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**Human Rights Council
Working Group on Arbitrary Detention**

**Opinions adopted by the Working Group on Arbitrary Detention at its 84th session
(24 April to 3 May 2019)**

Opinion No. 12/2019, concerning Joaquim Forn i Chiariello, Josep Rull i Andreu, Raül Romeva i Rueda and Dolors Bassa i Coll (Spain)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 21 September 2018 the Working Group transmitted to the Government of Spain a communication concerning Messrs Joaquim Forn i Chiariello, Josep Rull i Andreu, Raül Romeva i Rueda and Ms Dolors Bassa i Coll. The Government submitted its response on 21 November 2018. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards the 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 being 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. Joaquim Forn was appointed Minister of the Interior of the Government of Catalonia on 14 July 2017. He was a councillor of Barcelona City Council from 1999 to 2017. From 2011 to 2015 he was First Deputy Mayor of Barcelona, during which time he directed the Presidency of the Council, the Department of Internal Affairs and the Department of Security and Mobility. He is the President of Transports Metropolitans de Barcelona (TMB). He was elected to the Parliament of Catalonia at the end of 2017.

5. Josep Rull was the Minister of Territory and Sustainability of the Government of Catalonia. He served as a councillor in Terrassa City Council from 2003 to 2014, and was the General Coordinator of Democratic Convergence of Catalonia (CDC) until 2016.

6. Raül Romeva was the Minister of Foreign Affairs, Institutional Relations and Transparency of the Government of Catalonia. He has been a member of the Parliament of Catalonia since 2015 and served as a member of the European Parliament from 2004 to 2014.

7. Dolors Bassa was the Minister of Social Welfare, Employment and Family of the Government of Catalonia. She served as a councillor in Torroella de Montgrí Town Council from 2007 to 2015. She has been a member of the Parliament of Catalonia since 2015.

8. On 6 September 2017, the Parliament of Catalonia voted to hold a referendum on independence. On 7 September 2017 Spain's Constitutional Court declared the referendum unconstitutional. On 20 and 21 September 2017 pro-independence protests took place in Barcelona. The referendum was held on 1 October 2017.

9. On 22 September 2017, the Public Prosecutor's Office initiated proceedings against the persons whom it believed were responsible for the demonstrations. On 16 October 2017 two political leaders who promoted the aforementioned movement were arrested.

10. On 27 October 2017, the Parliament of Catalonia voted on and passed a unilateral declaration of independence. On the same day, the Government of Spain invoked article 155 of the Spanish Constitution, suspended the Government of Catalonia and called new elections.

11. On 30 October 2017, the Public Prosecutor's Office filed a complaint for rebellion, sedition and misuse of public funds against members of the Government of Catalonia, including Mr Forn, Mr Rull and Ms Bassa.

12. On 31 October 2017, the National Court in Madrid declared itself competent to hear the complaint and summoned those under investigation to appear before it two days later in order to testify for the first time.

13. On 2 November 2017 the National Court in Madrid heard the testimony of Messrs Forn, Rull and Romeva and Ms Bassa, and ordered their detention, along with that of the Vice-President and that of other ministers of the Government of Catalonia. It is alleged that the Court did not specify the acts individually attributable to those accused.

14. On 22 November 2017, the Examining Court of the National Court referred the file to the Supreme Court in order for it to be examined by the Supreme Court.

15. On 24 November 2017, the Supreme Court, which was carrying out another investigation concerning the members of the Parliament of Catalonia, which it initiated on 30 October 2017, ordered the amalgamation of that investigation and the one initiated by the National Court.

16. On 4 December 2017, the Supreme Court granted the conditional release on bail of Messrs Rull and Romeva and Ms Bassa, and confirmed the continued detention of Mr Forn.

17. On 21 December 2017, new elections were held in Catalonia. Messrs Forn, Rull and Romeva and Ms Bassa were elected Members of Parliament. On 5 January 2018, the Appeals Chamber refused to grant the release of Mr Forn.

18. On 24 January 2018, after his requests to take part in the opening session of the Parliament were refused, Mr Forn stood down as a Member of Parliament and agreed not to take part in political activities and to refuse to be a member of either the Parliament or the Government of Catalonia. He took these measures for the specific purpose of

securing his release. It is pointed out that it was established before the judge that the risk of any allegedly criminal activity would thus disappear, as would the justification for his detention. Mr Forn was not released.

19. According to the source, the attempts to form a new government in Catalonia following the elections were affected by the judicial proceedings and by the measures involving deprivation of liberty.

20. On 22 March 2018, the day before her hearing at the Supreme Court, Ms Bassa returned her certificate of election, standing down as a Member of Parliament, and announced her intention not to stand in future elections. She asked to be reinstated in the school where she had worked before entering politics.

21. On 23 March 2018, Messrs Rull and Romeva and Ms Bassa appeared before the Supreme Court. The examining judge ordered their detention on the grounds that they posed a flight risk and a risk of reoffending, despite the fact that they had complied with all the conditions imposed for their previous release. This decision allegedly referred to acts dating from 2012, without linking the said acts individually to the accused.

22. On 9 July 2018, the Appeals Chamber of the Supreme Court confirmed the suspension of the Members of Parliament.

23. On 12 July 2018, the German Regional High Court ruled against the extradition to Spain of a co-accused, which had been requested through a European arrest warrant. Immediately following this decision, Spain's Supreme Court withdrew all the European arrest warrants (in Switzerland, Scotland and Belgium) that it had issued against six co-accused who were residing abroad, which is an indication of the examining judge's lack of confidence in the classification of the acts, which serve as the grounds for detention.

24. The source alleges that the detention is the result of the exercise of the rights or freedoms guaranteed in articles 19 to 21 of the Universal Declaration and in articles 19, 21, 22 and 25 of the Covenant.

25. It is argued that the accusation against Messrs Forn, Rull, Romeva and Ms Bassa is based on the role that they played in the peaceful demonstrations staged at the end of 2017. Nevertheless, the Supreme Court argues that the demonstrations only constituted one step of a wider plan.

