2019 and 1 April 2019 – had to be rescheduled for reasons attributable to the authorities, and that this rescheduling was not justified by the complexity of the case or the actions of Ms. Coppens Zamora in her capacity as an accused person. This demonstrates an unjustified attitude on the part of the authorities that undermined Ms. Coppens Zamora's right to be tried without undue delay, in violation of article 14 (3) (c) of the Covenant.

85. In the light of the foregoing, the Working Group considers that Ms. Coppens Zamora's fair trial guarantees under articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant were partially violated, which renders her detention arbitrary under category III of the Working Group's methods of work.

Category V

86. The Working Group is convinced that the arrest and detention of Ms. Coppens Zamora are illustrative of a pattern of serious human rights violations committed in Nicaragua in the context of the peaceful protests that began on 18 April 2018. Moreover, the Working Group considers that her arrest was primarily motivated by the fact that she is a leader of the student movement, which is critical of the Government's policies.

87. The Working Group recalls that the Office of the United Nations High Commissioner for Human Rights has found that the human rights violations documented in Nicaragua since April 2018 include:

Disproportionate use of force by the police that sometimes resulted in extrajudicial killings; enforced disappearances; obstructions to access to medical care; widespread arbitrary or illegal detentions; prevalent ill-treatment and instances of torture and sexual violence in detention centres; violations of freedoms of peaceful assembly and expression, including the criminalization of social leaders, human rights defenders, journalists and protesters considered critical of the Government.²⁹

88. In this regard, the Inter-American Commission on Human Rights has noted that the repression of the April 2018 protests by the Nicaraguan authorities led to the deaths of between 198 and 325 persons; the wounding of thousands of persons; the detention and prosecution of between 372 and 777 persons; the dismissal of hundreds of health professionals and the expulsion of hundreds of students from the National Autonomous University of Nicaragua. In addition, the Inter-American Commission on Human Rights noted that there has been a significant increase in the number of persons seeking asylum in neighbouring countries as a consequence of the various forms of persecution that have

²⁷ Covenant, art. 14 (3) (c).

²⁸ General comment No. 32, para. 27.

²⁹ Office of the United Nations High Commissioner for Human Rights, *Human rights violations and abuses in the context of protests in Nicaragua: 18 April–18 August 2018*, p. 7. Available at www.ohchr.org/Documents/Countries/NI/HumanRightsViolationsNicaraguaApr_Aug2018_EN.pdf.

occurred in Nicaragua against protesters, political opponents, students, social leaders and human rights defenders.³⁰

89. Furthermore, the Working Group observes that the detention described in the present case is not the first to be carried out by the authorities of Nicaragua against persons who criticize the authorities' actions or who have participated in social demonstrations.³¹

90. In the light of the foregoing, the deprivation of liberty of Ms. Coppens Zamora constituted a violation of international law since she was deprived of her liberty on the grounds of discrimination based on her political opinion, her participation in protests and social demonstrations and her position as a leader of the student movement, in violation of articles 2 and 26 of the Covenant and articles 1 and 7 of the Universal Declaration of Human Rights, which renders her detention arbitrary under category V of the Working Group's methods of work.

91. On the basis of the information received regarding the conditions of Ms. Coppens Zamora's detention, for example, that there was a lack of medical care, and in view of the allegations of torture and other cruel, inhuman or degrading treatment, in accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

92. Lastly, in order to allow the Working Group to establish a direct dialogue with the authorities of the three branches of government (the executive, the legislature and the judiciary), representatives of civil society and detainees, with the aim of gaining a better understanding of the situation of deprivation of liberty in the country, the Working Group suggests that the Government may wish to consider inviting it to make a country visit, as requested in its notes verbales of 24 April and 21 November 2018. The Working Group recalls that on 26 April 2006 the Government of Nicaragua extended an open invitation to the special procedures of the Human Rights Council and that its most recent visit to Nicaragua was from 15 to 23 May 2006.³²

Disposition

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

The deprivation of liberty of Amaya Eva Coppens Zamora, being in contravention of articles 9, 11, 19, 20, 21 and 22 of the Universal Declaration of Human Rights and of articles 9, 14, 17, 18, 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

94. The Working Group requests the Government of Nicaragua to take the steps necessary to remedy the situation of Ms. Coppens Zamora 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.

95. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Ms. Coppens Zamora an enforceable right to compensation and other reparations, in accordance with international law.

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

97. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or

³⁰ Inter-American Commission on Human Rights, *Annual Report 2018*, chap. IV. B., Nicaragua, para. 13. Available at www.oas.org/en/iachr/docs/annual/2018/docs/IA2018cap.4B.NI-en.pdf.

³¹ Opinions No. 19/2019 and No. 16/2019.

³² A/HRC/4/40/Add.3.

degrading treatment or punishment and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

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

Follow-up procedure

99. 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 compensation or other reparations have been made to Ms. Coppens Zamora;
- (b) Whether an investigation has been conducted into the violation of Ms. Coppens Zamora's rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Nicaragua with its international obligations in line with the present opinion;
- (d) Whether the criminal record of Ms. Coppens Zamora has been cleared of the charges referred to in the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

100. 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.

101. 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. 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.

102. 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.³³

[Adopted on 14 August 2019]

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

Annex

Individual opinion of Sètondji Roland Adjovi (partially dissenting)

1. The mandate of the Working Group in relation to individual complaints is to determine whether, pursuant to international human rights law, the situation before it constitutes arbitrary detention under one of its five categories. In this context, the jurisdiction of domestic courts may be relevant as it constitutes an element of the right to a fair trial. The Working Group has repeatedly expressed its views on this issue.
 2. I do not believe, however, that the Working Group can comment on this matter in every case submitted to it.
 3. In the present case, the source raised the issue of territorial jurisdiction, arguing that the domestic court in question did not have jurisdiction under domestic law. The Government has not responded to this allegation and, in accordance with its regular practice, the Working Group must consider as valid the *prima facie* credible allegations submitted by the source, as the majority has done in the present case (see para. 77). In the present case, however, doing so with regard to this particular allegation would run the risk that the Working Group's decision would not be well founded, since the argument concerns domestic law and its validity is an objective matter in which the silence of the Government does not necessarily mean that the source's argument should be assessed favourably. In my opinion, the lack of a response from the State does not make the allegation any more credible, and I do not have the requisite expertise to make an internal assessment of the domestic legislation.
 4. Moreover, the Working Group has already reached a sufficiently strong conclusion on the violation of the right to a fair trial, so this additional conclusion does not seem to me to be essential to the decision.
 5. In the light of the above and on this point alone, I regretfully cannot concur with the majority opinion.
-