

## Fact Sheet No. 26, The Working Group on Arbitrary Detention

"No one shall be subjected to arbitrary arrest, detention or exile"

*(Universal Declaration of Human Rights, article 9)*

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### I. INTRODUCTION

Since 1975, the UN Commission on Human Rights has established a variety of mechanisms designed to improve international protection of human rights, if it is confronted with situations that appear to reveal a consistent pattern of human rights violations. The basis for these procedures is resolution No. 1235 (XLII) of 6 June 1967 of the U. N. Commission on Human Rights (today composed of 53 members). The procedures may refer to countries with similar patterns of violations, or to violations of specific rights (such as freedom of expression and opinion or independence of judges and lawyers), or else to particularly serious forms of human rights violations (enforced disappearances, torture, violence against women, etc.).

These procedures analyze the “theme” of the “situation” which is the subject of the mandate. Under the system in place, the Chairman of the Commission will designate an individual with special expertise in the matter under consideration (known as “Special Rapporteur”) or a group of experts (“Working Group”) which will investigate the matter and report to the next annual session of the Commission. The mandate of country-specific Rapporteurs is for one year, that for thematic rapporteurs and working groups three years.

The special procedures must be differentiated from the so-called treaty-based bodies, the legal basis for whom is a human rights treaty (convention or covenant), and whose members are elected through a meeting of the States parties.

## II. ORIGINS OF THE WORKING GROUP ON ARBITRARY DETENTION

All countries are confronted by the practice of arbitrary detention. It knows no boundaries, and thousands of persons are subjected to arbitrary detention each year:

- either merely because they have exercised one of their fundamental rights guaranteed under international treaties such as their right to freedom of opinion and expression, their right to freedom of association, the right to leave and enter one’s own country, as proclaimed in the Universal Declaration of Human Rights;
- or because, having been unable to benefit from the fundamental guarantees of the right to a fair trial, they have been imprisoned without an arrest warrant and without being charged or tried by an independent judicial authority, or without access to a lawyer; detainees are sometimes held incommunicado for several months or years, or even indefinitely;
- or because they remain in detention even though the measure or punishment which has been applied to them has been executed;
- or, finally, because of the growing and preoccupying practice of administrative detention, notably for those seeking asylum.

Since detention in itself is not a violation of human rights, international law has progressively endeavoured to define the limits beyond which a detention, whether administrative or judicial, would become arbitrary.

The United Nations Commission on Human Rights has addressed the distributing expansion of such practices since 1985.<sup>17</sup> In 1990, it requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to undertake a thorough study of the matter and submit recommendations to it for the reduction of such practices.

At the same time, concern about the guarantees which should be enjoyed by all persons deprived of their liberty was manifested in the adoption by the United Nations General Assembly in December 1988 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (see annex II).

In 1991, in pursuance of the recommendations made in the above-mentioned report of the Sub-Commission,<sup>21</sup> the Commission on Human Rights set up the Working Group on Arbitrary Detention, which thus joined the existing procedures set up at the initiative of the Commission to guarantee protection of the right to life and physical integrity, religious intolerance, and other rights.

## III. COMPOSITION AND MANDATE OF THE GROUP

The Commission on Human Rights has entrusted the Working Group with the following mandate:

(a) To investigate cases of detention imposed arbitrarily or otherwise inconsistently with relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned provided that no final decision has been taken in such cases by domestic courts in conformity with domestic law;

(b) To seek and receive information from Government and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives;

(c) To present a comprehensive report to the Commission at its annual session.

The Working Group on Arbitrary Detention is the only non-treaty-based mechanism whose mandate expressly provides for consideration of individual complaints. This means that its actions are based on the right of petition of individuals anywhere in the world.

The mandate also stipulates that the Group must carry out its task with discretion, objectivity and independence. Against this background the group adopted the rule that when the case under consideration concerns a country of which one of the members of the Group is a national, that member shall not participate in the discussion.

The Working Group is composed of five independent experts appointed following consultations by the Chairman of the Commission on Human Rights in the light of the criteria governing equitable geographical distribution which apply in the United Nations (see annex III). The first session of the Working Group was held in September 1991. The Working Group's mandate is extended by the Commission on Human Rights every three years. At the beginning of each three-year mandate, the members of the Working Group elect their Chairman and Vice-Chairman.

