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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Working Group on Arbitrary Detention*

Chair-Rapporteur: El Hadji Malick Sow

Summary

On 30 September 2010, the Human Rights Council, in its resolution 15/18,¹ extended the mandate of the Working Group on Arbitrary Detention for a further three years. During 2010, the Working Group on Arbitrary Detention visited Malaysia and Armenia at the invitation of the Governments. The reports on these visits are contained in addenda to the present document (A/HRC/16/47 Add.2 and 3).

Throughout the period 1 January to 30 November 2010, the Working Group adopted 33 Opinions concerning 98 persons in 23 States. These Opinions are contained in the first addendum to the present document (A/HRC/16/47 Add.1).

Also during the period 16 November 2009 to 17 November 2010, the Working Group transmitted 102 urgent appeals to 56 Governments concerning 844 individuals (2,774 men, 50 women, 2 boys). Governments and sources reported that 23 persons were released.

Information about the implementation of recommendations made by the Working Group to the Governments of countries visited in 2008 was received from the Government of Ukraine. The Working Group sent a reminder to the Government of Angola relating to its country visit in 2007 but did not receive a reply. The Governments of Colombia, Italy and Mauritania have offered to send the requested information.

This report includes thematic issues to which the Working Group has devoted its attention in 2010, namely the application of international human rights law to situations of armed conflict and the impact this has on the mandate of the Working Group. The issue of secret detention in the context of countering terrorism is also addressed.

* Late submission.

¹ A/HRC/RES/15/18.

The Working Group states that norms of international human rights law protecting individuals against arbitrary detention shall be complied with by Governments even during periods of armed conflict.

The report emphasises that no jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods without the possibility of resorting to legal procedures, including *habeas corpus*.

The Working Group also raises concerns over reprisals suffered by a judge and individuals who were the subject of its urgent appeals or Opinions.

It also devotes attention to the revision of its methods of work and has provided a new text in Annex IV.

To enable the Working Group to report more systematically and comprehensively, it reiterates its proposal to the Human Rights Council to expand the mandate of the Working Group to include the examination of conditions of detention around the world, and the monitoring of State compliance with obligations concerning all human rights of detained and imprisoned persons.

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I. Introduction

1. The Working Group on Arbitrary Detention was established by the former Commission on Human Rights in its resolution 1991/42 and entrusted with the investigation of instances of alleged arbitrary deprivation of liberty, according to the standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned. The mandate of the Working Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum-seekers and immigrants. On 30 September 2010, by its resolution 15/18, the Human Rights Council extended the Working Group's mandate for a further three-year period.

2. During the period 1 January 2009 to 30 April 2010, Mr. Aslan Abashidze (Russian Federation) was a member of the Working Group. He resigned and was replaced by Mr. Vladimir Tochilovsky (Ukraine), who began his term of office on 1 May 2010. In addition to Mr. Tochilovsky, the Working Group has consisted of Ms. Shaheen Sardar Ali (Pakistan), Mr. Mads Andenas (Norway), Mr. Roberto Garretón (Chile) and Mr. El Hadji Malick Sow (Senegal).

3. On 25 November 2010, El Hadji Malick Sow was re-elected as Chair-Rapporteur of the Working Group and Shaheen Sardar Ali as the Working Group's Vice-Chair.

II. Activities of the Working Group in 2010

4. During the period 1 January to 30 November 2010, the Working Group held its fifty-seventh, fifty-eighth and fifty-ninth sessions. By reason of budgetary constraints, it was able to carry out only two official missions: to Malaysia (7-17 June 2010) and to Armenia (6-15 September 2010) (see addenda 2 and 3).

5. At the fourteenth session of the Human Rights Council, a global joint study into the practice of secret detention was submitted (A/HRC/13/42). The study was prepared by the Special Rapporteur on the Protection of Human Rights while Countering Terrorism, the Special Rapporteur on Torture, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances and the Vice-Chair of the Working Group on Arbitrary Detention.

6. The Working Group devoted attention in 2010 to discussing preparations for its 20th anniversary event in 2011. This commemorative event is planned to be held in November and aims at bringing together various stakeholders to engage in a roundtable discussion on issues relating to development of the work and jurisprudence of the Working Group as well as identifying best practices to enhance its functions.

A. Handling of communications addressed to the Working Group during 2010

1. Communications transmitted to the Working Group during 2010

7. A description of the cases transmitted and the contents of the replies of Governments can be found in the respective Opinions adopted by the Working Group (A/HRC/16/47 Add.1).

8. During its fifty-seventh, fifty-eighth and fifty-ninth sessions, the Working Group adopted 33 Opinions concerning 98 persons in 23 countries. Some details of the Opinions

adopted during these sessions appear in the table below and the complete texts of Opinions Nos. 1/2010 to 33/2010 are reproduced in addendum 1 to the present report.

2. Opinions of the Working Group

9. Pursuant to its methods of work², the Working Group, in addressing its Opinions to Governments, drew their attention to resolutions 1997/50 and 2003/31 of the former Commission on Human Rights and Human Rights Council resolution 6/4, requesting them to take account of the Working Group's 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 had taken. On expiry of the three-week deadline the Opinions were transmitted to the source.

Table 1

Opinions adopted during the fifty-seven, fifty-eighth and fifty-ninth sessions of the Working Group

<i>Opinion No.</i>	<i>Country</i>	<i>Government's reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>
1/2010	Libyan Arab Jamahiriya	No	Mr. Jamal Al Hajji.	Detention arbitrary, categories I, II and III.
2/2010	Iran (Islamic Republic of)	No	Mr. Shane Bauer, Ms. Sarah Shourd and Mr. Joshua Fattal.	Detention arbitrary, category III.
3/2010	India	No	Mr. Jamali Khan.	Detention arbitrary, categories I and III.
4/2010	Myanmar	No	Dr. Tin Min Htut and Mr. U Nyi Pu.	Detention arbitrary, categories II and III.
5/2010	Israel	No	Messrs. Hamdi al-Ta'mari and Mohammad Baran.	Detention arbitrary, categories I, II and III.
6/2010	Viet Nam	No	Father Thadeus Nguyen Van Ly.	Detention arbitrary, categories II and III.
7/2010	Pakistan	Yes	Messrs. Mubashar Ahmed, Muhammad Irfan, Tahir Imran, Tahir Mehmood and Naseer Ahmed.	Case filed (para. 17 (a) of the Working Group's methods of work – persons released).
8/2010	Iran (Islamic Republic of)	No	Mr. Isa Saharkhiz.	Detention arbitrary, categories II and III.
9/2010	Israel	Yes	Mr. Wa'ad al-Hidmy.	Detention arbitrary, categories II and III.

