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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF TORTURE AND DETENTION

Opinions adopted by the Working Group on Arbitrary Detention

The present document contains the opinions adopted by the Working Group on Arbitrary Detention at its thirty-second, thirty-third and thirty-fourth sessions, held in November/December 2001, June 2002 and September 2002, respectively. A table listing all the opinions adopted by the Working Group and statistical data concerning these opinions are included in the report of the Working Group to the Commission on Human Rights at its fifty-ninth session (E/CN.4/2003/8).

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OPINION No. 19/2001 (NEPAL)

Communication addressed to the Government on 7 June 2001

Concerning: Yubaraj Ghimire, Binod Raj Gyawali and Kailash Sirohiya

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information.

3. In a note dated 27 November 2001, the Government informed the Working Group that the above-mentioned individuals, who had been detained since 6 June 2001, were released on 17 August 2001.

4. The Working Group transmitted the reply of the Government to the source, which confirmed that all the charges had been formally withdrawn by the Government. The Working Group is in a position to render an opinion on the case.

5. Having examined all the available information before it and without prejudging the arbitrary nature of the detention, the Working Group decides to file the case of the above-mentioned individuals, in accordance with paragraph 17 (a) of its revised methods of work.

Adopted on 28 November 2001

OPINION No. 20/2001 (CHINA)

Communication addressed to the Government on 14 June 2001

Concerning: Wang Wanxing

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided information concerning the case.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The Working Group welcomes the cooperation of the Government. However, it regrets that its reply was not informative enough and did not facilitate its task of investigating the case on specific points which were addressed in the letter of the Working Group's Chairperson. The Working Group transmitted the reply of the Government to the source, which provided the Working Group with its comments thereon. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted to the Working Group by the source, Wang Wanxing, who is said to be a veteran pro-democracy and human rights activist, has been and is still being detained in Ankang Psychiatric Hospital, Beijing. It is reported that Mr. Wang

was first detained on 3 June 1992, after attempting to unfurl a banner in Tienanmen Square in Beijing to commemorate the 1989 repression of the pro-democracy movement. He was taken against his will to Ankang Psychiatric Hospital, an institution allegedly run by the Public Security Bureau (PSB) and reserved for criminals deemed insane or a threat to society. He has spent the last nine years in this institution without trial or an independent medical examination, save for a three-month period from 19 August 1999 to 23 November 1999. After his detention, authorities pressured his wife, Ms. Wang Junying, to admit her husband's involvement in politics, assuring her that her husband would be held for no more than a month.

6. In early 1997, the authorities issued a document stating Mr. Wang had been determined to be "suffering from paranoid delusions" that caused "his attempt to disturb the social order". On 19 August 1999, he was released for a three-month probationary period, on the condition that he follow a strict set of rules imposed by the Haidian District of the Beijing PSB and the hospital authorities. These rules prevented him from contacting the press and people involved in the pro-democracy movement, and as well as from listening to international radio broadcasts.

7. On 18 November 1999, Mr. Wang telephoned Dr. Lü Qiuling, chief of staff and secretary of the Communist Party at the hospital, and informed her of his intention to convene a press conference to describe his seven years in Ankang Psychiatric Hospital. Dr. Lü reportedly told him that if he pursued his project, he would be returned to the hospital. On 23 November 1999, eight public security officers took Mr. Wang from his house and returned him to the hospital. His wife has refused to admit that Mr. Wang was mentally ill.

8. The source considers that Mr. Wang was detained simply for exercising his right to freedom of expression. The fact that Ankang Psychiatric Hospital is run by PSB supports the claim that he has not been detained for medical reasons. He was not given the benefit of a trial, and has thus been deprived of his right to due process. Because his detention falls outside the competence of the judiciary, there is no remedy available to him. The duration of his detention is unlimited and has lasted for nearly nine years already. The authorities have not provided any evidence to substantiate their allegation that Mr. Wang "attempted to disturb the social order".

9. The Government has made the following comments: Wang Wanxing, male, aged 52, ethnic Han Chinese, completed lower secondary education, and unemployed. In June 1992, Wang was removed from Tienanmen Square by policemen on duty in the square because he had gone there to conduct activities disturbing public order. Afterwards, it transpired that his mental state was not normal and, according to an appraisal by the judicial psychiatric appraisal division of Ankang Hospital in Beijing, he was diagnosed as suffering from "paranoia", and his dangerous behaviour was attributed to his state of delusion. At the time he was in Tienanmen Square conducting activities disturbing public order he had already lost his capacity for rational judgement and was no longer responsible for his actions. Afterwards, Wang underwent treatment in Ankang Hospital. In August 1998, Ankang Hospital arranged a three-month trial release of Wang, but during that period he fell ill once again and, after conducting tests on him, specialists at the diagnostic centre of Ankang Hospital came to the conclusion that Wang had suffered a relapse and had to be readmitted for observation and treatment. When the physician in charge of his case at Ankang Hospital informed Wang of this diagnosis, he expressed his acceptance. Up to the present time Wang has been undergoing treatment in hospital.

10. According to the relevant provisions of the Chinese Criminal Code, mentally ill persons whose actions can have dangerous consequences when in a state of diminished responsibility or loss of self-control, and who are confirmed as such by legal and other procedures, are not subject to criminal liability, but their family members or guardians are required to keep them under strict surveillance and to arrange for their medical treatment; if necessary, compulsory treatment is provided by government order.

11. As a mentally ill person with diminished responsibility it is perfectly normal and legitimate for Wang Wanxing to be receiving treatment in hospital; during his treatment his rights and interests have been fully safeguarded and he has never been subjected to any inhumane treatment. Wang's activities in violation of the law are attributable to his loss of self-control and are not politically motivated. The allegations that "political dissident" Wang has been taken into custody because of his political activities are utter nonsense.

12. Before taking a stand on the allegations made, the following two preliminary questions need to be answered: whether the conditions of Mr. Wang's detention are to be considered as deprivation of liberty and, if so, whether his deprivation of liberty was arbitrary.

13. The Working Group first examined whether the holding of a person in a psychiatric institution amounts to detention within the meaning of its mandate. The position of the Working Group is that keeping a person against his/her will in such an institution may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave. In the present case the source contends that Wang Wanxing had been held from 3 June 1992 to 19 August 1999 (and thereafter again from 23 November 1999 onwards) in Ankang Hospital without being allowed to leave it. The Government did not refute this allegation. Therefore, the Working Group concludes that the holding of Wang Wanxing in a psychiatric hospital amounts to deprivation of liberty.

14. Whether his detention is arbitrary or not depends on various factors. Against the detailed allegations of the source that the detention of Wang Wanxing was politically motivated (he was detained immediately after attempting to unfurl a banner in Tienanmen Square to commemorate the 1989 repression against the pro-democracy movement; Ankang Hospital is run by PSB; his wife has been under pressure from the authorities to admit her husband's intense interest in politics; while he was out of hospital for a probationary period he was prohibited from contacting the press and people involved in the pro-democracy movement and from listening to international radio broadcasts) the Government did not submit any evidence or arguments to the contrary. Moreover, the Government did not provide information concerning the legal provisions governing the admission to and the holding of people with mental disorders in psychiatric hospitals, the system of controlling admissions to and stay in such institutions by an independent body, be it a tribunal or a public authority, in order to prevent abuse, and the remedies available to psychiatric patients and their families to obtain a judicial review of the continued detention.

15. Since the Government failed to adduce convincing arguments or evidence to refute the allegations of the source, the Working Group cannot but conclude that the detention of Wang Wanxing in a psychiatric hospital for approximately 11 years is motivated by his political convictions which he has frequently manifested in public and to which he continues to give

expression. Therefore, on the basis of the information available to it the Working Group concludes that, in the light of the particular circumstances of this case, Wang Wanxing was and continues to be detained for having peacefully exercised his right to freedom of opinion and expression, as guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

16. Therefore, the Working Group expresses the following opinion:

> The detention of Wang Wanxing in a psychiatric hospital is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and of article 19 of the International Covenant on Civil and Political Rights and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

17. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Wang Wanxing in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights, and encourages it to ratify the International Covenant on Civil and Political Rights.

Adopted on 28 November 2001

OPINION No. 21/2001 (SRI LANKA)

Communication addressed to the Government on 24 June 2001

Concerning: Chinniah Atputharajah and 12 other citizens of Sri Lanka

The State has ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The reply of the Government was forwarded to the source on 8 October 2001. However, in a letter dated 25 October 2001, the source reiterated, in general terms, its allegation concerning the deplorable situation of detainees of Tamil origin in various prisons in the South of Sri Lanka; it made no comment on the merits of the reply of the Government. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

5. According to the information submitted by the source to the Working Group, the Government of Sri Lanka has given wide powers to the police and the Minister of Defence, under the Prevention of Terrorism Act (PTA) and the Emergency Regulations (ERs) linked to PTA, to arrest and detain Sri Lankan citizens of Tamil origin for a period of up to 18 months

without a warrant. Under the Act, a magistrate can remand a person indefinitely until his or her trial is completed in the High Court. Section 6 of PTA is said to enable a police officer (not below the rank of a superintendent, or a sub-inspector with written authorization of a superintendent) to arrest a citizen of Tamil origin.

6. Normally, the police would arrest a person under the ERs and at the end of the 21 days, the 60 days, or the three months of permissible detention under the ERs, change the legal basis for detention and file charges under PTA, so as to allow for the possibility of indefinite remand of the detainee.

7. The Emergency Regulations provide that an individual can be detained without a warrant for a period of up to 60 days in the Northern or Eastern Province, or up to 21 days outside the Northern and Eastern Provinces. However, if the arrest order is issued by the Ministry of Defence, the individual can be held for another period of three months. When there is a confession from a detainee, the security forces produce the detainee before a magistrate and try to obtain authorization for indefinite remand.

8. The 13 Sri Lankan citizens of Tamil origin whose cases are mentioned below are all said to have been arrested without reasons being given for their arrest. However, the source explains that these cases have been chosen from a list of 280 Sri Lankan citizens of Tamil origin arrested and detained at Kalutara Prison under similar conditions. The criteria for selecting these 13 detainees from the list were the time of arrest and the age of the persons concerned.

1. Chinniah Atputharajah, arrested on 13 June 1999 during a joint operation by members of the Sri Lankan army and the police.

2. Krishnaswamy Ramachandran, arrested on 3 February 1998 by members of the army during a search operation at Udatheniya.

3. Rasaratnam Punchalingam, arrested on 13 June 1999 during a joint operation by the army and the police.

4. Kanapthy Subramaniam, arrested on 13 October 1998 by members of the army.

5. Thuraiswamy Muthuswamy, arrested on 26 February 1999 in Eerravur by members of the Special Task Force (STF) of the Sri Lankan army.

6. Thambiah Kandaswamy, arrested on 25 March 1998 by police agents.

7. Ramiah Subramaniam, arrested on 25 March 1998 by police agents.

8. Sinnapu Kaniud, arrested on 19 March 1999 in Guruganer during a search operation by the Sri Lankan army.

9. Kathirgamu Shanmuganathan, arrested on 7 January 1998 in Karaveddy by members of the army.

10. Namasivayam Aathimulam, arrested on 27 March 1999 during a search operation conducted by the army at Vavuniya.

11. Arumugam Kanagaratnam, arrested on 14 January 1999 by members of the Sri Lankan army.

12. Ramiyah Gopalaswamy, arrested on 5 July 1999 at Chenkaladdy during a search operation conducted by members of STF.

13. Karthigesu Sivalingam, arrested on 4 February 1999 by members of STF during a search operation at Kalmunai.

9. In its replies dated 1 October and 12 November 2001, the Government made the following statement on the applicable legislation.

10. The Prevention of Terrorism Act enacted by the Parliament and the Emergency Regulations promulgated by the President of the Republic under the Public Security Ordinance (which has also been enacted by the Parliament of the Republic) have been so enacted and promulgated in order to deal with an extraordinary security situation perpetrated by a terrorist organization that seeks to illegally establish a mono-ethnic separate sovereign State primarily in the Northern and Eastern Provinces of the Republic. This situation has resulted in attempts to threaten the territorial integrity and sovereignty of the Republic and has had adverse effects on public security and public order. It has affected the maintenance of essential services and has caused the loss of the lives of several thousand legally elected representatives of the people, public officials, citizens and even foreign nationals. The damage caused to public property and to the national economy is immense and cannot even be calculated. Separatist violence continues to affect the country and its people.

11. The aforementioned legislation has been respectively enacted and promulgated in accordance with the provisions of the Constitution, which, inter alia, recognizes a series of fundamental rights that have been formulated in accordance with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and several other international human rights instruments. The provisions of the Constitution seek to prevent the enactment or the promulgation of legislation and regulations that, inter alia, contravene the provisions of the Constitution, including those relating to fundamental rights. The Prevention of Terrorism Act and the Emergency Regulations do not violate any provisions of the Constitution and, in particular, do not contravene fundamental rights guaranteed by the Constitution. It is also submitted that the Supreme Court enjoys jurisdiction to, inter alia, review the constitutionality of proposed legislation as well as proposed or promulgated regulations.

12. It is further submitted that, consequent to the promulgation of the Emergency Regulations, the said Regulations continue to be periodically reviewed by the Parliament and the said Regulations continue to be in force only upon the passing of a motion, by a majority of the members of Parliament, in favour of the state of emergency declared by the President of the Republic.

13. It is submitted that the arrest of suspects and their detention under these two laws are subject to judicial review by the Supreme Court. Suspects can be arrested only if there is reasonable evidence based on which it may be inferred that they are implicated in the commission of an offence under the relevant laws. A decision to arrest a suspect can be reviewed by the Supreme Court by an application petitioning the Court in case of a violation of a fundamental right. A decision to detain a suspect under a detention order can be made only in order to facilitate an investigation. Such a decision can also be challenged in the Supreme Court in the aforesaid manner.

14. A decision to prosecute (institute legal proceedings against) a suspect can be made only by the Attorney-General, who is legally required to take such a decision after an objective consideration of the evidence. His decision to institute criminal proceedings (by forwarding an indictment to the High Court) is also subject to judicial review.

15. Upon the institution of criminal proceedings against a suspect, any self-incriminatory material (such as a purported confession made voluntarily by the accused to a senior police officer) is subjected to scrutiny prior to its admission as evidence. In order to do so, a "voir dire" inquiry is conducted in order to test the admissibility of such evidence. In the context of a "confession", it is determined (after consideration of oral and documentary evidence) whether such a confession was in fact made by the accused to the relevant senior police officer, and whether such statement was made "voluntarily". In the course of the trial, the trial judge is also required to consider the "truthfulness" of the confession.

16. It is also important to note that the Government invited a two-member delegation from the Committee against Torture to visit Sri Lanka in August 2000. After this visit, the delegation made concrete recommendations for further improvement of the situation. The Government has already decided to implement some of these recommendations.

17. The Committee against Torture recommended that the relevant provisions of the Emergency Regulations be amended. Accordingly, an amendment was announced in the gazette on 6 April 2001. It read as follows: "Where any person has been arrested and detained under the provisions of regulation 18 of these regulations, such person shall be produced before a Magistrate within a reasonable time, having regard to the circumstances of each case and, in any event, not later than 14 days from the date of such arrest."

18. The Government also agreed to implement the Committee's recommendation enabling the judge of a Magistrate's Court to undertake regular visits to places of detention. This has also been announced in the gazette on 6 April 2001. The relevant section is reproduced and reads as follows: "The officer-in-charge of any place authorized by the Inspector General of Police as a place authorized for detention for the purpose of regulation 17 or 18 shall furnish to the magistrate within the local limits of whose jurisdiction such place of detention is located, once in every 14 days, a list containing the names of all persons detained at such place. The magistrate shall cause such list to be displayed on the notice board of the Court. The magistrate within whose jurisdiction any such authorized place of detention is situated shall visit such place of detention at least once in every month. It shall be the duty of the officer-in-charge of the place to secure that every person detained therein, otherwise than by an order of a magistrate, be produced before such visiting magistrate."

19. Pursuant to the Committee's recommendation, action is now under way to establish a central register of detainees in all parts of the country. The necessary administrative procedures are now being followed to purchase equipment, including computers. The Government has also accepted the Committee's recommendation to introduce video recording of confessionary statements made by suspects to assistant superintendents of police under the Prevention of the Terrorism Act.

20. The information on the establishment of a central register has been complemented in that a central police registry of detainees under PTA and the Errs was created with effect from 1 November 2001.

21. Concerning the allegations of the source concerning the unlawful detention of 13 Sri Lankan citizens, the Government made the following statement: Chinniah Atputharajah was released on 27 February 2001; Rasaratnam Punchalingam was released on 27 February 2001; Thuraiswamy Muthuswamy was discharged, owing to insufficient evidence against him, on 20 November 2000. The case of Thambiah Kandaswamy is pending before the Colombo High Court, the last hearing being held on 4 September 2001. Ramiah Subramaniam was discharged, owing to insufficient evidence against him, on 16 November 2000; Sinnapu Kaniud was released on 13 November 2000; Kathirgamu Shanmuganathan was found guilty and sentenced to three years of rigorous imprisonment for aiding and abetting the Tamil liberation movement. Ramiyah Gopalaswamy, who is said to have been in possession of a time bomb when arrested, is on trial before the Anuradhapura High Court (his case was heard on 19 September 2001). Karthigesu Sivalingam was released by the Magistrate's Court in Colombo on 19 September 2001.

22. This statement by the Government has not been contested by the source. In the absence of any comment by the source, the Working Group concludes that out of the 13 persons one was found guilty and sentenced, two are currently on trial and six have been released from detention.

23. As to the allegation of the source concerning the arbitrary detention of Krishnaswamy Ramachandran, Kanapthy Subramaniam, Namasivayam Aathimulam and Arumugam Kanagaratnam, the Permanent Mission of Sri Lanka to the United Nations noted in its reply of 1 October 2001 that observations concerning their cases would be transmitted as soon as further information was obtained from the Government. To date, no information has been provided to the Working Group concerning these four persons.

24. Bearing in mind the time available to the Government to clarify the situation of these four persons - more than five months instead of the 90 days provided for in article 15 of its methods of work - and the fact that it did not request an extension of the time limit provided under article 16 of its methods of work for responding, the Working Group, on the basis of the information available to it, renders the following opinion:

(a) The Working Group takes note of the release from detention of Chinniah Atputharajah, Rasaratnam Punchalingam, Thuraiswamy Muthuswamy, Ramiah Subramaniam, Sinnapu Kaniud and Karthigesu Sivalingam; in accordance with paragraph 17 (a) of its methods of work, the Working Group is of the view that their case should be filed, without expressing an opinion on the arbitrary nature of their detention;

(b) The Working Group finds that Kathirgamu Shanmuganathan was found guilty and sentenced; the cases of Thambiah Kandaswamy and Ramiyah Gopalaswamy are pending before the courts; the source made no allegation concerning the lack of fairness of the procedure conducted against them. Therefore, the Working Group concludes that their deprivation of liberty is not arbitrary;

(c) The Working Group is of the view that the deprivation of liberty of Krishnaswamy Ramachandran, Kanapthy Subramaniam, Namasivayam Aathimulam and Arumugam Kanagaratnam, who were arrested on 3 February 1998, 13 October 1998, 27 March 1999 and 14 January 1999, respectively, without being charged or tried since, is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

25. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of the persons enumerated in paragraph 24 (c) of the present Opinion and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 28 November 2001

OPINION No. 22/2001 (ETHIOPIA)

Communication addressed to the Government on 27 August 2001

Concerning: Bernahu Nega and Mesfin Woldemariam

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights and its mandate was clarified and extended by Commission resolution 1997/50 and reaffirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. On 8 May 2001, Professor Mesfin Woldemariam and Dr. Bernahu Nega, two human rights militants in Ethiopia, were arrested by police in Addis Ababa in connection with a criminal investigation, and detained at Makalawi State Prison. Brought before the Federal Court on 9 May 2001, they were held in detention at the request of the police. On 5 June 2001, they were released on bail and the date of their trial is set for 4 December 2001.