The Group is assisted by the Secretariat throughout the year and holds three sessions per year, each lasting between five and eight working days.

#### **IV. CRITERIA ADOPTED BY THE WORKING GROUP TO DETERMINE WHETHER A DEPRIVATION OF LIBERTY IS ARBITRARY**

##### **A. What is meant by "deprivation of liberty"?**

Commission on Human Rights resolution 1991/42, under which the Working Group was set up, did not define the term "detention". This led to differing interpretations of the term, which were solved by adoption of Commission Resolution No. 1997/50.

International human rights instruments protect the right to personal liberty, in that no one shall be arbitrarily deprived of his liberty.

There may accordingly be legitimate deprivations of liberty, such as of convicted persons or of those accused of serious offences. There may further be other forms of deprivation of liberty attributable to administrative authorities, as in the case of mentally disturbed persons. In addition, the right to personal liberty may suffer limitations during states of emergency, in accordance with article 4 of the International Covenant on Civil and Political Rights. In the latter instance, not judges but other authorities frequently justify arrests. Finally, there are deprivations of liberty which are per se prohibited, such imprisonment for debt.

It must also be noted that international instruments do not always use the same terminology to refer to deprivations of liberty: they may refer to "arrest", "apprehension", "detention", "incarceration", "prison", "reclusion", "custody", "remand", etc. For this reason the Commission on Human Rights, in its Resolution 1997/50, opted for the term "deprivation of liberty", term that eliminates any differences in interpretation between the different terminologies.

This terminology was chosen since the objective entrusted to the Group relates to the protection of individuals against arbitrary deprivation of freedom in all its forms, and its mandate extends to deprivation of freedom either before, during or after the trial (a term of imprisonment imposed following conviction), as well as deprivation of freedom in the absence of any kind of trial (administrative detention). The Group also regarded as forms of detention measures of house arrest and rehabilitation through labour, when they are accompanied by serious restrictions on liberty of movement.

## **B. When does deprivation of liberty become arbitrary?**

The question of when detention is or becomes arbitrary is not definitively answered by the international instruments. The Universal Declaration of Human Rights merely provides in article 9 that “no one shall be subjected to arbitrary arrest, detention or exile”. Article 9(1) of the International Covenant on Civil and Political Rights is scarcely any clearer: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

When determining the mandate of the Working Group, the Commission used a pragmatic criterion: while it did not define the term “arbitrary”, it considered as arbitrary those deprivations of liberty which for one reason or another are contrary to relevant international provisions laid down in the Universal Declaration of Human Rights or in the relevant international instruments ratified by States (Resolution 1991/42, as clarified by resolution 1997/50).

Resolution 1997/50 considers that deprivation of liberty is not arbitrary if it results from a final decision taken by a domestic judicial instance and which is (a) in accordance with domestic law; and (b) in accordance with other relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned.

To enable it to carry out its tasks using sufficiently precise criteria, the Working Group adopted criteria applicable in the consideration of cases submitted to it, drawing on the above-mentioned provisions of the Declaration and the Covenant as well as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Consequently, according to the Group, deprivation of liberty is arbitrary if a case falls into one of the following three 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, 10 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, spelled out 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).

In order to evaluate the arbitrary character or otherwise of cases of deprivation of freedom entering into Category 3, the Working Group considers, in addition to the general principles set out in the Universal Declaration of Human Rights, several criteria drawn from the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and, for the States parties to the International Covenant on Civil and Political Rights, the criteria laid down particularly in articles 9 and 14 thereof. The Group frequently receives communications requesting it to declare a deprivation of liberty “unfair”, or to take a view on the value of evidence produced during a trial. These are areas which fall outside the Group’s remit. It is not for the Group to evaluate the facts and evidence in a particular case or to substitute itself for domestic appellate tribunals. Similarly, it is not for the Group to examine complaints about instances of detention and subsequent disappearance of individuals, about alleged torture, or about inhuman conditions of detention. If such human rights violations occur, the Group will refer the matter to the competent body,

wherever appropriate (such as the Special Rapporteur on Torture or the Working Group on Enforced or Involuntary Disappearances).<sup>3/</sup>

## V. PROCEDURES FOLLOWED BY THE WORKING GROUP

### A. The procedure involving investigation of individual cases

This procedure comprises the following four stages (for the text of the Group's working methods, see [Annex IV](#)).

