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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

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 forty-fourth, forty-fifth and forty-sixth sessions, held in November 2005, May 2006 and August 2006, respectively. A table listing all the opinions adopted by the Working Group and statistical data concerning these opinions is included in the report of the Working Group to the Human Rights Council at its fourth regular session (A/HRC/4/40).

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OPINION No. 38/2005 (CHINA)

Communication: addressed to the Government on 21 April 2005.

Concerning: Mr. Hu Shigen.

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 2003/31. Acting in accordance with its methods of work, the Working Group forwarded to the Government of China the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of 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.

5. 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 and the response of the Government thereto, as well as the observations by the source.

6. According to the source, Mr. Hu Shigen, born on 14 November 1954, of Chinese nationality, lecturer at the Beijing Language and Culture Institute, resident of Beijing, member of the China Freedom and Democracy Party, the Chinese Progressive Alliance and the China

Free Trade Union Preparatory Committee was initially arrested on 27 May 1992 by the Beijing Public Security Bureau, but the formalities required for criminal detention under Chinese law (*zhengshi daibu*) were complied with only on 27 September 1992. He was held for four months in detention until his formal arrest. Then, he was tried together with 14 other persons, for organizing a counter-revolutionary group and carrying out counter-revolutionary propaganda and incitement, according to articles 98 and 102 of the 1979 Criminal Law of the People's Republic of China. On 16 December 1994, he was convicted of counter-revolutionary organization and counter-revolutionary propaganda, crimes that were later abolished from the Chinese Criminal Law. Mr. Hu was sentenced to 20 years imprisonment and transferred from the Beijing Public Security Bureau's locals to the Beijing No. 2 Prison. At the time when the communication was submitted he was still serving his prison sentence.

7. According to the source, Mr. Hu had helped to establish the China Freedom and Democracy Party and founded its Beijing chapter. He acted as its co-Chairman in January 1991. He had also participated in the Chinese Progressive Alliance. In 1991, he had helped to establish the China Free Trade Union Preparatory Committee. Mr. Hu had also been active in calling for a reassessment of the Government's suppression of the pro-democracy movement in June 1989. He was arrested while planning memorial activities concerning this movement, including a plan to drop leaflets on Tiananmen Square.

8. The source further mentions that, after his arrest, Mr. Hu was held incommunicado for two years prior to his trial in 1994, without access to legal representation. He was tried and sentenced together with 14 other persons, all known as the "Beijing 15", who reportedly received one of the heaviest sentences since the trials concerning the 1989 protesters.

9. The source further indicates that Mr. Hu has suffered and is suffering serious medical problems, such as chronic migraines, intestinal illness, back pain and malnutrition as the result of the harsh treatment he received in prison, and that despite his family's request for a comprehensive physical examination and medical treatment, he is being denied appropriate medical treatment. The continuation of his deprivation of liberty constitutes a serious threat to his health and even his life.

10. The source concludes that Mr. Hu's detention is in violation of his right to freedom of expression and opinion. In addition, no process for review of his conviction has been authorized, despite the repeal from the Criminal Law of the counter-revolutionary crimes of which he was accused.

11. In its observations the Government basically confirms the allegations of the source as to the facts surrounding the arrest and conviction of Mr. Hu. It emphasizes, however, that although according to article 35 of the Chinese Constitution citizens of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration, article 51 of the Constitution stipulates that in exercising their rights and freedoms, citizens may not cause harm to the State, society or the community, or to the lawful rights and freedoms of other citizens. The Government adds that Hu was punished because he had engaged in activities detrimental to State security.

12. In its comments on the Government's observations the source reiterated that Hu was merely punished for the exercise of his freedom of expression.

13. The starting point in the Working Group's assessment is that not even the Government asserted that in engaging in the activities for which he was convicted Mr. Hu ever resorted to violence or would have incited others to violent behaviour. All what he did was participate in the attempt to establish the Chinese Freedom and Democracy Party, participate in the Chinese Progressive Alliance and assist in creating a free trade union. However, these organizations were, or would have been outside the official State structure, all of these activities he carried out in a peaceful manner.

14. Since any restriction on the peaceful exercise of the freedom of association is incompatible with international law, the Working Group renders the following Opinion.

> The deprivation of liberty of Mr. Hu Shigen is arbitrary, being in contravention of articles 9 and 20 of the Universal Declaration of Human Rights and falls under category II 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 Mr Hu, which, under the specific circumstances of this case - the long time already spent in prison, the precarious health conditions of Mr. Hu, and the modification of the qualification of the offence, in which he was found guilty - is Mr. Hu's early release.

16. The Working Group also invites the Government to ratify, as soon as practicable, the International Covenant on Civil and Political Rights.

Adopted on 25 November 2005.

OPINION No. 39/2005 (CAMBODIA)

Communication: addressed to the Government on 15 June 2005.

Concerning: Mr. Channy Cheam.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2 The Working Group conveys its appreciation to the Government of Cambodia for having forwarded the requisite information.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

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.

5. 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 and the response of the Government thereto, as well as the observations by the source.

6. The source informed the Working Group that Mr. Channy Cheam, born on 15 February 1961, of Cambodian nationality, elected member of the Cambodian Parliament for the opposition Sam Rainsy Party, was arrested on 3 February 2005 and is currently being detained at the Toul Sleng National Military Prison in Phnom Penh by the National Military Police.

7. Mr. Cheam was reportedly stopped and arrested on a public road in central Phnom Penh by National Military Police officers under a warrant issued by a Military Public Prosecutor. Although as a member of the National Assembly Mr. Cheam is protected from arrest and prosecution, his immunity was removed by a two-thirds vote by the Assembly on 3 February 2005 and he was arrested a few hours later. Two other members of Parliament of the same Party also had their immunity removed but left the country the same day.

8. Mr. Cheam has been accused, along with other members of the Sam Rainsy Party, of organizing an illegal secret army, in contravention of Cambodian law. These allegations were first raised by the Prime Minister in a public speech in July 2004, long before Mr. Cheam's arrest, although Mr. Cheam was not named then personally. In the weeks following this speech, the Cambodian Military Court launched an investigation, which resulted in charges being brought against a number of members of the Sam Rainsy Party, including Mr. Cheam. Mr. Cheam and the Sam Rainsy Party have strongly denied these accusations and have claimed that the illegal secret army that they are accused of organizing is simply a shadow ministry, one of the several party committees that form the opposition "Government-in-waiting" structure. This party committee on defence and public security had been founded by Mr. Cheam in 2002 and chaired by him since then.

9. The source mentions that after the National Assembly voted to remove Mr. Cheam's parliamentary immunity on 3 February 2005, he was arrested on order of a Military Public Prosecutor, who issued an arrest warrant and a temporary detention warrant the same day. On 4 February 2005, a Military Court Investigating Judge issued a detention warrant on the accusations of charges including complicity in organized crime and fraud, in relation to the allegations of organizing a secret illegal army.

10. The source further mentioned that Mr. Cheam had been denied bail by both the Military Court on 11 February 2005 and the Appeals Court on 21 March 2005 on the grounds that he might flee the country or interfere with the investigation. Both courts have reportedly dismissed arguments raised that his arrest and detention by military jurisdiction is illegal and he has appealed this decision to the Supreme Court. It is reported that, in addition, several other procedural irregularities have taken place since the arrest of Mr. Cheam.

11. The source submitted that the process of removal of Mr. Cheam's parliamentary immunity was not carried out properly and that the leader of the Sam Rainsy Party and another member of Parliament of the same Party are living abroad for fear of arrest. It is alleged that the charges against Mr. Cheam, as well as his arrest and continued detention constitute a politically motivated attempt to silence a member of an opposition party.

12. The source also noted that on 7 February 2005, the United Nations Special Representative of the Secretary-General for Human Rights in Cambodia publicly raised concern about the removal of Mr. Cheam's parliamentary immunity, his arrest and the accusations he is facing.

13. In its comments the Government confirmed the factual allegations of the source as to the lifting of Mr. Cheam's parliamentary immunity and his subsequent arrest. The Government explained that Mr. Cheam faced a number of criminal proceedings against him. He had been charged by the Military Prosecutor for conspiring to set up an illegal armed force, in violation of the Regulation of the Co-Commander-General-in-Chief of the Cambodian Royal Armed Forces, together with Khom Piseth, an army captain, who had escaped abroad when the Military Court issued the arrest warrant.

14. Addressing the question as to why Mr. Cheam had been prosecuted and tried by a military jurisdiction, the Government explained that when a member of the military personnel and a civilian are accused together for the same offence, it is stipulated by law that the offence shall be under the competence of the military court. Therefore, although Mr. Cheam is a civilian, the offence falls under the jurisdiction of the military court.

15. The Government further indicated that the Court had rejected the request for bail for Mr. Cheam based on the evidence presented and because of the risk that he might flee the country or be an obstacle to the investigation. The Government further states that the evidence presented at Court and the testimonies of witnesses showed that Mr. Cheam had created an illegal structure of army personnel in the army, military police, navy, air force, engineering corps, illegally promoted army commanders and recruited soldiers. In particular, he had illegally organized the military structure of military region 5 (located in Battambang and Banteay Meanchy provinces near the border with Thailand) by appointing such personnel as experts, chief and deputy chief of staff and heads of various bureaux. These persons who were illegally recruited into the military structure had to pay fees according to their ranks and files to Mr. Cheam and his accomplice Khom Piesh. For this offence, Mr. Cheam had been accused of fraud.

16. The Government claimed that evidence presented at Court showed that he had attempted to hide his actions before the national and international opinion, but that in fact he had organized real forces in the military units in order to search and collect secret military information, with the aim of destroying the Armed Forces.

17. The Government informed the Working Group that Mr. Cheam's hearing had been opened on 8 August 2005 by the Phnom Penh Military Court in relation to the above-mentioned charges. On 9 August, he was found guilty of fraud and of illegally organizing armed forces, and was sentenced by the same court to a seven-year prison term.

18. In its comments on the observations of the Government the source put forward two arguments to support that the deprivation of liberty of Mr. Cheam was arbitrary.

19. First it asserted that the Decree-Law 5 on the Organization of Military Court (1981), referred to by the Government as a legal basis for the jurisdiction of military courts against Mr. Cheam is null and void, as it had been abrogated by two more recent laws: the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (1992); and the Law on the Organization and Activities of the Adjudicative Courts of the State of Cambodia (1993). Both laws clearly exclude civilians from military courts jurisdictions. The relevant legal texts submitted by the source are reproduced in the annex to this chapter.

20. Secondly, the source set out several serious procedural flaws during trial. It asserted that lawyers for the defence had been prevented from questioning all witnesses for the prosecution, they had not been allowed to call their own witnesses, and their questioning of the defendant had been interrupted for no apparent reason.

21. For purpose of expediency, the Working Group wishes to concentrate its attention on the allegation that the condemnation by a military tribunal of Mr. Cheam, who is a civilian, gave his deprivation of liberty an arbitrary character.

22. The Working Group was satisfied by the convincing arguments of the source, which were supported by legal texts, that under the laws of Cambodia the military tribunal did not have jurisdiction to adjudicate in Mr. Cheam's case.

23. Article 14 (1) of the International Covenant on Civil and Political Rights provides that in the determination of any criminal charge against a person everyone shall be entitled to a fair and public hearing by a *competent*, independent and impartial tribunal established by law (*emphasis added*). The rationale of this provision, which is one of the cornerstones of fair proceedings, is that the trust and confidence in the justice system require a stable regulation of competence and that the authority shall not interfere with the administration of justice arbitrarily modifying or removing the rules on the courts' competence.

24. On that basis, the Working Group renders the following Opinion.

> The deprivation of liberty of Mr. Channy Cheam is arbitrary being in contravention of article 14 of the International Covenant on Civil and Political Rights, and falls under 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 Mr. Channy Cheam.

Adopted on 25 November 2005.

Annex

1. Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (1992) (known as the "UNTAC law", which is the penal code currently in force in Cambodia and under which Mr. Cheam Channy was convicted).

Article 11 ("Military Tribunals") of this law states:

> "Military tribunals have jurisdiction only over military offences. Military offences are those involving military personnel, whether enlisted or conscripted, and which concern discipline within the armed forces or harm to military property. All ordinary offences committed by military personnel shall be tried in civilian courts".

Article 73 ("Abrogation of Inconsistent Rules") states:

> "Any text, provision, or written or unwritten rule which is contrary to the letter or the spirit of the present text is purely and simply nullified".

2. The Law on the Organization and Activities of the Adjudicative Courts of the State of Cambodia (1993), article 9 ("Military Court") states:

> "The military court shall have competence to adjudicate and shall be subjected to appeals for those cases of military offences. Military offences are those committed by military members in the army and which are concerned with military discipline or affect properties of military armed forces. In cases where a military member committed a normal criminal offence, he/she shall be prosecuted by the provincial/municipal court":

Further, Article 24 ("Final Provision"), states:

> "Any provision which stated otherwise contrary to this law, shall be repealed":

OPINION No. 40/2005 (FRANCE)

Communication: addressed to the Government on 19 April 2005.

Concerning: Mr. Joseph Antoine Peraldi.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

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

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

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 made comments on it. 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 received, Mr. Joseph Antoine Peraldi, born on 11 September 1941, a retiree of French nationality residing at Manicola Vecchia, La Confina No. 1, 20167 Ajaccio-Mezzavia (Corse du Sud, France), was arrested outside his home near Ajaccio on the evening of 26 February 2000 by armed plainclothes policemen, some of whom were hooded, as he was parking his car on returning home. He was taken to a police station and shown a warrant from a rogatory commission headed by Judge Bruguière of the 14th Counter-terrorism Section of the Public Prosecution Service in Paris; the warrant bore no signature or seal. On 27 February 2000, he was placed in custody at the Curzo gendarmerie station. On 28 February 2000, he was transferred by special aeroplane to the premises of the National Counter-terrorism Division in Paris, where he was detained for questioning for four days, plus a further day in the Conciergerie, before being brought before an examining magistrate. On 2 March 2000, he was transferred to Fresnes Prison on the outskirts of Paris, where he remains.

6. He has been charged with complicity in the destruction by explosives on 29 November 1999 of premises in Ajaccio occupied by the *Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales* (Social Security Contributions and Family Allowances Agency, URSSAF) and *Direction Départementale de l'Equipement* (Departmental Public Works Office, DDE) and of criminal association in connection with a terrorist undertaking, charges that he has consistently denied.

7. According to the source, at the time at which his case was submitted to the Working Group Mr. Peraldi had still to be tried on those charges and had been in preventive detention for more than 60 months. Furthermore, three requests for his release made on the grounds of breach of articles 5.3 and 6.1 of the European Convention on Human Rights and article 148.1 of the Code of Criminal Procedure to the Paris Court of Appeal and the Court of Cassation were rejected because his continued detention was allegedly the only means of preventing fraudulent concertation with other persons charged in the case and pressure on witnesses.

8. The source states that on 10 June 2005 Mr. Peraldi's lawyer submitted to the European Court of Human Rights an application under article 34 of the European Convention on Human Rights alleging violation of articles 5.3 and 6.1 of the Convention. The source expresses the view that to hold someone in preventive detention for over 60 months far exceeds what would be reasonable in the light of the right to a fair trial.

9. The Government of the French Republic states in its response that a warrant for Mr. Peraldi's commitment was issued on 2 March 2000, after he had been charged. On 16 April 2002, the criminal investigation having been completed, the investigation chamber of the Paris Court of Appeal confirmed in ten instances the decisions of the Paris liberties and

detention judge concerning preventive detention. Mr. Peraldi filed four applications for release with the investigation chamber; all were denied by judgements of the chamber. One of the judgements was the subject of an application for, and was upheld on judicial review.

10. The Government states that, by a decision dated 15 March 2005, the investigation chamber applied the provisions of article 181, paragraph 9, of the Code of Criminal Procedure and ordered the extension of Mr. Peraldi's detention from 31 March 2005, the committal order having become final on 31 March 2004. It points out that article 181, paragraph 8, of the Code provides that an accused person shall be released if he/she has not been tried within a year of the date on which the committal order becomes final and detention has not been extended for six months by an investigation chamber, and that Mr. Peraldi had appeared before the Paris assize court on 4 April 2005, within the time limit, and that his detention had been extended for six months with effect from 31 March 2005.

11. The Government observes that Mr. Peraldi is charged with involvement in the bomb attacks of 25 November 1999 on the premises in Ajaccio of the DDE and URSSAF. The investigation had revealed the involvement in those attacks of leading figures in the political organization "Corsica Viva" and its armed wing "FLNC du 5 mai". Mr. Peraldi had been identified as the de facto leader of Corsica Viva. The Government emphasizes that both attacks were carried out during the day and not only caused substantial property damage but also injured 71 people, some of them so seriously that they had been totally unable to work for 60 days.

12. The Government states that on 22 April 2005 Mr Peraldi was sentenced to 15 years' rigorous imprisonment and that on 8 June 2005 he was transferred to the Borgo detention centre in Corsica. This is close to his family home, so that he is able to receive visits, including from his wife; in addition, he is able to make telephone calls and, using his computer, to write. The Government is therefore of the opinion that his detention cannot be considered arbitrary.

13. In addition, the Government requests the Working Group to declare the communication inadmissible on the grounds that Mr. Peraldi filed an application with the European Court of Human Rights on 10 January 2005 and that it is established practice that individual communications are inadmissible before committees created under United Nations instruments when the dispute in question has been placed before another international investigatory or settlement body.

14. In reply, the source stresses that Mr. Peraldi was arrested outside his home by hooded men who neither wore armbands nor had blue police lights on their vehicles and who pressed a gun to his head. Three quarters of an hour later, at the police station, he was shown a rogatory commission that bore neither the signature nor the seal of the examining magistrate who had ordered his arrest, a circumstance constituting a procedural defect. He was subsequently incarcerated in Fresnes Prison, after having been held for 96 hours in police custody and 19 hours in the Conciergerie before being brought before an examining magistrate.

15. The source stresses that Mr. Peraldi spent 63 and a half months in prevention detention at Fresnes and that in the 39 months which elapsed between his examination by Judge Bruguière

on 22 December 2001 and his trial he saw no examining magistrate, but only the liberties and detention judge, who renewed the warrant for his commitment every six months, as required by law. Moreover, during those 39 months the examining magistrate ordered no additional enquiries and Mr. Peraldi himself took no legal action that could have delayed the closure of his case other than to file an application with the Court of Cassation for review of his committal for trial by the special assize court.

16. The source confirms that since 9 June 2005 Mr. Peraldi has been held in the Borgo detention centre in Corsica, where he can receive visits, in particular from his wife and family, but states that he has no computer and is not producing any written material. It stresses that Corsica Viva was a public movement with statutes on file at the Ajaccio Prefecture and that Mr. Peraldi was a member of its governing body.

17. The source states in conclusion that Mr. Peraldi was sentenced to 15 years' rigorous imprisonment on the personal conviction of the prosecutor, who stated during the trial that he had no material evidence, and of the police superintendent. The attacks in question, however, were carried out by unknown persons under false names. Mr. Peraldi pleaded not guilty throughout his trial and numerous public figures expressed support for him.

18. As regards the admissibility of the communication, the Working Group notes that on 10 January and 30 March 2005 Mr. Peraldi, who had been in preventive detention since 26 February 2000, filed complaints for violation of the right to be tried within a reasonable time or released with, respectively, the European Court of Human Rights and the Working Group. In its response, the Government requests the Working Group to declare the communication inadmissible on the ground that it is established practice that individual communications are inadmissible before committees created under United Nations instruments when the dispute in question has been placed before another international investigatory or settlement body.

19. On the basis of paragraph 25 of its methods of work, the Working Group does not consider itself precluded from the examination of a communication on the sole ground that an identical or the same application is pending before the European Court.

20. Regarding substance, the source makes several complaints, the one most relevant to the Working Group's mandate being that concerning the right to be tried within a reasonable time or released. The Working Group notes that Mr. Peraldi was under criminal investigation for involvement in attacks in Ajaccio in 1999. It is apparent from the history of the proceedings that the criminal investigation began in March 2000, the examining magistrate issued his committal order on 2 September 2003 and the investigation chamber of the Paris Court of Appeal confirmed Mr. Peraldi's committal for trial by the assize court on 19 December 2003. Mr. Peraldi appealed for judicial review of the committal order, an appeal that the Court of Cassation dismissed on 31 March 2004. On 4 April 2005, Mr. Peraldi was tried before the Paris assize court, which found him guilty and sentenced him to 15 years' rigorous imprisonment.

21. In this regard the Working Group notes that, while the right to a fair trial necessarily implies that justice be done without undue delay, the question what is a reasonable time depends on the circumstances and complexity of each case and, where appropriate, on the use of remedies

and of the right periodically to contest the accused's continued preventive detention. In reaching its decisions, the Working Group proceeds on a case-by-case basis. In the case in question, it is of the opinion that, bearing in mind the nature of the offences and the course of the proceedings, the time taken to bring Mr. Peraldi to trial was not excessive. Furthermore, Mr. Peraldi was able on several occasions to contest his continued preventive detention and the competent authorities concluded against releasing him.

22. The source further alleges that Mr. Peraldi's arrest and transfer to Paris were vitiated by a number of procedural irregularities and formal defects and that he was convicted without the production of physical evidence. The Working Group observes in this regard that it has consistently refrained from taking the place of the judicial authorities or acting as a kind of supranational tribunal when, as in the present case, it has occasion to verify the conditions of the judiciary's application of domestic law. When it examines a communication, it prefers not to query the facts and evidence of the case. It seeks only the observance of the relevant rules of international law and investigates whether the way domestic law has been applied has given rise to a violation of such gravity as to make the detention arbitrary.

23. The Working Group is of the opinion that the alleged procedural defects mentioned by the source, many of which the Government disputed, were not 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:

Mr. Joseph Antoine Peraldi's detention is not arbitrary.

25. Having rendered this Opinion, the Working Group, acting on the basis of paragraph 17 (b) of its revised methods of work, decides to file the case.

Adopted on 28 November 2005.

OPINION No. 41/2005 (TUNISIA)

Communication: addressed to the Government on 20 April 2005.

Concerning: Mr. Mohammed Abbou.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

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

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

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 made comments on it. 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 received, Monsieur Mohammed Abbou, born on 10 May 1966, of Tunisian nationality, a lawyer and member of human rights organizations and an opposition political party, was arrested on leaving a café in the evening of 1 March 2005 by persons in plain clothes who were probably police officers. No arrest warrant or other official document was produced at the time. It was only the following day, after several requests from his lawyers, that a rogatory commission dated 28 February 2005 issued by the examining magistrate of the Second Chamber of the Tunis Court of First Instance and signed by a police commissioner from the Criminal Affairs Section was produced.

6. Mr. Abbou was initially held in the "9 April" civil prison in Tunis; on 11 March 2005 he was transferred to the civil prison in El Kef, 170 km from Tunis. The source alleges that the transfer was contrary to domestic law since the Code of Criminal Procedure required that Mr. Abbou be held in a prison within the jurisdiction of the competent court, viz. that of Tunis. Furthermore, the examining magistrate's warrant of commitment stipulated that Mr. Abbou should be held in the 9 April prison in Tunis. Mr. Abbou is apparently still detained in El Kef.

7. The source alleges that the reason for Mr. Abbou's prosecution was his publication of two articles on the Internet: one, on 25 August 2005, in which he compared conditions in Tunisian prisons to those in the Abu Ghraib prison in Iraq, and the other, on 28 February 2005, in which he criticized the fact that the Israeli Prime Minister, Ariel Sharon, had been invited to attend the World Summit on the Information Society in Tunis in November 2005. He is charged under articles 42, 44, 49, 51, 68 and 72 of the Press Code and article 121-3 of the Criminal Code with publication and dissemination of false information causing or likely to cause public disorder, defamation of the judiciary and incitement to break the law.

8. The source states that at the time of submission of the communication Mr. Abbou was in preventive detention and that no date had been set for his trial. The only document in the case file is the rogatory commission dated 28 February 2005.

9. The source deems Mr. Abbou's arrest and detention arbitrary because they resulted from the exercise of the freedom of expression and opinion. It further alleges that there have been numerous irregularities that vitiate the entire proceedings. Firstly, the arrest was illegal because it was not made flagrante delicto. Mr. Abbou should have been summonsed to appear by an examining magistrate, who, after having heard his testimony, could have issued a warrant of commitment. If proceedings had then been opened, the Bar Council should have been informed of them, since Mr. Abbou had been exercising his profession of lawyer normally.

10. Second, the rogatory commission produced on 2 March 2005 is defective in several respects: it is dated 28 February, but was not given to Mr. Abbou's lawyers until 2 March; it mentions neither the order whereby, nor the date on which the prosecutor had authorized the opening of proceedings; it refers to a letter from the Criminal Affairs Section dated 31 September, although September only has 30 days; Tunisian procedure does not require

cases to be referred to examining magistrates in writing, even if the document in question is endorsed by the Attorney-General; pursuant to article 199 of the Code of Criminal Procedure, the fact the case file contains no request from a prosecutor for the start of action by an examining magistrate nullifies the entire investigation.

11. Third, the source states that, although they have gone there frequently in attempts to see him, Mr. Abbou has not been allowed to meet his lawyers since his transfer to the El Kef prison on 11 March 2005. That constitutes a breach of article 70 of the Code of Criminal Procedure. Mr. Abbou refuses to be questioned by the examining magistrate unless his lawyers are present and there has therefore been no such hearing.

12. The source further states that when, on 2 March 2005, Mr. Abbou was to be questioned by the examining magistrate, his lawyers were prevented from attending: they were physically assaulted by police officers, who barred their way to the magistrate's office. The hearing was then postponed to 16 March 2005 despite the fact that article 79 of the Code of Criminal Procedure provides that suspects must be questioned by an examining magistrate within three days of their arrest. On 16 March 2005, the day chosen for the postponed hearing, only the Bar President was allowed to meet the examining magistrate and the latter informed him that, of the 815 lawyers who had signed formal notices of appointment as their colleague's defence counsel, only ten would be allowed to discharge that function. When the Bar President tried to discuss that decision, he was insulted and forcibly expelled from the magistrate's office. Mr. Abbou was not present that day for a hearing.

13. The Government states in its response that the judicial authorities in Tunis instituted proceedings against Mr. Abbou, a lawyer and member of the bar, following the filing against him by a female lawyer of a complaint for an assault that occasioned physical injury and necessitated urgent medical attention followed by one month's sick leave. Mr. Abbou was also charged with defamation of the judiciary, dissemination of false information and incitement to break the law.

14. It further states that on 2 March 2005 Mr. Abbou appeared, together with his lawyers, before the examining magistrate of the Tunis Court of First Instance, who granted his request for a postponement to enable his lawyers to prepare his defence.

15. On 16 March 2005 Mr. Abbou again appeared before the examining magistrate, who authorized 17 of his lawyers to attend the hearing. Mr. Abbou contested this decision and refused to be questioned, on the ground that not all his lawyers were present. There not being room for all Mr. Abbou's lawyers and Mr. Abbou refusing to be questioned unless they were all present, the examining magistrate reminded the accused of the provisions permitting continuation of the proceedings notwithstanding his refusal to answer. In disregard of article 73 of the Code of Criminal Procedure, which expressly authorizes the prosecution service to be present during the questioning and confrontation of accused persons, one of the lawyers attending this meeting objected to the presence of the prosecution service.

16. On 23 April 2005, the examining magistrate decided to close the investigation and to commit the accused for trial by the criminal chamber of the Tunis Court of First Instance on a charge of assault and battery resulting in a level of permanent disability not exceeding 20 per cent.

17. Regarding the other charges, the Government states that the examining magistrate met with an absolute refusal on the part of Mr. Abbou, who, by his writings and attitude, rendered himself guilty of disseminating false information and defaming the judiciary. On 28 April 2005, the above criminal chamber sentenced Mr. Abbou to two years' immediate imprisonment for having assaulted a female colleague so as to occasion a level of permanent disability not exceeding 20 per cent and to 18 months' imprisonment for defamation of the judiciary, dissemination of false information and incitement to break the law.

18. Mr. Abbou appealed the verdict and appeared before the criminal chamber of the Tunis Court of First Instance on 10 June 2005 as a detainee. During the consideration of the first charge he reportedly refused to respond to the court's questions, leading to the application by the president of the court of article 148 of the Code of Criminal Procedure, under which a defendant's silence can be disregarded and the floor given to one of the defence counsel. Later, when the president tried to call on another of the defence lawyers, one of them objected, each of the two wishing to be the first to speak. In view of this disagreement and the subsequent disturbance, the president decided, at the request of the prosecution, to suspend the hearing until order was restored. As soon as that had been achieved, the hearing was resumed in the presence of Mr. Abbou's lawyers, who made a number of formal requests. When these were refused, the defence lawyers withdrew; two of them and a number of observers remained in the courtroom. The court then considered the second case and Mr. Abbou admitted disseminating the text in question. The two lawyers who had remained in the courtroom declined to plead. After deliberating, the court upheld the verdict of the court of first instance both as to civil and as to criminal law and, in the absence of an appeal from either the defendant or the prosecution service, the judgement became final.

19. The Government concludes that Mr. Abbou's detention is not arbitrary, since the proceedings giving rise to his conviction were conducted in accordance with the valid rules of procedure and the rights of the defence. It states that Mr. Abbou has enjoyed all his rights since his imprisonment, including those to medical examination, discussions with his lawyers and visits from relatives.

20. In response to the Government, the source observes that Mr. Abbou was arrested without a warrant and that neither he nor his family was told of the reasons for his arrest. The security service agents who arrested him were not entitled to do so, since article 10 of the Code of Criminal Procedure bars them from performing such acts (this being the opinion of Tunisian lawyers who consider that, not being members of the judicial police, security service agents are incompetent to make arrests, their authority having been linked to the State security courts that were abolished in 1987). The source also states that, contrary to article 45 of Law 87 of 1989, the Bar President was not informed of Mr. Abbou's arrest or incrimination.

21. According to the source, Mr. Abbou was detained in the 9 April prison after being brought before the examining magistrate on 2 March and then transferred to the prison in El Kef 200 km from Tunis and far from his family. The source alleges that this was done to keep him away from his lawyers, who are based in Tunis and several of whom, particularly those considered "activists", have been refused permission to visit him in the El Kef prison.

22. Regarding the investigation initiated by the judicial authorities in Tunis on the ground of a complaint by a female lawyer of assault that occasioned physical injury, the source states that the case file contained only a single sheet of paper, an unsigned medical report dated 2005 and referring to an incident alleged to have taken place in 2002.

23. The source concludes by stating that the article by Mr. Abbou that was used to incriminate him condemned the use of torture in Tunisia. In the source's opinion, however, the reason for Mr. Abbou's arrest was another article he wrote in which he compared the Israeli Prime Minister, Ariel Sharon, to the President of Tunisia, Zine el Abidine Ben Ali.

24. It is apparent from the foregoing that the allegations of the source and those of the Government differ. In the source's view, Mr. Abbou's arrest was contrary to Tunisian law and his conviction was reached after an unfair trial and intended to penalize his exercise via the Internet of the freedom of expression. In the Government's view, the investigation that led to Mr. Abbou's conviction arose out of the filing of a complaint against him by a female member of the bar and he was subsequently charged with defamation of the judiciary, dissemination of false information and incitement to break the law.

25. The Working Group notes that on 1 March 2005, Mr. Abbou, a lawyer and member of several human rights organizations and an opposition political party, was arrested for having, on 28 February, posted on the website tunisnews.net an article strongly criticizing the Government. It also notes that the rogatory commission that purportedly provided the legal basis for the arrest is flawed in several respects. For example, it bears the signature not of the examining magistrate but of a police commissioner. In this rogatory commission, Mr. Abbou is accused of offences in connection with an article he posted on the above website on 25 August 2004, namely "dissemination and propagation of false and malicious information likely to disturb public order, defamation of the judiciary, incitement of citizens to break the law of the Republic and presentation to the public of writings likely to disturb public order". There is no mention in the document of a complaint against Mr. Abbou by a female colleague.