26. The source points out that the demonstrations were not only called by the detainees but also by trade unions, universities, political parties and professional associations, whose members have not been the subject of criminal proceedings, much less deprived of their freedom. The demonstrations were in favour of the right to self-determination, by means of a referendum, in a spirit of non-violence.

27. The court decision states that the action of the accused was aimed at creating among citizens a feeling of rejection towards the institutions and powers of the [Spanish] State, in order to favour and justify disobedience of the orders emanating from them, for the purpose of enabling social mobilisation and the backing of pro-independence goals. The source argues that the actions constituted the legitimate exercise of political activity, which does not justify detention. The court decision lists, as part of the criminal proceeding, other actions which are not punishable and which are protected by the Covenant, such as the organisation of one-off, peaceful, dynamic and spectacular mass mobilisations, or calls for strikes and rallies.

28. The source states that in refusing to release Mr Forn, the Appeals Chamber argued that future mobilisations were largely dependent upon him and that, accordingly, he should not be released. It is alleged that legitimate protests are characterised as criminal acts.

29. Mr Forn's membership of Òmnium Cultural and the ANC (National Assembly of Catalonia) was highlighted in the detention order, as an indication of misdemeanours committed by him, regardless of the fact that both associations are legal and that belonging to them falls under the right to freedom of association and expression.

30. It is indicated that the allegations regarding the criminal responsibility of Messrs Rull and Romeva are based exclusively on the fact of their being members of the Government of Catalonia. Mr Rull's involvement is argued on the grounds that he "contributed to the process from 2015" and took part in several meetings. As regards Mr Romeva, he is

mentioned in just six lines of a 70-page decision, with regard to an online voting project, accessible from abroad, with no connection whatsoever to violence.

31. The source argues that using such factors as grounds to justify detention proves that the said detention is arbitrary, since this is tantamount to using the exercise of the rights of association and assembly as justification.

32. The source points out that the call to support a referendum was decriminalised in Spain through Organic Law 2/2015, since it constitutes a legitimate exercise of freedom of expression.

33. It is indicated that Messrs Forn, Rull and Romeva and Ms Bassa have peacefully expressed their political opinions. There is no evidence that their actions were violent, that they incited violence or that they caused violence. In its decision of 4 December 2017 to grant them a conditional release, the Supreme Court acknowledged that no violence had occurred.

34. As regards Mr Forn, his belief in independence was one of the reasons put forward in the decision of 2 February 2018 for denying him his freedom, as well as his alleged determination to commit acts aimed at causing political instability.

35. According to the source, the decision of 2 February 2018 states that the accused maintain *“the same aspiration that drove the behaviour under investigation; that is, the determination for the territory of the Autonomous Community in which they reside to constitute the territorial basis of a new Republic.”*

36. In respect of Ms Bassa, it is alleged that her political convictions are the cause of her detention, since she is not even mentioned in the indictment of 21 March 2018. In the case of Mr Romeva, the Supreme Court argues that his criminal acts were *“to promote the creation of the structures of the State and to attempt to foster recognition abroad of the Republic of Catalonia.”* As far as Mr Rull is concerned, his criminal acts comprised taking part in meetings since 2015, signing a pro-independence agreement with civil society [organisations] and helping stage the referendum.

37. It is pointed out that Messrs Forn, Rull and Romeva and Ms Bassa are elected representatives who have served in the Parliament or Government of Catalonia. The goal and effect of the detention is to restrict their capacity to participate in elections and to represent electors, as well as to make it impossible for them to contribute to political organisation and life.

38. Despite the legality of their political activities, the judges ruled that the risk of criminal behaviour was specifically related to the public responsibilities of the detainees. It is argued that the detention aims to prevent their participation in political affairs.

39. Mr Forn was prevented from campaigning in the election campaign at the end of 2017. Nevertheless, he was elected as a representative. The detainees have been prevented from fulfilling their duties as parliamentarians. Ms Bassa stood down as a Member of Parliament and agreed not to stand in future elections. Mr Forn renounced his political role, his right to freedom of opinion and expression, and his right to participate in public affairs, in an attempt to bring his detention to an end.

40. On confirming the accusation of rebellion, on 26 July 2018, the Supreme Court applied article 384 of the Criminal Prosecution Law, thus preventing the detainees from taking up their seats in Parliament, despite the fact that a final judgement had not been made, and that appeals remained pending. It stated that the detainees were rebels, despite the fact that there had been no violence and no use of arms, and despite the fact that the said suspension had not been agreed by the Parliament of Catalonia, as required by article 25 of its Regulations.

41. It is argued that the intentions of the [Spanish] Government are revealed by the remarks made by the then Deputy Prime Minister of Spain, when she congratulated the then Prime Minister on successfully decapitating and liquidating the pro-independence leadership. The source also highlights the remarks of the Spanish Interior Minister, in which he threatened to have two other politicians detained and prosecuted for having prepared electoral lists.

42. The source argues that the detention has violated the standards of competence, independence and impartiality of the court, along with the detainees’ right to be informed of the acts attributed to them, their right to the presumption of innocence, and the possibility of their having sufficient time and facilities to prepare their defence.

43. The source argues that the High Court of Justice of Catalonia is the competent court, since the alleged crimes were committed in this territory. The source points out that the National Court considered that when sedition is committed with the goal of changing the territorial organisation of the State, it must be considered an offence against the form of government. It is argued that this interpretation is a manoeuvre in order to grant jurisdiction to the National Court under article 65(1) of the Organic Law of the Judiciary.

44. It is argued that the National Court has only considered this offence in relation to an attack on the Parliamentary Monarchy, and that it is not applicable to a situation of change and reorganisation in the regional structure. It is unheard of and unjustifiable for the meaning of the offence to be broadened in order to justify the detention.

45. In a judgement of 2 December 2008, the National Court ruled that rebellion had never fallen under its jurisdiction. It is pointed out that one hundred lecturers in Criminal Law warned about the lack of competence of the National Court.¹

46. It is argued that the transfer of the case to the Supreme Court does not remedy the aforementioned irregularities, since the National Court ordered the detention of the accused and because, in any event, the Supreme Court is no more competent [than the National Court].

