

CONFIDENTIAL

15 October 2020

Dear Colleague,

I am writing in relation to the complaints from Spain received by the Coordination Committee on 8 May 2019, 29 May 2019 and 5 June 2019 respectively raising concerns about (i) the procedures followed by some mandate holders in sending communications to Spain, (ii) an alleged leak of the opinion of the Working Group on Arbitrary Detention and (iii) an alleged conflict of interest in relation to some of the mandate holders involved. The concerns raised by Spain related to complex issues which therefore required thorough examination and consultations. The advice of the Coordination Committee on these matters can be summarized as follows:

1. In relation to the concerns raised regarding the terminology used in the joint communication sent by four special procedures mandate holders about Mr Cuixart, the Committee stressed the following:
  - a) The Committee informed Spain that it consulted the mandate holders concerned regarding the terminology used in the communication related to the “referéndum de autodeterminación de Cataluña” and the possible implication of this terminology. The mandate holders concerned emphasized that use of this phrase did not imply any political stance in favor of the referendum. The mandate holders simply referred to the language contained in the allegations received. The Committee contrasted this to the language used in public statements from the mandates, where references to this issue were addressed using different language (see examples in footnote<sup>1</sup>).

The Committee indicated that the reference to an allegation does not in any way imply that the mandate holders accept the statement as proven fact. The purpose of the communication is to give the government concerned an opportunity to present its observations on the allegations conveyed to it. This is recognised in the Manual of Operations of the Special Procedures, which states that: “Communications do not imply any kind of value judgment on the part of the Special Procedure concerned and are thus not per se accusatory... Their main purpose is to obtain clarification in response to allegations of violations and to promote measures designed to protect human rights” (page 12, para. 30). In addition, the allegation letter itself makes no comment on the legality of the referendum. It is also noted that the term “referendum of self-determination” in Spanish “referéndum de autodeterminación” is the term used including by the Supreme Court in Spain. This term has also been used by Special Procedures in communications related to this topic previously.

In light of the above, the Committee would also like to remind mandate holders to ensure that the language used in communications and other documents respect the principle of neutrality. At the same time, the Committee also emphasizes that in the case of communications, the text should refer clearly to any allegations made, with a view to seeking clarification from the Government concerned,

---

<sup>1</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22928&LangID=E>  
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22197&LangID=E>

in situations where the Government may contest or disagree with the use of particular language or terminology.

b) In relation to the fact that Spain has received two communications on the same case, one jointly by several mandate holders and an opinion by the Working Group on Arbitrary Detention (WGAD), the Committee shared with Spain the information received by the WGAD that it has a specific mandate and working methods that can lead to two separate communications. More specifically, the Committee indicated that, according to its mandate and working methods the Working Group has two separate functions namely, (i) issuing urgent appeals and other communications (such as allegation letters) on situations brought to its attention, and (ii) adopting opinions under its regular procedure (A/HRC/RES/33/30, paras. 5(a) and 8-10). As a result, from time to time, governments may receive both a communication (urgent appeal, allegation letter or other letter) and a communication under the WGAD's regular procedure leading to the adoption of an opinion. This is also reflected in the working methods of the WGAD (A/HRC/36/38, 13 July 2017).

The Committee noted that these provisions explicitly recognise that there may be two separate communications from the WGAD in the form of an urgent appeal (or allegation letter), as well as a regular communication, by stating in paragraph 23 that the Government is required to respond separately to both forms of communication. This is the reason for the text in the last paragraph of the allegation letter in which the WGAD clarifies that the allegation letter "in no way prejudices any opinion that it may issue on the case", and states that the Government must respond separately to the allegation letter and the regular procedure.

The Committee further stressed that the Working Group also indicated that in adopting an opinion, the WGAD may, according to paragraph 16 of its Methods of Work, "render an opinion on the basis of all of the information it has obtained", including, when appropriate, taking into account information received in response to other communications such as an allegation letter. This assists in preventing the WGAD from reaching a conclusion that is inconsistent with information received in response to an urgent appeal or allegation letter, or inconsistent with the findings of other Special Procedures in relation to the case. It is also a common practice that the WGAD has developed in relation to other States<sup>2</sup>.

In light of the above, the Committee indicated that it has been exploring with the WGAD how best to reduce any perceived confusion arising from the existence of two distinct methods of communication adopted by the WGAD, and avoid the possible duplication of both procedures. The Committee is ready to discuss this issue further with the WGAD in line with the existing rules and procedures governing the work of special procedures and the Working Groups in particular. There are different possibilities of sequencing for when and how the Working Group joins a communication and when it is asked to render an opinion. The Committee informed Spain that the WGAD has agreed to consider further how to exercise prudently these dual functions.

2. In relation to the concerns raised regarding the leak of the Opinion, the Committee stressed to Spain that confidentiality is a key principle of the working methods of special procedures and the mandate holders do their utmost to preserve the confidentiality of their work. In this case, the Committee has been assured that OHCHR proceeded with the necessary investigation to the best of their capacity and with the technical resources available to them. There is no evidence of the opinion having been shared with any external parties, other than the Permanent Mission of Spain on 27.05.2019 at 15.50 and with the source on 29.05-2019 at 17.30 (more than 48 hours later), thus within the working methods of the WGAD.

---

<sup>2</sup> See e.g. opinions No. 26/2014, No. 27/2015, No. 50/2017, No. 89/2017 and No. 46/2018.

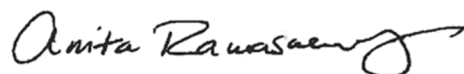
The Committee noted that the leak did not originate from any of the official email addresses of the staff and managers concerned. As for the WGAD, the Committee said that it was informed that its opinion 6/2019 was transmitted to the Government of Spain on 27 May 2019 at 15:50 hours (according to the fax receipt), and to the source on 29 May 2019 at 17:30 hours. The Committee referred to the fact that the WGAD noted with regret that opinion 6/2019, together with the cover letter addressed to the Government of Spain, was placed in the public domain prior to its official transmission to the source and that the WGAD firmly rejects any accusation that its members or its Secretariat did not act in accordance with its Methods of Work.

3. In relation to the concerns raised about potential conflict of interest, the Committee stressed that nothing in the Code of Conduct or the Manual prevents a former mandate holder from sending information to special procedures. It should also be kept in mind that any allegation received by Special Procedures goes through an internal review process to ensure the credibility of information presented, which should alleviate concerns about conflicts of interest. The Committee also noted that it was informed that the WGAD adopted opinion 6/2019 by consensus among its five independent experts and disagrees with the accusation that the group lacked impartiality when considering and adopting this opinion.

However, the Committee also noted that Spain has raised an important point about the potential for a perception of conflict of interest that deserves serious consideration. The Committee stressed that we do need to keep in mind that former mandate holders will likely continue to work on human rights issues and that any prohibition on their ability to work in this area should not be unduly limited after six years of unpaid work for the UN. The Committee indicated that it is collecting relevant information about how former mandate holders have engaged with the system to understand better the frequency and scope of such activity with the objective of proposing a course of action to all mandate holders during the upcoming annual meeting. Rather than proceed with restrictions on former mandate holders, the Committee is examining how to strengthen protocols for situations where current mandate holders receive communications submitted by or with input from former mandate holders.

The Committee would like to thank the WGAD for having engaging thoroughly with the Committee on these matters and for providing all the necessary information. I would also like to recall the confidential nature of this procedure and related exchanges.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Anita Ramasastry". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Anita Ramasastry  
Chair of the Coordination Committee of Special Procedures