26. The Group concludes from the foregoing and from the circumstances of Mr. Abbou's trial, from the fact that he was transferred to El Kef prison although the investigation and trial took place in Tunis, and from the support he received from the Tunisian Bar and numerous national and international non-governmental organizations that it was indeed the articles he published on the Internet, and not the complaint from a female colleague, that were the reason for his arrest and conviction. According to the source, 815 lawyers agreed to defend him.

27. With respect to the exercise of the freedom of expression via the Internet, the Working Group reaffirms that the freedom of expression and opinion guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights includes the right to impart ideas of all kinds in any form and by any means except when, in exercising that right, the person or persons concerned incite to crime or racial hatred, use violence or, in breach of the law, threaten national security, public order, public health or morals or the rights or reputation of others, which does not seem to have been the case in the present instance. In the article entitled *Abou Ghraib d'Iraq et Abou Ghraib de Tunisie* (Abou Ghraib in Iraq and Abou Ghraib in Tunisia) for which he was sentenced to 18 months'

rigorous imprisonment, Mr. Abbou expresses political opinions critical of the Head of State and his Government's policy without overstepping the allowable limits of the exercise of freedom of expression.

28. The Working Group's position is that the freedom of expression protects not only opinions and ideas that are favourably received or considered inoffensive or of no account, but also opinions and ideas that may offend public figures, including political leaders. The peaceful expression of an opinion via the Internet is, if the opinion is not couched in violent terms or does not constitute an incitement to national, racial or religious hatred or to violence, within the allowable limits of the exercise of freedom of expression.

29. In view of this position, the Working Group felt it unnecessary to examine the source's allegation that the trial was unfair.

30. In the light of the foregoing, the Working Group renders the following Opinion:

> The detention of Mr. Mohammed Abbou is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to both of which instruments the Tunisian Republic is a party, and falls under category II of the categories applicable to the consideration of cases submitted to the Working Group.

31. 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 and the International Covenant on Civil and Political Rights.

Adopted on 28 November 2005.

OPINION No. 42/2005 (COLOMBIA)

Communication: addressed to the Government on 7 July 2005.

Concerning: Mr. Luis Torres Redondo.

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 2003/31. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government of Colombia.

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

3. The Working Group also takes note with appreciation of the information received from the source stating that Mr. Torres Redondo is no longer in detention.

4. Having examined all the available information, and without pronouncing on the arbitrariness or otherwise of the detention, the Working Group decides to file the case of Mr. Torres Redondo, in accordance with paragraph 17 (a) of its methods of work.

Adopted on 29 November 2005.

OPINION No. 43/2005 (CHINA)

Communication: addressed to the Government on 10 March 2005.

Concerning: Mr. Peng Ming.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group conveys its appreciation to the Government of China for having forwarded the requisite information.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

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.

5. 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 and the response of the Government thereto, as well as the observations by the source.

6. The source informed the Working Group that Mr. Peng Ming, a citizen of China born on 11 October 1956, participated in 1997 in the establishment of the China Development Union (CDU), a non-governmental organization dedicated to promoting sound environmental policies and sustainable development in China. CDU was subsequently banned by the Government. From January 1999 to August 2000, the authorities detained Mr. Peng in a re-education-through labour camp. After his release from the camp, he moved to the United States of America, where he was granted refugee status. In October 2001, while in the United States, he participated in the establishment of the China Federation Party (CFP) and was elected its Chairman. The Party declared its intention to become the basis for future democratic governance in China.

7. In March 2001, the United States Immigration and Naturalization Service authorized Mr. Peng to immigrate into the United States. On 15 May 2001, the United Nations High Commissioner for Refugees (UNHCR) issued a document certifying that Mr. Peng Ming,

his wife Nie Ying, their son Peng Yiale and their daughter Peng Jia-Yin are considered refugees under the mandate of UNHCR. The certificate has a validity of four months. Mr. Peng arrived in the United States in August 2001. Most recently, on 19 March 2004, the United States Department for Homeland Security issued Mr. Peng Ming a Refugee Travel Document.

8. In May 2004, Mr. Peng travelled to Thailand and, from there, to Myanmar. The purpose of his travelling to Myanmar was to set up safe havens for Chinese refugees. On or around 22 May 2004, security forces of Myanmar arrested Mr. Peng on charges of possessing huge amounts of counterfeit yuan renminbi. On 28 May 2004, they handed him over to the police in Yun Nan province (China). He was detained at the Yun Nan Province Detention Centre.

9. According to a Detention Notice dated 16 June 2004, the Xishuangbanna Police Department detained Mr. Peng under section 61 of the Criminal Procedure Law on charges of "alleged possession and use of counterfeit currency". According to a Detention Notice dated 18 June 2004, the Wuhan City Police detained Mr. Peng on 17 June 2004 on charges of "alleged administrative procedure law offences". He was transferred to Wuhan City Detention Centre No. 2. According to an Arrest Notice dated 23 July 2004, the Wuhan City Police arrested Mr. Peng on that same day on charges of "alleged kidnapping".

10. Mr. Peng continues to be detained at Wuhan City Detention Centre No. 2. Although his relatives have hired two lawyers practising in China to defend him, their access to him has been strictly limited. Mr. Peng suffers from painful kidney stones but is denied the required hospitalization.

11. The source further alleges that Mr. Peng is detained in order to prevent him from carrying out his political activities aimed at peacefully bringing to a fall the current Government of China and substituting it with a democratically elected Government. The continuously changing charges against Mr. Peng (first possession of counterfeit currency, then administrative procedure law offences, and finally kidnapping) corroborate that the criminal proceedings against him are arbitrary and a sham, covering the actual reasons for his detention. Also Mr. Peng's previous detention in a re-education-through-labour camp bears out the purely political motives behind his detention.

12. The source finally states that Mr. Peng is being deprived of his right to due process. Already his being handed over to the Chinese authorities was in violation of international law, in particular of the principle of non-refoulement. Moreover, international law requires that persons in detention be provided access to their family and a lawyer. Mr. Peng is denied both.

13. In its response, the Government indicated that Mr. Peng Ming is an ethnic Han male born in 1965; he is university educated and a native of Beijing. In 2001 he began developing a terrorist organization. He used articles, publications and essays posted on the Internet to disseminate his violent terrorist ideology, raise funds, establish a base and recruit trainers. He used all sorts of methods including kidnapping and murder to carry out violent terrorist activities and sought to "bring Beijing to a standstill in an instant and create chaos", provoking "concomitant social unrest and economic crisis". In June 2003 he plotted to train terrorist cadres in Myanmar; the trainees he recruited would then teach their students how to carry out such

violent terrorist activities as kidnappings and murders. When they had completed their training the students would be given diplomas, and it was hoped that after returning to China they would actively recruit members for the terrorist organization and carry out kidnappings and terrorist activities.

14. The Government further states that during a two-year period between November 2001 and 2004 Mr. Peng, acting from outside China, had collected certain information about influential bank presidents, government officials and business leaders inside and outside China, and plotted, organized and carried out a series of kidnappings (all of which were aborted). On 22 May 2004, he had entered Thailand from Myanmar and was arrested by the Myanmar police, who found him to be carrying 108 million yuan in counterfeit money. On 20 July 2005, the Wuhan People's Procuratorate in Hubei Province brought proceedings against him in the Wuhan Intermediate People's Court, charging him with the crime of organizing and leading a terrorist organization, the crime of kidnapping and the crime of possessing counterfeit money. At the time of the Government's reply, the case was being heard.

15. The Government concludes by stating that terrorism constitutes a brutal violation of democracy and human rights and is the common enemy of all mankind and that it reflects utter disregard for human life and man's creations and casts a shadow over the life proclaimed in the Universal Declaration of Human Rights, a life "in which human beings shall enjoy … freedom from fear". Accordingly, safeguarding human rights must involve cracking down on terrorism. The Government resolutely opposes all forms of terrorism and is actively responding to the United Nations Millennium Declaration by working alongside all countries of the world to support, adopt and coordinate measures to combat international terrorism.

16. The source, commenting on the response from the Government, argues that the Government is trying to distort the case in displaying Mr. Peng as a criminal and a terrorist, when he is clearly a foreign-based dissident, with United Nations refugee status, recognized by UNHCR. The source claims that the Government of Myanmar detained Mr. Peng on inaccurate charges, which amounts to a kidnapping act. The source claims that the same charges were used against Mr. Peng by the Chinese authorities, i.e. possession of counterfeit money in Myanmar. This pretext has also been used against other dissidents. The source argues that, if the Government of China insists on bringing Mr. Peng to trial, this should take place in a third country where he would be guaranteed a fair trial, which is not the case in China because he had been persecuted there in the past.

17. The source states that the Government confirms, in its essentials, the information provided by the source in relation to the circumstances in which Mr. Peng Ming's detention took place. Nevertheless, the Government does not provide any clarification with regard to the procedure followed in order to obtain that Mr. Peng Ming be expelled from Myanmar and transferred to the Chinese authorities of the Province of Yun-Nan.

18. The Government, which justifies Peng Ming's detention for his alleged terrorist ideology and activities of a violent nature, further reports that he is currently being judged for the charges that the District Procurator of Hubei Province has raised against him, relating basically to organizing and directing a terrorist organization, kidnapping and possession of counterfeit money.

19. The source reiterates that Mr. Peng Ming is, certainly, a political dissident opposed to the current Government and has published two books critical of the Government. It underlines, however, that, he did not, in any way, support terrorist objectives or carry out violent activities.

20. In its assessment of the information available in the communication at issue, the Working Group finds it difficult to consider the purposes attributed by the Government to Mr. Peng Ming's activities as equivalent to terrorist activities. The imprecise and diffuse way in which the Government describes the ideology of the organization created by Peng Ming, allegedly with the aim of "trying to paralyze the activity of Beijing by means of social worry and economic crisis" [sic] cannot be considered sufficient to substantiate charges of terrorist activity. In its evaluation, the Working Group takes into consideration the information provided by the source and not contested by the Government, that Mr. Peng Ming spent one and a half years in a "re-education through labour" camp and was recognized as a refugee by UNHCR.

21. In addition, the Government has not provided any specific information on the alleged "gathering of information on political and financial personalities" and aborted kidnappings that it imputes to Peng Ming.

22. Finally, though the Government reports that the District Attorney has also accused Mr. Peng Ming of counterfeiting 108 million Yuan, the link by which it connects this offence to Mr. Peng Ming's political activities, as well as the clear denial of this allegation by the source, allows the Working Group to suppose that this charge of a common crime could be politically motivated.

23. The Working Group considers that any limitation of Mr. Peng Ming's legitimate political and non-violent activities carried out peacefully and in exercise of his rights to freedom of association and expression would be contrary to the international human rights law enshrined in the Universal Declaration of Human Rights.

24. In the light of the foregoing, and without any need to analyse the allegedly irregular way in which Mr. Peng Ming was transferred from Myanmar to China, the Working Group renders the following Opinion:

> The deprivation of liberty of Mr. Peng Ming is arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.
>
> As a consequence of the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Peng Ming, and bring it in conformity with the principles set forth in the Universal Declaration of Human Rights.
>
> The Working Group reiterates its recommendation to the Government of China to consider ratification of the International Covenant on Civil and Political Rights.

Adopted on 29 November 2005.

OPINION No. 44/2005 (IRAQ AND UNITED STATES OF AMERICA)

Communication: addressed to the Governments of Iraq and the United States of America on 18 March 2005.

Concerning: the case of Mr. Abdul Jaber al-Kubaisi.

Both States are parties to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2 The Working Group regrets that only the Government of the United States of America responded, providing general information only, which was not related to the person concerned. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. According to the information received, Mr. Abdul Jaber al-Kubaisi, founder and director of the weekly newspaper *Nida al watan* ("*Call of the Nation*") and President of the Patriotic Alliance of Iraq; resident in Al-Hamriya, Baghdad. Mr. Al-Kubaisi was a victim of the regime of Saddam Hussein. He had been forced into exile for almost 30 years. First he was in the Syrian Arab Republic and then, since 1995, in France, where he and his family obtained refugee status. Two of his brothers were executed under Saddam Hussein's regime. However, Mr. Al-Kubaisi supported neither the United Nations sanctions against Iraq nor the war in 2003. He worked closely with some of the current leaders of Iraq.

5. Mr. Al-Kubaisi was arrested at his home on the night from 4 to 5 September 2004 by around 30 soldiers of a Special Forces Unit of the United States Army. They arrived in three armoured vehicles. One helicopter was surveying the operation. No arrest warrant was shown to him. The troops took him to an undisclosed destination. Eight hours later, on 5 September 2004, the same Special Forces returned to search his house. They confiscated the files and archives relating to the *Nida al watan* newspaper, broke the main door and the windows and destroyed the furniture.

6. In February 2005, Mr. Al-Kubaisi's brother received unofficial reports that Mr. Al-Kubaisi was being detained in Cropper camp, a United States military camp located near Baghdad airport. No official information was given to his family and no reasons have been provided to justify his detention. Visits and correspondence have not been authorized. Mr. Al-Kubaisi's lawyer has not been authorized to see him.

7. According to the source, Mr. Al-Kubaisi was being held in an isolation cell under deplorable and inhuman conditions. Fears have been expressed that he may be subjected to torture.

8. It was further reported that, on several occasions, Mr. Al-Kubaisi's relatives had addressed the Iraqi Ministry of the Interior; the Iraqi Army; the United States military authorities; the Embassy of the United States and the office of the International Committee of the Red Cross in Baghdad, without results.

9. The source considers that Mr. Al-Kubaisi was arrested because his articles opposing the United States-led military occupation of Iraq and calling on the Iraqi people to end it. It was said that, the day before his arrest, Mr. Al-Kubaisi had given an interview to the French newspaper *Journal du Dimanche* on the situation of two French journalists held hostage in Iraq, Christian Chesnot and Georges Malbrunot. In that interview, he stated he would do everything in his power to have the journalists freed.

10. The Government of the United States provided general information on Camp Cropper, a detention facility reserved for high-value security detainees. It argued that security detainees held by the multinational force in Iraq (MNF-I) under the authority of international humanitarian law and Security Council resolution 1546 fall into the scope of international humanitarian law and therefore claimed that the Working Group on Arbitrary Detention did not have the mandate to consider this issue.

11. The Government of the United States offered general information about the treatment of security detainees and its cooperation on this matter with the Government of Iraq and the International Committee of the Red Cross. However, it refused to confirm or deny the presence of Mr. Al-Kubaisi at Camp Cropper or under its custody. The Government of the United States invites the family to submit their request for information to the multinational force.

12. In commenting on the Government response, the source noted that the Government of the United States did not reply to the questions asked about the arrest of Mr. Al-Kubaisi, and reaffirmed that the ICRC is unable to visit Camp Cropper and to bring concrete information to his family. This is also the case for the Iraq authorities and the lawyers from the Iraq bar association. The source added that the European Parliament had adopted a resolution on Iraq in which it requested the liberation of Mr. Al-Kubaisi.

13. The Working Group would like to stress as a matter of principle that the application of international humanitarian law to an international or non-international armed conflict does not exclude the application of human rights law. The two bodies of law are complementary and not mutually exclusive. In the case of a conflict between the provisions of the two legal regimes with regard to a specific situation, the *lex specialis* will have to be identified and applied. The Working Group adopted this approach in its "Legal Opinion Regarding the Deprivation of Liberty of Persons Detained in Guantánamo Bay" (E/CN.4/2003/8, para. 64).

14. As far as the mandate is concerned, the Working Group considers that, where persons are deprived of their liberty in a situation of international armed conflict but are denied the protection of the Third or Fourth Geneva Conventions, the reasons for not dealing with situations

of international armed conflict underlying paragraph 14 of the Methods of Work cannot find any application.[1] Accordingly, the Working Group has already dealt with communications from detainees finding themselves in such a situation.[2]

15. In the case under consideration, Mr. Al-Kubaisi was arrested at his home on the night from 4 to 5 September 2004 by soldiers of a Special Forces Unit of the United States Army and taken to an undisclosed destination. This occurred at a time when the United States no longer has the status of occupying power in Iraq under the Fourth Geneva Convention. Even if we consider the United States as an occupying power in that country and that Mr. Al-Kubaisi is detained as a threat to the security of the occupying power, or if we consider that the United States has permission under the Security Council resolution 1546 (2004) to detain civilians, both countries are still bound by the provisions of the Fourth Geneva Convention and article 9 of the International Covenant on Civil and Political Rights to which the United States and Iraq are party and have not derogated from.

16. Under article 78 of the Fourth Geneva Convention, the administrative detention or internment of civilians in occupying territories can only proceed "for imperative reasons of security". In its Commentary on article 78 of the Convention, the International Committee of the Red Cross explains that: "In any case, such measures can only be ordered for real and imperative reasons of security; their exceptional character must be preserved." Internment shall be carried out according to regular procedure in accordance with the provisions of the Convention.

17. Article 9 (4) of the International Covenant on Civil and Political Rights requires that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful".

18. In the absence of any comment from the Government of the United States on the specific case submitted to its attention and the lack of reply by the Government of Iraq, the Working Group is therefore bound to accept the allegations of the source, namely that Mr. Al-Kubaisi was arrested and continues to be detained in Camp Cropper, a United States military camp for no reason other than his political opinions. The Working Group thus considers that Mr. Al-Kubaisi's prolonged detention (14 months) in an undisclosed place without any access to the International Committee of the Red Cross, family members, lawyers or other persons of the outside world violates the provisions of the Fourth Geneva Convention and article 9 of the International Convention on Civil and Political Rights.

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[1] *See* the Working Group's *legal Opinions Regarding detention at El-Khiam prison (E/CN.4/2000/4, paras. 11-18) and the Deprivation of Liberty of Persons Detained in Guantánamo Bay* (E/CN.4/2003/8, page 21).

[2] *See* Opinion No. 5/2003 (United States of America) (E/CN.4/2004/3/Add.1, page 33).

19. In the light of the foregoing, the Working Group renders the following Opinion:

> On the basis of the above information, the Working Group concludes that the detention of Mr. Abdul Jaber al-Kubaisi is of an arbitrary character, being in contravention of 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.

20. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Abdul Jaber al-Kubaisi and to bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 30 November 2005.

OPINION No. 45/2005 (IRAQ AND UNITED STATES OF AMERICA)

Communication: addressed to the Governments on 17 January 2005.

Concerning: Mr. Tariq Aziz.

Both States are parties to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. (Same text as paragraph 3 of Opinion No. 38/2005.)

3. In the light of the allegations made, the Working Group welcomes the information provided by the Government of the United States of America. It would have welcomed the cooperation of the Government of Iraq. The Working Group transmitted the reply provided by the Government of the United States to the source and received its comments.

4. According to the information received from the source, Mr. Tariq Aziz, a citizen of Iraq born in Mousal, Iraq, on 6 February 1936, is a journalist and English language teacher by profession. He was a high-ranking member of the Government of Iraq, first as Minister of Foreign Affairs and then as Vice-President.

5. On 20 March 2003, military forces belonging primarily to the United States and the United Kingdom of Great Britain and Northern Ireland invaded Iraq. On 9 April 2003, Baghdad was formally secured by United States forces and the regime of Saddam Hussein was declared to have ended. On 1 May 2003 the President of the United States announced the end of major combat operations in the Iraq war. As recognized in Security Council resolution 1483 (2003), around this date the United States and the United Kingdom "assumed the specific authorities, responsibilities, and obligations under applicable international law … as occupying powers under unified command". The Coalition forces established a Coalition Provisional Authority (CPA) under an Administrator named by the United States. CPA named an Interim Iraqi

Governing Council. On 30 June 2004, the occupation of Iraq ended and CPA ceased to exist. As of that date, Iraq reasserted its full sovereignty and an Interim Government of Iraq assumed full responsibility for governing Iraq (see paragraphs 1 and 2 of Security Council resolution 1546 (2004)). In accordance with this resolution, however, a multinational force, composed primarily of United States and United Kingdom military forces, remained in Iraq at the request of the Iraqi Government.

6. The source further states that, on 24 April 2003, Mr. Tariq Aziz surrendered to the members of the United States military forces in Iraq and was taken into custody at an undisclosed location. From that date to the date of the communication in December 2004, his only contact with his family (which currently lives in Jordan) was through two letters delivered to them through the Baghdad section of the International Committee of Red Cross. His family does not know whether he has ever received the numerous letters they sent to him.

7. The source does not know whether Mr. Aziz was initially detained as a prisoner of war or with a different legal status.

8. On 10 December 2003, the Iraqi Governing Council established the Iraqi Special Tribunal. According to article 1 (b) of its Statute, the Tribunal "shall have jurisdiction over any Iraqi national or resident of Iraq accused of the crimes listed in articles 11 to 14 below, committed since 17 July 1968 and up until and including May 1, 2003, in the territory of the Republic of Iraq or elsewhere, including crimes committed in connection with Iraq's wars against the Islamic Republic of Iran and the State of Kuwait." The crimes listed in articles 11 to 14 of the Statute are genocide, crimes against humanity, war crimes, and violations of certain Iraqi laws listed in article 14. On 11 October 2005, the President of Iraq signed a new statute and new rules of procedure of the court, which rename it the Supreme Iraqi Criminal Tribunal (which is the term used hereinafter).

9. The source states that on 1 July 2004, Mr. Aziz appeared before the Iraqi Special Tribunal in order to enter a plea, as provided in article 21 (c) of the Statute. The hearing took place at a secret location and the defendant was not assisted by counsel. Pictures of this hearing were taken by an authorized company and passed to broadcasters all over the world. These pictures showed Tariq Aziz wearing the orange overalls typical of persons in United States detention and with chains at his feet. He had greatly lost weight and appeared lost and confused.

10. A son of Tariq Aziz appointed a team of lawyers to represent his father. As of the date of the communication in December 2004, however, these lawyers had not been allowed to contact their client, either by visiting him in his place of detention, or by phone, or by exchange of correspondence. Nor had the lawyers received any information or documents relating to the charges raised against him. He continued to be detained incommunicado at an undisclosed location, without access to legal counsel or family.

11. The source alleges that the detention of Tariq Aziz is arbitrary in respect of category III of the Working Group's mandate. The source argues that because Tariq Aziz was forced to prepare his trial in conditions of complete isolation from the outside world, detained at a secret location, deprived - at the time of the initial communication - of all contact with legal counsel

(although the charges raised against him must be of the most serious nature to fall within the mandate of the Supreme Iraqi Criminal Tribunal), and in a precarious state of health, the non-observance of international norms relating to fair trial is so serious as to render his pretrial detention, as well as any detention upon conviction, arbitrary.

12. The source submits that, whatever Tariq Aziz's status in the period following his arrest, he is currently de jure detained by the sovereign Iraqi authorities, while he is de facto in the hands of the Coalition forces, more specifically United States forces. The source therefore concludes that legal responsibility for his arbitrary detention attaches both to Iraq and to the United States of America.

13. In its reply to the communication, the Government of the United States underlines that, as also noted by the source, Tariq Aziz is under physical custody of the multinational forces (MNF-I) pursuant to arrangements between MNF-I and the Iraqi Ministry of Justice, but is being held under the legal authority of an Iraqi tribunal. The Government of the United States therefore considers that the Government of Iraq is best placed to clarify the legal basis for the detention of Tariq Aziz.

14. As noted above, however, the Working Group did not receive any information from the Government of Iraq.

15. In replying to the statement by the Government of the United States, the source insists that both Governments must be considered responsible for the detention of Tariq Aziz. In particular, the Government of the United States is responsible for the severe isolation to which Tariq Aziz is subjected, which prevents him from adequately preparing his defence.

16. The source further provides an update on the situation of Tariq Aziz, who soon after the communication was submitted to the Working Group in December 2004, was allowed a first visit by one of his defence counsels. Four further meetings between Tariq Aziz and the lawyer followed in March and August 2005. At all times during these interviews, a United States official remained present. Moreover, Tariq Aziz still has not been informed of any charges against him. The source concludes that the detention of Tariq Aziz continues to be arbitrary for the reasons it adduced at the time of the communication.

17. The communication was brought to the attention of both concerned Governments by a letter of the Chairperson-Rapporteur dated 17 January 2005 in conformity with section 15 of the Working Group's revised methods of work, requesting the Governments to provide their respective reply within 90 days.

18. Since no response was received from either Government within the given time limit, the Working Group sent a communication to the Permanent Mission of the Republic of Iraq to the United Nations Office at Geneva (on 29 April 2005) and to the Permanent Mission of the United States of America to the United Nations Office at Geneva (on 3 May 2005). In the communication it informed both Governments that the forthcoming session of the Working Group would take place in Geneva from 23 to 27 May 2005, during which the Group would discuss the communication submitted on behalf of Tariq Aziz. It reminded the Permanent Missions that no answer had been received to the Chairperson-Rapporteur's letter of 17 January.

On 18 July 2005 the Government of the United States provided a reply, in which it recommended that the Working Group seek information from the Government of Iraq. Since the Government of Iraq had not responded to the Chairperson-Rapporteur's letter of 17 January 2005, the Working Group again urged the Iraqi Permanent Mission in Geneva in two communications dated 8 August and 28 October 2005. No response was received.

19. Paragraph 16 of the Working Group's revised working methods reads, that "Even if no reply has been received upon expiry of the time limit set, the Working Group may render an opinion on the basis of all the information it has obtained."

20. To be able to spell out the law applicable to the different issues raised by the source and identify the Government(s) responsible under international law for the legality of the detention and the possible violation, if any, of the rights of Mr. Tariq Aziz, the Working Group considers it necessary to highlight the particularity of the circumstances of the case before it.

21. The Working Group would like to stress that Mr. Tariq Aziz was Vice-President of Iraq when armed forces of the United States and the United Kingdom invaded Iraq in March 2003. On 1 May 2003, the Security Council of the United Nations in its resolution 1483 admitted that the United States and the United Kingdom of Great Britain had assumed the authority, responsibility and applicable obligations under international law in the territory of Iraq. It is undisputed that Mr. Aziz surrendered to the United States military forces on 24 April 2003 and since that time has been detained. The source is uncertain as to whether Mr. Aziz was given "prisoner of war" (POW) or "civilian internee" status during the initial period of his detention. In its reply, the United States Government did not clarify under which status Tariq Aziz had initially been detained. It is, however, well known that from the early days of the conflict in Iraq, the United States Government recognized that the Geneva Conventions applied comprehensively to individuals captured in the conflict. The United States Government also gave assurances that it intended to comply with article 5 of the Third Geneva Convention by treating all belligerents captured in Iraq as prisoners of war unless and until a competent tribunal determined that they were not entitled to POW status.[3]

22. The position of the Working Group is that it is indifferent whether at the time of his being taken into custody he was considered a prisoner of war or a civilian internee, because it is undisputed that even if the invading coalition stated that the major combat operations finished on 1 May 2003, the total occupation still continued until 30 June 2004. Therefore as Tariq Aziz's detention took place in the context of an international armed conflict resulting in the invasion of Iraq by the United States Government forces and the armed coalition, his status is protected by the Third Geneva Convention, at least until 30 June 2004.

[3] Statement made in April 2003: see e.g. "Briefing on Geneva Convention, EPW and war crimes" 7 April 2003, available at: http://www.defenselink.mil/transcripts/2003/t04072003_t407genv.html.

23. Consequently, and in accordance with paragraph 16 of its methods of work (14 of its revised methods of work),[4] the Working Group, will not assess the lawfulness of Mr. Tariq Aziz's detention for the period from 13 December 2003 to 30 June 2004, as it occurred during an ongoing international armed conflict insofar as that the US Government recognized that the Geneva Conventions applied to individuals captured in the conflict in Iraq and it seems according to the source that the International Committee of the Red Cross was in a position to communicate two letters to Tariq Aziz's family.

24. According to the fifth paragraph of article 119 of the Third Geneva Convention and the second paragraph of article 133 of the Fourth Geneva Convention it is permissible for prisoners of war and civilian internees, against whom penal proceedings are pending, to be detained until the close of such proceedings. The Working Group is not in a position to assess the conformity to the applicable provisions of international humanitarian law (articles 12, 118 and 119 of the Third Geneva Convention to which the United States and Iraq are parties), of the procedure under which, Mr. Tariq Aziz was transferred by the Coalition Provisional Authority in its power of occupant to the Interim Government of Iraq. It is, however, not disputed that if de jure transferred, Mr. Tariq Aziz remains de facto in United States custody. The United States Government, in its reply to the Working Group, recognizes that "the detainee is under the custody of the 'Multinational Force - Iraq' according to an agreement reached with the Minister of Iraqi Justice although he is under the authority of an Iraqi court".

25. The Working Group concludes that until 1 July 2004, Mr. Tariq Aziz had been detained under the sole responsibility of the Coalition members as occupying powers or, to be more precise, under the responsibility of the United States Government. Since then and as the Iraqi Criminal Tribunal is a court of the sovereign State of Iraq, the pretrial detention of a person charged before the Tribunal is within the responsibility of Iraq. In the light of the fact that Mr. Aziz is in the physical custody of the United States authorities, any possible conclusion as to the arbitrary nature of his deprivation of liberty may involve the international responsibility of the United States Government.

26. As to the period of detention subsequent to 30 June 2004, Mr. Aziz appeared on 1 July 2004 before the Supreme Iraqi Criminal Tribunal in order to enter a plea. Arguably, he was then informed of the charges against him. On this occasion he did not have the assistance of a lawyer. Later, in December 2004 and on four more occasions between March and August 2005 he was allowed to meet and consult with one of his lawyers, but on each occasion a United States official remained present. Therefore, whatever was his status when detained prior to 1 July 2004, he subsequently became a defendant in a criminal procedure entitled to the protection of the International Covenant on Civil and Political Rights. As both the United States and Iraq have ratified the Covenant, articles 9 (3) and 14 ICCPR are applicable to his detention.

[4] "The Working Group will not deal with situations of international armed conflict in so far as they are covered by the Geneva Conventions of 12 August 1949 and their Additional Protocols, particularly when the International Committee of the Red Cross (ICRC) has competence".

27. The Working Group has neither received information concerning the trial being scheduled against Mr. Aziz, nor regarding the facts and offences for which he is to stand trial. Whether he will be given a fair trial - a crucial issue for the assessment of the lawfulness or arbitrariness of his detention before, pending, and if convicted after trial - will largely depend on the particular circumstances of how the trial will be conducted. What will happen in the future is not a matter of speculation for the Working Group. However, some negative signs can already be detected at present. The Working Group had access to and gathered information regarding the Supreme Iraqi Criminal Tribunal and its rules of procedure.

28. This Tribunal was established by the Iraqi Governing Council on 10 December 2003, and in the first days of August 2004, the Interim Iraqi Assembly modified the statute that was regulating it. The Working Group does not know the criteria according to which the Iraqi Government has nominated the judges who form this tribunal. However, the alleged withdrawal or substitution of several judges is a matter of concern. The atmosphere surrounding the preparation of the trial, which can negatively affect the independence and impartiality of the Tribunal - or at least give the impression that it lacks the requisite independence and impartiality- is also a matter of concern to the Working Group. The murder of defence lawyers, the threatening behaviour of the crowd against some of the accused, motivated by past wrongs suffered in the previous regime, might exert undue pressure on the Tribunal. More specifically, the fact that capital punishment was recently re-introduced and that no appeal is allowed against conviction and sentence, which is in complete disregard of article 14 paragraph 5 of the International Covenant on Civil and Political Rights, may cast a shadow over the requisite fairness of the process. The Working Group was also made aware of discrepancies between the old Iraqi criminal procedure code and the rules of procedure of the Supreme Iraqi Criminal Tribunal on important points, and it is not clear which law prevails.

29. In his annual report (2005) to the General Assembly of the United Nations, Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, raised his own concerns about the judicial proceedings taking place before the “Iraqi Special Tribunal”:

> “Despite the commitment and personal efforts of the judges and the cooperation provided by several countries in setting up the Tribunal, he [the Special Rapporteur] is concerned that the pressure weighing on the judges and the prevailing insecurity in Iraq may undermine its independence. Moreover, the Tribunal itself has certain deficiencies, some of which can be traced back to the manner in which it was set up and, in particular, to the restriction of its jurisdiction to specific people and a specific time frame; i.e., the Tribunal may only try Iraqi citizens for acts committed prior to 1 May 2003, when the occupation began. The Tribunal’s power to impose the death penalty demonstrates the extent to which it contravenes international human rights standards. Because it was established during an occupation and was financed primarily by the United States, its legitimacy has been widely questioned, with the result that its credibility has been tarnished.