4. The Working Group notes with satisfaction the information provided by the source attesting to the fact that Professor Mesfin Woldemariam and Dr. Bernahu Nega are no longer being deprived of their liberty. The Working Group believes that it is in a position to render an opinion on the case.

5. Having examined all the information submitted to it, and without determining whether the detention was arbitrary or not, the Working Group decides, pursuant to paragraph 17 (a) of its methods of work, to file the cases of Professor Mesfin Woldemariam and Dr. Bernahu Nega.

Adopted on 29 November 2001

OPINION No. 23/2001 (ISRAEL)

Communication addressed to the Government on 27 August 2001

Concerning: Khaled Jaradat

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The case summarized hereafter has been reported to the Working Group as follows.

5. Khaled Jaradat was born in 1960, has a West Bank residence identity card issued by the military authorities and lives in Silat-El-Kharthiye, Jenin district. It was reported that Mr. Jaradat was arrested without a warrant on 13 February 1997 at his home by members of the Israeli army. His arrest was reportedly ordered by the military commander of the West Bank on charges of being an activist of the illegal organization Palestinian Islamic Jihad.

6. The source reports that Mr. Jaradat was arrested under Military Order No. 1229 of 1988 on Administrative Detention, Temporary Provision, and on the basis of secret evidence never revealed to him. Although there was judicial review, the secret evidence remained privileged

information and the military judges only received one-sided information. Supposed informers were not asked to appear before the judges and, in fact, they never appeared during the judicial proceedings.

7. Mr. Jaradat's case was brought to Israel's High Court of Justice twice, but his appeals were rejected on both occasions by judges relying on secret evidence. Mr. Jaradat had no access to the information used against him. This made it impossible for him to challenge the accusation. According to the source, although Mr. Jaradat may again appeal against his detention, he is unable to present a meaningful defence. Since almost all information presented to the Court is classified, he is unable to contest its veracity. He cannot confront or cross-examine the primary witnesses.

8. Mr. Jaradat is being held in detention in Megiddo Military Prison. He has been detained for a total of four years and six months.

9. The source adds that Military Order No. 1229 of 1988 allows military commanders in the West Bank to detain a person for up to six months if they have reasonable grounds to presume that the security of the area or public security requires his or her detention. Military commanders can extend detention for additional periods of up to six months if, on the eve of the expiration of a detention order, they have reasonable grounds to believe that the security of the area or public security still requires the holding of the detainee in detention. The terms "security of the area" and "public security" are not defined and their interpretation is left to the military commanders. Given that the detention order does not specify a maximum cumulative period of administrative detention, extensions can be indefinite.

10. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations which seriously contravene the right to a fair trial, protected by 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, have not been challenged by the Government.

11. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mr. Khaled Jaradat is arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

12. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 29 November 2001

OPINION No. 24/2001 (SRI LANKA)

Communication addressed to the Government on 20 July 2000

Concerning: Edward Anton Amaradas, and 13 other citizens of Sri Lanka

The State has ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. However, in a letter dated 25 October 2001 the source reiterated, in general terms, its allegation concerning the deplorable situation of detainees of Tamil origin in various prisons in the south of Sri Lanka; it made no comment on the merits of the reply of the Government. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

5. According to the information submitted by the source to the Working Group, the Government of Sri Lanka has given wide powers to the police and the Minister of Defence, under the Prevention of Terrorism Act (PTA) and the Emergency Regulations (ERs) linked to PTA, to arrest and detain Sri Lankan citizens of Tamil origin for a period of up to 18 months without a warrant. Under the said Act, a magistrate can remand a person indefinitely until his or

her trial is completed in the High Court. Section 6 of PTA is said to enable a police officer (not below the rank of a superintendent of police) or a police officer (not below the rank of sub-inspector with written authorization of a superintendent of police) to arrest a citizen of Tamil origin.

6. According to the source, normally the police would arrest a person under the Emergency Regulations and, at the end of the 21 days, the 60 days, or the 3 months of permissible detention under the ERs, change the legal basis for detention and file charges under PTA, so as to provide for the possibility of indefinite remand of the detainee.

7. The ERs provide that an individual can be detained without a warrant for a period of up to 60 days in the Northern or Eastern Province, or up to 21 days outside the Northern and Eastern Provinces. If the arrest order is issued by the Ministry of Defence, the individual can be held for another period of three months. When there is a confession from a detainee, the security forces produce the detainee before a magistrate and try to obtain authorization for indefinite remand.

8. The 14 Sri Lankan citizens of Tamil origin whose cases are listed below are all said to have been arrested without reasons being given for their arrest and to have been forced to sign self-incriminating statements. Those statements were written in Sinhalese, a language not known to most of them. In many cases, the confession statement, obtained under duress, is said to be used as the only evidence against the accused in court proceedings:

1. Edward Anton Amaradas, born in 1975 and an undergraduate at the University of Moratuwa, was arrested on 27 August 1999 in Colombo by members of the Sri Lankan army. He was detained at Nugegoda police station.

2. Gajamohan, born in 1974 and an undergraduate student at the University of Moratuwa, was arrested on 27 August 1999 in Colombo by members of the army. He was also detained at Nugegoda police station.

3. Thanigasalam Pillai Nandanan, also born in 1974 and an undergraduate of the University of Moratuwa, was arrested on 27 August 1999 in Colombo by members of the army. He was detained at Nugegoda police station.

4. Kadiravelupillai Sivamogan, born in 1974 and an undergraduate of the University of Moratuwa, was arrested on 27 August 1999 in Colombo by members of the army. He was detained at Nugegoda police station.

5. Selvanayagam Suganthan, an Arts Faculty student at Jaffna University, was arrested on 25 October 1999 in Jaffna by members of the army.

6. Moothuthamby Uthayakumar, a teacher at Kadukkamunai Vidyalayam, was arrested on 2 August 1999 in Naavatkudu, Jaffna district, by members of the army.

7. Mrs. Navajothi Sinnarasa, a teacher at the Batticaloa Teacher Training College, was arrested on 3 September 1999 in Batticaloa by agents of the Criminal Investigation Department (CID) on orders of the CID office in Kandy. She was detained in Batticaloa.

8. Sinnathambi Kamalanadan, Ms. Sinnarasa's husband, a teacher at the Batticaloa Teacher Training College, was arrested on 3 September 1999 in Batticaloa by CID agents on orders of the CID office in Kandy. He was detained in Batticaloa.

9. Krisnapillai Pavalakeshan, born in 1973 and an employee of a local non-governmental organization, was arrested on 12 August 1999 in Batticaloa by members of the army.

10. Thambinakayam Sribalu, a journalist, was arrested on 12 August 1999 in Batticaloa by members of the army when he inquired about Pavalakesan's arrest at a local army camp.

11. P. Selvaraja, President of the Jaffna Missing Persons Guardian Association, was arrested on 6 September 1999 in Chemmani, Jaffna district, by army personnel as he witnessed the clearing of an alleged mass grave site located at Chemmani. The source reported that Jaffna District Judge Illancheliyan reprimanded an army commander and a major general for interfering in the Chemmani Court proceedings, noting that the arrest of this person was an attempt to disrupt the investigations.

12. S. Senthurajah, coordinator of a local welfare organization, was arrested on 31 October 1999 in Akkaraipattu, Batticaloa district, by agents of the Sri Lankan police under PTA.

13. Sri Arasaretnam Senthinathakurukkal, chief priest of a Hindu temple, was arrested on 22 July 1999 in Akkaraipattu, Batticaloa district, by the police under PTA.

14. Krishnapillai Perinpam, a Hindu priest, was arrested on 13 August 1999 in Matale, Kandy district, by the police, while he was carrying out his duties at Balamurugan Temple. He was detained at Naula police station.

9. In its replies dated 29 June and 12 November 2001 the Government made the same comments as those reported in paragraph 7 of Opinion No. 21/2001 (SRI LANKA), to which the reader is referred, including the description of the action taken by the Government to implement the recommendations made by the Committee against Torture at the time of its delegation's visit to Sri Lanka in August 2000.

10. With regard to the allegations made by the source concerning the unlawful detention of the above-mentioned 14 persons, the Government made the following statement:

(a) Despite the inquiries made of the relevant services, the Government maintains that no trace can be found of the detention of the following four persons: Gajamohan, Moothuthamby Uthayakumar, Krisnapillai Pavalakeshan and Thambinakayam Sribalu (the Government specified the bodies and registry services of which it made inquiries). In the absence of any comment by the source and to the absence of sufficient information, the Working Group therefore considers that, in accordance with paragraph 17 (d) of its methods of work, the case may be filed. The same applies to the cases of S. Senthurajah and P. Selvaraja, in the absence of sufficiently well-founded allegations;

(b) Four of these persons have been released: Thanigasalam Pillai Nandanan, Kadiravelupillai Sivamogan, Edward Anton Amaradas and Selvanayagam Suganthan (released on bail).

11. In the light of this response, a determination as to whether the deprivation of liberty was arbitrary is necessary only in the following four of those cases brought to the Working Group's attention: Ms. Navajothi Sinnarasa (Sebastian Pillai Selvarasa Navajothi), Sinnathambi Kamalanadan, Sri Arasaretnam Senthinathakurukkal and Krishnapillai Perinpam.

12. The Working Group welcomes the action taken by the Government of Sri Lanka to implement the recommendations of the Committee against Torture, particularly with regard to the maximum period during which an arresting authority can detain a person for questioning without bringing him before a judge, which has been reduced from 30 to 14 days. The Working Group nevertheless wishes to point out that 14 days is still far in excess of what can be considered consistent with the term "promptly" within the meaning of article 9, paragraph 3, of the International Covenant on Civil and Political Rights (to which Sri Lanka is a party), according to which "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge ... ."

13. The same applies to article 17, paragraph 1, of the ERs, which provides that the Minister of Defence may order a person to be detained solely on the basis of information to the effect that a harmful act might be committed. This measure is similar to administrative detention and therefore not compatible with article 9 of the Covenant. The Working Group is particularly concerned because, according to the source, new Emergency Regulations were promulgated on 3 May 2000, widening the emergency powers already vested in the executive.

14. In the light of the foregoing:

(a) The Working Group takes note of the release from detention of Thanigasalam Pillai Nandanan, Kadiravelupillai Sivamogan, Edward Anton Amaradas and Selvanayagam Suganthan. In accordance with paragraph 17 (a) of its methods of work, the Working Group is of the view that their case should be filed, without expressing an opinion on the arbitrary nature of their detention;

(b) The Working Group finds that, in the absence of sufficient information concerning Gajamohan, Moothuthamby Uthayakumar, Krisnapillai Pavalakeshan and Thambinakayam Sribalu, their cases should be provisionally filed in accordance with paragraph 17 (d) of its methods of work;

(c) The Working Group is of the view that the deprivation of liberty of Mrs. Navajothi Sinnarasa (Sebastian Pillai Selvarasa Navajothi), Sinnathambi Kamalanadan, Sri Arasaretnam Senthinathakurukkal and Krishnapillai Perinpam is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

15. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of the persons enumerated in paragraph 14 (c) of the present opinion and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 29 November 2001

OPINION No. 25/2001 (PAKISTAN)

Communication addressed to the Government on 18 October 2001

Concerning: Ayub Masih

The State has not signed nor ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requested information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply of the Government to the source, which provided the Working Group with its comments thereon. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted to the Working Group, Ayub Masih, a Christian Pakistani citizen, was arrested by the police on 14 October 1996. No judicial decision or arrest warrant was presented at the time of his arrest.

6. According to the source, Mr. Masih's family had applied for land under a government programme that distributes parcels of land to provide housing for homeless people. The local landlord and other residents of the village apparently resented this prospect as previously Christian families had lived on land provided by Muslim landowners in exchange for labour. Implementation of the Government's land allocation programme would deprive the village landowners of the benefits of Christian labour.

7. It is submitted that Mr. Masih was arrested when a Muslim neighbour, Mr. Muhammad Akram, told police that Mr. Masih had offended him by stating that Christianity was "right" and suggesting he should read British author Salman Rushdie's *Satanic Verses*. Mr. Masih denied all these accusations. On the day of his arrest, the other villagers forced the entire Christian population of the village (14 families in all) to leave their homes and abandon their belongings. The authorities allocated Mr. Masih's house to the complainant, Mr. Akram, who has apparently been living there ever since. Bishop John Joseph of Faisalbad observed that Mr. Akram's allegations against Mr. Masih were motivated by a dispute between Muslim and Christian villagers. He pointed out that neither Mr. Masih nor the complainant could read English and would know little about the Rushdie book.

8. On 6 November 1997, the complainant shot and injured Mr. Masih in the halls of the Sahiwal Sessions Court, after which the trial was held in camera. The police reportedly refused to register a complaint against Mr. Akram, despite eyewitness testimonies by family members. The trial began on 8 January 1998. On 20 April 1998, Judge Khan sentenced Mr. Masih to death and to a fine of 100,000 rupees. Mr. Masih immediately filed an appeal before the Multan Bench of the Lahore High Court. On the day of the verdict, extremists gathered near the Court threatened Mr. Masih's lawyer with dire consequences for pursuing the case.

9. It is reported that on 6 May 1998 Bishop John Joseph of Faisalbad shot and killed himself in front of the Court to protest against Mr. Masih's conviction.

10. In January 1999, Mr. Masih was allegedly attacked and injured in the prison by four other inmates. No action appears to have been taken against the attackers. In April 1999, the Multan Bench of the Lahore High Court denied Mr. Masih's request for medical treatment.

11. The source reports that on 24 July 2001, the High Court finally heard Mr. Masih's appeal, over three years and three months after being convicted. On the day of the hearing, the courtroom was filled with extremists who made death threats against the Court and Mr. Masih's lawyer. Shortly thereafter, Justices Naeem Ullah Khan Sherwani and Khawaja Muhammad Sharif affirmed the judgement. Mr. Masih's appeal is currently before the Supreme Court of Pakistan.

12. The law giving rise to the sentence, the Pakistan Penal Code, section 295C, the pertinent text of which was reproduced by the source, reads as follows: "Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly defiles the sacred name of the Holy Prophet (PBUH) … shall be punished with death, or imprisonment for life, and shall be also liable to fine."

13. It is submitted that in October 1990 the Federal Shariah Court ruled that "the penalty for contempt of the Holy Prophet (PBUH) … is death". Under Pakistani law, the Federal Shariah Court is a religious body whose rulings are binding on the Government of Pakistan. Thus, life imprisonment is no longer an available sentence for persons convicted of blasphemy under section 295C of the Penal Code; the only possible punishment available for anyone convicted of blasphemy under section 295C is death. Moreover, according to the Pakistani Code of Criminal Procedure, judges presiding at blasphemy trials must be Muslims. This is the only section in the Pakistani criminal system for which a religious qualification of the judge is prescribed.

14. Summarizing its position, the source points out that the detention of Mr. Masih is arbitrary. He was accused and convicted largely because he belongs to a religious minority, on the basis of a provision of a law which itself is clearly discriminatory. Therefore, his conviction implies a violation of Mr. Masih's rights to equal protection and non-discrimination.

15. It is submitted that Mr. Masih requested written documentation regarding the charges and evidence against him. He was not provided with any such documentation or evidence. During the proceedings he was never informed of his rights. It is also submitted that by refusing to conduct an independent investigation and by allowing the testimony of a single, biased witness, the court shifted the burden of proof onto the defendant who was expected to prove he did not commit the alleged offence. This shifting of the burden of proof was reinforced by the requirement that judges hearing blasphemy cases be Muslims.

16. Moreover, the threats and atmosphere surrounding his trial and appeal denied him any chance of having a fair trial. The source considers that the courts hearing the case and appeal were unable to make their decisions in an independent and impartial manner, because the judges themselves felt that their personal integrity and safety were at risk. The source recalls that Judge Arif Iqbal Hussain Bhatti was assassinated on 19 October 1997 in his Lahore office after acquitting two persons accused of blasphemy.

17. The description by the Government of the facts of the case giving rise to Mr. Masih's conviction are quite close to, but more detailed than that given by the source. According to the Government, Muhammad Akram informed the local police that on 14 October 1996 at 3 p.m. Ayub Masih was sitting in front of the house of Hakim Machhi. The complainant, Zulfigar Arshad Bhatti and Muhammad Akram were also present. Ayub Masih said that his religion was right while their religion was false. Moreover, he stated that their religion preached by Muhammad (PBUH) was absolutely false. He urged that they read the book written by Salman Rushdie in which he unveiled the true face of Hazrat Muhammad (PBUH), and said that the complainant and the witnesses should accompany him to Karachi so that he could make them read the book by Salman Rushdie. After reading it, they would understand that their Prophet for whom they had so much respect preached a false religion. Then he stated that he wanted to give information to the complainant and the witnesses regarding his own religion so that they could note the shortcomings of their religion, Islam, and also realize that they were following a religion preached by the wrong person. During this conversation he did not pronounce the name of the Holy Prophet (PBUH) with due respect and said that the Prophet was a liar. Upon hearing such derogatory remarks the complainant, along with the witnesses, were overcome with emotion. He seized the accused and took him to the police.

18. The Government did not comment on or refute the allegations of the source on how the proceedings against Ayub Masih were conducted.

19. The Working Group finds that the procedure conducted against the accused, Mr. Ayub Masih, did not respect the fundamental rights of a person charged with a crime. He was not provided with documentary or other evidence against him, nor was he informed of his rights as an accused. This prevented him from properly preparing his defence. The verdict against him was based on the testimony of a single, biased witness. The threats by extremists against him and his defence lawyer during trial and appeal, and the hostile atmosphere - characterized, inter alia, by the fact that the complainant shot at him in the courtroom without apparently being sanctioned by the court - intimidated the accused and counsel alike, thereby restricting the effectiveness of the defence. To all this is added the fact that under Pakistani law blasphemy cases insulting the Muslim religion can only be heard by Muslim judges, which undermines credibility in a fair and impartial trial being conducted. These serious deficiencies in proceedings where capital punishment is provided by law not as an alternative penalty, but as a mandatory one if the accused is found guilty, basically strips the procedure of its requisite fair character.

20. On the basis of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Ayub Masih is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

21. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Ayub Masih. The Working Group believes that under the circumstances a retrial, the granting of a pardon, or a commutation of sentence would be an appropriate remedy. The Working Group recommends that the Government consider ratifying the International Covenant on Civil and Political Rights.

Adopted on 30 November 2001

OPINION No. 26/2001 (FRANCE)

Communication addressed to the Government on 13 June 2001

Concerning: Mr. Guy Mariani

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information concerning the case of Mr. Mariani in good time.

3. The Working Group welcomes the information from the Government to the effect that Mr. Guy Mariani is no longer deprived of liberty. The Working Group has transmitted this information to the source, and has received the latter's comments in good time. The Working Group is in a position to render an opinion on the case.

4. Having examined all the available information before it and without prejudging the arbitrary nature of the detention, the Working Group decides to file the case of Mr. Guy Mariani, in accordance with paragraph 17 (a) of its methods of work.

Adopted on 3 December 2001

OPINION No. 27/2001 (MOROCCO)

Communication addressed to the Government on 13 June 2001

Concerning: Former Captain Mustapha Adib

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time. The reply has been transmitted to the source.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case in question.

5. According to the source, Mustapha Adib, born on 16 September 1968, of Moroccan nationality, was arrested by military personnel on 5 December 1999 at the military airbase of Sidi Slimane, 80 km north of Rabat, where he was posted at the time.

6. Mustapha Adib was responsible for equipment at the airbase of Errachidia, in the south of Morocco. He had occasion to witness illegal trafficking in fuel, organized by the most senior officer of the base. The unit received a fuel consignment for the operation of a large radar

system. The traffic consisted in diverting and selling the fuel oil received free to a neighbouring gas station. Some 120 tonnes of fuel oil are believed to have been involved over a period of 10 months.

7. As the person responsible for supplies, Captain Adib was required by his superiors to sign fuel vouchers. As he refused to become involved in corrupt dealings, he suffered various forms of pressure and then penalties, for refusing to obey.

