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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018

Opinion No. 6/2018 concerning Alberto Javier Antonio March Game (Ecuador)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. 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 13 September 2017, the Working Group transmitted to the Government of Ecuador a communication concerning Mr. Alberto Javier March Game. The Government replied on 24 November 2017. 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. Mr. Alberto Javier Antonio March Game, aged 55, is an Ecuadoran citizen and an engineer and business owner.
5. According to the information received, Mr. March Game was arrested by the National Police in the early morning on 17 June 2016 during a raid on his home, located in Samborondón Canton in Guayas Province. An arrest warrant for investigative purposes was reportedly shown at this time. He was then transferred to the judicial complex at the Albán Borja shopping centre in Guayaquil, where his statement was taken.
6. The source states that, following his arrest, it came to light that the Office of the Special Prosecutor to Combat Money-Laundering in Quito had been pursuing an investigation for approximately a year without notifying the persons under investigation so that they could exercise their right to a defence.
7. According to the source, on the evening of 17 June 2016, a hearing to bring charges was held before the judge responsible for hearing flagrante delicto cases in Guayaquil. The prosecutorial investigation process began at that time and the pretrial detention of Mr. March Game and his co-defendants was ordered.
8. The source states that, at this time, the decision was made to handle the case through a procedure known as *modo relatado* (based on reports), said to be applicable only in cases of apprehension in flagrante delicto, which would not be appropriate in this case, according to article 594 of the Comprehensive Organic Criminal Code. A violation of due process is therefore claimed. In addition, the source contends that the investigation and prosecution stage of the case took place entirely in Quito, which would infringe the principle of the natural judge, as Guayaquil should have been considered the competent jurisdiction, since it was the location in which the offence allegedly occurred and where the defendants were resident.
9. According to the information received, after 120 days of pretrial detention, the criminal investigation stage was declared closed and a pretrial hearing was held at which the prosecutor's report was presented. The prosecutor accused and charged Mr. March Game with the crime of money-laundering. However, the source reported that the prosecutor did not at this time indicate the alleged unlawful origin of the money, which made it impossible for Mr. March Game to exercise his right to defend himself against the accusation.
10. It is reported that, on 30 March 2017, the judge of criminal court No. 2 in the Canton of Guayaquil issued a committal for trial order. The case then reportedly went on to be heard by the criminal court in Guayaquil, consisting of a panel of three judges who convened an oral trial. According to the source, the trial took place in three sessions, held on 9, 13 and 15 May 2017.
11. The source states that, upon conclusion of the trial, and in accordance with the law, an oral decision was issued in which the court ruled that an offence had been committed and found the accused criminally responsible; Mr. March Game was thus found guilty of the crime of money-laundering and sentenced to 11 months' imprisonment and a fine of US\$ 100,000.
12. However, according to the information received, on 16 May 2017, after having issued and given notice of the court's final judgment, the judges who handed down this judicial decision were suspended by means of an administrative disciplinary sanction and were subsequently replaced by three new judges.
13. On the same day, 16 May 2017, the three new judges assumed jurisdiction over the case and issued a "general order" vacating the final judgment. The source emphasizes that this occurred despite the fact that the judges had not been present during the hearings, knew nothing about the substance of the case and would not have had time to assess it. The source alleges that this "general order" was unlawful and violated the rights and guarantees of due process and the principles of *res judicata*, *ne bis in idem* and personal freedom.

14. The source argues that the “general order” violated legal provisions prohibiting the modification of the oral judgment handed down, in particular article 100 of the General Organic Procedural Code and article 3 of the binding resolution of the National Court of Justice of 5 October 2011, published in Official Gazette No. 654.

15. In accordance with the information received, an appeal opposing the “general order” was reportedly lodged with the criminal division of the provincial court of Guayas, which rejected the appeal on the grounds that the order was not a nullification order but rather an order vacating the sentence. Moreover, the source states that motions for clarification and amplification, review and reconsideration were submitted to the panel of judges, but were all denied on the same grounds on which the appeal had been rejected.