"The Special Rapporteur urges the Iraqi authorities to follow the example set by other countries with deficient judicial systems by asking the United Nations to set up an independent tribunal which complies with international human rights standards."[5]

30. The concerns raised above also fully apply to the trial prepared against Mr. Tariq Aziz. Already at the preparatory stage of the trial against him, some serious procedural flaws can be identified, above all in respect of his full and unlimited access to his defence counsel to prepare his defence out of earshot of the prison staff and any other officials.

31. The Working Group is fully aware that the ongoing judicial procedure in Iraq is aimed at bringing to justice the highest-ranking leaders of the past Iraqi regime of Saddam Hussein, including Mr. Tariq Aziz, for the most serious crimes they allegedly committed against the Iraqi people and some neighbouring countries. The crimes for which they are prosecuted against comprise, but are not limited to: genocide, crimes against humanity and war crimes.

32. The Working Group would like to stress that as one of the mechanisms of the United Nations Commission on Human Rights, it is deeply committed to the principle that any violation of human rights, whether committed by politicians or others, must be inquired into and redressed, if necessary, by bringing the perpetrators to justice. Yet, any procedure aiming to put right gross human rights violations and as such, welcomed by the Working Group, shall scrupulously respect the rules and standards drawn up and accepted by the international community to respect the rights of any person charged with a criminal offence. The violation of the rights of the person charged may easily backfire. This is particularly true in the present case; any lack of respect for the rights of the leaders of the former Iraqi regime in the criminal proceedings against them may undermine the credibility of the justice system of the newly emerging democratic Iraq.

33. The Working Group believes that under the circumstances the proper way to ensure that the detention of Mr. Tariq Aziz does not amount to arbitrary deprivation of liberty would be to ensure that his trial is conducted by an independent and impartial tribunal in strict conformity with international human rights standards.

34. In the light of the above-mentioned, the Opinion of the Working Group is that:

(a) It will not take a position on the alleged arbitrariness of the deprivation of liberty of Mr. Tariq Aziz during the period of international armed conflict;

(b) As far as the alleged arbitrariness of his detention after the re-establishment of Iraqi sovereignty is concerned, the Working Group will follow the development of the process and will request more information from both concerned Governments and from the source. In the meantime, and referring to paragraph 17 (c) of its methods of work, the Working Group decides to keep the case pending until further information is received.

Adopted on 30 November 2005.

[5] See (A/60/321) page 15.

OPINION No. 46/2005 (IRAQ AND UNITED STATES 0F AMERICA)

Communication: addressed to the Governments on 9 March 2005.

Concerning: Mr. Saddam Hussein al-Tikriti.

Both States are parties to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group conveys its appreciation to both Governments for having submitted information with regard to this communication.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Governments of Iraq and the United States of America. The Working Group transmitted the replies provided by the two Governments to the source and received its comments.

5. According to the information received from the source, Mr. Saddam Hussein al-Tikriti, born on 28 April 1937, of Iraqi nationality, is the former President of Iraq.

6. According to information publicly available, on 20 March 2003 military forces belonging primarily to the United States and the United Kingdom of Great Britain and Northern Ireland began the invasion of Iraq. On 9 April 2003, Baghdad was formally secured by United States forces and the Iraqi regime headed by President Saddam Hussein was declared to have ended. On 1 May 2003 the President of the United States announced the end of major combat operations in the Iraq war. As recognized in Security Council resolution 1483 (2003), around this date the United States and the United Kingdom "assumed the specific authorities, responsibilities, and obligations under applicable international law … as occupying powers under unified command".

(a) The Coalition forces established a Coalition Provisional Authority under an Administrator named by the United States, and the Coalition Provisional Authority named an Interim Iraqi Governing Council. On 30 June 2004, the occupation of Iraq ended and Coalition Provisional Authority ceased to exist. As of that date, Iraq reasserted its full sovereignty and an Interim Government assumed full responsibility for governing the country (see paragraphs 1 and 2 of Security Council resolution 1546 (2004)). In accordance with Security Council resolution 1546, however, a multinational force, composed primarily of United States and British military forces, remained in Iraq at the request of the Interim Government.

7. On 13 December 2003, Mr. Saddam Hussein was captured in Tikrit by military forces of the United States, then the occupying power in Iraq, and was taken into custody at an undisclosed location. From that date until the time of submission of the communication, his only contact with his defence team was on 16 December 2004 with one of his attorneys, under supervision of at least two United States military guards who were present during this interview. The source states that despite repeated requests before and after this interview, the lawyers of the defence committee were denied the possibility to hold other meetings with their client.

8. The source alleges that Mr. Saddam Hussein was initially detained as a prisoner of war under the terms of the Third Geneva Convention Relative to the Protection of Prisoners of War. However, the Government of the United States has since then claimed that he is no longer a prisoner of war but a prisoner of the Government of Iraq. The source adds that, despite this claim by the Government of the United States, Saddam Hussein remains under the complete control of that Government.

9. On 10 December 2003, the Iraqi Governing Council established the Iraqi Special Tribunal. According to article 1 (b) of its Statute:

> "The Tribunal shall have jurisdiction over any Iraqi national or resident of Iraq accused of the crimes listed in Articles 11 to 14 below, committed since July 17, 1968 and up until and including May 1, 2003, in the territory of the Republic of Iraq or elsewhere, including crimes committed in connection with Iraq's wars against the Islamic Republic of Iran and the State of Kuwait."

The crimes listed in articles 11 to 14 of the Statute are genocide, crimes against humanity, war crimes, and violations of certain Iraqi laws listed in article 14. On 11 October 2005, the President of Iraq signed a new statute and new rules of procedure of the court, which renamed it the Supreme Iraqi Criminal Tribunal.

10. According to information publicly available, Mr. Saddam Hussein appeared before the Supreme Iraqi Criminal Tribunal for his first hearing (arraignment) on 1 July 2004. The hearing took place at a secret location and the defendant was not assisted by counsel. The investigating judge confined himself to ascertaining the identity of the accused. In addition, Mr. Saddam Hussein was informed of seven charges brought against him. Because he was not assisted by legal counsel, he refused to sign the record of proceedings.

11. The source further submits that Mr. Saddam Hussein's status should be covered by the Third Geneva Convention Relative to the Protection of Prisoners of War, since he was captured because of his participation in an armed conflict. However, he is being denied such protection by the Government of the United States as occupying power and custodian authority, and the Iraqi authorities have brought charges against him before the Tribunal. Therefore, the source is of the opinion that the legal responsibility for his arbitrary detention attaches to both Iraq and the United States.

12. The source alleges that the detention of Mr. Saddam Hussein is arbitrary because he was:

- Not charged in a timely manner;
- Not granted the full privileges of a prisoner of war (for example, to be allowed to communicate with his family without undue delays or to receive documents pertaining to his legal representation);
- Forced to prepare his trial in conditions of complete isolation from the outside world;
- Detained at a secret location;

– Severely restricted in the contact with legal counsel (although the charges raised against him must be of the most serious nature to fall within the mandate of the Tribunal).

(a) The source concludes that the non-observance of international norms relating to fair trial is so serious as to render his pretrial detention, as well as any detention upon conviction, arbitrary. Furthermore, the source alleges that Mr. Saddam Hussein has been denied the right to challenge the legality of his detention. Finally, the source expresses doubts as to whether a fair trial can at all take place under the current security situation in Iraq, before a special tribunal that lacks the independence and impartiality needed.

13. In its reply to the communication, dated 2 May 2005, the Government of Iraq states that Saddam Hussein is awaiting trial, and that it is premature to discuss matters relating to his right to prepare his defence and to be given a fair hearing. As to his place of detention, it is kept secret in order to protect him. The Government further reports that Saddam Hussein was allowed to meet one of his lawyers on 27 April 2005, that this meeting had lasted six hours, and that the lawyer was able to freely interview Saddam Hussein in the presence of an officer.

14. The Government of the United States, in its reply to the communication, underlines that (as also noted by the source) Saddam Hussein is in the physical custody of the multinational force - Iraq (MNF-I) pursuant to arrangements between MNF-I and the Iraqi Ministry of Justice, but is being held under the legal authority of an Iraqi court. The Government of the United States therefore considers that the Government of Iraq is best placed to clarify the legal basis of his detention.

15. In replying to the statement by the Government of the United States, the source argues that as it is the State actually detaining Saddam Hussein, the United States is responsible for respecting his right to security of person. It cannot disclaim this responsibility on the basis of the argument that he is being kept in custody on behalf of the Government of Iraq or that he is not detained on United States territory.

16. As to the reply of the Government of Iraq, the source asserts that this Government confirmed the accuracy of all its allegations. The source argues that Saddam Hussein's rights to counsel, to prepare his defence, and to a fair hearing have been violated for more than 20 months (as of mid-August 2005). It adds that a single meeting between counsel and defendant in the presence of a United States military officer clearly does not fulfil the requirements of the right to be assisted by counsel. Finally, the source argues that the violation of Saddam Hussein's rights is exacerbated by the repeated attacks against the house of his defence counsel, as well as by his humiliation through the circulation of pictures showing him in partial undress, and by the Government allowing physical attacks against him while in custody.

17. To be able to spell out the law applicable to the different issues raised by the source and identify the Government(s) responsible under international law for the legality of the detention and the eventual violation of the rights of Mr. Saddam Hussein, if any, the Working Group considers it necessary to highlight the particularity of the circumstances of the case before it.

18. The Working Group would like to stress that Mr. Saddam Hussein was the President of the Republic when armed forces of the United States and the United Kingdom invaded Iraq on 20 March 2003. On 1 May 2003, the Security Council, in its resolution 1483, conceded that the United States and the United Kingdom had assumed the authority, responsibility and applicable obligations under international law in the territory of Iraq. On 13 December 2003, Saddam Hussein was captured in Tikrit by United States military forces. Later, the occupying forces set up the Coalition Provisional Authority under the control of an envoy named by the Government of the United States.

(a) On 30 June 2004, the occupation ended and the full sovereignty of Iraq was restored through the Interim Government. In accordance with Security Council resolution 1546 of 8 June 2004, however, a multinational force, composed primarily of United States and British military forces, remained in Iraq at the request of the Interim Government. At some point before the restoration of sovereignty to Iraq, Mr. Saddam Hussein and other members of the former Iraqi regime were "formally" or "de jure" transferred by the Coalition Provisional Authority to Iraqi custody.

19. According to some developments publicly reported in the case under consideration, on 1 July 2005, Saddam Hussein and 11 other members of the former Baathist leadership appeared before the Supreme Iraqi Criminal Tribunal's chief investigating judge. The defendants were reportedly informed of the charges against them and questioned by the investigating judge. They did not have legal counsel present, and no full public transcript of the proceedings exists.

20. On 19 October 2005, the trial of Saddam Hussein and seven co-defendants in the *Dujail* case opened before the Supreme Iraqi Criminal Tribunal. At the hearing, defence counsel and some of the defendants raised three challenges:

- The lack of adequate time given to the defence to study the final dossier and prepare its case;
- The lack of sufficient access to the accused by defence counsel;
- Concerns regarding the court's legitimacy and competence.

21. The court granted an adjournment of the trial until 28 November 2005. At the time of drafting this Opinion (30 November 2005), a further adjournment had been granted until 5 December 2005.

22. On 20 October 2005, the day following the opening hearing, Mr. Sadoum al-Janabi, counsel of one of Saddam Hussein's co-defendants, was abducted from his office by armed men. He was subsequently found dead with two bullet wounds to the head.

23. On 8 November 2005, in a drive-by shooting in Baghdad, gunmen killed Mr. Adel Muhammad al-Zubaidi, who had been representing another defendant in the *Dujail* trial, and injured a further defence lawyer, Mr. Thamer al-Khuzaie.

24. The source alleges that Mr. Saddam Hussein was initially detained as a prisoner of war but has not been granted the full privileges of a prisoner of war under the terms of the Third Geneva Convention Relative to the Protection of Prisoners of War. In their replies, neither the Government of the United States nor the Government of Iraq provided information on this allegation. It is, however, well known that from the early days of the conflict in Iraq, the Government of the United States recognized that the Geneva Conventions applied comprehensively to individuals captured in the conflict there. It also gave assurances that it intended to comply with article 5 of the Third Geneva Convention by treating all belligerents captured in Iraq as prisoners of war unless and until a competent tribunal determined that they were not entitled to this status.[6]

25. The position of the Working Group is that although the invading coalition stated that the major combat operations had finished on 1 May 2003, the total occupation still continued until 30 June 2004. Therefore, as Saddam Hussein's detention took place in the context of an international armed conflict resulting in the invasion of Iraq by the United States forces and the armed coalition, his status is protected by the Third Geneva Convention, at least until 30 June 2004.

26. Consequently, and in accordance with paragraph 16 of its methods of work and 14 of its revised methods of work,[7] the Working Group will not assess the lawfulness of Mr. Saddam's detention for the period between 13 December 2003 and 30 June 2004, as it occurred during an ongoing international armed conflict and the Government of the United States recognized that the Geneva Conventions applied to individuals captured in the conflict in Iraq.

27. According to the fifth paragraph of article 119 of the Third Geneva Convention it is permissible for prisoners of war against whom penal proceedings are pending to be detained until the close of such proceedings. The Working Group is not in a position to assess the conformity to the applicable provisions of international humanitarian law (articles 12, 118 and 119 of the Third Geneva Convention to which the United States and Iraq are parties) of the procedure under which Mr. Saddam Hussein was transferred by the Coalition Provisional Authority to the Interim Government of Iraq. However, it does not dispute that, although de jure transferred, Mr. Saddam remains de facto in the custody of the United States.

28. The Government of the United States, in its reply to the Working Group, recognizes that "the detainee is under the custody of the 'Multinational Force Iraq' according to an agreement reached with the Minister of Iraqi Justice although he is under the authority of an Iraqi court".

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[6] Statement made in April 2003: see e.g. "Briefing on Geneva Convention, EPW and war crimes" 7 April 2003, available at: http://www.defenselink.mil/transcripts/2003/t04072003_t407genv.html.

[7] "The Working Group will not deal with situations of international armed conflict in so far as they are covered by the Geneva Conventions of 12 August 1949 and their Additional Protocols, particularly when the International Committee of the Red Cross (ICRC) has competence."

29. The Working Group concludes that until 1 July 2004 Saddam Hussein was detained under the sole responsibility of the Coalition members as occupying powers or, to be more precise, under the responsibility of the Government of the United States. Since then, and as the Supreme Iraqi Criminal Tribunal is a court of the sovereign State of Iraq, the pretrial detention of a person charged before the Tribunal is within the responsibility of Iraq. In light of the fact that Saddam Hussein is in the physical custody of the United States authorities, any possible conclusion as to the arbitrary nature of his deprivation of liberty may involve the international responsibility of that Government.

30. As of the period of detention subsequent to 30 June 2004, Saddam Hussein appeared before the Supreme Iraqi Criminal Tribunal for his first hearing on 1 July 2004. The hearing took place in a secret location and the defendant was not assisted by counsel. He was informed of the charges brought against him. Because he was not assisted by legal counsel, he refused to sign the record of proceedings. Therefore, whatever the status under which he was detained prior to 1 July 2004, he subsequently became a defendant in a criminal procedure, entitled to the protection of the International Covenant on Civil and Political Rights. As both the United States and Iraq have ratified the Covenant, articles 9 (3) and 14 are applicable to his detention.

31. Although neither the Government of Iraq nor that of the United States have provided detailed answers to the allegations concerning the characteristics of the process and the violations affecting the right of defence, as invoked by the source, the Working Group had access to and gathered information regarding the Supreme Iraqi Criminal Tribunal and its rules of procedure.

32. This Tribunal was established by the Iraqi Governing Council on 10 December 2003, and in the first days of August 2004 the Interim Iraqi Assembly modified the statute that was regulating it. The Working Group does not know the criteria under which the Government of Iraq has nominated the judges who form this tribunal. However, the alleged withdrawal or substitution of several judges is a matter of concern. The atmosphere surrounding the preparation of the trial, which can negatively affect the independence and impartiality of the Tribunal, or at least give the impression that the Tribunal lacks the requisite independence and impartiality, is also a matter of concern to the Working Group.

33. The murder of defence lawyers, the threatening behaviour of the crowd against some of the accused, motivated by past wrongs suffered in the previous regime, might exert undue pressure on the tribunal. More specifically, the fact that capital punishment was recently re-introduced and that no appeal is allowed against conviction and sentence, which is in complete disregard of article 14, paragraph 5, of the International Covenant on Civil and Political Rights, may cast a shadow over the requisite fairness of the process.

34. In his annual report (2005) to the General Assembly, Leandro Despouy, the Special Rapporteur on the independence of judges and lawyers, raised his own concerns about the judicial proceedings taking place before the “Iraqi Special Tribunal”:

> “Despite the commitment and personal efforts of the judges and the cooperation provided by several countries in setting up the tribunal, he is concerned that the pressure weighing on the judges and the prevailing insecurity in Iraq may undermine its

> independence. Moreover, the tribunal itself has its deficiencies, some of which can be traced back to the manner in which it was set up, and in particular to the restriction of its jurisdiction to specific people and a specific time frame; i.e., the tribunal may only try Iraqi citizens for acts committed prior to 1st May 2003, when the occupation began. The tribunal's power to impose the death penalty demonstrates the extent to which it contravenes international human rights standards. Because it was established during an occupation and was financed primarily by the United States, its legitimacy has been widely questioned, with the result that its credibility has been tarnished. The Special Rapporteur urges the Iraqi authorities to follow the example set by other countries with deficient judicial systems by asking the United Nations to set up an independent tribunal which complies with international human rights standards."[8]

35. The Working Group shares these concerns. It is also concerned about the criminal proceedings in Saddam Hussein's case, notably the right to counsel. Apparently, Saddam can only meet his defence counsel in the presence of United States officials. It is not clear whether he can meet them often enough as would be needed for such a complicated case. On 19 October 2005, at the hearing, defence counsel and some of the defendants raised three challenges:

- The lack of adequate time given to the defence to study the final dossier and prepare its case;
- The lack of sufficient access to the accused by defence counsel;
- Concerns regarding the court's legitimacy and competence.

36. The Working Group was also made aware that there are discrepancies between the old Iraqi criminal procedure code and the rules of procedure of the Supreme Iraqi Criminal Tribunal on important points, and it is not clear which law prevails.

37. Since procedural flaws amounting to violation of the right to a fair trial may, in principle, be redressed during the subsequent stages of the criminal proceedings, the Working Group would find it premature to take a position on this point now. The Working Group is fully aware that the ongoing judicial procedure in Iraq is aimed at bringing to justice Saddam Hussein and the other highest-ranking leaders of the past Iraqi regime for the serious crimes they allegedly committed against the Iraqi people and some neighbouring countries. The crimes for which they are prosecuted comprise, but are not limited to, genocide, crimes against humanity and war crimes.

38. As one of the mechanisms of the United Nations Human Rights Council (formerly the Commission on Human Rights), the Working Group is deeply committed to the principle that any violation of human rights, whether committed by politicians or others, must be inquired into

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[8] See (A/60/321), page 15.

and redressed, if necessary by putting the perpetrators to justice. Yet, any procedure aiming to put right gross human rights violations, as such welcomed by the Working Group, shall scrupulously respect the rules and standards drawn up and accepted by the international community to respect the rights of any person charged of a criminal offence. The violation of the rights of the person charged may easily backfire. This is particularly true in the present case; any lack of respect for the rights of the leaders of the former regime in the criminal proceedings against them may undermine the credibility of the justice system of the newly emerging democratic Iraq.

39. The Working Group believes that under the circumstances the proper way to ensure that the detention of Saddam Hussein does not amount to arbitrary deprivation of liberty would be to see to it that his trial is conducted by an independent and impartial tribunal in strict conformity with international human rights standards.

40. On the basis of what precedes, the Opinion of the Working Group is that:

(a) It will not take a position on the alleged arbitrariness of the deprivation of liberty of Mr. Saddam Hussein during the period of international armed conflict;

(b) It will follow the development of the process and will request more information from both concerned Governments and from the source. In the meantime and referring to paragraph 17 (c) of its methods of work, it decides to keep the case pending until further information is received.

Adopted on 30 November 2005.

OPINION No. 47/2005 (YEMEN)

Communication: addressed to the Government on 9 August 2005.

Concerning: Messrs. Walid Muhammad Shahir Muhammad al-Qadasi; Salah Nasser Salim`Ali and Muhammad Faraj Ahmed Bashmilah.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

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

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted to the source the reply provided by the Government. 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 and the response of the Government thereto, as well as the observations by the source.

5. The source reports that Mr. Walid Muhammad Shahir Muhammad al-Qadasi, a citizen of Yemen, was arrested in the Islamic Republic of Iran in late 2001. He was held there for about three months before being handed over, with other detained foreign nationals, to the authorities in Afghanistan, who in turn handed them over to the custody of the United States of America. He was held in a prison in Kabul, where he was blindfolded, interrogated, threatened with death and accused of belonging to Al-Qaida. Walid Muhammad Shahir Muhammad al-Qadasi and his fellow detainees were kept in underground cells, 10 of them in a cell measuring approximately two by three metres, and constantly exposed to loud music. After three months in detention in Kabul, he was transferred to a detention centre of the United States military forces at Baghram Air Base, outside Kabul. After a month there, Walid Muhammad Shahir Muhammad al-Qadasi was taken to the United States military base at Guantánamo Bay, Cuba.

6. Walid Muhammad Shahir Muhammad al-Qadasi was transferred from Guantánamo Bay to Yemen at the beginning of April 2004. On his arrival, he was detained in the Political Security Prison in Sana'a. He was denied access to a lawyer and not brought before a court. Walid Muhammad Shahir Muhammad al-Qadasi was visited in detention by representatives of the source in mid-April 2004. The prison staff informed the source that Walid Muhammad Shahir Muhammad al-Qadasi was under investigation and would be released as soon as the investigation was completed. Subsequently, he was transferred to Ta'iz prison, where a lawyer from the United States non-governmental organization Centre for Constitutional Rights met with him on 21 June 2005. He currently remains in detention there. He has not been charged with a criminal offence, nor been given the opportunity to challenge the legality of his detention. The Head of the Political Security Department in Sana'a informed the source that Walid Muhammad Shahir Muhammad al-Qadasi and other detainees who returned from Guantánamo Bay were being held at the request of the United States authorities and would remain detained in Yemen pending receipt of their files from these authorities for investigation.

7. With regard to Mr. Salah Nasser Salim 'Ali, the source reports that he is a 27-year-old Yemeni citizen who lived in Jakarta until 19 August 2003. On that day he was detained in Jakarta by agents of the Indonesian police and taken to an immigration centre. After four days of detention, during which his passport expired, Salah Nasser Salim 'Ali was told that he would be deported to Yemen, via Jordan. Upon arrival at the airport in Amman, however, he was taken to a detention facility of the Jordanian intelligence service, where he was interrogated about a past stay in Afghanistan and tortured repeatedly for four days.

8. As to Mr. Muhammad Faraj Ahmed Bashmilah, aged 37, the source reports that he is a Yemeni citizen, who also lived in Indonesia. In October 2003, he travelled to Jordan with his wife. On arrival at Amman airport, Jordanian immigration authorities took his passport. Three days later, on 19 October 2003, he was arrested by the Jordanian Da'irat al-Mukhabarat al-'Amah (General Intelligence Department, who kept him in custody for four days. During this period he was allegedly repeatedly tortured.

9. The source further states that from detention in Jordan, Messrs. Salah Nasser Salim 'Ali and Muhammad Farah Ahmed Bashmilah were transferred to a detention centre under United States control. They were taken blindfolded to this detention centre by a several hours' long plane flight and detained underground, and are therefore not able to identify the location

of the detention centre. Both the forces in charge of transferring them thereto and those in charge of the detention centre were, however, from the United States. They were subsequently transferred, again blindfolded, by plane and helicopter, to a second detention centre under United States control. They are therefore not able to identify the location of the facility. In both places, the two men were interrogated about their activities in Afghanistan and Indonesia, and about their knowledge of other persons suspected of terrorist activities.

10. According to the source, Messrs. Salah Nasser Salim ‘Ali and Muhammad Farah Ahmed Bashmilah were kept in United States custody for 20 and 18 months, respectively. During this period, they were held in solitary confinement and incommunicado, without contact with anyone other than the prison guards, interrogators and interpreters. Western music was piped into their cells uninterruptedly, 24 hours a day. In the second facility they were given books, including the Koran, and videos, and had an opportunity to exercise. Salah Nasser Salim ‘Ali was visited by a doctor twice a month.

11. On or around 5 May 2005, without explanation, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim ‘Ali were transferred to Yemen, where they were detained in the central prison of Aden. They were subsequently briefly taken to Sana’a and back to Aden. They are currently detained at the Fateh political security facility in Aden, where they have received visits by their family.

12. The source states that neither Muhammad Farah Ahmed Bashmilah nor Salah Nasser Salim ‘Ali have been charged or tried with any offence, nor have they been informed of the reason for their continued detention. Representatives of the Yemeni authorities have told the source that the reason for their detention is that their transfer from United States detention was conditional upon them being held in Yemen.

13. According to the source, the detention of Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim ‘Ali is devoid of any legal basis and thus arbitrary. In particular, the three above-mentioned persons were released from United States custody without charges and were never charged with any criminal offence in Yemen, where they have been detained for 18 months (Walid Muhammad Shahir Muhammad al-Qadasi) and three months (Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim ‘Ali), respectively. No decision concerning their detention and or statement setting forth the grounds therefor has been issued by any Yemeni authority. They have not been informed of any charges against them, have not been provided with legal assistance, have not had the right to challenge the lawfulness of their detention, and have not had a single hearing in their case.

14. The source adds that the detention of Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim’Ali is in violation of Yemeni domestic law, as well, because, according to it, suspects have the right to see a judge or prosecutor within 24 hours of being detained, the right to challenge the legal basis of their detention and the right to seek prompt legal assistance. Furthermore, Yemeni law provides that detention is not permitted except for acts punishable by law.

15. In its reply to these allegations, the Government confirms that Messrs. Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim 'Ali were handed over to Yemen by the United States. They are held in a security police facility because of their alleged involvement in terrorist activities related to Al-Qaida. The Government of Yemen adds that the "competent authorities are still dealing with the case pending receipt of their [the persons'] files from the United States of America authorities in order to transfer them to the Prosecutor".

16. In replying to the Government's observations, the source informs that, as of 8 November 2005, the three men remain in detention, while the Government continues to state that it is awaiting the files concerning their cases from the United States authorities.

17. The Working Group, based on the above information provided by the source and the Government, which coincide, is in the position to render an Opinion.

18. The Government states that Messrs. Al-Qadasi, Bashmila and Salim were handed over to Yemen by the United States. It is waiting for the files from the American authorities so as to transfer them to the prosecutor. This clearly shows that the Yemen authorities do not currently have any files on them.

19. The Working Group notes with concern that the transfers that the three persons experienced before being detained in Yemen occurred outside the confines of any legal procedure, such as extradition, and do not allow the individuals access to counsel or to any judicial body to contest the transfers.

20. No charges have been made by the Government of Yemen against these three men. They have not been informed of any accusation against them, nor have been brought before any judicial authority. No legal procedure has been followed to accuse them. Their deprivation of liberty is, as such, devoid of any legal basis.

21. In the light of the foregoing, the Working Group renders the following Opinion:

> The deprivation of liberty of Messrs. Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim'Ali, 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 I of the categories applicable to the consideration of the cases submitted to the Working Group.

22. Consequent upon the Opinion rendered, the Working Group requests the Government:

> To release the three above-mentioned persons, or otherwise subject them to a competent judicial authority, bringing these cases in conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 30 November 2005.

OPINION No. 48/2005 (NAMIBIA)

Communication: addressed to the Government on 15 October 2004.

Concerning: John Samboma; Charles Samboma (alleged "Caprivi Liberation Army" commander); Richard Libano Misuha; Oscar Muyuka Puteho; Richard John Samati; Moises Limbo Mushwena; Thaddeus Siyoka Ndala; Martin Siano Tubaundule; Oscar Nyambe Puteho; Charles Mafenyeho Mushakwa; Fred Maemelo Ziezo; Andreas Mulupa, and Osbert Mwenyi Likanyi.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group conveys its appreciation to the Government of Namibia for having forwarded the requisite information.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

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.

5. 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 and the response of the Government thereto, as well as of the observations by the source.

6. The source informed the Working Group that the above-mentioned 13 persons, all detained at Grootfontein Prison, 500 kilometres north of Windhoek, were part of a group of 120 individuals arrested for allegedly taking part in secessionist violence led by the "Caprivi Liberation Army", which attacked Katima Mulilo, in the northeastern Caprivi region, on 2 August 1999. They were handed over to Namibia by Botswana and Zambian authorities between August 1999 and December 2002. They were put in secret detention during six months at the Grootfontein Military Base before appearing in court. Later, they were accused of high treason, murder and other offences in connection with the uprising.

7. They were released on 23 February 2004 following an order by Judge Elton Hoff at the High Court in Grootfontein. He ruled that his court did not have the jurisdiction to try the men because the circumstances under which they had been held were irregular, owing to the manner in which the 13 were detained in the territories of Botswana and Zambia and irregularly brought before court.

8. According to Judge Hoff, Namibian authorities had not merely been passive bystanders when the Botswana and Zambian authorities handed over the 13 persons to Namibia. Judge Hoff found that they had been delivered to Namibia through a process of disguised extradition dressed up as the deportation of supposedly illegal immigrants from other countries. In this irregular

process, Botswana and Zambia's extradition laws had not been adhered to. According to the source, a Namibian court cannot assume jurisdiction over persons who claim to have been brought unlawfully from abroad to be charged and put on trial. Proper extradition procedures were not followed when these persons were returned to Namibia from countries with which Namibia has standing extradition agreements. International law had thus been violated.

9. However, only a few minutes after their release, they were re-arrested and charged with common crimes such as assault, illegal possession of elephant tusks and theft of car keys. Owing to the lack of evidence, they were released the following day, but were detained again on 25 February 2004 and accused of the same charges which had previously been considered impossible to judge due to their irregular detention and the violation of the norms on extradition under international law.

10. The source alleges that the authorities bent the Namibian Constitution and laws to their own ends. Their five-year pretrial detention is in contravention of international norms for the following reasons:

- Proper extradition procedures were not followed;
- The detained persons were again accused of the same crimes for which the court had found they could not be tried;
- Their detention abroad and extradition to Namibia was irregular;
- The submitted evidence was inconsistent.

11. In its response, the Government stated that the Government of Namibia's respect for constitutionalism, rule of law, democracy and human rights is well known worldwide. Consequently, it was not correct to allege that the authorities bent the Namibian Constitution and laws to their own ends. The facts found by the High Court of Grootfontein (Supreme Court in the land of the case), put paid to the allegations raised by the communicators. As this High Court is of first instance, it would possibly be considered by the Supreme Court. As can be found in the Supreme Court judgement, the progress of the proceedings on the merits was checked by a series of interlocutory applications by the accused.

12. The Government adds that the trial resumed in February 2003 in Grootfontein. In May 2004, fatal car accidents bogged down the trial proceedings. One member of the State Prosecution team died and two others were seriously injured while travelling to Grootfontein from Windhoek. On 17 May 2005, the Prosecution requested the Court to move to Windhoek and to allow a new prosecution team to prepare for the trial. The Court should rule on the application for an adjournment by the prosecution.

13. The Government also reported that on 17 May 2005, the accused persons raised an objection that, since they are not Namibian but Caprivians, a Namibian court does not have the jurisdiction to try them for treason. Consequently, they lost their legal representation. According to the Government, the court should also rule on this point.

14. The source replies in commenting on the response from the Government and argues the following.

15. Some of the high treason suspects have been tortured physically and psychologically by police officers and have mutilated bodies and permanent scars. These persons have introduced civil claims against the perpetrators but the proceedings are still outstanding.

