



General Assembly

Distr.: General
5 June 2020
English
Original: Spanish

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020

Opinion No. 3/2020, concerning Ferney Salcedo Gutiérrez and others (Colombia)

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 9 December 2019 the Working Group transmitted to the Government of Colombia a communication concerning Ferney Salcedo Gutiérrez, Yulivel Leal Oros, Jesús Leal Salcedo, Miguel Ángel Rincón Santisteban, Carmen Iraida Salcedo Gutiérrez, Josué Eliecer Rincón Duarte, María Teresa Rincón Duarte and Jerónimo Salcedo Betancourt. The Government replied to the communication on 30 January 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. The source refers to the case of eight persons who are being detained and prosecuted for having led the mobilization of the community of San Luis de Palenque and taken part in protests organized to defend the community against the social, environmental and economic impact on its territory of the activities of an oil company. The eight persons, who are of Colombian nationality, are: Ferney Salcedo Gutiérrez, born in April 1979, a cattle rancher and transporter living in San Luis de Palenque; Yulivel Leal Oros, born in June 1990, a farmer and transporter based in Yopal; Jesús Leal Salcedo, born in August 1983, a farmer living in San Luis de Palenque; Miguel Ángel Rincón Santisteban, born in March 1979, a civil engineer living in Yopal; Carmen Iraida Salcedo Gutiérrez, born in April 1980, a physiotherapist living in Yopal; Josué Eliecer Rincón Duarte, born in September 1972, a farmer and cattle rancher based in San Luis de Palenque; María Teresa Rincón Duarte, born in June 1970, a mother and head of household living in San Luis de Palenque; and Jerónimo Salcedo Betancourt, born in September 1990, a cattle driver and day labourer living in San Luis de Palenque.

5. The source reports that, in the last three years, 16 community leaders and human rights defenders have been arrested in Casanare, 11 of them for obstructing public roads. The events on which the Prosecutor's Office based the indictment took place during protests organized in defence of human rights. The criminalization of human rights defenders in Colombia is claimed to be having serious consequences; the practice is framed against a backdrop of increasingly frequent attacks against community leaders and human rights defenders.

6. The Office of the Ombudsperson has issued a risk report in which it identified social, environmental and community leaders and human rights defenders as a vulnerable social group, particularly in the municipalities of Yopal, Aguazul, Trinidad, San Luis de Palenque and Paz de Aripuro. The report states that:

“In rural areas and small or isolated municipalities, the risk to which human rights defenders and community leaders is exposed is more serious. Environmental leaders [...], who are noted, among other things, for their opposition to mining and oil exploitation (fracking), the construction of hydroelectric plants and/or projects with significant environmental impacts, are exposed to harassment, stigmatization, threats, attacks and murder on a daily basis.”¹

7. The source states that, over the last seven years, the community of San Luis de Palenque has been voicing its opposition to the oil industry activities carried out by Frontera Energy and has mobilized its people against the social, environmental and economic impact of these activities within its territory. The authors of the communication have led the opposition and community mobilization in pursuit of the following demands: (a) payment of compensation equal to 1 per cent of the total investment in the project to fund the restoration, preservation, protection and control of the rivers from which the water used is directly drawn; (b) repair of the Merey-Platanales road, which has been so damaged by the passage of tractors and trucks that it is impassable for cars, so impeding communication and affecting rural trade; and (c) payment of the sums the company owes to members of the community who provided it with transport, food and accommodation, among other services.

¹ Office of the Ombudsperson, Risk Report No. 010-17 A.I., 30 March 2017.

8. The source recounts that, in 2016, in a meeting with the mayor's office and the municipal council, Mr. Salcedo Gutiérrez complained about the damage that the company was causing to roads, sewers and bridges. Similarly, Ms. Salcedo Gutiérrez drew attention to the sums that the company owed her in exchange for the loan of a dumper truck that she used in her work. On 20 June 2017, Ms. Salcedo Gutiérrez complained that the company's actions were undermining the right to equality and work and alerted the mayor's office to possible irregularities and corruption in the contract award process. On 24 June 2017, it was agreed that an audit office should be set up to oversee the repair of the road, whose staff would include some of the eight human rights defenders who have been deprived of their liberty.

9. The source reports that, because the company failed to comply with these and other agreements, the community and oil workers of San Luis de Palenque organized a peaceful demonstration at the oil wells in the Cubiro Block, which lasted from 1 to 4 August 2017. In response, Pacific E&P (a company forming part of the business group now known as Frontera Energy) filed a civil suit against some of the protesters, alleging that the demonstration was preventing their vehicles from reaching the wells. The defendants replied that the activity at the root of the complaint could not have affected traffic because the road used was not the only one available. They also pointed out that the right to protest was protected under article 37 of the Constitution. Additionally, they accused the company of acting slanderously in taking action against community organizations that are legally constituted and represent the local population and dismissed the claim that they had violated public order, which they believe was intended to discredit both the defenders themselves and the demands they were making.

10. On 17 October 2017, the communities of the municipality of San Luis de Palenque mobilized again to demand that the series of demands set out in their petition were met, and, on 21 October, the company agreed to enter into dialogue with the local community. However, since their demands remained unmet and the agreements were still unfulfilled, the community decided to continue using social mobilization as a means to claim their rights.

11. On 29 January 2018, a demonstration took place in San Luis de Palenque. On 31 January, the community reached an agreement with the company under which the latter undertook to cease transporting oil and gas until the issues raised in the dialogue were resolved. However, on 2 February, the company unexpectedly rolled in 15 tractors escorted by the police and army. Local residents responded by blockading the road in order to prevent the vehicles from passing.

