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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\***

**Chairperson-Rapporteur: Manuela Carmena Castrillo**

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\* Late submission.

## Summary

During 2008, the Working Group on Arbitrary Detention visited Colombia, Italy, Mauritania and Ukraine at the invitation of the Governments of these countries. The reports on these visits are contained in the addenda to the present document (A/HRC/10/21/Add.2-5).

During the period from 1 December 2007 to 30 November 2008, the Working Group adopted 46 Opinions concerning 183 persons in 22 countries. These Opinions are contained in the first addendum to the present document (A/HRC/10/21/Add.1).

Also during this period, the Group transmitted a total of 130 urgent appeals concerning 1,256 individuals, including 57 women, 4 boys and 3 girls, to 44 Governments. Governments informed the Working Group that they had taken measures to remedy the situation of the detainees: in some cases, the detainees were released; in other cases, the Working Group was assured that the detainees concerned would enjoy fair trial guarantees.

The Working Group has continued to develop its follow-up procedure and has sought to engage in a continuous dialogue with those countries visited by the Working Group, in respect of which it had recommended changes to domestic legislation governing detention or to adopt other measures. Information about the implementation of the Working Group's recommendations was received from the Governments of Belarus, Canada, China, Ecuador and Turkey, countries visited by the Working Group in 2004, 2005 and 2006, respectively.

The present report includes several issues which have given rise to concern during 2008. In particular, the Working Group denounces the fact that an important proportion of the 9 million persons deprived of their liberty worldwide are unable to benefit from legal resources and guarantees that they are entitled to for the conduct of their defence. Most do not have the economic means to afford expensive and complex legal procedures. They not only have difficulties in verifying the lawfulness of their detention, but also find themselves subject to lack of an effective control of their other rights. Therefore, the Working Group proposes to the Human Rights Council an extension of its mandate to include the monitoring of State compliance with their obligations concerning all human rights of detained and imprisoned persons.

The Working Group includes in its report a list of principles that it has elaborated concerning deprivation of liberty of persons accused of acts of terrorism. It also proposes to hold a special forum on the respect of the right not to be arbitrarily deprived of liberty in the counter-terrorism context, giving special consideration to the methods and framework applied by the States in emergency situations.

The Working Group notes that the corruption it has observed in some countries makes the whole system of guarantees devoid of any content and reduces the credibility of the entire administration of justice system. It calls upon States to become a party to the United Nations Convention against Corruption, which recently entered into force.

Finally, the Working Group reiterates that immigrants in irregular situations should not be qualified or treated as criminals nor viewed only from the perspective of national security. Detention should be of the last resort, permissible only for the shortest period of time.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION .....	1 - 3	4
II. ACTIVITIES OF THE WORKING GROUP IN 2008 .....	4 - 41	4
A. Handling of communications addressed to the Working Group during 2008 .....	5 - 18	4
B. Future activities .....	19	13
C. Country missions .....	20 - 41	13
III. THEMATIC CONSIDERATIONS .....	42 - 70	18
A. Rights of persons deprived of their liberty .....	42 - 49	18
B. Detentions in the framework of measures countering terrorism .....	50 - 55	20
C. Arbitrary detention and corruption .....	56 - 64	21
D. Detention of immigrants in irregular situations .....	65 - 68	23
E. Video and audio recording of criminal interrogations .....	69 - 70	23
IV. CONCLUSIONS .....	71 - 76	24
V. RECOMMENDATIONS .....	77 - 83	25

## **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. At its sixth session the Human Rights Council assessed the mandate of the Working Group and adopted resolution 6/4, in which it confirmed the scope of its mandate and extended this for a further three-year period.

2. During the period 1 January to 30 April 2008, Ms. Soledad Villagra de Biedermann (Paraguay), Ms. Leïla Zerrougui (Algeria) and Mr. Tamás Bán (Hungary) were members of the Working Group and Ms. Zerrougui was also its Chairperson-Rapporteur. They were replaced on 1 May 2008 by Mr. Roberto Garretón (Chile), Mr. Malick El Hadji Sow (Senegal) and Mr. Aslan Abashidze (Russian Federation), respectively. During the period 1 January to 31 July 2008, Mr. Seyyed Mohammed Hashemi (Islamic Republic of Iran) was also a member of the Working Group. He was replaced on 1 August 2008 by Ms. Shaheen Sardar Ali (Pakistan).

3. On 6 May 2008, Manuela Carmena Castrillo was appointed as Chairperson-Rapporteur of the Working Group and Malick El Hadji Sow was appointed as the Working Group's Vice-Chairperson.

## **II. ACTIVITIES OF THE WORKING GROUP IN 2008**

4. During the period 1 January to 30 November 2008, the Working Group held its fifty-first, fifty-second and fifty-third sessions. It also carried out official missions to Mauritania (19 February-3 March 2008), Colombia (1-10 October 2008), Italy (3-14 November 2008) and Ukraine (22 October-5 November 2008) (see A/HRC/10/21/Add.2-5).

### **A. Handling of communications addressed to the Working Group during 2008**

#### **1. Communications transmitted to Governments**

5. A description of the cases transmitted and the contents of the replies of Governments will be found in the respective Opinions adopted by the Working Group (A/HRC/10/21/Add.1).

6. During its fifty-first, fifty-second and fifty-third sessions, the Working Group adopted 46 Opinions concerning 183 persons in 22 countries. Some details of the Opinions adopted during these sessions appear in the table below and the complete texts of Opinions Nos. 1/2008 to 16/2008 and 14/2007 to 40/2007 are reproduced in addendum 1 to the present report.

## 2. Opinions of the Working Group

7. Pursuant to its methods of work,<sup>1</sup> the Working Group, in addressing its Opinions to Governments, drew their attention to former Commission on Human Rights resolutions 1997/50 and 2003/31 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 the expiry of the three-week deadline, the Opinions were transmitted to the source.

**Table 1**  
**Opinions adopted during the fifty-first, fifty-second and fifty-third sessions of the Working Group**

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
1/2008	Syrian Arab Republic	Yes	Mr. Mus'ab al-Hariri.	Detention arbitrary, category III.
2/2008	Equatorial Guinea	No	Commandant Juan Ondo Abaga; Lieutenant-Colonel Florencio Elá Bibang, Pedro Esono Ntunu and Antimo Edu Nchama.	Detention arbitrary, categories I (between 3 July 2005 and 6 September 2005) and III (since 3 July 2005).
3/2008	United Arab Emirates	Yes	Mr. Abdullah Sultan Sabihat Ali Alili.	Detention arbitrary, categories II and III.
4/2008	Islamic Republic of Iran	Yes	Ms. Shamila (Delara) Darabi Haghighi.	Detention arbitrary, category III.
5/2008	Syrian Arab Republic	Yes	Messrs. Anwar al-Bunni; Michel Kilo and Mahmoud 'Issa.	Detention arbitrary, categories II and III.
6/2008	Saudi Arabia	Yes	Mr. Abdul Rahman b. Abdelaziz al Sudays.	Detention arbitrary, category III.
7/2008	Myanmar	Yes	Messrs. Ko Than Htun and Ko Tin Htay.	Detention arbitrary, category II.
8/2008	Colombia	Yes	Messrs. Frank Yair Estrada Marin; Carlos Andrés Giraldo Hincapié and Alejandro de Jesús González Duque.	Cases filed (paragraph 17 (a) of the Working Group's methods of work) and considering that their detention was arbitrary. Messrs. Frank Yair Estrada Marin and Carlos Andrés Giraldo Hincapié: detention was arbitrary, to category I.
9/2008	Yemen	Yes	Mr. Saqar Abdelkader al Chouitier.	Detention arbitrary, categories I and II.