² E/CN.4/1998/44, annex I.

<i>Opinion No.</i>	<i>Country</i>	<i>Government's reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>
10/2010	Singapore	Yes	Dr. Chee Siok Chin.	Case filed (para. 17 (a) of the Working Group's methods of work – person released).
11/2010	Iraq	No	1. Jalil Gholamzadeh Golmarzi Hossein; 2. Azizollah Gholamizadeh; 3. Homaun Dayhim; 4. Mohammad Ali Tatai; 5. Mohammad Reza Ghasemzadeh; 6. Iraj Ahmadi Jihonabadi; 7. Jamshid Kargarfar; 8. Ebrahim Komarizadeh; 9. Javad Gougerdi; 10. Mehrban Balae; 11. Hamid Ashtari; 12. Mehdi Zare; 13. Mehdi Abdorrahimi; 14. Hossein Sarvezad; 15. Hossein Farsy; 16. Ali Tolammy Moghaddam; 17. Seyyed Hossein Ahmadi Djehon Abadi; 18. Karim Mohammadi; 19. Mir Rahim Ghorayshy Danaloo; 20. Asad Shahbazi; 21. Moshfegh Kongi; 22. Ahmad Tajgardan; 23. Jalil Forghany; 24. Ebrahim Malaipol; 25. Gholam- Reza Khorrani; 26. Mohsen Shojaee; 27. Omid Ghadermazi; 28. Manouchehr Majidi; 29. Hassan Besharati; 30. Ezat Latifi; 31. Mostafa Sanaie; 32. Habib Ghorab; 33. Rahman Haydari; 34. Mohammad Reza Hoshmand; 35. Abbas Mohammadi; 36. Gholamreza Mohammadzadeh; and 37. Abbas Hussein Fili.	Detention arbitrary, category III.

<i>Opinion No.</i>	<i>Country</i>	<i>Government's reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>
12/2010	Myanmar	No	Ms. Aung San Suu Kyi	Detention arbitrary, categories I, II and III.
13/2010	Palestinian Authority	No	Mr. Mohammad Abu-Shalbak	Detention arbitrary, categories I and III.
14/2010	United Arab Emirates	Yes	Mr. Nikola Milat	Detention arbitrary, category III.
15/2010	Turkmenistan	No	Messrs. Annakurban Amanklychev and Sapardurdy Khadzhied.	Detention arbitrary, categories II and III.
16/2010	Lebanon	No	Messrs. Abdulkarim Idane Ibrahim Al Samara'i and Shehabeldin Othman Yehya Othman	Detention arbitrary, categories I and III.
17/2010	Yemen	No	Mr. Azzam Hassan Ali	Detention arbitrary, categories I and III.
18/2010	Mauritania	No	Mr. Hanevy Ould Dahah	Detention arbitrary, category I.
19/2010	Peru	No	Messrs. Pedro Condori Laurente, Claudio Boza Huanhuayo and Eloy Martín Poma Canchán.	Case filed (paragraph 17 (a) of the Working Group's methods of work- persons released).
20/2010	Venezuela (Bolivarian Republic of)	Yes	Judge María Lourdes Afiuni Mora	Detention arbitrary, categories I, II and III.
21/2010	Egypt	Yes	Messrs. Abdul Mohamed Gamal Heshmat, Hosni Omar Ali Omaar and 10 other individuals.	Detention arbitrary, categories I and II.
22/2010	Egypt	Yes	Mr. Abdel Hakim Abdel Raouf Hassan Soliman	Detention arbitrary, categories I and II.
23/2010	Myanmar	Yes	Mr. Kyaw Zaw Lwin (a.k.a. Nyi Nyi Aung).	Detention arbitrary, category III.
24/2010	Syrian Arab Republic	Yes	Mr. Ziad Wasef Ramadan	Detention arbitrary, categories I and III.
25/2010	Qatar	Yes	Mr. Mohamed Farouk Al Mahdi	Detention arbitrary, category III. ³

³ This Opinion will be revised during the Working Group's 60th session.

<i>Opinion No.</i>	<i>Country</i>	<i>Government's reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>
26/2010	China	No	Mr. Zhisheng Gao	Detention arbitrary, categories II and III.
27/2010	Syrian Arab Republic	No	Mr. Haytham al-Maleh	Detention arbitrary, categories II and III.
28/2010	Myanmar	Yes	Mr. Ko Mya Aye	Detention arbitrary, categories II and III.
29/2010	China	Yes	Mr. Thamki Gyatso, Mr. Tseltem Gyatso, Mr. Kalsang Gyatso.	Detention arbitrary, category II.
30/2010	Colombia	Yes	Edinson Palomino Banguero	Case filed
31/2010	Venezuela (Bolivarian Republic of)	No	Santiago Giraldo Florez, Luis Carlos Cossio, Cruz Elba Giraldo Florez, Isabel Giraldo Celedón (only Venezuelan national) Secundino Andrés Cadavid, Dimas Oreyanos Lizcano, Omar Alexander Rey Pérez	Case filed (paragraph 17 (a) of the Working Group's methods of work – persons released).
32/2010	Peru	No	Luis William Polo Rivera	Detention arbitrary, category III.
33/2010	Mexico	No	Raúl Hernández Abundio	Case filed (paragraph 17 (d) of the Working Group's methods of work – lack of sufficient information).

3. Information received concerning previous opinions

10. By note verbale dated 14 December 2009, the Permanent Mission of the Bolivarian Republic of Venezuela to the United Nations Office at Geneva submitted information on the case of the detention of Mr. Eligio Cedeño, which had been considered by the Working Group in its Opinion No. 10/2009 (Venezuela).

11. By note verbale dated 9 December 2009, the Permanent Mission of the Kingdom of Saudi Arabia to the United Nations Office and other International Organizations at Geneva, submitted information concerning the Working Group's Opinion No. 6/2008 (Saudi Arabia) on the detention of Mr. Abdul Rahman b. Abdelaziz al-Sudays. The Permanent Mission reported that this person was sentenced by a competent court on 6/9/1426 (9 October 2005) to a term of 10 years' imprisonment after being found guilty of being in unauthorized possession of a quantity of weapons and explosives with the intention of undermining security, in violation of articles 22 and 32 of the Weapons and Munitions Act promulgated by Royal Decree No. M/8 of 16 December 1981 (Judgement No. 15/J/22 of 6/9/1426 -9 October 2005). Mr. al-Sudays was arrested on 22/4/1424 AH (22 June 2003), in accordance with articles 33, 103, 113 and 114 of the Code of Criminal Procedure, for having established a terrorist cell pursuing the aims of the Al-Qaeda organization based on the

procurement and stockpiling of weapons and explosives. Mr. al-Sudays was enabled to appoint a lawyer in conformity with article 4 of the Code of Criminal Procedure.