12. On 5 February 2018, the company announced that it was suspending its activities in the Cubiro Block. Because the dialogue had broken down, the community began organizing days of protest, to which the State apparently responded with force, entering into confrontations with demonstrators. In this setting, on 26 February 2018, a police officer was injured. At the time, and subsequently throughout the investigation, the authorities blamed this injury on the organizers of the protest.

13. On 30 May 2018, Mr. Ferney Salcedo and Mr. Leal Salcedo complained of "discrimination, egoism and deception" in the consultations between the community and the company.

14. In October 2018, Mr. Ferney Salcedo sent a petition calling on the company to pay the environmental compensation equal to 1 per cent of its total investment that it was required by law to pay in return for using water drawn from the Guanapalo, Pauto and Caño Gandul rivers. On 2 November 2018, Frontera Energy refused to accept and comply with this petition.

15. Subsequently, Mr. Salcedo Gutiérrez, Mr. Leal Salcedo, Mr. Rincón Santisteban, Mr. Rincón Duarte, Mr. Salcedo Betancourt, Ms. Leal Oros, Ms. Salcedo Gutiérrez and Ms. Rincón Duarte began to note signs of surveillance, as well as rumours and other indications of an imminent arrest. For this reason, some of them voluntarily presented themselves at the Prosecutor's Office to make themselves available for questioning and to offer their cooperation in any enquiry that might have been initiated against them. The Prosecutor's Office stated that no investigation was under way.

16. On 27 November 2018, at approximately 2.45 a.m., the homes of the eight human rights defenders were raided simultaneously. There was no prosecution service representative present during the raids, as required under article 225 of Act No. 906 of 2004.

17. The source states that the public security forces deployed approximately 200 men to carry out these raids, including both police and army officers. This excessive and unnecessary use of force caused great anxiety among the local population, who thought that the security forces were acting against highly dangerous criminals. The arrestees were taken first to Yopal police station and subsequently, handcuffed and restrained, to the immediate response unit of the Prosecutor's Office.

18. In public statements about the arrests, the chief of staff and second commander of the army's sixteenth brigade stated that:

"Since 2016 the defendants have been organizing blockades against oil and gas contactors. In the rural area within the municipality of San Luis de Palenque, blockades of this kind have been carried out in the villages of La Venturosa and Platanales. As the public is well aware, these blockades have involved indiscriminate attacks against the civilian population, including the drivers of vehicles. The public security forces have also come under attack [...]. Each force is organizing its resources and capacities to support the Prosecutor's Office in judicial proceedings involving raids leading to the capture of members of the organized criminal group known as the 'Masked Horsemen' (Jinetes de Caretas)."

19. The source stresses that in the judicial proceedings no evidence had been presented that identifies the persons implicated as members of a group calling themselves the "Masked Horsemen", as the official stated. It is alleged that the police created this alias as a means to publicly discredit the protest and its organizers and justify the claim that the danger they posed was sufficient to necessitate pretrial detention.

20. The source alleges that the police improperly claimed to be fighting organized crime, terrorism and violations of other national security laws in the case in question. The authorities attempted to equate the alleged offences with the actions of an organized criminal group in order to have grounds to apply Act No. 1908 of 2018, penalizing offences envisaged in the United Nations Convention against Transnational Organized Crime, even though they were not dealing with groups that pose a threat to national or international security.

21. The source further alleges that the community organization and mobilization activities were associated in the public mind with unlawful activities, and were thus stigmatized and discredited. Through statements referring to supposed leaders and a distributed power structure, the Prosecutor's Office created a false reality in a bid to restrict the enjoyment of rights and benefit the company.

22. The main irregularities alleged by the source are: (a) failure to respect the principles of legality and presumption of innocence; (b) association of leadership activities with criminal conduct; and (c) failure to define individual charges.

23. The source alleges that the charge of collusion to commit a criminal offence presupposes an agreement between the detainees to organize demonstrations, as if the criminal offence to be committed were the protests. It also presupposes that the interests being defended in the demonstrations were private and not collective, even though they were community demands. Lastly, among the acts attributed to the defendants there are none that are unlawful per se other than mass agitation, which is an inherent part of community leadership and mobilization.

24. The source alleges that bringing this charge is akin to criminalizing the exercise of the right of assembly and association, in that community organization in pursuit of social demands is being treated as an unlawful activity. As the offence is also being treated as if committed by an organized criminal group, it is guaranteed to attract a more serious penalty and the exercise of human rights is being prevented through prolonged pretrial detention.

25. With regard to the offence of obstructing public roads in violation of public order, the source points out that the offence of violating public order, as defined in the Civil

Security Act, involves threats to human life, public health, food security, the environment or the right to work. The source also considers it important to note that such conduct will only be criminal if it is carried out through unlawful means. Directive No. 8/2016 of the Attorney General's Office and the case law of the Constitutional Court establish that "the participants in or organizers of a march in which violent events occurred cannot be prosecuted unless they were a determining factor or a participant in those events".

26. Even if a protest disrupts traffic, the disruption cannot be considered a criminal offence if it is caused by lawful activity. The source argues that the facts alleged by the authorities are generic, do not establish any individual responsibility and above all do not give account of any unlawful means having been used to obstruct the roads.

27. With regard to the charge of violence against a public servant, article 429 of the Criminal Code establishes that this offence consists in using violence against a public servant either by reason of his or her function or to force him or her to perform or omit to perform an act that forms part of his or her duties or to perform an act contrary to his or her official duties. In the proceedings, the Prosecutor's Office lists 27 victims, among them a police officer who was injured during one of the protests. This officer is also the alleged victim in the charge of attempted aggravated homicide and bodily injury, by which the authorities are attempting to prosecute three acts supposedly resulting from a single event, even though they are unconnected.