<sup>1</sup> E/CN.4/1998/44, annex I.

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
10/2008	Syrian Arab Republic	Yes	Messrs. Husam 'Ali Mulhim; Tareq al-Ghorani; Omar 'Ali al-Abdullah; Diab Siriyeh; Maher Isber Ibrahim; Ayham Saqr and Allam Fakhour.	Detention arbitrary, categories II and III.
11/2008	Saudi Arabia	Yes	Mr. Amer Saïd b. Muhammad al-Thaqfan al-Qahtani.	Detention arbitrary, category III.
12/2008	Myanmar	Yes	Ms. Mie Mie (Thin Thin Aye); Mr. Htay Kywe and Mr. Ko Aung Thu.	Detention arbitrary, category II.
13/2008	Saudi Arabia	Yes	Mr. Ali Chafi Ali al-Chahri.	Detention arbitrary, category III.
14/2008	Uzbekistan	Yes	Mr. Erkin Musaev.	Detention arbitrary, category III.
15/2008	Gambia	No	Ms. Tania Bernath, Mr. Ayodele Ameen and Mr. Yaya Dampha.	Case filed (paragraph 17 (a) of the Working Group's methods of work - persons released).
16/2008	Turkey	Yes	Mr. Halil Savda.	During the periods between 16 and 28 December 2004; 7 December 2006 and 2 February 2007, and 5 February and 28 July 2007: Detention arbitrary Since 27 March 2008: Detention arbitrary, categories II and III.
17/2008	Lebanon	Yes	Mr. Assem Kakoun.	Detention arbitrary, category III.
18/2008	Egypt	Yes	Mr. Djema'a al Seyed Suleymane Ramadhan.	Detention arbitrary, category III.
19/2008	United Kingdom of Great Britain and Northern Ireland	Yes	Mr. Adabert Glaise Emani (aka Michel Moungar).	Case filed (paragraph 17 (a) of the Working Group's methods of work - person deported).
20/2008	Egypt	Yes	Mr. Islam Sobhy Abd El Latif Attia al-Mazeni.	Since 7 April 2007 to 7 July 2007: Detention arbitrary, categories I and III. Since 8 July 2007 to 19 December 2007: Detention arbitrary, category I.
21/2008	China	Yes	Pastor Gong Shengliang.	Case filed (paragraph 17 (d) of the Working Group's methods of work) (The Working Group did not have sufficient elements of information to render an Opinion).

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
22/2008	Saudi Arabia	Yes	Mr. Suleyman b. Nasser b. Abdullah al-Alouane.	Detention arbitrary, categories I, II and III.
23/2008	Syrian Arab Republic	Yes	Mr. Nezar Rastanawi.	Detention arbitrary, categories I, II and III.
24/2008	Syrian Arab Republic	Yes	Dr. Mohamad Kamal al-Labouani.	Detention arbitrary, categories II and III.
25/2008	Mexico	Yes	Mr. Olivier Acuña Barba.	Case filed (paragraph 17 (a) of the Working Group's methods of work - person released).
26/2008	Myanmar	No	Messrs. H. Kun Htun Oo; Sai Nyunt Lwin; Hso Ten; Nyi Nyi Moe; Sai Myo Win Htun; Htun Nyo and Sai Hla Aung.	Detention arbitrary, categories II and III.
27/2007	Egypt	Yes	Messrs. Mohamed Khirat Saad Al-Shatar; Hassan Ezzudine Malek; Ahmed Ashraf Mohamed Mostafa Abdul Warith; Ahmad Mahmoud Shousha; Ayman Abd El-Ghani Hassanin; Esam Abdul Mohsen Afifi; Essam Abdul Halim Hashish; Farid Aly Galbt; Fathy Mohamed Baghdady; Mamdouh Ahmed Al-Husseini; Medhat Ahmad El-Haddad; Mohamed Ali Bishr; Mostafa Salem; Murad Salah El-Desouky; Khaled Abdelkader Owda; Ahmad Ahmad Nahhas; Ahmed Azzedin El-Ghoul; Amir Mohamed Bassam Al-Naggar; Gamal Mahmoud Shaaban; Yasser Mohamed Ali; Mahmoud Abdul Latif Abdul Gawad; Mahmoud Morsi Koura; Mohamed Mahmoud Hafez; Mohamed Mehany Hassan; Mohammed Ali Baligh; and Osama Abdul Muhsin Shirby.	Detention arbitrary, categories I and III. Messrs. Khaled Abdelkader Owda; Ahmad Ahmad Nahhas; Ahmed Azzedin El-Ghoul; Amir Mohamed Bassam Al-Naggar; Gamal Mahmoud Shaaban; Yasser Mohamed Ali; Mahmoud Abdul Latif Abdul Gawad; Mahmoud Morsi Koura; Mohamed Mahmoud Hafez; Mohamed Mehany Hassan; Mohammed Ali Baligh; and Osama Abdul Muhsin Shirby: Cases filed (paragraph 17 (a) of the Working Group's methods of work - persons released).
28/2008	Syrian Arab Republic	Yes	Messrs. Ahmed 'Omar 'Einein, Khaled Hammaami, Khaled Jema', 'Abd al-'Aal, Mustafa Qashesha, Muhammad Asa'd, Ahmed Huraania, Hussein Jema' Othmaan, Samer Abu al-Kheir, Abd al-Ma'ti Kilani, Muhammad' Ali Huraania, muhammad 'Ezz al-Din Dhiyab and Muhammad Kilani.	Detention arbitrary, category III.