16. In addition, the source reports that a habeus corpus petition was filed with the provincial court of Guayas, alleging that the prison term of 11 months imposed in the sentence had already been served. Moreover, in this *amparo* action it was argued that, even if the “general order” was found to be valid, the pretrial detention period would already have ended, as under article 541 of the Comprehensive Organic Criminal Code its maximum duration (one year) would have elapsed. The habeus corpus petition was denied by the provincial court.

17. For the reasons laid out above, the source contends that the detention of Mr. March Game is arbitrary under category I because, it is argued, there is no legal basis for it, given that: (a) Mr. March Game has already been deprived of his liberty for the period of the sentence he was given, and (b) he has been held in pretrial detention for the maximum period permitted under national law.

18. Moreover, the source alleges that the deprivation of liberty of Mr. March Game is arbitrary under category III because there was a failure to comply with international fair trial standards. These arguments are based on the following claims: (a) Mr. March Game was not notified during the investigation stage so that he could exercise his right to a defence; (b) a procedure applicable under the rules for flagrante delicto cases was carried out when Mr. March Game was arrested at his home in the early morning, although he was not engaged in committing, nor had he just committed, any offence; (c) the prosecutor’s office conducted the entire investigative stage in Quito, far from Mr. March Game’s residence and the jurisdiction where the offence had allegedly been committed, which made it significantly more difficult for him to exercise his right to a defence; and (d) the source alleges that Mr. March Game is not being detained under an independent and impartial legal system, as his natural judges were suspended and the replacement judges were named without a proper prior procedure in accordance with the law.

Response from the Government

19. On 13 September 2017, the Working Group transmitted the allegations from the source to the Government, and requested that the Government provide its response by 13 November 2017. The Government requested that the Working Group extend this deadline, which it did, establishing the new deadline as 24 November 2017. The Government submitted its response to the source’s allegations on 24 November 2017.

20. The Government indicates that it registered the money-laundering case against Mr. March Game and others (case No. 170101815061924) on 10 June 2015.

21. In view of this information, the preliminary investigation stage was begun, pursuant to articles 580 to 588 of the Comprehensive Organic Criminal Code. The preliminary investigation is confidential in nature and is not public. However, it recognizes the right of “the victim and the persons under investigation and their counsel to have immediate, effective and adequate access to investigations upon request”.

22. On 17 June 2016, the prosecutor in charge of the case requested, under articles 480 and 577 of the Comprehensive Organic Criminal Code, that the judge of the first criminal court in Samborondón issue a warrant to search the property and seize objects from Mr. March Game’s residence with the aim of searching for and collecting elements or evidence that might help with the investigation. Furthermore, pursuant to article 490 of the same

Code, it was requested that the investigation remain confidential. The request was granted by the judge, who ordered the search and seizure.

23. On 17 June 2016, as a result of the request made by the prosecutor in charge of the case, the judge of the Guayaquil criminal court unit with jurisdiction over flagrante delicto cases, acting pursuant to articles 530 to 532 of the Comprehensive Organic Criminal Code, ordered the arrest of Mr. March Game for investigative purposes.

24. Under the court orders referred to above, on 17 June 2016, the money-laundering unit of the National Anti-Drug Trafficking Directorate of the Ecuadorian National Police carried out the raid and arrested Mr. March Game.

25. The Government maintains that, during the arrest, the police lieutenant responsible informed Mr. March Game of his constitutional rights under article 77 (3) and (4) of the Ecuadorian Constitution. Following his arrest, Mr. March Game underwent a medical examination where it was concluded that he showed no sign of injury, and he was later transferred to the flagrante delicto crimes unit in Guayaquil.