47. According to the source, this demonstrates that the courts, in this case, are not competent, independent or impartial. It is alleged that the remarks of the Deputy Prime Minister of Spain, referring to the decapitating of pro-independence parties, clearly highlight the lack of independence of the proceedings, since she described the detention as a political achievement of the Prime Minister.

48. The source states that the lack of competence of the courts, along with their lack of independence and impartiality, affected their decisions, including the decision to order the detention of the accused, in breach of articles 9 and 10 of the Universal Declaration and of articles 9 and 14 of the Covenant.

49. In respect of the accusation of misuse of public funds, it is alleged that there are five reports by the Ministry of Finance of Spain which deny that any funds were diverted for the referendum of 1 October 2017. As such, the accusation of misuse of public funds cannot constitute grounds for the detention.

50. As regards sedition, it is pointed out that article 544 of the Criminal Code requires a public, tumultuous, violent and collective uprising in order to overturn laws. No such elements were present in the declaration of independence, the referendum or the preceding demonstrations. A peaceful protest cannot constitute sedition; neither can the acts of calling for or taking part in a referendum, since they have been decriminalised since 2005. It is also argued that supporting the self-determination of Catalonia does not constitute a crime but rather the exercise of fundamental rights, namely the right to ideological freedom and to freedom of association, protected by articles 16 and 22 of the [Spanish] Constitution.

51. It is argued that, under article 472 of the Spanish Criminal Code, rebellion also requires a violent and public uprising. Peaceful declarations of independence, which lack the necessary element of violent confrontation, cannot constitute rebellion. The source claims that, in order to avoid complying with the requirement of violence, the accusations refer to alleged acts of intimidation, without specifying places or times. For example, in respect of Mr Forn, the detention order 2 November 2017 alleges that he committed "many acts", but none of them are specified. In the absence of specific accusations of acts of violence perpetrated by the detainees, they cannot be deprived of their freedom on the grounds of rebellion.

52. According to the source, the previous Chief Prosecutor of the High Court of Justice of Catalonia stated that no violence had been perpetrated and that the democratic behaviour of more than one million citizens, exercising their right to demonstrate politically, could not be retroactively classified as violence in order to serve as an element of rebellion.

53. It is pointed out that the courts in Catalonia, in other cases involving similar acts, have heard complaints of sedition and rebellion related to pro-independence actions.² For example, regarding the referendum of 9 November 2014, the High Court of Justice of Catalonia ruled that the actions might constitute disobedience, perversion of the

¹ Eldiario.es, *Legalidad penal y proceso independentista*, 9 November 2017.

² Judgements of 24 March 2014 and of 8 January 2015

course of justice and misuse of public funds. No detention was ordered and the accused were found guilty of disobedience and perverting the course of justice.

54. The source points out that the High Court of German state ruled against the extradition to Spain of a co-accused in the case, which had been requested through a European arrest warrant. The grounds for this ruling were that the court failed to find the element of violence necessary to constitute rebellion, instead seeing the actions as an attempt to achieve a peaceful political goal through democratic means.

55. It is alleged that the right to the presumption of innocence is violated if an official statement gives the impression of guilt when no final judgement has been made. The said violation occurred in this case when the Spanish Prime Minister described the independence movement and its leaders as imprudent, and even dangerous, rebels, and when the Deputy Prime Minister announced that the Government had succeeded in decapitating the pro-independence parties. The source argues that these statements breach the right to the presumption of innocence of the accused, since the legal proceedings have not concluded and their guilt has not been established. The statements demonstrate the lack of independence of powers in this case and violate article 11.1 of the Universal Declaration and article 14.2 of the Covenant.

56. The source states that the right to defence involves the unrestricted possibility of submitting evidence that supports the defence and influences the result of the court proceedings. It is alleged that the accused were summoned to appear in a hearing to be held the very next day, 2 November 2017, and that they were heard and detained on that same day. Therefore, they did not have sufficient time to prepare [their defence] and, what is more, one of the defence lawyers was not present at the hearing.

57. On 31 October 2017, the court received the complaint from the Public Prosecutor's Office. On 1 November 2017, a public holiday, Mr Forn's family received a summons at the family home, while Mr Forn was abroad. The accused and his lawyer had to travel, without delay, from Barcelona to Madrid (630 km) in order to appear before the court on 2 November 2017. It is alleged that this did not give the defence sufficient time to study, process and respond to the 117-page accusation document and the documents of the file. It is indicated that the detainees protested before the court that they had been unable to prepare their defence within the available time.

58. Finally, the source alleges that given that the detention of Messrs Forn, Rull, Romeva and Ms Bassa is due to their defence of the right to self-determination of the Catalan people, this constitutes discrimination on the grounds of political opinion, and therefore falls within category V.

59. The link between the detainees and the political situation is highlighted. The detainees in this case are publicly identified as leaders of the political movement for the independence of Catalonia. Furthermore, the acts in question took place in that region. This constitutes additional grounds to consider that the detention of Messrs Forn, Rull and Romeva and Ms Bassa is arbitrary.

Response from the Government

87. The Government states that the detention of Messrs Forn, Rull and Romeva and Ms Bassas had been ordered within criminal proceedings, currently taking place before the Supreme Court, to which the proceedings that initially took place before the National Court were added. The examining judge made the initial decision to deprive them of their freedom and the Criminal Chamber of the Supreme Court confirmed the said detention and its maintenance.

88. The Government indicates that article 17 of the Spanish Constitution provides for the possibility of adopting the measure of pre-trial detention, and that the Criminal Prosecution Law grants judges the capacity to impose the precautionary measure of pre-trial detention when the causes set forth in articles 503 and 504 are present. Spain is governed by the rule of law and by the principle of separation of powers. As such, neither the legislative nor the executive branch has intervened in the decisions adopted by the judicial branch, which in this case is the Supreme Court.