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
29/2008	China	Yes	Mr. Alimujiang Yimiti (aka Alimjan Yimit).	Detention arbitrary, categories II and III.
30/2008	Sri Lanka	Yes	Mr. Gunasundaram Jayasundaram.	Detention arbitrary, categories II and III.
31/2008	Saudi Arabia	Yes	Mr. Abdel Rahman Marwan Ahmad Samara.	Detention arbitrary, categories I and III.
32/2008	Malaysia	Yes	Mr. Mat Sah Bin Mohammad Satray.	Detention arbitrary, categories I and III.
33/2008	Algeria	Yes	Mr. Mohammed Rahmouni.	Detention arbitrary, categories I and III.
34/2008	Islamic Republic of Iran	No	Mahvash Sabet; Fariba Kamalabadi; Jamaluddin Khanjani; Afif Naeimi; Saeid Rezaie; Behrouz Tavakkoli and Vahid Tizfahm.	Detention arbitrary, category II.
35/2008	Egypt	Yes	Mr. Abdul Kareem Nabil Suliman Amer.	Detention arbitrary, category II.
36/2008	Saudi Arabia	Yes	Dr. Said b. Mubarek b. Zair.	Detention arbitrary, categories I, II and III.
37/2008	Saudi Arabia	No	Mr. Matrouk b. Hais b. Khalif al-Faleh.	Detention arbitrary, categories I, II and III.
38/2008	Sudan	No	Messrs. Ishag Al Sanosi Juma; Abdulhai Omer Mohamed Al Kalifa; Al Taieb Abdelaziz Ishag; Mustafa Adam Mohamed Suleiman; Mohammed Abdelnabi Adam; Saber Zakaria Hasan; Hasan Adam Fadel; Adam ibrahim Al Haj; Jamal Al Deen Issa Al Haj; and Abdulmajeed Ali Abdulmajeed.	Detention arbitrary, category III.
39/2008	Islamic Republic of Iran	No	Messrs. Aziz Pourhamzeh, Kamran Aghdasi, Fathollah Khatbjavan, Pouriya Habibi, Simin Mokhtary, Sima Rahmanian Laghaie, Mina Hamran, Simin Gorji, Mohammad Isamel Forouzan, Mehrab Hamed, Ali Ahmadi, Houshang Mohammadabadi, Mehraban Farmanbardar and Vaheed Zamani Anari.	Detention arbitrary, categories II and III.
40/2008	Yemen	No	Mr. Abdeladhim Ali Abdeljalil Al-Hattar.	Detention arbitrary, categories I and III.



Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
41/2008	Indonesia	Yes	Messrs. Johan Teterisa; Ruben Saiya; Romanus Basteran; Daniel Malwauw; Fredi Akihary; Abraham Saiya; Jefta Saiya; Alexander Tanate; Yusup Sapakoli; Josias Sinay; Agustinus Abraham Apono; Piter Patiasina; Stevanus Tahapary; Jhordan Saiya; Daniel Akchary; Baree Manuputty; Izaak Saimima; Erw Samual Lesnusa; Renol Ngarbinan; Soni Bonseran; Ferdinan Waas; Samual Hendrik; Apner Litamahaputty; Philip Malwauw; Alex Malwauw; Marlon Pattiwael; Jhon Saranamual; Yacob Supusepa; Jhonatan Riri; Petrus Rahayaan; Elias Sinay; Piter Latumahina; Johanes Apono; Domingus Salamena and Deni de Fretes.	Detention arbitrary, categories II and III.
42/2008	Egypt	Yes	The source has specifically requested that the names not be published; the Government was fully informed about their identities.	Detention arbitrary, categories II and III.
43/2008	Myanmar	Yes	Messrs. Min Zayar (Aung Myin), Kyaw Min Yu (Ko Jimmy), Min Ko Naing (Paw Oo Tun) and Pyone Cho (Mtay Win Aung).	Detention arbitrary, categories II and III.
44/2008	Myanmar	No	Mr. U Ohn Than.	Detention arbitrary, categories II and III.
45/2008	India	Yes	Messrs. Manzoor Ahmad Waza, Nisar Ahmad Wani, Sh. Farooq Ahmad Kana, Mohammed Yousuf Mir, Mehraj-ud-Din Khanday, Nazir Ahmad Dar, Mohammed Younis Bhat, Umar Jan, Reyaz Ahmad Teeli and Abdul Qadeer.	Detention arbitrary, categories II and III.
46/2008	Myanmar	No	Aung San Suu Kyi.	Detention arbitrary, categories I, II and III.

### **3. Government reactions to Opinions**

8. In a letter dated 11 April 2008, the Permanent Representative of the United States of America to the United Nations Office at Geneva noted that his Government was deeply troubled by several of the assertions in the Working Group's Opinion No. 43/2006 (United States of America) concerning Mr. Ali Salem Kahlah Al-Marri. The Permanent Representative stated that the United States is in a legal state of armed conflict with Al-Qaida, the Taliban, and their affiliates and supporters. Al-Qaida leaders explicitly declared war against the United States, and its members attacked United States embassies, military vessels and military headquarters, its financial centre and capital city, killing more than 3,000 people in the process. The Taliban allowed Al-Qaida to use Afghanistan as an area from which to plot attacks and train in the use of weapons. The Security Council explicitly recognized the right of the United States to act in self-defence in response to these armed attacks. The North Atlantic Treaty Organization (NATO), the Organization of American States (OAS) and the Security Treaty between Australia, New Zealand and the United States of America (ANZUS) all invoked the collective self-defence provisions of their respective treaties. Contrary to the Working Group's assertion, anyone who takes up arms against another State is by definition an "enemy combatant" subject to detention under international humanitarian law.

9. The Working Group takes note of the letter of the Permanent Representative of the United States of America. However, it wishes to reiterate that it has consistently not supported this position.<sup>2</sup>

10. The Permanent Representative further pointed out that the use of material witness warrants is a long-standing practice authorized by statute and dating back to 1789. Every material witness has the right to challenge, in court, before a judicial officer, his or her confinement as a material witness. An attorney will be appointed if the material witness cannot afford to pay for a lawyer. Lastly, the Permanent Representative reported that Mr. Al-Marri's case is pending litigation at a three-judge panel of the United States Court of Appeals for the Fourth Circuit.

### **4. Information received concerning previous Opinions**

11. In connection with Opinion No. 38/2005 (China), the source reported that Mr. Hu Shigen was released on 26 August 2008. He had been sentenced to 20 years' imprisonment for carrying out counter-revolutionary propaganda and organizing a counter-revolutionary group.

12. The source reported that Messrs. Moustapha Talal Mesto and Ayman Nouredine Tarabay were released on 27 August 2008. Their detention had been considered arbitrary by the Working Group in its Opinion No. 37/2007 (Lebanon).

### **5. Request for review of Opinions**

13. By letter dated 29 February 2008, the Government of Lebanon requested a revision, in accordance with paragraph 21 of the Working Group's methods of work, of Opinion

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<sup>2</sup> See, for example, E/CN.4/2006/120, paras. 19 et seq.