28. The source claims that in this charge the individual responsibility of each person has not been established. The legal system does not allow the possibility of a person being investigated for participating in a demonstration, even if acts of violence were committed during the demonstration. The Prosecutor's Office has provided no evidence that might prove the eight persons' involvement in the injuries caused to the police officer, nor has it revealed the circumstances in which each of them supposedly participated in the alleged offence. The eight defenders have been charged with using violence against a public servant, without the individual responsibility of each being specified. The Prosecutor's Office made a generic charge with the aim of criminalizing social protest and guaranteeing pretrial detention.

29. Mr. Ferney Salcedo and Mr. Salcedo Betancourt are also charged with attempted aggravated homicide and culpable bodily injury of the police officer in relation to the events that occurred during the protest on 26 February 2018. They are also charged with using violence against the same public servant. However, the source highlights that the available evidence, testimonies and photographs are insufficient to allow for the possible perpetrators to be properly identified. The Prosecutor's Office accuses Mr. Ferney Salcedo of being the principal, merely because he was visibly one of the leaders of the protest. In the case of Mr. Salcedo Betancourt, there is nothing to indicate that he was one of the perpetrators of the offence. It is alleged that the Prosecutor's Office charged him because he is a well-known rodeo champion.

30. The Prosecutor's intention is to bring multiple criminal charges in an attempt to aggravate the detainees' liability, and thus make them appear more dangerous and justify the need for pretrial detention.

31. The source claims that the aim of the proceedings initiated by the Prosecutor's Office is to portray the eight human rights defenders as dangerous individuals and thus distance them from the community mobilization movement and support the interests of the company, which is indirectly financing the movement (see below). To this end, the Prosecutor's Office has criminalized the exercise of the right to social protest, using legislation on the fight against organized crime to extend the maximum permitted period of pretrial detention.

32. The eight persons facing prosecution are being deprived of their liberty. The Prosecutor's Office requested that all eight defenders be remanded in prison. The Court decided to order pretrial detention for some of the defenders and house arrest and electronic tagging for others. It should be noted that precautionary measures of this kind constitute a punishment for the work of those who defend human rights and the environment.

33. The source states that it is harsh to prosecute the eight defenders under Act No. 1908 against organized crime, which provides that precautionary custodial measures may have a duration of up to three years. This means that they may remain subject to these restrictions – and thus prevented from exercising their human rights – for a further two years without being found guilty.

34. The source states that, even though article 14 of the Covenant stipulates that everyone is entitled to be tried by a competent, independent and impartial tribunal, in this case not only is Frontera Energy bringing a civil complaint and participating as a victim in the criminal proceedings but it is also alleged to have entered into an alliance with the military, the police and the Prosecutor's Office, apparently through its partner company Ecopetrol, that could compromise the independence of the institutions involved in the proceedings.

35. The source reports that, on 16 November 2018, 11 days before the arrests, Frontera Energy signed agreement No. 18-014 with the Ministry of Defence, by which the national army undertook to provide special protection in the company's areas of interest in exchange for financial contributions from the company in the amount of \$643,599, to be made over a period of 13 months. Three days later, the company signed a new agreement with the Ministry of Defence (No. 18-017), which had the same purpose but this time provided for the payment of an amount of \$699,507, to be settled within 1 month and 12 days, before 31 December 2018.

36. The source also reports that Ecopetrol, which is a Colombian oil and gas exploration and production company, has entered into five cooperation agreements with the Prosecutor's Office since 2015, worth a total of \$24,698,485 dollars. In exchange, the Prosecutor's Office reinforces the resources assigned to the investigation and prosecution of actions "that affect Ecopetrol, its business group and associates, and involve offences of [...] obstructing public roads [...] during social protests that prevent the smooth operation of the oil industry".

37. The source adds that the prosecutor assigned to the case has an office on the premises of Manare military cantonment's sixteenth brigade in Yopal, Casanare, and that, in 2018, when the investigation began and the eight persons were detained, this brigade received \$1,343,106 from Frontera Energy, to be used to guarantee, among other things, the maintenance of the building in which the prosecutor works.

38. As evidence in the case, the prosecutor submitted a military intelligence report dated 21 September 2018 which attests to the existence of an organized crime group that "uses social protest as a facade". The report was drawn up by a body that receives funding from the company whose economic interests have been affected.

39. According to the source, the Attorney General's Office has created support units and divisions dedicated exclusively to the investigation of offences against the oil and gas industry. Between the start of 2015 and 31 May 2019, the Office initiated 196 investigations into offences linked to social protests against the activities of oil companies. As a result, 47 people have been detained. For example, community leaders in the department of Meta are being prosecuted for their involvement in and promotion of demonstrations organized to demand that Frontera Energy respect the environment and ensure decent working conditions in Puerto Gaitán.

40. The source concludes by requesting the Working Group to declare the arrest and detention of the eight persons named to be arbitrary under category II, given that they result from the exercise of the rights or freedoms guaranteed under articles 7, 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19, 21, 22, 25 and 26 of the Covenant. The source also requests the Working Group to declare the detention to be arbitrary under category III, since judicial independence has not been guaranteed in the trial proceedings.

Response from the Government

41. The Working Group transmitted the source's allegations to the Government on 9 December 2019 and asked it to provide detailed information on the case no later than 7 February 2020.

42. The Government replied to the communication on 30 January 2020. In its response, the Government submitted information provided by the Prosecutor's Office, the courts and the Human Rights Directorate of the Ministry of Foreign Affairs.