4. Follow-up to Opinions

12. By letter dated 8 March 2010, the Chair-Rapporteur of the Working Group requested the Permanent Mission of the United States of America to the United Nations Office at Geneva to provide information on the current situation of the persons mentioned in Opinion No. 19/2005 (United States of America) as well as on the measures eventually adopted to give consideration to the Working Group's recommendations.

13. By note verbale dated 12 July 2010, the Permanent Mission of the United States of America provided the Working Group with the requested information. According to the Government, the Working Group had issued its Opinion before any appellate opinion issued concerning the case at issue. Since then, the appellate process had yielded extensive analysis in consideration of the defendant's claims. The Court of Appeals had thoroughly and exhaustively considered many of the same issues raised by the Working Group and concluded that the defendants could, and did, receive a fair trial in Miami (see Campa II, pp. 1142-1155). Classified information was treated appropriately and without prejudice to the defendants (see Campa III, pages 994-996). The defendants' detention is not arbitrary, but based on the application of law by an independent judiciary in proceedings that give ample due process to them.

14. The Government further adds that the United States Court of Appeals affirmed the sentences for two defendants and identified errors in the application of the sentencing guidelines requiring resentencing of the other three defendants. On remand, the trial judge reduced all three sentences. In two instances, defendants reached agreement with the prosecution on the sentence to recommend. In short, independent judicial review in this case ensured that sentencing was consistent with United States law, and led to reductions in three of the five sentences. The appellate process provided an opportunity for the courts to give consideration to the very issues noted by the Working Group. Accordingly, the Government urged the Working Group to dismiss this matter and remove it from its docket.

5. Communications giving rise to urgent appeals

15. During the period 16 November 2009 to 17 November 2010, the Working Group transmitted 102 urgent appeals to 56 Governments (including the Palestinian National Authority) concerning 844 individuals (2,774 men, 50 women, 2 boys). In conformity with paragraphs 22 to 24 of its methods of work,⁴ the Working Group, without prejudging whether the detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported, and appealed to them to take the necessary measures to ensure that the detained persons' right to life and to physical integrity were respected. When the appeal made reference to the critical state of health of certain persons or to particular circumstances, such as failure to execute a court order for release, the Working Group requested the Government concerned to take all necessary measures to have the persons concerned released. In accordance with Human Rights Council resolution 5/2, the Working Group integrated into its methods of work the prescriptions of the code of conduct relating to urgent appeals and has since applied them.

16. During the period under review, 102 urgent appeals were transmitted by the Working Group as follows:

⁴ E/CN.4/1998/44, annex I.

Table 2

Urgent appeals transmitted to Governments by the Working Group

<i>Government concerned</i>	<i>Number of urgent appeals</i>	<i>Persons concerned</i>	<i>Persons released/Information received from</i>
Angola	1	5 men	
Bahrain	5	20 men	
Bolivia	1	2 men	
Bosnia and Herzegovina	1	4 men	
Cameroon	1	2 men	
Central African Republic	1	1 girl	
China	6	6 men	
Democratic People's Republic of Korea	1	1 man	
Egypt	7	18 men, 1 woman	1 man (Government)
Georgia	1	1 man	
Guinea	1	1 man	
India	3	4 men, 3 women	
Iran (Islamic Republic of)	14	516 men, 8 women	3 men, 3 women (sources)
Iraq	1	3 men	
Israel	4	2 men, 1 woman, 1 boy	
Kazakhstan	1	1 man	
Kuwait	1	1 man	
Kyrgyzstan	4	2,072 men, 1 boy	
Malawi	2	3 men	
Mexico	4	27 men, 2 women	1 man released (source)
Morocco	2	10 men	
Myanmar	1	1 man	
Norway	1	1 man	
Palestine	1	1 man	

<i>Government concerned</i>	<i>Number of urgent appeals</i>	<i>Persons concerned</i>	<i>Persons released/Information received from</i>
Pakistan	2	4 men	
Philippines	1	18 men, 24 women	
Qatar	1	1 man	
Republic of Korea	1	2 men	
Democratic Republic of the Congo	1	2 men	
Russian Federation	1	1 man	
Saudi Arabia	1	1 man	
South Africa	1	1 man	
Spain	1	5 men, 4 women	
Sri Lanka	1	1 man	
Sudan	2	10 men, 3 women	10 men, 3 women released (Government and source)
Syrian Arab Republic	4	3 men, 1 woman	
Tajikistan	1	1 man	
Tunisia	2	2 men	
Turkey	1	1 man	
Turkmenistan	1	5 men	
Uganda	2	2 men	
United Arab Emirates	2	2 men	
United Kingdom of Great Britain and Northern Ireland	1	1 man	
Venezuela (Bolivarian Republic of)	2	2 men	1 man released
Viet Nam	3	2 men, 1 woman	1 man released (source)
Yemen	3	3 men	
Zimbabwe	2	2 men, 1 woman	

17. Governments and sources reported that 23 persons were released. The Working Group wishes to thank those Governments that heeded its appeals and took steps to provide it with information on the situation of the persons concerned, especially the Governments

that released those persons. In other cases, the Working Group was assured that the detainees concerned would receive fair trial guarantees.

6. Release of detainees who were subjects of the Working Group Opinions

18. The Working Group is pleased with the release of three detainees who were subjects of its Opinions and whose detentions were declared arbitrary. Father Thadeus Nguyen Van Ly⁵ (Viet Nam) was released on 15 March 2010 after three years of detention; former judge, Birtukan Mideksa⁶ (Ethiopia) was released on 6 October 2010 after almost five years of detention and Daw Aung Sung Suu Kyi⁷ (Myanmar) was released on 13 November 2010 after 21 years of house arrest.

7. Reprisal relating to the Working Group's Opinions

19. According to information received, Judge María Lourdes Afiuni was promptly arrested on 10 December 2009 by police intelligence officers after having ordered the conditional release pending trial of Mr. Cedeño. Mr. Cedeño's counsel team had submitted to Judge Afiuni during the trial the Working Group's Opinion No. 10/2009 (Venezuela) on Cedeño, which declared his detention to be arbitrary (A/HRC/13/30/Add.1, p. 325).