No. 37/2007 (Lebanon) (A/HRC/10/21/Add.1, p. 79). After having carefully examined the contents of this letter, the Working Group decided, at its fifty-second session, not to grant the request. It considered that the letter neither contained entirely new facts on which the requests were based and such as to have caused the Working Group to alter its decision had it been aware of them (paragraph 21 (a) of the methods of work), nor that facts had not been known or had not been accessible to the Government (paragraph 21 (b) of the methods of work). The Working Group also wishes to highlight that, contrary to the statement of the Government of Lebanon in this letter that it would have appreciated if the Working Group had brought to its attention the information received from the source and upon which it based its Opinion No. 37/2007, the Working Group had indeed transmitted this information to the Government and received its reply as is reflected in the Opinion.

## **6. Follow-up on Opinions**

14. The Working Group has, since 1992, been seized with innumerable allegations in relation to the practice of arbitrary detention resorted to by the Government of Myanmar. The Working Group has, on five occasions,<sup>3</sup> pronounced itself on the consecutive and renewed detentions that have affected Aung San Suu Kyi, Nobel Peace Prize laureate. The Working Group is also aware of other cases of arbitrary detention which violate the human conscience, such as the case of the activist U Ohn Than forming the basis of Opinion No. 44/2008 (Myanmar). He also had spent a large part of his life in prison for calls for democracy for his country, and was sentenced to life imprisonment in 2008 for a peaceful and solitary demonstration in his homeland.

15. These Opinions were adopted in light of the lack of cooperation by the government authorities with the Working Group, and with the Human Rights Council. The Working Group, therefore, requests the Council to take these circumstances into account.

## **7. Communications giving rise to urgent appeals**

16. During the period 1 December 2007 to 30 November 2008, the Working Group transmitted 130 urgent appeals to 44 Governments concerning 1,256 individuals (603 men, 57 women, 4 boys, 3 girls and 589 unidentified persons). In conformity with paragraphs 22 to 24 of its methods of work (E/CN.4/1998/44, annex I), 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.

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<sup>3</sup> Opinion Nos. 8/1992 (E/CN.4/1993/24, p. 43), 2/2002 (E/CN.4/2003/8/Add.1, p. 50), 9/2004 (E/CN.4/2005/6/Add.1, p. 47), 2/2007 (A/HRC/7/4/Add.1, p. 56) and 46/2008.

17. During the period under review, 130 urgent appeals were transmitted by the Working Group. They are set out in table 2 below.

**Table 2**

**Urgent appeals transmitted to Governments by the Working Group**

Government concerned	Number of urgent appeals	Persons concerned	Persons released/ information received from
Algeria	1	1 man	
Armenia	1	3 men	
Azerbaijan	1	2 men	
Bahrain	3	92 men	
Belarus	1	1 man	
Belgium	1	1 man, 1 woman, 1 boy	
Bulgaria	1	1 man	
Burundi	1	1 man	
Cambodia	1	1 man	
Cameroon	1	2 men	
Chad	1	1 man	
China	18	18 men, 10 women, 570 unidentified persons	1 man, 1 woman (Source)
Colombia	1	13 men, 1 woman	
Democratic Republic of the Congo	1	1 man	
Denmark	1	1 man	
Egypt	3	18 men	
Equatorial Guinea	1	1 woman	1 woman (Source)
Eritrea	1	2 men	
Fiji	1	12 women	
India	2	2 men	
Iran (Islamic Republic of)	19	36 men, 21 women, 3 girls, 2 boys and 19 unidentified persons	8 men, 7 women (Source)
Kazakhstan	2	1 man, 2 women	
Kyrgyzstan	1	1 woman	
Lao People's Democratic Republic	1	3 men	
Malaysia	2	7 men	
Mexico	3	8 men	1 man (Source)
Mongolia	2	1 man, 1 woman	
Morocco	3	10 men, 1 woman	
Myanmar	7	9 men	
Nigeria	2	4 men, 2 women	
Peru	1	1 man	
Russian Federation	3	3 men	
Saudi Arabia	4	12 men	1 man (Source)
Sri Lanka	2	6 men, 1 woman	3 men (Source)
Sudan	4	251 men	9 men (Source)
Sweden	1	1 man	1 man (Source)
Syrian Arab Republic	12	17 men, 2 women, 1 boy	1 man (Source)
Thailand	1	1 man	
Tunisia	3	6 men	2 men (Source)
Turkmenistan	2	2 men	
Uzbekistan	4	6 men	
Venezuela	1	1 man	
Yemen	3	48 men, 1 woman	1 (Source)
Zimbabwe	5	8 men	3 men (Source)

18. Sources reported that 40 persons had been 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.

## **B. Future activities**

19. The Working Group is aware of, and commends, the joint initiative on secret places of detention launched by the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment and by the Special Rapporteur on the promotion and protection of human rights while countering terrorism, which aims at studying and analysing the reality, as well as the objectives and implications, of secret places of detention on human rights. This thematic subject is of great importance, as the human rights of persons arrested, detained or imprisoned can only be enjoyed if the person is held in a public place. Access to legal counsel, to family, to a judge or other judicial authority, to education, to health and medical attention, and the right to denounce torture or other cruel, inhuman or degrading practices, would be rendered impossible in secret or otherwise clandestine prisons. Therefore, the Working Group offers its full cooperation to this initiative.

## **C. Country missions**

### **1. Request for visits**

20. The Working Group has been invited to visit Malta, Senegal and the United States of America. The visit to Malta has been scheduled to take place in January 2009.

21. During its fifty-first session, the Working Group held meetings with representatives of the Governments of Senegal and the United States to discuss possible dates for visits. 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 Afghanistan, Algeria, Argentina (a follow-up visit), Armenia, Azerbaijan, Burkina Faso, Egypt, Ethiopia, Georgia, Guinea-Bissau, India, Japan, the Libyan Arab Jamahiriya, Malaysia, Morocco, Nauru, Nicaragua (a follow-up visit to Bluefields), Papua New Guinea, the Russian Federation, Saudi Arabia, Sierra Leone, Thailand, Turkmenistan and Uzbekistan.

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

22. 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 visited, requesting information on such initiatives as the authorities might have taken to give effect to the relevant recommendations adopted by the Group contained in the reports on its country visits (E/CN.4/1999/63, para. 36).

23. In 2008, the Working Group received replies to communications sent in 2007 and 2008 from the Governments of Belarus (E/CN.4/2005/6/Add.3), Canada (E/CN.4/2006/7/Add.2),

China (E/CN.4/2005/6/Add.4), Ecuador and Turkey (A/HRC/4/40/Add.2 and 5, respectively). No replies have been received from the Governments of Honduras (A/HRC/4/40/Add.4) or Nicaragua (A/HRC/4/40/Add.3).