43. The Prosecutor's Office recounted that, in January 2018, it opened a criminal investigation into an organized criminal group operating in Casanare after receiving physical evidence and information about the start of unlawful activities on the part of this organization. The investigation established that a group of people were colluding to commit crimes.

44. According to the submission, the organization was led by Mr. Salcedo Gutiérrez who, through misinformation, succeeded in making local residents unwilling to work with the companies operating in the area and obtaining popular backing and support for violent protest activities. These activities resulted in arrests and attacks on the civilian population and involved bodily injury, violence against a public servant, damage to third party property and the obstruction of public roads, which are offences punishable under articles 112, 429, 265 and 353 (a) of the Criminal Code. The aim of all this was to force companies to enter into contracts worth millions of dollars with Mr. Salcedo Gutiérrez. The investigation found that Mr. Salcedo Gutiérrez was acting in association with Ms. Leal Oros, Ms. Salcedo Gutiérrez, Ms. Rincón Duarte, Mr. Leal Salcedo, Mr. Rincón Santisteban, Mr. Rincón Duarte and Mr. Salcedo Betancourt.

45. According to the information received from the Government, in response to the foregoing proceedings which were brought before due process and trial judges, and also before the Criminal Chamber of Casanare Court. On 16 November 2018, after hearing the prosecutor, analysing the evidence and conducting a constitutional analysis of proportionality, reasonableness, necessity and urgency, Pajarito Municipal Court proceeded to issue arrest warrants.

46. On 28 November 2018, following the court-ordered arrests, hearings began before Municipal Criminal Court of Due Process No. 2 in Yopal, Casanare. The hearings ended on December 2, and the proceedings were declared to be lawful. The court ordered that four of the eight detainees be remanded in prison. On 21 March 2019, the Prosecutor's Office filed the indictment.

47. The preparatory hearing began on 24 October 2019, and the defence team applied for preclusion of the investigation. The Prosecutor's Office and the victims' counsel opposed the request, and on 1 November it was denied by the judge. This decision was appealed. On 10 December, Yopal High Court upheld the decision to deny the application for preclusion.

48. According to the information received, the second-instance decision was read out on 21 March 2019, confirming the measures imposed. The irregularities that occurred during the raids in which the arrests were made were not addressed in this decision because the defence team should have raised them before Municipal Criminal Court No. 2.

49. The Government states that Yopal Criminal Court No. 2 reviewed 17 items of investigative evidence, including tapped telephone calls, through which it was able to identify conduct constituting criminal activity in which the accused might be assumed to have been involved. Procedural law requires only a possibility of involvement to be identified, without prejudicing the presumption of innocence. The defence team did not challenge the constitutionality or proportionality of the decision; otherwise the judge could not have ruled on the matter.

50. Court No. 1 of the Specialized Circuit of Yopal, which is hearing the trial stage of the proceedings, stated that it has rigorously respected the fundamental safeguards enjoyed by persons deprived of their liberty and that all stages of the proceedings have been carried

out in strict compliance with the law. The proceedings are currently in the trial stage, during which the evidence will be examined.

51. The Government states that, when the Code of Criminal Procedure (Act No. 906 of 2004) entered into force, the country switched to an accusatory criminal justice system built on principles of adversarialism, promptness, concentration, openness, equality of arms, presumption of innocence and legality, among others. Under this system, investigations are the responsibility of the Prosecutor's Office, while the due process judge is responsible for ensuring the lawfulness of proceedings and respect for human rights and the trial judges are responsible for evaluating evidence and attributing guilt. By virtue of the equality of arms principle, the parties face each other in the proceedings and have access to the same tools to argue their case before the judge, without privilege or disadvantage. This ensures that the court is impartial and independent.

52. The Government reports that in the present case the decision on deprivation of liberty was taken by Due Process Judge No. 2 and was confirmed by his superior. In the proceedings, the parties were able to submit arguments and items of evidence to the judges and to contest and challenge those submitted by the other. In the Government's view, the proceedings have clearly been independent and impartial, as the judges have denied a number of the prosecution's requests and have accepted applications from the defence. The decisions to deprive the defendants of their liberty was based on relevant principles and norms, and were necessary, proportionate and reasonable. The Government points out that when ruling to deprive them of their liberty, Yopal Criminal Court No. 2 based its decision on items of material evidence from which it could be inferred that the defendants might have engaged in criminal acts.

53. The Government reports that the Attorney General's Office is under an obligation to investigate criminal acts and initiate criminal proceedings whenever circumstances indicate and there are grounds to believe that criminal acts might have been committed. Criminal prosecutions may not be suspended, interrupted or discontinued.

54. For the Government, there is no doubt that the investigative efforts provided material evidence to support the charges brought. There is no evidence of arbitrariness, partiality or lack of objectivity in the work of the prosecutors assigned to the case, and the possible involvement of the defendants can be inferred from items of evidence presented during the proceedings before the due process judges.

55. Given the presumption of innocence, the defence team will be able to submit further evidence and dispute the evidence already presented and heard during the oral hearing. To be able to hand down a conviction, the judge must be convinced of the criminal responsibility of the accused beyond all reasonable doubt and the decision must be based on the evidence examined during the trial.

56. Colombia's legal system meets international standards in this area, especially with regard to the rights and procedural safeguards established in articles 8 to 11 of the Universal Declaration of Human Rights and articles 2 and 9 et seq. of the Covenant, in particular article 14.

Further comments from the source

57. The Working Group transmitted the Government's response to the source on 30 January 2020. The source submitted final comments and observations on the Government's response on 14 February 2020.