89. The observations submitted by the Government are based on the rulings contained in the criminal proceedings, which emanate from the judiciary, the branch of State which ordered the detention. Accordingly, the remarks made by members of the executive branch or of political parties are irrelevant, since they have not adopted the measure of detention and there is no indication that they have influenced the decisions of the judiciary.

90. The Government states, first of all, that: (i) the Venice Commission informed the Government of Catalonia that the referendum did not meet international standards; (ii) the [Spanish] Government did not take over the competencies of the Parliament of Catalonia but rather its functions were carried out by the Permanent Deputation; (iii) the examining judge issued an indictment on 21 March 2018 and, in accordance with the Law, summoned Ms Bassa and Messrs Romeva and Rull to appear, accompanied by their lawyers and the prosecuting parties in order to make a decision regarding the enactment of provisional precautionary measures; and, (iv) the High Court of a German state considers that it is ridiculous to think that [individuals] are persecuted in Spain for political reasons, while Amnesty International is of the opinion that there are no prisoners of conscience in Spain.

91. The Government points out that the Spanish Constitution allows for its own modification through a specific procedure. In Spain, the political parties that advocate for the separation of Catalonia from the rest of Spain are legal and the Constitution includes mechanisms that enable this situation to come about. This has been reaffirmed in judgment STC 42/2014 of the Constitutional Court, which stated that “the right to decide of the citizens of Catalonia” must be channelled through the principles of democratic legitimacy, dialogue and legality, all within the framework of the Constitution and of the procedures for reform established therein.

92. The Government argues that the independence movement, not having the required majority, opted not to respect the rule of law and decided to act on a unilateral basis. According to the Constitutional Court:

Such a serious attack on the rule of law violates, with similar intensity, the democratic principle, the Parliament having disregarded that the subordination of one and all to the Constitution is another form of submission to the will of the people, expressed in this instance as a constituent power of which the entire Spanish people, and not a single fraction of it, is the holder.³ (...)

93. The Government argues that the independence movement, through its control of the Government and of the Parliament of Catalonia, and with the support of civil society organisations, promoted a referendum and passed unconstitutional laws leading to a declaration of independence without having a majority of votes and without having a supermajority of seats in the Parliament of Catalonia, required by the Statute of Autonomy.

94. According to the Government, in the referendum of 6 December 1978 to approve the Spanish Constitution, 90.46% of the eligible voters in Catalonia voted in favour, the turnout being 68% of the electoral census. This means that 62% of Catalans with a right to vote voted in favour of the Constitution. The Government states that, by contrast, the independence movement has never had the majority of votes in Catalonia.

95. The Government argues that since full democracy was reinstated in Spain in 1977, it has established itself as a country of high democratic quality in which the rights and freedoms of all its citizens are guaranteed. It highlights as a well-known fact the international recognition of its democratic transition, of which the 1978 Constitution is the fulcrum.

96. According to the Government, the judicial actions of the present case cannot be understood as a reaction to a legitimate political aspiration but rather exclusively as a judicial measure in response to specific acts committed outside the framework of the rule of law. From the moment in which the judicial decisions of detention were adopted, several judicial rulings have confirmed the detention and its maintenance, on the grounds of the risk of reoffending.

97. The Government indicates that the detention of the accused was ordered by the examining judge on 2 November 2017 and was subsequently confirmed by the Criminal Chamber of the National Court, as well as by the Supreme Court, in response to the requests for release and/or the requested permits.

98. The factual account of the indictment of 21 March 2018, submitted by the Government, describes a series of events within the context of the independence movement, from the approval of a political agreement on 19 December 2012 to the events of 1 October 2017 and the subsequent declaration of independence. It describes how political

³ Judgement STC 117/2017

parties, civil society, the Government of Catalonia and the Parliament of Catalonia carried out specific actions, such as the passing of laws or resolutions, the creation of the so-called White Paper and the calls for protests and demonstrations, which strove towards implementing the independence plan. It also describes how bodies of the [Spanish] State, such as the Constitutional Court, the Senate and the Government passed resolutions or other measures that illegalised, prohibited or attempted in some way to frustrate the actions of the independence movement. Nevertheless, according to the factual account, the said movement insisted on carrying out actions prohibited by the authorities of the [Spanish] State.

99. The factual account of the indictment of 21 March 2018 includes information on a meeting of 28 September 2017 between the most senior officials of the police force of Catalonia, the Mossos d'Esquadra, and the President of the Government of Catalonia, the Vice-President Oriol Junqueras and the Minister of the Interior Joaquim Forn. The police officers allegedly informed the three members of the Government that the large number of mobilised collectives pointed to an escalation of violence. Accordingly, they were advised to avoid holding the vote of 1 October. According to the indictment, the *"responsibility of the three members of the Government present at that meeting was essentially determined (...) by the decision to promote the referendum that would determine the declaration of independence, making use of or accepting the violence that its holding would demand or entail."*

100. The Government points out that the acts were initially classified as sedition. However, the examining judge subsequently considered that the acts appeared to fall under criminal offence of rebellion.

101. The indictment of 21 March 2018, referred to by the Government, analyses the element of violence required by the crime of rebellion, by virtue of article 472 of the Criminal Code and of the jurisprudence of the Criminal Chamber. It is indicated that the events of 20 September 2017 reflect violent conduct and the risk of future mobilisations leading to violence. According to the indictment, the insistence on holding the referendum of 1 October entailed, in addition to accepting the risk of violence, having urged a mass of citizens to forcefully overwhelm any attempts at containment by the State. The indictment states:

It is evident that the detailed planning of the strategy aimed at imposing independence in the territory leads to the consideration that the main instigators of these acts must have been conscious at all times that the process would end up resorting to the instrumental use of force.

102. As regards Mr Forn, it is indicated that the grounds for his detention emanate from his having ordered the continuation of the independence process, having called on the population to mobilise and participate, and having promoted the design of an operation by the police force of Catalonia that enabled voting and that entailed confrontation with the police force of the [Spanish] State.