### **Belarus**

24. The Government of Belarus submitted information concerning the recommendations made by the Working Group on the outcome of its visit, carried out from 16 to 24 August 2004. With regard to the recommendation concerning taking all appropriate measures to guarantee the effective independence of judges and lawyers, the Government reported that a new Code on the Judicial System and the Status of Judges had been adopted on 13 January 2007. The Code has set forth all the fundamental principles necessary for safeguarding judicial independence. Judges may not be transferred to another position or court without their personal consent and are inviolable during their term of office. They may not be held to account for any opinion they express during the administration of justice or for the decisions they hand down. The Bar Act establishes that the bar is an independent legal entity which assures genuine professional self-government and enables lawyers to combine their efforts to establish and strengthen the rule of law. No court may refuse to recognize the right of a lawyer to represent the interests of a person who applies for legal assistance. The activities of the National Bar Association, the provincial bar associations, the Minsk City Bar Association and the specialized Belarusian bar association "Belinyurkollegia" are governed by statutes adopted by the associations' higher authorities.

25. In relation to the recommendation concerning reconsidering the legal framework relating to pretrial detention, the Government reported that the procuratorial body must decide whether to initiate proceedings within 12 hours of the actual arrest. If no decision is taken, the detained person must be released. On the expiry of a 72-hour period, an appropriate preventive measure must be imposed or the detained person must be released from custody. Article 144 of the Code of Criminal Procedure sets out the guarantees allowing persons who are detained to have the legality of their detention, remand or house arrest, reviewed by a court.

26. The Government reported that, between 2004 and 2007, the Penal Correction Department of the Ministry of Internal Affairs implemented a raft of measures to reduce the number of persons being held in remand centres and prisons and to provide detainees with the living space required under health standards. The aggregate number of persons being held in remand centres and prison remand wings is currently within the set limit. The Supreme Court and the Procurator-General of Belarus are informed by the Penal Correction Department of instances in which cassation courts have exceeded the legally established time limits for the consideration of criminal cases and cases in which courts have extended custody after the deadline stipulated in the Code of Criminal Procedure. Concerning detention of juveniles, the Government reported that since 2005, work has been under way on the elaboration of a draft juvenile justice policy with the participation of all interested organizations, including UNICEF.

27. In relation to administrative detention, the Government reported that a Code of Administrative Procedure and Enforcement was adopted on 20 December 2006, and had been in force since 1 March 2007. The Code provides an extensive and detailed description of the rights and duties of the participants in administrative proceedings. Its norms extend, inter alia, to

foreign nationals and stateless persons detained for the purposes of identification or enforcement of a decision to deport them. Lastly, concerning the Working Group's recommendation on facilitating the participation of civil society in the oversight of prisons and other detention facilities, the Government reported that, on 15 December 2006, the Ministry of Justice adopted its decision No. 85 ratifying the Instructions on the Procedures for the Formation of Voluntary Watchdog Committees.

### Canada

28. By note verbale dated 13 November 2008, the Government of Canada informed the Working Group about the implementation of the recommendations made by the Group following its 1-15 June 2005 visit to Canada. In relation to the Working Group's recommendation to reverse the trend to ever-increasing use of pretrial detention and to find innovative alternatives to the detention on remand of accused without strong roots in the community, the Government reported that, in January 2008, provincial and territorial Deputy Ministers endorsed the creation of a Task Force to confirm and/or quantify the nature of adult corrections population as well as the nature of recent shifts in its composition. The Task Force is expected to make preliminary recommendations in January 2009 on the growing remand population and on the impact of federal justice legislation on correctional capacity.

29. The Government pointed out that there were several opportunities for an accused without strong roots in the community to be released pending trial or sentence. Over the next five years, the Government will contribute Can\$ 560 million to provinces and territories for criminal legal aid and \$57 million for immigration and refugee legal aid. In the case of the Northwest Territories, Yukon and Nunavut, funding for criminal legal aid, court work and public legal education and information is administered through the Access to Justice Service Agreements. In connection to the recommendation concerning the elimination of the use of security certificates, the Government stated that security certificate proceedings should be characterized as deportation proceedings. There is nothing arbitrary, ipso facto, about detention of an alien based on the issuance of a security certificate provided for by law. The Immigration and Refugee Protection Act (IRPA) contains extensive procedural and human rights safeguards and is subjected to the Canadian Charter of Rights and Freedoms. The security certificate process is intended to deal with those people in Canada who are or have been involved in, for example, terrorist activity. On 23 February 2008, IRPA was amended, strengthening the ability of the person detained under a security certificate to know the case against him or her and participate in the judicial process. This amendment requires the establishment of a security-cleared "special advocate", who will have access to the sensitive information against the detainee.

30. Finally, concerning the recommendation related to strengthening policies to address the overrepresentation of Aboriginals among the prison population, the Government reported on several law enforcement, justice and correctional services initiatives to reduce offending and therefore, the overrepresentation of Aboriginal peoples in the criminal justice system and among the prison population. Several programmes are being carried out by the Royal Canadian Mounted Police, the Judiciary and the Correctional Service of Canada. A forum on justice system responses to violence in northern and remote Aboriginal communities took place in 2008 in Ottawa.

## China

31. The Government of China reported that, over the past four years, the Legal Committee of the National People's Council, the People's Supreme Court, the People's Supreme Procuratorate, the State Council Legislative Affairs Office and the Ministries of Public Security and Justice have taken full account of the Working Group's recommendations made after its visit to China in 2004, in the course of the legislative and judicial reform process under way in China.

Amendments to the Code of Criminal Procedure have been included in the legislative programme of the tenth session of the Standing Committee of the National People's Congress, in order to prevent the extortion of confessions by torture; to strengthen arrangements to protect the legal rights of litigants; to ensure better reflection of the policy of tempering severity in justice with leniency; to ensure fair trials and to raise the standard of legal proceedings and to strengthen protection of the rights of juvenile criminal suspects and defendants.

32. The Government reported that, on 28 August 2005, the Maintenance of Public Security (Penalties) Act was enacted by the Standing Committee of the People's National Congress and passed into law on 1 March 2006. The Act ensures that the degree of severity of administrative detention is more appropriately determined, sets out more stringent procedures, further standardizes the penalties and provides for more effective oversight. The Act is more strongly people-oriented, ensuring respect for and protection of human rights, upholding the rights of citizens to a remedy and attaching due priority to the regulation and oversight of police authority. The new legislation further restricts the discretionary powers of the public security authorities to impose administrative detention. In 2006, 1,277 proceedings were instituted challenging administrative detention orders, of which 910 were granted, 77 dismissed and 28 revised.

33. Concerning the system of re-education through labour, the Government reported that the Standing Committee of the National People's Congress at its tenth session incorporated legislation on labour re-education, specifically the Unlawful Conduct (Rehabilitation) Act, in the five-year legislative plan. In addition, Beijing and certain other cities have set up pilot schemes for the social correction of persons serving terms of labour re-education outside the custodial facility. Regarding the Working Group's recommendation on mandatory medical treatment, the Government reported that the relevant departments have completed the basic draft of a mental health act, which has been included in the 2007 legislative plan. In 2005 the city of Ningbo and in 2006 the city of Hangzhou promulgated mental health regulations setting out strict requirements for the administration of mandatory psychiatric treatment. A new Narcotics Control Act has been drafted, stipulating the conditions triggering compulsory treatment for drug addiction and the protection of the rights and interests of those undergoing the treatment.