58. In these final observations, the source reiterates that the detention is arbitrary under category II, in that it results from the exercise of the right to freedom of expression, association and participation during the protests in San Luis de Palenque organized to demand the settlement of debts owed to the community, the repair of public roads and the payment of debts owed to local companies that provided services to the oil company. The source also points out that the Government has never provided proof of the existence of an organized crime group. There is, on the other hand, clear evidence that no such group exists. The allegations of organized criminal activity were falsely made in an attempt to justify the application, apparently improperly, of Act No. 1908. This made it possible to hold the

leaders and organizers of the demonstrations in pretrial detention, thereby preventing them from continuing to promote protests in their community. The charge of causing bodily harm to a public servant is based solely on the attribution of responsibility for convening the demonstration; no individual responsibility for the conduct that allegedly caused the physical injuries is specified.

59. With regard to category III, the source stresses that the Government omitted to refer to the links between the Prosecutor's Office, Frontera Energy, the army and Ecopetrol, which have a significant impact on the independence and impartiality of the justice system. Emphasis is also placed on the undue interference of senior State officials, who publicly attributed criminal responsibility in advance of the hearing, in violation of the principle of presumption of innocence. Lastly, the source highlights the excessive length of the pretrial detention, which is continuing through the trial.

Discussion

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

61. 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

62. In the present case, the Working Group has been able to establish, on the basis of the information provided, that Mr. Salcedo Gutiérrez, Mr. Leal Salcedo and Mr. Salcedo Betancourt are in pretrial detention, while Ms. Leal Oros, Ms. Salcedo Gutiérrez, Ms. Rincón Duarte, Mr. Rincón Santisteban and Mr. Rincón Duarte are under house arrest, unable to leave their homes and subject to electronic surveillance. The Working Group has found that house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave.³ In the present case, the Working Group received consistent information from the parties through which it was able to ascertain that five of the eight individuals who are the subject of the communication are under house arrest, fitted with electronic tagging devices, in an enclosed space that they are not allowed to leave. It will therefore proceed to consider whether these deprivations of liberty are arbitrary.

63. After reviewing all the available information, the Working Group established that, since 2016, and in 2018 in particular, the eight human rights defenders participated in social protest activities and demonstrations in defence of economic, social, cultural and environmental rights, denouncing the impact of activities carried out by an oil company in Casanare.

64. The Working Group was informed that, on 27 November 2018, simultaneous raids were carried out on the homes of the eight defenders, without a representative of the prosecution service being present, in an operation in which hundreds of police and army officers were deployed. The arrestees were taken to Yopal police station and, subsequently, to the immediate response unit of the Prosecutor's Office.

(ii) Category II

65. The Working Group emphasizes that everyone has the right to freedom of expression, in accordance with article 19 of the Universal Declaration of Human Rights, and that this right includes freedom to impart information and ideas of all kinds, either orally or by some other means of communication. In addition, the Working Group reiterates that the exercise of this right may be subject to restrictions only when expressly provided

² A/HRC/19/57, para. 68.

³ E/CN.4/1998/38, para. 20.

for by law and 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.⁴

66. 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 of every free and democratic society.⁵ These two freedoms form a basis for the effective enjoyment of a wide range of other human rights, including the rights to freedom of assembly and association.⁶

67. Freedom of expression is of such importance that no Government may infringe 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. The right to exercise freedom of expression in the context of peaceful protests to demand respect for agreements that affect environmental, economic, social and cultural rights must be respected, as any restriction of this right is incompatible with the Universal Declaration of Human Rights and the Covenant. It is unacceptable to categorize the expression of an opinion through peaceful social protest as an offence, nor is it permissible for persons to be harassed, intimidated or stigmatized, arrested, detained, tried or imprisoned, on account of the opinions they may hold.⁷

68. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that:

“assembly organizers and participants should not be considered responsible (or held liable) for the unlawful conduct of others, [...] and should not be held responsible for the maintenance of public order”.⁸

69. According to the information received, members of the local community in San Luis de Palenque participated in a series of protests starting in January 2018, and, on 26 February, the authorities responded to a demonstration using force, which resulted in clashes between the police and demonstrators in which one police officer was injured. Subsequently, the Prosecutor's Office laid criminal charges against the eight human rights defenders and community leaders who convened and participated in the protests, and they were held responsible for causing bodily injury and committing other offences related to the protests.

70. The Working Group was convinced that the protests in which the eight defenders participated were prompted by the oil company's apparent failure to comply with agreements, with allegedly adverse consequences for the environment and the economic rights of workers and members of the local community. The information provided also shows that the Prosecutor's Office accused these persons of forming part of an organized criminal group, without putting forward convincing information to substantiate the claim that such a group existed and was in active operation. The Working Group was also not convinced that the conduct did not result directly from the exercise of the right to freedom of expression in the context of social protest.

71. On the other hand, in recent years the Working Group has received convincing information about the detention of social leaders and members of rural communities in Colombia against whom criminal law has been used apparently to restrict their rights and their work to defend human rights in the face of oil company activities.⁹

72. The Working Group received convincing information from the source, which was not disputed by the Government, that, between 2017 and 2019, 16 community leaders and human rights defenders were arrested in Casanare. Most of these persons were prosecuted for obstructing public roads and for taking part in demonstrations to demand social and environmental rights.

⁴ Opinion No. 58/2017, para. 42.

⁵ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 2.

⁶ Ibid., para. 4.

⁷ Ibid., para. 9.

⁸ See A/HRC/20/27, para. 31.

⁹ Office of the Ombudsperson, Risk Report No. 010-17 A.I., 30 March 2017.