#### STAGE 1: *Bringing the matter to the attention of the Working Group*

The Group's involvement is generally triggered by communications sent to it by the individuals directly concerned, their families, their representatives or non-governmental organizations for the protection of human rights, although it may also receive communications from Governments and inter-governmental organizations. The Working Group has prepared a model questionnaire to facilitate the task of those submitting communications, known as "sources". The questionnaire, which appears in annex V, is not obligatory. Failure to use it to submit cases to the Working Group does not result in the inadmissibility of the communication. Similarly, the Working Group does not require local remedies to be exhausted in order for a communication to be declared admissible.

Since 1993, the Commission on Human Rights has authorized the Working Group to take up cases on its own initiative when its attention is drawn to sufficiently substantiated allegations of arbitrary deprivation of liberty.

#### STAGE 2: *Offering the Government an opportunity to refute the allegations*

The Group attaches great importance to the adversarial character of its procedure. Consequently, the communication is forwarded to the Government concerned through diplomatic channels with an invitation to communicate to the Working Group within 90 days its comments and observations on the allegations made, both as regards the facts and the applicable legislation and concerning the progress and outcome of any investigations that may have been ordered. If the Government desires an extension of this time limit, it is required to inform the Group of the reasons for requesting one, so that it may be granted a further period of a maximum of two months in which to reply.

The Working Group, whose terms of reference require it to discharge its duties with discretion, does not reveal the identity of the source to the Government to which it forwards the substance of the communication.

#### STAGE 3: *Offering the source an opportunity to make comments on the Government's response*

A reply sent by the Government to the Working Group is transmitted to the source for any final comments.

On the other hand, if the Government has not communicated its response within the above-mentioned 90-day deadline, or within the extended deadline, the Working Group may take a position on the case on the basis of all the information available to it.

#### STAGE 4: *The Working Group's opinion*<sup>4/</sup>

In the light of the information collected under this adversary procedure, the Working Group adopts one of the following measures in private session:

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

(b) If the Group considers that the case is not one of the arbitrary deprivation of liberty, it shall render an opinion to this effect;

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

(d) If the Group considers that it is unable to obtain sufficient information on the case, it may file the case provisionally or definitively;

(e) If the Group decides that the arbitrary nature of the deprivation of liberty is established, it shall render an opinion to that effect and make recommendations to the Government.

The opinion is sent to the Government, together with the recommendations. Three weeks after this notification, the opinion is also conveyed to the source for information.

The opinions are published in an annex to the report presented by the Working Group to the Commission on Human Rights at each of its annual sessions.

#### **B. The “deliberations” procedure**

The Working Group may also formulate “deliberations” on matters of a general nature involving a position of principle in order to develop a consistent set of precedents and assist States, for purposes of prevention, to guard against the practice of arbitrary deprivation of liberty. The Group has already adopted various such “deliberations”, specifically in the above-mentioned areas of house arrest and deprivation of freedom for purposes of rehabilitation through labour; by means of these “deliberations” it defines the criteria on the basis of which deprivation of freedom linked with such situations may become arbitrary.

#### **C. The “urgent action” procedure**

The Working Group has developed an “urgent action” procedure for cases in which there are sufficiently reliable allegations that a person is being detained arbitrarily and that the continuation of the detention may constitute a serious danger to that person’s health or life. The urgent action procedure may also be resorted to in other circumstances, when the Working Group deems that the situation warrants such an appeal. In such cases, an urgent appeal is sent, by the most rapid channel of communication, to the Minister for Foreign Affairs of the State concerned, requesting that his Government should take appropriate measures to ensure that the detained person’s right to life and to physical and mental integrity are respected. In addressing such communications, the Working Group emphasizes that such urgent appeals are of purely humanitarian character and in no way prejudice the Working Group’s final assessment of whether the deprivation of liberty is arbitrary or not.

#### **D. Field missions**

Visits to countries constitute an opportunity for the Working Group, through a direct dialogue with the Government concerned and representatives of civil society, to understand better the situation prevailing in that country, as well as the underlying reasons for instances of arbitrary deprivation of liberty. Discussions conducted during such visits with the judicial, penitentiary and other officials concerned, as well as with detainees, enable the Working Group members to enhance their understanding of the state and the evolution of the national legislation from the perspective of international human rights norms, taking into account the social, political and historical context in each country. Such visits bring about a spirit of cooperation between the country visited and the Working Group. They take place on the basis of an invitation from the Government concerned. This is why the Commission on Human Rights has on numerous occasions encouraged Governments to invite the Working Group to their countries so as to enable the Group to discharge its mandate even more effectively.