16. The children of the persons in detention have been dismissed from their schools and are deprived of education because of lack of financial assistance from their parents. This situation has been continuing for more than six years. Furthermore, the source also claims that all of their personal items which were left in the hands of police officers when arrested have been lost and compensation has not been granted for these losses. It is also stated that families of the detainees, when visiting them in prison or during court proceedings, are submitted to unreasonable searches and inhuman treatment.

17. The source further claims that the Government initiated a series of postponements by the prosecuting team, including delaying tactics, which have resulted in the worsening of their current detention. Their detention is also worsened by the inadequacy of the food they are being served, which has resulted in some persons being affected by diseases.

18. Finally, the source mentions that police officers have forcefully compelled their friends and relatives from Dukne Refugee Camp in Botswana to testify against them while these persons are being repatriated on a voluntary basis.

19. The petitioners, reportedly members of the Caprivi Liberation Army, were charged for high treason, murder, and other offences in connection with the attack on Katima Mulilo in August 1999. They consider themselves Caprivians and not Namibians, as they stated before the Court to challenge its jurisdiction.

20. Even though the first instance court sustained that they had been brought to Namibia irregularly, this judgment was challenged by the Namibian prosecutor in an appeal to the Supreme Court, which ruled to the contrary, that progress of the proceedings on the merits were by a series of interlocutory applications by the accused.

21. It is not in the mandate of the Working Group to substitute for national courts or to decide if the petitioners are guilty or innocent. It can only check if the guarantees relating to a fair trial under international standards binding on the State concerned have been complied with in the case under consideration.

22. As far as the right to be tried without undue delay is concerned, the Working Group recalls that when bail is denied because the accused are charged with serious offences, as it is in the case under consideration, they must be tried within a reasonable time. Excessive period of pretrial detention lead to a violation of both articles 9 (3) and 14 (3) (c) of the International Covenant on Civil and Political Rights, to which Namibia is party. The burden of proof for justifying that a case was particularly complex rests with the Government.

23. The Working Group notes that the Government doesn't contest the allegation of the source, that the accused have been detained for nearly six years without judgement on the merits of the charges brought against them. The Government recognizes that the trial resumed in February 2003 and since then has been postponed because in May 2004, a member of the State Prosecution team died and two other were seriously injured in a fatal car accident.

24. The Working Group considers such an argument too weak to justify more than a one-and-a-half-year delay to restart the trial of the accused, who have been detained for more than six years awaiting trial, especially when the source claims that the Government initiated a series of postponements by the prosecuting team, including delaying tactics. The Working Group is of the opinion that the right to be tried without undue delay obliges States to organize their judicial machinery in a manner that ensures an effective and speedy trial.

25. In the light of the foregoing, the Working Group renders the following Opinion:

> The deprivation of liberty of Messrs. John Samboma, Charles Samboma (alleged "Caprivi Liberation Army" commander), Richard Libano Misuha, Oscar Muyuka Puteho, Richard John Samati, Moises Limbo Mushwena, Thaddeus Siyoka Ndala, Martin Siano Tubaundule, Oscar Nyambe Puteho, Charles Mafenyeho Mushakwa, Fred Maemelo Ziezo, Andreas Mulupa and Osbert Mwenyi Likanyi is arbitrary, being in contravention of article 14 of the International Covenant on Civil and Political Rights and falls under category III of the categories applicable to the consideration of cases submitted to the Working Group.

26. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of the above-mentioned persons.

Adopted on 30 November 2005.

OPINION No. 1/2006 (UZBEKISTAN)

Communication: addressed to the Government on 18 October 2005.

Concerning: Ms. Elena Urlaeva.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group notes with appreciation the information received from the Government of Uzbekistan in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group further notes that the Government has informed the Group that the above-mentioned person is no longer in detention. The response of the Government was transmitted to the source, which did not communicate any comments.

4. Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the case of Ms. Elena Urlaeva under the terms of paragraph 17 (a) of its methods of work.

Adopted on 9 May 2006.

OPINION No. 2/2006 (EGYPT)

Communication: addressed to the Government on 30 January 2006.

Concerning: Mr. Metwalli Ibrahim Metwalli.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group notes with appreciation the information received from the Government of Egypt in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group notes that the Government has informed it that the person concerned is no longer in detention. This fact has also been confirmed by the source that submitted the communication.

4. Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the case of Mr. Metwalli Ibrahim Metwalli under the terms of paragraph 17 (a) of its methods of work.

Adopted on 9 May 2006.

OPINION No. 3/2006 (UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND)

Communication: addressed to the Government on 10 May 2005.

Concerning: Mr. Tosin Fred Adegbuji.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group conveys its appreciation to the Government of the United Kingdom of Great Britain and Northern Ireland for having forwarded the requisite information.

3. The Government, in its response, which was not contested by the source, confirms that Mr. Tosin Fred Adegbuji, an immigrant, is no longer in detention, and that on July 2005 he was granted indefinite leave to enter the United Kingdom.

4. Having examined the available information and without prejudging the nature of the detention, the Working Group, under the terms of paragraph 17 (a) of its methods of work, decides to file the case.

Adopted on 9 May 2006.

OPINION No. 4/2006 (MYANMAR)

Communication: addressed to the Government on 23 January 2006.

Concerning: Ms. Su Su Nway.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. (Same text as paragraph 3 of Opinion No. 38/2005.)

3. The Working Group welcomes the cooperation of the Government for having provided it with the necessary information. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case.

4. The allegations of the source can be summarized as follows: Ms. Su Su Nway is a 34-year-old citizen of Myanmar, usually resident in Htan Manaing Village, Kawmoo Township, Rangoon Division. She is a youth member of the opposition National League for Democracy. It was reported that in January 2005 she successfully sued the local authorities because of their forced labour practices. This was a historic case in Myanmar, as it was the first time such a case was brought to court and won by the plaintiff.

(a) The local authorities of Htan Maniang Village soon began to severely harass Su Su Nway, including through public taunts, in an attempt to make her flee the village. At the end of April 2005, they filed criminal charges against her, accusing her of "besmearing their reputation" and swearing at them under articles 506 and 294B of the Myanmar Penal Code. She proclaimed her innocence;

Su Su Nway was arrested on 13 October 2005, the day her trial began. Villagers seeking to be witnesses in her favour of were intimidated by the local authorities, who stated that those intending to testify would have to "pay a visit to the police station" before appearing as witnesses. One man was detained for 24 hours for attempting to support Su Su Nway. The source contends that Su Su Nway had not been informed in a timely manner about the charges against her and was thus unable to effectively prepare her defence. She pleaded not guilty to the charges, but the clerks entered a guilty plea for her. In mid-trial the original township judge,

Judge Mya Mya, was replaced by Judge Htay Htay Win from Henzada Township. No reasons were given explaining that change. The accused also faced harassment and taunts from the authorities during the trial. Su Su Nway suffers from a chronic heart condition and slipped and fell during the trial, hurting herself, but the local nurse treating her was intimidated by the authorities and thereby prevented from continuing treatment of Su Su Nway.

(b) In the end, Su Su Nway was found guilty of "besmearing the reputation" of the village authorities and of swearing at them under the same articles of the Penal Code. She was sentenced to 18 months imprisonment. An appeal against this judgement was pending before the Supreme Court at the time when the communication was lodged (25 October 2005);

(c) Su Su Nway is currently detained at Insein Prison, Rangoon Division. She has been denied medicines since she has been in detention. She reportedly was hospitalized from 4 to 7 January 2006. She is also reportedly suffering from anaemia.

5. In its reply the Government confirmed the factual allegation of the source. It informed the Working Group that the appeal of Ms. Nway had been dismissed by the Supreme Court.

6. The Working Group finds convincing the allegation of the source that the criminal proceedings initiated against Ms. Su Su Nway was motivated by her suing the local authorities for their forced labour practice. This is clearly shown by the dates: whereas the judicial action against the authorities was brought about in January 2005, the criminal action against Ms. Su Su Nway was instituted three months after she had won her case. Moreover, the criminal offences against Ms. Su Su Nway - besmearing the reputation of, and swearing at the authorities - are, in the absence of any convincing argument by the Government to the contrary - indicative of the intention of the Government to unduly restrict the freedom of opinion and expression of someone, who dared to take an action against the authorities of the State. Her detention, therefore, is incompatible with her freedom of opinion and expression. Likewise, the serious procedural flaws referred to by the source and not contested by the Government confer an unfair character to the proceedings against her. These procedural flaws can be summarized as follows: intimidation of witnesses in favour of the person charged, the recording of her guilt when in fact she pleaded not guilty, the substitution of the judge during trial, and the lack of information of the charges against her in due time.

7. In the light of the foregoing, the Working Group renders the following Opinion:

> The detention of Ms. Su Su Nway is arbitrary, being in contravention of articles 9, 10 and 19 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.

8. Consequent upon this Opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Ms. Su Su Nway in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration and to duly consider the signature and ratification of the International Covenant on Civil and Political Rights.

Adopted on 9 May 2006.

OPINION No. 5/2006 (IRAQ AND UNITED STATES OF AMERICA)

Communication: addressed to the Government on 25 October 2005.

Concerning: Mr. Majeed Hameed.

Both States have ratified the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group notes that the Government of the United States of America and the source have informed the Group that the above-mentioned person is no longer in detention.

3. Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the case of Mr. Majeed Hameed under the terms of paragraph 17 (a) of its methods of work.

Adopted on 11 May 2006.

OPINION No. 6/2006 (JAPAN)

Communication: addressed to the Government on 27 July 2005.

Concerning: Mr. Kyaw Htin Aung.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group notes with appreciation the information received from the Government of Japan in respect of the case in question.

3. The Working Group further notes that the Government concerned has informed the Group that the above-mentioned person is no longer in detention.

4. The response from the Government was transmitted to the source, which did not communicate any comments.

5. Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the case of Mr. Kyaw Htin Aung under the terms of paragraph 17 (a) of its methods of work.

Adopted on 11 May 2006.

OPINION No. 7/2006 (YEMEN)

Communication: addressed to the Government on 17 November 2005.

Concerning: Mr. Muhammad Abdullah Salah al-Assad.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group notes with appreciation the information received from the Government of Yemen in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group further notes that the source has informed the Group that the above-mentioned person is no longer in detention.

4. Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the case of Mr. Muhammad Abdullah Salah al-Assad under the terms of paragraph 17 (a) of its methods of work.

Adopted on 11 May 2006.

OPINION No. 8/2006 (LIBYAN ARAB JAMAHIRIYA)

Communication: addressed to the Government on 19 September 2005.

Concerning: Mr. Abdel Razak al-Mansuri.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group notes with appreciation the information received from the Government of the Libyan Arab Jamahiriya in respect of the case in question.

3. The Working Group further notes that according to the Government's information the above-mentioned person is no longer in detention.

4. This information was brought to the attention of the source, which confirmed the liberation of Mr. Al-Mansuri. Yet, it expressed the wish that notwithstanding the release of Mr. Al-Mansuri the Working Group pursue the consideration of the communication, bearing in mind the harm caused by the deprivation of liberty.

5. Under its mandate the paramount objective of the Working Group is to obtain the release of persons from detention, especially when this liberation has been obtained in the framework of the Working Group's cooperation with the Government.

6. On that basis, having examined all the information submitted to it, and without prejudging the arbitrary nature of the detention, the Working Group, referring to paragraph 17 (a) of its methods of work, decides to file the case.

Adopted on 11 May 2006.

OPINION No. 9/2006 (SAUDI ARABIA)

Communication: addressed to the Government on 25 January 2006.

Concerning: Mustapha Muhammed Mubarak Saad al-Jubairi and Faysal Muhammed Mubarak al-Jubairi.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group regrets that the Government has not replied in spite of the extension of the 90-day deadline which it had requested and obtained from the Group.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. No information arrived from the Government. Yet, 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. Messrs. Mustapha Muhammed Mubarak Saad al-Jubairi, born in 1973, with identity card No. 1032144386 issued on 12 October 1989, resident in Riyadh, Al Nassim Al Gharbi; and his brother, Faysal Muhammed Mubarak al-Jubairi, born in 1970, with identity card No. 1035579380 issued on 16 August 1987, also resident in Riyadh.

6. It was reported that these two persons, both officers from the Saudi Arabian Passport Services, were arrested on 15 June 2004 by agents of the Ministry of the Interior at the Riyadh central compound of the Ministry. No arrest warrants were showed to them. They had been summoned to go to Riyadh from Al Asir Province to meet Prince Mohammed B. Naif. Instead, they were arrested. Their homes were subsequently searched, without a search warrant being shown.

7. The brothers al-Jubairi were subsequently conducted to Jeddah, where they were held in incommunicado detention and solitary confinement during eight months, and subjected to ill-treatment. Their relatives were not informed about their detention nor were they authorized to visit them.

8. Subsequently, these two persons were transferred to Riyadh, where they are currently being held in detention in Al Alicha Prison.

9. On 18 November 2004, Mr. Mustapha Muhammed Mubarak Saad al-Jubairi was subjected to torture and ill-treatment and threatened with the detention of his sister and other members of his family. Since that day, his health has seriously deteriorated.

10. These two persons have not been charged. They have not been authorized to appoint a defence counsel, in spite of their reiterated requests to do so. They have not been presented before a judge and have not been able to contest the lawfulness of their detention.

11. Having examined the information received and in the absence of a reply from the Government, the Working Group considers that the al-Jubairi brothers were arrested without a warrant on 15 June 2004. Since then they continue to be detained without any charge having been raised against them, without having been brought before any judicial authority and being deprived of the assistance of a lawyer.

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

> The deprivation of liberty of Mustapha Muhammed Mubarak Saad al-Jubairi and Faysal Muhammad Mubarak al-Jubairi, is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and falls within category I of the applicable categories to the consideration of the cases submitted to the Working Group.

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

Adopted on 11 May 2006.

OPINION No. 10/2006 (ALGERIA)

Communication: addressed to the Government on 29 September 2005.

Concerning: Salaheddine Bennia, Mohamed Harizi, Amar Medriss and Mohamed Ayoune.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

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

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

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 made comments on it. 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, the response of the Government thereto and the comments of the source.

5. According to the information received, Mr. Salaheddine Bennia, an Algerian born on 24 February 1974 and resident at 20 avenue Atallah El Naoui Hussein Dey, was arrested at his home on 31 December 2002 by members of the Department for Information and Security (DRS). His detention was ordered by the examining magistrate of the Fifth Chamber of the Algiers Court:

(a) According to the source, for over two years Mr. Bennia was held incommunicado, with no contact with his family or a lawyer. He was detained without legal foundation in an illegal place of detention, the Antar military barracks in Hydra;

(b) The source adds that justification for the incommunicado detention was only produced *a posteriori* and in the form of a mere administrative issuance, namely, a restricted residence order signed by the Minister of the Interior and dated 28 June 2003, i.e. nearly six months after the arrest. The order did not specify the required place of residence;

(c) The examining magistrate did not order the opening of an investigation (Investigation No. 07/2005; Parquet No. 124/05) under articles 87 bis 3 and 87 bis 4 of the Criminal Code (terrorism) until 29 January 2005. Mr. Bennia has been transferred to the Serkadji Prison. He claims to have been tortured while being held incommunicado and to have been told that he would be questioned by United States intelligence agents;

(d) Mr. Mohamed Harizi, an Algerian born on 1 February 1974, resident at 47 rue Amari Mehdiya Tiaret and director of a private insurance company, was arrested at his home at 11.30 p.m. on 15 December 2002 by members of the DRS. The following day, his family filed a complaint for kidnapping;

(e) Mr. Harizi has been held incommunicado for 2 years and 45 days, with no contact with his family or a lawyer. He has been detained without legal foundation in illegal places of detention (military barracks): first in the Tiaret military sector and then in the Antar barracks in Hydra. He is still awaiting trial and there has been no investigation of the legality of his arrest;

(f) The source adds that, as in the case of Mr. Bennia, an attempt has been made to justify the incommunicado detention *a posteriori* through an administrative issuance in the form of a restricted residence order. The order, signed by the Minister of the Interior, is dated 5 January 2003 and once again does not specify the required place of residence. The opening of an investigation for offences under articles 87 bis 3 and 87 bis 4 of the Criminal Code was ordered on 29 January 2005;

(g) Mr. Harizi claims to have been tortured for five days while being held incommunicado and to have been told that he would be questioned by United States intelligence agents;

(h) Mr. Amar Midriss, an Algerian born on 23 December 1974, a merchant resident at 5 rue Idir Toumi, Ben Aknoun, Algiers, was arrested at his home on 1 September 1999 by officers of the Debih Cherif criminal police department;

(i) The source reports that in 2000, when a case for membership of an armed group was under investigation in Algiers, the court in Bir Mourad Rais also opened a file on it. The criminal police pointed out at the time that the case was already being investigated by the Algiers criminal court. In the circumstances, the examining magistrate should have deferred to the competence of the court in Algiers. In fact, the court in Bir Mourad Rais set the matter aside for several months. During that time, on 27 March 2002, the Algiers criminal court sentenced Mr. Midriss to three years in prison; he should have been released in October 2002. The court in Bir Mourad Rais reopened proceedings and Mr. Midriss was tried a second time for the same offences and on the basis of the same evidence. On 4 April 2005, he was convicted of the offences a second time and sentenced to 15 years' imprisonment;

(j) The source adds that in the court in Bir Mourad Rais proceedings against all the other persons involved, who had been convicted in Algiers, were dismissed;

(k) Mr. Mohamed Ayoune, an Algerian born on 19 December 1979, a merchant resident at Bach Djerrah, was arrested on 1 November 2002 on a charge of having carried Mrs. Leila Hamma, allegedly the wife of a member of a terrorist organization, in his car. On 10 August 2004, a committal order from the indictment chamber reduced the case to the status of one for the misdemeanour of failure to denounce a criminal. The prosecution service appealed the order and the matter is pending before the Supreme Court;

(l) According to the source, Mr. Ayoune has been held without trial for 34 months, whereas the Code of Criminal Procedure sets the maximum period of preventive detention at 24 months. His application for pretrial release has been denied. Mrs. Hamma has been left at liberty;

(m) Torture was reportedly practised on Mr. Ayoune in Ben Aknoun barracks, resulting in the breaking of his left arm and necessitating an operation;

(n) The source considers the detention de Messrs. Bennia, Harizi, Midriss and Ayoune arbitrary because the men's fundamental rights to a fair trial, particularly their rights under 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 respected.

6. In its response the Government states that:

(a) Proceedings were brought against Mr. Salaheddine Bennia and Mr. Mohamed Harizi for the offence of membership of a terrorist organization operating abroad and the case was entrusted to an examining magistrate of the Fifth Division of the Algiers court. A warrant of commitment was issued on 29 January 2005;

(b) Contrary to what is alleged in the communication, Mr. Omar Medriss was not prosecuted for the same offences in two separate cases;

(c) In the first case, he was prosecuted by the prosecution service in the Sidi M'hamed district of Algiers for membership of a terrorist organization, robbery and illegal possession of a weapon;

(d) Following referral of the case to the Algiers criminal court, he was sentenced on 29 February 2004 to three years' immediate imprisonment, a sentence that both he and the prosecution service appealed. The matter is pending before the Supreme Court;

(e) In the second case, Mr. Omar Medriss was prosecuted by the prosecution service in the Bir Mourad Rais district of Algiers for complicity in the murder of O. Mohamed Said;

(f) Following referral of the case to the Algiers criminal court, he was sentenced on 4 April 2005 to 15 years' imprisonment. He has applied for judicial review of that decision;

(g) As can be seen from this, there were two distinct cases concerning different acts, charges, and victims;

(h) Mr. Mohamed Ayoun was prosecuted for membership of a terrorist organization;

(i) When the investigation was complete, the examining magistrate referred to the case to the indictment chamber;

(j) The indictment chamber held the offence to be a misdemeanour and on 18 August 2004 issued an order referring the case to a criminal court;

(k) The Attorney-General's department appealed for judicial review of that decision and the matter is pending before the Supreme Court;

(l) Contrary to what is alleged in the communication, preventive detention can be for as long as 48 months in the most serious cases of terrorism;

(m) In conclusion, the Government states that Mr. Salaheddine Bennia, Mr. Mohamed Harizi and Mr. Mohamed Ayoun have benefited from the effects of the Order implementing the Charter for Peace and National Reconciliation in that they have been released.

7. In its comments on the Government's response, the source confirms that Mr. Salaheddine Bennia, Mr. Mohamed Harizi and Mr. Mohamed Ayoun have been released and maintains that Mr. Medriss was found guilty and sentenced twice for the same offences.

8. The Working Group concludes that, as Mr. Bennia, Mr. Harizi and Mr. Ayoun have been released, paragraph 17 (a) of its methods of work applies.

9. With regard to Mr. Medriss, the Working Group observes that according to the Government he was and is the defendant in two distinct trials, one for action in connection with

terrorist activities and the other for conspiracy to commit murder. In each of the cases he has been convicted, proceedings have been suspended on the ground of an appeal, and an application has been filed for judicial review. The Group notes that, while the source alleges that Mr. Medriss was tried and convicted twice for the same offence, the allegation is insufficiently supported to refute the Government's contention that the acts that gave rise to the two trials and two convictions were different.

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

- With respect to the communication concerning Messrs. Bennia, Harizi and Ayoune the case may be filed;

- With respect to the communication concerning Mr. Medriss, his deprivation of liberty is not arbitrary.

Adopted on 11 May 2006.

OPINION No. 11/2006 (CHINA)

Communication: addressed to the Government on 26 October 2005.

Concerning: Mr. Zheng Zhihong.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

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

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

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.

5. 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 and the response of the Government thereto, as well as the observations by the source.

6. Mr. Zheng Zhihong, a citizen of China, born on 14 October 1957, was a cadre at the Huanggang City Salt Company in Hubei Province. He lived at the company dormitory in Huanggang City.

7. At an unspecified time before the year 2000, Zheng Zhihong became a Falun Gong practitioner. In 2000 he went to Beijing to appeal for the right to practice Falun Gong.

Security forces escorted him back to Huanggang City. He was held at the No. 1 Detention Centre in Huanggang City for one month. In 2001, the police took him into custody at his work unit without an arrest warrant and without charges and held him at the No. 2 Detention Centre for 15 days.

8. On 9 March 2004, Mr. Zheng Zhong, father of Zheng Zhihong and also a Falun Gong practitioner, passed away. On 11 March 2004, the Huanggang City Foreign Trade Bureau held a courtyard memorial service for its former cadre Zheng Zhong. Some bureau officials and Falun Gong practitioners attended the service. Mr. Zheng Zhihong delivered a eulogy in which he stated that his father regained his health after practicing Falun Gong; that the police had monitored and pursued his father since 2002 and forced him into exile; that his work unit suspended his salary, and that he passed away under tremendous pressure and poor living conditions due to the loss of his income and the persecution. These allegations were also posted on the World Wide Web.

9. On 20 May 2004, a group of police officers led by the political head of the Huangzhou District Police Department arrested Zheng Zhihong at his apartment. They held him at the No. 1 Detention Centre. Zheng Zhihong's detention was accompanied by other measures of reprisal against those involved in the 11 March 2004 memorial service. The head of the Huanggang City Foreign Trade Bureau was transferred, and about eight Falun Gong practitioners who had attended the memorial service were arrested.

10. In June 2004, a formal arrest warrant was issued. In November 2004, the police charged Zheng Zhihong with "instigation" and "using superstitious sects or secret societies or weird religious organizations … to undermine the implementation of the laws".[9] On 23 December 2004, the Huangzhou District Court tried Zheng Zhihong and sentenced him to five years of imprisonment.

11. Zheng Zhihong appealed the judgment on 29 December 2004. His attorney stated that his client had just followed the traditional Chinese custom of filial piety by delivering a eulogy at his father's memorial service and spoken words from his heart, so it could not be called "instigation". Rather, the Government prosecuted Zheng Zhihong because his father was a Falun Gong practitioner, because Falun Gong practitioners attended the service and because they appealed for justice. The Huanggang Intermediate People's Court rejected the appeal on 28 February 2005. The court cited section 1 of article 300 of the Criminal Law of China, and section 4 of article 1 of the Explanation of Specific Law Enforcement Applications Regarding Cases in Which People Organize Cults to Commit Crimes. Zheng Zhihong is currently detained at the Qinduankou Prison in Hubei Province.

12. The Government's reply is as follows: Zheng Zhihong, also known as Zheng Hong, is an ethnic Han male born on 14 October 1957 in the town of Huanggang, Huangzhou District, Hubei Province. He was formerly a cadre at the Huanggang City Salt Company. In March 2000

[9] Text not available.

Zheng was sentenced by the Hubei public security authorities to one month's detention for going to Beijing to cause trouble and disturb public order. In December 2000 he was placed in administrative detention in accordance with the law by the Hubei public security authorities for 15 days for once again disrupting public order. On 11 March 2004 he used the Huanggang Foreign Trade Bureau to hold a memorial service for his father, giving tremendous publicity to Falun Gong, vilifying the Government for subjecting his father to political repression because he had practised Falun Gong, and maliciously fabricating slanderous remarks to the effect that the Foreign Trade Bureau had withheld his father's salary and benefits. Under the influence of his inflammatory speech, the mood of the Falun Gong members to follow the hearse through the streets demonstrating, creating a major public disturbance:

(a) The public security authorities, acting in accordance with the law, investigated these criminal acts - using a cult to organize a parade and disrupting public order - and seized more than 200 Falun Gong flyers and 44 Falun Gong compact discs from the Zheng home. On 20 May 2004, the public security authorities placed Zheng in criminal detention on suspicion of using a cult to undermine law enforcement; on 29 June the Huangzhou district procurator's office ordered his arrest, and on 16 November the Huangzhou district procurator's officer initiated criminal proceedings in the district court. The court, acting in accordance with the law, established a collegial panel, which heard the case. The prosecutor, the defendant and his counsel all participated in the hearing. During the proceedings the prosecutor read out the indictment, witnesses gave testimony and counsel provided a defence; the proceedings were conducted in public and in accordance with the law. The court found that the defendant Zheng Zhihong had disregarded national law, knowing that the Falun Gong cult was outlawed by the State, and instigated the disruption of public order and violated the provisions of national legislation and official regulations; his acts constituted a crime under article 300, paragraph 1, of the Criminal Law of the People's Republic of China and article 1, paragraph 4, of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Questions Concerning Specific Application of Laws in Handling Cases Involving the Organization and Use of Cults to Commit Crimes, and constituted the crime of using a cult to undermine law enforcement. He was sentenced to five years' imprisonment. Zheng did not accept this verdict and filed an appeal. The Intermediate People's Court in Huanggang heard the case, rejected the appeal and upheld the original verdict. Zheng is currently serving his sentence in the Qinduankou prison in Wuhan, Hubei Province;

(b) In its explanatory remarks, the Government states that: Falun Gong, which has been legally banned by the Government of China, fraudulently uses some Buddhist, Taoist and Christian names and terminology to concoct a heresy that confuses people's minds and advocates such fallacies as the notion of a "global explosion" and the idea that sick persons cannot take medicine. In the name of religion, it hoodwinks [people] and amasses money, harms lives, endangers society, tramples on human rights and causes a great many obsessed people to injure or kill themselves, leaving countless families to mourn their kin: this poses a tremendous threat to Chinese society. The cult continues to engage in such disruptive activities as destroying radio and television stations, cutting fibre optical cables, disrupting television signals and harassing by telephone those who disagree with them. All countries deal with cults, like the Branch Dravidians in the United States of America and Aum Shinrikyo in Japan, in accordance with the law;

(c) The Government further states that China is a country governed by the rule of law. In its handling of cases China's judiciary acts in strict compliance with such legislation as the Criminal Law and the Criminal Procedure Law of the People's Republic of China. China's legislation stipulates that any act involving the organization or use of a cult to undermine law enforcement is punishable under the law. Zheng Zhihong suffered legal consequences because he advocated a cult and used it to undermine social stability; the facts of his crime were clear, the evidence was conclusive, and his actions and their aftermath constitute elements of the crime of using a cult to undermine law enforcement, as clearly spelled out in the applicable legislation. China's judicial authorities acted in strict compliance with the law: throughout the investigation of Zheng's crime, his arrest, the hearing and judicial proceedings, they observed due process, took due note of the evidence and upheld the defendant's legitimate interests, allowing him to fully exercise his right to a defence and a hearing. The allegations that "Zheng Zhihong's detention is arbitrary because the court that convicted and sentenced him was acting upon instructions of the Security Administration", that "the 610 Office had decided that Zheng would receive a five-year prison sentence before the trial began" and that "the police gave the court a note reading, 'be severe in handling this case', written by the deputy Governor of Hubei Province" are all inconsistent with the facts.

13. In its reply to the Government's observations, the source states that Mr. Zheng's original appellant letter has presented his case very clearly. The Government's response in fact corroborated the factual happenings of his case. What the Government tried to spin is its typical politically charged allegations. One key allegation was that Mr. Zheng "took advantage of his father's funeral held by Huanggang City Foreign Trade Bureau to wantonly publicize Falun Gong and attack the government for politically persecuting his father for his father's practice of Falun Gong". "Influenced by his inciting language, other Falun Gong member became aroused." This allegation in itself showed what Mr. Zheng had done is no more than making a speech. To the Working Group, to incriminate Mr. Zheng based on his speech is a shameless illustration, although perhaps unknowingly so, of the Government's utter ignorance of the right to freedom of expression. The Chinese Government's response has also failed to explain how Mr. Zheng was allowed to, as it has claimed, "attack the Government" in the funeral sponsored by the Foreign Trade Bureau, a government agency. The fact is, Mr. Zheng was invited to give a eulogy to his late father:

(a) Another allegation made by the Government is "Mr. Zheng instigated dozens of Falun Gong member[s] to follow the casket to stage a parade demonstration, and severely disturbed the social order". It only shows how arbitrary the Government is to trump up charges: that following the casket can be interpreted as a parade demonstration and called a disturbance to social order;

(b) The third allegation is the discovery of "over 200 Falun Gong flyers and 44 Falun Gong CDs". Again, the Chinese Government is shamelessly showing to the Working Group how it disrespects the freedom of the press;

(c) In summary, the Government of China is giving the Working Group a complete admission of how it arbitrarily infringes the basic freedoms guaranteed by the Universal Declaration of Human Rights.

14. The Working Group notes that the Government agrees in essence with the facts as presented by the source. Mr. Zheng Zhihong expressed his beliefs and opinions as a Falun Gong member in the eulogy he held, as provided by the official protocol, at his father's funeral on 11 March 2004. Thereafter, Mr. Zheng Zhihong took part with other persons in a peaceful demonstration protesting against the Government's attitude towards Falun Gong. Finally, Mr. Zheng Zhihong had leaflets and CDs concerning the Falun Gong association at home.

15. The detention of Mr. Zheng Zhihong on the ground of these facts is incompatible with his right to freely express, in a peaceful manner, his religious beliefs and political opinions, and with his right to peacefully demonstrate.

16. The Working Group has already in previous Opinions and on the occasion of its visits to China expressed its concern with regard to the treatment to which members of the Falun Gong association are subjected. It finds no justification for the Government to keep in force penal laws impeding the exercise of the right to freedom of association, expression and demonstration of citizens who peacefully exercise activities within that association.

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

> The deprivation of liberty of Zheng Zhihong is arbitrary, being in contravention of articles 18, 19 and 20 of the Universal Declaration of Human Rights and falls within category II of the applicable categories to the consideration of the cases submitted to the Working Group.

18. The Working Group, having rendered this Opinion, requests the Government to take the necessary steps to rectify the situation, in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Rights, and to take the necessary measures to ratify the International Covenant on Civil and Political Rights.

Adopted on 11 May 2006.

OPINION No. 12/2006 (SAUDI ARABIA)

Communication: addressed to the Government on 26 January 2006.