73. The Working Group also ascertained that the Office of the Ombudsperson had categorized social, environmental and community leaders and human rights defenders as a vulnerable social group and had warned of the risk they face in San Luis de Palenque.

74. The Working Group is likewise aware that, in his most recent visit to Colombia, the Special Rapporteur on the situation of human rights defenders found that 202 land and environmental rights defenders had been prosecuted since 2012.¹⁰

75. Furthermore, the Judiciary has recognized that the community mobilized to protest against the activities of oil companies. When persons are accused of being members of a criminal organization, the permitted time limits for pretrial detention are extended. The Working Group therefore considers that the accusations made by the Prosecutor's Office, with the support of the national police and army, were intended to restrict social organization and the community's capacity to mobilize in protest. Such action violates the rights of assembly and association and freedom of opinion, expression and participation in the public affairs of the country through social protest against the negative impact on human rights of by oil company activities.

76. On the basis of the foregoing, the Working Group considers the arrest and detention of the eight human rights defenders to be arbitrary under category II, as they result from the exercise of the rights or freedoms guaranteed by articles 7, 18, 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21, 22, 25 and 26 of the Covenant. The Working Group is referring this case to the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

(iii) Category III

77. In the light of the findings made in relation to categories I and II, in which it concluded that the detention results from the exercise of the rights to freedom of expression and association, the Working Group considers that there is no justifying basis for the trial. However, since a trial is taking place, and the complainants are facing potentially severe penalties, and in view of the claims made by the source and the Government's response, the Working Group will proceed to analyse whether, in the course of the judicial proceedings, the fundamental components of a fair, independent and impartial trial have been respected.

78. Both the Universal Declaration of Human Rights and the Covenant recognize the right of everyone accused of an offence to a fair and public hearing, with every guarantee, by a competent, independent and impartial tribunal.¹¹

79. Access to a public hearing by a competent, independent and impartial court is a key element of protection for other human rights, as it is designed to ensure the proper administration of power and guarantee a series of specific rights.¹² The Human Rights Committee has recalled that the requirement of competence, independence and impartiality of judicial bodies is an absolute right that is not subject to any exception.¹³ Impartiality should be understood, first, as a requirement that judges must not allow their decisions 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 one of the parties to the detriment of another. Second, the judicial body must also appear to a reasonable observer to be impartial.¹⁴

80. In addition, the Working Group is aware that the Special Rapporteur on the independence of judges and lawyers has noted that the Guidelines on the Role of Prosecutors are, "at the global level, the main instrument specifically aimed at regulating

¹⁰ A/HRC/43/51/Add.1, para. 29.

¹¹ Article 10 of the Declaration and article 14 of the Covenant.

¹² General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 2.

¹³ Ibid., para. 19.

¹⁴ Ibid., para. 21.

the profession of prosecutors”.¹⁵ With this in mind, the Working Group would like to recall that the preamble to these Guidelines reaffirms the rights to equality before the law, to be presumed innocent and to a fair and public hearing by an independent and impartial tribunal.¹⁶ These rights are enshrined in the Universal Declaration of Human Rights, the Covenant and the American Convention on Human Rights, among other instruments.

81. The Working Group is of the view that the criteria of competence, impartiality and independence, and in general the guarantees of a fair trial required of judges, are also applicable to prosecutors, as the latter have a key role in the administration of justice and the fight against crime. In accordance with international human rights law, prosecutors are under an obligation to perform their duties fairly, consistently and expeditiously, to respect and protect human dignity and to uphold human rights.¹⁷ Their obligations include carrying out their duties impartially, acting with objectivity and giving due attention to all relevant circumstances.¹⁸ In this connection, as pointed out by the Special Rapporteur on the independence of judges and lawyers:

“Prosecutors are the essential agents of the administration of justice, and as such should respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system. Prosecutors also play a key role in protecting society from a culture of impunity and function as gatekeepers to the judiciary.”¹⁹

82. In this regard, the Working Group underscores the importance of prosecutors’ active role in criminal proceedings and, more generally, in protecting society against crime. This role includes instituting prosecutions, investigating offences, monitoring the lawfulness of proceedings and the enforcement of court judgments and exercising other functions as representatives of the general public interest.²⁰ For the Working Group, it is essential that prosecutors act in strict compliance with the principle of lawfulness under the rule of law.

83. In assessing the independence and impartiality of prosecutors, it is important to examine both the structural independence of prosecutors’ offices and their operational independence and impartiality, or functional independence, given that a “lack of autonomy can erode the credibility of the authority responsible for investigating crimes objectively and undermine confidence in its ability to do so”.²¹ In this context, States have a duty to ensure that prosecutors can carry out their functions without undue interference.²²

84. In the present case, the Working Group will examine whether the Prosecutor’s Office acted independently and impartially in investigating and bringing criminal charges against the eight human rights defenders.

85. The Working Group wishes to recall that army and police officers were involved in the arrest of the eight individuals. The Working Group also received information, which was not refuted by the Government, that security agreements had been concluded between the oil companies, the national army and the support units of the Prosecutor’s Office, which are divisions tasked with investigating and prosecuting offences against the oil and gas industry. The Working Group notes that one of the main witnesses for the prosecution of the eight persons deprived of their liberty is an employee of Frontera Energy who stated that the eight human rights defenders were members of an organized criminal group.

86. The Working Group received convincing information about the two agreements that Frontera Energy concluded with the Ministry of Defence, under which the army undertook to provide special protection in the company’s areas of interest in exchange for financial considerations. The Working Group was convinced that the prosecutor assigned to the case has his office on the premises of Manare military cantonment’s sixteenth brigade in Yopal.