8. In October 1998, he reported the illegal trafficking to Crown Prince Sidi Mohamed, as coordinator of the Royal Armed Forces. After an inquiry, the senior officers mentioned in the report were found guilty of diverting fuel supplies, complicity and failure to report offences by the Permanent Tribunal of the Royal Armed Forces. Captain Adib, on the other hand, was exonerated of any involvement in the trafficking he had reported. Looked upon thenceforth, however, as a "black sheep" in the army, he was subjected to harassment, bullying, close confinement and various other forms of punishment. He received four disciplinary sanctions. At the end of 1998, he was transferred to the base of Salé, then in February 1999 to the base of Sidi Slimane.

9. Mustapha Adib decided finally to appeal against the disciplinary sanctions. According to the source, those appeals merely made matters worse. A request for discharge from the army was refused. Feeling that he had exhausted all possible remedies, he contacted Mr. Jean-Pierre Tuquoi, a journalist with the French daily Le Monde specializing in Maghreb affairs. The interview took place on 30 November 1999. On 5 December, before anything was published, Mustapha Adib was arrested. He was sentenced to 60 days' confinement in a military prison starting from 10 December 1999.

10. On 16 December 1999, Le Monde published an article under the title "Moroccan officers denounce corruption in the army", signed by Jean-Pierre Tuquoi. Captain Adib was cited as one of the sources of the information. The Gendarmerie opened an investigation and Captain Adib was placed in pre-trial detention on 17 January 2000.

11. The source adds that, in a judgement on 17 February 2000, the Permanent Tribunal of the Royal Armed Forces found Captain Adib guilty of a violation of military rules and contempt of the army, on the basis of articles 159 and 178 of the Code of Military Justice. He received the maximum applicable sentence, namely five years' imprisonment, and was discharged from the army. On 21 February 2000, Captain Adib initiated the only appeal action possible, for judicial review of his case by the Supreme Court. On 24 June 2000, the Supreme Court annulled the judgement for lack of reasons regarding the absence of attenuating circumstances and referred the case back to the Permanent Tribunal of the Royal Armed Forces, with a different composition. On 6 October 2000, Mustapha Adib was sentenced by the Permanent Tribunal to two and a half years' imprisonment and to dismissal from the army. By decision of 22 February 2001, the Supreme Court rejected the appeal brought by Captain Adib against that judgement, thus making it irrevocable.

12. Still according to the source, Captain Mustapha Adib was not given a fair trial before the Permanent Tribunal of the Royal Armed Forces. His presumed innocence was violated and the Permanent Tribunal displayed a lack of impartiality with regard to the hearing of witnesses. By

ordering him to appear in civilian dress, the Tribunal had ignored the ruling of the Supreme Court, which had annulled Captain Adib's dismissal. The source also alleges that the Tribunal acceded to all the prosecution's requests and systematically rejected all those put forward by the defence. No preliminary hearing was held for the accused to explain his case. At the time of the second hearing before the Supreme Court, Captain Adib's counsel had not been informed of the case brought by the prosecution.

13. The source considers that the arrest, pre-trial detention and conviction of Mustapha Adib are due exclusively to the fact that he made use of his right to freedom of expression. The restriction imposed on Captain Adib was not referred to expressly in the law. Moroccan law makes no provision for restricting the right to denounce corrupt behaviour. On the contrary, it was Captain Adib's duty to report corrupt deeds that were prejudicial to the army's reputation. The effect of such restrictions was to stifle any attempts to report facts which are punishable under Moroccan law and to cover up corruption, rather than to punish contempt of the army or the violation of military rules.

14. In its reply, the Government merely recalled the facts which had led to Mustapha Adib's conviction for violating military rules and contempt of the army by the Permanent Tribunal of the Royal Armed Forces, and the various trials which had led to his last sentence of two and a half years' imprisonment.

15. In his rejoinder, the source maintains that Mustapha Adib did not enjoy a fair trial before the Permanent Tribunal of the Royal Armed Forces and that his pre-trial detention and conviction were due solely to the fact that he had used his right to freedom of expression.

16. With regard to the violation of the right to a fair trial, the Working Group notes that, in its reply, the Government did not reject or even discuss the facts and allegations contained in the communication, particularly those concerning the reasons for the arrest, detention and conviction of Mustapha Adib and those concerning the details of the trial proceedings.

17. Thus there was no denial of the fact that the Permanent Tribunal, on the basis of an administrative decision to dismiss Captain Adib and giving in to the demands of the prosecutor, had obliged the accused to appear in civilian dress, whereas, in its final judgement, it had again ordered his dismissal. That appeared to suggest that dismissal could be decided only by the Tribunal and that, therefore, prior to that ruling, the accused could still claim to belong to the army and was entitled to appear in uniform.

18. It was not denied, either, that the accused had been removed from the court room and judged in absentia and without his lawyers being present - since they withdrew once he had been removed - only because he had protested against the systematic rejection of his counsel's requests, particularly the request to call witnesses, and had called for a fair trial.

19. It appears from the foregoing that Mustapha Adib was judged by a military tribunal, which, owing to its composition and the form of appointment of its members, is a type of court whose independence from the executive power is often in doubt, but which, in addition, acted in that particular case in a way that cast doubts on its impartiality by infringing the presumption of innocence of the accused and by hindering his defence.

20. In this respect and in conformity with its methods of work, the Working Group considers that, under article 14, paragraph 1, of the Covenant, if a trial is not conducted by a competent, independent and impartial tribunal, the gravity of the violation of the right to a fair trial is such as to confer on the deprivation of liberty an arbitrary character.

21. It should be added, however, that in commenting on the arbitrary character of Mustapha Adib's deprivation of liberty, the Working Group took account of the special circumstances of the case; its conclusions should not therefore be interpreted as a position of principle regarding the incompatibility of justice rendered by military courts and the standards of fair trial.

22. With regard to enjoyment of the right to freedom of expression, in view of the fact that the person concerned was on active military service and expressed himself through the media, a doubt arises as to how far his right to freedom of expression extended.

23. Under article 19 of the Covenant, the enjoyment of the right to freedom of expression may, generally speaking, be subject to certain restrictions, if such restrictions are necessary, either for respect of the rights or reputations of others, or for the protection of national security or of public order, or of public health or morals. According to the Covenant, however, these restrictions must be expressly provided by law, and the Human Rights Committee has in the past taken the view that, when a State imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself (General Comment No. 10 on article 19 of the Covenant).

24. With regard to the specific case of military personnel, it is generally recognized that the right to freedom of expression of officials, police officers and the armed forces should be subject to certain restrictions owing to the special nature of the obligations and responsibilities by which they are bound. In the case in hand, Mustapha Adib, in a letter addressed to the Moroccan authorities and to the international community to protest against his conviction and detention, recognizes that Moroccan military personnel, under the regulations of the Royal Armed Forces, are generally forbidden to publish.

25. Yet even if there has been a breach of regulations, the question of the disproportionality of the sanction (60 days of military confinement and five years' imprisonment, including two and a half non-suspensive) in relation to the fault committed - which might have merited no more than a disciplinary sanction - still remains and deserves to be examined.

26. However, considering that neither the information supplied by the source, nor that supplied by the Government sheds sufficient light on the matter, the Working Group is not in a position to express an opinion in the circumstances, neither regarding compatibility of the restriction with the provisions of article 19 of the Covenant, nor regarding the proportionality of the sanction inflicted on Mustapha Adib for his violation.

27. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mustapha Adib is arbitrary, as being in contravention of 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, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

28. In view of the above-mentioned circumstances and since Mustapha Adib's deprivation of liberty has been considered arbitrary within category III of the categories applicable to the consideration of cases submitted to the Working Group, the latter has not considered it necessary to decide whether the deprivation of liberty also falls within category II.

29. Consequent upon the opinion rendered, the Working Group requests the Government of Morocco to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 3 December 2001

OPINION No. 28/2001 (ALGERIA)

Communication addressed to the Government on 14 June 2001

Concerning: Abassi Madani and Ali Benhadj

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having sent its comments concerning that case in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government, but regrets that it did not provide the Group with all the information it sought, notably concerning the applicable legislation in this case, as well as the conformity of the judgement rendered with domestic legislation and the relevant international instruments such as the Universal Declaration of Human Rights and the international instruments ratified by the Republic of Algeria.

5. The Working Group transmitted the Government's reply to the source on 3 September 2001. To date, the latter has not provided the Working Group with its comments.

6. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the light of the allegations made and the response of the Government thereto.

7. According to the information submitted to the Group by the source, Abassi Madani, university professor, President of the Front islamique du salut (Islamic Salvation Front - FIS), was arrested by military security on 30 June 1999 at FIS headquarters. On 2 July 1991, he was brought together with other leaders of his party before the investigating judge at the court of Blida and charged with jeopardizing the security of the State and the national economy. He was particularly blamed for having organized and led a strike described as subversive. His counsel rejected proceedings before a military tribunal. The defence maintained that such a tribunal did not have jurisdiction to judge the case, being authorized only to deal with offences against the penal law and the Code of Military Justice committed by military personnel in the performance or at the time of their duties.

8. The military tribunal composed of a civilian appointed by the military authorities and assisted by two senior officers designated by the Defence Ministry sentenced Mr. Madani to 12 years' rigorous imprisonment by a judgement pronounced in his absence, on 15 July 1992. The appeal for judicial review lodged against that judgement was rejected by the Supreme Court in a ruling on 15 February 1993, which made the penal sentence final.

9. Abassi Madani was held in complete isolation in the military prison of Blida, where he is alleged to have received ill treatment. During this period of detention, political negotiations were initiated at the same prison between the then Defence Minister and the leaders of the party led by Abassi Madani. When these negotiations broke down, the latter was subjected to particularly severe coercive measures, despite his age and poor state of health, having been subjected for a very long period to complete isolation and denied all visits by his counsel or members of his family.

10. Further negotiations were initiated in June 1995, whereupon Abassi Madani was transferred to a State residence in Algiers. When this second round of negotiations broke down, he was returned to the military prison of Blida, where he was held for another two years.

11. He was finally released on 15 July 1997. Forty-five days later, on 1 September 1997, following an interview with a foreign journalist in which he expressed his political opinions, and after he had written a letter to the United Nations Secretary-General offering to find a solution to the crisis, he was placed under house arrest and completely forbidden to leave the premises, which consisted in a small, two-room flat situated in a neighbourhood of Belouizdad, Belcourt, in Algiers.

12. The flat is guarded round the clock by the security services, which prevent all visits except for those of close relatives. He is denied all means of communications with the outside world and not allowed to consult his own doctor.

13. According to the source, the deprivation of liberty in Madani's case, both that resulting from his arrest on 30 June 1991 and sentencing by the military tribunal on 15 July 1992, and that resulting from his house arrest on 1 September 1997, was arbitrary. Abassi Madani was

arbitrarily arrested for exercising his political rights. The charge brought against him of jeopardizing State security is also strictly political, since no specific fact related in any way to a criminal offence could be established by the prosecution.

14. The house arrest to which Abassi Madani was sentenced by the authorities rests on no legal foundation in domestic Algerian law. The reasons for his house arrest are the same as those that gave rise to his arrest and conviction by the military tribunal, namely the free exercise of his political rights.

15. According to information communicated by the source, Ali Benhadj, college teacher and Vice-President of the FIS, currently detained at the military prison of Blida, was arrested by military security forces on 29 June 1991 at the State television headquarters, where he had gone to claim a right of reply concerning the strike decided by his electoral party. On 2 July 1991, he was brought with other leaders of his party before the military prosecutor of Blida and charged with jeopardizing State security and the national economy. He was mainly blamed for having initiated and led a strike described as subversive. Ali Benhadj's counsel rejected the jurisdiction of the military tribunal, which was hierarchically subordinated to the Ministry of Defence.

16. The military tribunal, composed of a civilian judge appointed by the military authorities and assisted by two senior officers designated by the Defence Ministry, sentenced Mr. Benhadj to 12 years' rigorous imprisonment in a judgement on 15 July 1992. The judgement was rendered in the absence of the accused, who had been expelled from the courtroom by order of the military prosecutor. This judgement was subsequently confirmed by a ruling of the Supreme Court on 15 February 1993, which precluded all further appeals.

17. Ali Benhadj is starting his tenth year in detention. All those accused, arrested and convicted with him under the same proceedings, to sentences of 4, 6 and 12 years' imprisonment, were released after serving only part of their sentences. According to the source, during this period, Ali Benhadj went through different forms of imprisonment and was treated differently according to whether he was considered by the authorities to be a political interlocutor or an opponent.

18. From July 1991 to April 1993, Ali Benhadj was detained in the military prison of Blida, where he is said to have suffered ill treatment on several occasions. He was subsequently transferred to the civilian prison of Tizi-Ouzou, where he was held in solitary confinement on death row for several months, then transferred back to the military prison of Blida, where political negotiations were said to have been opened between the leaders of his party and the Defence Ministry. When those negotiations broke down, he was transferred, on 1 January 1995, to military barracks at the extreme south of the country, where he was allegedly held in solitary confinement in a tiny cell, without ventilation or any hygienic facility.

19. Meanwhile new negotiations had been opened between a national commission chaired by General Liamine Zeroual and FIS leaders. Ali Benhadj was then transferred to a State residence. When this second round of negotiations broke down, he was transferred back to the extreme south of the country, where he was held in a secret detention place, probably in military security

barracks. In autumn 1997, he was again transferred to the military prison of Blida, where he was kept in total solitary confinement. In March 1999, his family was authorized to visit him. In January 2001, his family noted that his general state of health had deteriorated and expressed serious fears for his life.

20. According to the source, the tribunal that sentenced Ali Benhadj manifestly had no jurisdiction, and could be neither fair nor impartial, since it depended on the Ministry of Defence and not on the Ministry of Justice, while its judges were appointed by the Ministry of Defence. His trial was held in his absence, in camera, and was not fair.

21. In its reply the Government limited itself to state that in both cases "(…) Algerian law has been correctly applied on the basis of precise and established charges, the proper procedure has been set in motion and scrupulously followed, and the matter has been laid before the competent judicial authorities, which have reached an independent and impartial verdict in conformity with the law". It further added that "(…) during the entire process the persons referred to have been able to exercise all the rights and safeguards which are guaranteed to them by law. Accordingly, they have been able to select their own counsel (…) and they have freely exercised their right to appeal against the judgement handed down by the trial court. In the case of Mr. A. Benhadj, the judgement was upheld by ruling of the Supreme Court. Mr. A. Madani's application for judicial review of the judgement was rejected by the Supreme Court".

22. The Government further asserted that the Working Group overstepped its mandate by embarking on the consideration of this communication, since, in the view of the Government, this mandate is limited to dealing with cases only in which no judicial decision has been handed down, but in no circumstances to question properly formulated judgements taken by a court of a sovereign State.

23. As to the allegation of the Government challenging the competence of the Working Group, the Group wishes to refer to resolution 1997/50 of the Commission on Human Rights, which considers that deprivation of liberty is not arbitrary if it results from a final decision of 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 State concerned. It follows that if the detention results from a judicial decision which is not in keeping with international standards, the detention may be considered as arbitrary. Since in the present case what the source contends is that the judgement on the basis of which the two individuals are detained was taken in breach of the international standards embodied in the relevant international instruments, the task of the Group is to ascertain whether this allegation withstands a thorough scrutiny. This is what the Working Group will do below.

24. The source formulates the following arguments to support the assertions that the procedures conducted against Abassi Madani and Ali Benhadj were not in keeping with international human rights standards:

(i) Both cases were heard by military tribunals composed of a civilian appointed by the military and two officers designated by the Defence Ministry, which is incompatible with the requirement of the independence and impartiality of courts. Furthermore the source asserts that the trial was conducted and the judgement pronounced in the absence of the persons charged.

(ii) As to the question whether the composition and the status of the military tribunal trying the cases was in keeping with the relevant international standards and instruments, the information made available to the Group and not denied by the Government casts serious doubts on the independence and impartiality of a panel, two members - the majority - of which, after having been designated by the Defence Ministry from among military personnel, remained dependent on and hierarchically directly subordinated to their military superior while hearing the cases and handing down the judgement.

(iii) As to the question that the trial was conducted and the judgement pronounced in the absence of the persons charged, the Working Group points out that international instruments, inter alia, the International Covenant on Civil and Political Rights which Algeria ratified, require that persons charged are tried in their presence.

25. It is also alleged that Abassi Madani was placed under house arrest on 1 September 1997 - a measure not provided for under Algerian law. He is ordered to stay permanently in a small apartment guarded by the security service, which he is prohibited to leave. He may not possess any means of communication. He may not receive visitors, either, except his family. The Government offered no comment on this allegation.

26. It is also asserted that Abassi Madani and Ali Benhadj, respectively president and vice-president of an opposition party, have been prosecuted and sentenced because of their opinions and convictions on political issues. The Government made no comments on these arguments.

27. In the absence of further information and substantiation concerning this allegation, the Working Group could not reach a conclusion as to whether the trial and conviction of Messrs Madani and Benhadj raises a separate issue concerning deprivation of liberty used to punish the exercise of freedom of expression.

28. On the basis of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Messrs Abassi Madani and Ali Benhadj is arbitrary, being in contravention of 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 and falls

within category III of the categories applicable to the consideration of cases submitted to the Working Group. The Working Group notes with regard to the house arrest imposed on Mr. Abassi Madani that it considered, in conformity with its Deliberation 01, this house arrest as a form of deprivation of liberty.

29. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 3 December 2001

OPINION No. 29/2001 (ETHIOPIA)

Communication addressed to the Government on 27 August 2001

Concerning: Gebissa Lemessa Gelelcha

The State has ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights which extended and clarified its mandate in resolution 1997/50 and reaffirmed it in resolution 2000/36. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having promptly provided the information requested.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group has transmitted the Government's reply to the source, who has not made any comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case in the light of the allegations made and the Government's reply.

5. Mr. Gebissa Lemessa Gelelcha, aged 59, a former accountant at the Ethiopian Office of the United Kingdom-based Save the Children Fund and a founder of the Human Rights League (HRL), was arrested on 13 November 1997 in Addis Ababa, together with other founder members of the League. They were taken to the Maikelawi Police Investigation Centre in Addis Ababa, although they were not initially charged with any offence. On 24 November 1997, the judge ordered that they should be allowed access to their relatives, lawyers and medical care.

6. According to the source, HRL was formed among the Oromo community in Addis Ababa in December 1996 with the stated objectives of enlightening citizens about human rights, reporting on human rights violations and providing legal aid to victims of human rights violations. It had applied for official registration and was about to hold a workshop in Addis Ababa on human rights standards when its board members were arrested. Its Secretary-General, Mr. Garoma Bekelle, who is also editor of *Urji*, Mr. Beyene Abdi, a former judge and parliamentarian, Mr. Beyene Belissa and Mr. Addisu Beyene, Secretary-General of the Oromo Relief Association, were among its board members.

7. It is alleged that these persons were arrested simply for taking a public stand against violations of the human rights of members of the Oromo ethnic group and for their peaceful community activities. For Mr. Lemessa, this was the third time he had been arrested: he had previously been arrested in 1976 and again in 1980, having been released in 1988.

8. Mr. Lemessa has been held in detention for four and a half years. He was reportedly charged with offences related to armed conspiracy with the Oromo Liberation Front. His trial, held in camera, has now entered its fourth year and no verdict has yet been issued. His relatives have been banned from attending the trial.

9. According to the source, Mr. Lemessa is being held in detention simply for his work in favour of promoting human rights and denouncing violations of the Universal Declaration of Human Rights. He was arrested shortly after HRL applied for registration. The Government refused to register it and confiscated its office records and equipment.

10. The Government replied that Mr. Lemessa and his accomplices, Mr. Garoma Bekelle, Mr. Beyene Abdi, Mr. Beyene Belissa and Mr. Addisu Beyene, are detained for their involvement in terrorist activities in different parts of the country. Their detention, therefore, has no bearing whatsoever on their human rights work, if any. They were brought before the appropriate court of law within 48 hours of their arrest and they have fully exercised their constitutional rights to be informed of the charges against them, to be represented by a legal counsel of their choice and to be visited by their spouses, relatives and others.