20. On 16 December 2009, the Chair-Rapporteur of the Working Group, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers sent a joint urgent appeal to the Bolivarian Republic of Venezuela regarding Judge Afiuni.

21. Judge Afiuni is said to have been charged with corruption, being an accessory to an escape, criminal conspiracy and abuse of power. She is still imprisoned today and the Working Group has received information alleging that she has been subjected to death threats and that her health is deteriorating. The Working Group is very concerned that the use of its Opinion on Mr. Cedeño and the subsequent conditional release of this person has been the reason for reprisal against Judge Afiuni.

B. Country missions

1. Requests for visits

22. The Working Group has been invited to visit on official mission Azerbaijan, Burkina Faso, Georgia, the Libyan Arab Jamahiriya and the United States of America.

23. The Working Group has also asked to visit Sierra Leone, a country which, in spite of having extended an open formal invitation to all the thematic mechanisms of the Human Rights Council, has not yet replied to the Working Group's request. It has also made requests to visit Algeria, Argentina (a follow-up visit), Egypt, Ethiopia, Guinea Bissau, India, Japan, Morocco, Nauru, Nicaragua (a follow-up visit limited to Bluefields), Papua New Guinea, the Russian Federation, Saudi Arabia, Thailand, Turkmenistan and Uzbekistan.

⁵ Opinion No. 20/2003, E/CN.4/2005/6/Add.1, p. 4.

⁶ Opinion No. 28/2009, A/HRC/16/47/Add.1

⁷ Opinion No. 8/1992, E/CN.4/1993/24; Opinion No.2/2002, E/CN.4/2003/8/Add.1; Opinion No. 9/2004, E/CN.4/2005/6/Add.1; Opinion No.2/2007, A/HRC/7/4/Add.1; Opinion No. 46/2008, A/HRC/13/30/Add.1, Opinion No.12/2010, A/HRC/16/47/Add.1

2. Follow-up to country visits of the Working Group

24. In accordance with its methods of work, the Working Group decided in 1998 to address a follow-up letter to the Governments of the countries it had visited, requesting information on such initiatives as the authorities might have taken to give effect to the relevant recommendations adopted by the Working Group contained in the reports on its country visits.⁸

25. During 2010, the Working Group requested information from the countries it had visited during 2008 and received information from the Government of Ukraine. The Governments of Angola (visited in 2007), Colombia, Italy and Mauritania offered to send their information before the end of 2010.

Ukraine

26. In information received on 3 December 2010, the Government of Ukraine informed the Working Group that any request submitted by international, regional and national human rights organizations to visit penitentiary facilities is given due consideration and these organizations are provided with unhindered access. For instance, according to the Law Concerning the Amendments to the Criminal Code adopted on 21 January 2010, access to penitentiary facilities by the chairperson and members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment does not require any preliminary authorization from the Government. The Government informed the Working Group that the concept and format of a preventive mechanism against torture is currently under consideration and will be finalized by the end of 2011. The Ministry of Interior has implemented a training programme for its officials for the period 2010-2012, a publicly available Information Centre and special commissions overseeing the conditions of the penitentiary facilities.

27. The Government notes the ongoing project of a new Code of Criminal Procedure, which contains an innovative approach to obtaining testimonies. The latter are only considered evidence if submitted directly to the court. According to new article 88 of the Code of Criminal Procedure, no person is under an obligation to testify during the pre-trial investigation.

28. During 2010, the Government together with other stakeholders organized seven seminars for officials in charge of temporary detention facilities. In the first half of 2010, 21 officials have been brought to criminal responsibility for the misuse of authority and 24 members of the Ministry of Interior for the abuse of power and official functions.

29. Following the Order of the President of Ukraine No. 820 dated 17 August 2010, a working group was formed regarding the reform of the criminal procedure. Its function includes discussing the possibility of transforming the office of the prosecutor into an organization which will abide by the standards of the Council of Europe. Pursuant to the Law on the Selection and Status of Judges dated 7 July 2010, the competence to select candidates for judges belongs to a highly qualified commission of judges of Ukraine, a permanent body in the criminal justice system. It also provides for the introduction of an automated database of documents and distribution of cases. Pursuant to Law No. 2395-VI on the Amendments to the Code of Criminal Procedure of Ukraine regarding the Rights of Witnesses to a Lawyer and other Legal Assistance, the right of the witness to request legal assistance at all stages of criminal investigation is guaranteed.

⁸ E/CN.4/1999/63, para. 36

30. In the course of 2010, the authorities responsible for the security of the borders of Ukraine have not permitted detention of individuals who have applied for the status of refugee in Ukraine. In accordance with article 8 of the Law of Ukraine on Refugees, upon being granted refugee status, 104 individuals were released in 2010. Pursuant to the Law of Ukraine regarding the Amendments to the Code of Criminal Procedure in Relationship to Extradition, a refugee cannot be extradited to a foreign State where his or her health, life or liberty may be at risk on the grounds of race, religion, nationality, social or political considerations, unless otherwise provided by a particular treaty obligation incumbent on Ukraine.

31. Pursuant to the order of the Ministry of Justice No. 491/7, dated 27 May 2010, a working group has been created to promote the existence of a complete and effective system of juvenile justice.

32. In accordance with paragraph 3 of article 29 of the Constitution of Ukraine, any person deprived of his or her liberty has to be released within 72 hours from the moment of the arrest, unless provided with a reasoned judicial decision extending this initial period. Article 156 of the Code of Criminal Procedure and article 20 of the Law of Ukraine on Preventive Detention provide that the chief of the preventive detention facility must immediately release suspects in the absence of a judicial decision. Paragraph 6 of article 29 of the Constitution of Ukraine provides that arrest or detention of a person must be immediately communicated to the family and relatives.

3. Future country missions

33. The Working Group reiterates its concern at the limitation in the number and length of the visits it may conduct each year. Two country visits per year, each limited to ten days, does not appear to the Working Group sufficient for an adequate discharge of the Working Group's mandate. The Working Group conducted four visits in 2006, three in 2007, and four in 2008, undergoing the current limitation of two per year in 2009 and 2010. Country visits are of great importance to the victims of arbitrary detention.

34. In order to be able to verify the implementation of its recommendations, the Working Group should also be in a position to undertake follow-up visits. Follow-up visits are an essential element of its mandate, the only means to assess and monitor in situ the situation of personal liberty in various countries.