103. In respect of Mr Romeva, the indictment indicates that the grounds for his detention are his activities aimed at achieving the recognition abroad of a Catalan republic by means of the *Diplocat* organisation, his involvement in passing the legislation designed to support the independence process, and his presence at the protest of 20 September where he called for mobilisation. It is stated that Mr Romeva placed "the parliamentary institution at the service of the violent result obtained with the referendum."

104. As far as Ms Bassa is concerned, the indictment indicates that she assumed control of all the premises dependent on her ministry "in order to guarantee the readiness of the referendum and achieve its success." Furthermore, she allegedly permitted the use of her department to bear costs of the vote.

105. Last of all, with regard to Mr Rull it is stated that *"Since he signed the agreement for independence on 30 March 2015 (...) he has participated in several key meetings concerning the independence strategy,"* and prevented a ferry with State security forces from docking in Palamós port.

106. The Government points out that the aforementioned legal classification [of the acts] constitutes the grounds on which the Supreme Court based its decision to confirm and maintain the detention. Furthermore, the Government states that the indictment of 21 March 2018, which confirms the pre-trial detention, bases its decision on the existence of the risk of reoffending and the existence of a serious flight risk. According to the indictment:

The severity of the acts described in the indictment, the use of institutions in order to carry them out, and the likelihood of a resumption of the course of action which is described in the White Paper and which the accused maintain in line with the general expressions [made] during the long period which has preceded the investiture, determine that their political rights do not have pre-eminence and are not in greater need of protection than the rights preserved in this ruling.

107. The Government states that in order to impose pre-trial detention, the judiciary considered that the circumstances provided for in article 503 of the Criminal Procedure Law existed, specifically: i) the acts comprise elements of crime subject to the punishment of jail terms of more than two years; ii) there are sufficient reasons for the persons in question to be deemed criminally responsible; iii) the risks of flight and reoffending have been identified.

108. In view of the foregoing, the Government concludes that detention is legal provided that it is based on law; in the present case the measures are not adopted with the goal of limiting the rights of the Covenant, but rather as a consequence of the actions of the affected persons, which in the judge's view constitute very serious crimes.

109. In relation to the alleged lack of competence and jurisdiction of the National Court and the Supreme Court, in respect of the view that the crimes have been committed in Catalonia, the Government points to the judgement of 9 May 2018, in which the Supreme Court deemed itself competent, given that *"the crime is committed in all the jurisdictions in which an element of the criminal offence has been committed."* The court considered that some of the actions carried out by the pro-independence movement have gone beyond the borders of the territory, such as the collection of votes, the purchase of ballot boxes and the printing of ballot papers on foreign soil, by virtue of which competence can be attributed to the Supreme Court.

110. In respect of the violation of the right to the presumption of innocence, the Government argues that this can only be breached by the judiciary, since the remarks made by members of the executive branch cannot be attributed to it.

111. In relation to the allegation made by the affected persons of not being given sufficient time and facilities to prepare the arguments of their defence, the Government points out that in the Court Decision by the Examining Judge of the National Court, of 2 November 2017, which ordered the detention of the affected persons, the suspension [of proceedings] was not requested at the beginning of the hearing but rather a request was lodged through the general register which arrived after the hearing had been completed. Therefore, the Government argues that there has been a lack of diligence on the part of the affected persons, who should have informed the Examining Judge of their request at the start of the hearing.

112. Regarding the successive requests for the release of the affected persons and the appeals lodged against the refusal to release them, the Government points out that the detainees have not alleged the existence of limitations to their exercise of defence, in respect of knowledge and preparation time, in the internal judgement.

113. The Government states that there is no discrimination in this case and refers to that set forth by the Criminal Chamber of the Supreme Court on 5 January 2018, in the ruling of one of the refusals to grant the release of the affected persons:

It is legitimate to hold a political position which calls for the independence of part of a national territory. The Constitution allows any political position to be held, including one that argues for the destruction of the Constitution itself and the establishment of a non-democratic system. The appellant can argue the suitability, advisability or desirability of achieving the independence of a part of Spain without committing any crime. As such, the present case has not been brought in order to prosecute political dissent or the espousal of a pro-independence position. The term "political prisoner" is therefore not applicable since nobody is prosecuted for espousing an idea. The system allows the defence of any position and offers many means through which to argue it.

114. The Government concludes by pointing out that both the High Court of a German state and Amnesty International consider that no one is persecuted for political crimes in Spain.

Additional comments by the source.

115. The source presented additional comments on the non-violent way in which Messrs Forn, Rull and Romeva and Ms Bassa expressed their political opinions, and [on how] they exercised their rights of freedom of association, assembly and participation in the public affairs of their country, which make their detention arbitrary. Similarly, it examined in greater detail elements to do with violations of the detainees' right to due process of law.

Discussion

115. The Working Group on Arbitrary Detentions thanks the source and the Government for submitting relevant information about the detention of Messrs Forn, Rull and Romeva and Ms Bassa.

116. The Working Group's mandate is to investigate cases of allegedly arbitrary deprivation of liberty which are submitted to it, and to this end it refers to the relevant international norms contained in the Universal Declaration and the Covenant. Moreover, the Working Group's action is governed by the rules of procedure contained in its methods of work, and by its usual practice for dealing with individual communications, which is accepted by States.

117. 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 on personal freedom which constitute arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.⁴

118. In the present case, the Working Group noted that Messrs Forn, Rull and Romeva and Ms Bassa are public figures, well known for their work in favour of the independence of Catalonia. Moreover, they have held posts in political parties, and in [government and parliament]. It was furthermore convinced that they have been deprived of liberty during the greater part of the duration of the [legal proceedings] from November 2017 onwards.