Concerning: Mr. Abdurahman Nacer Abdullah al-Dahmane al-Chehri and Mr. Abdelghani Saad Muhamad al-Nahi al-Chehri.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

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

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. 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 cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Mr. Abdurahman Nacer Abdullah al-Dahmane al-Chehri (hereinafter "Abdurahman al-Chehri"), a citizen of the Kingdom of Saudi Arabia, of 21 years of age (identity card No. 1072917427), is a university student usually resident in Riyadh.

6. According to the information received, on 23 November 2003, members of the intelligence services arrested Abdurahman al-Chehri, purportedly in order to interrogate him about certain acquaintances of his. Since then he has been in detention, currently at the Jeddah prison. He has not been formally charged with any offence, or been informed of the duration of his custodial order, nor been brought before a judicial officer, or been allowed to name a lawyer to act on his behalf, nor otherwise been provided the possibility to challenge the legality of his detention.

7. Mr. Abdelghani Saad Muhamad al-Nahi Al-Chehri (hereinafter "Abdelghani al-Chehri"), a citizen of the Kingdom of Saudi Arabia born on 30 October 1979 (identity card No. 1029492541), is a civil servant usually resident in Nassim Al- Gharbi, Riyadh.

8. On 17 June 2004, members of the intelligence services arrested Abdelghani al-Chehri, purportedly in order to interrogate him about his brother-in-law, Youssef al-Chehri, who is reportedly in United States custody at the Guantánamo Bay detention centre. After his arrest he was tortured and ill-treated during several weeks of detention in a secret detention facility. His health is since then seriously impaired. He has not been formally charged with any offence, nor been informed of the duration of his custodial order, nor been brought before a judicial officer, nor been allowed to name a lawyer to act on his behalf, nor otherwise been provided the possibility to challenge the legality of his detention. Abdelghani al-Chehri is currently detained at the Al-Alicha prison in Riyadh.

9. The source alleges that the detention of Abdurahman al-Chehri and Abdelghani al-Chehri is arbitrary. It argues that it is devoid of any legal basis. The men have not been informed of the charges against them; are denied access to a lawyer, and have not been brought before a judge in the, respectively, 26 and 19 months since their arrest. The authorities have so far failed to provide any decision justifying arrest and detention.

10. In the absence of a reply from the Government, the Working Group considers the allegations of the source convincing. The detention of both Abdurahman and Abdelghani al-Chehri served no other purpose than interrogating them. Abdelghani was moreover subjected to ill-treatment and threats.

11. These two persons have been denied the possibility to consult with a lawyer and continue to be detained without having been charged or presented to any judicial authority.

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

> The deprivation of liberty of Abdelghani Saad Muhamad al-Nahi al-Chehri and Abdurahman Nacer Abdullah al-Dahmane al-Chehri is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and falls within category I of the applicable categories to the consideration of the cases submitted to the Working Group.

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

Adopted on 11 May 2006.

OPINION No. 13/2006 (UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND)

Communication: addressed to the Government on 4 October 2005.

Concerning: Mr. Paul Ikobonga Lopo.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

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

3. (Same text as paragraph 1 of Opinion No. 38/2005.)

4. The Working Group welcomes the cooperation of the Government of the United Kingdom of Great Britain and Northern Ireland, which provided the Working Group with the requested information concerning the allegations of the source. The reply by the Government was brought to the attention of the source, which made comments on it.

5. Mr. Paul Ikobonga Lopo (formerly named “Lopo Ikobonga Emongo Mbuya Madu”) is a citizen of the Democratic Republic of the Congo, born on 25 October 1956. He has 12 children, several of them underage, all of whom are present and settled in the United Kingdom and have been granted indefinite leave to stay.

6. Mr. Lopo entered the United Kingdom illegally on 8 August 1988 at Dover using a French identity card in the name of Mbuya Madu to which he was not entitled. He applied for asylum in the United Kingdom on the same day. On 8 February 1989,

Ms. Ntalongeno Ikobonga, also a citizen of the Democratic Republic of the Congo, filed an asylum claim in the United Kingdom and Mr. Lopo was recorded as her dependent husband under the name of Weshti Ikobonga. On 7 July 1989, she was granted asylum and given leave to remain in the United Kingdom until 7 July 1993. Mr. Lopo (under the name of Weshti Ikobonga) was granted asylum in line with her.

7. On 26 March 1989, Mr. Lopo was caught while attempting to facilitate the illegal entry into the United Kingdom of two Congolese nationals using forged passports. On 25 November 1991, Mr. Lopo was convicted on five counts of obtaining property by deception. The court sentenced him to two years' imprisonment and recommended his deportation. However, the authorities did not pursue the deportation. On 1 June 1994, Mr. Lopo was again convicted of a property-related crime and sentenced to 40 hours community service. He was again convicted on 23 June 1994, this time of driving without a licence and without insurance.

8. By letter dated 13 November 1995, the Immigration and Nationality Department informed Mr. Lopo that his application for refugee status had been refused. He was, however, granted exceptional leave to remain in the United Kingdom for one year. On 23 December 1996, the Department granted Mr. Lopo and his family exceptional leave to remain until 13 November 1999.

9. On 22 May 1998, Mr. Lopo was convicted of drinking and driving as well as of assaulting a police officer and sentenced to six months imprisonment. On 20 August 1999, Mr. Lopo was caught while attempting to facilitate the illegal entry of five persons into the United Kingdom.

10. On 17 October 2001, Mr. Lopo submitted an application for indefinite leave to remain.

11. On 10 July 2004, Mr. Lopo arrived at London's Heathrow Airport with two children, one his son, the other the daughter of a cousin. Mr. Lopo was arrested and charged with attempting to deceive the authorities with regard to the identity of the children. On 12 July 2004, he was convicted on charges of using a false instrument, assisting illegal entry and obtaining leave by deception. On 27 August 2004, he was sentenced to 15 months imprisonment. The court recommended that he be removed after serving his sentence.

12. This time the Government decided to act on the recommendation to make a deportation order and on 9 November 2004 Mr. Lopo was served with a Notice of Decision to Make a Deportation Order. He lodged an appeal against this decision on 25 November 2004.

13. Upon completion of the prison sentence, on 4 March 2005, Mr. Lopo was detained by the Immigration Service under the Immigration Act 1971 as subject to deportation proceedings initiated against him following his conviction for serious criminal offences. A hearing concerning his appeal against the deportation order took place on 19 April 2005. On 25 April 2005, the Designated Immigration Judge rejected his appeal. In reaching this decision, the Immigration Judge balanced Mr. Lopo's claim that he should not be deported as his children lived in the United Kingdom and needed his continued guidance against his criminal record, and

reached the conclusion that Mr. Lopo's deportation was justified also from a human rights point of view. In doing so, the judge expressed doubts as to whether the 16 children were all in fact Mr. Lopo's offspring, a fact the Home Office had never challenged.

14. On 28 April 2005, Mr. Lopo filed an application for reconsideration against this decision to the Asylum and Immigration Tribunal. He based his application on two grounds: (a) that as a former soldier and deserter he would be at risk of persecution, killing, torture and arbitrary detention if deported to the Democratic Republic of the Congo; and (b) that, having been living in the United Kingdom for more than 16 years and having a large family stably resident in the United Kingdom, under article 8 of the European Convention on Human Rights, his right to respect for his family life overrides any reasons for his removal, as he has not been found guilty of any violent crime.

15. On 6 May 2005, Mr. Lopo applied for bail, arguing that he has an address in the United Kingdom, that he has strong family and community ties and that there is no indication that the immigration authorities will resolve the question whether he should be removed quickly.

16. The source alleges that the continued detention of Mr. Paul Ikobonga Lopo is arbitrary because he has fully served all prison terms imposed on him for the offences he was found guilty of. He is currently detained pending removal, but there is no prospect that such removal will take place within a reasonable delay. The source notes that negotiations between the United Kingdom and the Democratic Republic of the Congo regarding a Memorandum of Understanding concerning the removal of Congolese citizens have been ongoing for years without success. The source adds that numerous cases of citizens of the Democratic Republic of the Congo currently to be removed from the United Kingdom show that the practical obstacles preventing involuntary return to the Democratic Republic of the Congo are intractable. There is no evidence that this will change in the foreseeable future. The source submits that the case law of United Kingdom courts clearly establishes that removal detention should not be maintained where removal is not realistically practicable within a reasonable period.

17. The Government, in its response, says that Mr. Lopo was not arbitrarily detained. It said that he employed at least 17 different aliases in his dealings with the British immigration authorities. The Government insists that Mr. Lopo entered the United Kingdom illegally on 8 August 1988, using a French identity card and claiming asylum under the name of "Mbuya Madu"; on 8 February 1989 his wife submitted a further asylum claim for herself with Mr. Lopo as her dependant under the name of "Wetshi Ikobonga". On 26 March 1989 under the identity of "Mbuya Madu Nana Okitungu", he attempted to facilitate unlawful entry to two citizens of Zaire travelling on forged passports and was refused entry to the United Kingdom. He was removed the same day.

18. The Government states that on 7 July 1989 Mr. Lopo's wife was recognized as a refugee. He was given leave, as "Wetshi Ikobonga", to remain in the United Kingdom until 7 July 1993 as her dependant. On 11 January 1990 Mr. Lopo applied for asylum in the identity of "Ndinga Lopo". On 1 May 1990 Mr. Lopo said that he wished to withdraw his asylum claim in the identity of Mbuya Madu, but later in 15 August said he wished to continue to seek asylum in the United Kingdom.

19. The Government says that on 25 November 1991 he was convicted on five counts of "Obtaining property by deception". He was sentenced to two years' imprisonment and recommended for deportation by the Court. The Court recommendation was not pursued. He was detained at the end of his sentence and was released on bail. On 1 June 1994 he was convicted on a charge of "Attempting to obtain property by deception" and sentenced to community service of 40 hours and given a fine. On 23 June 1994 he was convicted for "Possession of a listed false instrument", "Using a false instrument", "Driving without a licence and insurance" and fined and disqualified from driving for six months.

20. The Government informs that on 13 November 1995 Mr. Lopo and his family were granted leave to remain in the United Kingdom on an exceptional basis, outside the immigration rules for 12 months, which was further extended until 13 November 1999. On 22 May Mr. Lopo was convicted for driving with excess alcohol and for assaulting a police officer. He was sentenced to three months' imprisonment and disqualified from driving for three years.

21. The Government keeps telling different offences Mr. Lopo kept committing, such as assisting illegal entries, using a false instrument, obtaining leave by deception (12 July 2004), which sentenced him to 15 month's imprisonment and gave him a recommendation by the Court to be deported; driving with excess alcohol, common assault, destroying or damaging property, failing to surrender to bail at the appointed time (12 August 2004) which sentenced him to four months' imprisonment. Meanwhile, Mr. Lopo's wife and children, whom he stated in 1999 he was separated from, requested in that year and on 4 August 2004 were granted indefinite leave to remain in the United Kingdom.

22. On 1 October 2004, Mr. Lopo was refused leave to enter the United Kingdom and on November 2004 was noticed of a Decision to make a deportation order against him. He appealed against it and this was dismissed on 25 April 2005. On 4 March 2005 Mr. Lopo completed custodial sentence and was taken into Immigration Service Detention. On 6 September 2005 his application for a High Court review was refused and this exhausted all his available avenues for appeal. On 14 September 2005 a Deportation Order was served on Mr. Lopo and arrangements were made for a removal on 24 October 2005. These were deferred after it was discovered that Mr. Lopo had lodged a late application with the Criminal Cases Review Commission, which requires the presence of the applicant.

23. The Government says that several bails were withdrawn by Mr. Lopo and others were denied to him by the judge on the basis of having ignored the conditions of his bail in the past, taken together with his poor immigration history.

24. The Government states that removal of Mr. Lopo is not an unrealistic prospect, that he would have been removed to Democratic Republic of the Congo on October 2005 had he not lodged a late application for his criminal case, which is to be expedited, and once concluded, he will be removed using his valid national passport. As the Criminal Cases Review Commission issued a provisional decision not to refer Mr. Lopo's sentence to the Court of Appeal, his removal remains imminent.

25. The Government finally states that Mr. Lopo had entered and re-entered the United Kingdom on several occasions, in a number of different identities and he has returned of his own volition to the Democratic Republic of the Congo, that he has shown a blatant disregard for the both Immigration and Criminal Law of the United Kingdom, employing at this 17 known different aliases. His detention has been reviewed on a regular basis and was maintained due his exceptionally poor immigration history, his previous failure to comply with conditions of release, his use of verbal and documentary deception to gain leave to enter and remain in the United Kingdom, or evade removal, his illegal and attempted illegal entries to the United Kingdom, and the strong likelihood that he would not comply with any conditions attached to his release if he were freed from detention.

26. The source, in its reply to the Government, says that Mr. Lopo only used three aliases and that the others were parts of his same larger name. He recognizes the allegations of the Government in respect to his offences, but states that he already has paid for them. It states that he was refused at least 10 bails. It states that he has been in Brazzaville and not in the Democratic Republic of the Congo. It states that he might already be deported when the response from the source arrived to the Working Group.

27. The Working Group believes that it is in a position to render an Opinion, based on the allegations expressed by the Government and the source. Both Government and source agree on the offences Mr. Lopo had committed, in that the Court issued a recommendation to deport him after serving his sentence, and that since completing his sentence, on March 2005, he was held in administrative detention by the Immigration Service to be further deported. Then it is not contested that Mr. Lopo exercised numerous remedies against deportation, while his detention continued without giving him bail, due to his poor immigration and criminal record.

28. The Working Group's mandate does not enable it to examine the procedure which results in deportation, it can only examine the character of the deprivation of liberty of the individual concerned. The Working Group in that sense is concerned that detention of asylum seekers or non-status persons who are detained for purposes of deportation, comply with the requirement of reasonable time, as stated in previous reports (E/CN.4/2003/8/Add.2).

29. The question is if in his detention, Mr. Lopo has benefited from the standards of a fair trial, which includes being detained for a reasonable time period. The Working Group takes notice that Mr. Lopo had been through administrative and judicial procedures in which he could challenge his detention. During his detention period, he was able to use all the remedies available to him to not to be deported, and meanwhile he was not released as a result of the lack of commitment to the bail requirements that he had to follow.

30. The Working Group considers that the detention was neither indefinite nor unreasonably prolonged, given the duration of the various procedures involved. Since one deportation date had already been postponed on account of an appeal by Mr. Lopo, which entailed his remaining in the country, and, as the source acknowledges, a new time limit was set for his deportation on completion of the appeal proceedings. There does seem to have been a time limit set for the period of detention.

31. That said, the Working Group believes that in this particular case, the period of detention, due to the circumstances above mentioned, does not amount to violations of international standards of a fair trial such as to confer on the deprivation of liberty an arbitrary character.

32. Therefore, the Working Group issues the following Opinion:

The detention of Mr. Paul Ikobonga Lopo is not arbitrary.

Adopted on 11 May 2006.

OPINION No. 14/2006 (ISLAMIC REPUBLIC OF IRAN)

Communication: addressed to the Government on 7 October 2005.

Concerning: Ms. Kobra Rahmanpour.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. (Same text as paragraph 3 of Opinion No. 38/2005.)

3. The Working Group welcomes the cooperation of the Government of the Islamic Republic of Iran, which provided the Working Group with the requested information concerning the allegations of the source. The reply by the Government was brought to the attention of the source, which made comments on it.

4. According to the information received, Ms. Kobra Rahmanpour, 22 years old; resident of Shahre Rey, near Tehran; arrested on 5 November 2000; currently imprisoned and on death row in Evin prison, Tehran, awaiting judicial execution:

(a) Ms. Kobra Rahmanpour was born and grown up in a very poor family and had to give up school. Her father is elderly and one of her brothers is disabled. In order to help her family to survive, she married a man older than her own father, 40 years her senior. She reportedly suffered repeated maltreatment and abuse at her husband's home. On the last incident before her arrest, her mother-in law, Ms. Farokh-shoa Sabet, reportedly attacked her with a kitchen knife. Ms. Rahmanpour claimed that she had then killed her mother-in-law in an act of self-defence;

(b) Ms. Rahmanpour was arrested at the house of her husband and her mother-in-law, shortly after the incident, by police officers from the Police station of Niavaran who showed her an arrest warrant. She was accused of intentional murder and kept in detention awaiting her trial;

(c) The source alleges that Ms. Rahmanpour was interrogated without the presence of a defence lawyer. Before she had the occasion to obtain legal representation, she was coerced to confess to the murder of her mother-in-law. During the whole phase of the investigation she could not be assisted by a defence lawyer;

(d) Ms. Kobra Rahmanpour's trial began on 21 August 2001 before Branch 1608 of the Tehran's Criminal Court and lasted five sessions, only the first being public and the remaining four held in camera. The source alleges that Ms. Rahmanpour was convicted for premeditated murder and sentenced to death, despite the fact that her defence lawyer presented a temporary-insanity defence and demonstrated the fact that her husband, Mr. Alireza Niakaniyan, had several times committed mental, physical and sexual abuse against her; rape; defamation and fraud. Ms. Rahmanpour had been the victim of continuous humiliation by her husband, her mother-in-law and other family members. In one occasion, her husband was arrested and imprisoned for physically and sexually abusing her. Ms. Rahmanpour's lawyer also demonstrated that she was severely depressed at the time the incident took place;

(e) It was also reported that Ms. Rahmanpour's lawyer filed an appeal with the Supreme Court to overturn the guilt verdict. Despite the fact that Ms. Rahmanpour always pleaded not guilty and never waived from her claim that she acted in self-defence against an attacking mother-in-law, the Supreme Court rejected her claim and confirmed the verdict on 22 August 2002;

(f) Although Ms. Rahmanpour's punishment could have been commuted to a prison sentence if she would obtain the pardon of the heirs of the victim, such was not the case. She has remained in detention on death row since the Supreme Court confirmed the verdict. Her execution has been postponed several times. It is alleged that these delays in her execution have been due to the inability of her former husband and his family to provide the necessary documents to establish their relationship to the victim and also to eventual shortage of the necessary equipment to carry out the execution;

(g) The execution of Ms. Kobra Rahmanpour was first scheduled for 10 November 2003 and later for 31 December 2003 and 28 February 2004, before being submitted to an arbitrary council in view of the possibility of obtaining, from the heirs of the victim, their acceptance of compensation or payment of blood money (*dhiye*) rather than retribution in kind (*qesas-e nafs*). In July 2005, the victim's heirs ratified their decision not to pardon Ms. Kobra Rahmanpour and not to accept blood money. Her execution was then set to be carried out on 15 April 2005 but was also postponed. Efforts by public figures and officials have not deterred the family of the victim from seeking her execution, which now may be carried out at any moment;

(h) The source considers the detention of Ms. Kobra Rahmanpour to be arbitrary because her fundamental rights were not respected. Ms. Rahmanpour was arrested by police officers at the victim's family request after the death of the victim. She did not have access to a lawyer immediately after her arrest nor during the whole investigation phase, this leading to coercion by the authorities to self-incrimination. She could not challenge the validity of her detention before her trial nor could be granted bail;

(i) The source adds that Ms. Rahmanpour's rights to a fair trial have not been respected, in particular because her trial failed to comply with international standards. In this respect, it should be mentioned that there was an absence of presumption of innocence and the

right not to testify against oneself was not respected. Ms. Rahmanpour did not have a public hearing. The source considers that the court that sentenced her was not an independent and impartial tribunal and that she was not given the full right to defend herself. It adds that the appeal was not a genuine one.

5. The Government in its reply states that Ms. Kobra Rahmanpour has been accused of first-degree murder of her mother-in-law and following due process of law in competent court with full access to legal counsel of her choice has been sentenced to capital punishment. The sentence was upheld by the Supreme Court; however, it was not carried out based on direct orders from the Head of the Judiciary for the purpose of further consideration, including consultation between the accused and the victim's heirs. The Head of the Judiciary referred the case to the Arbitration Council so that the consent of the victim's heirs may be established through relevant mechanisms. A number of meetings between the Judiciary and the victim's heirs have so far failed to reach a satisfactory conclusion. Arbitration efforts are still ongoing and the sentence is still stayed despite the fact that it was sustained by the Supreme Court almost one year ago:

(a) Protecting the rights of a perpetrator of a crime must not preclude the system of justice from protecting those of the victim, who, in this case, has been deprived of her most essential rights of all, which is her Right to Life. Paragraph 2 of the resolution 1994/45 of the Commission on Human Rights, entitled "Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women" has endorsed sub-article (c), article 4, of the Declaration of Elimination of Violence against Women, which reads "… to punish acts of violence against women and to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State or by private persons";

(b) According to article 7 of "Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty", contained in Economic and Social Council resolution 1984/50, Ms. Rahmanpour has the right to seek pardon or commutation of sentence. She has done so and, as stated above, the Judiciary of the Islamic Republic of Iran, according to article 8 of the same guidelines, has refrained from carrying out the sentence, "pending appeal or other recourse or other proceeding relating to pardon or commutation of the sentence".

6. The complaint raised with regard to Ms. Rahmanpour's case relies on two allegations. Firstly it is contended that the criminal proceedings against her were not fair, secondly it was argued that the qualification of the acts for which Ms. Rahmanpour stood trial was incorrect under applicable Iranian law.

7. The Working Group emphasizes from the outset that whereas it is mandated to examine whether Ms. Rahmanpour was given a fair trial in the context of her detention, its competence does not extend to assess, whether the capital punishments taken against her complies with the applicable domestic law. Hence, the only aspect of Ms. Rahmanpour's case, which comes within the Working Group's purview, is whether the criminal proceedings conducted against her withstand the scrutiny of the relevant international standards.

8. Therefore, in what follows, the Working Group will concentrate to the due process aspects of the criminal proceedings against Ms. Rahmanpour.

9. The principal objection of the source to the proceedings is that Ms. Rahmanpour was, after her arrest, interrogated without the presence of a defence lawyer; more specifically, she was coerced to confess the murder of her mother-in-law before having the opportunity to obtain any legal representation. In sum, it is contended that during the whole phase of the investigation she could not resort to the assistance of a defence lawyer.

10. Contrariwise, the Government submitted, without giving more details thereon, that "Ms. Rahmanpour had full access to legal counsel to her choice."

11. The Working Group notes that the contradiction between the two allegations is only apparent. The statement of the Government shall obviously be understood as meaning that the defence counsel was made available for the accused during the entire trial. The Government neither confirmed, nor contested that before the trial began, Ms. Rahmanpour lacked legal representation.

12. This interpretation of the Government's statement is supported by the Working Group's own experience gained during its visit to the Islamic Republic of Iran in 2003. During this visit the host authorities explained to the delegation that under Iranian law the participation of defence lawyers is not required from the very beginning of the investigation. This also applies to the investigation of capital cases. Since the Working Group held that on this point the domestic law is at variance with international law and practice, it made the following recommendation in its report on the visit (E/CN.4/2004/3/Add.2): "The active involvement of counsel must be provided for, whatever the nature of the case, starting with the custody, or, the very least, the investigation phase, throughout the trial and the appeals stage." For all these reasons the submission of the Government may be construed as not challenging the allegation of the source that Ms. Rahmanpour could not accede to the services of a defence lawyer between her being taken into custody and the beginning of the trial.

13. The lack of legal representation in the investigation of a capital charge may seriously jeopardise a supreme human value: the life of the accused. It is the position of the Working Group that in the instant case the lack of defence counsel from the initial stage of the investigation is so detrimental to the interests of justice in general, and to the interests of the person charged in particular that it confers to the criminal proceedings an unfair character.

14. On that basis the Working Group concludes that:

> The deprivation of liberty of Ms. Rahmanpour is arbitrary as being in contravention of article 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.

15. The Working Group requests the Government of the Islamic Republic of Iran to remedy the situation of Ms. Kobra Rahmanpour. Under the specific circumstances of this case and bearing in mind that she is being held on death row for a long time, the most appropriate remedy would be to obtain her exemption from the implementation of the capital punishment. Such a generous measure, the Working Group believes, would be broadly welcomed and highly appreciated by the international community.

Adopted on 11 May 2006.

OPINION No. 15/2006 (SYRIAN ARAB REPUBLIC)

Communication: addressed to the Government on 19 January 2006.

Concerning: Mr. Ryad Hamoud Al-Darrar.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group conveys its appreciation to the Government of the Syrian Arab Republic for having forwarded the requested information.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

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. However, to date, the latter has not 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 cases, in the context of the allegations made and the response of the Government thereto.

5. Mr. Ryad Hamoud al-Darrar; born in 1954 at Deir Ezzor; married with six children; Professor of Arab literature; a member of the National Forum for the Democratic Dialogue, was arrested on 4 June 2005 at his home by members of the Political Security Agency. It was reported that Mr. Al-Darrar was arrested without a warrant clearly specifying the charges against him. In spite of his bad health, he was held during the first 25 days of his detention in solitary confinement and in incommunicado detention. Later, he was transferred to Section No. 2 (Political) of ‘Adhra Prison, near Damascus.

6. It was reported that Mr. Al-Darrar is in urgent need of appropriate medication and specialist medical care. He is suffering from severe diabetes needing permanent treatment with insulin. It was alleged that, in prison, his health could deteriorate further.

7. According to the information received, on 20 May 2005, Mr. Al-Darrar chaired a public meeting at Deir Ezzor of more than 200 members of the National Forum for the Democratic Dialogue. Following this meeting, he wrote a communication to the tenth local Congress of the

governmental party asking for constitutional reform; for the establishment of a multi-party democracy; the end of the state of emergency; and for several political reforms, including the return of the exiles and the liberation of political detainees. On 3 June 2005, Mr. Al-Darrar denounced the death in detention of Mr. Mohamed Mashouq Al-Khiznaoui, calling for an exhaustive investigation of his death. The source alleges that these were the reasons for his arrest.

8. On 4 December 2005, Mr. al-Darrar appeared for his first hearing before the Supreme State Security Court (SSSC) (*Mahkamat Amn Al Dawla Al Ulya*), where he was charged with infractions of articles 285, 286 and 287 of the Penal Code, concerning offences of a political character, mainly membership in a non-authorized political organization and disturbing the nation's harmony. The next session of the trial was scheduled for 15 January 2006.

9. The source alleges that his defence lawyers were not authorized to visit him. His relatives were authorized only once to visit him and solely on the basis of an authorization of an exceptional character. His lawyers complained that, contrary to article 275 of the Code of Criminal Procedures, they were not allowed access to the charge sheet and other documents relevant to the case.

10. According to the source, this is a case of a politically motivated arbitrary arrest. Mr. Al-Darrar is being held in detention solely for the expression of his conscientiously held beliefs and for the exercise of his rights of freedom of expression and association. The judicial procedures of this defendant before the SSSC are seriously flawed and fall far short of international standards of fairness. The SSSC, which was created under 1963 emergency legislation, is not bound by the rules of the Syrian Code of Criminal Procedures. Magistrates, especially the President of the Court, have been granted wide discretionary powers. In addition, defendants have restricted access to defence lawyers. Lastly, the SSSC verdicts are not subject to appeal.

11. The source recalls that in April 2001, the United Nations Human Rights Committee expressed concern about the procedures of the SSSC. It stated that these procedures were "incompatible with the provisions of Article 14, paragraphs 1, 3 and 5 of the International Covenant on Civil and Political Rights"; that the SSSC rejects torture allegations even in flagrant cases and that its decisions are not subject to appeal (CCPR/CO/71/SYR/Add.1, para. 16).

12. The source further considers that the SSSC has been conceived as an institution of the state of emergency. It is solely dependant on the executive branch of the Government; it is placed outside the ordinary criminal justice system and is accountable only to the Minister of the Interior. Its powers are limited to the courtroom and it is unable to ensure that those acquitted are actually released.

13. The Government, in its response, states that Mr. Al-Darrar has been charged on account of his membership in a non-authorized secret organization, diffusion of false information and perturbing the Nation's concord, as stated in articles 225, 226 and 328 of the Criminal Code. His hearing will take place on 5 March 2006.

14. The Working Group takes notice that the Government does not contest that the criminal charges were pressed against Mr. Al-Darrar because he hosted a public meeting, issued a communication and denounced a death in prison. These activities where held without violence and are rights protected under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

15. The facts described show that Mr. Al-Darrar was holding an opinion and imparting information, which is a right that he is entitled to in article 19 of the Universal Declaration of Human Rights. Having a public meeting without violence is a right to which he is entitled until article 20, which enshrines the right to freedom of peaceful assembly. He is detained on the sole basis of exercising these rights.

16. Furthermore, it is not contested that Mr. Al-Darrar's detention was conducted without a warrant and that he was held in incommunicado detention for 25 days, that his lawyers were not permitted to have contact with him and that were not given the pertaining documents of the case, and that he did not benefit from a fair and impartial trial, as the procedure before the SSSC is described.

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

> The deprivation of liberty of Mr. Ryad Hamoud Al-Darrar is arbitrary, as being in contravention of articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

18. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Ryad Hamoud Al-Darrar and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 12 May 2006.

OPINION No. 16/2006 (SYRIAN ARAB REPUBLIC)

Communication: addressed to the Government on 26 October 2005.

Concerning: Messrs. Muhammed Osama Sayes, Ahmet Muhammad Ibrahim, 'Abd al-Rahman al-Musa, Nabil al-Marabh and Muhammad Fa'iq Mustafa.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2 The Working Group conveys its appreciation to the Government of the Syrian Arab Republic for having forwarded the requisite information.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. It transmitted the reply provided by the Government to the source and received its comments.

5. 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 and the response of the Government thereto, as well as the observations by the source.

6. The cases concerning the above-mentioned five persons were reported to the Working Group on Arbitrary Detention as follows.

7. Mr. Muhammed Osama Sayes, a 30-year-old Syrian citizen, was deported from the United Kingdom to the Syrian Arab Republic in May 2005 via Amsterdam's Schiphol airport, after the United Kingdom authorities had rejected his application for political asylum. It is reported that he is a member of the outlawed Muslim Brotherhood. He was arrested on his arrival in Damascus. He was transferred to the Political Security branch in Damascus shortly after arrest but has not been charged with any offence. His current place of detention is unknown and he has not been seen for over four months. It is feared that he is at risk of torture.

8. Mr. Ahmet Muhammad Ibrahim, aged around 21, a national of Syria, has been detained since he was deported from Turkey to the Syrian Arab Republic on 25 March 2005. He was arrested and detained by Turkish security forces close to the Syrian border on 22 August 2004, and remanded to prison on allegations of membership of the Kurdish armed organization *Kongra Gel* (previously known as the PKK). Although it is reported that he was acquitted by a Turkish court of all charges on 24 March 2005, he was handed over to the Syrian authorities and was immediately imprisoned in Qamishli, in the north-east of the country. In the Syrian Arab Republic, he has apparently been held in various detention centres under the control of different security branches. He is reportedly now being held for the last three months in Tadmur prison in the Homs desert, approximately 250 km north-east of Damascus.

9. According to the information provided by the source, Mr. Ahmet Muhammad Ibrahim has been subjected to torture, including with electrical wires, being beaten, and by the "tyre" (*dullab*), which involves hanging the victim from a suspended tyre and beating him with sticks and cables. His mental health is said to be very poor. Ahmet Muhammad Ibrahim is believed to be charged with membership of a Kurdish opposition group.

10. Mr. 'Abd al-Rahman al-Musa, a Syrian national, 41 years old, grocery store manager, has been detained in Syria without charge since January 2005. He had been living in the United States since 1991. In Houston, Texas, he married an American citizen and fathered two children. In March 2004 his asylum application was refused and he was detained until he was ordered to be removed from the country. He was deported by the United States authorities on 19 January 2005, via Amsterdam's Schiphol airport, despite his previous affiliation to the outlawed Muslim Brotherhood. He was initially held at the Political Security Detention Centre in Hama, western Syria, before being transferred to another place of detention. It is alleged that since April 2005 he has not been allowed contact with his family or a lawyer and is being held incommunicado.

11. The source also mentions the possibility that Mr. ‘Abd al-Rahman al-Musa would stand trial on unknown charges before the Supreme State Security Court (SSSC), a tribunal not subject to the rules of the Code of Criminal Procedure. The SSSC operates outside the normal justice system and is under the control of the executive branch of the Government. It is alleged that defendants before this court only have a very brief access to their lawyer before or after trial sessions and that this court lacks independence and impartiality. Its decisions are not subject to appeal. Its powers are reportedly limited to the courtroom and do not extend to control or supervision of the conduct of the security forces or pretrial procedures.