¹⁵ A/HRC/20/19, para. 20.

¹⁶ A/CONF.144/28/Rev.1, second and fifth preambular paragraphs.

¹⁷ *Ibid.*, para. 12.

¹⁸ *Ibid.*, para. 13 (a) and (b).

¹⁹ A/HRC/20/19, para. 93.

²⁰ A/CONF.144/28/Rev.1, para. 11.

²¹ A/HRC/17/30/Add.3, para. 16. See also para. 87.

²² A/HRC/20/19, para. 26.

During 2018, when the investigation began and the eight persons were arrested, this office benefited from agreements with Frontera Energy that provided for the maintenance of the premises where the prosecutor works.

87. The Working Group also received information, which was not refuted by the Government, about the cooperation agreements that Ecopetrol has concluded with the Prosecutor's Office since 2015, under which the prosecution service reinforces resources assigned to the investigation and prosecution of actions "that affect Ecopetrol, its business group and associates, and involve offences of [...] obstructing public roads [...] during social protests that prevent the smooth operation of the oil industry".

88. The Working Group received information from the source, which was not disputed by the Government, that agreements of this nature were in force during the investigation that the Prosecutor's Office instigated against the community leaders of San Luis de Palenque and that, as at 31 May 2019, the Prosecutor's Office had initiated 196 investigations for offences committed in scenarios of social protest against oil company activities.

89. The Special Rapporteur on the situation of human rights defenders, in his report on his last visit to Colombia, made reference to these agreements, which directly and indirectly generate a perception of lack of independence and impartiality in the actions of the Attorney General's Office, particularly because it seems to perform its duty to investigate and bring charges against persons in a manner that favours the companies with which it has concluded financial agreements.²³

90. In view of the agreements that oil companies have concluded with the army and the Attorney General's Office under which the prosecution service undertakes to provide security and investigate crimes related to the oil industry, and considering that the prosecutor responsible for bringing the charges in the present case was working from the military headquarters and apparently benefiting from the resources provided under some of these agreements, the Working Group is of the opinion that, in the present case, the Prosecutor's Office would not appear to a reasonable observer to be acting with the impartiality and independence required in accordance with article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant.

91. 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 series of obligations on all State institutions, requiring them to treat persons accused of a criminal offence as innocent until they have been found guilty beyond any reasonable doubt. This right also carries an obligation for all public authorities to refrain from prejudging the outcome of a trial, for example, by abstaining from making public statements affirming the guilt of the accused.²⁴

92. The Working Group has determined that statements publicly and openly condemning the accused persons before a judgment has been made violate the presumption of innocence and constitute undue interference that undermines the independence and impartiality of the trial.²⁵

93. The Inter-American Court of Human Rights has stated that:

"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

²³ A/HRC/43/51/Add.1, para. 30.

²⁴ General comment No. 32, para. 30. See also Human Rights Committee, *Kozulina v. Belarus* (CCPR/C/112/D/1773/2008), para. 9.8.

²⁵ Opinions No. 90/2017, No. 76/2018 and No. 89/2018.

and caution when making public statements regarding criminal proceedings before the person has been tried and a judgment has been made.”²⁶

94. The public statements of high-ranking officials violate the right to be presumed innocent if they declare persons guilty of an offence for which they have not yet been tried, thereby creating a public perception of guilt, besides attempting to influence or prejudice the examination of the facts by the competent judicial authority.²⁷

95. In the present case, the Working Group found that senior government officials had made public statements and accusations incriminating the eight defenders. In particular, the Working Group received the testimony of the chief of staff and second commander of the sixteenth brigade, who stated, in reference to the detention of the eight persons, that:

“Since 2016 the defendants have been organizing blockades against oil and gas contractors. In the rural area within the municipality of San Luis de Palenque, blockades of this kind have been carried out in the villages of La Venturosa and Platanales. As the public is well aware, these blockades have involved indiscriminate attacks against the civilian population, including the drivers of vehicles. The public security forces have also come under attack [...]. Each force is organizing its resources and capacities to support the Prosecutor’s Office in judicial proceedings involving raids leading to the capture of members of the organized criminal group known as the ‘Masked Horsemen’ (Jinetes de Caretas).”

96. The source submitted convincing information, which was not refuted by the Government, about the connection between Frontera Energy, the army’s sixteenth brigade and the Public Prosecutor’s support unit in the criminalization of the eight defenders and the possible impact of the agreement between Ecopetrol and the Prosecutor’s Office on the situation. For the Working Group, this clearly undermines the principle of independence and impartiality that should govern the process. The Government has also not contested the claim that statements condemning the accused were made public prior to sentencing.

97. The Working Group also notes the information provided by the source, and not refuted by the Government, about the manner in which the arrest of the eight environmental defenders was carried out. The arrests were made at the same time (approximately 2.45 a.m.) without a prosecution service representative being present and deploying around 200 police and army officers, who used violence to complete the task. In addition, a special law against organized crime was invoked from the start of the criminal proceedings. These facts suggest that the investigating and arresting authorities, who were acting in conjunction with each other, already had a preconceived notion about the guilt of the eight environmental defenders, and strengthen the Working Group’s conviction that the principle of presumption of innocence was not respected in the present case.

98. Lastly, the Working Group notes the excessive length of the period during which the accused have been deprived of their liberty in the present case, for having exercised their right to freedom of expression. Article 9 (3) of the Covenant stipulates that pretrial detention must be the exception to the rule, while article 14 (3) (c) stipulates that everyone charged with a criminal offence has the right to be tried without undue delay. In the present case, the Government has not provided a reasonable justification for the use of pretrial detention, nor has it explained the reasons for the 18-month delay in bring the eight defenders to trial for having exercised their right to freedom of expression, association and participation in public affairs. In the Working Group’s view, cases in which it can be presumed that the deprivation of liberty results from the exercise of human rights require greater scrutiny by the national authorities, reinforce the requirement that pretrial detention be used on an exceptional basis only, and make it even more important that the trial be conducted without undue delay.