Category II

119. The Working Group stresses that everyone has the right to the freedom of expression, which includes the right to disseminate information and ideas of all kinds, orally or in any other way. The Group also recalls that the exercise of this right may be subject to restrictions which are expressly defined by law and necessary in order to ensure respect for the rights or reputation of others, and the protection of national security, public order, health and public morality.⁵

120. The Working Group shares the view of the Human Rights Committee that freedom of opinion and expression are vital to the full development of individuals and constitute the cornerstone of all free and democratic societies.⁶ Both freedoms provide the basis for the effective exercise of a wide range of human rights, such as freedom of assembly, association and political participation, as contained in articles 20 and 21 of the Declaration and 21, 22 and 25 of the Covenant.⁷

121. In the view of the Working Group, the importance of freedom of opinion is such that no government can violate other human rights on the grounds of the opinions —of a political, scientific, historical, moral, religious or any other nature— expressed by or attributed to any individual. Consequently, it is not compatible with either the Declaration or the Covenant to classify the expression of opinion as a crime. This implies that to harass, intimidate, or stigmatise anyone, which includes submitting them to detention, preventive imprisonment, trial or confinement, on the grounds of their opinions, is contrary to the Covenant.⁸

122. It is also relevant to note that the right to freedom of opinion and expression is related to and includes the possibility of expressing an opinion on the way in which peoples can freely determine their political status, and their type of constitution or government, and that this demonstrates the link between [this possibility] and other human rights. The Human Rights Committee has observed that:

The rights under article 25 are related to, but distinct from, the right of peoples to self-determination. In accordance with paragraph 1 of article 1, peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs.⁹

123. The Working Group, while noting that referendums are permitted in Spain on a wide range of topics, considers that public calls, by individuals or organisations, to hold processes of citizen participation are legitimate ways of exercising the rights of freedom of opinion and expression.

124. The Working Group notes that on 20 and 21 September 2017 a public demonstration was held in support of a referendum on the independence of Catalonia and that in the course of this demonstration conflicts or clashes with the police occurred. In this regard, the Working Group received no convincing information from the Government that these incidents could be attributed to Messrs Forn, Rull and Romeva and Ms Bassa.

⁴ A/HRC/19/57, parag. 68.

⁵ Opinion 58/2017, parag. 42.

⁶ CCPR/C/GC/34, parag. 2.

⁷ CCPR/C/GC/34, parag. 4.

⁸ CCPR/C/GC/34, parag. 9.

⁹ CCPR/C/21/Rev. 1/Add.7, parag. 2.

125. From the information submitted by the parties, the Working Group confirmed that Messrs Forn, Rull and Romeva and Ms Bassa did indeed take part, along with thousands of other people, in the September demonstrations, which were called jointly by numerous organisations.

126. From the information submitted by both parties, the Working Group was able to ascertain that Messrs Forn, Rull and Romeva and Ms Bassa were accused of the crime of sedition in connection with the demonstrations or social protests of 20 and 21 September 2017; and that the accusation was reportedly changed later to that of rebellion.

127. The Government offered information about the Catalan independence process, and about clashes between demonstrators and the police during the September protests, but not about any non-peaceful exercise of rights or individual actions carried out by the accused which could be considered violent and therefore of a criminal nature under the applicable legislation, including international law.

128. The Working Group is aware that the element of violence is essential to the classification of the crimes of sedition and rebellion. In this context, the Working Group was convinced that the actions of Messrs Forn, Rull and Romeva and Ms Bassa both before and after the demonstrations of 20 and 21 September 2017 were not violent, that they did not seek to stir up violence, and that their conduct did not lead to violent events or acts. On the contrary, they consisted of the peaceful exercise of rights and freedoms protected under the Covenant.

129. Furthermore, from the information received, the Working Group was not convinced that other forms of conduct attributable to Messrs Forn, Rull and Romeva and Ms Bassa and aimed at the organisation of a referendum could be considered crimes.

130. In the Working Group's view, the detention of Messrs Forn, Rull and Romeva and Ms Bassa from the very beginning of the criminal proceedings is implausible if analysed within the period of political upheaval during which the accusation was made, on dates close to the holding of the referendum, and along with the detention of a group of well-known personalities from the independence movement.¹⁰ On the basis of the information received, the Working Group bears constantly in mind the fact that the accused are persons well known for their work in favour of the independence of Catalonia.

131. Moreover the Working Group, against this background, considers relevant the statements by high-ranking [Spanish] Government officials who, when faced by social protest, talk of decapitating the independence movement by arresting its leaders] and describe the conduct of Messrs Forn, Rull and Romeva and Ms Bassa as violent.¹¹

132. In this respect, the Special Rapporteur on the right of freedom of opinion and expression voiced concern over the arrests since they "were directly related to the call for mobilisation and citizen participation issued in the context of the referendum". He also expressed concern that "the accusation of the crime of rebellion might be disproportionate and therefore incompatible with Spain's obligations in the framework of international human rights norms".¹²

133. The Working Group considers it relevant to mention that a German court, when analysing the extradition of a person facing the same charges as Messrs Forn, Rull, Romeva and Ms Bassa, did not consider that the alleged offences included the component of violence which is necessary to the crime of rebellion, and confirmed accordingly that the actions attributable to the extraditable person cannot be considered an attempt to achieve the violent political overthrow of the Government. It noted that the accused were seeking to achieve independence by democratic means.¹³

134. In this context, the Working Group received convincing information, which was not denied by the Government, that Sr. Forn offered to give up his political role in a bid to secure release. In other words, he was driven to forgo his freedom of opinion and expression, and his right to take part in public life, in an attempt to bring his detention to an end. Similarly, Ms Bassa was prompted by the criminal proceedings against her to surrender her certificate of election.

135. The nonexistence of the component of violence and the absence of convincing information about specific individual acts attributable to Messrs Forn, Rull and Romeva and Ms Bassa which would involve them in prohibited forms of conduct have convinced the Working Group that the purpose of the criminal charges and the resulting trial is to coerce them on account of the political opinions they have expressed about the independence of Catalonia and discourage them from pursuing this aim by political means.

¹⁰ A/HRC/WGAD/2019/6.

¹¹ See paragraphs 41, 47 and 55 above.

¹² AL ESP 1/2018

¹³ Decision of the High Court of the state of Schleswig-Holstein, 12 July 2018.