12. Mr. Nabil Al-Marabh, 39 years old, a Kuwaiti-born Syrian national, was deported to the Syrian Arab Republic by United States authorities in May 2004. He was initially arrested and held as a material witness following the 11 September 2001 attacks on New York and Washington, then was later deported as an illegal alien. It is reported he was detained in Syria but in fact he effectively “disappeared” from late May 2004 until August 2005, after he went to register for military service. He was reportedly detained by two Syrian intelligence officers at the medical centre attached to the military service centre in Damascus, and there was then no word of him for over one year.

13. The source further mentions that when members of his family tried to find out about him they were told not to bother. Later, he was allowed monthly visits from members of his family. He will reportedly stand trial before the Supreme State Security Court, but it is not known on what charges. It is reported he is now held at ‘Adra prison, outside Damascus, and has allegedly been subject to torture and ill-treatment.

14. Mr. Muhammad Fa’iq Mustafa, aged around 42, a national of Bulgaria and the Syrian Arab Republic, detained without charge since 22 November 2002 when he was deported from Bulgaria, where he had been living since 1981, studying and then practicing medicine. His Bulgarian passport was confiscated, reportedly without explanation. He is currently held at Sednaya prison, outside Damascus. He is reported to have been subject to torture and ill-treatment during the initial period of his three years of detention without charge. He could be tried by a Field Military Court (FMC), which does not allow legal representation for defendants. Trials before the Field Military Court are reported to be unfair. It is believed that he has been charged and sentenced after three appearances before the FMC. The source assumes he has been sentenced although he has not been informed of any charges or an eventual sentence.

15. The source further reports those trial sessions before the FMC are short and consist of one or two hearings, and routinely take place inside a prison. The defendants are allegedly taken to the hearings usually only to plead guilty, or otherwise, to the charges filed against them. In some cases it is alleged that political detainees have been sentenced without a hearing. In others, defendants have been sentenced after FMC hearings without being aware that they were in fact at a FMC hearing. Others have learned of their sentencing only by chance, even months or years after the trial. The source further reports that confessions extracted under duress are systematically used as evidence in these courts. The defendants’ claims of ill-treatment or torture are almost never investigated.

16. According to the source, these persons have not officially been charged with any recognizable criminal offence and have not been given fair and prompt trials. Their detention is therefore arbitrary.

17. In its response, the Government provided the following information:

(a) With regard to Mr. Muhammed Osama Sayes, it stated that in 1981, he left the Syrian Arab Republic with his family to join in Jordan his father, a member of a terrorist group who had already fled Syria in 1980. According to the Government, in 1990, Muhammed Osama Syes became himself a member of a terrorist group and was trained on how to use light weapons. In 2000, he left Jordan for the United Kingdom and on his arrival applied for political asylum on the alleged reason that as a member of a terrorist group, he could face the death penalty if deported to Syria. In 2005, the United Kingdom authorities rejected his claim for political asylum and he was deported to the Syrian Arab Republic via Amsterdam. On 5 May 2005, he was arrested at Damascus Airport after the Netherlands authorities also rejected his claim for political asylum. The Government asserted that the investigation of his case was completed and he will be tried before the Supreme State Security Court;

(b) With regard to Mr. Ahmet Muhammad Ibrahim, the Government reported that he fled the Syrian Arab Republic on 14 August 2002 after he absconded from the Army and entered illegally to Turkey; he was arrested by the Turkish authorities and put in jail under the charges of supporting the Kurdistan Labour Party. His detention lasted until 25 March 2005. On 6th June he was transferred to the Syrian Immigration Authorities, which are currently detaining him on the charge of absconding the country;

(c) With regard to Mr. 'Abd al-Rahman al-Musa, the Government stated that since 1980 he has been a member of the Muslim Brotherhood, an organization which is banned in the Syrian Arab Republic. It has emerged from the investigations that have been conducted with him that he provided shelter in his home in Hama to subversives and was trained at the Brotherhood's camps in Iraq to handle different categories of weapon. He travelled to the United States via Jordan and remained there until the United States authorities deported him to the Syrian Arab Republic on 19 January 2005. He was then detained and brought before the Supreme State Security Court;

(d) With regard to Mr. Nabil al-Marabh, in its reply the Government points out that he forged passports and used forged documents and a forged seal bearing the name of the Syrian Embassy in Washington. The Government adds that he also committed acts prejudicial to Syrian's relations with another State and broadcast false information with a view to damaging the good name of the State, and for that he is currently detained;

(e) With regard to Dr. Muhammad Fa'iq Mustafa, the Government confirmed that he returned to the Syrian Arab Republic on 22 November 2002 after being expelled by the Bulgarian authorities. During his interrogations it was established that he is a member of the Muslim Brotherhood, an organization proscribed in Syria. The Government adds that he was tried by a military court and sentenced to 12 years' hard labour pursuant to judgement No. 1 of 25 January 2004.

18. The source replies in commenting on the response from the Government by reiterating its allegations and providing the following new developments.

19. According to the source, 'Abd al-Rahman al-Musa has been detained incommunicado, without charge and without seeing a lawyer since he was deported on 19 January 2005 from the United States. On November 2005, his case was brought before the Supreme State Security Court, but the charges against him remain unclear. As far as Nabil al-Marabh is concerned, the sources adds to the previous allegations that it is not aware of the allegations of forging a passport and only saw that in the communication of the Government and it is also not aware that there are official charges. The Source alleged that Nabil al-Marabh appeared before the Supreme State Security Court in October 2005 on charges relating to "Subversion" without getting access to a lawyer.

20. With regard to Muhammed Osama Sayes, the source alleged that he was brought before the Supreme State Security Court on 4 December 2005 and again on 15 January 2006. It is however, not able to ascertain if he has any legal representation and added that, according to reports, he is charged with membership of the Muslim Brotherhood, spreading false information against the State (apparently by seeking asylum abroad), and possessing a forged passport. His case was initially adjourned until 12 March and reportedly the next session will be on 7 May 2006. The source reiterates that after his deportation, Muhammed Osama Sayes was held incommunicado for months, but in January 2006, it was reported that he had received at least one family visit.

21. The source also reported that Muhammad Fa'iq Mustafa was released on 3 November 2005 from Sydnaya prison, as one of 190 political prisoners released under a presidential amnesty to mark the Muslim holiday of *Eid al-Fitr*. He has been detained without charge, had reportedly been tortured and was tried by the Field Military Court without being given details about the charges brought against him or his sentence. According to the source, 101 of the people released under the presidential amnesty had been detained because they were allegedly linked to the Banned Muslim Brotherhood.

22. According to the information forwarded by the source, Ahmet Muhammad Ibrahim was also released from Sednaya prison on 22 January 2006. Following his deportation, he was held in various places of detention and was charged with membership of a Kurdish opposition group and appeared before the Field Military Court; however, the judge reportedly decided that he was not mentally fit to stand trial. According to the source, Ahmet Muhammad Ibrahim is reported to have lost a great deal of weight and is suffering from depression. He was tortured during his first month of detention at the Far'Filistin of Military Intelligence in Damascus.

23. The source expresses concern about a number of Syrian nationals being detained without charge or trial after being deported to Syria and added that these forcibly returned individuals are in danger of being subjected to torture and other ill-treatment. The source is therefore concerned for the three men who were forcibly returned to the Syrian Arab Republic from the United Kingdom and the United States, two of them via Netherlands and still remain in detention. The source believes that similar cases of forcible return, arrest and detention and

trial before military and special courts with systematic absence of legal due process and guarantees is likely to continue. The source insists that for these reason it is vital that the Working Group renders an Opinion on the legality of the detention in all these cases, independently of the release of Muhammad Fa'iq Mustafa and Ahmet Muhammad Ibrahim.

24. The Working Group welcomes the release of two of the above-mentioned individuals: Muhammad Fa'iq Mustafa, released under a presidential amnesty, on 3 November 2005, after being sentenced by the Field Military Court to 12 years' imprisonment and Mr. Ahmet Muhammad Ibrahim, released on 22 January 2006 because, according to the source, he was not mentally fit to stand trial. Mr. Ahmet Muhammad Ibrahim was allegedly subjected to torture during his detention. The three others remain in detention awaiting trial before the Supreme State Security Court.

25. Given the seriousness of the alleged violations which the Government ignored in its reply, the Working Group decides to render its Opinion on the question of whether the deprivation of liberty in the cases referred to was arbitrary, notwithstanding the release of the two above-mentioned persons, in accordance with paragraph 17 (a) of its methods of work.

26. The Working Group notes that all five above-mentioned individuals were arrested at Damascus airport after being deported to the Syrian Arab Republic from different countries. In its reply the Government provided detailed information on their situation prior to their arrest by the Syrian authorities, but limited itself to a fairly laconic submission on the charges and procedure that led three of them to be sent before the Supreme State Security Court and the two that were afterwards released, before the Field Military Court.

27. The Working Group also notes that the Government fails to provide information that contests the very serious allegations of non-observance of the right to a fair trial which were impugned by the source, particularly that all of the five were detained incommunicado for a prolonged period, without access to their family or a lawyer, without knowledge of the charges brought against them and allegedly subjected to torture and ill treatment. The source also complained of the unfairness of the procedure conducted before the Supreme State Security Court and the Field Military Court and about the fact that confessions extracted under duress are systematically used as evidence in these courts. The Working Group notes that the Government did not comment on these allegations either.

28. The Working Group has already expressed its serious concern about these courts' non-compliance with international standards on the right to a fair trial (Opinion No. 21/2000). For example, lawyers are not granted access to their clients prior to the trial, proceedings are initiated before legal representatives have an opportunity to study the case file, and lawyers are frequently denied their right to speak on behalf of their clients. Lawyers require written permission from the Court's President before they can see their clients in prison. Moreover, those sentenced by the Supreme State Security Court and the Field Military Court had no right to appeal their sentences. In its concluding observations, following its consideration of the second periodic report submitted by the Syrian Arab Republic under article 40 of the International Covenant on Civil and Political Rights (CCPR/CO/71/SYR), the Human Rights Committee

declares that the procedures of the Supreme State Security Court are incompatible with the provisions of article 14, paragraphs 1, 3 and 5, of the Covenant. Thus, the gravity of the violation of the right to a fair trial is such as to confer on the deprivation of liberty of the above-mentioned five persons an arbitrary character.

29. In these circumstances, the Working Group would like to stress that countries which forcibly return individuals who are in danger of being subjected to torture and other ill-treatment and/or being tried without enjoying legal due process and guarantees are in breach of their obligations under international law, particularly the International Convention against Torture and the International Covenant on Civil and Political Rights.

30. In the light of the foregoing, the Working Group renders the following Opinion:

(a) The deprivation of liberty of Ahmet Muhammad Ibrahim from 25 March 2005 until his release on 3 November 2005 and of Muhammad Fa'iq Mustafa, from 22 November 2002 until his release on 22 January 2006 was arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is party, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group;

(b) The deprivation of liberty of Muhammed Osama Sayes, Nabil al-Marabh and 'Abd al-Rahman al-Musa, who are still in detention, is arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is party, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

31. Consequent upon the opinion rendered, the Working Group requests the Government to remedy the situation of the three persons who are still deprived of their liberty, in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Right and in the International Covenant on Civil and Political Rights.

Adopted on 12 May 2006.

OPINION No. 17/2006 (LEBANON)

Communication: addressed to the Government on 3 May 2005.

Concerning: Mr. Nehmet Naim El Haj.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

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

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

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 made comments on it. 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 received, Mr. Nehmeh Naim El Haj, born in 1963, of Lebanese nationality, interior decorator, resident in the Al Basatin neighbourhood, Ain Saadeh, Lebanon, and currently detained in the Roumieh central prison in Lebanon, was arrested at the Lebanese-Syrian border on 25 November 1998. The arrest was made, without an arrest warrant, by Syrian intelligence service agents, who placed Mr. El Haj in an illegal Syrian interrogation centre at Anjar in the Bekaa Valley region of Lebanon for a month. While he was there, his family was told neither that he had been arrested nor where he was and he had no access to a lawyer. According to the information received, he was tortured during interrogation sessions conducted by members of the Syrian intelligence services. A month after his arrest, he was handed over to the Lebanese authorities at Zahleh and then transferred to Jounieh before being detained in the Roumieh prison, where he has been ever since.

6. He was charged with having murdered two people in Lebanon and was not tried until July 2004. The Lebanese authorities did not question him about the alleged murders. According to the source, his conviction was based solely on the interrogations conducted by members of the Syrian intelligence services. He is currently awaiting judicial review of his case.

7. According to the source, almost six years elapsed between Mr. El Haj's arrest and his trial. In addition, his conviction was based solely on the interrogations conducted by members of the Syrian intelligence services during his first month in custody. Those services were not competent to conduct a judicial investigation or to collect evidence, and while being interrogated Mr. El Haj was tortured.

8. The source further states that the families of the two people Mr. El Haj was charged with, and convicted of murdering withdrew their claims against him for criminal indemnification once his lawyer explained his situation to them. Despite that, Mr. El Haj was sentenced to death.

9. The Government of Lebanon states in its response that the documents and official records in Mr. El Haj's case file show that he was arrested by the intelligence services on 22 November 1998 in Syria, where he had fled because he was wanted by the Lebanese authorities for the murders of two Syrian workers. The examining magistrate in the case had issued a warrant for his arrest. The Syrian intelligence services questioned him at the Anjar station without informing the Lebanese authorities, to whom they handed him over at Zahleh on 25 November 1998. On 26 November 1998 he was passed on to the judicial authorities in Jounieh, which were competent *ratione loci* and which in turn delivered him the same day to the prosecutor of the Court of Cassation in Mount Lebanon. Later that day he was brought before the examining magistrate, who decided to apply the arrest warrant issued against him by default on 18 November 1998.

10. The Government further states that Mr. El Haj admitted to the examining magistrate 35 days after having committed the murders that he had made a plan to drug and strangle the two Syrian workers and burn their bodies. It is apparent from the records in the case file that his questioning by the Syrian intelligence services lasted only three days, since he was arrested by the Syrian authorities on 22 November 1998 and handed over at Zahleh on 25 November 1998. As the Lebanese authorities did not ask the Syrian authorities to make the arrest and did not take part in it, they can neither confirm nor refute his assertions that he was tortured. Consequently, none of what happened before his handover to the Lebanese authorities concerns Lebanon. Furthermore, the Criminal Court made no mention of the record of the inquiries carried out by the Syrian intelligence services among the grounds for its judgement. It should also be noted that Mr. El Haj himself chose to flee to Syria, even though his victims were of Syrian nationality.

11. The preliminary inquiry carried out by the Lebanese authorities lasted no more than 48 hours from the time when Mr. El Haj was brought to the Zahleh station on 25 November 1998, transferred to the Jounieh station and then taken to the office of the Procurator-General at the Court of Cassation at Mount Lebanon, who in turn referred him on 26 November 1998 to the examining magistrate. Those 48 hours constitute the legal time limit provided for in article 48 of the Code of Criminal Procedure. Mr. El Haj was heard on 26 November 1998 by the examining magistrate. The latter is not a military officer serving in a barracks. He is a civil servant whose office is located in the Law Courts. As it is the right of the accused to ask to be assisted by a lawyer before being heard, the examining magistrate offered Mr. El Haj such assistance but he agreed to be questioned in the absence of a lawyer and signed a document to that effect. At no moment was Mr. El Haj subjected to torture, maltreatment or psychological pressure before the examining magistrate. He unambiguously admitted the crime of which he had been accused and his statements were consistent on all points with the account of his accomplice, Sami Rebeh, who had confessed to the examining magistrate without the Syrian authorities having questioned him. Mr. El Haj personally recognized before the Criminal Court that he had never been badly treated in the office of the examining magistrate or in police premises, affirming only that he had been tortured by the Syrian police.

12. Mr. El Haj was tried for intentional, premeditated homicide under article 549, paragraphs 1, 4 and 8, of the Criminal Code, an offence which carries the death penalty. The judgement was pronounced by the Criminal Court composed of three eminent judges known for their competence, integrity and experience. The proceedings before this body are conducted in public in the presence of lawyers so as to guarantee the accused a fair and impartial trial. As regards the affirmation that the plaintiffs decided not to proceed against Mr. El Haj, such decisions have no effect on public prosecutions and apply only to personal rights, i.e. action for damages. The Court of Cassation declared the appeal filed by Mr. El Haj admissible on 11 April 2005 under article 396 of the Code of Criminal Procedure, by virtue of which all death sentences are subject to appeal on the merits and the form, which makes it possible for the Court of Cassation to re-examine the case. Mr. El Haj's place of detention is a prison governed by the provisions of decree No. 14310 of 11 February 1949 and the amendments thereto relating to the organization of prisons. Those provisions lay down the procedures for the application of the laws and regulations concerning detainees, define the obligations and powers of prison directors, contain the rules governing the management of prisoners inside prisons and their transfer to the courts, and provide for the submission to the competent authorities of periodic reports on prisoners' conditions of detention.

13. The Government further observes that: the Criminal Court established, after examining in public the probative and indicative evidence and facts of the case, that Mr. El Haj committed a horrible crime whose victims were two innocent workers; Mr. El Haj was tried by an independent regular criminal court observing the legal rules in force in Lebanon, which are applicable to all citizens without distinction and which are consistent with the international norms and principles in force in such matters. Mr. El Haj is currently serving a prison sentence in a place of detention governed by the law, under entirely humane conditions and respecting reasonable standards of security and good management of places of detention as set forth in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

14. The allegations that Mr. El Haj was arrested arbitrarily and was the victim during his pretrial detention of violations by the security services of legal safeguards are merely tendentious affirmations coming from suspect persons who have no hesitation in making gross accusations, without providing the slightest proof, in order to tarnish the image of the Lebanese authorities. It should not be forgotten that the Procurator-General at the Court of Cassation, who is the highest authority in the department of public prosecutions, personally supervises all the judicial police services and oversees the application of the provisions of criminal law designed to ensure the protection of citizens against any arbitrary measure or injustice.

15. In reply, the source asserts that, contrary to what is said in the Government's response, Mr. El Haj has officially been in detention in Lebanon since 25 November 1998, when the Syrian intelligence services handed him over to the Lebanese authorities. The fact that the Government says that "the Syrian intelligence services questioned [Mr. El Haj] at the Anjar station without informing the Lebanese authorities" means that it is relying on information from the Syrian intelligence services when it states that those authorities only held him for three days.

16. The source asserts that Mr. El Haj's detention by the Syrian authorities was illegal because the place of detention was not an official one, the persons who arrested and interrogated Mr. El Haj were not competent to do so, and Mr. El Haj was held without the knowledge of the Lebanese authorities, meaning that during that period of incommunicado detention he was deprived of the protection of the relevant laws.

17. The source points out that the Government contradicts itself when it says on the one hand that Mr. El Haj was arrested by the Syrian intelligence services under a warrant issued by the examining magistrate because of his default and on the other that the arrest took place without any official request by and without the supervision of the Lebanese authorities. The source believes that Mr. El Haj was arrested in violation of the lawful procedure.

18. The source observes that, although the Government contends that Mr. El Haj's arrest by the Syrian intelligence services did not concern Lebanon, it was sanctioned by the Lebanese judicial authorities, since they did not contest it for having been made in an unlawful manner.

19. The source asserts that the verdict against Mr. El Haj was founded on a confession he signed while under torture at the hands of the Syrian intelligence services. The Government claims to be unable to confirm or refute the allegations that Mr. El Haj was tortured because the examining magistrate did not include a record of the intelligence services' questioning of him in the case file. According to the source, however, Mr. El Haj's lawyer, Mr. Elias Bou Ghosn,

reported that the file does contain such a record, dated 24 November 1998 and drawn up by the Syrian intelligence services. The source also disputes the Government's assertions that Mr. El Haj was questioned by a civilian judicial officer in a civilian prison and that he agreed in writing to be questioned without the presence of a lawyer. In fact, Mr. El Haj claims that he was tortured for a month before being handed over to the Lebanese authorities, that he was immediately brought before the examining magistrate and that, under mental pressure from that magistrate, he simply signed papers without reading them.

20. The Working Group notes that the Government of Lebanon neither confirms nor refutes the allegations that Mr. El Haj was arrested at the Lebanese-Syrian border, that he was detained and tortured for a month in an interrogation centre and that it was under torture that he made a confession. The Government admits that Mr. El Haj was questioned by the examining magistrate without the assistance of a lawyer and claims that the examining magistrate reported in the record of the hearing that he offered Mr. El Haj such assistance and that Mr. El Haj agreed to do without it.

21. The Working Group considers that, when someone is accused of an offence punishable by death, the presence of a lawyer is not simply a right that the accused person may renounce, but an absolute necessity for the sake of justice. The Working Group wishes to draw attention in this regard to article 14, paragraph 3 (d), of the International Covenant on Civil and Political Rights, an instrument to which Lebanon is a party. That paragraph provides that everyone charged with a criminal offence has the right to legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

22. In view of the circumstances of the case in question, the Working Group considers the violation of the above provision to be so serious as to confer on Mr. El Haj's detention and conviction an arbitrary character.

23. In the light of the foregoing, the Working Group renders the following Opinion:

> The deprivation of liberty of Mr. Naim El Haj is arbitrary, being in contravention of article 14 of the International Covenant on Civil and Political Rights, and falls under category III of the categories applicable to the consideration of cases submitted to the Working Group.

24. Having rendered this Opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Naim El Haj in conformity with the norms and principles set forth in the International Covenant on Civil and Political Rights. In view of the special circumstances of the case, the most appropriate remedy would be to obtain his exemption from capital punishment.

25. Such a generous measure would, the Working Group believes, be broadly welcomed and highly appreciated by the international community.

Adopted on 12 May 2006.

OPINION No. 18/2006 (LIBYAN ARAB JAMAHIRIYA)

Communication: addressed to the Government on 30 September 2005.

Concerning: Fardj Al Marchai, Salah Eddine al-Aoudjili, Khaled Chebli, Idris al-Maqsabi, Djamel Aquila Abdullah al-Abdli, Rejeb Salem al-Raqai and Assaad Mohamed Salem Assahar.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

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

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. 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 cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the information received, Fardj al-Marchai, Salah Eddine al-Aoudjili, Khaled Chebli, Idris al-Maqsabi, Djamel Aquila Abdullah al-Abdli, Rejeb Salem al-Raqai and Assaad Mohamed Salem Assahar were arrested on 6 October 2004, along with other employees of the Arab Gulf Petroleum Corporation. It is alleged that these persons were submitted to brutality during their arrest by police officers in plainclothes who showed no arrest warrant and did not explain the reasons or grounds for their arrest.

6. These persons were detained at the headquarters of the Internal Security forces in Benghazi before being transferred to Tripoli where they were detained incommunicado by these forces for more than a month. It is further reported that during their incommunicado detention all of the above-mentioned persons were submitted to acts of torture and bad treatment. They were later transferred to the Ain Zara prison in Tripoli, where they are now detained.

7. According to other persons arrested at the same time and later released, the above-mentioned seven persons were arrested and detained because they had reportedly communicated via the Internet with persons in foreign countries. It is further alleged that, since their arrest, these persons have not been able to have access to a lawyer nor to see their relatives or families.

8. According to the source, the detention of these persons constitutes a violation of the national law, mainly of articles 26, 30, 33, 37, 115, 122, 123, 124 and 175 of the Penal Procedure Code, as well as of article 53 of Law 47 of 1975. It also constitutes a violation of article 9 of the

International Covenant on Civil and Political Rights, ratified by the Libyan Arab Jamahiriya, and of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988.

9. In accordance with its methods of work, the Working Group transmitted these allegations to the Government on 30 September 2005 and again on 4 April 2006 but to date no reply has been received.

10. In the light of the information provided by the source and not challenged by the Government, the Working Group renders the following Opinion:

> The deprivation of liberty of Fardj al-Machai, Salah Eddine al-Aoudjili, Khaled Chebli, Idris al-Maqsabi, Djamel Aquila Abdullah al-Abdli, Rejeb Salem al-Raqai and Assaad Mohamed Salem Assahar is arbitrary, because they are being detained for more than one year without any charge being communicated to them, without being brought before a competent court and without being able to challenge the lawfulness of their detention. Since no legal basis was given for their detention, their deprivation of liberty falls within category I of the applicable categories to the consideration of the cases submitted to the Working Group.

11. 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 and the International Covenant on Civil and Political Rights.

Adopted on 12 May 2006.

OPINION No. 19/2006 (ISLAMIC REPUBLIC OF IRAN)

Communication: addressed to the Government on 9 February 2006.

Concerning: Mr. Arash Sigarchi.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group conveys its appreciation to the Government of the Islamic Republic of Iran for having forwarded the requested information.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. The Working Group welcomes the cooperation of the Government, which submitted to it factual information concerning the allegations of the source. The reply by the Government was brought to the attention of the source.

5. Mr. Arash Sigarchi is a citizen of the Islamic Republic of Iran, born in 1978, a journalist by profession. He is the former editor-in-chief of the daily *Gilan Emroz* and, since 2002, the author of several weblogs. In his weblogs he denounced the pressure exercised by the authorities on the on-line journalists and webloggers arrested in the year 2004 in reprisal for their participation in reformist publications.

6. On 9 June 2005, the appeals court in Rashat sentenced Arash Sigarchi to 3 years' imprisonment, having found him guilty of "insulting the Supreme Leader" and "propaganda against the regime", offences punishable pursuant to articles 500 and 514 of the penal code.

7. Arash Sigarchi learned about this judgement only on 22 January 2006. On 26 January 2006 he went to the appeals court of Rashat to obtain a copy of the judgement in order to appeal against it before the Supreme Court. At the appeals court, however, he was arrested and since then is being detained at the central prison of Rashat.

8. According to the Government, Mr. Arash Sigarchi has been charged with "disturbing public order and inciting unrest", "disseminating false information in local media", "blasphemy to the Founder of the Islamic Republic of Iran and the Supreme Leader" and "espionage". He was subsequently sentenced to 14 years' imprisonment. He appealed to the court and he was released on bail on 18 March 2004, pending consideration of the case by the appellate court. The latter reconsidered the case and commuted the sentence to three years' imprisonment. The sentence was upheld by the Supreme Court and he is currently serving his term. He has used prison leave on many occasions so far.

9. The Government did not contest the allegation that Mr. Sigarchi, as a journalist and author of several web logs, was prosecuted for standing up for other journalists and web loggers arrested during 2004 in relation to the publication of their opinion. The Government did not contest either the allegation of Mr. Sigarchi that the detention of journalists and web loggers had been a reprisal for their participation in reformist activities in order to intimidate them and to deter journalists from publications critical to the Government. Moreover, the Government failed to explain how Mr. Sigarchi's activities could have amounted to espionage, blasphemy to the founder of the Islamic Republic and dissemination of false information. In the absence of any convincing argument that his conviction and detention was necessary in the interest of the rights and reputations of others, or for the protection of national security, public order, public health or morals, the Working Group cannot but conclude that he was punished for the expression of his opinion.

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

> The deprivation of liberty of Mr. Arash Sigarchi is arbitrary, being in contravention of article 19 of the International Covenant on Civil and Political Rights and falls under category II of the categories applicable to the consideration of cases submitted to the Working Group.

11. Consequent upon the opinion rendered the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Sigarchi.

Adopted on 30 August 2006.

OPINION No. 20/2006 (GABON)

Communication: addressed to the Government on 18 January 2006.

Concerning: Mr. Robert Sobek.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group notes with appreciation the information forwarded by the Government of Gabon in respect of the case in question.

3. The Working Group further notes that the Government has informed the Group that the above-named person is no longer in detention. This information was confirmed by the source of the communication.

4. Consequently, and without pronouncing on the arbitrariness of otherwise of the detention of Mr. Robert Sobek, the Working Group decides, in conformity with paragraph 17 (a) of its methods of work, to file the case.

Adopted on 31 August 2006.

OPINION No. 21/2006 (SYRIAN ARAB REPUBLIC)

Communication: addressed to the Government on 22 September 2005.

Concerning: Messrs. Muhamad Ra'dun and Ali al-Abdullah.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group notes with appreciation the information forwarded by the Government of the Syrian Arab Republic in respect of the cases in question.

3. The Working Group further notes that the Government has informed the Group that the above-named persons were released. This information was confirmed by the source of the communication.

4. Having examined the available information, and without concluding on the arbitrary or non-arbitrary character of the detention, the Working Group decides, in conformity with paragraph 17 (a) of its methods of work, to file the case of Messrs. Muhamad Ra'dun and Ali al-Abdullah.

Adopted on 31 August 2006.

OPINION No. 22/2006 (CAMEROON)

Communication: addressed to the Government on 23 January 2006.

Concerning: François Ayissi, Emeran Eric Zanga, Didier Ndebi, Pascal Atangana Obama, Alim Mongoche, Marc Lambert Lamba, Christian Angoula, Blaise Yankeu Yankam Tchatchoua, Stéphane Serge Noubaga, Balla Adamou Yerima, Raymond Mbassi Tsimi.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

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

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

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 made comments on it. 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 comments of the source.

5. The communication concerns the following 11 persons:

(a) Mr. François Ayissi, born in 1976, of Cameroonian nationality, hotelier;

(b) Mr. Emeran Eric Zanga, born in 1986, of Cameroonian nationality, hotelier;

(c) Mr. Didier Ndebi, born in 1986, of Cameroonian nationality, student;

(d) Mr. Pascal Atangana Obama, born in 1956, of Cameroonian nationality, fashion designer;

(e) Mr. Alim Mongoche, born in 1976, of Cameroonian nationality, fashion designer;

(f) Mr. Marc Lambert Lamba, born in 1974, of Cameroonian nationality, computer specialist;

(g) Mr. Christian Angoula, born in 1988, of Cameroonian nationality, dancer;

(h) Mr. Blaise Yankeu Yankam Tchatchoua, born in 1980, of Cameroonian nationality, student;

(i) Mr. Stéphane Serge Noubaga, born in 1983, of Cameroonian nationality, hotelier;

(j) Mr. Balla Adamou Yerima, of Cameroonian nationality, fashion designer;

(k) Mr. Raymond Mbassi Tsimi, born in 1970, of Cameroonian nationality.

6. According to the source, officers from the Nlongka gendarmerie squad, acting without a warrant, arrested the above-mentioned 11 persons in the Elise Night Club in Yaoundé on 1 June 2005. The arrestees were taken to the Nlongka gendarmerie station, where they were held until 13 June 2005, on which date they were transferred to the Kondegui central prison in Yaoundé, where they are still detained.

7. The source states that the above-mentioned 11 persons were arrested with six other persons (17 in all) in a bar known to be frequented by homosexuals. The arrests were widely covered in the press and by local television channels, which showed pictures of them. The source adds that some of the arrestees have been released, but that the above-mentioned 11 of them are still in detention.

8. These 11 persons have been charged under article 347 (bis) of Order No. 72-16 of the Cameroonian Criminal Code of 28 September 1972, which provides for a penalty of 6 months' to 5 years' imprisonment and a fine of 20,000 to 200,000 CFA francs for anyone guilty of having sexual relations with a person of the same sex. In September 2005, their lawyer obtained the transfer to the juvenile offenders' section of the only minor in the group; he (aged 17) had previously been held with the other adult detainees. In October 2005 the lawyer applied for the pretrial release of all 11 accused, but the application was denied.

9. The trial was scheduled to begin on 17 March 2006. A few days after it started, Mr. Emeran Eric Zanga and Mr. Didier Ndebi were released, apparently for lack of evidence. The source states that when the trial began the prosecution was badly prepared and did not present any witnesses. Instead of dismissing the proceedings, the judge scheduled a further hearing for 21 April 2006.

10. At that hearing, the prosecution presented neither witnesses nor other evidence to support its case against the nine remaining defendants. The judge therefore found them not guilty of the offence with which they had been charged.

11. However, instead of being released, they were returned to and again detained in the detention centre. The Office of the Public Prosecutor refused to order their release and said that they had to be retried. On 10 May 2006 the source informed the Working Group's secretariat that Mr. Ndebi and Mr. Zanga were no longer in detention.