26. On the night of the day Mr. March Game was arrested, a hearing was held to bring charges under article 591 of the Comprehensive Organic Criminal Code, at which point the prosecutorial investigation stage commenced. At the hearing, the special prosecutor charged him with the apparent commission of the offence provided for under article 317, money-laundering, on the grounds that there was sufficient evidence of the existence of the offence. In addition, it was established that the offence was punishable by a term of imprisonment of over a year and that non-custodial interim measures would not be sufficient. As a result, in accordance with article 317 (3) of the Comprehensive Organic Criminal Code, pretrial detention was necessary to ensure the presence of the person under investigation at the trial and the enforcement of the sentence.

27. The judge of the Guayas criminal court unit with jurisdiction over flagrante delicto cases, after the parties had been given the opportunity to address the court through their private lawyers, determined that the requirements set out under article 522 (6) and article 534 of the Comprehensive Organic Criminal Code had been met and thus issued a pretrial detention order against Mr. March Game and six other individuals.

28. On 21 June 2016, in accordance with article 160 (1) of the Organic Code of the Judiciary, the process of selecting a court to hear the case began, and the case (which was assigned No. 09286-2016-02579) was allocated to the northern criminal court No. 2 in Guayaquil.

29. On 23 June 2016, the judge of the northern criminal court No. 2 in Guayaquil agreed to hear the case and resolve the legal situation of the defendants. The judge also decided to admit an appeal against the pretrial detention order that had reportedly been filed, and the matter was thus referred to the next higher court.

30. On 9 September 2016, the decision of the criminal division of the provincial court of Guayas on the defendants' prior appeal was attached to the case file. In the decision, the appeals filed were rejected and the pretrial detention order was upheld.

31. On 25 October 2016, by order of the northern criminal court No. 2 in Guayaquil, a pretrial hearing was scheduled for 18 November 2016, in accordance with article 599 (1) of the Comprehensive Organic Criminal Code. However, the hearing was postponed several times at the request of the prosecutor and the defendants.

32. Eventually, after several deferrals, the pretrial hearing was held on 30 March 2017. At the hearing, a committal order was issued and the defendants were bound over for trial, in accordance with article 42.3 of the Comprehensive Organic Criminal Code. Mr. March Game was named as a possible co-perpetrator of the offence defined and punishable under article 317 (1), (3), (4) and (5) of the Code. In addition, he was ordered to be held in pretrial detention.

33. On 10 April 2017, the case was assigned to the criminal court in Guayaquil.

34. On 20 April 2017, in line with the procedural principles of orality, publicness, immediacy and confrontation, as set out in articles 610 and 611 of the Comprehensive

Organic Criminal Code, the parties to the judicial proceedings were summoned to appear at a public, oral and adversarial trial on 9 May 2017.

35. The trial took place on the date indicated. On 10 May 2017, it was determined that the oral, public and adversarial trial would be reconvened on 13 May 2017.

36. On 16 May 2017, the criminal court in Guayaquil found Mr. March Game guilty and sentenced him to 11 months' imprisonment and a fine of US\$ 100,000.

37. The Government indicates that the Council of the Judiciary suspended the judges who had heard and ruled on the case for "a disciplinary matter", and consequently appointed new judges. On 16 May 2017, the new judges issued a general order that stated: "through provincial suspension procedure No. S-0022-SNCD-2017-PM, of the President of the Council of the Judiciary, dated 16 May 2017, in Quito, at 8 a.m. [...] the decision was taken to order a provisional suspension of the exercise of their functions". As a result, the case was transferred to a new court to be adjudicated, as the previous court had not been competent, rendering "null and void all action taken in the present trial as from the date of the summons to trial on 9 May 2017, at 10.30 a.m., issued on 20 April 2017, at 11.39 a.m., and the later summons for the trial to reconvene on 13 and 15 May 2017, at 9 a.m. and 4 p.m., respectively, in which the oral decision was communicated, that decision also being null and void".