136. In the light of the foregoing, the Working Group was convinced that the detention of Messrs Forn, Rull and Romeva and Ms Bassa [was] the outcome of the exercise of their rights to freedom of conscience, opinion, expression, association, assembly and political opinion, in violation of articles 18 to 21 of the Universal Declaration and articles 19, 21, 22 and 25 of the Covenant, and consequently that it is arbitrary under Category II.

Category III

137. In view of the findings under category II, which conclude that the detention was the outcome of the exercise of human rights, the Working Group considered that there are no commensurate bases to justify preventive detention and trial. However, since the trial is underway, and long prison sentences are being called for, and bearing in mind the allegations made by the source, the Working Group will proceed to analyse whether, in the course of the aforesaid judicial proceedings, the fundamental elements of a fair, independent and impartial trial have been respected.

Presumption of innocence

138. The Universal Declaration, in article 11, paragraph 1, and the Covenant, in article 14, paragraph 2, recognises that anyone charged with a penal offence has the right to be presumed innocent. This right imposes a series of obligations on all the State institutions, to ensure that the accused is treated as innocent until convicted beyond all reasonable doubt. The Working Group, like the Human Rights Committee, considers that this right obliges all public authorities, including the executive branch, not to pre-judge the outcome of a trial, and that this entails refraining from making public statements asserting that the accused is guilty.¹⁴

139. The Working Group has determined that public interferences in which the accused are openly declared guilty before conviction violate the presumption of innocence and constitute an unwarranted intrusion which affects the independence and impartiality of the court.¹⁵

140. The European Court of Human Rights has noted that public statements by high-ranking officials violate an individual's right to the presumption of innocence when they assert that individual to be responsible for a crime for which they have not yet been tried and in so doing lead the public to believe in their guilt and pre-judge the competent judicial authority's evaluation of the facts.¹⁶

141. In the present case, the Working Group was convinced that the Deputy Prime Minister of Spain made statements in which she congratulated the Prime Minister for successfully decapitating the Catalan independence parties by arresting their leaders. Similarly, the Group received credible information about the statements attributable to the Minister of the Interior in which he referred to the leaders of the independence movements as rash, dangerous rebels.

142. In view of remarks by high-ranking officials of the Spanish Government which seek to establish in advance the criminal responsibility of the pro-independence leaders and which could have an impact on the image of these leaders before the judicial authority, the Working Group was convinced that a violation occurred of the right of Messrs Forn, Rull, Romeva and Ms Bassa to the presumption of innocence, as recognised in articles 11.1 of the Universal Declaration and 14.2 of the Covenant.

Preventive detention

143. It is an established norm of international law that preventive detention must be the exception and not the rule, and must be ordered for the shortest time possible. Article 9, paragraph 3 of the Covenant requires a motivated court ruling to examine the merits of preventive detention in each case. This provision established furthermore that "release may be subject to guarantees to appear for trial, or at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgement." From this it is inferred that detention must be an exception in the interests of justice. The provisions of article 9, paragraph 3 of the Covenant can be summarised as follows: any detention must be the exception and of short duration, release must be preferred when means exist for guaranteeing the presence of the accused at the trial and the execution of the judgement. When preventive detention is prolonged, the presumption in favour of [releasing the accused while the trial is underway] must increase.

¹⁴ CCPR/C/GC/32, paragraph 30. See also, Human Rights Committee, communication No. 1773/2008, Kozulina v. Belarus, parag. 9.8.

¹⁵ Opinions No. 90/2017, 76/2018 and 89/2018.

¹⁶ European Court of Human Rights. *Alenet de Ribemont v. France*, § 41; *Daktaras v. Lithuania*, § 42; *Petyo Petkov v. Bulgaria*, § 91; *Pesa v. Croatia*, § 149; *Gutsanovi v. Bulgaria*, §§ 194-198; *Konstas v. Greece*, §§ 143 and 45; *Butkevicius v. Lithuania*, (153; *Khuzhin and Others v. Russia*, § 96; *Ismoilov and Others v. Russia*, § 161.

144. In the present case, the accused were detained in November 2017, released in December 2017 and detained again in March 2018 until the present; in other words, they have remained in preventive detention during the greater part of the [judicial proceedings], which have not yet ended. The source indicated that the refusal to grant conditional release was motivated by the supposed danger of their re-offending by issuing new calls for independence, since this might give rise to new popular demonstrations. The Working Group concluded that the detention is arbitrary since it arises from the exercise of the right of freedom of opinion, expression, association, assembly and participation. Moreover, it has not been possible to ascertain that the judges or the Government have analysed and concluded, in accordance with the Covenant, that there are legitimate, necessary and proportionate bases for restricting these human rights by depriving [the accused] of their liberty in the course of the judicial proceedings. Consequently, the Working Group is forced to conclude that the maintenance of preventive detention breaches article 9, paragraph 3 of the Covenant.

The right to be tried by a competent, independent and impartial tribunal

145. According to article 14, paragraph 1 of the Covenant, in the determination of any criminal charge against him, everyone is entitled to a fair hearing by a competent, independent, impartial tribunal. The Working Group considers that the requirement of impartiality implies that the judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the matter under their consideration, nor act in ways that promote the interests of the parties. Furthermore, the tribunal must appear to a reasonable observer to be impartial.¹⁷

146. The Working Group considered that if criminal proceedings against persons accused for crimes committed in a particular territory are conducted by tribunals located in another jurisdiction, this constitutes a violation of the right to be tried by the competent judge whenever national legislation expressly attributes that competency to the jurisdiction of the locality where the alleged crime was committed.¹⁸

147. In the present case, the Working Group was convinced that the competent territorial, personal and material jurisdiction to investigate and try possible criminal acts belongs to the courts of Catalonia, since the crimes were allegedly committed in the territory of Catalonia and by officials of the Catalan government and parliament. Moreover, the Working Group received convincing information that the Catalan courts have dealt with complaints filed by Spain in relation to the Catalan independence process. Furthermore, the Working Group was not convinced that the natural judge to try the alleged crimes referred to in the present case are the courts which are currently dealing with them.