35. The usefulness of most of the forthcoming visits of the Working Group might be hampered by a limitation to eight working days. The abolishment of a number of country mandates further adds to the necessity of answering calls from the victims of human rights violations by the thematic mandates.

36. The Working Group reiterates its call to the General Assembly and the Human Rights Council to take into account the fact that the Working Group comprises five members. In order to make best use of its potential and enable it to discharge its mandate more effectively, the Working Group should be provided with additional funds to be able to conduct at least three country visits per year and relevant follow-up visits within an appropriate time frame.

III. Thematic considerations

A. Application of the international instruments on human rights to situations of armed conflict by the Working Group on Arbitrary Detention

37. In some instances, the Working Group on Arbitrary Detention is seized of communications concerning alleged arbitrary detention by governmental authorities in situations of armed conflict. Some argue that such situations are outside the mandate of the Working Group as they are covered by international humanitarian law.

38. However the application of international humanitarian law does not necessarily exclude the Government's obligations under international human rights law.

39. The Human Rights Committee recently reiterated that "the applicability of the regime of international humanitarian law during an armed conflict, as well as in a situation of occupation, does not preclude the application of the Covenant, except by operation of article 4, whereby certain provisions may be derogated from in a time of national emergency⁹."

40. Earlier, in its general comment No. 31, the Human Rights Committee noted that "the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive¹⁰."

41. The International Court of Justice, in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, considered that "the protection offered by the human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of any kind to be found in article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law¹¹."

42. The Court subsequently reiterated this finding in its binding judgment in the case of Democratic Republic of the Congo v. Uganda: "The Court first recalls that it had occasion to address the issues of the relationship between international humanitarian law and international human rights law and of the applicability of international human rights law instruments outside national territory in its Advisory Opinion of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory ... It thus concluded that both branches of international law, namely international human rights law and international humanitarian law, would have to be taken into consideration. The Court

⁹ Consideration of reports submitted by States parties under article 40 of the Covenant, concluding observations of the Human Rights Committee, CCPR/C/ISR/CO/3, 3 September 2010, para. 5.

¹⁰ Human Rights Committee, general comment No. 31 on the nature of the general legal obligation imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 11. See also Human Rights Committee, general comment No. 29 on states of emergency (art. 4), CCPR/C/21/Rev.1/Add.11 (2001), para. 3.

¹¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, para. 106.

further concluded that international human rights instruments are applicable ‘in respect of acts done by a State in the exercise of its jurisdiction outside its own territory’, particularly in occupied territories¹².”

43. It was emphasized recently that human rights law in its entirety continues to apply in situations of armed conflict, except for derogations in accordance with treaty provisions relating to times of emergencies¹³.

44. It was stressed that the continued operation in wartime of non-derogable human rights – side by side with the norms of the law of international armed conflict – may prove of signal benefit to some individual victims of breaches¹⁴. The reason is that, when it comes to seeking remedies for failure to comply with the law, human rights law may offer effective channels of action to individuals, whereas no equivalent avenues are opened by the law of international armed conflict. This is particularly manifested when human rights instruments set up supervisory organs vested with jurisdiction to provide adequate remedies to victims of breaches¹⁵.

45. Indeed, as has been emphasized by the International Committee of the Red Cross (ICRC), the Geneva Conventions and their additional Protocols have the same purpose as international instruments relating to human rights, i.e., the protection of the human person. Human rights, according to the ICRC, continue to apply concurrently in time of armed conflict.¹⁶ In resolution 2675 (XXV), the United Nations General Assembly affirmed some basic principles for the protection of civilian populations in armed conflicts. In particular, according to the resolution, “fundamental human rights, as accepted in international law and laid down in international instruments, continue to apply fully in situations of armed conflict.”

46. Pursuant to article 72 of additional Protocol I, the provisions of Section III (Treatment of Persons in the Power of a Party to the Conflict) are additional to the rules concerning humanitarian protection of civilians in the power of a Party to the conflict, as well as to other applicable rules of international law relating to the protection of fundamental human rights during international armed conflict. In this regard, the ICRC refers to three instruments binding the States which are Parties to them: (a) the International Covenant on Civil and Political Rights (1966); (b) the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); (c) the American Convention on Human Rights (1969).¹⁷

47. In particular, in accordance with paragraph 3 of Article 75 of Protocol I, any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

¹² Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda), Judgment of 19 December 2005, para. 216.

¹³ Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance, A/HRC/15/21, 22 September 2010, para. 68.

¹⁴ Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, Cambridge University Press (2004), p. 25.

¹⁵ Ibid.

¹⁶ ICRC Commentary on Protocol II, para. 4429, with reference to Resolution 2675 (XXV) of the United Nations General Assembly.

¹⁷ ICRC Commentary on Protocol I, para. 2928.

48. Paragraph 4 of article 75 of Protocol I reproduces most of the fair trial guarantees provided for in international human rights instruments (International Covenant on Civil and Political Rights art. 14; European Convention on Human Rights, arts. 5-6; American Convention on Human Rights, art. 8). Indeed, as is noted in the ICRC commentaries, in each of these treaties there is a clause permitting derogations from the articles in question in time of war.¹⁸ However, article 75 is not subject to any possibility of derogation or suspension and consequently it is these provisions which will play a decisive role in the case of armed conflict. Besides, the provisions in all these instruments are more or less equivalent.¹⁹

49. Similarly, it is emphasised in the preamble to Additional Protocol II that “international instruments relating to human rights offer a basic protection to the human person.” In this regard, the ICRC notes that this provision establishes the link between Protocol II and the international instruments on human rights.²⁰

50. The International Conference on Human Rights of 1968²¹ established the relationship between human rights and international humanitarian law. By adopting a resolution on human rights in armed conflicts, which encouraged the development of new rules, the Conference qualified humanitarian law as an extension of human rights and included it amongst the matters of concern to the United Nations.²² The ICRC noted in this regard that since then, the rules of international law on human rights, and in particular the International Covenant on Civil and Political Rights, would be used as a point of reference to bring into focus the fundamental guarantees given in Protocol II for the way in which human beings should be treated.²³

51. In sum, there could be situations of armed conflict where State institutions, including the judicial system, become dysfunctional. However, in general, the norms of the international human rights law protecting individuals against arbitrary detention shall be complied with by the Governments in situations of armed conflict. It is therefore appropriate to have the alleged violations of these human rights norms considered by the Working Group on Arbitrary Detention.