38. The Government indicated that, at the time it submitted its response, the matter was in the trial stage before the criminal court in Guayaquil.

39. In May 2017, Mr. March Game filed an application for writ of habeas corpus, which was considered by the civil division of the provincial court of Guayas. On 19 May 2017, the civil division agreed to hear the case and admitted the application for habeas corpus. On the same day, 19 May 2017, Mr. March Game submitted a document in which he withdrew the application. Consequently, on 22 May 2017 the court declared the proceedings closed.

40. In July 2017, Mr. March Game lodged a new habeas corpus application, which, on 3 July 2017, was assigned to the criminal division of the provincial court of Guayas.

41. On 6 July 2017, the criminal division of the provincial court of Guayas ruled that "the competent judge did not issue the detention order arbitrarily, but rather on the basis of the law and the evidence as assessed by the judge himself, which led him to conclude that Mr. March Game had been involved in the commission of the offence defined and punishable under article 317 (1), (3), (4) and (5) of the Comprehensive Organic Criminal Code; the order is not unlawful since it was issued and confirmed by a judge with jurisdiction and competence conferred by the Constitution and by law; therefore, the deprivation of liberty cannot be considered unlawful, arbitrary or wrongful". The court also found that the requests for postponement of hearings in this case constituted "attempts to delay or interrupt the normal course of the proceedings so that the case would become time-barred". The court denied the writ of habeas corpus.

42. The Government notes that the Inter-American Court of Human Rights, in the *Gangaram-Panday* case, defined the concept of arbitrary detention in the following terms: "No one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality."¹

43. Consequently, even a detention classified as legal might constitute a rights violation unless there is "sufficient evidence to lead to a reasonable supposition of guilt of the person submitted to a proceeding and the arrest must be strictly necessary to ensure that the

¹ Inter-American Court of Human Rights, *Gangaram-Panday v. Suriname*, para 47; see also *Suárez Rosero v. Ecuador*, para. 43; *"Street Children" (Villagran-Morales et al.) v. Guatemala*, para. 131; *Bámaca-Velásquez v. Guatemala*, para. 139; *Juan Humberto Sánchez v. Honduras*, para. 78; *Maritza Urrutia v. Guatemala*, para. 65; *Gómez-Paquiyaui Brothers v. Perú*, para. 83; *Tibi v. Ecuador*, para. 98; *Acosta-Calderón v. Ecuador*, para. 57; *Palamara-Iribarne v. Chile*, para. 215; *Chaparro Álvarez and Lapo Ñíguez v. Ecuador*, para. 90; *Yvon Neptune v. Haití*, para. 97.

accused party will not impede an effective development of the investigations nor will he evade the action of justice”.²

44. With regard to the source’s assertion that Mr. March Game’s detention had no legal basis since he had already served the prison term to which he had been sentenced and since he had already been held in pretrial detention for the maximum period permitted by law, the Government notes that the conclusions of the criminal division of the provincial court of Guayas that ruled on the petition for habeas corpus should be taken into account. The court took the view that the requests for postponement of hearings in the case constituted attempts to delay or interrupt the normal course of the proceedings so that the case would become time-barred for reasons not attributable to the administration of justice. In the light of the foregoing, the court decided unanimously to deny the writ of habeas corpus. The State is thus clearly not responsible for the length of the proceedings.

45. As regards the source’s allegation concerning non-compliance with international fair trial standards, the Government notes the following: regarding the failure to notify Mr. March Game of the preliminary investigation, the Government points out that preliminary investigations take place prior to any legal proceedings and are conducted by the prosecutor alone for the purpose of gathering information when a possible crime has been reported. This phase of the investigation is kept confidential in order to ensure that the evidence remains intact; nevertheless, the parties have access to the case file.