11. The Government further reported that, owing to the gravity and seriousness of the crime they allegedly committed, the court decided to remand the detainees in custody as per article 59, paragraphs (2) and (3), of the Criminal Procedure Code of Ethiopia, pending the completion of the investigation. As the investigation has now been completed, the defendants will soon be formally charged in accordance with the law.

12. The Working Group took due note of the Government's comments to the effect that Mr. Gebissa Lemessa's detention is apparently justified by his involvement in terrorist activities. It notes, however, that Mr. Lemessa has been imprisoned since October 1997 without having been charged or convicted, and that he had been arrested and detained on a number of occasions in the past for periods of up to eight years before being released without being charged or convicted.

13. These repeated periods of detention without charge or conviction lend credence to the version of events advanced by the source. Furthermore, regardless of the allegation that Mr. Lemessa has personally committed serious crimes, his prolonged detention without trial cannot be regarded as having any basis in law given that he has been denied the right to a fair trial. The Working Group further notes that, to date, the person concerned has not been given an opportunity to challenge the legality of his detention.

14. The Working Group believes that a violation of the individual's right to a fair hearing has occurred, and that this violation is of such gravity as to confer on the deprivation of liberty an arbitrary character.

15. In the light of the above, the Working Group renders the following opinion:

> The deprivation of liberty of Mr. Gebissa Lemessa Gelelcha since October 1997 is arbitrary because it contravenes 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, and falls within category III of the principles applicable in the consideration of cases submitted to the Working Group.

16. Consequently, the Working Group requests the Government of Ethiopia to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 3 December 2001

OPINION No. 30/2001 (ISLAMIC REPUBLIC OF IRAN)

Communication addressed to the Government on 29 June 2001

Concerning: Ezzatollah Sahabi, Hassan Youssefi-Echkevari, Mohammad Maleki, former Director of the University of Tehran, Habibollah Peyman, a writer and academic researcher, Mohammad Bestehnegar, a writer and academic researcher, Masoud Pedram, a writer and academic researcher, Ali-Reza Rajai, a jurist and a journalist, Hoda Rezazadeh-Saber, a journalist, Mohammad-Hossein Rafiee, an academic researcher, Reza Raïs-Toussi, aged 65, a writer and academic researcher, Taghi Rahmani, a writer and academic researcher, Mahmoud Emrani, an academic researcher, Reza Alidjani, editor of the journal *Iran-e Farda*, Morteza Kazemian, a journalist, Mohammad Mohammadi-Ardehali, a trader, Saïd Madani, a psychotherapist and academic researcher, a total of 16 persons

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time. The Government's reply was transmitted to the source.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable Amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations formulated, the Working Group welcomes the cooperation of the Government.

5. According to the source of the communication, all cases relate to persons associated with the Milli Mazhabi Movement (Religious Nationalist Movement) or with the Iran Freedom Movement. They were arrested between December 2000 and April 2001 in different cities throughout Iran by members of the Islamic Revolutionary Guard on general charges of seeking to overthrow the Islamic Government. According to the source, these persons were arrested in the absence of any evidence or legal framework. They have been denied access to their lawyers, relatives and medical doctors. The source further reports that these persons are being held in incommunicado detention in unknown locations. Some of their relatives have been ordered to remain silent and not publicly protest against their detention.

6. Ezzatollah Sahabi, aged 70, managing editor of the banned journal *Iran-e Farda* (The Iran of Tomorrow). It was reported that this person was arrested on 16 December 2000 after speaking at a student rally. He was on bail at that time, having previously been detained from 26 June to 21 August 2000, in connection with his participation at a conference in Berlin on political and social reforms, organized by the Heinrich-Böll Institute. He has been denied access to his lawyer, medical doctor and relatives since his arrest in December 2000. According to the source, he is being held in an unmarked building in north Tehran. On 13 January 2001, the Islamic Revolutionary Court of Tehran sentenced him to four and a half years' imprisonment. He is also being prosecuted for subversive activities against the security of the State.

7. Mr. Hassan Youssefi-Echkevari, a writer and academic researcher. It was reported that he was arrested in August 2000 on charges of apostasy and subversive activities against the security of the State, in connection with his participation in the Berlin conference.

8. The 14 other intellectuals whose names are listed below are all said to have been arrested without reasons being given for their arrests and to have been pressured to confess. The confession statements are said to be the only evidence against the accused in court proceedings. Those persons are: Mohammad Maleki, Habibollah Peyman, Mohammad Bestehnegar, Masoud Pedram, Ali-Reza Rajai, Hoda Rezazadeh-Saber, Mohammad-Hossein Rafiee, Reza Raïs-Toussi, Taghi Rahmani, Mahmoud Emrani, Reza Alidjani, Morteza Kazemian, Mohammad Mohammadi-Ardehali, Saïd Madani.

9. In its reply, dated 27 November 2001, the Government of the Islamic Republic of Iran explained that eight of them had been released (Mohammad Bestehnegar, Morteza Kazemian, Mohammad Maleki, Mohammad Mohammadi-Ardehali, Masoud Pedram, Mohammad Hossein Rafiee, Mahmoud Emrani, Ali-Reza Rajai) and that other cases, including that of Ezzatollah Sahabi, are currently subject to review in the relevant court.

10. The source, to whom the Government's reply was transmitted, has indicated that the eight persons whom the Government says had been released were not discharged or acquitted, but were released upon payment of a very substantial sum in bail. They will shortly be tried before the Tehran Revolutionary Court. The source is very concerned about this, given that the recent trials of two persons (Mohammad Tavassoli and Hachem Sabagdian) were allegedly held in secret, and that their lawyers were denied access to the case-file and were eventually ejected from the courtroom.

11. In the light of the above, the Working Group renders the following opinion:

(a) The cases of the eight persons released on bail should be dealt with under paragraph 17 (a) of its methods of work;

(b) Concerning the other eight persons listed above (Ezzatollah Sahabi, Hassan Youssefi-Echkevari, Habibollah Peyman, Hoda Rezazadeh-Saber, Reza Raïs-Toussi, Taghi Rahmani, Reza Alidjani and Saïd Madani), the Working Group considers that they are being prosecuted and detained for having peacefully exercised their right to freedom of opinion and expression, as guaranteed under articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19, 21 and 22 of the International Covenant on Civil and Political Rights, and that consequently their detention since August 2000 is arbitrary within the meaning of category II of the principles applicable in the consideration of cases submitted to the Working Group.

12. Having stated this opinion, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation, in accordance with the standards and principles set forth in the Universal Declaration of Human Rights;

(b) To consider the possibility of amending its legislation to bring it into line with the Universal Declaration of Human Rights and the other relevant international standards which it has accepted.

Adopted on 4 December 2001

OPINION No. 31 /2001 (PALESTINIAN AUTHORITY)

Communication addressed to the Palestinian Authority on 28 August 2001

Concerning: Jaweed Al-Ghussein

The Palestinian Authority has not signed nor ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Palestinian Authority the above-mentioned communication.

2. The Working Group conveys its appreciation to the Palestinian Authority for having provided the requested information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Palestinian Authority. The Working Group transmitted the reply of the Palestinian Authority to the source. The latter has provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Palestinian Authority.

5. According to the information submitted to the Group, Jaweed Al-Ghussein, a citizen of Jordan and a resident of the United Arab Emirates since 1966, with a Jordanian passport, was arrested on 20 April 2001 at the Inter-Continental Hotel in Al Khalidya, Abu Dhabi, by police

officers of the United Arab Emirates in plainclothes. No arrest warrant or other decision by a public authority was shown at the time of his arrest. Police officers refused to answer his repeated requests for an explanation for his arrest.

6. Mr. Al-Ghussein is the owner of the Cordoba Development Corporation, an engineering and construction company founded in 1950 that has its headquarters in Abu Dhabi. In 1984 he was elected as a member of the Executive Committee of the Palestine Liberation Organization (PLO) and as Chairman of the Palestinian National Fund. In 1990, he publicly condemned Iraq's invasion of Kuwait. In 1996, he resigned from his posts as Chairman of the Palestinian National Fund and from the PLO Executive Committee.

7. According to the source, individuals associated with PLO made allegations against Mr. Al-Ghussein regarding a business transaction executed while he was still Chairman of the Palestinian National Fund. They brought a civil suit against him, seeking recompense for monies allegedly lost in the transaction. A judgement was initially rendered in favour of the plaintiffs, but the Supreme Court of the United Arab Emirates subsequently reversed it.

8. Mr. Al-Ghussein was taken to a police station in Abu Dhabi where he was held for two days. On 22 April 2001, Mr. Al-Ghussein was put into a car with Mr. Tariq Al-Ghoul, an officer of the intelligence service (*Mukhabarat*) of the United Arab Emirates, taken to a private airport and flown in a private aircraft to Egypt. In the aircraft was Saaed Allam, known as Abu Saud, a chief security officer of the Palestinian Authority. From Egypt, Mr. Al-Ghussein was driven to Gaza by representatives of the Palestinian Authority where he has been detained ever since.

9. According to the source, Mr. Al-Ghussein was first brought to the presidential offices of the Palestinian Authority. He has since been held in isolation in various apartments under the control of the Palestinian Authority, but not in official places of detention. Relatives and attorneys who have sought permission to visit him have been ignored or turned away. Neither the United Arab Emirates nor the Palestinian Authority has provided justification for his arrest and detention. No legal procedures have been followed. He has been held for more than four months without being charged. No legal process has been available to him or his family to obtain judicial review of his arrest and detention.

10. Mr. Al-Ghussein is an insulin-dependent diabetic and has a heart condition that causes palpitations. These health problems require him to take medication and to receive regular medical care. He was hospitalized twice in the five months prior to his arrest. His family has not received a substantive reply from any official of the Palestinian Authority, the United Arab Emirates or Egypt. The Palestinian General Delegation to the United Kingdom, which the family also contacted, confirmed that Mr. Al-Ghussein was arrested in the United Arab Emirates and asserted that he was extradited to Palestine, but did not offer any explanation for his arrest or detention. The United Arab Emirates Embassy in the United Kingdom refused to provide the family with any information. No information has been obtained from the Government of Egypt.

11. In its reply, the Palestinian Authority explained that Mr. Al-Ghussein is a Palestinian national holding a Palestinian passport. Without contesting the allegations of the source concerning the arrest and detention of Mr. Al-Ghussein before he was brought to Gaza, on a date

which was not specified either by the source or the Palestinian Authority, it did not deny that he has been held in detention for a considerable time. According to the information provided by the Palestinian Authority, Mr. Al-Ghussein was released on 13 October 2001 and is living with his family, awaiting the amicable settlement of the issue between him and the Palestinian Authority, concerning the payment of a debt he has to pay to the Palestinian Authority. Moreover, the Palestinian Authority did not contest the allegations of the source that Mr. Al-Ghussein is being detained without any criminal charge against him.

12. In its comments on the Palestinian Authority's reply, the source maintains that Mr. Al-Ghussein is still deprived of his liberty, irrespective of the fact that the premises where he is being held are not prisons in the literal meaning of the term. Because he suffers from cancer and needs medical care he has been driven to Cairo and apparently to a hospital on Palestine territory to see doctors, but he has always been escorted by security personnel and has never been allowed to leave the place of detention where he is being held, which is permanently guarded by agents of the Palestinian Authority.

13. On the basis of the coinciding information provided by both the source and the Palestinian Authority, the Working Group concludes that Mr. Al-Ghussein is deprived of his liberty solely because of a debt he allegedly owes to the Authority, which has no intention of releasing him till he pays it back.

14. On the basis of the foregoing, the Working Group renders the following opinion: the deprivation of liberty of Jaweed Al-Ghussein is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights, and falls within category I of the categories applicable to the consideration of cases submitted to the Working Group.

15. Consequent upon the opinion rendered, the Working Group requests the Palestinian Authority to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 4 December 2001

OPINION No. 1/2002 (CHINA)

Communication addressed to the Government on 26 June 2001

Concerning: Cao Maobing

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having submitted information concerning the case.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The Working Group welcomes the cooperation of the Government. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted to the Working Group by the source, Cao Maobing, who is said to be an electrician at the Funing Silk Factory in Jiangsu Province, was forcibly committed to the Yancheng City No. 4 Psychiatric Hospital on 15 December 2000, 24 hours after he gave an interview to an international radio in which he spoke of his attempts to

form an independent labour union. He had helped organize strikes to protest against corruption in the factory and the lay-off of more than half of its 2,000 workers. In November 2000, more than 300 workers in the factory signed a letter of protest after not receiving their wages for more than six months.

6. Mr. Cao Maobing is not permitted to receive visits from his family, friends or fellow workers. In January 2001, he started a hunger strike demanding to be allowed to return to his home. Shortly after beginning the hunger strike, he was force-fed pills and given electric shock treatment. He is currently being held in a single room with over 20 psychiatric patients. Hospital authorities issued a document saying that Cao Maobing had been determined to be "suffering from paranoid delusions" that caused "his attempt to disturb the social order". According to the source, he displayed no symptoms of mental illness either at work or after being sent to the hospital.

7. The source considers that this person was detained for exercising his right to freedom of association and expression. The fact that the Yancheng City No. 4 Psychiatric Hospital is run by the Public Security Bureau supports the claim that Mr. Cao has not been detained for medical reasons. He was not given the benefit of a trial, and has thus been deprived of his right to due process. Because his detention is outside the competence of the judiciary, there is no legal remedy available to him. The duration of his detention is unlimited and has so far lasted for more than one year.

8. The Working Group first examined whether the holding of a person in a psychiatric institution amounts to detention within the meaning of its mandate. The position of the Working Group is that forcing an individual against his will to stay in such an institution may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave. In the present case the source contends that Cao Maobing has been held since December 2000 in Yancheng City No. 4 Psychiatric Hospital without being able to leave it. The Government did not refute this allegation. Therefore, the Working Group concludes that the holding of Mr. Cao Maobing in a psychiatric hospital amounts to deprivation of liberty.

9. Whether his detention is arbitrary or not depends on various factors. The allegations of the source and of the Government referred to above are basically contradictory. Against the detailed allegations of the source that the detention of Cao Maobing was politically motivated (he was detained immediately after giving an interview on international radio, the hospital is run by the Public Security Bureau, his relatives have been under pressure from the authorities), the Government limited its comments to stating that Mr. Cao's detention is exclusively attributable to his mental illness and that the allegation that he has been taken into custody because of his trade union activities is utter nonsense. The Government did not provide information in support of its allegation concerning the mental illness of Mr. Cao, nor did it provide specific information to convince the Working Group of the existence of sufficient safeguards against arbitrary detention of political opponents or trade union activists for alleged mental illness, namely information concerning the legal provisions governing the admission to and the holding of people with mental disorders in psychiatric hospitals, the system of monitoring the admission and stay in such institutions by an independent body in order to prevent abuse, and the remedies available to psychiatric patients and their families to obtain review of continued detention.

10. The Working Group cannot but conclude that the detention of Cao Maobing in a psychiatric hospital for more than one year is motivated by his trade union or political activities. Therefore, on the basis of the information available to it the Working Group is convinced that Cao Maobing is being detained for having peacefully exercised his right to freedom of opinion and expression, as guaranteed by article 19 of the Universal Declaration of Human Rights.

11. In the light of the foregoing, the Working Group renders the following opinion:

> The detention of Cao Maobing in a psychiatric hospital is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and falls within category I of the categories applicable to the consideration of cases submitted to the Working Group.

12. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Cao Maobing in order to bring it into conformity with the provisions and principles contained in the Universal Declaration of Human Rights, and encourages it to ratify the International Covenant on Civil and Political Rights.

Adopted on 18 June 2002

OPINION No. 2/2002 (MYANMAR)

Communication addressed to the Government on 24 August 2001

Concerning: Aung San Suu Kyi

The State has not signed nor ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply of the Government to the source, which provided it with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted to the Group, Aung San Suu Kyi, a citizen of Myanmar, born on 19 June 1945 in Yangon (formerly Rangoon), domiciled at 54, University Avenue, Yangon, leader of the political party the National League for Democracy, was arrested on 22 September 2000 in Yangon by military intelligence personnel. No arrest warrant was shown during her arrest, which took place as she was about to board a

train to Mandalay. It is believed that she was arrested on charges of attempting to violate a travel ban preventing her from leaving Yangon and on charges relating to sections 7-9, or sections 10-15, of the 1975 State Protection Act.

6. The source pointed out that sections 7-9 of the 1975 State Protection Act purport to allow for restrictions to be imposed on the fundamental rights of a citizen if he or she has performed, or is performing, or is believed to be performing, an act endangering State sovereignty and security, as well as public law and order. In order for sections 10-15 to be applied, there has to be a potential danger to the State from that person. Aung San Suu Kyi is a known advocate of political change exclusively by peaceful means. According to the source, no controlling body, acting in good faith, would find or believe that she is a potential danger to the State.

7. Aung San Suu Kyi was placed under house arrest on 22 September 2000, without being formally charged with any offence, and without standing trial. She was prevented from leaving her house and from receiving any visitors except with express authorization from the Government. Her telephone was cut off. It was reported that a German delegation was not allowed to visit her in April 2001. Similarly, the request of the Vice-President of the Philippines, Teofisto Guingona, to visit her was refused. Aung San Suu Kyi has been held for the most part incommunicado. However, the Special Rapporteur on the situation of human rights in Myanmar, Mr. Pinheiro, and a European Union delegation were authorized to meet her in early 2001.

8. Aung San Suu Kyi had previously been placed under house arrest on 20 July 1989. Her case was then submitted to the Working Group on Arbitrary Detention, which in its Decision 8/1992 ruled that the measure of house arrest then applied was a deprivation of liberty equivalent to detention which, in addition, was of an arbitrary character, falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group. Aung San Suu Kyi was not released until 1995.

9. The source considers that the travel ban and the measure of house arrest applied are due to the exercise by Aung San Suu Kyi of her rights and freedoms as guaranteed by articles 13, 19, 20 and 21 of the Universal Declaration of Human Rights. The reason for such measures is to prevent her from and punish her for exercising the rights to which she is entitled under international law.

10. In addition, the source considers that given that Aung San Suu Kyi was placed under house arrest without bringing charges against her or without trial, articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights have also been violated. She is believed by the source not to have had any access to the facilities due to detainees, such as, but not limited to, knowledge of the charges, the right to legal counsel, the right to judicial review of the arrest and detention, the right to the presumption of innocence, the right to adequate time and facilities for defence, the right to a fair trial before an independent and impartial tribunal, the right to a speedy trial and the right to cross-examine witnesses.

11. In its comments the Government asserted that the allegations of the source are factually incorrect. It denied that Aung San Suu Kyi was and is still under arbitrary detention. It informed the Working Group that she was engaged in a dialogue with the Government a year ago. Since then she has often received visits by several foreign dignitaries. The Government

emphasized that the Special Rapporteur on the situation of human rights in Myanmar was received by Aung San Suu Kyi in her house and attested that she was in good health. Moreover, the Government contends that Aung San Suu Kyi received delegations from the United States of America, Japan, the United Kingdom and the European Union. She has also been meeting regularly with leaders of the National League for Democracy.

12. The Government did not contest, however, the allegation of the source that Aung San Suu Kyi was taken into custody on 22 September 2000, more than 14 months ago, without any warrant and that she is prevented by military intelligence personnel from leaving her house, without any judicial or other decision against her having been taken to this effect. The Government failed to indicate the legal provisions justifying such measures.

13. Based on the comments of the Government it appears that it does not consider the current situation of Aung San Suu Kyi as amounting to deprivation of liberty. Yet, the Working Group has had the opportunity to make its position clear in this regard in a number of cases, including in its earlier Decision (8/1992) concerning the house arrest imposed on Aung San Suu Kyi, as well as in its Deliberation 01 in which it stated in unambiguous terms that house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave.