148. The Working Group, like the Human Rights Committee, considers that "States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws [...] A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal."¹⁹

149. The Working Group considers that the statement by the Deputy Prime Minister, in which she attributed to the Prime Minister the political achievement of decapitating the independence movement by detaining its leaders, and the fact that the preventive detention of Messrs Forn, Rull and Romeva and Ms Bassa was ordered by the judiciary in violation of the rights contained in the Covenant, generate a situation which affects the perception of the impartiality of the court for any reasonable observer.

150. In view of the foregoing, the Working Group considers that the right of Messrs Forn, Rull and Romeva and Ms Bassa to be tried by a competent, impartial tribunal, as recognised in articles 10 of the Declaration and 14.1 of the Covenant, has not been respected.

The right to have adequate time and facilities for defence

151. Article 14, paragraph 3, section b) of the Covenant recognises the right of everyone "to have adequate time and facilities for the preparation of their defence", this being an important guarantee of a fair trial and of the principle of equality of arms.²⁰ Having adequate facilities for the defence includes, among other things, having access ahead of time to all the materials, documents and other evidence which the prosecution plans to offer in court.²¹

¹⁷ CCPR/C/GC/32, parag. 21.

¹⁸ Opinion. No. 30/2014.

¹⁹ CCPR/C/GC/32, parag. 19.

²⁰ CCPR/C/GC/32, parag. 32.

²¹ Ibid., parag. 33.

152. The Working Group shares the view that, when counsel feel that the time for the preparation of the defence is insufficient, they may request an adjournment, and the authorities, in principle, must grant such requests. It is important to note that "there is an obligation to grant reasonable requests for adjournment, in particular when the accused is charged with a serious criminal offence and additional time for preparation of the defence is needed".²²

153. Moreover, as the Human Rights Committee has also observed, having adequate facilities for the defence includes access to all the materials, documents and other evidence which the prosecution plans to offer in court.²³

154. In the present case, the Working Group was convinced that Messrs Forn, Rull and Romeva and Ms Bassa did not have sufficient time to prepare their defence, since very few hours were available between the notification and the hearing, bearing in mind the size of the file. Moreover, it was noted that the accused were not granted more time to prepare their defence and that this affected unrestricted access to the facilities required for their legal protection. This implies a breach of the right recognised in articles 11, paragraph 1 of the Universal Declaration of Human Rights and 14, paragraph 3, section b) of the Covenant.

155. In view of the foregoing, the Working Group was convinced that Messrs Forn, Rull and Romeva and Ms Bassa were deprived of their liberty in detriment of the fundamental guarantees of due process of law, notably their right to the presumption of innocence, to be tried by a competent court and to an adequate defence, in violation of the provisions of articles 9, 10 and 11 of the Universal Declaration and articles 9 and 14 of the Covenant, and that consequently their detention was arbitrary under category III.

Category V

156. The Working Group has considered that deprivation of liberty is arbitrary when it aims to repress members of political groups in order to silence their call for self-determination.²⁴

157. In this case the Working Group found that the detention of Messrs Forn, Rull and Romeva and Ms Bassa and other leaders of the independence movement²⁵ was based on concerted actions by the national prosecution service and judiciary against specific leaders of the Catalan independence movement, and that [these actions] in turn enjoyed public political support from high-ranking officials of the Spanish government, even in the form of statements in support of decapitating the said movement. Since the detention breached the principle of human equality because it was motivated by [the leaders' political opinion] in detriment of the provisions of articles 2 of the Universal Declaration of Human Rights and 3 of the Covenant, this renders it arbitrary under category V.

158. The Working Group, in accordance with paragraph 33 a) of its methods of work, is submitting information about the rights of freedom of opinion and expression, and of assembly and association, [as affected in] the present case, to the Special Rapporteur on the rights of freedom of peaceful assembly and association, and to the Special Rapporteur on freedom of opinion and expression.

Decision

156. In view of the foregoing, the Working Group expresses the following opinion: the deprivation of liberty of Joaquim Forn, Josep Rull, Raul Romeva and Dolors Bassa is arbitrary, being in contravention of articles 2, 9 to 11, and 18 to 21 of the Universal Declaration of Human Rights and articles 2, 14, 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights, and falls within categories II, III and V.

157. The Working Group requests the Government of Spain to take the steps necessary to remedy the situation of Messrs Forn, Rull and Romeva and Ms Bassa without delay and bring it into conformity with relevant international norms, including those set out in the Universal Declaration and the Covenant.

158. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Messrs Forn, Rull and Romeva and Ms Bassa immediately and accord them an enforceable effective right to compensation and other reparations, in accordance with international law.

²² CCPR/C/GC/32, parag. 32.

²³ CCPR/C/GC/32, parag. 33.

²⁴ Opinion No. 11/2017.25.

²⁵ Opinion No. 6/2019.

159. The Working Group urges the Government to conduct an exhaustive, independent investigation into the circumstances surrounding the arbitrary deprivation of liberty of Messrs Forn, Rull and Romeva and Ms Bassa and to take appropriate steps against those responsible for the violation of their rights.

160. In accordance with paragraph 33 a) of its methods of work, the Working Group is submitting the present case to the Special Rapporteur on the rights of freedom of peaceful assembly and association, and to the Special Rapporteur on freedom of opinion and expression.

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

Follow-up procedure

162. 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, notably: a) Whether Messrs Forn, Rull and Romeva and Ms [Bassa] have been released, and if so, on what date; b) Whether compensation and other reparations have been made to Messrs Forn, Rull and Romeva and Ms [Bassa]; c) Whether an investigation has been conducted into the violation of the rights of Messrs Forn, Rull and Romeva and Ms [Bassa] and, if so, the outcome of the investigation; d) Whether any legislative amendments or changes in practice have been made to harmonise the laws and practices of Spain with its international obligations in line with the present opinion; e) Whether any other action has been taken to implement the present opinion.

163. 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 of any further additional technical assistance required, for example, by means of a visit from the Working Group.

164. 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 shortcomings that may be observed.

165. 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 opinions 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. ²⁶

[Adopted on 26 April 2019]

²⁶ See resolution 33/30 of the Human Rights Council, parags. 3 and 7.