## Ecuador

34. The Government of Ecuador submitted to the Working Group a complete report on the implementation of the recommendations made by the Working Group after its February 2006 visit to the country. Provisions contained in Act No. 2003-101, which established "detención en firme" (mandatory preventive detention), were declared contrary to the Constitution by the



Constitutional Court on 23 October 2006.<sup>4</sup> On 26 June 2007, the Government declared the national prison system in a state of emergency. Necessary funding had also been provided to the Judiciary, which had allowed the creation of 20 new penal courts, 11 new chambers at high courts of appeal and 40 new specialized courts for minors.

35. The Government further reported that by Executive Decree No. 441 of 26 June 2007, a criminal defence unit had been established in the new Ministry of Justice and Human Rights to improve free access to public defenders. Around US\$ 7 million had been allocated to the new unit. The overloading in pretrial detention centres and social rehabilitation centres had diminished in 37 per cent. Nine legal firms in Guayaquil and five in Quito, with 183 lawyers, had been recruited as public defenders. They are currently providing free legal services to 7,386 detainees. Ecuador is also promoting a flexible mechanism to provide pardons for prisoners who are terminally ill or those who are serving unfair prison sanctions.

### **Turkey**

36. In relation to the recommendations by the Working Group after its visit to Turkey from 9 to 20 October 2006 (see A/HRC/4/40/Add.5 and A/HRC/4/G/8), the Government reported on 9 October 2008 that the Ministry of Health was in the process of considering the views expressed in section B (subsection 2 and 3) of the Working Group's report with a view to formulating possible solutions and policies. The Ministry of Health has also been analysing the Working Group's Deliberation No. 7 (E/CN.4/2005/6) on psychiatric detention pointed out in the recommendations. Furthermore, the Ministry of Justice is considering the issue of psychiatric hospitalization pending a judicial intervention.

37. The Government further reported that article 252/2 of the Criminal Procedure Code, which establishes the maximum duration of remand detention in cases of terrorist crimes, will enter into force on 31 December 2010. Necessary measures will be taken to ensure its correct interpretation and implementation in practice, in line with the recommendations of the Working Group. In relation to its recommendation concerning the amendment of the definition of terrorism with a view to limiting its scope, the Government reported that Law No. 5532 amended in 2006 article 1 of the Anti-Terror Law, repealing its second and third paragraphs. The anti-terror legislations are under constant review, owing to the scourge of terrorism with which Turkey is faced.

38. Concerning recommendations regarding the juvenile system, the Government reported that the law enforcement agencies have been restructured in order to set up new child units, child bureaux and departments which will deal with all proceedings concerning the child, including those in need of protection, without parental care, seeking asylum, drawn into offences,

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<sup>4</sup> According to the system of "detención en firme", judges were obliged to maintain in detention a suspect without taking into consideration whether the time limit for pretrial detention had elapsed. Thousands of persons were thus detained for longer periods than the Constitution allows.

homeless, etc. The Gendarmerie has also set up special child centres including special child protection experts in order to deal with the proceedings against juvenile offenders within its jurisdiction. Finally, concerning foreigners who do not have the financial means or necessary documents in order to leave the country, the Government reported that they are accommodated in special guest houses until their return and that the Government of Turkey will bear the travel costs if they cannot be afforded by the foreigner, his relatives or the relevant consulate or embassy.

### **3. Future country missions**

39. The Working Group has been informed by the Secretariat that, when extending the Group's mandate, the Human Rights Council provided for two country visits per year, each visit not to exceed eight working days. Three visits of the Working Group have already been accepted for 2009 and it conducted three visits in 2004, two in 2005, four in 2006, three in 2007 and four in 2008. 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.

40. The Working Group considers follow-up visits as an essential element of its mandate, the only means to assess and monitor in situ the situation of personal liberty in various countries. Furthermore, the Working Group believes that it should conduct further country visits, as they are of great importance to victims of arbitrary detention. The usefulness of most of the forthcoming visits of the Working Group might be hampered by a limitation to 10 calendar 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.

41. The Working Group calls on the Human Rights Council to take into account the fact that the Working Group comprises five members. In order to best make use of its potential and enable it to discharge its mandate more effectively, the Working Group would request the Human Rights Council to provide it with additional funds to be able to conduct at least five country visits per year and its relevant follow-up visits within an appropriate time frame.

## **III. THEMATIC CONSIDERATIONS**

### **A. Rights of persons deprived of their liberty**

42. It is estimated that many of the 9 million people who are currently imprisoned worldwide suffer from violations of their human rights. Article 10 of the International Covenant on Civil and Political Rights establishes that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person", but reality looks different in some parts of the world.

43. Since its establishment, the Working Group, entrusted with the investigation of instances of deprivation of liberty imposed arbitrarily, has visited prisons and detention centres during 30 country missions, where it has conducted interviews with detained and imprisoned persons. It

has reported systematically on some of their plight in its previous annual reports<sup>5</sup> whenever the particular rights issue fell within the ambit of its mandate, or has taken issues up immediately with government authorities during country missions.

44. Its experience permits the Working Group to present before the Human Rights Council its conclusions with a view to cooperate with States more efficiently in the protection of this vulnerable group of people. The Working Group has certainly visited prisons and detention centres which can be described as exemplary. However, even in these centres, the Working Group has at times perceived difficulties in guaranteeing all rights to detained and imprisoned people.

45. Although article 9 of the Universal Declaration of Human Rights establishes that “no one shall be subjected to arbitrary arrest, detention or exile”, the truth is that an important number of persons deprived of their liberty are frequently unable to benefit from legal resources and guarantees that they are entitled to for the conduct of their defence as required by law in any judicial system and by applicable international human rights instruments.

46. The main element that defines deprivation of liberty is the inability of those who are in detention to defend and protect themselves, as their daily life is largely dependent on the decisions taken by the staff at the detention facilities. Additionally, and although legal safeguards to prevent arbitrary detention from occurring have been adopted by the majority of countries, many persons deprived of their liberty have no access to such substantive, procedural and institutional guarantees. Most of them do not have the economic means to afford expensive and complex legal procedures, especially when legal aid systems are absent or dysfunctional. Moreover, the transmission of communications from detention centres may face obstacles and in some cases means of communication are inexistent.

47. In such an environment, persons deprived of their liberty not only have difficulties in verifying the lawfulness of their detention, but also find themselves subjected to a lack of an effective control of their other rights. They are at risk of suffering abuse of authority, humiliation, ill-treatment and other utterly unacceptable deprivations of rights, practices which all run counter to the essential objective of social reintegration set out in paragraphs 65 and 66 of the Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, and principles 6, 8 and 10 of the Basic Principles for the Treatment of Prisoners adopted by the General Assembly in its resolution 45/111 of 14 December 1990.