14. On the basis of the information provided by the source and not contested by the Government the Working Group concludes that the circumstances of house arrest imposed on Aung San Suu Kyi amount to deprivation of liberty.

15. This deprivation of liberty is, in the view of the Working Group, arbitrary. However, the source believes that Aung San Suu Kyi was arrested on charges relating to several provisions of the 1995 State Protection Act. The Government neither confirmed nor refuted this assumption. Therefore, the Working Group considers that there is no legal basis whatsoever for her arrest and detention. The Government has also not contested that Aung San Suu Kyi is in custody without having been charged and without being given the opportunity to have her case heard by a competent authority in a fair proceeding.

16. The Government has further not disputed that the house arrest of Aung San Suu Kyi is largely motivated by her political convictions and activities.

17. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Aung San Suu Kyi is arbitrary, being in contravention of articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights, and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

18. The Working Group is concerned that the Government not only did not comply with its Decision 8/1992 to remedy the situation of Aung San Suu Kyi, who was released from house arrest only in 1995, but again arbitrarily deprived her of her liberty from 22 September to 6 May 2002.

19. However, although the deprivation of liberty of Aung San Suu Kyi constitutes arbitrary detention, in accordance with its Deliberation 01, and on the basis of paragraph 17 (a) of its working methods, the Working Group decides to file the case.

20. The Working Group also requests the Government of Myanmar to remedy the situation of Aung San Suu Kyi in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Rights and to consider ratifying the International Covenant on Civil and Political Rights.

Adopted on 19 June 2002

OPINION No. 3/2002 (ERITREA)

Communication addressed to the Government on 5 March 2002

Concerning: Mahmoud Sherifo, Petro Solomo, Haile Woldensae, Ogbe Abraha, Berraki Ghebreslasse, Berhane Ghebregzabher, Stefanos Syuom, Slih Idris Kekya, Hamed Himed, Germano Nati and Mrs. Aster Feshazion

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which has given its comments thereon. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made, the response of the Government thereto and the observations by the source.

5. The cases summarized hereafter concerning 11 government officials have been reported to the Working Group as follows:

(a) Mahmud Sherifo, born in 1948, is a founding member of the Eritrean Liberation Front (EPLF) in 1970 and has been, since the independence of Eritrea (1991), a member of the Central Council of the ruling People's Front for Democracy and Justice (PFDJ), a member of the National Assembly, Minister of Foreign Affairs and Minister of Zonal Administration, and has replaced the President of the State in his absence;

(b) Petros Solomon, born in 1948, joined EPLF in 1972 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Minister of Defence, Minister of Foreign Affairs and Minister of Fisheries;

(c) Haile Woldensae, born in 1947, joined EPLF in 1972 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Secretary of the Economic Commission and International Cooperation, Minister of Finance and Development, Minister of Foreign Affairs and Minister of Trade and Industry. He is reported to be a diabetic;

(d) Ogbe Abraha, born in 1948, joined EPLF in 1972 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Council, Secretary and then Minister of Trade and Industry, Minister of Labour and Social Welfare, Chief of Logistics, Administration and Health in the Ministry of Defence, Chief of Staff of the Eritrean Defence Forces. Mr. Abraha was dismissed from his post and stripped of his military rank by the President in February 2000. He is reported to be suffering from asthma;

(e) Beraki Ghebreslasse, born in 1946, joined EPLF in 1972 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Secretary of Education, Minister of Information, Ambassador to Germany, the Vatican, Poland, Hungary and Australia;

(f) Berhane Ghebregzabher, born in 1947, joined EPLF in 1972 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Secretary of Industry, Administrator of Hasmasien Province, Commander of the Ground Forces in the Eritrean Defence Forces as Major General, and Commander of the reserve army. Mr. Berhane Ghebregzabher was dismissed from his post and stripped of his military rank by the President of the Republic in 2000;

(g) Stefanos Syuom, born in 1947, joined EPLF in 1972 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Secretary of Finance, Head of Finance in the Eritrean Defence Forces as Brigadier General and Director-General of Inland Revenue;

(h) Salih Idris Kekya, born in 1950, joined EPLF in 1976 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Director of the Office of the President, Ambassador to Sudan, Vice-Minister of Foreign Affairs, Minister of Transport and Communication and Mayor of the town of Assab in 2000;

(i) Aster Feshazion, born in 1951, joined EPLF in 1974 and, since independence, has held the following positions: member of the Central Council of PFDJ, member of the National Assembly, Head of Social Affairs in the Ministry of Social Welfare and Head of Personnel in the Anseba Zone. She is reported to be suffering from a stomach ulcer;

(j) Hamed Himed, born around 1955, has held, since independence, the following positions: member of the Central Council of PFDJ, member of the National Assembly, Head of the Middle East Department in the Ministry of Foreign Affairs, Administrator of the Senhit Province, Ambassador to Saudi Arabia, and Head of the Middle East and North Africa Department and of the Political Department in the Ministry of Foreign Affairs;

(k) Germano Nati, born in 1946, joined EPLF in 1977 and, since independence, has held the following positions: member of the Central Council and Executive Committee of PFDJ, member of the National Assembly, Administrator of the Gash-Setit Province and Head of Social Affairs in the Southern Red Sea Zone.

6. According to the source, the 11 senior officials mentioned above were arrested on 18 September 2001 in Asmara by members of the Eritrean Defence Forces after having written in May 2001 an open letter criticizing the concentration of powers in the hands of the President of the Republic and calling for reforms and for meetings of the National Assembly and the Central Council of PFDJ.

7. The source further states that these persons are being held in incommunicado detention, and their families have not been formally advised of the reasons for their arrest and continued detention, nor have they been informed about their whereabouts. Apparently, these persons have not been formally charged with any recognizable criminal offence or brought before a court. It is reported that the conditions of their detention are extremely harsh and that they may not be receiving essential medication. The source considers that these persons have been detained solely for the peaceful expression of their political concerns and that their detention violates their rights and freedoms guaranteed by articles 9, 10, 14, 19 and 20 of the Universal Declaration of Human Rights.

8. In its reply, the Government of Eritrea maintained that the detention of the persons mentioned in the communication was made in consonance with the existing Criminal Code of the country and other relevant national and international instruments. The Government explained that they were detained, inter alia, for conspiring to overthrow the legitimate Government of the country in violation of the relevant resolutions of the Organization of African Unity (OAU), colluding with hostile foreign powers with a view to compromising the sovereignty of the State, undermining Eritrean national security and endangering Eritrean society and the general welfare of the people.

9. Responding to the Government's reply, the source maintained that the answer provided by the Minister is wrong, in law as well as in fact. Legally, according to the Transitional Criminal Procedure Code (art. 29) and the Constitution (art. 17), any person accused of a crime has the right to be brought before a regular court in 48 hours, the right to be represented by legal

counsel and the other habeas corpus-related rights. As for the facts, the source stated that the accused had not been brought before a judicial body with the legally required assistance of counsel to answer the charges because the Government could not prove the serious allegations of collusion with a foreign hostile power. The truth of the matter, according to the source, is that the detainees are political prisoners imprisoned for airing their views on the governance of the country. The source adds that the persons mentioned in the communication are still detained in unknown places, and their family members and lawyers are not allowed to visit them.

10. It appears from the above that the 11 individuals mentioned in the communication are high-ranking political figures and leading officials of the ruling party, the People's Front for Democracy and Justice. According to the source, these individuals have been held in solitary confinement for over nine months without being formally notified of any charges against them and without being able to communicate with the outside world, including their families and lawyers. In its reply, the Government ignored these allegations.

11. The source alleges that the arrest and detention of the above-mentioned individuals are therefore a consequence of the publication of an open letter in which they criticized the concentration of power in the hands of the President of the Republic and called for power to be exercised democratically. A copy of this letter was attached to the communication and its contents reveal that it does indeed consist of political demands expressed in a peaceful manner. From the Government's viewpoint, these individuals were arrested for conspiring with enemy forces to overthrow the lawful Government.

12. From the contradictory statements of the source and the Government, it seems to the Working Group that the detention of these leading political figures is related to the ongoing political debate about the way the country is governed by the President.

13. The argument put forward by the Government to justify detention, namely that the opponents conspired to overthrow the regime led by the President, did not convince the Working Group because it lacked concrete evidence to substantiate its claims.

14. Therefore, the Working Group concludes that the political leaders in question were arrested and are being detained for having expressed their political opinions and convictions and that they are victims of having exercised their right to freedom of opinion and expression guaranteed under article 19 of the Universal Declaration of Human Rights.

15. Moreover, the Working Group notes that the deprivation of liberty suffered by those individuals for over nine months is demonstrated by their isolation in one or more secret locations where they have had no contact whatsoever with lawyers or their families. In addition, there was no court ruling on the legality of their detention. All this constitutes a series of violations of such gravity as to confer on their deprivation of liberty an arbitrary character, which contravenes articles 9 and 10 of the Universal Declaration of Human Rights and principles 10 to 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

16. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mahmoud Sherifo, Petro Solomo, Haile Woldensae, Ogbe Abraha, Berraki Ghebreslasse, Berhane Ghebregzabher, Stefanos Syuom, Slih Idris Kekya, Hamed Himed, Germano Nati and Mrs. Aster Feshazion is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

17. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of those individuals by bringing it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take adequate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 17 June 2002

OPINION No. 4/2002 (TOGO)

Communication addressed to the Government on 21 December 2001

Concerning: Mr. Yawowi Agboyibo

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the Government's reply to the source and received the latter's comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case in question, in the light of the allegations made, the reply given by the Government and the source's comments.

5. Mr. Yawowi Agboyibo, lawyer, former parliamentarian, president of the political party Comité d'action pour le Renouveau (CAR - Action Committee for Renewal), was arrested on 3 August 2001 and sentenced to six months' imprisonment. He was imprisoned in the civil prison of Lomé, despite lodging an appeal.

6. Mr. Agboyibo signed a press release on 6 October 1998, in his capacity as president of the CAR, in which he criticized a number of criminal activities, including the murder of Mr. Koffi Kegbe, a member of CAR, by militiamen followers of Mr. Kodjo, then Director of the Port of Lomé and currently Prime Minister of Togo.

7. Mr. Kodjo then initiated defamation proceedings against Mr. Agboyibo. This suit was deemed inadmissible against Mr. Agboyibo on account of his parliamentary immunity.

8. Mr. Kodjo reinitiated his complaint on 23 February 2001, when the same allegations regarding his militiamen were made public in a joint report by two intergovernmental organizations. The Public Prosecutor then initiated criminal proceedings against Mr. Agboyibo, who no longer benefited from parliamentary immunity.

9. According to the source, Mr. Agboyibo was sentenced by a manifestly incompetent tribunal, which could be neither fair nor impartial, since the judge, close to the ruling party, did not apply the appropriate law, i.e. the Press and Communications Code, but the Penal Code instead. In addition, the judge disregarded both the parliamentary status of Mr. Agboyibo at the time the events of which he was accused occurred, which gave him immunity against criminal prosecution, and the fact that the statutory time limitation on the case had expired.

10. The Working Group welcomes the information provided, according to which Mr. Agboyibo is no longer deprived of liberty since 14 March 2002 and the defamation proceedings against him have been abandoned. This information was transmitted to the Working Group by the source. The Working Group therefore believes it is in a position to render an opinion on this case.

11. Having examined all the available information before it and without prejudging the arbitrary nature of the detention, the Working Group decides to file the case of Mr. Agboyibo, in accordance with paragraph 17 (a) of its methods of work.

Adopted on 20 June 2002

OPINION No. 5/2002 (CHINA)

Communication addressed to the Government on 3 September 2001

Concerning: Tang Xi Tao, Han Yuejuan, Zhao Ming and Yang Chanrong

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which has not provided it with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. Because of their similar nature, the cases of the four following practitioners of Falun Gong are being dealt with in a single opinion:

(a) Mrs. Tan Xi Tao according to the information received, is a 64-year-old retiree who has studied and practised Falun Gong since 1996, which has helped her to overcome health problems. She has been detained several times, the latest being while she was on her way to Canton on holiday, and was sentenced to two years in a labour camp for disturbing public order and membership of an illegal organization. It is also alleged that her trial took place in camera and that her request for a lawyer was denied. She was reportedly subjected to ill-treatment, which led to heart trouble and psychological problems;

(b) Mrs. Han Yuejuan, 43-year-old widow of Liu Mingfang, a former United Nations military observer, graduated from Zhongshan University. She is a former Secretary-General of Dongshan District Literature and Arts Federation, a former Director of the Theory Education Section of the Propaganda Department of Dongshan District and a Falun Gong practitioner. She was first detained for 15 hours on 22 July 1999 and was pressed to give up her faith in Falun Gong. She was again arrested on 26 July 1999, in early June 2000, in July 2000 and in December 2000, when she was allegedly subjected to ill-treatment and even torture. In June 2000, she was dismissed from her post, and in October 2000, her application for a passport was refused. On 23 June 2001 she was arrested in Guangzhou by members of the police and was taken to an unknown destination where she was interrogated every two hours for three consecutive days. On 27 June 2001, Ms. Han was taken to Tianpingjia Detention Centre in Dongshan District in Guangzhou, where she is currently being detained;

(c) Mr. Zhao Ming, 30-year-old, a graduate of the Department of Computer Science of Tingshua University, a postgraduate student at the Computer Science Department of Trinity College in Dublin, a former network engineer with Tingshua Unisplendour Group and a practitioner of Falun Gong. He was arrested on 13 May 2000 in Beijing at the home of a fellow Falun Gong practitioner, after his passport was confiscated to force him to give up his faith, thus preventing him from returning to Ireland to continue his studies. On 7 July 2000, he was sentenced to one year's imprisonment in a labour camp, and was allegedly tortured and subjected to ill-treatment. His sentence was extended for a further period of six months;

(d) Mr. Yang Chanrong, a Falun Gong practitioner, was arrested on 27 December 2000 at his home by members of the police who did not show an arrest warrant. His wife, Ms. Zhou Fengling, was also arrested. According to the source, she died in prison on 12 July 2001, allegedly as a result of torture. It was reported by the source that she was seen handcuffed to a torture device known as the "Forbidden Board" at Xilin Detention Centre. It was also reported that their five-year-old son had been missing since, they were arrested. Mr. Yang was later sentenced to three years' imprisonment in a labour camp.

6. In its reply, the Government reported that it has carefully reviewed the circumstances and stated the following concerning the persons in question:

(a) Tang Xin Tao, a 64-year-old woman with an elementary education, lives in Guangzhou City. From March to May 2000, she repeatedly took part in activities directed against government institutions, seriously disrupting social order and the regular work of government departments. In June 2000 she was ordered by the Guangzhou Re-education through Labour Commission to undergo two years of re-education through labour until 17 June 2002 for disrupting social and administrative order. On 6 July 2000 she was sent

to the Chatou labour rehabilitation facility in Guangzhou. When she entered the facility, her relatively advanced years and difficult life were taken into account, and she was frequently taken to the clinic for check-ups and was given prompt treatment for her complaints;

(b) Han Yuejuan is a 43-year-old college graduate and native of Dongshan District in Guangzhou City. On 21 July 1999, Ms. Han, in collusion with others, plotted and organized nearly 1,000 Falun Gong practitioners to besiege the Guandong provincial government, and on numerous occasions thereafter organized and instigated activities aimed at undermining public security, seriously affecting social order and disrupting the work of the Government and the lives of the masses, to the disgust of the broad masses. On 5 July Ms. Han was detained on the order of the Guangzhou Municipal Security Department on suspicion of organizing and utilizing a heretical organization to break the law and commit crimes. The Guangzhou public security authorities are currently investigating her case in accordance with the law;

(c) Zhao Ming is a 30-year-old Han Chinese male and a native of Changchun City, Jilin Province, who graduated from Qinghua University in 1998 and went to Ireland in March 1999 to study at Trinity College, Dublin, at his own expense. In May 2000 Mr. Zhao was ordered by the Beijing Re-Education through Labour Commission to undergo one year of re-education through labour for having participated in the illegal activities of a heretical organization and for having disrupted the social order. While serving his term, Mr. Zhao violated re-education-through-labour disciplinary regulations on numerous occasions, and his period of re-education was consequently extended for 10 months, that is until 3 December 2002;

(d) Yang Chanrong is a 41-year-old male high school graduate from Changzhou City, and an employee of the Shuyan Industrial Raw Material Supply and Marketing Corporation. Since July 1999, he has repeatedly engaged in Falun Gong activities. On 3 November 2000, the Changzhou Re-education Labour Administration, acting in accordance with the relevant regulations, ordered Mr. Yang to undergo three years' re-education through labour. His wife, Zhou Fenglin, was also engaged in illegal Falun Gong activities and she was detained in accordance with criminal legislation for the offence of organizing and utilizing a heretical organization to break the law and commit crimes. While in prison she started refusing food because of her obsession with Falun Gong and desire to achieve a state of "completeness", fell ill and although the public security authorities and medical department organized a prompt rescue effort, they were unable to save her life. Her death, according to the medical examiner of the procurator's office, was caused by lobar pneumonia and electrolyte disturbance. The Government concluded by saying that the six-year-old son of Ms. Zhou and Mr. Yang has not disappeared and is currently being raised by Mr. Yang's elder brother.

7. The Government stated that the above-mentioned persons have been under investigation and are undergoing re-education through labour, their legal rights having always been fully protected, and that the allegations transmitted by the Office of the High Commissioner that these persons have been subjected to cruel punishment and ill-treatment are complete fabrications.

8. The Government stated that, like other organizations such as the Branch Davidians in the United States or the Aum Shinrikiyo in Japan, Falun Gong is quite simply a heresy. On the theoretical level, Falun Gong advocates doomsday and other extreme heretical ideas to create an atmosphere of terror; on the practical level, it legally amasses wealth and uses propaganda,

founder worship and other fallacies to control the minds of Falun Gong practitioners. A great many persons obsessed with Falun Gong go overboard in their infatuation and their minds become affected that they attempt suicide.

9. The Government also stated that, to date, more than 2,000 people have been injured or have died as a result of practising Falun Gong, and more than 650 have gone mad. In fact, Falun Gong has such extreme phenomena in China as collective immolations of obsessed persons and the derailing and overturning of trains; it is a very dangerous heretical organization. The Chinese Government has lawfully banned the Falun Gong organization precisely to protect the fundamental rights and fundamental freedoms of all persons, including Falun Gong practitioners and their families, and in so doing has obtained the broad support and endorsement of all segments of society.

10. The Government repeatedly stated that in the process of banning the Falun Gong, it has acted in strict compliance with the law. In the case of the overwhelming majority of ordinary practitioners the measures taken have consisted mainly of persuasion and education aimed at helping those persons recover their former everyday lives. Only a very few law-breaking criminal elements have been punished under the law. The Government concluded its remarks by stating that its methods are identical to those used by any other country in combating heretical practices, and therefore are universally understood by the international community.

11. In the light of the foregoing, the following may be concluded:

(a) The Working Group notes that Mrs. Tan Xi Tao was arrested because of her practice and defence of Falun Gong, in which she did in a peaceful manner and in exercise of the rights to freedom of belief, either alone or in community with others and in public or private, and to freedom of opinion and expression, which are guaranteed by the Universal Declaration of Human Rights;

(b) In the case of Han Yuejan, the Working Group notes that she was detained several times, the latest for membership of Falun Gong, and that the Government also accuses her of organizing and directing a demonstration, but neither indicates that the demonstration was a violent one nor offer any details to that effect. Consequently, Ms. Han Yuejan was detained for the peaceful exercise of internationally protected rights, such as the right to assemble and to demonstrate, freedom of belief and freedom to express opinions, including those which run counter to the opinions of the broad masses, as the Government stated in its reply;

(c) In the case of Zhao Ming, no satisfactory explanation was provided as to why his passport was confiscated, which prevented him from continuing his studies, nor was any reason given for his detention other than the fact that he freely exercised his rights to freedom of belief and opinion in the manner to which he was entitled;

(d) In the case of Yang Chanrong (Canrong, according to the source), the Government acknowledged that he was sentenced to re-education through labour for involvement in Falun Gong activities, as was his wife, who died in prison. The Working Group considers that the right to freedom of opinion and belief signifies that the mere adherence to or practise of a discipline or belief cannot be invoked as the only ground for detention.