In accordance with these principles, the Working Group carries out country visits on a regular basis.

In principle, the Working Group does not visit countries in respect of which provision has already been made for a special rapporteur (or similar machinery), unless the Special Rapporteur appointed for the country in question requests or agrees that it should do so.

## **VI. THE ANNUAL REPORT**

Each year the Working Group reports to the Commission on its activities. In it, the Working Group will express its observations on the different institutions, (legal) insufficiencies, policies, judicial practices which, in its opinion, are the cause for arbitrary deprivation of liberty. In its conclusions, the Working Group has made critical comments on abuses of states of emergency, of criminal legislation which fails to define criminal offences with sufficient precision, excessive recourse to special tribunals, particularly military courts, absence of an independent judiciary or bar association, violations of the right to freedom of expression and opinion, etc. In accordance with its working methods, the Working Group formulates specific recommendations for the Commission on Human Rights.

The report, includes the following annexes or addenda:

- opinions adopted on individual cases;
- reports on field visits;
- statistics.

Between 1991 and the end of 1997, the Working Group had declared the detention of 1331 persons to be arbitrary and the detention of 19 others to be not arbitrary; it decided to file 335 cases, the detainees having been freed by the time the Working Group considered their case. The cases investigated by the Working Group concerned 60-odd countries throughout the world. It is noteworthy that, among the cases of detention declared arbitrary, there is a majority of cases in which the deprivation of freedom was linked with the exercise of certain rights and freedoms (cf. category 2, mentioned above); thus, many cases concerned deprivation of liberty imposed following the peaceful exercise of the right to freedom of opinion and expression, which is guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on civil and Political Rights.

Despite the cooperation from Governments, the Working Group notes that close to one half of those to which it sends communications relating to alleged cases of arbitrary deprivation of liberty still fail to reply or content themselves with acknowledging receipt.

The Working Group, in cooperation with the Commission on Human Rights and other United Nations bodies, has been striving to find means which would lead not only to the release of those whose detention has been declared by the Group to be arbitrary, but above all to the adoption by the States concerned of legislative and executive measures which would prevent new cases of arbitrary detention.

## **VII. COOPERATION WITH OTHER UNITED NATIONS BODIES**

### **A. Cooperation with other human rights protection mechanisms**

Given the growth of multiple forms of machinery for the protection of human rights, either through resolution (special thematic or country-oriented procedures) or through treaties (machinery set up under conventions, such as the Human Rights Committee established under the International Covenant on civil and Political Rights, the Committee on the Elimination of Racial Discrimination or the Committee against Torture) made it necessary to lay down rules for coordination in order to prevent duplication in the consideration of cases. These rules are in accordance with the principle non bis in idem, under which two bodies may not simultaneously consider a single case involving the same persons, subject-matter and cause of action.

In order to avoid such duplication, the following procedure is followed: as soon as a case is brought before the Group, the secretariat checks whether it does indeed fall under the Group's mandate. If the principal violation suffered by the detained person falls under the practice of torture, summary execution or enforced disappearance, the case is forwarded to the appropriate special rapporteur or working group.

In contrast, when the alleged violation fundamentally has to do with the lawfulness of detention, the Working Group, with the backing of the Commission on Human Rights, has opted for the following solution:

- If the other body before which the case has been brought does not deal with individual cases, but with the evolution of the human rights situation in the thematic or geographical area allocated to it, the requirement that the person, the subject-matter and the cause of action should be the same is not met. The Group therefore considers that the rule non bis in idem does not apply, and it therefore takes up the case.

- If, on the other hand, the body is one which deals with individual cases (this means only the Human Rights Committee), the principle non bis in idem does apply. The secretariat checks whether the communication involves a country which has recognized the competence of the Human Rights Committee to consider individual complaints; if it does, the secretariat contacts the source in order to determine whether the source opts for the Human Rights Committee or the Working Group.

## **B. Cooperation with non-governmental organizations**

The Working Group continuously cooperates with non-governmental organizations, both international and regional, which are its main sources of information. In this context, the Working Group periodically meets with representatives of those non-governmental organizations that have submitted to it the largest number of individual cases as well as information of a general nature, in order to consider ways of enhancing mutual cooperation.