46. In respect of the source’s allegation concerning the use of a procedure that is only applicable to flagrante delicto cases, the Government contends that Mr. March Game was not prosecuted under those rules. The judge of the criminal court unit with jurisdiction over flagrante delicto cases in Guayaquil referred the case to the Council of the Judiciary to be assigned and tried in accordance with the ordinary procedure.

47. As regards the source’s argument that the prosecutor conducted the entire investigation stage in Quito, a long distance from the accused’s home and the jurisdiction in which the crime was allegedly committed, thereby seriously hindering Mr. March Game’s ability to exercise his right to a defence, the Government states that this assertion is inaccurate. It points out that only the preliminary investigation was carried out in a location other than Mr. March Game’s place of residence, and since the investigation was confidential and not part of the proceedings, there could hardly have been a breach of the right to a defence.

48. Lastly, in connection with the source’s claim that the removal and appointment of the judges who heard the case is indicative of a lack of independence and impartiality in the judicial system, the Government notes that the judiciary must be presumed to be independent and impartial until proven otherwise. Consequently, as there is no evidence to the contrary, this claim is baseless and should be dismissed.

49. In the case in question, the Government believes that it has demonstrated that Mr. March Game’s detention was lawful under articles 530 to 542 of the Comprehensive Organic Criminal Code relating to detention for investigative purposes and pretrial detention, since it was ordered by a competent judge and was justified in the context of a criminal trial, and due process was followed.

Further comments from the source

50. On 27 November 2017, the Working Group sent the Government’s reply to the source. On 11 December 2017, the source submitted the following observations and comments on the reply from the Government.

51. In the source’s view, it is obvious that the “new” judges take contradictory positions when they acknowledge and affirm the existence of an oral judgment pronounced at the trial and notified to the parties, which established the offence committed, the responsibility

² Inter-American Court of Human Rights, *Servellón-García et al. v. Honduras*, para. 90; see also *López-Álvarez v. Honduras*, para. 69; *Palamara-Iribarne v. Chile*, para. 198; *Acosta Calderón v. Ecuador*, para. 111.

of the defendants and the sentences to be imposed, but then they declare themselves unable to enforce the existing ruling, and they go on to state that they need to “hear and rule on” the legal situation of the defendants, for which purpose they convene a new trial, annulling all previous proceedings, including the oral verdict that was duly pronounced and notified to the parties. The source is of the view that this situation gravely undermines the rights of the defendants and due process guarantees, as it delayed the proceedings and — despite the fact that a judgment had already been rendered — led to the reopening of the trial, as if the earlier proceedings had never taken place.

52. The source recalls that an appeal against the judges’ order was filed in the criminal division of the provincial court of Guayas. During an oral hearing to determine leave to appeal, the appeal was rejected on the grounds that the order did not nullify the earlier verdict, but rather vacated it.

53. The source points out that the Working Group, in the report of its mission to Ecuador in 2006, has already drawn attention to various issues relating to due process that could impair procedural rights.³

54. The source considers that institutional weaknesses in Ecuador’s justice system have become increasingly apparent since 2007, and developments in Ecuador over the past decade should therefore be taken into account. According to the source, lack of security of judicial tenure and arbitrary removal of judges are recurrent phenomena in Ecuador.

55. The source considers that the case in question here illustrates this circumstance, since the three judges who tried and sentenced Mr. March Game were suspended on disciplinary grounds and the three new judges who were appointed to replace them vacated the judgment, which resulted in the arbitrary detention of Mr. March Game beyond the 11-month prison term he had already served.

56. The source reports that, on 27 November 2017, the criminal court in Guayaquil issued a new oral judgment at Mr. March Game’s second trial, acquitting him of the charges and ordering his release from custody. Still, despite his release, the source holds that his detention was arbitrary for the reasons expounded in the original communication.

Discussion

57. The mandate of the Working Group is to investigate cases of deprivation of liberty imposed arbitrarily that have been brought to its attention. In the discharge of its mandate, the Working Group refers to the relevant international standards set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and other relevant international legal standards, in accordance with its methods of work.