12. The Working Group considers that, according to the information provided concerning these cases, the activities and protests of these four Falun Gong activists were peaceful and devoid of all violence. In particular, in these cases the persons concerned were detained for having peacefully exercised their right to demonstrate their belief in Falun Gong, which the Government has not denied. The Working Group is of the opinion that article 19 of the Universal Declaration of Human Rights, in particular, has been violated, as everyone, according to this article, has the right to freedom of belief, conscience and religion and as this right includes the freedom to manifest one's religion or belief and the freedom to hold opinions without interference and to impart them, either alone or in community with others, in public or private and through any media.

13. In its report on the visit to China (E/CN.4/1998/44/Add.2) the Working Group stated that administrative detention for re-education through labour should not be imposed on any person exercising his or her fundamental freedoms, as guaranteed by the Universal Declaration of Human Rights. In the cases at hand, detention does constitute a coercive measure designed to undermine the freedom of those persons to adopt beliefs of their own choosing.

14. In the light of the foregoing, the Working Group is of the opinion that the deprivation of liberty of Tang Xi Tao, Han Yuejuan, Zhao Ming and Yang Chanrong is arbitrary, as being contrary to articles 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, and falls within category II of the principles applicable to the consideration of cases submitted to the Working Group.

15. Consequently, the Working Group requests the Government to take the necessary steps to remedy the situation of these four persons and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and encourages it to ratify the International Covenant on Civil and Political Rights.

Adopted on 18 June 2002

OPINION No. 6/2002 (YUGOSLAVIA)

Communication addressed to the Government on 11 August 2000

Concerning: Arieta Agushi, Sulejman Bytiqi, Avni Dukaj, Deme Ramosaj and Yilber Topalli

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.

3. In a note dated 22 October 2001, the Government informed the Working Group that the five above-mentioned individuals were released in the following circumstances. The source has confirmed this information.

(a) Arijeta Agushi, born in Gjilan, Gniljane Municipality, on 14 April 1973, was arrested by agents of the Serbian Ministry of the Interior (MUP) on 25 March 1999 at her house in Bresje village, Pristina Municipality. She was not registered in any of the detention places in the Federal Republic of Yugoslavia. According to the source, and to information provided by the International Committee of the Red Cross, she died on 24 March 1999 in Gnjilane, Kosovo, of natural causes;

(b) Sylejman Bytiqi, a member of the Democratic League of Kosovo (LDK) party, of the Forum of Albanian Intellectuals and an employee of a technical high school, born in Mirosale, Ferizaj, Urosevac, on 2 March 1952, was arrested on 28 June 1998 by 20-30 agents of the Ministry of the Interior, who surrounded his home. He was sent to Kosovo in accordance with the agreement between the Federal Republic of Yugoslavia and the United Nations Mission in Kosovo (UNMIK);

(c) Avni Dukaj, a farmer born in Drenoc, Decani, on 23 October 1974, was arrested on 27 March 1999 by police officers in camouflage uniforms who came to his house. Apparently he was released thereafter. According to the source, on 17 April 1999, he was rearrested, together with his brother and 20 other persons, in Babino Polje, close to Plav. He was sent to Pec/Peja until 11 June 1999, and subsequently transferred to Leskovac and Zajecar detention centres. He was sent to Kosovo in accordance with the FRY/UNMIK agreement;

(d) Deme Ramosaj, a teacher born in 1949 in Donji Crnobreg, Decani Municipality, was arrested on 20 June 1998 by MUP in Brezanik village, Pec/Peja Municipality. He was released on 21 December 1999;

(e) Ylber Topalli, head of the sub-branch of LDK in Greme/Grebno, born in Greme/Grebno, Ferizaj/Urosevac, on 19 March 1965, was arrested together with his brother on 25 June 1998 at home by a group of police officers. He was released in accordance with the Amnesty Act.

4. The Working Group transmitted the reply provided by the Government to the source, which confirmed the release of the individuals mentioned above. The Working Group is therefore in a position to render an opinion on the case.

5. The Working Group, taking note of the release of the above-mentioned individuals, having examined all the information available to it, and without prejudging the arbitrary nature of the detention, decides to file the case, in accordance with paragraph 17 (a) of its revised methods of work.

Adopted on 21 June 2002

OPINION No. 7/2002 (EGYPT)

Communication addressed to the Government on 3 September 2001

Concerning: Yasser Mohamed Salah, Kamal Hakim Yacob, Mohamed Mahmoud Mourad, Ashraf Mohamed El-Zanaty, Nabil Fouad Bekhit, Adel Abdelnaby Amin, Ahmad Fahmy Azziz, Alaa El-Sayed El-Sawy, Hatem Ibrahim Mohamed, Amir Aly Kollaly, Mohamed Fath Allah Ibrahim, Agmed Mostafa Mohamed, Gamal Salam Saied, Mohamed Abdel Azeim Abdel Wahab, Atef Abdel Azeim, Waael Osman Serag, Farhan Mansour Metwalli, Walid Ismail Hasanein, Magdi Mohamed Ahmed, Ashraf Salah Shahin, Abdel Salam Mohamed Taha, Hani Said Azoug, Sayed Mohamed Abdel Mottalib, Mohamed Elsayed Ibrahim, Sayed Ahmed Kamal Hussein, Hamada Said Ahmed, Sherif Said Hilmi, Fouad Mohamed Abdel Rahman, Mohamed Fathi Ibrahim, Nagi Abdalla Abdelhafeez, Hani Fathi Elshahat, Osame Mohamed Eid, Mohamed Kamal Abdelrazek, Moawwad Ismail Ibrahim, Abdallah Gamal Soleiman, Amr Ramadan Khattab, Mohamed Fathi Mohamed, Walid Elmohammadi Mustafa, Mohamed Reda Ahmed, Wael Abdelrahman Mohamed, Yehya Abbas Mayhoub, Ayman Anwar Mousa, Mohamed Ali Osman, Sherif Hosni Mousa, Sherif Farahat and Mahmoud Ahmed Allam (55 persons in all, 52 according to the Government)

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government.

5. According to the source of the communication, at least 55 persons were arrested in Cairo on the grounds of their sexual orientation in the early hours of 11 May 2001, during a raid by police of the discotheque on the Queen Boat moored on the Nile in Zamalek District. Ten undercover officers from both State Security and the Cairo Vice Squad are said to have entered the bar around 2 a.m. After watching and filming the dancing in the bar for some time, they reportedly began rounding up Egyptian customers.

6. According to the information received, the police targeted men who appeared to them to be homosexuals or who were not accompanied by women. One of the men was slapped on the face several times by a police officer and was called a derogatory word for homosexual when he allegedly refused to leave the boat.

7. The detained men were reportedly driven to the Vice Squad headquarters at Abdin police station, where they are said to be held in incommunicado detention. They were interrogated by high-ranking officers of the State Security Prosecution. A lawyer went to the police station, but was reportedly denied access to the detainees because he could not produce a power of attorney. State Security officers are believed to have stated that the arrested persons must appoint a lawyer by signing a power of attorney in person. The whereabouts of the detainees were said not to have been revealed to their families or friends. Some relatives who went to the Vice Squad headquarters were reportedly refused access to the detainees.

8. It was reported that on 12 May 2001, the detainees were brought before the public prosecution service where they were served with a detention order and transferred to Tora Prison where they continue to be held. On 6 and 7 June 2001, they were brought before the public prosecution service in Cairo on charges of immoral behaviour and contempt of religion.

9. In its reply, dated 19 September 2001, the Government explained that there was no article in Egypt's national legislation that provides for the prosecution of a person on account of his or her sexual orientation. The Government gave the following explanations.

10. The incident of 11 May 2001 involving the arrest of the 52 accused persons was registered as Qasr al-Nil State Security (Emergency) Misdemeanour case No. 182/2001. The first and second accused persons were charged with contempt of religion, and all the other accused persons were charged with habitually engaging in immoral acts with men. Such acts are punishable as criminal offences under article 98 (f) of the Penal Code and articles 9 (c) and 15 of the Prevention of Prostitution Act No. 10 of 1961. The case was referred to the courts on 18 July 2001 and is still pending.

11. Article 2 (1) of the International Covenant on Civil and Political Rights provides that: "Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other

opinion, national or social origin, property, birth or other status." The obligations set forth in the aforementioned article, therefore, place the States parties to the Covenant, including Egypt, under a positive obligation to respect and to ensure to all individuals within their territory and subject to their jurisdiction all the rights recognized in the Covenant, without distinction of any kind or on any ground.

12. Article 98 (f) of the Penal Code provides that: "Any person who exploits religion in order to promote or advocate extremist ideologies by word of mouth, in writing or in any other manner with a view to stirring up sedition, disparaging or belittling any divinely-revealed religion or its adherents, or prejudicing national unity or social harmony shall be liable to a penalty of imprisonment for a period of not less than six months and not more than five years or a fine of not less than LE 500 and not more than LE 1,000."

13. This article designates the act in question as a criminal offence, regardless of the perpetrators, and does not establish any criteria for making a distinction between offenders that could constitute discrimination. Thus, the same procedures and penalties are applied under the law to any person proved to have committed such an offence.

14. Article 9 (c) of the Prevention of Prostitution Act No. 10 of 1961 states that: "Anyone who habitually engages in debauchery or prostitution is liable to a penalty of three months to three years' imprisonment and/or a fine of LE 25-300." This article characterizes prostitution, meaning the perpetration of immoral acts and of offences against public decency, as a criminal offence, regardless of whether the offender is a woman (prostitution) or a man (debauchery).

15. Thus, it is the personal conduct of each of the defendants, meaning their perpetration of immoral acts and offences against public decency, which is regarded as a criminal offence under this particular article. The Government reported that the gender or sexual orientation of the perpetrator is irrelevant. This offence need only display a certain type of conduct. According to the evidence gathered by the Department of Public Prosecutions, the accused persons in this case had displayed just such conduct. Therefore, the Department of Public Prosecutions referred the case, together with the contempt of religion charges brought against the defendants, to the courts.

16. There is no truth to the allegation that the accused were arrested on account of their sexual orientation (sodomy), since the offences to which the case refers are not defined by the sexual orientation of the perpetrator.

17. In addition to the above, the Government affirmed that all of the measures taken against those accused were in conformity with the procedures for remand in custody, and were carried out in accordance with the law and in the presence of defence counsels.

18. The source, to whom the Government's reply was communicated, stated that the persons arrested were brought before the High Court of State Security, established under emergency law. The court sentenced 23 of them to imprisonment for periods ranging from one to five years for "debauchery" and "offence against religion" and ordered the release of the other 29 persons. The sentence is not subject to appeal.

19. In its reply, the source enclosed a document entitled "Forensic Report Case No. 655/2001 - High Court of State Security", confirming the allegations made.

20. The report provides an account of the examination by an expert of the two persons mentioned in the initial communication. The subject is an anal examination required by the Procurator's Office, as part of the prosecution procedure, to establish whether or not the persons concerned are homosexuals.

21. In the light of the above information, the Working Group considered the case in two stages. First, it had to determine whether the alleged prosecution or conviction of the persons accused on grounds of sexual orientation was justified and, if so, whether those grounds did constitute discrimination under article 2, paragraph 1, of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which would confer an arbitrary character on their detention.

22. Concerning the allegation that the accused were prosecuted on grounds of sexual orientation, the Government argues, on the one hand, that there is no truth in the allegations that the accused were arrested on account of their sexual orientation (sodomy) since the offences to which the case refers are not determined by the sexual orientation of the offender, and, on the other, that all the persons accused were charged with "habitually engaging in immoral acts with men".

23. The Working Group notes, however, that article 98, paragraph 1, of the Penal Code, which provided the basis for the prosecution, penalizes any person who exploits religion in order to promote or advocate extremist ideologies with a view to:

(a) Stirring up sedition;

(b) Disparaging or belittling any divinely-revealed religion or its adherents;

(c) Prejudicing national unity or social harmony.

24. According to the source, who had commissioned someone to oversee the trial proceedings a fact not contested by the Government in its reply - two of the defendants (Sherif Farahat and Mahmoud Ahmed Allam) were prosecuted and/or convicted for offence against religion, while the others were charged with "making homosexual practices a fundamental principle of their group in order to create social dissensions, and engaging in debauchery with men".

25. The Working Group considers that, setting aside the case of the first two persons mentioned above, about whom it is insufficiently informed regarding the acts with which they are charged, the other persons were in fact prosecuted on charges of homosexuality, as is attested by the legal examination ordered by the Procurator's Office on the grounds that homosexuality, as a sexual orientation, is a source of "social dissensions" under article 98, paragraph 1, of the Egyptian Penal Code.

26. With regard to the discriminatory character of the measure of deprivation of liberty which would confer on such deprivation an arbitrary character, the Working Group notes that, in its reply, the Government (which is a party to the International Covenant on Civil and Political Rights) refers to article 26 of the Covenant in the following terms:

> "The obligations set forth in article 2 (1) place the States parties to the International Covenant, including Egypt, under a positive obligation to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, without distinction of any kind or on any ground. However, article 26 cited above, which establishes the right of all persons not to be subjected to discrimination has, as its corollary, the responsibility imposed on States parties (article 2, paragraph 1 of the Covenant) to undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as … sex … or other status."

27. The question, therefore, is whether the reference to "sex" may be regarded as covering "sexual orientation or affiliation", and whether it follows that the detention of the defendants can be considered arbitrary on the grounds that it was ordered on the basis of a domestic legislation provision (namely article 98, paragraph 1 of the Egyptian Penal Code) not in accordance with the international standards set forth in article 2, paragraph 1, of the Universal Declaration of Human Rights, and articles 2, paragraph 1, and 26 of the Covenant to which the Government refers. The approach adopted by United Nations human rights bodies with regard to this question would argue in favour of an affirmative answer. Of particular relevance in this regard are the following:

(a) The Human Rights Committee. In the *Nicholas Toonen v. Australia* case, the Committee notes, in paragraph 8.7 of its Views, that "The State Party has sought the Committee's guidance as to whether sexual orientation may be considered an 'other status' for the purposes of article 26. The same issue could arise under article 2, paragraph 1, of the Covenant. The Committee confines itself to noting, however, that in its view the reference to 'sex' in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation" (CCPR/C/50/D/488/1992). Confirming this approach, the Committee subsequently called on States not only to repeal laws criminalizing homosexuality, but also to include in their constitutions the prohibition of any discrimination based on sexual preferences (see concluding observations of the Human Rights Committee (Poland), 29 July 1999 (CCPR/C/79/Add.110, para. 23));

(b) The Committee on Economic, Social and Cultural Rights. Its General Comment No. 14 (2000), referring in paragraph 18 (under the heading "Non-discrimination and equal treatment"), to article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights (the wording of which is similar to that of the above-cited article 2 of the International Covenant on Civil and Political Rights) considers that that article proscribes any discrimination, including that based on "sexual orientation";

(c) The Committee on the Elimination of Discrimination against Women. In paragraphs 127 and 128 of its concluding observations on Kyrgyzstan (A/5438), the Committee states: "The Committee is concerned that lesbianism is classified as a sexual offence in the Penal Code, and accordingly, recommends that lesbianism be reconceptualized as a sexual orientation and that penalties for its practice be abolished";

(d) The Office of the United Nations High Commissioner for Refugees (UNHCR). In a recent document (7 May 2002) entitled "Guidelines on International Protection: gender-related persecution within the context of article 1 A (2) of the 1951 Convention and its 1967 Protocol relating to the Status of Refugees" (HCR/GIP/02/01) it is stated in paragraph 17 under the heading "Persecution on account of one's sexual orientation" that: "Where homosexuality is illegal in a particular society, the imposition of severe criminal penalties for homosexual conduct could amount to persecution, just as it would for refusing to wear the veil by women in some societies. Even where homosexual practices are not criminalized, a claimant could still establish a valid claim where the State condones or tolerates discriminatory practices or harm perpetrated against him or her, or where the State is unable to protect effectively the claimant against such harm."

28. In the light of the foregoing and of the approach adopted by United Nations human rights bodies in this regard, the Working Group renders the following opinion:

> The detention of the above-mentioned persons prosecuted on the grounds that, by their sexual orientation, they incited "social dissention" constitutes an arbitrary deprivation of liberty, being in contravention of the provisions of article 2, paragraph 1, of the Universal Declaration of Human Rights, and articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights to which the Government is a party.

29. Consequently, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation by bringing it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights;

(b) To consider the possibility of amending its legislation so as to bring it into line with the Universal Declaration of Human Rights and other relevant international instruments to which it is a party.

Adopted on 21 June 2002

OPINION No. 8/2002 (SAUDI ARABIA)

Communication addressed to the Government on 18 December 2001

Concerning: Said Al Zu'air

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. Although the Working Group was provided with the Government's reply well beyond the set deadline, it wishes to express its appreciation to the Government for its cooperation. In conformity with rule 15 of its revised methods of work, the Working Group brought the reply of the Government to the attention of the source, which made comments thereon.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made by the source and the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

5. According to the source, Mr. Al Zu'air, aged 44 and a national of the Kingdom of Saudi Arabia, is a former head of the Information Department at the Imam Muhammad Bin Saud Islamic University in Riyadh. He is said to be outspoken on public affairs. On 5 March 1995 he was arrested at his home in Riyadh by agents of the General Intelligence Service (*Al-Mabahith Al-Amma*) on orders of the Minister of the Interior, without an arrest warrant or charges being

brought against him. The Saudi authorities allegedly accused him of meeting with other academics, including the late Grand Mufti of Saudi Arabia, Sheikh Abdel Aziz Bin Baz, and speaking out about the Kingdom's public affairs, especially corruption.

6. The Government gave the following account of Mr. Al Zu'air's arrest: "Mr. Al Zu'air was arrested on a charge of fomenting sedition and instigating acts incompatible with the laws in force in the Kingdom of Saudi Arabia, which would cause problems and disturbances and jeopardize public safety and security. After questioning, he was immediately charged with exploiting his academic position at the Imam Muhammad Bin Saud Islamic University to instigate rebellion and advocate extremism and sedition, all of which are punishable acts under the laws of the Kingdom of Saudi Arabia. He is currently facing trial."

7. The Working Group is well aware of the dangers of advocating such extremism, aimed at undermining the integrity of the State. Accordingly, the arrest and trial of the accused were necessary to protect society from a destructive ideology and his detention cannot be regarded as arbitrary since he was questioned and formally charged and is awaiting a court ruling.

8. The only allegation of the source which is not denied by the Government is that Mr. Al Zu'air has now been held in detention for more than seven years. To assess the remaining allegations of the source and the Government, which are almost completely contradictory, the Working Group would like to emphasize that the Government has not challenged the following allegations of the source, namely that Mr. Al Zu'air was not served with an arrest warrant at the time, that he was not informed of the reasons for his detention and of the charges against him, that the authorities did not afford him the assistance of a lawyer or allowed him to appoint his own lawyer, and that he was not formally charged with any criminal offence nor was he brought before a judge to face charges. For its part, the Government has not substantiated its allegation with regard to the lawfulness of the detention and has failed to provide the Working Group with the text of the criminal law serving as the basis of the procedure conducted against Mr. Al Zu'air, or with any judicial decision ordering his arrest. No explanation has been offered by the Government for the unusually long delay in instituting criminal proceedings against him, nor has the Government explained why his detention for such a long period of time was deemed indispensable by the judicial authorities.

9. The Working Group is of the opinion that the Government's argument concerning the dangerous nature of acts advocating extremism does not by itself justify the long detention of Mr. Al Zu'air.

10. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Said Al Zu'air, ordered by the executive and not reviewed nor sanctioned by the judiciary, as well as his detention for more than seven years without the benefit of a trial at which his guilt or innocence could have been established, are contrary to international norms relating to a fair trial spelled out in articles 9, 10 and 11 of the Universal Declaration of Human Rights. This breach of international norms is of such gravity as to confer an arbitrary character on his deprivation of liberty, which falls within category III of the principles applicable to the consideration of cases submitted to the Working Group.

11. Consequently, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation by bringing it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights; the Working Group believes that in this particular case the release and compensation of Mr. Al Zu'air for the lengthy arbitrary detention would constitute an appropriate remedy;

(b) To take adequate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 11 September 2002

OPINION No. 9/2002 (PHILIPPINES)

Communication addressed to the Government on 18 July 2002

Concerning: Manuel Flores, Felix Cusipag, Hadji Salic Camarodin and Michael Guevarra

The State has ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply of the Government to the source, which provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted to the Working Group by the source, Manuel Flores (10 years of age) and Felix Cusipag (12 years of age) have been detained at Angeles District Jail, Angeles City, for two months without charges, legal counsel or any regard for their legal rights. No arrest warrants were issued at the time of their arrest and no court order

was given for their detention. Manuel Flores is said to have spent more than five weeks in detention without knowing if his mother knew where he was. Hadji Salic Camarodin (17 years of age) had been detained, at the time of the communication, for six months in the same prison. He was found guilty of sniffing glue and was sentenced to six months' imprisonment. He is said to be serving his sentence in a prison for adults. Michael Guevarra (17 years of age) had already been in the same prison for two months when the present communication was submitted. He is on trial for attempted robbery and faces at least three more months in detention before the next hearing. He is also detained in a prison for adults. The cell next to his is occupied by a convicted drug user and dealer.

6. According to the source, the cells in which these four children are being kept are small, unventilated, dirty and located in blocks for convicted adult prisoners. They are obliged to stay 23 hours a day in those cells, without any mental stimuli. They are made to sleep on a stone floor and have been denied access to basic sanitary items like soap, toothbrushes, etc. These unsanitary conditions could be life-threatening, are psychologically very damaging and amount to torture and other cruel, inhuman or degrading treatment or punishment.

7. The source further reports that none of these children has been provided with competent legal counsel, as required by Philippine law. No birth certificates were submitted to the courts, in spite of the fact that such official documents should be easy to obtain for the prosecution officials.

8. In its reply, the Government made the following statement concerning the allegations of the source:

> "As for the case of Manuel Flores (13) and Felix Cusipag (12). (For the record, Manuel Flores is 13 years of age and not 10 as reported), the two were arrested on 31 May 2002 for violation of section 2 of [Presidential Decree] 1619 (Possession and use of a volatile substance). By virtue of the confirmation of detention signed by attorney Oliver S. Garcia, they were committed to Angeles District Jail as detainees.
>
> "On 14 June 2002, during arraignment, both of the accused pleaded guilty to a minor offence of vagrancy and were sentenced to five days' imprisonment in a court order issued by Judge Ofelia Tuayon Pinto. In that court order, the District Jail warden was also instructed to release the minors and place them in the custody of their parents. Consequently, the personnel of the Angeles District Jail tried to locate the parents of these minors at their given address but failed to find them.
>
> "On 24 June 2002, following his release Felix Cusipag was put in the custody of his mother, Mary Jane Cusipag, while Manuel Flores was turned over to the Bahay Bata Center (Children's Home) in Kauayan, Angeles City, as his parents could not be located despite attempts to find them.
>
> "With regard to the case of Hadji Camarodin (aged 17), he was detained at the Angeles District Jail on 15 March 2002 by virtue of an order signed by attorney Lucila Dayaon of the Office of the City Prosecutor, Angeles City, for violation of the

Penal Code No. 1619 (Possession and use of volatile substance). Subsequently, Criminal Case No. 08-80 was filed at the Regional Trial Court Branch 60, Angeles City (Family Court).

"In a court order issued on 3 April 2002 and signed by Judge Ofelia Tuazon Pinto, the accused was sentenced to an indeterminate imprisonment of a maximum of six months and one day and a minimum of four months and one day. Being a minor, the execution of his sentence was suspended and he was ordered to be placed in the Central Luzon Drug Rehabilitation Center in Magalang, Pampanga. The consent of the minor's parents was required for admission to that centre. The transfer was delayed because the parents failed to show up until 5 July 2002 when they finally appeared and accompanied their son to the above-mentioned centre.

"As for the case of Michael Guevarra. (For the record, he is 18 years of age according to court records and, therefore, no longer a minor), who claims to be a minor, it is up to the court to decide on the truthfulness of his claim. It may be noted that none of his relatives wanted to cooperate in ascertaining his claim despite the efforts made by the Jail authorities in this regard.

"Michael Guevarra was detained at Angeles District Jail on 21 April 2002 by virtue of a confirmation of a detention order issued by investigating attorney Oliver Garcia on the same day. Charged with trespassing on a private dwelling a criminal case (No. 02-504) was filed against Michael Guevarra with the office of the court clerk on 22 April 2002. His case is pending trial before the Municipal Court Branch 2, Angeles City."

9. In its comments on the Government's reply, the source confirmed that since the communication was submitted Manuel Flores, Felix Cusipag and Hadji Salic Camarodin were released from detention. Still, it requested the Working Group not to file the case, but to avail itself of the power it has under rule 17 (a) of its revised methods of work to render an opinion as to whether or not the deprivation of liberty suffered by the three minors was arbitrary. In support of this request the source invoked the harsh prison conditions in the Philippines and the practice of the authorities of detaining juveniles in prisons for adults.

10. The source did not challenge the substance of the Government's allegation that Michael Guevarra was not a minor at the time of his arrest and that he was arrested on 21 April 2002 in flagrante delicto. His arrest had been consistently confirmed by the Philippine judicial authorities. He is currently standing trial in Angeles City. The source did not invoke any specific reason to support the arbitrary nature of the detention.

11. The Working Group takes note with concern of the allegation of the source which was confirmed by the Government that because of inadequate prison facilities juveniles are quite often detained in prisons for adults, a practice obviously contrary to article 10 of the International Covenant on Civil and Political Rights. However, since the mandate of the Working Group does not extend to investigating the manner in which minors are detained, it decides to bring the case to the attention of the Committee on the Rights of the Child.

12. In the light of the foregoing, the Working Group renders the following opinion:

(a) The Working Group takes note of the release of Manuel Flores, Felix Cusipag and Hadji Salic Camarodin and decides to file their cases. A copy of this opinion will be sent to the Committee on the Rights of the Child;

(b) The Working Group concludes that the deprivation of liberty suffered by Michael Guevarra is not arbitrary within the meaning of the categories of principles applicable to the consideration of cases submitted to it.

Adopted on 11 September 2002

OPINION No. 10/2002 (MAURITANIA)

Communication addressed to the Government on 26 December 2001

Concerning: Mr. Sidi Fall

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the Government's reply to the source and received the latter's comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case in question, in the light of the allegations made, the reply given by the Government and the source's comments.

5. The case below was reported to the Working Group on Arbitrary Detention as follows.

6. Mr. Sidi Fall, born on 12 December 1951, of Mauritanian nationality, a researcher in agronomy, was arrested on 24 January 1998 in Nouakchott by the judicial police under an arrest warrant issued by the prosecutor of Rosso (Mauritania) and imprisoned at the civilian prison of Rosso.

7. According to the source, Mr. Fall was arrested after an inquiry conducted by inspectors of the Court of Audit concerning the management of the farm of M'Pourié, which he had directed from 1992 to 1996. In a report, of which 7 pages out of 12 were missing, Mr. Fall was held liable for acts of bad management, which could give rise to either civil or criminal proceedings.

8. Mr. Fall, who had been a high official in the Rural Development Ministry at Nouakchott prior to his detention, was arrested on 24 January 1998 by the judicial police under an arrest warrant issued by the prosecutor and not by the investigating judge, which, according to the source, constitutes a procedural irregularity according to the Mauritanian Code of Penal Procedure.

9. The investigating judge, who intervened without a preliminary investigation (which, according to the source, constitutes another procedural irregularity) closed the pre-trial proceedings with a dismissal order dated 22 March 1998, in view of the fact that the only evidence against Mr. Fall was based on the truncated report of the Court of Audit. Nevertheless, because the prosecutor appealed against the decision of the investigating judge, Mr. Fall was kept in detention, which, according to the source, constitutes a violation of the Code of Penal Procedure. On 4 April 1998, the Court of Appeal of Nouakchott confirmed the order of dismissal of Mr. Fall's case.

10. The prosecutor then appealed for review before the Supreme Court against that ruling and Mr. Fall was still kept in detention. The Supreme Court, in a ruling on 13 April 1998, annulled the decision of the Appeal Court for procedural irregularities and sent the case back to that same Court with a different composition. On 3 May 1998, the Court of Appeal dismissed the case for a second time. For a second time the prosecutor called for a review by the Supreme Court, but it was the Council Chamber that issued a ruling, and not the Appeal Chamber of the Supreme Court. The former again annulled the decision and sent the case back to the Appeal Court, which declared itself competent to rule on the charges brought against Mr. Fall. On 10 April 1999, the Appeal Court issued a judgement on the merits recognizing that Mr. Fall was guilty of embezzlement when he was managing the farm of M'Pourié, and sentenced him to five years' non-suspensive imprisonment, a fine of UM 50,000 and reimbursement of the sum of UM 35,524,060.

11. According to the source, Mr. Fall is in poor health, having been imprisoned since 1998 in unhealthy conditions in the civil prison of Rosso. He adds that Mr. Fall's fundamental rights to a just and fair trial have not been respected, owing to the many procedural irregularities, and in particular to the fact that the only evidence against Mr. Fall is the report of the Court of Audit, the greater part of which has been removed.

12. In a detailed reply, the Government recalled the background of the case and replied to the source's allegations by referring to the relevant articles of Mauritania's Constitution, Penal Code and Code of Penal Procedure. The quotations from Mauritanian legislation are annexed to the reply. According to the Government, the proceedings against Mr. Fall were initiated as a result of an audit drawn up by the sponsors of the projects which he was in charge of managing. It

adds that the Court of Audit found that the sum of UM 44,299,912 had been misappropriated and ordered Mr. Fall either to return the missing public money or to justify the use he had made of it. As this order elicited no response, the Public Prosecutor had then been requested to undertake proceedings against Mr. Fall in accordance with the Penal Code (art. 164).

13. In its response, the Government rejects the allegation that seven pages of the Court of Audit's report, which had been used to bring charges, had been removed and maintained that the report, a copy of which was enclosed with the reply, had been added in full to the case file. As far as the Public Prosecutor's lack of competence for issuing an arrest warrant, it points out that he is authorized to do so under article 61 of the Code of Penal Procedure. It also justifies the absence of a preliminary inquiry in Mr. Fall's case with arguments based on extracts of the law.

14. With regard to the conduct of proceedings, the Government maintains that all the formalities provided in the Code of Penal Procedure were duly followed, that Mr. Fall enjoyed all the guarantees provided by law and that his case was heard by an independent and impartial tribunal, which sentenced him after a fair, public trial. According to the Government, the accused was therefore not entitled to the dismissal order, which had been annulled by the Supreme Court, the body responsible for supervising investigating judges. With regard to conditions of detention, the Government maintains that Mr. Fall has received the same treatment as all other prisoners and has not been subjected to any discrimination or ill-treatment.

15. In his comments in reply to the Government's response, the source mentions three grounds for extinction of the public proceedings: continued detention in violation of the law and the rules of procedure, the dismissal of proceedings confirmed on two occasions by the Court of Appeal and which had acquired the force of *res judicata*, and the statutory limitation on public proceedings, since no prosecution proceedings had been initiated since the sentence had been handed down and appealed against, as far back as 10 April 1999.

16. It appears from the above that the communication contains several allegations: that the prosecution and conviction were politically motivated; that the proceedings initiated by the Public Prosecutor were irregular; that part of the report of the Court of Audit had been removed; that the person had been detained arbitrarily; that conditions of detention were unsatisfactory; that the material evidence held against Sidi Fall and the appreciation of the charges held against him by domestic courts were contestable, and that the public proceedings should have been extinguished.

17. The Working Group finds that some of the allegations do not fall within its mandate or are not supported by verifiable information, such as to enable it to give an opinion as to their validity. It will consider only the legal aspects of the detention, which are the only aspects that fall within its mandate.

18. With regard to the legal aspects of the detention, the source refers to a violation of domestic legislation as the ground for maintaining that Sidi Fall's detention and conviction were arbitrary. The Working Group recalls in this respect that, according to its methods of work and established case law, when it receives individual communications, it may deem it necessary to examine domestic legislation in order to ensure that the country's law has been duly applied and, if so, to verify whether this legislation is in conformity with international norms. In verifying the

manner in which domestic legislation has been applied, the Working Group makes it clear that it does not wish to take the place of the judicial authorities of member States or to act as a kind of supranational tribunal. Its mandate is to inquire into cases where detention has been imposed arbitrarily or in any other manner incompatible with the relevant international norms. When it examines a communication, it prefers not to query the facts and the evidence of a case, just as in its decision it is concerned not with the judges and courts but to ascertain whether the domestic legislation is in conformity with the relevant international instruments.

19. In the case in hand and according to the source's allegations, the doubts concern not so much domestic legislation as the way it is applied. This being the case, the Working Group, in conformity with its methods of work, ascertains whether the way the law has been applied, if not in conformity with domestic legislation, may have given rise to a violation of such gravity as to confer on the deprivation of liberty an arbitrary character.

20. In the case submitted for its appreciation, the Working Group notes that Sidi Fall was arrested on 24 January 1998 and held in pre-trial detention under the terms of a judicial inquiry, conducted by an investigating judge, which ended on 22 March 1998 with an order of dismissal. Under Mauritanian law, if an investigating judge concludes his inquiry with an order of dismissal, the accused in pre-trial detention must be released, even if an appeal is brought against the order of dismissal, in application of article 161 of the Mauritanian Code of Penal Procedure, according to which: "If the investigating judge considers that the facts constitute neither a crime, nor an offence, nor a contravention, or if the perpetrator remains unknown, or there are not sufficient charges against the accused, he shall issue an order dismissing the proceedings. The accused held in pre-trial detention must then be released." This provision is in conformity with international norms, and in particular with articles 9 and 11 of the Universal Declaration of Human Rights and principles 36 and 37 of the Basic Principles for the Treatment of Prisoners adopted by General Assembly resolution 45/111 of 14 December 1990, according to which the accused are presumed innocent and are detained only as an exception. Maintaining an accused in detention after his case has been dismissed or he has been acquitted constitutes a serious violation of the presumption of innocence.

21. In the event, Sidi Fall has been and is still being maintained in detention, although the Court of Appeal has twice confirmed the investigating judge's dismissal of proceedings and, until sentence was handed down on 10 April 1999, no ground for detention had been found against him, neither by the Criminal Chamber of the Supreme Court, which, on appeal by the prosecutor, had annulled the first judgement of the Court of Appeal for procedural irregularities, nor by the Council Chamber of the Supreme Court - whose competence is contested by the source - which after a second appeal annulled the order of dismissal and the two rulings by the Court of Appeal. With regard to the court that passed sentence upon him, the source maintains that the referral of the case to that court was irregular and that its decision, which was not final, was not enforceable. In fact, and in the opinion of the source, although the sentence passed on 10 April 1999 was appealed against, more than three years later the case has still not been settled by the Court. In its response, the Government did not comment on that allegation.

22. Thus, while from 24 January to 22 March 1998, regardless of the alleged irregularities, Sidi Fall was detained under a warrant issued in accordance with judicial procedure, from 22 March 1998 to 10 April 1999, he was kept in detention on no legal ground, so that his detention during that period was clearly legally unfounded and constitutes a violation of article 9 of the Universal Declaration of Human Rights.

23. From 10 April 1999, that is, after the judgement was handed down by the court which sentenced him to five years' firm imprisonment, and even if that decision may constitute a valid legal ground for detention, the Working Group points out that Sidi Fall, according to procedure, should have appeared as a free man before the court, and should have been able to appeal against that decision while free unless a judicial authority had decided otherwise. The Working Group also notes that apparently the referral of the case to the court which sentenced him was not in conformity with the procedure in force in Mauritania. These irregularities, however, though they undoubtedly constitute violations of internal rules of procedure, cannot, in the light of the Working Group's methods of work, constitute a violation of such gravity as to confer on the deprivation of liberty an arbitrary character.

24. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mr. Sidi Fall during the period from 22 March 1998 to 10 April 1999 is arbitrary, as being in contravention of article 9 of the Universal Declaration of Human Rights. It clearly has no legal justification and falls within Category I of the applicable categories to the consideration of the cases submitted to the Working Group. As from 10 April 1999 onwards, Mr. Sidi Fall's detention is not arbitrary.

25. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take appropriate steps to ratify the International Covenant on Civil and Political Rights.

Adopted on 11 September 2002

OPINION No. 11/2002 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 28 September 2001

Concerning: Fawaz Tello, Habib Issa, Walid al-Bouni, Hasan Saadoun, Habib Saleh, Aref Dalila, Kamal Labouani, Riad al-Turk, Riad Seef, Mohamed Maamun al-Homsi

The State has ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time concerning one of these cases, namely that of Mohamed Maamun al-Homsi. The Government's reply was transmitted to the source, which provided the Working Group with its comments thereon. As for the other cases, the Working Group regrets that the Government has not replied within the 90 days' time limit, nor in the period of extension it has requested and obtained from the Working Group.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government concerning one of these cases, namely that of Mohamed Maamun al-Homsi. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto. As for the other cases, the Working Group would have welcomed the

cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to information received from the source, Fawaz Tello, Habib Issa, Walid al-Bouni, Hasan Saadoun, Habib Saleh, Aref Dalila, Kamal Labouani, Riad al-Turk, Riad Seef and Mohamed Maamun al-Homsi were detained on various days in September 2001, beginning from the first of that month, and were taken to the Adra Prison in Damascus.

6. Mr. Fawaz Tello, born in Damascus in 1961, an engineer and a member of the Dialogue National Forum and of the *Mountada Al-Hiwar al Watani* Forum, was arrested during the night of 11 September 2001 in Damascus by members of the Political Security Department Forces.

7. Mr. Habib Issa, born in Misiaf-Hama in 1956, living in Damascus, a lawyer and spokesperson for the *Mountada Jamal al-Aattasii* Forum, a founding member of the Comités de la renaissance de la société civil (CRSC), a civil society forum, and well known for his legal defence of political detainees, was arrested during the night of 11 to 12 September 2001 by members of the Political Security Department Forces.

8. Mr. Walid al-Bouni, born in Aleppo in 1963, a medical doctor and a Dialogue National Forum organizer, was arrested at his home by members of the Political Security Department Forces on 9 September 2001, after having attended a political seminar held at Mr. Riad Seef's house on 6 September 2001.

9. Mr. Hassan Saadoun, born in 1941 in Qamishii, District of Al-Hassaka in northern Syria, a Debate Forum activist, was arrested on 9 September 2001.

10. Mr. Habib Saleh, a 52-year-old, born in Tartus, a businessman and a CRSC activist, was arrested in Tartus on 9 September 2001. He had been interrogated by the authorities earlier this year.

11. Mr. Aref Dalila, born in Latakia in 1943, living in Dommar close to Damascus, an economist, a Damascus University professor and a founding member of CRSC, was also arrested on 9 September 2001 by members of the Political Security Department Forces after appearing in a television programme at Al-Jazeera television channel.

12. Mr. Kamal Labouani, a 44-year-old, born in Zabadani, a medical doctor, a member of the administrative council of the Committees for the Defence of Democratic Freedoms and Human Rights in Syria and a member of the editorial staff of *Amarji* publication was arrested at his house in September 2001, after having attended a political seminar held at Mr. Riad Seef's house on 6 September 2001.