12. The source later reported that all the remaining detainees were released on 26 June 2006. Seven of them had been convicted, but they were released because the time they had spent in detention exceeded the term of imprisonment to which they were sentenced.

13. The source stated that Mr. Alim Mongoche died in hospital a week after leaving prison and that his death was directly attributable to the dreadful conditions in which he had been detained for over a year.

14. In its response, the Government stated that the 11 persons had been placed in preventive detention for the purposes of proceedings against them by the Court of First Instance of

Yaoundé-Centre Administratif. The detention had been founded on a gendarmerie investigation that had brought to light substantial evidence against them. Homosexuality is on offence under article 347 bis of the Cameroonian Criminal Code.

15. On 21 April 2006, all the accused were brought before the competent court, which found, in the light of the relevant legislation, that the case had been improperly referred to it. In the Government's view, the basis for the court's finding was Law No. 90/45 of 19 December 1990, which provides that persons accused of certain offences, including the offence to which article 347 bis of the Criminal Code relates, must be brought directly before the competent court. In consequence of the finding, all the accused were returned to custody under a committal order on 24 April 2006 and, on 8 May 2006, brought before the court, which then proceeded on the basis of the prosecution service's record of questioning on arrest flagrante delicto.

16. The Government asserts that the criminalization of homosexuality is contrary neither to article 12 of the Universal Declaration of Human Rights nor to article 26 of the International Covenant on Civil and Political Rights, since the persons in question are not denied a right or service on the ground of their presumed sexual orientation. What is involved is prosecution for practices contrary to law and to the moral standards of Cameroonian society.

17. The Government also states that, even should criminalization not be consistent with article 26 of the International Covenant, justification for it can be found in article 29, paragraph 2, of the Universal Declaration of Human Rights, which provides that a State may limit a right or freedom "for the purposes of securing due recognition for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

18. In its comments on the Government's response, the source invokes the leading opinions expressed by the Working Group in earlier cases, in particular the determination that the references to "sex" in the first paragraph of article 2 of the Universal Declaration of Human Rights and in article 2, paragraph 1, and article 26 of the International Covenant on Civil and Political Rights can be considered as including "sexual orientation". It also refers to the views of the Human Rights Committee, particularly those concerning the case of *Nicholas Toonen v. Australia* (CCPR/C/50/D/488/1992), in which the Committee held that the criminalization of homosexual practices was incompatible with article 17 of the International Covenant. The source adds that the Government's contention that issues of morality are solely within the jurisdiction of States themselves is unacceptable: to agree to it would be to open the door to the removal from international control of a potentially considerable number of domestic laws that could give rise to interference in people's private lives. The sources reasserts that the deprivation of liberty of the above-mentioned 11 persons was, for all those reasons, arbitrary.

19. Ever since the Human Rights Committee adopted its View in *Toonen v. Australia* and it itself adopted its Opinion 7/2002 (Egypt), the Working Group has followed the line taken in those cases. That means that the existence of laws criminalizing homosexual behaviour between consenting adults in private and the application of criminal penalties against persons accused of such behaviour violate the rights to privacy and freedom from discrimination set forth in the

International Covenant on Civil and Political Rights. Consequently, the Working Group considers that the fact that the criminalization of homosexuality in Cameroonian law is incompatible with articles 17 and 26 of the International Covenant on Civil and Political Rights, which instrument Cameroon has ratified.

20. The Working Group concludes that the deprivation of liberty of the above-mentioned 11 persons was arbitrary, and that regardless of the fact that they were ultimately released.

21. In accordance with paragraph 17 (a) of its methods of work, the Working Group considers that the case in question warrants the rendering of an Opinion even though the persons concerned were released. The reasons for this position are the Group's wish to restate its jurisprudence on a matter of importance and the fact that one of the accused in the case died, apparently as a result of the conditions of his arbitrary detention.

22. In the light of the foregoing, the Working Group renders the following Opinion:

> The deprivation of liberty of Messrs. François Ayissi, Pascal Atangana Obama, Alim Mongoche, Marc Lambert Lamba, Christian Angoula, Blaise Yankeu Yankam Tchatchoua, Stéphane Serge Noubaga, Balla Adamou Yerima and Raymond Mbassi was arbitrary, as contravening the provisions of articles 17 and 26 of the International Covenant on Civil and Political Rights and falling under category II of the categories applicable to the consideration of cases submitted to the Working Group.

23. The Working Group, having rendered this Opinion, requests the Government to take the necessary steps to remedy the situation by considering the possibility of amending domestic law to bring it into line with the Universal Declaration of Human Rights and the other relevant international standards accepted by the State.

Adopted on 31 August 2006.

OPINION No. 23/2006 (QATAR)

(This Opinion was replaced by Opinion No. 32/2006 (Qatar)).

OPINION No. 24/2006 (COLOMBIA)

Communication: addressed to the Government on 22 March 2006.

Concerning: Mr. Jhon Jaime Romaña Denis.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

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

3. The Working Group forwarded the Government's response to the source of the communication, which informed the Group that the person in question had been released for lapse of time.

4. Having examined the available information and without pronouncing on the arbitrariness of otherwise of the detention, the Working Group decides to file the case of Mr. Jhon Jaime Romaña Denis under the terms of paragraph 17 (a) of its methods of work.

Adopted on 1 September 2006.

OPINION No. 25/2006 (ROMANIA)

Communication: addressed to the Government on 18 April 2006.

Concerning: Mr. Hayssam Omar.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group notes with appreciation the report received from the Government that Mr. Hayssan Omar is no longer in detention. The Working Group forwarded that report to the source, which did not refute the Government's information.

4. Having examined the available information and without pronouncing on the arbitrariness or otherwise of the detention, the Working Group decides to file the case of Mr. Hayssan Omar under the terms of paragraph 17 (a) of its methods of work.

Adopted on 31 August 2006.

OPINION No. 26/2006 (ISLAMIC REPUBLIC OF IRAN)

Communication: addressed to the Government on 18 October 2005.

Concerning: Abdolfattah Soltani.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group conveys its appreciation to the Government of the Islamic Republic of Iran for having forwarded the requested information.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. In the light of the allegations made, 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 cases, in the context of the allegations made and the response of the Government thereto.

5. The source reports that Mr. Abdolfattah Soltani is a citizen of the Islamic Republic of Iran resident in Tehran. He is a lawyer, a member of the Bar Association's board of directors, and a co-founder of the Centre to Defend Human Rights, a non-governmental organization that has not been granted official permission to operate. Prior to his arrest, Mr. Soltani was on the legal team defending Mr. Akbar Ganji and the legal team representing Ms. Zahra Kazemi, the Iranian-Canadian journalist who died in custody in Evin prison in Tehran in July 2003.

6. It was reported that on 27 July 2005, the Chief Prosecutor issued a warrant for the arrest of Mr. Soltani. When the authorities went to his house to arrest him, he was not at home. His house was searched, and documents and computer files seized. Upon hearing that an arrest warrant had been issued against him, he began a sit-in protest at the building of the Tehran Bar Association. He was arrested there on 30 July 2005.

7. The source reports that Mr. Soltani is detained at Evin prison. From the date of his arrest until mid-September 2005, he was held in solitary confinement. His wife was allowed to visit him on 5 September 2005, but the visit took place in the presence of a prison guard. Mr. Soltani has also been barred from making phone calls. As of 29 September 2005, Mr. Soltani's lawyers had not been allowed to meet with him. Interrogation sessions were carried out in prison without the presence of defence counsel.

8. Mr. Soltani's case is reportedly pending before Branch 4 of the Tehran Revolutionary Court. It is not known whether he has been charged, but it appears that he is accused of "releasing secret and classified national intelligence information to unqualified people and those connected to foreign embassies". These charges arise out of his activity as defence lawyer for several persons accused of espionage in connection with the Islamic Republic of Iran's nuclear programme.

9. The source alleges that the detention of Abdolfattah Soltani is arbitrary. It argues that Mr. Soltani has been detained virtually incommunicado since his arrest and has specifically been denied the right of access to his lawyers. As a result, his right to prepare his defence and to a fair hearing on the charges raised against him is and will be violated.

10. The source further submits that the charges against Mr. Soltani are in retribution for his involvement as lawyer in the cases of Mr. Ganji and Ms. Kazemi. It specifically asserts that on the last day of the appeal proceedings brought in the case of Ms. Kazemi, Mr. Soltani had suggested in open court that the State should be held responsible for her death, and that Mr. Soltani's arrest and detention are in retribution for that statement. The source sees confirmation of these allegations in the fact that Ms. Shirin Ebadi, who is also a co-counsel in the cases of Mr. Ganji and Ms. Kazemi was publicly accused, on 30 July 2005, of "having suspicious ties to foreigners" by the Tehran Deputy Public Prosecutor.

11. The Government, in its response, states that Mr. Soltani has been charged with the disseminating classified intelligence and thus attempting to [affect] State security, and he has been offered bail by the court and he is free on bail at the moment.

12. According to information further received by the Working Group, Mr. Soltani has been convicted on 2 June 2006 of disclosing classified information, divulgation of State secrets, relations with two foreign diplomats, interviews with journalists related to State secrets subjects and propaganda against the country regime, and has been sentenced to five years in prison and privation of his civil and political rights. He is appealing this sentence and waiting for the second instance judgement, and has been released on bail.

13. In conformity with paragraph 17 (a) of its methods of work, the Working Group considers that this is one of the cases in which it reserves the faculty to render an Opinion, notwithstanding the release of the person concerned. The Working Group is taking into account the relevance of the case and the fact that Mr. Abdolfattah Soltani has been sentenced to five years' imprisonment, he is actually in liberty on bail pending appellation.

14. The Working Group notes that in its reply, the Government did not contest that Mr. Soltani was, from his arrest on 30 July 2005 until his release on bail in March 2006, detained virtually incommunicado, and that he has been denied the right of access to his lawyers. The Working Group also observes that Mr. Soltani has been detained and convicted on the charges of disclosing classified information and divulgation of State secrete to diplomats and journalists. The Government did not give any indication of the nature of the alleged classified intelligence or State secret that a lawyer and human rights activist could hold and is under an obligation to not disclose.

15. In the absence of any convincing argument, the Working Group concludes that the detention of Mr. Soltani is motivated exclusively by his human rights and/or political activities, activities constituting the peaceful exercise of the right to freedom of expression as guaranteed by article 19 of the International Covenant on Civil and Political Rights to which the Islamic Republic of Iran is party.

16. The Working Group also notes that Mr. Soltani was tried and sentenced by a revolutionary court. In its report (E/CN.4/2004/3/Add.2) on its visit to the Islamic Republic of Iran, the Working Group questioned the legitimacy of the Revolutionary Courts and expressed concern over their non-compliance with the fair-trial standards as enshrined in article 14 of the International Covenant on Civil and Political Rights to which the Islamic Republic of Iran is party and stressed that the jurisprudence of these courts is extremely restrictive of freedom of opinion and expression.

17. Based on the above, the Working Group is of the opinion that:

> The detention of Mr. Abdolfattah Soltani from 30 July 2005 until 6 March 2006 is arbitrary and contravenes articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and falls within categories II and III of its methods of work.

18. Consequently, the Working Group requests the Government to take all the necessary measures to remedy the situation of Mr. Soltani and bring it into conformity with the principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 1 September 2006.

OPINION No. 27/2006 (CHINA)

Communication: addressed to the Government on 20 October 2005.

Concerning: Mr. Shi Tao.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group conveys its appreciation to the Government of China for having forwarded the requested information.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. In the light of the allegations made, 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 cases, in the context of the allegations made and the response of the Government thereto.

5. The source informs that Mr. Shi Tao, born on 25 July 1968, of Chinese nationality, is a journalist for the daily *Dangdai Shang Bao* (Contemporary Business Newspaper), a resident of Taiyuan, Shanxi Province, and he is currently held in detention at the Chishan Prison, Yuanjiang Municipality, Hunan Province.

6. According to the information received, Mr. Shi Tao was arrested on 23 November 2004 in the street near his residence at Jun An Li Small District in Taiyuan City, Shanxi Province, by unidentified agents of the State Security Bureau of Changsha Municipality (Hunan Province) without an arrest warrant. The same day, the police searched his house without a warrant and took away his personal computer and some written material from his apartment. His family was not notified of his arrest. On 25 November 2004, a detention order was issued by the Changsha Municipal State Security Bureau and Shi Tao was officially detained at the Detention Centre of the Hunan State Security Bureau on suspicion of "providing State secret illegally to [agents] outside the borders". On 14 December 2004, he was formally arrested on suspicion of the above-mentioned offence after the approval of the Changsha Municipal People's Procurator's Office.

7. The source reports that on 11 March 2005, the Changsha Municipal Intermediate People's Court, Hunan province, tried Shi Tao in secret. It is alleged that the main defence lawyer for the defendant was barred from attending the trial because government authorities had suspended his licence, citing un-related reasons. On 27 April 2005 the court delivered its verdict and sentenced Shi Tao to 10 years in jail followed by two years of deprivation of political rights for the crime of "providing State secret illegally to [agents] outside the borders." The source states that the offence was sending articles to overseas Internet publications, in which he talked about an internal communication the authorities had sent to his newspaper, warning journalists of the dangers of social instability and possible incidents on the occasion of the 15th anniversary of the Tiananmen Square events. During the first trial, State Security officials reportedly confirmed that the message was "top secret". The prosecutor insisted that sending articles abroad for publication via the Internet was a crime punishable by imprisonment. Shi Tao admitted that he had sent the articles but contested that the articles had contained anything "top secret" in nature and stated that he had no intention to endanger State security. The Changsha Municipal Intermediate Court reportedly admitted the evidence provided by the State Security Bureau, which used records of email correspondence provided by Yahoo, without allowing the defendant and his lawyers to challenge the legality of such evidence and the methods used to obtain these.

8. The source further reports that Shi Tao filed an appeal to the Hunan Provincial Higher People's Court on 4 May 2005, in which he reportedly presented his own defence arguments for innocence. Shi Tao's defence lawyer for the second trial, Mo Shaoping, submitted to the Provincial Higher Court his defence arguments for Shi Tao's innocence on 9 June 2005. But the Provincial Higher Court presented to the lawyer its verdict, which is considered final by Chinese law, of turning down the appeal and upholding the lower court's verdict because it had been delivered at a closed-door review panel convened by the Higher Court on 2 June 2005, which the defence lawyer had not been informed of nor asked to attend while the defendant, who was present, was not asked to present his self-defence. The 10-year jail sentence was upheld on the same basis of such "evidence" by the Hunan Provincial Higher Court. Shi Tao's lawyer for the second trial argued that his actions had in no way endangered State security, but he was not given a chance to present these arguments before the Higher Court.

9. The source also informs that between 23 November 2004 and 30 April 2005, Shi Tao was not allowed to meet with anybody (including his lawyers) except once with his mother and once with his wife. Furthermore, he was forced to undergo pre-imprisonment training in July and August 2005, during which he was denied any visits by anybody, including family and his lawyers. Repeated requests by his lawyers to meet their client were also rejected. The source informs that the lawyers submitted to the Higher Court their "Legal opinion by defence lawyers concerning the final verdict issued by the Hunan Provincial Higher Court" on 11 July 2005. On 21 August 2005, Shi Tao's mother, on behalf of Shi Tao, publicly appealed to the highest court, the Supreme People's Court, as well as the Provincial Higher Court, for a review of the final verdict and for retrial. Neither of these courts has yet responded to the mother's request for judicial review.

10. The Government, in its response, states that Shi Tao, university graduate, was employed on the Hunan Province *Modern Business Daily*, in charge of the editorial department, and that in April 2004, he had used his own office Internet equipment to send material that he had transcribed from secret official documents by email to an Internet site abroad.

11. It states that on 31 January 2005, the Changsa city Procurator's Office in Hunan province instituted proceedings against Shi Tao with the Changsa city Intermediate Level Court, for the offence of unlawfully transmitting State secrets to persons outside the country. Because the materials in question involved State secrets, in accordance with the relevant provisions of the Code of Criminal Procedure, the Changsa city Court decided, on 11 March 2005, to consider the case in closed session.

12. In the proceedings the Court concluded that the suspect had knowingly supplied secret State intelligence in his possession to an organization outside the country resulting in a situation of extreme gravity, and that this conduct constituted the offence of unlawfully transmitting State secrets to persons or bodies outside the country. In accordance with the Criminal Code, on 30 April 2005, the court sentenced Shi Tao to 10 years' imprisonment, stripping him of his political rights for two years.

13. The Government sustains that during the court proceedings, in accordance with the law, Shi Tao appointed Tong Wenzhong, a lawyer with the Tianyi Attorneys Office in Shangai, to act in his defence in the trial and he also conducted his own defence, and that the court fully upheld both Shi Tao's and his counsel's defence rights. The Government states that following the proceedings at first instance, Shi Tao did not accept the verdict and lodged an appeal, on the grounds that his offence has not been particularly serious, it had not caused any serious consequences, he had displayed a good attitude in admitting his guilt and the sentence had been excessively severe. The Hunan provincial High Court ruled at second instance, dismissing Shi Tao's appeal and upholding the original judgement. The Government states that during the proceedings at second instance, Shi Tao was defended by the lawyers Mo Shaoping and Ding Xikui, from the Mo Shaoping law firm in Beijing. With regard to the appeal lodged on Shi Tao's behalf by his mother with the Supreme Court, following an investigation, the Supreme Court determined, in accordance with the rules for the hearing of appeals, that the letter of appeal should be referred to the Human provincial High Court, which reviewed the case and ruled that grounds for the appeal had no substance, and accordingly, no case file was opened on the matter.

14. The source responds that as the Government did not give any evidence that Shi Tao had disclosed any State secret in what he published on the Internet, what he was really punished for was for posting on the Internet articles critical of the Government.

15. The source also claims that the State Secret Law and article 111 of the Criminal Code cause a dangerous defect in the legal system, which allows authorities to use "leaking State secrets" or "providing abroad State secret or intelligence" to prosecute people for exercising free speech/expression and it subjects many people, especially journalists/writers, to an undue risk.

It states that in this case, despite the person who orally delivered the notice in question and claimed that he asked the audience to keep it confidential, it by no means assigned the item/notice a status of state secret, as Shi Tao's lawyers argued.

16. Shi Tao was deprived of a fair trail because at the basic level trial, the main defence lawyer was prevented from representing him at Court and putting on a defence for his client because authorities had found unrelated excuses to suspend the lawyer's licence. The Hunan Higher Court refused to give the defendant Shi Tao and his second-trial lawyer an opportunity to present their defence arguments for his innocence at court when the court reviewed the case without notifying the lawyer. The final verdict had been delivered without opening a Court session. After the final verdict, access to legal council of his own choosing was impeded because he was forced to undergo harsh pre-prison training.

17. On 9 June, Shi Tao's defence lawyer requested re-examining the evidence, subjecting the evidence to expert evaluation, and postponing the second trail, but the Higher Court never responded. The retrial was replaced by a review panel in which Shi Tao's defence lawyer was not present because the Court had not informed the lawyer. Owing to these failures and impediments, the Hunan Higher Court violated Mr. Shi Tao's right to all facilities necessary for appeal and a fair trial.

18. The Working Group notes, as stated in the Government's reply, that Shi Tao is accused of unlawfully transmitting State secrets to persons or bodies outside the country. In its previous reports on its visits to China, the Working Group has identified as matter of concern the criminalization of contacts and exchange of "classified" information with individuals, institutions or organizations based abroad, in a way that acts of individuals exercising their freedom of opinion may well be regarded as criminal offences (E/CN.4/1998/44/Add.2, para. 46 and E/CN.4/2005/6/Add.4, para. 23).

19. While no details are given by the Government on the nature of the State secrets transmitted outside the country, the information received and not contested is that the accusation of dissemination of State secrets was based on sending articles to overseas Internet publications. The Working Group is not convinced about how these activities could "result in a situation of extreme gravity" as stated by the Government.

20. In the absence of any convincing argument, the Working Group concludes that Mr. Shi Tao is detained for the peaceful exercise of the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas through any media, including the Internet and regardless of frontiers, since, the dissemination, even outside the territory, is guaranteed by article 19 of the Universal Declaration of Human Rights.

21. The Working Group is also concerned about the facts, not contested by the Government, that (a) the lawyer chosen by Shi Tao was barred from attending the trial and not allowed to assist his client, who was judged in a secret trial, and (b) that other restrictions are imposed on the right to defence. In its previous reports on its visits to China, the Working Group has pointed out that :"where the case concerns charges of endangering State secrets, the rights of the defence are even further restricted. Under article 96 the right of the accused to be represented by a

counsel of his own choosing as from the first hours of detention and the right of the lawyer to meet his or her client are subject to a preliminary authorization by the authorities in charge of the investigation. In practice, this provision appears to give rise to numerous abuses, either because the notion of State secret is not defined with sufficient precision, or because it is interpreted in an extensive manner"(E/CN.4/2005/6/Add.4, para. 36).

22. These considerations, coupled with other elements relating to the impossibility of challenging the allegations brought against Shi Tao, would cumulatively confer to the deprivation of his liberty an arbitrary character.

23. In the light of the foregoing, the Working Group renders the following Opinion:

> The detention of Mr. Shi Tao is arbitrary, as it contravenes the principles and norms set forth in the articles 9, 10 and 19 of the Universal Declaration of Human Rights and falls into categories II and III of the methods of work adopted by the Working Group on Arbitrary Detention.

24. The Working Group, having rendered this opinion, requests the Government to take the necessary steps to rectify the situation, in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Rights, and to take the necessary measures to ratify the International Covenant on Civil and Political Rights.

Adopted on 1 September 2006.

OPINION No. 28/2006 (URUGUAY)

Communication: addressed to the Government on 22 September 2005.

Concerning: Messrs. Jorge, José and Dante Peirano Basso.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group notes with appreciation the information forwarded by the Government concerning the case in question.

3. The Working Group forwarded the Government's response to the source of the communication, which informed the Group that it had decided to withdraw the communication and requested that no further action should be taken on it.

4. After considering the source's request, the Working Group decided not to examine the case of the above-mentioned persons and to the file the case definitively in accordance with paragraph 17 (d) of its methods of work.

Adopted on 1 September 2006.

OPINION No. 29/2006 (UNITED STATES OF AMERICA)

Communication: addressed to the Government on 8 December 2005.

Concerning: the case of Mr. Ibn al-Shaykh al-Libi and 25 other persons.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2 The Working Group regrets that the Government of the United States of America did not provide it, despite repeated invitation to this effect, with the requested information. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. The source submitted to the Working Group a list containing the names and some other particulars of 26 persons who are being held in detention either in the United States or in other countries in the context of the so-called "war on terror". According to the source, they all are suspected of involvement in terrorist plots led by al-Qaida or other terrorist organizations. It is further contended that they are held in unknown secret detention facilities (the so-called "black sites"). According to the source they are deprived of the enjoyment of the requisite safeguards against arbitrary detention, and their basic human rights are in jeopardy. The source holds that the United States authorities are responsible for the arbitrary detentions, irrespective of their factual place of detention, because they all have been arrested or captured in the United States-led war against international terrorism. Many of them had been kept in facilities run by the United States secret services, or have been transferred, often by secretly run flights to the detention centres of countries with which the United States authorities cooperate in their fight against international terrorism.

5. Upon reception of the communication, the Working Group noted that the communication as submitted fails to meet the requirements of Rule 10 of its methods of work which reads as follows:

> "10. As far as possible, each case shall form the subject of a presentation indicating family name, first name and any other information making it possible to identify the person detained, as well as the latter's legal status, particularly:
>
> (a) The date and place of the arrest or detention or of any other form of deprivation of liberty and the identity of those presumed to have carried them out, together with any other information shedding light on the circumstances in which the person was deprived of liberty;
>
> (b) The reasons given by the authorities for the arrest and/or the deprivation of liberty;
>
> (c) The legislation applied in the case;

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

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

The source informed the Working Group that it was unable to provide more complete data about the detainees. It pointed out that just because of the secrecy surrounding black sites - which is one of the principal item of its complaint - the strict application of the rules would be tantamount to hampering the submission of this and similar complaints and would thereby reward States conducting secret rendition practices.

6. The Chairman-Rapporteur of the Working Group forwarded a summary of the communication to the Permanent Representative of the United States of America to the United Nations Office at Geneva on 8 December 2005 (paras. 7 to 18 below).

7. According to the allegations received, some of these secret detention facilities, located outside territories under United States jurisdiction, are administered by agents of the United States Central Intelligence Agency (CIA), who are applying the CIA's approved enhanced or harshest interrogation techniques, which are allegedly contrary to international conventions and even to the United States military law. They include tactics such as "water-boarding", in which a detainee is made to believe he or she is drowning.

8. It was also reported that the United States intelligence services have also shipped some detainees to countries that use interrogation techniques to extract confessions, techniques that are harsher that any authorized for use by United States intelligence officers. These detainees were not necessarily citizens of those nations. Secret jails in these countries are operated by the host nations, with CIA financial assistance and, sometimes, direction.

9. It was further reported that those detainees were taken from one country to another country on flights which have duration of three to eight hours, stayed there for periods ranging from 18 months to more than two years, and transferred again to a third country. Some of the detainees were moved from Afghanistan and Middle Eastern countries to Eastern Europe in a small fleet of private jets used by the CIA.

10. Allegations were also received regarding the existence of a related system of secretly returning prisoners to their home country when they have outlived their usefulness to the United States. Algerians, Chinese nationals, Egyptians, Jordanians, Moroccans, Pakistanis, Saudis, Tunisians and Uzbekistanis were reportedly returned to their countries' intelligence services after initial debriefing by United States intelligence officers.

11. The transfer practice, also known as "rendition" or "extraordinary rendition", is supposed to be a counter-terrorism technique. Detainees are held in order to continue detention and interrogation, and to exchange information with foreign intelligence agents conducting the interrogations.

12. Some of these detention centres were located in former Soviet air or military bases. Former detainees held in these secret detention facilities relate that they were not formally charged of any crime, nor brought before any authority, administrative or judicial, responsible for their detention to contest the legality of it. They were held in incommunicado detention, not having access to the outside world and could not access either their families - who had no idea of their whereabouts - or defence lawyers. They were not allowed to speak to anyone but the interrogators. They were also forced to listen to loud music day and night. Some detainees were kept in dark and underground cells.

13. Concern was expressed that these transfers occur outside the confines of any legal procedure, such as deportation or extradition, and do not allow access to counsel or to any judicial body to contest the transfer.

14. According to the information received by the Working Group, many of the detainees listed below are being held in secret prisons or "black sites" located outside territories under the jurisdiction of the United States. Many of them are suspected of involvement in serious crimes, including the 11 September 2001 attacks, the 1998 United States Embassy bombings in Kenya and Tanzania, and the 2002 bombing at two nightclubs in Bali, Indonesia. Yet none on this list has been arraigned or criminally charged, and United States government officials have reportedly suggested that some detainees have been tortured or seriously mistreated in custody.

15. The current location of these prisoners is unknown. The list of persons in detention is the following:

- Mr. Ibn al-Shaykh al-Libi. Reportedly arrested on 11 November 2001 in Pakistan. Libyan, suspected commander at Al-Qaeda training camp;

- Mr. Abu Faisal. Reportedly arrested on 12 December 2001. Nationality unknown;

- Mr. Abdul Aziz. Reportedly arrested on 14 December 2001. Nationality unknown. In early January 2001, Kenton Keith, a spokesman at the United States Embassy in Islamabad, produced a chart with the names of senior al-Qaida members listed as killed in action, detained, or on the run. Faisal and Aziz were listed as detained on 12 and 14 December 2001;

- Mr. Abu Zubaydah (also known as Zain al-Abidin Muhahhad Husain). Reportedly arrested in March 2002 in Faisalabad, Pakistan. Palestinian, born in Saudi Arabia, suspected senior al-Qaida operational planner. The source adds that this system of secret prisons began with the transfer of Mr. Abu Zubaydah from Pakistan to Thailand, where he was housed in a small disused warehouse in an active airbase. After treatment there for gunshot wounds by a CIA doctor especially sent from the CIA headquarters to assure Mr. Zubaydah was given proper care, he was slapped, grabbed, made to stand long hours in a cold cell and finally handcuffed and strapped feet up to a water board until after 31 seconds he begged for mercy and began to cooperate;

- Mr. Abdul Rahim al-Sharqawi (alias Riyadh the facilitator). Reportedly arrested in January 2002. Possibly Yemeni, suspected Al-Qaida member (possibly kept previously in Guantánamo);

- Mr. Abd al-Hadi al-Iraqi. Reportedly arrested in January 2002. Nationality unknown, presumably Iraqi. Suspected commander of an al-Qaida training camp;

- Mr. Muhammed al-Darbi. Reportedly arrested in August 2002. Yemeni, suspected al-Qaida member. On 26 December 2002, citing "U.S. intelligence and national security officials", the *Washington Post* reports that al-Darbi, as well as Ramzi Binalshibh [see below], Omar al-Faruq [reportedly escaped from U.S. custody in July 2005], and Abd al-Rahim al-Nashiri [see below] all "remain under CIA control."