58. Notwithstanding the Mr. March Game’s release in November 2017, given the seriousness of the allegations made by the source and the facts of the case, the Working Group renders the present opinion in accordance with paragraph 17 (a) of its methods of work.

59. The Working Group has in its jurisprudence established the way 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 evidentiary burden to rebut those claims rests with the Government (see A/HRC/19/57, para. 68).

60. On the basis of the information provided by the parties, the Working Group was able to establish that Mr. March Game was arrested on 17 July 2016 and kept in pretrial detention for one year and five months. In addition, he was tried and sentenced twice for the crime of money-laundering; the first time he was found guilty, the second time he was acquitted.

61. Based on the information received from the parties, the Working Group concludes that Mr. March Game was held in pretrial detention from the time of his arrest on 17 July 2016. The duration of his detention thus exceeded the one-year period of pretrial detention

³ A/HRC/4/40/Add.2.

permitted under Ecuadorian law for offences punishable by more than 5 years' imprisonment. The Working Group was not persuaded by the Government's claim that Mr. March Game himself was responsible for his detention beyond the statutory limit because he filed an application for habeas corpus. In that connection, the Working Group wishes to stress that the exercise by a detained person of his or her human rights, such as the right to habeas corpus, must not be used as an excuse to absolve a State of its responsibility for the violation of other rights and guarantees of detainees, such as the presumption of innocence, the right to be tried without undue delay and the principle that pretrial detention should be ordered only as an exceptional measure, in accordance with articles 9 and 14 of the Covenant.

62. The Working Group notes that, on the day after the court trying the case rendered its judgment on 15 May 2017, the judges were replaced. The new judges annulled the sentence by way of a general order and ordered the trial to be reopened, thereby prolonging the duration of Mr. March Game's pretrial detention. It emerges from the information received that the permitted period for keeping Mr. March Game in detention repeatedly expired and was extended without any legal basis, and his legal situation remained unresolved. For those reasons, the Working Group finds that Mr. March Game's detention was arbitrary under category I.

63. The Working Group is not convinced that the investigation phase conducted by the competent authorities in Quito infringed the accused's right to a defence, since the investigation phase falls within the remit of the prosecutor's office and the investigation is normally kept confidential in order to ensure its effectiveness.

64. The Working Group considers that the Government violated the right to a fair trial (category III). It also failed to respect due process guarantees: the unjustified change of judges and the general order of 16 May 2017 annulling the earlier proceedings, including the judgment handed down at the trial on 15 May 2017, constitute a violation of international fair trial standards as established in articles 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. Moreover, the new judges decided to hear a matter that had already been adjudicated and the sentence imposed had already been served under the terms established by a competent court. This constitutes a violation of the right not to be tried twice for an offence of which the defendant has previously been convicted or acquitted.

65. Finally, in the light of the allegations made by the source regarding the lack of independence of the judiciary, the Working Group has decided to submit the information to the Special Rapporteur on the independence of judges and lawyers for information and possible action.

Disposition

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

The deprivation of liberty of Mr. Alberto Javier Antonio March Game, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary within categories I and III.

67. The Working Group requests the Government of Ecuador to take the steps necessary to remedy the situation of Mr. March Game 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.

68. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to afford Mr. March Game an enforceable right to compensation or other reparations, in accordance with international law.

69. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. March Game and to take appropriate measures against those responsible for the violation of his rights.

70. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers for information and possible action.

Follow-up procedure

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

(a) Whether compensation or other reparations have been made to Mr. March Game;

(b) Whether an investigation has been conducted into the violation of Mr. March Game'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 Ecuador with its international obligations in line with the present opinion;

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

72. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

73. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

74. The Government should disseminate through all available means the present opinion among all stakeholders.

75. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.⁴

[Adopted on 18 April 2018]

⁴ See Human Rights Council resolution 24/7, paras 3 and 7.