13. Mr. Riad al-Turk, a 71-year-old, born in Homs in 1930, a lawyer, co-founder of the Rassemblement national démocratique and the first secretary of the Communist Party-Political Bureau, was arrested on 1 September 2001 at a clinic in Tartus where he was receiving medical treatment following heart problems. He is also said to be suffering from diabetes. He was

apparently arrested after appearing in a programme at Al-Jazeera television channel. It was further reported that between 1980 and 1998 Mr. Riad al-Turk had spent 18 years in prison because of his opposition to the Government, without having been tried.

14. Mr. Riad Seef, a member of Parliament aged 54, born in Damascus in 1947, and living in Sehnaya, Damascus, was arrested at his home on 9 August 2001 by members of the Political Security Department Forces.

15. Mr. Mohamed Maamun al-Homsi, born in Damascus in 1956, living in Azbakyya, Damascus, reportedly suffering from diabetes, and an independent member of Parliament, was arrested on 9 August 2001 by members of the Political Security Department Forces, two days after he went on hunger strike in protest at alleged corruption and excessive power wielded by the security forces.

16. The source alleges that following their arrest most of these persons were held incommunicado with no access to medical treatment or to lawyers of their own choosing. The source further alleges that as yet no formal charges have been brought against them. According to the source, all these cases involve political opponents and human rights activists from civil society groups who prior to their detention had been subjected to political persecution. It is alleged that they were arrested merely for having expressed their ideas peacefully in an attempt by the Government to suppress and prevent the activities of opposition political parties and human rights organizations.

17. In its reply, the Government provided information only about the case of Mohamed Maamun al-Homsi, but made no mention of the other cases referred to in the present communication.

18. The Government maintains that the security forces learned that Ma'amun al-Homsi had committed grave offences against the security of the State and its public authorities and that they passed this information on to the Public Prosecutor, who ordered that no legal action be taken against him since he was entitled to parliamentary immunity in accordance with article 67 of the Constitution.

19. The Government goes on to say that after reviewing this file the Public Prosecutor, noting that the offences imputed to Mr. al-Homsi were punishable by law, submitted a report to the Minister of Justice, requesting that the President of the People's Assembly grant the judiciary permission to institute legal proceedings against Mr. al-Homsi. The President of the People's Assembly gave his permission and Mr. al-Homsi was arrested and handed over for questioning on a number of counts.

20. The Government concludes by saying that Mr. al-Homsi was afforded the guarantees necessary to preserve his dignity, that he was permitted to engage 10 lawyers, that visitors, including lawyers, members of his family and friends, were allowed to visit him, and that he was provided with medical care and treatment free of charge. It is asserted by the Government that Mr. al-Homsi was found guilty of the charges against him, that he exercised his right of appeal to the Court of Cassation, which is currently reviewing his case, and that his trial was held in public

and attended by officials of various foreign embassies (e.g. United States of America, Netherlands, Canada, Japan, Norway, Italy and France), as well as representatives of international news agencies.

21. Commenting on the Government's reply, the source stated that MPs Mohamed Maamun al-Homsi and Riad Seef were sentenced by the Damascus Criminal Court to five years in prison following their trials, held in March and April, respectively. The trials are believed by the source to have been conducted in an unfair manner.

22. Concerning the cases of Fawaz Tello, Habib Issa, Walid al-Bouni, Hasan Saadoun, Habib Saleh, Aref Dalila, Kamal Labouani, Riad al-Turk and Riad Seef, no information, as mentioned earlier, has been received from the Government.

23. While the source initially stated that no formal charges were brought against the persons mentioned in the preceding paragraph, it subsequently submitted new information to the effect that Aref Dalila, Habib Saleh and Walid al-Bouni have had further charges (atteinte à la Presidence) pressed against them, reportedly following recordings made of their conversations while in detention. According to this information, Mr. Dalila is reported to have been subjected to torture.

24. It is claimed that those persons face restrictions on visits by families and lawyers and that lawyers are denied access to their files. It is also stated that representatives of the local human rights committees are forbidden to attend the court sessions which are being held in camera, that statements by the detainees are extracted under duress and that no testimony by the defence is accepted.

25. Having regard to the allegations made by the source, to the Government's reply concerning the case of Mohamed Maamun al-Homsi and to the information, which has not been challenged by the Government, concerning the other cases, the Working Group makes the following observations:

(a) With respect to the case of MP Mohamed Maamun al-Homsi, the Working Group notes that he was detained for peacefully exercising his right to freedom of opinion and expression, which is guaranteed by international law. Arrested after going on hunger strike, he exercised his right to freely express his views without using violence, a fact confirmed by the information received and not challenged by the Government. Moreover, no details are given about how his actions, which were deemed punishable by law, could be said to have involved the use of violence in his political activities as a member of Parliament;

(b) However, concerning the allegation that Mr. Mohamed Maamun al-Homsi was not given a fair trial, the Working Group does not consider that it has sufficient evidence to assert that there was complete or partial non-observance of the international standards relating to a fair trial of such gravity as to confer on his deprivation of liberty an arbitrary character;

(c) Regarding the cases of Fawaz Tello, Habib Issa, Walid al-Bouni, Hasan Saadoun, Habib Saleh, Aref Dalila, Kamal Labouani, Riad al-Turk and Riad Seef, the Working Group notes that these persons were detained for having taken part in various forums in support of a

group holding meetings and encouraging wider political participation, and that they carried out their activities peacefully, which was not denied by the Government, in exercise of their rights to freedom of assembly, expression and opinion, as guaranteed by international law;

(d) Finally, the circumstances under which legal proceedings were taken against these persons, with lawyers being denied access to their files, hearings held in closed session and the court not allowing the defence counsel to properly represent the defendants, a fact not been denied by the Government, are of such gravity as to confer on their deprivation of liberty an arbitrary character.

26. In the light of the foregoing, the Working Group is of the opinion that the deprivation of liberty suffered by Mohamed Maamum al-Homsi is arbitrary, being contrary to articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the International Covenant on Civil and Political Rights, and falls within category II of the principles applicable to the consideration of cases submitted to the Working Group.

27. The deprivation of liberty suffered by Fawaz Tello, Habib Issa, Walid al-Bouni, Hasan Saadoun, Habib Saleh, Aref Dalila, Kamal Labouani, Riad al-Turk, Riad Seef is equally arbitrary, being contrary to articles 9, 10, 18 and 19 of the Universal Declaration of Human Rights and articles 9, 14, 18 and 19 of the International Covenant on Civil and Political Rights, and falls within categories II and III of the principles applicable to the consideration of cases submitted to the Working Group.

28. Consequently, the Working Group requests the Government to take the necessary steps to remedy the situation of the above-mentioned persons by bringing it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 12 September 2002

OPINION No. 12/2002 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 20 December 2001

Concerning: Mohamed Rame Osman, Taraq Shukri, Abdel Naser Arab, Mohamed Joum'a Msetto, Hilal Msetto, Mohamed Yazan Al Kojak and Mohamed Ayman Al Kojak

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the Government's reply to the source, which so far has not provided the Working Group with its comments thereon. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. The cases involve both Syrian and American citizens, as well as a Palestinian refugee who were allegedly arrested on 28 June 2000 and accused of destroying a statue of the late President Hafez Al-Assad. According to the source, those persons did not belong to any political

organization and were described by the authorities as a group of homosexuals. One of them, Mohamed Rame Osman, was a minor when the alleged incident and arrest took place. The following details about the accused were given:

(a) Mr. Mohamed Rame Osman, born in Illinois, USA, in 1984, of Syrian and American nationalities and living in Qudsyya, Damascus, was arrested on 28 June 2000 by members of Public Security Forces and detained at Adra Prison;

(b) Mr. Taraq Shukri, born in Damascus in 1982, of Syrian nationality and living in Qudsyya, Damascus, was arrested on 28 June 2000 by members of Public Security Forces and detained at Adra Prison;

(c) Mr. Abdel Naser Arab, born in Damascus in 1959, a Palestinian refugee living in Qudsyya, Damascus, was arrested on 28 June 2000 by members of Public Security Forces and detained at Adra Prison;

(d) Mr. Mohamed Joum'a Msetto, born in Damascus in 1981, of Syrian nationality and living in Qudsyya, Damascus, was arrested on 28 June 2000 by members of Public Security Forces and detained at Adra Prison;

(e) Mr. Hilal Msetto, born in Damascus in 1981, of Syrian nationality and living in Qudsyya, Damascus, was arrested on 28 June 2000 by members of Public Security Forces and detained at Adra Prison;

(f) Mr. Mohamed Yazan Al Kojak, born in Hama in 1983, of Syrian nationality and living in Qudsyya, Damascus, was arrested on 28 June 2000 by members of Public Security Forces and detained at Adra Prison;

(g) Mr. Mohamed Ayman Al Kojak, born in Hama in 1982, of Syrian nationality and living in Qudsyya, Damascus, was arrested on 28 June 2000 by members of Public Security Forces and detained at Adra Prison.

6. It was reported all these persons were apparently tortured during their arrest and that no sentence as yet has been pronounced against them. The authorities described these persons as a group of homosexual perverts. Fears were expressed regarding their physical and psychological integrity.

7. According to the source, in the cases under consideration, several provisions of international human rights instruments invoked by the Working Group in the examination of cases brought to its attention were violated, in particular articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is a party.

8. In its reply, the Government explained that, according to the security services, the persons mentioned in the communication were attempting to form secret organizations with the aim of engaging in acts of sabotage, including the demolition of statues of former national leaders. The persons involved were arrested, prosecuted and sentenced as follows:

(a) Abdel Naser Arab, a Palestinian residing in Syria: three years' imprisonment; release date: 30 June 2002;

(b) Mohamed Ayman Al Kojak: two years' imprisonment; release date: 28 June 2002;

(c) Mohamed Joum'a Chaabane Msetto: two years' imprisonment; release date: 28 June 2002;

(d) Hilal Mohamed Hassen Msetto: two years' imprisonment; release date: 28 June 2002;

(e) Mohamed Rame Osman, a Syrian also holding American nationality: 18 months' imprisonment; served his sentence and was released on 15 January 2002;

(f) Mohamed Yazan Al Kojak: eight months' imprisonment; served his sentence and was released on 28 December 2001;

(g) Taraq Shukri: eight months' imprisonment; served his sentence and was released on 28 December 2001.

9. From the foregoing it appears that the allegations made by the source are not sufficiently substantiated to enable the Working Group to render an opinion with full knowledge of the facts on the circumstances of the arrest of those individuals, the reasons for their detention and the conditions under which the trial that led to their conviction was conducted. The Working Group also notes that the information provided by the source does not tally with the account given by the Government in its reply. According to the source, those individuals, one of whom was a minor at the time of his arrest, were apprehended by members of the political police on 28 June 2000 and detained at Adra Prison on charges of "thwarting the goals of the revolution". The source maintains that those persons were described as a group of homosexuals, tortured and held in incommunicado detention for seven months. On the other hand, the Government maintains that they were involved in acts of sabotage, that they were brought before the State security court and sentenced to custodial penalties and that six of them had already served their sentences and had since been released. According to the Government's reply, Abdel Naser Arab is the only one currently still in prison serving a three-year sentence and due to be released on 28 June 2003.

10. On 17 June 2002, the Working Group requested the source, in writing, to transmit to it updated information about the situation of the persons mentioned in the communication; the Group's secretariat has received no reply to date.

11. Under these circumstances, the Working Group considers that neither the source nor the Government has provided it with the information needed to determine whether or not the detention of the above-mentioned persons was arbitrary. Regarding the release of those individuals who had already served their sentences, the Working Group considers that, as the information provided by the Government was not contested by the source, Abdel Naser Arab appears to be the only person still being held.

12. Accordingly, with regard to the persons released and without venturing an opinion as to whether their detention was arbitrary or not, the Working Group decides, pursuant to paragraph 14 (a) of its methods of work, to file the case in respect of Mohamed Rame Osman, Taraq Shukri, Mohamed Joum'a Msetto, Hilal Msetto, Mohamed Yazan Al Kojak and Mohamed Ayman Al Kojak.

13. With respect to Abdel Naser Arab, reportedly still in detention, the Working Group, in accordance with paragraph 17 (d) of its methods of work, decides to file the case provisionally.

Adopted on 12 September 2002

OPINION No. 13/2002 (LEBANON)

Communication addressed to the Government on 13 June 2002

Concerning: Mr. Hanna Youssef Chalita

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, who has not replied. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

5. Mr. Hanna Youssef Chalita, born 20 September 1956, of Lebanese and Australian nationalities, residing in Kfarabida (North-Lebanon), merchant, is currently detained at the Lebanese Ministry of Defence in Yarzé (Beirut).

6. According to the source, Mr. Chalita was arrested in September 1994 by the intelligence services of the Lebanese army after a warrant for his arrest had been issued by the investigating judge Abdallah Bitar of Beirut, and accused of alleged participation in the assassination of the Lebanese deputy Tony Sleimane Frangieh in 1978.

7. Since he was first detained in 1994, Mr. Chalita was apparently never interrogated regarding his alleged participation in the assassination of deputy Tony Sleimane Frangieh. His counsel, Maître Michel Semaan, asked for his client to be interrogated in his presence, but obtained no reply. He put in many requests for his client's release, which also remained unanswered. It appears that the Australian Embassy in Beirut also tried to intervene, but without success. Mr. Chalita's detention for seven years is unlawful. According to the Lebanese Code of Penal Procedure, an accused person must be brought before a court as soon as possible.

8. The case of the assassination of the Lebanese deputy Tony Sleimane Frangieh in 1978 was referred to the Legal Council under Amnesty Act No. 48/91. Hanna Youssef Chalita was interrogated accordingly by the investigating judge Abdallah Bitar and allegedly admitted having committed the crime of which he is accused.

9. The investigating judge issued an order to find out the identity and places of residence of the other persons involved in the assassination. This order took a long time to be enforced in view of the large number of persons involved. The judge is therefore continuing his investigations into the case and one of the suspects involved in the crime has been interrogated and is now detained as a result.

10. The Government's reply shows that investigations are still continuing with a view to closing the file and transferring it to the Legal Council for judgement, in accordance with procedure. This means that Mr. Chalita's detention from September 1994 to date (September 2002) has lasted eight years without leading to a final judgement. Deprivation of liberty for such a long period is arbitrary, as it appears contrary to articles 9 and 10 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, according to which anyone arrested or detained is entitled to trial within a reasonable time or to release.

11. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mr. Chalita is arbitrary, as being in contravention of the provisions of articles 9 and 10 of the Universal Declaration of Human Rights (and article 9 of the International Covenant on Civil and Political Rights) and falls within Category (…) of the applicable categories to the consideration of the cases submitted to the Working Group.

12. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 12 September 2002

OPINION No. 14/2002 (DJIBOUTI)

Communication addressed to the Government on 28 June 2002

Concerning: Mohammed Abdillahi God, Ahmed Faden, Daher Hassan Ahmed, Houssein Vuelden Boulalaleh, Houssein Farah Ragueh, Abdourahim Mahmoud Hersi, Doualeh Egoueh Offleh, Nasri Ilmi Maidaneh, Moustapha Khaireh Darar, Hassan Djama Meraneh, Aden ali Guedi and Moussa Guedi.

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the Government's reply to the source and received the latter's comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the light of the allegations made, the response of the Government thereto, and the source's comments.

5. The Working Group received a communication concerning 12 police officers, who allegedly rebelled against the Government, as a result of which, according to the source, they were placed in detention without a warrant. It is reported that 11 of them are still detained in the

prison of Gabode, in conditions which are in conformity neither with the standards of domestic law nor with those of international human rights. They have all been charged with treasonable complicity, jeopardizing State security, rebellion, transporting weapons of war and incitement to arm. According to the source, their arrest was due to the fact that they belonged to a movement of rebellion led by General Yacin Yabeh Galab, Chief of Police, against the Head of State.

6. By initiating a trial of strength, which lasted several hours - still according to the source - without any shots being fired by the rebels, General Yacin Yabeh Galab hoped to oblige the Head of State to negotiate. The uprising was severely repressed. It was in that situation that, on 10 December 2000, General Galab and 12 police officers under his orders were arrested and taken three days later to the prison of Gabode.

7. According to the source, the above arrests and related house searches were carried out without warrants, according to discriminatory tribal criteria. The individuals, who were selected from a group of mutineers, all belonged to the family or clan of General Yacin Yabeh Galab, whence the Government's hostility towards them. Before they had been informed of the charges brought against them, the detainees were allowed no visits, nor any medical or legal assistance. They are being held at the prison of Gabode in extremely poor conditions, which clearly jeopardize their physical and mental integrity.

8. Eleven detainees remained in prison for 16 months without judgement, which is clearly more than may be termed a reasonable time. The twelfth (Colonel God) was kept in detention even though his case had been dismissed by the country's Supreme Court. Most of the accused were refused pre-trial release despite applying for it.

9. According to the source's information, the trial should be heard by the Criminal Court of the Djibouti Tribunal. The detainees fear that their trial is bound to be perfunctory and conducted in violation of international norms.

10. In its detailed reply, the Government recalls that, contrary to the source's allegations, in Gabode prison the detainees were allowed unrestricted visits by their officially appointed counsel and their families, a fact which may be confirmed by representatives of the International Committee of the Red Cross, who were in contact with the accused from the start of the proceedings.

11. The accused receive all the medical care they need at any time from a team of doctors and nurses. It was in fact by medical order of one of these doctors that Mr. Yacin Yabeh Galab was provisionally released for humanitarian reasons after a few months in detention. Mr. Bouh Ahmed Omar's case was dismissed by certified submission of the Public Prosecutor, which makes the decision final.

12. On the other hand, while Mohammed Abdillahi God's case, like that of Fathi Mohammed Guelleh, was initially dismissed by the investigating judge, the submission was not certified by the Public Prosecutor, who immediately appealed. The appeal suspended the dismissal of the case pending a ruling by the Court of Appeal, which, endorsing the submissions of the Public Prosecutor, overturned the dismissal order in favour of

Mohammed Abdillahi God and Fathi Mohamed Guelleh (who had meanwhile been provisionally released) and referred all the accused before the Criminal Court, except Bouh Ahmed Omar, whose case was definitively filed.

13. Following that decision, which is binding on both the investigating judge and the prosecution, the accused did not attempt to lodge any further appeal, except for Mohammed Abdillahi God and Fathi Mohammed Guelleh, who requested a judicial review of their case.

14. As soon as the referral decision concerning the other 13 accused became final, the Public Prosecutor brought their case before the Criminal Court for trial.

15. At the end of the trial, which - according to the Government - was held completely openly in the presence of all the accused's lawyers, their families and many national and foreign observers, the court rendered its verdict after a long deliberation. Only one of the accused was acquitted, namely Abdonnasser Awaleh Cheik. The main person accused, Mr. Yacin Yabeh Galab, was sentenced to 15 years' rigorous imprisonment, while Mr. Hussein Gouldon Boulaleh, Mr. Ahmed Aden Faden and Mr. Daher Assan Ahmed were sentenced to 10 years' rigorous imprisonment each. The other accused were sentenced to 3, 4 or 6 years' rigorous imprisonment, after being found guilty of the charges brought against them, in addition to incurring civil penalties, to which they were jointly sentenced.

16. It may be noted that once again none of the accused considered it worth appealing against the decision of the Criminal Court within the period allowed, except for two, whose cases may be examined and judged by the Criminal Court at its next session in the last quarter of 2002, according to the Government.

17. It appears from the above that the judicial proceedings brought against those responsible for the events of 7 December 2000 appear to have been conducted in conformity with domestic and international human rights law, in view, in particular, of the presence of lawyers and observers at the trial and the possibility of lodging appeals, in accordance with the principles governing the protection of all persons subject to any form of detention or imprisonment and without contravening the Universal Declaration of Human Rights.

18. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of the persons referred to above may be regarded as being in conformity with domestic legislation, which itself does not contravene the relevant international norms.

19. The Working Group is grateful to the Government for supplying the necessary information in good time, and requests it to take appropriate steps to become a State party to the International Covenant on Civil and Political Rights.

Adopted on 13 September 2002