48. The Working Group on Arbitrary Detention is not the only mechanism aware of the social reality in detention centres. Rather, other thematic special procedures, such as the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion

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<sup>5</sup> For example, in A/HRC/7/4, paras. 55 et seq. (Groups in detention which are susceptible to sexual abuse), A/HRC/4/40, paras. 59 et seq. (Overview of penitentiary systems and the conditions of detainees), or E/CN.4/2005/6, paras. 68 et seq. (The negative impact on the right to defence of inadequate conditions of detention).

and protection of human rights while countering terrorism, or the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, frequently visit prisons and other detention centres. However, and although a duplication of visits occasionally occurs, at present there appears to be no special procedures mandate that could address the full range of human rights enjoyed by detainees, and especially their right to rehabilitation, which can potentially be violated while in detention. Certainly, there is no special procedure of the Human Rights Council whose mandate provides for a global and comprehensive approach to the protection of all human rights of all persons deprived of their liberty. In fact, a paradox emerges: while important international standards such as the Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Treatment of Prisoners provide norms and standards on the rights of persons deprived of their liberty, no mechanism which monitors the compliance of these standards exists.

49. Therefore, and due to the Working Group's serious concern regarding the protection of this vulnerable group, the Working Group has decided to formally propose to the Human Rights Council an expansion of its mandate, to include the monitoring of State 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 of the African Commission on Human and Peoples' Rights as well as 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.

### **B. Detentions in the framework of measures countering terrorism**

50. The Working Group already expressed, in previous reports, some concerns related to the continuing tendency of using deprivation of liberty in the context of States' legitimate fight against terrorism.

51. However, as the number of allegations concerning this aspect of the problem is skyrocketing and it is expected that this tendency will regrettably remain in future, the Working Group considers it justified to reiterate some key elements from the previous reports on the issue under examination and incorporate them in the present report.

52. The Working Group considers it necessary to reiterate that some States continue to use deprivation of liberty without charges or trial or other applicable procedural guarantees against persons accused of terrorist acts in the context of the implementation of criminal policies against terrorism, a practice which is contrary to international human rights instruments. The Working Group has noticed such practices in numerous cases presented before it in recent years, as well as from information received, notably from non-governmental organizations working in the field.

53. Therefore, for the time being and notwithstanding further additions, the Working Group considers it advisable to set up a list of principles in conformity with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights, which may be used in relation to deprivation of liberty of persons accused of acts of terrorism.

54. The principles are the following:

(a) Terrorist activities carried out by individuals shall be considered as punishable criminal offences, which shall be sanctioned by applying current and relevant penal and criminal procedure laws according to the different legal systems;

(b) Resort to administrative detention against suspects of such criminal activities is inadmissible;

(c) The detention of persons who are suspected of terrorist activities shall be accompanied by concrete charges;

(d) The persons detained under charges of terrorist acts shall be immediately informed of them, and shall be brought before a competent judicial authority, as soon as possible, and no later than within a reasonable time period;

(e) The persons detained under charges of terrorist activities shall enjoy the effective right to habeas corpus following their detention;

(f) The exercise of the right to habeas corpus does not impede on the obligation of the law enforcement authority responsible for the decision for detention or maintaining the detention, to present the detained person before a competent and independent judicial authority within a reasonable time period. Such person shall be brought before a competent and independent judicial authority, which then evaluates the accusations, the basis of the deprivation of liberty, and the continuation of the judicial process;

(g) In the development of judgements against them, the persons accused of having engaged in terrorist activities shall have a right to enjoy the necessary guarantees of a fair trial, access to legal counsel and representation, as well as the ability to present exculpatory evidence and arguments under the same conditions as the prosecution, all of which should take place in an adversarial process;

(h) The persons convicted by a court of having carried out terrorist activities shall have the right to appeal against their sentences.

55. The Working Group acknowledges the significant progress made in the promotion and protection of human rights in the counter-terrorism context; however, there remains a fragmented approach by international bodies to this issue. The Working Group therefore proposes that the Human Rights Council consider organizing a special forum, to deliberate and work on common positions necessary to guarantee the respect for the right to be free from arbitrary detention in the counter-terrorism context. This special forum should give special consideration to the methods and framework applied by States, particularly in perceived emergency situations, and will call for the participation of representatives of all relevant special procedures and treaty bodies.

### **C. Arbitrary detention and corruption**

56. The Working Group has observed, during the various visits conducted, the devastating effects caused by corruption on the effective fulfilment of human rights, including the right to be free from arbitrary detention.

57. As referred to in previous reports, the Working Group could observe throughout the years that there has been a notable increase in the number of States that have ratified international human rights instruments. These States consequently have introduced in their constitutions and national legislation provisions to guarantee the rights set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights for persons deprived of their liberty.

58. Nevertheless, in spite of the increase in formal recognition of human rights instruments, implementation of these instruments has not yet reached the desirable level.

59. The Working Group has identified, as one main cause for this discrepancy between theory and practice, the issue of corruption, which it observed to continue to exist among some officials in the police, the judicial, legislative and other State institutions.

60. When police officers, prison administration staff, judicial civil servants, judges, public prosecutors and lawyers approach individuals deprived of their liberty varyingly, depending on whether or not bribes or other irregular payments or favours have been received, then the whole system of guarantees becomes devoid of any content, empty and meaningless; it renders defenceless all those who cannot or refuse to pay the amounts that are asked from them and in turn further reduces the credibility of the entire system of administration of justice.

61. The Working Group shares the opinion of those who believe in the necessity of linking the fight against corruption with the enjoyment of human rights. The United Nations Convention against Corruption, adopted by General Assembly resolution 58/4 of 31 October 2003 and which entered into force on 14 December 2005, reflects in its preamble, inter alia, the concerns of State parties about “the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law”.

62. From the viewpoint of the mandate of the Working Group, it is considered that corruption can have an enormous consequence on any legal system in that corruption prevents such legal systems from being effective instruments for its eradication.

63. If there is a legal system perceived to be generally corrupt, it is essential to analyse in the first place the underlying root causes facilitating corrupt conduct. They are, without a doubt, usually manifold and concurrent. However, the Working Group considers it important, among other things, to highlight the following: the absence of a system of information for citizens with respect to their rights and a lack of awareness resulting from it; the lack of transparency in judicial proceedings due to their obscurity and complexity; and the absence of effective instruments to investigate into and redress allegations of corruption which can be approached anonymously.

64. With a view to the United Nations Convention against Corruption recently entered into force, which establishes a comprehensive set of extraordinarily ample measures for the prevention and prosecution of corrupt practices, the Working Group calls on States affected by this phenomenon to study these measures and seek the implementation of those measures most

suitable and adequate for them, in order to eradicate corruption from its system of administration of justice. The Working Group calls on those States which have not yet become a party to this Convention to ratify, accept, approve or accede to it.