- Mr. Ramzi bin al-Shibh. Reportedly arrested on 13 September 2002. Yemeni. Suspected Al-Qaida conspirator in September 11 attacks (former roommate of one of the hijackers). Mr. Ramzi Binalshibh was captured in Pakistan and flown to Thailand;

- Mr. Abd al-Rahim Al-Nashiri (or Abdulrahim Mohammad Abda al-Nasherii), (alias Abu Bilal al-Makki or Mullah Ahmad Belal). Reportedly arrested in November 2002 in the United Arab Emirates. Saudi or Yemeni. Suspected Al-Qaida chief of operations in the Persian Gulf, and suspected planner of the *USS Cole* bombing and of the attack on the French oil tanker, *Limburg;*

- Mr. Mohammed Omar Abdel-Rahman (alias Asadullah). Reportedly arrested in February 2003 in Quetta, Pakistan. Egyptian, son of Sheikh Omar Abdel-Rahman, who was convicted in the United States of involvement in terrorist plots in New York. See Agence France Presse, 4 March 2003: "Pakistani and US agents captured the son of blind Egyptian cleric Omar Abdel Rahman … a US official said Tuesday. Muhamad Abdel Rahman was arrested in Quetta, Pakistan, the official said, speaking on condition of anonymity." David Johnston, *New York Times*, 4 March 2003: "On February 13, when Pakistani authorities raided an apartment in Quetta, they got the break they needed. They had hoped to find Mr. [Khalid Sheikh] Mohammed, but he had fled the apartment, eluding the authorities, as he had on numerous occasions. Instead, they found and arrested Muhammad Abdel Rahman, a son of Sheik Omar Abdel Rahman, the blind Egyptian cleric …";

- Mr. Mustafa al-Hawsawi (alias Al-Hisawi). Reportedly arrested on 1 March 2003 (together with Khalid Sheikh Mohammad) in Pakistan. Saudi. Suspected al-Qaida financier;

- Mr. Khalid Sheikh Mohammed. Reportedly arrested on 1 March 2003 in Rawalpindi, Pakistan. Kuwaiti (Pakistani parents). Suspected al-Qaida member; alleged to have masterminded September 11 attacks; the killing of Daniel Pearl and the *USS Cole* attack in 2000;

- Mr. Majid Khan. Reportedly arrested on March-April 2003 in Pakistan. Pakistani. Alleged link to Khalid Sheikh Mohammad; alleged involvement in a plot to blow up gas stations in the United States. Details about Khan's arrest were revealed in several media reports, especially in *Newsweek*: Evan Thomas, "Al Qaeda in America: The enemy within," *Newsweek*, 23 June 2003. United States prosecutors provided evidence that Majid Khan was in United States custody during the trial of 24-year-old Uzair Paracha, who was convicted in November 2005 of conspiracy charges, and of providing material support to terrorist organizations;

- Mr. Yassir al-Jazeeri (alias Al-Jaziri). Reportedly arrested on 15 March 2003 in Pakistan. Possibly Moroccan, Algerian, or Palestinian. Suspected al-Qaida member; linked to Khalid Sheikh Mohammed. Details of arrest reported: Alex Spillius, "FBI questions al-Qaeda man in Pakistan," *Daily Telegraph*, 17 March 2003; Paul Haven, "Al-Qaida suspect begins cooperating with authorities, Pakistani security officials say," Associated Press, 17 March 2003;

- Mr. Ali Abdul Aziz Ali (alias Ammar al Baluchi). Reportedly arrested on 29 April 2003 in Karachi, Pakistan. Pakistani. He is alleged to have funnelled money to September 11 hijackers, and alleged to have been involved with the Jakarta Marriot bombing and in handling Jose Padilla's travel arrangements to the United States. United States Judge Sidney Stein ruled that defence attorneys for Uzair Paracha could introduce statements Baluchi made to United States interrogators, proving that he was in U.S. custody. Former Deputy Attorney General James Comey also mentioned Baluchi during remarks to the media about the case of José Padilla on 1 June 2004;

- Mr. Waleed Mohammed bin Attash (alias Tawfiq bin Attash or Tawfiq Attash Khallad). Reportedly arrested on 29 April 2003 in Karachi, Pakistan. Saudi (of Yemeni descent). Suspected of involvement in the bombing of the *USS Cole* in 2000, and the September 11 attacks. See Afzal Nadeem, "Pakistan Arrests Six Terror Suspects, including Planner of September 11 and *USS Cole* Bombing," *Associated Press*, 30 April 2003. His brother, Hassan bin Attash, is reportedly held in Guantánamo. President Bush described his arrest as a "major, significant find" in the war against terrorism: "He's a killer. He was one of the top al Qaeda operatives … . He was right below Khalid Shaikh Mohammad on the organizational chart of al Qaeda. He is one less person that people who love freedom have to worry about." David Ensor and Syed Mohsin Naqvi, "Bush hails capture of top al Qaeda operative," CNN.com, 1 May 2003;

- Mr. Adil al-Jazeeri. Reportedly arrested on 17 June 2003 outside Peshawar, Pakistan. Algerian, suspected Al-Qaida and longtime resident of Afghanistan; alleged "leading member" and "longtime aide to Bin Laden." (Previously kept in Guantánamo);

- Mr. Hambali (alias Riduan Isamuddin). Reportedly arrested on 11 August 2003 in Thailand. Indonesian, allegedly involved in Jemaah Islamiyah and al-Qaida, alleged involvement in organizing and financing the Bali nightclub bombings, the Jakarta Marriot Hotel bombing, and preparations for the September 11 attacks;

- Mr. Mohamad Nazir bin Lep (alias Lillie, or Li-Li). Reportedly arrested in August 2003 in Bangkok, Thailand. Malaysian, with alleged link to Hambali;

- Mr. Mohamad Farik Amin (alias Zubair). Reportedly arrested in June 2003 in Thailand. Malaysian; alleged link to Hambali. For more information on the arrest of Mohammad Farik Amin and Mohamad Nazir bin Lep, see: Kimina Lyall, "Hambali talks under grilling - slaughter of innocents," *The Australian*, 21 August 2003; Kimina Lyall, "Hambali moved JI front line to Bangladesh, Pakistan," *The Weekend Australian*, 27 September 2003; Simon Elegant and Andrew Perrin, "Asia's Terror Threat," *Time Asia Magazine*, 6 October 2003; Simon Elegant, "The Terrorist Talks," *Time*, 13 October 2003;

- Mr. Tariq Mahmood. Reportedly arrested in October 2003 in Islamabad, Pakistan. Dual British and Pakistani nationality. Alleged to have ties to al-Qaida. See "Pakistan grills detained British al-Qaeda suspect," Agence-France Presse, 10 November 2005; Sean O'Neill, "Five still held without help or hope; Guantánamo," *The Times*, 12 January 2005;

- Mr. Hassan Ghul. Reportedly arrested on 23 January 2004, in Kurdish highlands, Iraq. Pakistani; alleged to be Zarqawi's courier to Bin Laden; alleged ties to Khalid Sheikh Mohammad. President Bush described Hassan Ghul's arrest on 26 January 2004, in comments to the press, Little Rock, Arkansas: "Just last week we made further progress in making America more secure when a fellow named Hassan Ghul was captured in Iraq. Hassan Ghul reported directly to Khalid Sheik Mohammad, who was the mastermind of the September 11 attacks … . He was captured in Iraq, where he was helping al Qaida to put pressure on our troops.";

- Mr. Musaad Aruchi (alias Musab al-Baluchi, al-Balochi, al-Baloshi). Reportedly arrested in Karachi on 12 June 2004 in a "CIA-supervised" operation. Presumably Pakistani. Pakistani intelligence officials told journalists Aruchi was held by Pakistani authorities at an airbase for three days, before being handed over to the United States and then flown in an unmarked CIA plane to an undisclosed location. Anwar Iqbal, "Pakistan Hands Over 1998 Bomber to US," United Press International, 3 August 2004. See also Zahid Hussain, "Pakistan Intensifies Effort Against al Qaeda," *The Asian Wall Street Journal*, 5 August 2004; Bill Powell, "Target: America," *Time*, 16 August 2004, vol. 164, issue 7; "Pakistani Aides: Al-Qaida Arrest in June Opened Leads," *Dow Jones International News*, 3 August 2004; "CIA-supervised arrest in Pak opened valuable leads: Report," The Press Trust of India, 3 August 2004;

- Mr. Mohammed Naeem Noor Khan (also known as Abu Talaha). Reportedly arrested on 13 July 2004 in Pakistan. Pakistani, computer engineer, was held by Pakistani authorities, and likely transferred to U.S. custody. See Douglas Jehl and David Rohde, "Captured Qaeda figure led way to information behind warning," *New York Times*, 2 August 2004. Kamran Khan, "Al Qaeda arrest In June opened valuable leads," *Washington Post*, 3 August 2004; Kamran Khan and Dana Priest,

"Pakistan pressures Al Qaeda; military operation results In terror alert and arrests," *Washington Post*, 5 August 2004; "Pakistan questioning almost 20 Al-Qaeda suspects," Agence-France Presse, 5 August 2005; Robert Block and Gary Fields, "Al Qaeda's data on U.S. targets aren't new: surveillance of listed sites in eastern cities took place over time, perhaps years," *The Asian Wall Street Journal*, 7 August 2004; Adrian Levy and Cathy Scott-Clark, "One huge U.S. jail," *The Guardian*, 19 March 2005;

- Mr. Ahmed Khalfan Ghailani. Reportedly arrested on 24 July 2004 in Pakistan. Tanzanian. Reportedly indicted in the United States for 1998 embassy bombings. U.S. and Pakistani intelligence officials told UPI that Ghailani was transferred to "CIA custody" in early August. See Anwar Iqbal, "Pakistan hands over 1998 bomber to U.S.," United Press International, 3 August 2004. Pakistani security officials told AFP and Reuters in January 2005, that Ghailani was handed over to the United States "several months ago." See e.g., "Pakistan hands Tanzanian Al-Qaeda bombing suspect to U.S.," Agence France Presse, 25 January 2005;

- Mr. Abu Faraj al-Libi. Reportedly arrested on 4 May 2005, in North Western Frontier Province, Pakistan. Libyan, suspected Al-Qaida leader of operations; alleged mastermind of two assassination attempts on Musharraf. Col. James Yonts, a United States military spokesman in Afghanistan, said in an email to the Associated Press saying that Al-Libi had been taken directly from Pakistan to the United States and was not brought to Afghanistan.

16. It was reported that this alleged hidden global internment network is a central element in the CIA's unconventional war on global terrorism. It depends on the cooperation of foreign intelligence services. Concern was expressed that the existence of these secret sites of detention, where no legal control or human rights protection can be exercised, facilitates avoiding the international obligations and responsibilities of the Governments who are running them. It is also well known that secret detention without any legal control augments for the detainee the practice of torture and other cruel, inhuman or degrading treatment, especially when under interrogation.

17. It was alleged that the pattern of this type of arbitrary deprivation of liberty, lacking any legal basis, is against international human rights law and implies more gross violations of detainees rights: forced disappearance; lack of access to lawyers, families, doctors; to have families informed of place of arrest and detention; the right to be free from torture and cruel, inhuman or degrading treatment, which are against the standards of international law.

18. It was further stressed that detaining terrorist suspects under such conditions, without charging them and without the prospect of a trial in which their guilt or innocence will eventually be established, is in itself a serious denial of their basic human rights and is incompatible with both International Humanitarian Law and Human Rights Law.

19. The Working Group requested the Government to provide, within 90 days, relevant information concerning the allegations of the source in respect of both, the facts and the applicable legislation. Since no reply arrived within the deadline, the Secretariat of the Working Group sent out a reminder on 7 April 2006. The Permanent Representative, in a note dated 8 May 2006, promised a response to the Working Group as soon as it will be able to provide a more complete response. Since no response arrived, the Working Group informed the Government that it would consider this case during its forty-sixth session during the period from 28 August to 1 September 2006. No response arrived to this information either.

20. The lack of cooperation of the authorities may not prevent the Working Group from formulating an Opinion. It had to rely on the information provided by the source. The information is consistent to the extent that is possible under the circumstances, and is corroborated by other information coming from independent and reliable sources, first of all from non-governmental organizations. Not even the United States authorities deny the practice of rendition and the running of secret detention facilities in the United States and abroad. The United States Secretary of State herself was quoted as saying that many extremely dangerous terrorists possess information that may save lives, perhaps even thousands of lives; therefore rendition of such terrorists may be a vital tool in combating transnational terrorism.

21. The detention of the 26 aforementioned individuals falls outside of all national and international legal regimes pertaining to the safeguards against arbitrary detention. In addition the secrecy surrounding the detention and the interstate transfer of suspected terrorists may expose the persons affected to torture, forced disappearance, extra-judicial killing and in case they are prosecuted against, to the lack of the guarantees of a fair trial.

22. In the light of the foregoing, the Working Group renders the following Opinion:

> The deprivation of liberty of Ibn al-Shaykh al-Libi, Abu Faisal, Abdul Aziz , Abu Zubaydah (also known as Zain al-Abidin Muhahhad Husain), Abdul Rahim al-Sharqawi (alias Riyadh the facilitator, Abd al-Hadi al-Iraqi, Muhammed al-Darbi, Ramzi bin al-Shibh, Abd al-Rahim al-Nashiri (or Abdulrahim Mohammad Abda al-Nasherii) (alias Abu Bilal al-Makki or Mullah Ahmad Belal), Mohammed Omar Abdel-Rahman (alias Asadullah), Mustafa al-Hawsawi (alias al-Hisawi), Khalid Sheikh Mohammed, Majid Khan, Yassir al-Jazeeri (alias al-Jaziri), Ali Abdul Aziz Ali (alias Ammar al Baluchi), Waleed Mohammed bin Attash (alias Tawfiq bin Attash or Tawfiq Attash Khallad), Adil al-Jazeeri, Hambali (alias Riduan Isamuddin), Mohamad Nazir bin Lep (alias Lillie, or Li-Li), Mohamad Farik Amin (alias Zubair), Tariq Mahmood, Hassan Ghul, Musaad Aruchi (alias Musab al-Baluchi, al-Balochi, al-Baloshi), Mohammed Naeem Noor Khan (aka Abu Talaha) Ahmed Khalfan Ghailani and Abu Faraj al-Libi is arbitrary, being in contravention of article 9 of the International Covenant on Civil and Political Rights and falls under category I of the categories applicable to the consideration of cases submitted to the Working Group.

23. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of the aforementioned persons.

Adopted on 1 September 2006.

OPINION No. 30/2006 (COLOMBIA)

Communication: addressed to the Government on 2 February 2006.

Concerning: Ms. Natalia Tangarife Avendaño and seven other persons.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group regrets that, despite having sought and obtained a 90-day extension from the Working Group and despite having been sent a reminder on 9 August 2006, the Government failed to respond.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. In view of the allegations made, the Working Group would have welcomed the cooperation of the Government. Notwithstanding the absence of official information, the Working Group believes that it is in a position to render an Opinion, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The source alleges that Ms. Natalia Tangarife Avendaño, born on 24 January 1981, resident in Medellín; Mr. Juan David Ordóñez Montoya, born on 28 May 1977, resident in Medellín; Mr. Juan David Espinoza Henao, born on 7 September 1982, resident in Medellín; Mr. Juan Camilo Mazo Arenas, born on 21 November 1986, resident in Medellín; Mr. Carlos Andrés Peláez Zapata, born on 6 February 1982, resident in Medellín; Mr. David Esneider Mejía Estrada, born on 26 February 1984, resident in Envigado; Mr. Andrés Maurio Zuluaga Rivera, born on 7 January 1985, resident in Itagui; and Mr. Yeison Arlet García Pérez, born on 5 November 1985, resident in Medellín, all university students of Colombian nationality, were arrested in the early hours of 5 May 2005 in simultaneous raids on their homes by members of the National Police. The arrests were made, with the stipulation that the students should be held in pretrial detention without the possibility of bail, under warrants issued by Prosecution Office 51 at the Criminal Court of the Medellín Special Circuit assigned to the National Police's Special Counter-terrorism Squad (CEAT).

6. Some of the arrestees are leaders of the General Student Assembly of Antioquia University. Others are students who were injured during the events in the University on 10 February 2005. On that date, students held a day of protest against negotiations on a free-trade agreement with the United States of America. When members of the National Police's Mobile Anti-Riot Squadron (ESMAD) fired buckshot and teargas at the demonstrators, a group of hooded persons threw stones and low-power explosive devices ("explosive potatoes") at the police officers.

7. At 12.10 p.m. there was a loud explosion in the chemistry laboratory and first-floor corridor of Block 1 on the campus, where the hooded persons were preparing their explosive devices. As a result, two female students died from burns and an undetermined number of

other people who were in the vicinity of the explosion were injured, some of them seriously. Some of the injured were taken to the university infirmary and 17 others to the municipal outpatients' clinic.

8. The source states that Special Prosecution Office 51 in Medellín is not an independent judicial organ. It is located within the CEAT site, a fact which limits not only its independence but also the possibility of access by victims and witnesses to make statements and testify free from pressure, fear or additional risk. Its staff are prosecutors assigned to the forces of law and order.

9. The source states that, in keeping with an internal instruction, the Office of the Attorney-General usually assigns criminal investigations to a prosecutor unconnected with the police investigation and independent of the security services. In the case in question, however, the CEAT commander expressly asked for the criminal investigation to be carried out by Special Prosecution Office 51 assigned to his unit. By memorandum 0509/CEAT-MEVAL of 12 April 2005, the head of CEAT in Medellín explicitly requested that the investigation be entrusted to Special Prosecution Office 51 assigned to CEAT, thereby giving rise to different and discriminatory treatment of the detained students.

10. The source alleges that detention of the students was unnecessary, disproportionate and unreasonable. No evidence has been presented to link the detained students with the above-mentioned guerrilla groups and the only thing that the criminal investigation has shown so far is that the students were victims of, and injured in an accidental explosion.

11. There can be no question of terrorism, since the explosion was an accidental, chance event. Nor, since there is no correlating factor between the explosion and the constituent elements of the offence, can there be any question of rebellion. Still less can there be any question of aggravated theft because of the mere disappearance of a few keys from university premises.

12. The source considers that, the students being subject to judicial proceedings that are not impartial and to discriminatory conditions, their rights to personal liberty, judicial safeguards and due process have been violated.

13. The source provided the Working Group with the text of the decision of the Third Prosecution Office of the Medellín High Court on the appeal made against the warrants for the students' arrest.

14. The source states that the prosecution office which ordered the arrests in May 2005 was not independent, since it was designated by name and specifically to investigate the acts in question, whereas, under the standard procedure provided for in an internal instruction from the Attorney-General, the case should have been given to the prosecutor who was first on the roster for assignment.

15. The source adds that the office entrusted with the investigation, Special Prosecution Office 55 in Medellín, cannot be considered an independent body, since it is located within the premises of CEAT.

16. As different prosecution office, the Third Prosecution Office of the Medellín High Court, examined the detainees' appeal, it may perhaps be considered that there was compliance with article 14, paragraph 1, of the International Covenant on Civil and Political Rights, according to which it is as essential part of the definition of a fair trial that detainees should be able to appeal their detention to an independent judicial organ.

17. However, even if the fact that the investigation was made by a body of questionable independence from the Government did not result in violation of the principle of a fair trial, inasmuch as the students were able to contest their detention before an independent agency, there were other procedural irregularities that must be taken into account.

18. The students have been in prison for over 15 months without having been formally charged with specific offences to justify their detention. The accusations against them are generic and relate principally to the explosion that occurred in May 2005 in the laboratory at Antioquia University. Even the prosecutor of the Medellín High Court recognizes that the explosion was accidental, despite holding that its ultimate cause was the fact that some hooded persons - who the investigating prosecutor apparently thinks included some of the detainees - were making "explosive potatoes" for use in fighting off the attempts of the National Police to break up a university protest against the free-trade agreement between Colombia and the United States of America.

19. Article 14 of the International Covenant on Civil and Political Rights provides, in paragraph 3 (a), that everyone is entitled to be informed promptly of the nature and cause of the charge against him. That requirement has not been met in the present case, since after 15 months' detention no formal, individualized charges have been brought.

20. Article 14, paragraph 3 (c), provides that everyone is entitled to be tried without undue delay. In determining what constitutes undue delay, account must be taken of the nature and characteristics of the acts in question, which exhibit no particular complexity that might justify delay or inactivity in the process of investigation.

21. In the light of the foregoing, the Working Group renders the following Opinion:

> The deprivation of liberty of Natalia Tangarife Avendaño, Juan David Ordóñez Montoya, Juan David Espinoza Henao, Juan Camilo Mazo Arenas, Carlos Andrés Peláez Zapata, David Esneider Mejía Estrada, Andrés Maurio Zuluaga Rivera and Yeison Arlet García Pérez is arbitrary, and contravenes article 14, subparagraphs 3 (b) and (c), 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.

22. Having rendered this Opinion, 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 September 2006.

OPINION No. 31/2006 (IRAQ AND UNITED STATES OF AMERICA)

Communication: addressed to the Governments on 3 May 2005.

Concerning: Mr. Saddam Hussein al-Tikriti.

Both States are parties to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group regrets that despite repeated invitation to this effect, the Governments did not provide it with the requested information. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. On 30 November 2005, the Working Group adopted Opinion No. 46/2005 concerning the communication on behalf of Mr. Saddam Hussein al-Tikriti against the Governments of Iraq and the United States of America. The Working Group stated its views on certain legal questions raised by the source and the Governments, in particular with regard to its mandate and the principles governing the responsibility of the Iraqi and United States Governments for the facts alleged by the source.

5. Firstly, the Working Group decided that, in accordance with paragraph 16 of its methods of work and paragraph 14 of its revised methods of work,[10] it will not assess the lawfulness of Mr. Saddam's detention for the period from 13 December 2003 to 30 June 2004, as it occurred during an ongoing international armed conflict and the United States Government recognized that the Geneva Conventions applied to individuals captured in the conflict in Iraq.

6. Secondly, the Working Group decided that until 1 July 2004 Saddam Hussein was detained under the sole responsibility of the Coalition members as occupying powers or, to be more precise, under the responsibility of the US Government. Since then, as the Supreme Iraqi Criminal Tribunal (SICT) is a court of the sovereign State of Iraq, his pretrial detention on charges pending before the SICT is within the responsibility of Iraq. The Working Group also found that, considering that Saddam Hussein is in the physical custody of the United States authorities, any possible conclusion as to the arbitrary nature of his deprivation of liberty may involve the international responsibility of the United States Government as well.

7. Finally, with regard to the alleged violations affecting the right to a fair trial, the Working Group considered that it was premature to take a stance on the allegations of arbitrary

[10] "The Working Group will not deal with situations of international armed conflict in so far as they are covered by the Geneva Conventions of 12 August 1949 and their Additional Protocols, particularly when the International Committee of the Red Cross (ICRC) has competence."

deprivation of liberty, because the procedural flaws amounting to the violation of the right to a fair trial could, in principle, be redressed during the subsequent stages of the criminal proceedings. Therefore, the Working Group decided that it would follow the development of the trial and would request more information from both concerned Governments and from the source. In the meantime, the Working Group decided to keep the case pending until further information was received, as provided in paragraph 17 (c) of its Methods of Work.

8. On 14 December 2005 the Working Group notified its Opinion to the two Governments, and on 12 January 2006 to the source. The Working Group subsequently received new allegations by the source. On 3 May 2006, the Chairperson-Rapporteur of the Working Group transmitted them to the Governments of Iraq and the United States through their respective Permanent Representatives in Geneva and requested comments and observations. Since no reply arrived, on 28 June 2006 the Chairperson-Rapporteur of the Working Group sent a letter informing the Permanent Representatives of the two Governments that the Working Group would consider the case during its forthcoming forty-sixth session from 28 August to 1 September 2006. Whereas no reply was received from the Government of Iraq, the Government of the United States sent a reply on 30 August 2006.

9. The source has presented to the Working Group new information regarding alleged multiple violations of the right to a fair trial since the Working Group's Opinion of 30 November 2005. It also reiterates the allegations already brought to the attention of the Working Group.

10. A first set of allegations and arguments presented by the source regard the composition of the Supreme Iraqi Criminal Tribunal. In January 2006 the presiding judge of the Dujail trial, Rizar Amin, resigned. His resignation followed public criticism of his handling of the trial by senior Iraqi government officials and was, according to the source, due to pressure by a high-level member of a Shia party in the Interim Legislature. His successor as presiding judge of the Dujail trial chamber, Saeed al-Hameesh, was transferred to a different chamber of the Supreme Tribunal after being accused of being a former member of the Baath party. On 24 January 2006, a new judge, Raouf Rasheed Abdel-Rahman, was nominated to preside the Dujail trial. The source expresses serious doubts regarding his impartiality, since he was born in Halabja, the Kurdish town which was attacked with poison gas by the Iraqi armed forces in 1988, and he had reportedly lost several family members in the attack. Moreover, judge Abdel-Rahman made statements indicating that the guilt of Saddam Hussein was a foregone conclusion. In particular, before assuming his position as presiding judge, he is reported to have stated on Iraqi national television that Saddam Hussein should be executed without trial. The source asserts that in February 2006 the defence counsel for Saddam Hussein submitted several challenges to the impartiality of the new presiding judge. The challenges were rejected, but the Supreme Tribunal allegedly refused to give a decision in writing to the defence lawyers, despite their repeated requests. On 10 February 2006, Kurdish media reported that another judge of the trial chamber, Ali Hussein al-Shimmiri, had died on 9 February. The source affirms that with this death, four of the five judges who were on the original trial court were removed, two of them reportedly for political reasons.

11. The source further reports that the identity of the judges sitting on Saddam Hussein's trial in the Dujail case is not disclosed, with the exception of the presiding judge. It argues that as a consequence of the judges' "facelessness", the defence cannot verify whether they meet the requirements for judicial office and are impartial and independent.

12. A second set of allegations and arguments presented by the source concern restrictions of Saddam Hussein's rights to be represented by lawyers of his own choosing and to communicate with his lawyers. Most fundamentally, the source states that the lawyers were not allowed to meet the defendant in private, all meetings taking place in the presence of United States officials. Moreover, the source reports numerous instances of obstruction of the lawyers' work. On 5 December 2005, the presiding judge appointed as defence counsels some lawyers who had been waiting outside the courtroom, despite their lack of preparation and Mr. Hussein's protests. On 21 December 2005, one of Mr. Hussein's accredited lawyers was denied the right to present a request to see his client directly to the Supreme Tribunal. On 17 January 2006, the United States authorities refused permission to visit Mr. Hussein to four of the nine lawyers, arguing that they had to present their original accreditation documents to the SICT, while they were at the same time not allowed to enter the courtroom to present their credentials.

13. The source states that the setting and cancellation of hearing dates at very short notice often made it impossible for Saddam Hussein's lawyers to attend hearings in the case. With regard to Mr. Hussein's foreign lawyers, the source adds that on 7 March 2006 the Supreme Tribunal communicated that two of them, experts on international human rights law, Mr. Doebler and Mr. Armouty, were not entitled to meet with their client or enter the courtroom. The Supreme Tribunal did not give any reasons. Mr. Doebler and Mr. Armouty possessed powers of attorney from Mr. Hussein and had been previously admitted to act before the Supreme Tribunal.

14. According to the source, the failure of the authorities to take steps to protect the life and physical integrity of defence lawyers further contributed to undermining the fairness of proceedings. As publicly reported, defence lawyers have been the object of several attacks, which resulted in the death of three of them, including Mr. Khamis Obedi, who was killed on 21 June 2006. After his death, the defence lawyers stated that they could not appear before the Supreme Tribunal until better security was provided. As no action to improve security was taken, the Supreme Tribunal convened on 10, 11, 24, 26 and 27 July 2006 without their attendance. It appointed other defence lawyers over the express objections of the defendants.

15. The third set of allegations and arguments presented by the source relates to the right to present the defence case in conditions of equality with the prosecution. In this respect, the source states that evidence was reportedly read into the record on the basis of affidavits of which the defence counsel had no adequate prior notice, and which they therefore could not meaningfully question. Moreover, the defence was not provided with copies of the statements of prosecution witnesses.

16. The Working Group also takes notice of reports that on 13 June 2006, within 24 hours of having agreed to allow nine more witnesses, the Supreme Tribunal suddenly interrupted the defence case and disallowed the introduction of any further defence evidence.

17. In its submission of 30 August 2006, the Government of the United States notes the Working Group's recognition that the criminal proceedings against Mr. Hussein are ongoing. It states that the Working Group thereby acknowledged that Mr. Hussein had domestic remedies available which had not been exhausted. The Government also reiterates its position that, although it has physical custody of the detainee, Mr. Hussein is being held under the legal authority of an Iraqi court and that therefore the appropriate Iraqi authorities are best placed to respond to the questions about his continued detention. The Government accordingly chose not to comment on the new allegations of the source.

18. While noting with appreciation the cooperation of the Government of the United States, the Working Group regrets that neither the Government of Iraq nor the Government of the United States have submitted information in respect of the new allegations by the source or their position on its merits. Nonetheless, the Working Group believes that it is in a position to consider the case again and render an opinion on the facts and circumstances in the context of the new substantiated allegations made.

19. With regard to the doctrine of exhaustion of domestic remedies mentioned by the United States Government in its submission, the Working Group recalls that, as it has explained most recently in its 2006 report to the Commission on Human Rights, "the Commission […] never intended the doctrine of exhaustion of domestic remedies to apply to the activity of the Working Group as a criterion for the admissibility of communications" (E/CN.4/2006/7, paragraph 11).[11] This does not, however, preclude the Working Group from keeping in mind the rationale underlying the doctrine, i.e. that the State where a human rights violation has allegedly occurred should have the opportunity to redress the alleged violation by its own means within the domestic framework.

20. As already mentioned above, in this spirit the Working Group decided on 30 November 2005 to clarify the principles governing its competence and the responsibility of the two Governments with regard to the detention of Mr. Saddam Hussein but not to express an Opinion on the merits yet. Since then, nine months have passed, the Governments concerned have not cooperated with the Working Group, and the source alleges that the violations of international law in the trial of Saddam Hussein have grown worse. Most importantly, article 27 (2) of the Iraqi Special Court's Statute provides that sentences shall be enforced within 30 days of becoming final, which in the case of imposition of the death penalty could result in

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[11] E/CN.4/2006/7, paragraph 11: "Commission resolution 1997/50 establishes that, as a rule, the Working Group shall deal with cases in which the national judiciary has not yet spoken its final word; paragraph 15 of that resolution "[d]ecides to renew … the mandate of the Working Group … entrusted with the task of investigating cases of deprivation of liberty imposed arbitrarily, *provided that no final decision has been taken in such cases by domestic courts*" (emphasis added). The resolution then proceeds to qualify this principle: the Working Group shall be competent in cases in which the domestic courts have rendered a final decision insofar as that decision is contrary to relevant international standards."

a precipitous and irremediable end to the proceedings. Therefore, the Working Group considers that it can no longer delay giving its Opinion on the communication submitted to it two years ago.

21. In the light of the allegations summarized above, which have not been refuted by the Governments despite an invitation to do so, and also in the light of all the information publicly available about the trial of Mr. Saddam Hussein before the Supreme Iraqi Criminal Tribunal, the Working Group notes that no action has been taken to correct the deficiencies identified in its Opinion rendered on 30 November 2005. In addition, new procedural flaws have been reported to the Working Group.

22. In Opinion No. 46/2005, the Working Group had clearly stated that the proper way to ensure that the detention of Mr. Saddam Hussein did not amount to arbitrary deprivation of liberty would be to ensure that his trial was conducted by an independent and impartial tribunal in strict conformity with international human rights standards. It is unfortunate to notice that Mr. Saddam Hussein's trial was conducted and ended with a series of violations of the right to defence and to a fair trial, in breach of article 14 of the Covenant, to which Iraq and the United States are parties.

23. More specifically, the Working Group finds that Saddam Hussein did not enjoy the right to be tried by an independent and impartial tribunal as required by article 14 (1) of the Covenant. As reported by the source, the presiding judge of the chamber trying Saddam Hussein changed twice, both times as a result of political pressure exercised on the Supreme Iraqi Criminal Tribunal. The current presiding judge is reported to have made statements incompatible with the requirement of impartiality and the presumption of innocence enshrined in article 14 (2) of the Covenant. The known circumstances surrounding the changes of the presiding judge of the trial chamber render the fact that the identities of the other judges composing the chamber are not known all the more worrying. As pointed out by the source, neither the defendants nor the public are in a position to verify whether these judges meet the requirements for judicial office, whether they are affiliated with political forces, or whether their independence and impartiality is otherwise undermined.

24. Saddam Hussein did not "have adequate time and facilities for the preparation of his defence", as required by article 14 (3) (b) of the Covenant. The severe restrictions on his access to the lawyers of his own choosing and the presence of United States officials at such meetings violated his right to communicate with counsel. The assassination of two of his counsel in the course of the trial, Mr. Sadoun al-Janabi on 20 October 2005 and Mr. Khamis al-Obedi on 21 June 2006, seriously undermined his right "to defend himself […] through legal assistance of his own choosing" enshrined in article 14 (3) (d) of the Covenant (in addition to being, first of all, a tragedy in its own right).

25. Finally, Saddam Hussein did not enjoy the possibility "to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him", as required by article 14 (3) (e) of the Covenant. This guarantee was undermined by the failure to adequately disclose prosecution evidence to the defendants, the reading into the record of affidavits without an adequate possibility for the defence to challenge them, and the sudden decision of the presiding judge to cut short the defence case on 13 June 2006.

26. It is because the Working Group is deeply committed to the principle that serious violations of human rights, whether committed by political leaders or others, must be inquired into and redressed by putting the perpetrators to justice, that it considers that procedures to hold the perpetrators of gross human rights violations accountable must scrupulously respect the rules and standards drawn up and accepted by the international community to guarantee a fair trial to any person charged with a criminal offence. This is all the more necessary when the death penalty could be imposed.

27. The Working Group believes that also from the perspective of the victims, who under international law enjoy the right to reparation, truth and justice, it is particularly important that the investigation of the gross violation of human rights and the trial of their alleged perpetrators are conducted in a legitimate and transparent legal process. For them as well, it is essential that justice should not only be fair but should also be seen to be fair.

28. In the light of the foregoing, the Working Group renders the following Opinion:

> The deprivation of liberty of Mr. Saddam Hussein is arbitrary, being in contravention of article 14 of the International Covenant on Civil and Political rights to which Iraq and the United States are parties, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

29. As a consequence of the Opinion rendered, the Working Group requests the Governments of Iraq and the United States to take the necessary steps to remedy the situation of Mr. Saddam Hussein and to bring it into conformity with the principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In this context, the Working Group invites the Government of Iraq to give serious consideration to the question as to whether a trial of the former Head of State in conformity with international law is at all possible before an Iraqi tribunal in the current situation in the country, or whether the case should not be referred to an international tribunal.

Adopted on 1 September 2006.