## **Annexes**

### **Annex I**

#### **Articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights relating to the mandate of the Working Group on Arbitrary Detention**

##### Universal Declaration of Human Rights

###### Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

###### Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

###### Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

###### Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.



2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

#### Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

#### Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

#### Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

#### Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

#### Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

#### Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

### International Covenant on Civil and Political Rights

#### Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

#### Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

#### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance

assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their re-habilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

#### Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with its special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

#### Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

#### Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

#### Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the elections;

(c) To have access, on general terms of equality, to public service in his country.

#### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their groups, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

## Annex II

### Body of principles for the protection of all persons under any form of detention or imprisonment

(Resolution 43/173 adopted by the General Assembly)

The General Assembly,

Recalling its resolution 35/177 of 15 December 1980, in which it referred the task of elaborating the draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment to the Sixth Committee and decided to establish an open-ended working group for that purpose,

Taking note of the report of the Working Group on the Draft Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment,<sup>4/</sup> which met during the forty-third session of the General Assembly and completed the elaboration of the draft Body of Principles,

Considering that the Working Group decided to submit the text of the draft Body of Principles to the Sixth Committee for its consideration and adoption,<sup>5/</sup>

Convinced that the adoption of the draft Body of Principles would make an important contribution to the protection of human rights,

Considering the need to ensure the wide dissemination of the text of the Body of Principles,

1. Approves the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the text of which is annexed to the present resolution;
2. Expresses its appreciation to the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment for its important contribution to the elaboration of the Body of Principles;
3. Requests the Secretary-General to inform the States Members of the United Nations or members of specialized agencies of the adoption of the Body of Principles;
4. Urges that every effort be made so that the Body of Principles becomes generally known and respected.

76th plenary meeting  
9 December 1988

## **ANNEX**

### **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**

#### SCOPE OF THE BODY OF PRINCIPLES

These principles apply for the protection of all persons under any form of detention or imprisonment.

#### USE OF TERMS

For the purposes of the Body of Principles:

(a) "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;

(b) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;

(c) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence;

(d) "Detention" means the condition of detained persons as defined above;

(e) "Imprisonment" means the condition of imprisoned persons as defined above;

(f) The words "a judicial or other authority" mean a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

#### Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

#### Principle 2

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

#### Principle 3

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

#### Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

#### Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

#### Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment<sup>\*\*/</sup>. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

#### Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

#### Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

#### Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

#### Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

#### Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

#### Principle 12

1. There shall be duly recorded:

(a) The reasons for the arrest;

(b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before judicial or other authority;

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

#### Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

#### Principle 14

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

#### Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

#### Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is capable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

#### Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

#### Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.



3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

#### Principle 19

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

#### Principle 20

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

#### Principle 21

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

#### Principle 22

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

#### Principle 23

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

#### Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

#### Principle 25

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

#### Principle 26

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

#### Principle 27

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

#### Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of availability resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

#### Principle 29

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such place.

#### Principle 30

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

#### Principle 31

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

#### Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

#### Principle 33

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

#### Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

#### Principle 35

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules on liability provided by domestic law.

2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

#### Principle 36

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

#### Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of

detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

#### Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

#### Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

#### General clause

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.<sup>6/</sup>

### **Annex III**

#### **COMPOSITION OF THE WORKING GROUP**

At the end of 1998, the composition of the Working Group was as follows:

- Roberto Garretón (Chile)
- Louis Joinet (France)
- Laity Kama (Senegal)
- Kapil Sibal (India) (Chairman)
- Petr Uhl (Slovakia and Czech Republic)

Mr. Louis Joinet assumed the functions of Chairman/Rapporteur of the Working Group from 1991 to 1997.

Since the 18th session (1997), Mr. Kapil Sibal has acted as Chairman/Rapporteur of the Working Group.

### **Annex IV**

#### **REVISED METHODS OF WORK**

##### 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 Commission on Human Rights resolutions 1991/42, 1992/28, 1993/36,

1994/32, 1995/59, 1996/28 and specifically the clarifications contained in resolution 1997/50, which give the Group not only the task of informing the Commission by means of a comprehensive report, but also of "investigating cases of deprivation of liberty imposed arbitrarily" (para. 15).

#### I. FUNCTIONING OF THE GROUP

2. The Working Group on Arbitrary Detention was set up under Commission on Human Rights resolution 1991/42. The threeyear initial mandate of the Working Group was renewed by the Commission in 1994 and in 1997, each time for another period of three years.