²⁶ *Pollo Rivera et al. v. Peru*, para. 177. See also *Tibi v. Ecuador*, para. 182; and *J. v. Peru*, paras. 244–247. European Court of Human Rights, *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; *Daktaras v. Lithuania*, para. 42; *Ismoilov and Others v. Russia*, para. 161, *Ismoilov and Others v. Russia*, para. 161.

²⁷ See opinions No. 6/2019 and No. 12/2019.

99. In the light of the above, the Working Group is of the opinion that the Prosecutor's Office did not act objectively and impartially in the investigation and indictment of the eight environmental defenders, and that high-level Colombian authorities violated the defenders' right to be presumed innocent and held them in pretrial detention for a prolonged period without justification, which constitutes a serious breach of the international fair trial standards set out in article 11 of the Universal Declaration of Human Rights and article 14 of the Covenant. Their detention may therefore be considered arbitrary under category III. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

(v) Category V

100. The Working Group notes that the present case is framed in a broader context of persecution and criminalization of persons who work to defend human and environmental rights. The Special Rapporteur on the situation of human rights defenders drew attention to this situation following his visit to Colombia in 2018,²⁸ and the Office of the United Nations High Commissioner for Human Rights has also highlighted the problem.²⁹ The Office of the Ombudsperson, which serves as the national mechanism for the promotion and protection of human rights, has also reached similar conclusions.³⁰

101. This case is about the detention not of a single individual, but of eight persons who share the same characteristic, i.e. they have all exercised their rights to freedom of expression, association and participation in order to demand respect for environmental and community rights that are being compromised by oil and gas-related activities. The profile of human rights and environmental defenders places them within a vulnerable group that has been systematically persecuted and criminalized in Colombia. This situation leads the Working Group to conclude that the detention was discriminatory, in that the detainees all belonged to a specific vulnerable social group. Accordingly, the Working Group considers that the detention constitutes a violation of international law as it involves discrimination on the grounds of membership of a group of human rights and environmental defenders, which also makes it arbitrary under category V.

102. Lastly, the Working Group would welcome the opportunity to visit Colombia in order to work with the Government to address the issue of arbitrary deprivation of liberty. Given that a significant amount of time has passed since it last visited Colombia in October 2008, the Working Group considers that this would be an appropriate time for it to revisit the country. The Working Group recalls that the Government issued a standing invitation to all thematic special procedure mandate holders in March 2003, and looks forward to a positive response to its previous request to visit, made on 30 August 2018.

Decision

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

The deprivation of liberty of Ms. Leal Oros, Ms. Salcedo Gutiérrez, Ms. Rincón Duarte, Mr. Salcedo Gutiérrez, Mr. Leal Salcedo, Mr. Rincón Santisteban, Mr. Rincón Duarte and Mr. Salcedo Betancourt, being in contravention of articles 7, 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II, III and V.

104. The Working Group requests the Government of Colombia to take the steps necessary to remedy the situation of Ms. Leal Oros, Ms. Salcedo Gutiérrez, Ms. Rincón Duarte, Mr. Salcedo Gutiérrez, Mr. Leal Salcedo, Mr. Rincón Santisteban, Mr. Rincón Duarte and Mr. Salcedo Betancourt without delay and to 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.

²⁸ A/HRC/43/51/Add.1.

²⁹ A/HRC/43/3/Add.3.

³⁰ Office of the Ombudsperson, Risk Report No. 010-17 A.I., 30 March 2017.

105. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Leal Oros, Ms. Salcedo Gutiérrez, Ms. Rincón Duarte, Mr. Salcedo Gutiérrez, Mr. Leal Salcedo, Mr. Rincón Santisteban, Mr. Rincón Duarte and Mr. Salcedo Betancourt immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law. In the context of the current global pandemic caused by the coronavirus disease (COVID-19) and the threat that the disease poses in places of detention, the Working Group calls on the Government to take urgent action to ensure the immediate release of the three individuals who are being held in prison.

106. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the eight defenders and to take appropriate measures against those responsible for the violation of their rights.

107. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

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

Follow-up procedure

109. 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. Leal Oros, Ms. Salcedo Gutiérrez, Ms. Rincón Duarte, Mr. Salcedo Gutiérrez, Mr. Leal Salcedo, Mr. Rincón Santisteban, Mr. Rincón Duarte and Mr. Salcedo Betancourt have been released and, if so, on what date;

(b) Whether Ms. Leal Oros, Ms. Salcedo Gutiérrez, Ms. Rincón Duarte, Mr. Salcedo Gutiérrez, Mr. Leal Salcedo, Mr. Rincón Santisteban, Mr. Rincón Duarte and Mr. Salcedo Betancourt have been granted compensation and other reparations;

(c) Whether an investigation has been conducted into the violation of the rights of Ms. Leal Oros, Ms. Salcedo Gutiérrez, Ms. Rincón Duarte, Mr. Salcedo Gutiérrez, Mr. Leal Salcedo, Mr. Rincón Santisteban, Mr. Rincón Duarte and Mr. Salcedo Betancourt and, if so, the outcome of the investigation;

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

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

110. 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.

111. 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.

112. 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.³¹

[Adopted on 29 April 2020]

³¹ Human Rights Council resolution 42/22, paras. 3 and 7.