B. Secret detention

52. The joint study on global practices in relation to secret detention in the context of countering terrorism (see para. 5 above), was prepared with the full participation of all four experts on equal terms. They adopted all parts of the report jointly by consensus.

53. In conducting the study, the experts worked in an open, transparent and consultative manner with inputs from all relevant stakeholders, including the replies to a questionnaire sent to all Member States of the United Nations. Several consultations were held with States, and the experts shared their findings and relevant excerpts of States concerned before finalizing the study. In addition to United Nations sources and responses to the questionnaire from 44 States, primary sources included interviews conducted with persons

¹⁸ Ibid., para. 3092.

¹⁹ Ibid.

²⁰ Ibid., para. 4427.

²¹ The first International Conference on Human Rights was held in Teheran from 22 April to 13 May 1968 to review the progress made in the 20 years since the adoption of the Universal Declaration of Human Rights and formulate an agenda for the future.

²² ICRC Commentary on Protocol II, para. 4371.

²³ Ibid.

who had been held in secret detention, family members of those held captive and legal representatives of detainees. Flight data was also used to corroborate information.

54. The legal assessment concluded that secret detention is irreconcilably in violation of international human rights law, including during states of emergency and armed conflict. Likewise, it is in violation of international humanitarian law during any form of armed conflict. Secret detention violates the right to personal liberty and the prohibition of arbitrary arrest or detention. No jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including *habeas corpus*. Secret detainees are typically deprived of their right to a fair trial when State authorities do not intend to charge or try them. Even if detainees are criminally charged, the secrecy and insecurity caused by the denial of contact to the outside world and the fact that family members have no knowledge of their whereabouts and fate violate the presumption of innocence and are conducive to confessions obtained under torture or other forms of ill-treatment. At the same time, secret detention amounts to an enforced disappearance. If resorted to in a widespread or systematic manner, secret detention may even reach the threshold of a crime against humanity. Every instance of secret detention is by definition incommunicado detention. Prolonged incommunicado detention may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment, and may in itself constitute such treatment. Despite these unequivocal norms, secret detention continues to be used in the name of countering terrorism around the world and has been reinvigorated by the so-called global war on terror.

55. The study is a valuable contribution in the field as it is not only a legal but factual analysis on secret detention and makes concrete recommendations regarding this practice, aimed at curbing the resort to secret detention and unlawful treatment or punishment of detainees in the context of counter-terrorism. The full implementation of all these measures is the only way to put an end to the unacceptable practice of secret detention and the range of human rights violations that accompany it. The evidence gathered for this study demonstrates that the time has come for States to unambiguously reaffirm, in law and in practice, that secret detention will no longer be acceptable and neither will impunity for such acts be acceptable.

56. Most Member States were appreciative of the study presented at the Human Rights Council's fourteenth session and raised pertinent and incisive points for debate and also sought ideas for further action and the way forward. The mandate holders made a number of concrete recommendations, in particular requesting States to undertake rigorous enquiry on secret detention within their jurisdictions.

IV. Conclusions

57. The Working Group, in the fulfilment of its mandate, welcomes the cooperation it has received from States with regard to the responses by the Governments concerned with regard to cases brought to their attention. During 2010, the Working Group adopted 33 Opinions concerning 98 persons in 23 countries.

58. The Working Group welcomes the invitations extended to it as well as the cooperation on the part of the respective Governments. The Working Group conducted two official visits in 2010, to Malaysia and the Republic of Armenia. Among all the requested country visits, the Working Group has received invitations by the Governments of Azerbaijan, Burkina Faso, Georgia, the Libyan Arab Jamahiriya and the United States of America. The Working Group reiterates its belief that its country visits are essential in fulfilling its mandate. For Governments, these

visits provide an excellent opportunity to show developments and progress in detainees' rights and the respect for human rights, including the crucial right not to be arbitrarily deprived of liberty.

59. Further to this, the Working Group considers that follow-up visits are of the utmost importance. This was evident when the Working Group carried out its follow-up visit to China in September 2004. The Working Group requests the support of Members States in facilitating follow-up visits.

60. With respect to the application of international instruments on human rights to situations of armed conflict, the Working Group believes that there are particular instances of deprivation of liberty that fall within its mandate. This understanding is premised on principles reiterated by the Human Rights Committee and further supported by case law and opinion by the International Court of Justice. The Geneva Conventions and its additional Protocols governing the ICRC and situations of armed conflict also provide support to fundamental human rights as accepted in international law and laid down in international instruments, and continue to apply fully in situations of armed conflict. The International Covenant on Civil and Political Rights applies in situations of armed conflict to which the rules of international humanitarian law are applicable. The spheres of both international humanitarian law and human rights law are complementary and not mutually exclusive.

61. The Working Group notes the far-reaching impact of the joint study on secret detention in the context of countering terrorism, particularly in relation to its mandate and instances of arbitrary deprivation of liberty. Secret detention violates the right to personal liberty. Detainees kept in secret are typically deprived of their right to fair trial and possible legal recourse to fundamental remedies such as *habeas corpus*.

62. Finally, the Working Group considers it most useful to reiterate its concern over the deprivation of liberty imposed arbitrarily, and the fact that a still considerable number of persons are frequently unable to benefit from legal resources and guarantees to which they are entitled for the conduct of their defence by law and by applicable human rights instruments.

V. Recommendations

63. To enable the Working Group to report more systematically and comprehensively, it reiterates its proposal to the Human Rights Council to expand the mandate of the Working Group to include the examination of conditions of detention around the world and the monitoring of States' compliance with their obligations concerning all human rights of detained and imprisoned persons. The mandates of the Special Rapporteur on Prisons and Conditions of Detention in Africa and of the Rapporteurship on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights might provide some guidance as to the scope of such an extended mandate.

64. In view of information of a serious nature received concerning reprisals suffered by a judge who applied a Working Group's Opinion and individuals subject to urgent appeals or Opinions, States are urged to cease such practice.

65. The Working Group recommends consideration of the argument put forth in this report regarding the application of international instruments on human rights in situations of armed conflict and that the application of international humanitarian

law does not necessarily exclude Governments' obligations under the international human rights law.

66. The Working Group recommends that States consider that, although there may be situations of armed conflict where State institutions, including the judicial system are dysfunctional, the norms of the international human rights law protecting individuals against arbitrary detention shall be complied with by the Governments. It is in these situations that such alleged violations of human rights norms may be considered by the Working Group on Arbitrary Detention.