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

4. The Working Group meets at least three times a year.

5. When the case under consideration or the visit made 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 visit or in the discussion.

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 Commission on Human Rights at its annual session. 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 Group is adopted as the view of the Group.

#### II. IMPLEMENTATION OF THE MANDATE OF THE GROUP

7. The mandate of the 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 and the relevant international instruments accepted by the States concerned, in particular the International Covenant on Civil and Political Rights, 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");

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 three 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 nonobservance 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).

### III. SUBMISSION OF COMMUNICATIONS TO THE GROUP 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 telephone, telex and telefax numbers, or any other acceptable means of communication.

10. As far as possible, each case shall form the subject of a presentation indicating 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 and/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, particularly for verification of the measure of deprivation of liberty, and steps at the international or regional levels, as appropriate, the results of such action or the reasons why such measures were ineffective or were not taken; and

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

11. In order to facilitate the Group's work, it is hoped that communications will be submitted by 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 nongovernmental organizations.

13. In accordance with the provisions of paragraph 4 of resolution 1993/36, the Working Group may, on its own initiative, take up cases which might constitute arbitrary deprivation of liberty. When the Working Group is not in session, the Chairman, or in his absence the ViceChairman, may decide to bring the case to the attention of the Government, but must refer the matter to the Group at its next session. When acting on its own initiative, the Working Group shall give consideration to the thematic or country situations drawn to its attention by the Commission on Human Rights.

14. Situations of armed conflict, covered by the Geneva Conventions of 12 August 1949 and their Additional Protocols, do not fall within the competence of the Group.

#### 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 Chairman of the Group or, if he is not available, by the ViceChairman. In the case of Governments, the letter shall be transmitted through the Permanent Representative to the United Nations. It shall request the Government to reply within 90 days after having

carried out such inquiries as may be appropriate so as to furnish the Group with the fullest possible information.

16. However, if the Government desires an extension of this time limit, it shall inform the Group of the reasons for requesting one, so that it may be granted a further period of a maximum of two months 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 the 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; the Group, however, reserves the right to render an opinion, on a casebycase basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned;

(b) If the Group considers that the case is not one of arbitrary detention, it shall render an opinion to that effect;

(c) If the 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 Group considers that it is unable to obtain sufficient information on the case, it may file the case provisionally or definitively;

(e) If the 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 Group shall be transmitted to the Government concerned. Three weeks after their transmittal to the Government they shall be transmitted to the source.

19. The opinions rendered by the Group shall be brought to the attention of the Commission on Human Rights in the annual report of the Working Group.

20. The Working Group shall take all appropriate measures to ensure that Governments inform it of the follow-up action taken on the recommendations made, thus enabling it to keep the Commission 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 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 Group to be entirely new and such as to have caused the 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.

#### IV. 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 or even to 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. Such appeals - which are of a purely humanitarian nature - in no way prejudice any opinion the Working Group may render if it later has to determine whether the deprivation of liberty was arbitrary or not, except in cases where the Working Group has already determined the arbitrary character of such deprivation of liberty.

24. The Chairman, or in his absence the ViceChairman, shall transmit the appeal by the most rapid means to the Minister for Foreign Affairs of the country concerned.

#### V. COORDINATION WITH OTHER HUMAN RIGHTS MECHANISMS

25. Desiring to respond to the request of the Commission for a strengthening of 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 thematic working group or special rapporteur, it would refer them to the relevant 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 Commission has appointed a special rapporteur, or another appropriate mechanism with reference to that country, are referred to the 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 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 SecretaryGeneral, 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.

26. Furthermore, the Group shall not make visits to countries for which the Commission has already appointed a country rapporteur, or another appropriate mechanism with reference to that country, unless the rapporteur or the person responsible requests the Group to make the visit.

### Annex V

#### MODEL QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION <sup>77</sup>

##### I. IDENTITY



1. Family name: .....
2. First name: .....
3. Sex: (Male) (Female)
4. Birth date or age (at the time of detention): .....
5. Nationality/Nationalities:.....
6. (a) Identity document (if any): .....
- (b) Issued by: .....
- (c) On (date): .....
- (d) No.: .....
7. Profession and/or activity (if believed to be relevant to the arrest/detention):  
.....  
.....
8. Address of usual residence:  
.....  
.....  
.....  
.....