#### **D. Detention of immigrants in irregular situations**

65. The Working Group has noted with concern, during the period reported upon, a development yet again towards tightening restrictions, including deprivation of liberty, applied to asylum-seekers, refugees and immigrants in an irregular situation even to the extent of making the irregular entry into a State a criminal offence or qualifying the irregular stay in the country as an aggravating circumstance for any criminal offence.

66. The Working Group has also publicly expressed, together with other mandate holders of special procedures, its concern regarding a law-making initiative of a regional organization comprising mainly receiving countries which would allow concerned States to detain immigrants who are in an irregular situation for a period of time of up to 18 months, pending removal. It would also be permitted to detain unaccompanied children, victims of human trafficking, and other vulnerable groups.

67. It was felt that States should be reminded that detention shall be the last resort and permissible only for the shortest period of time and that alternatives to detention should be sought whenever possible. Grounds for detention must be clearly and exhaustively defined and the legality of detention must be open for challenge before a court and regular review within fixed time limits. Established time limits for judicial review must even stand in “emergency situations” when an exceptionally large number of undocumented immigrants enter the territory of a State. Provisions should always be made to render detention unlawful if the obstacle for identifying immigrants in an irregular situation or carrying out removal from the territory does not lie within their sphere, for example, when the consular representation of the country of origin does not cooperate or legal considerations - such as the principle of non-refoulement barring removal if there is a risk of torture or arbitrary detention in the country of destination - or factual obstacles - such as the unavailability of means of transportation - render expulsion impossible.

68. In conclusion, the Working Group feels duty bound to reiterate that immigrants in irregular situations should not be qualified or treated as criminals and be viewed only from the perspective of national security.

#### **E. Video and audio recording of criminal interrogations**

69. The Working Group is aware of a seemingly recent tendency of various international and regional human rights bodies recommending to Governments the installation of video and/or audio (recording) equipment in rooms where interrogations related to criminal investigations are undertaken. Such recommendations vary with respect to their scope. At times it is advised that such equipment be installed in police stations only. In other instances it is proposed to extend the measure to investigators’ or prosecutors’ offices, or all rooms where law enforcement authorities have relevant competencies. Such recommendations are made to Governments of States regarding which there are concerns about confessions obtained under torture or other forms of

ill-treatment. The purpose of such recommendations is to effectively prevent instances of coerced confessions from occurring and to ensure that they will not be admitted as evidence in courts during criminal trials.

70. Such measures have far-reaching implications, for example, with respect to the right to privacy of the suspect, to the possibility of abuses when used during confidential meetings between defence counsel and clients, or to costs in relation to effectiveness, also with a view to different designs such measures may take. The Working Group feels that the issue warrants further study and calls upon Governments and other stakeholders to provide the Working Group with relevant information and share experiences made.

#### **IV. CONCLUSIONS**

71. **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 concerning cases brought to their attention. During 2008, the Working Group adopted 46 Opinions concerning 183 persons in 22 countries.**

72. **The Working Group welcomes the invitations extended to it as well as the cooperation on the part of Governments. The Working Group conducted four official visits in 2008, to Colombia, Italy, Mauritania and Ukraine. Among all the requested country visits, the Working Group has received invitations by the Governments of Malta, Senegal 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. Further to this, the Working Group considers that future visits and follow-up visits are of utmost importance.**

73. **The Working Group considers the question of detention in the context of counter-terrorism. As such, the Working Group considers it necessary to reiterate the prominent concern that, in the counter-terrorism context, some States continue to use deprivation of liberty without charges or trial or other applicable procedural guarantees against persons accused of terrorist acts; a practice the Group considers as contrary to international human rights instruments. Specifically, the Working Group considers that detained persons suspected of terrorist activities and/or acts shall be immediately informed of such charges in line with relevant national legislation; they shall be brought before a competent judicial authority; and they shall enjoy the effective right to habeas corpus. The Working Group deems it appropriate to put forward a list of principles in conformity with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights, which may be used in the context of measures countering terrorism.**

74. **The Working Group considers that, among other factors, corruption is detrimental to the rule of law and on the effective fulfilment of human rights, including the right to be free from arbitrary detention.**



75. The Working Group feels bound to reiterate that detention shall be the last resort and permissible only for the shortest period of time, and that alternatives to detention shall be sought whenever possible, all of which particularly concern the deprivation of liberty applied to asylum-seekers, refugees and irregular migrants. Furthermore, the Working Group feels that immigrants in irregular situations should not be qualified or treated as criminals and viewed only from the perspective of national security.

76. Finally, the Working Group considers it most useful to reiterate its concern over the deprivation of liberty imposed arbitrarily, and that a still important 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

77. The Working Group requests the Human Rights Council to adopt a resolution or decision to provide additional funds for the Working Group to enable it to conduct at least five country visits per year and relevant follow-up visits. This would put the Working Group in a position to best use its potential as a group of five members and to discharge its mandate more effectively.

78. The Working Group proposes to the Human Rights Council to expand the mandate of the Working Group so as to include the monitoring of State 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 of the African Commission on Human and Peoples' Rights as well as 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 extended mandate.

79. The Working Group proposes that the Human Rights Council consider organizing a special forum, to deliberate and work on common positions necessary to guarantee the respect for the right to be free from arbitrary detention in the counter-terrorism context. This special forum should give special consideration to the methods and framework applied by States, particularly in perceived emergency situations and will call for the participation of representatives of all relevant special procedures and treaty bodies.

80. The Working Group recommends to States to take duly 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.

81. The Working Group calls on those States which have not yet become a party to the United Nations Convention against Corruption to ratify, accept, approve or accede to it. It further calls on all States to study the set of measures contained in this Convention for the prevention and prosecution of corrupt practices and to seek the implementation of those measures most suitable and adequate for their efforts in combating arbitrary detention.

82. With regard to detention of immigrants in an irregular situation the Working Group reminds States that detention should be the last resort, and is permissible only for the

**shortest period of time. Alternatives to detention must be sought whenever possible. Grounds for detention must be clearly and exhaustively defined and the legality of detention must be open for challenge before a court and regular review within fixed time limits. Provisions should always be made to render detention unlawful if the obstacle for identifying immigrants in an irregular situation or carrying out removal from the territory does not lie within their sphere, for example, when the consular representation of the country of origin does not cooperate or legal considerations - such as the principle of non-refoulement barring removal if there is a risk of torture or arbitrary detention in the country of destination - or factual obstacles, such as the unavailability of means of transportation - render expulsion impossible.**

**83. Finally, the Working Group requests States and other stakeholders to provide the Group with information and share their experiences regarding the installation of video and/or audio (recording) equipment in rooms where interrogations related to criminal investigations are conducted. The Working Group has taken note of a seemingly recent tendency of international and regional human rights bodies recommending to States the implementation of such measures to prevent the extraction of confessions under torture or other forms of ill-treatment and their admission as evidence in criminal trials. It considers that the issue warrants further study.**

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