67. The Working Group calls on those States to take note of the secret detention study and its concrete recommendations regarding the practice of secret detention which aim at curbing the use of secret detention and unlawful treatment or punishment of detainees in the context of counter-terrorism.

68. The Working Group recommends that States duly take into account the principles contained in the present report with respect to deprivation of liberty in the context of measures countering terrorism and review their legislation and practice in the light of these principles.

Annex

Revised methods of work of the Working Group

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I. Introduction

1. The methods of work take account of the specific features of the terms of reference of the Working Group on Arbitrary Detention under former Commission on Human Rights resolutions 1991/42, 1992/28, 1993/36, 1994/32, 1995/59, 1996/28, 1997/50, 1998/41, 1999/37, 2000/36, 2001/40, 2002/42, 2003/31, 2004/39 as well as by resolutions 6/4, 10/9 and 15/18 of the Human Rights Council. Resolution 1997/50 gives the Working Group not only the task of informing the former Commission by means of a comprehensive report, but also of “investigating cases of deprivation of liberty imposed arbitrarily” (para. 15).

II. Functioning of the Working Group

2. The Working Group on Arbitrary Detention was set up under Commission on Human Rights resolution 1991/42. The initial mandate of the Working Group was renewed by the former Commission and the Human Rights Council. The Council undertook the mandate of the Working Group in accordance with decision 2006/102 and renewed the mandate by resolutions 6/4 and 15/18. The Working Group’s mandate is considered for renewal every three years.

3. At the beginning of each renewed mandate the members of the Working Group elect their Chair-Rapporteur and Vice-Chair for the term of the renewed mandate.

4. The Working Group meets at least three times a year, for at least five to eight working days, generally in Geneva.

5. When the case under consideration or the country visit concerns a country of which one of the members of the Working Group is a national, or in other situations where there may be a conflict of interest, that member shall not participate in the discussion of the case, in the visit or in the preparation of the report on the visit.

6. During the course of its deliberations, when dealing with individual cases or situations, the Working Group renders Opinions which are incorporated in its annual report submitted to the Human Rights Council. The Opinions of the Working Group are the result of consensus; where consensus is not reached, the view of a majority of the members of the Working Group is adopted as the view of the Working Group.

III. Implementation of the mandate of the Working Group

7. The mandate of the Working Group is to investigate cases of deprivation of liberty imposed arbitrarily. In the discharge of its mandate, the Working Group refers to the relevant international standards set forth in the Universal Declaration of Human Rights, as well as to the relevant international instruments accepted by the States concerned, in particular the International Covenant on Civil and Political Rights; the Convention relating to the Status of Refugees of 1951; the International Convention on the Elimination of All Forms of Racial Discrimination, as well as, when appropriate, the following standards:

- (a) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- (b) Standard Minimum Rules for the Treatment of Prisoners;
- (c) United Nations Rules for the Protection of Juveniles Deprived of their Liberty;

(d) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”);

(e) Convention on the Rights of the Child;

(f) Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as any other relevant standard.

8. As a general rule, in dealing with situations of arbitrary deprivation of liberty within the meaning of paragraph 15 of resolution 1997/50, the Working Group shall refer, in the discharge of its mandate, to the following five legal categories:

(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 sentence or despite an amnesty law applicable to him) (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 International Covenant on Civil and Political Rights. (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 the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).

IV. Submission and consideration of communications

A. Submission of communications to the Working Group

9. Communications shall be submitted in writing and addressed to the Secretariat, giving the family name, first name and address of the sender and (optionally) his or her telephone, telex and telefax numbers or electronic mail address.

10. As far as possible, each case shall form the subject of a presentation indicating the circumstances of the arrest or detention and the family name, first name and any other information making it possible to identify the person detained, as well as the latter's legal status, particularly:

(a) The date and place of the arrest or detention or of any other form of deprivation of liberty and the identity of those presumed to have carried them out, together with any other information shedding light on the circumstances in which the person was deprived of liberty;

(b) The reasons given by the authorities for the arrest, detention or the deprivation of liberty;

(c) The legislation applied in the case;

(d) The action taken, including investigatory action or the exercise of internal remedies, in terms of both approaches to the administrative and judicial authorities; as well as the steps taken at the international or regional levels; the results of such action or the reasons why such measures were ineffective or were not taken;

(e) An account of the reasons why the deprivation of liberty is deemed arbitrary.

(f) A report of all elements presented by the source which aim to inform the Working Group on the full status of the reported situation, such as the beginning of a trial; granting of provisional or definitive release; changes of incarceration conditions or venue, or of any other similar circumstances. Furthermore, the absence of information or the absence of a response by the source can authorize the Working Group to file the case.

11. In order to facilitate the Working Group's work, it is hoped that communications will be submitted using the model questionnaire available from the Working Group's Secretariat.

12. Communications addressed to the Working Group may be received from the individuals concerned, their families or their representatives. Such communications may also be transmitted by Governments and intergovernmental and non-governmental organizations as well as by national institutions for the promotion and the protection of human rights. In dealing with communications, the Working Group will give consideration to articles 9, 10 and 14 of the Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council.

13. In accordance with the provisions of paragraph 4 of resolution 1993/36 of the former Human Rights Commission, the Working Group may, on its own initiative, take up cases which might constitute arbitrary deprivation of liberty.

14. When the Working Group is not in session, the Chair-Rapporteur, or in her/his absence the Vice Chair, may decide to bring the case to the attention of the Government.

B. Consideration of communications

15. In the interest of ensuring mutual cooperation, communications shall be brought to the attention of the Government and the reply of the latter shall be brought to the attention of the source of the communication for its further comments. They shall be transmitted by the Chair-Rapporteur of the Working Group or, if she/he is not available, by the Vice Chair. In the case of Governments, the letter shall be transmitted through the Permanent Representative to the United Nations Office at Geneva. It shall request the Government to reply within sixty (60) days after having carried out such inquiries as may be appropriate so as to furnish the Working Group with the fullest possible information. The communication shall inform the Government that the Working Group is authorized to render an Opinion determining whether the reported deprivation of liberty was arbitrary or not, if a reply is not received by the Government within the time limit granted by the Working Group to the Government.

16. However, if the Government desires an extension of this time limit, it shall inform the Working Group of the reasons for requesting one, so that it may be granted a further period of a maximum of one month in which to reply. Even if no reply has been received upon expiry of the time limit set, the Working Group may render an Opinion on the basis of all the information it has obtained.