## II. Arrest <sup>B/</sup>

1. Date of arrest:.....
2. Place of arrest (as detailed as possible):  
.....  
.....  
.....  
.....
3. Forces who carried out the arrest or are believed to have carried it out:  
.....  
.....  
.....
4. Did they show a warrant or other decision by a public authority?  
(Yes) ..... (No).....

5. Authority who issued the warrant or decision:  
.....  
.....  
.....

6. Relevant legislation applied (if known):  
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.....  
.....  
.....  
.....  
.....

### III. Detention <sup>8/</sup>

1. Date of detention: .....

2. Duration of detention (if not known, probable duration): .....

3. Forces holding the detainee under custody:  
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.....  
.....

4. Places of detention (indicate any transfer and present place of detention):

.....

5. Authorities that ordered the detention:  
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.....

6. Reasons for the detention imputed by the authorities:

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7. Relevant legislation applied (if known):  
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IV. Describe the circumstances of the arrest and/or the detention and indicate precise reasons why you consider the arrest or detention to be arbitrary <sup>9/</sup>

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V. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken

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.....  
.....  
.....  
.....

VI. Full name and address of the person(s) submitting the information (telephone and fax number, if possible) <sup>10/</sup>

.....  
.....  
.....  
.....  
.....

Date: ..... Signature: .....

\_\_\_\_\_

*This questionnaire should be addressed to the Working Group on arbitrary detention. Office of the High Commissioner for Human Rights, United Nations Office at Geneva, 8-14 avenue de la Paix, 1211 Geneva 10, Switzerland, fax No. (022) 917.90.06, E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org).*

## Annex VI

### Practical information

I. How should a case be brought before the Working Group?

- For an individual case or cases, the communication should be sent, if possible accompanied by the model questionnaire prepared for this purpose (see annex V), to:

Working Group on Arbitrary Detention  
c/o. Office of the UN High Commissioner for Human Rights  
United Nations Office at Geneva  
CH-1211, Geneva 10  
Switzerland

- Communications requesting the Working Group to launch an urgent appeal on humanitarian grounds (see section IV.C, "The urgent action procedure") should be sent to the above address or preferably, by facsimile to No. (41-22) 917.90.06.

II. How to obtain the following documents:

(a) Model questionnaire to facilitate placing cases before the Working Group;

(b) Copy of a decision on an individual case;

- In either case, write to the Working Group at the above address.

(c) Annual report of the Working Group on Arbitrary Detention -

Write to:

Documents Distribution Service  
Counter, Door 40  
Palais des nations  
8-14, avenue de la Paix  
1211 Geneva 10  
Switzerland

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### Notes

1/ Commission on Human Rights resolutions 1986/16, 1988/45, 1989/38 and 1990/107.

2/ Report on the practice of administrative detention drawn up by one of the independent experts of the Sub-Commission, Mr. Louis Joinet (E/CN.4/Sub.2/1990/29 and Add.1), which led to the adoption of Commission on Human Rights resolution 1991/42 of 5 March 1991.

3/ See fact sheets Nos. 4,6 and 11 on methods of combating torture, enforced or involuntary disappearances and summary or arbitrary executions, respectively.

\*/ At its 53rd session in 1997, the Commission on Human Rights requested the Group to use the term "opinion", rather than "decision".

4/ A/C.6/43/L.9.

5/ Ibid., para. 4.

\*\*/ The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

6/ See resolution 2200 A (XXI), annex.

7/ A separate questionnaire must be completed for each case of alleged arbitrary arrest or detention. As far as possible, all details requested should be given. Nevertheless, failure to do so will not be necessarily result in the inadmissibility of the communication.

8/ For the purpose of this questionnaire, "arrest" refers to the initial act of apprehending a person. "Detention" means and includes detention before, during and after trial. In some cases, only section II, or section III may be applicable. None the less, whenever possible, both sections should be filled in.

9/ Copies of documents that prove the arbitrary nature of the arrest or detention, or help to better understand the specific circumstances of the case, as well as any other relevant information, may also be attached to this questionnaire.

10/ If a case is submitted to the Working Group by anyone other than the victim or his family, such person or organization should indicate authorization by the victim or his family to act on their behalf. If, however, the authorization is not readily available, the Working Group reserves the right to proceed without the authorization. All details concerning the person(s) submitting the information to the Working Group, and any authorization provided by the victim or his family, will be kept confidential.