C. Action taken on communications

17. In light of the information obtained, the Working Group shall take one of the following measures:

(a) If the person has been released, for whatever reason, following the reference of the case to the Working Group, the case is filed through an Opinion. The Working Group reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned;

(b) If the Working Group considers that the case is not one of arbitrary detention, it shall render an opinion to that effect. The Working Group can also make recommendations in this case if it considers it necessary.

(c) If the Working Group considers that further information is required from the Government or from the source, it may keep the case pending until that information is received;

(d) If the Working Group considers that the arbitrary nature of the detention is established, it shall render an opinion to that effect and make recommendations to the Government.

18. The Opinions rendered by the Working Group shall be transmitted to the Government concerned. Two weeks after their transmittal, they shall be communicated to the source.

19. The Opinions rendered by the Working Group shall be brought to the attention of the Human Rights Council in its annual report.

20. Governments, sources and other parties should inform the Working Group of the follow-up action taken on the recommendations made by the Working Group in its Opinion. This will enable the Working Group to keep the Human Rights Council informed of the progress made and of any difficulties encountered in implementing the recommendations, as well as of any failure to take action.

D. Procedure of review of opinions

21. In exceptional circumstances, the Working Group may, at the request of the Government concerned or the source, reconsider its opinions under the following conditions:

(a) If the facts on which the request is based are considered by the Working Group to be entirely new and such as to have caused the Working Group to alter its decision had it been aware of them;

(b) If the facts had not been known or had not been accessible to the party originating the request;

(c) In the case where the request comes from a Government, on condition that the latter has observed the time limit for reply referred to in paragraphs 15-16 above.

V. Urgent action procedure

22. A procedure known as "urgent action" may be resorted to in the following cases:

(a) In cases in which there are sufficiently reliable allegations that a person is being arbitrarily deprived of his liberty and that the continuation of such deprivation

constitutes a serious threat to that person's health, physical or psychological integrity or even to her/his life;

(b) In cases in which, even when no such threat is alleged to exist, there are particular circumstances that warrant an urgent action.

23. After having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an Opinion on whether the deprivation of liberty was arbitrary or not. Such appeals – which are of a purely humanitarian nature – in no way prejudge any Opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

24. The Chair-Rapporteur, or in his/her absence the Vice-Chair, shall transmit the appeal by the most rapid means to the Minister for Foreign Affairs through the Permanent Mission of the country concerned.

VI. Country visits

25. For the purposes of completing its task, the Working Group frequently pays visits on official mission. These visits are prepared in collaboration with the Government, the United Nations agencies in the field and with civil society representatives. The visits are an opportunity for the Working Group to engage in direct dialogue with the Government in question and with representatives of civil society, with the aim of better understanding the situation of deprivation of liberty in the country and the underlying reasons for arbitrary detention. An important part of these missions are visits to detention centres, including penitentiaries, prisons, police stations, detention centres for migrants and psychiatric hospitals.

26. When the Working Group receives an invitation by a Government to conduct a country visit, the Working Group responds by inviting the Permanent Representative of the State to the United Nations Office at Geneva to a meeting to determine the dates and terms of the country visit. The Secretariat of the Working Group initiates a dialogue with the parties involved in the visit with a view to taking all practical measures to facilitate the mission. The preparation for the visit is conducted in close cooperation with diplomatic authorities of the host country and United Nations agencies.

27. The Government must assure the Working Group that, during the visit, the Working Group will have the opportunity to conduct meetings with the highest authorities of the branches of the State (political, administrative, legislative and judicial authorities) and that it will be able to visit penitentiaries, prisons, police stations, immigration detention centres, military prisons, detention centres for juveniles and psychiatric hospitals. It will be able to meet with all the authorities and officials who affect the personal liberty of persons subjected to the jurisdiction of the host State. The Working Group shall also conduct meetings with international bodies and agencies as well as non-governmental organizations, lawyers, bar associations and other professional associations of interest, national human rights institutions, diplomatic and consular representatives and religious authorities. Absolute confidentiality shall be guaranteed during the interviews between the Working Group and persons deprived of their liberty. The Government shall guarantee there will be no reprisals against persons interviewed by the Working Group.

28. The Working Group shall conduct at least two visits per year, and its delegation will be composed of at least two of its members.

29. At the end of its visit, the Working Group shall submit a preliminary statement to the Government, informing it about its preliminary findings. It shall inform the public of its findings by means of a press conference after debriefing the Government.

30. A report shall be prepared by the Working Group, and once adopted it shall be communicated to the Government of the country visited with a view to gathering its observations on factual and legal errors. The final report shall take into consideration the observations of the Government. It shall be published as an addendum to the annual report.

31. During the visit, members of the Working Group shall respect the legislation of the host country.

32. Two years after its visit, the Working Group shall request the Government to present a report on the implementation of the recommendations formulated in its mission report. All of the stakeholders involved in the visit shall be informed during this follow-up procedure and shall submit their observations. If necessary, the Working Group shall request a follow-up visit to the country concerned.

VII. Coordination with other human rights mechanisms

33. In order to strengthen the good coordination which already exists between the various United Nations bodies working in the field of human rights (resolution 1997/50, para. 1 (b)), the Working Group takes action as follows:

(a) If the Working Group, while examining allegations of violations of human rights, considers that the allegations could be more appropriately dealt with by another working group or special rapporteur, it will refer them to the relevant working group or rapporteur within whose competence they fall, for appropriate action;

(b) If the Working Group receives allegations of violations of human rights which fall within its competence as well as within the competence of another thematic mechanism, it may consider taking appropriate action jointly with the working group or special rapporteur concerned;

(c) If communications concerning a country for which the Human Rights Council has appointed a special rapporteur, or another appropriate mechanism with reference to that country, are referred to the Working Group, the latter, in consultation with the rapporteur or the person responsible, shall decide on the action to be taken;

(d) If a communication addressed to the Working Group is concerned with a situation that has already been referred to another body, action shall be taken as follows:

(i) If the function of the body to which the matter has been referred is to deal with the general development of human rights within its area of competence (e.g. most of the special rapporteurs, representatives of the Secretary General, independent experts), the Working Group shall retain competence to deal with the matter.

(ii) However, if the body to which the matter has already been referred has the function of dealing with individual cases (Human Rights Committee and other treaty bodies), the Working Group shall transmit the case to that other body if the person and facts involved are the same.

34. Furthermore, the Working Group shall not make visits to countries for which the Human Rights Council has already appointed a country rapporteur, or another appropriate mechanism with reference to that country, unless the special rapporteur or the person responsible considers the visit by the Working Group to be useful.
