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Report of the Working Group on Arbitrary Detention

Chair-Rapporteur: El Hadji Malick Sow

Summary

During 2011, the Working Group on Arbitrary Detention commemorated its twentieth anniversary. On that occasion, the Working Group launched a database to facilitate access of victims, States and civil society to its Opinions and other materials.

The Working Group has visited Georgia and Germany at the invitation of their respective Governments. The reports of these visits are contained in addenda to the present document (A/HRC/19/57/Add.2 and 3).

Throughout the period 1 January to 30 November 2011, the Working Group adopted 68 Opinions concerning 105 persons in 31 countries. These Opinions are contained in the addendum 1 to the present document (A/HRC/19/57/Add.1).

Moreover, during the period 18 November 2010–17 November 2011, the Working Group transmitted 108 urgent appeals to 45 Governments concerning 1,629 persons (1,526 men, 99 women and 4 minors). Governments and sources reported that 21 persons were released.

Information about the implementation of recommendations made by the Working Group to the Governments of countries visited was received from the Governments of Angola and Colombia.

This report includes thematic issues to which the Working Group has devoted its attention in 2011, namely the exceptional character of pretrial detention and the human right of habeas corpus. The Working Group also takes the opportunity to reflect upon the impact of its work, cooperation with other United Nations bodies and international and regional instruments for the protection and promotion of human rights, and the need to revisit the definition and scope of arbitrary deprivation of liberty. In connection with the latter, the Working Group has held informal consultations with representatives of Governments and civil society in preparation of its Deliberation No. 9 on the definition and scope of arbitrary deprivation of liberty in customary international law.

The Working Group calls upon all States to remedy arbitrary detention mainly through release and compensation measures in compliance with international human rights norms and standards. The Working Group also recommends that States guarantee the human right of habeas corpus under all circumstances as an effective tool to combat the phenomenon of arbitrary detention.

Contents

I. Introduction

1. The Working Group on Arbitrary Detention was established by the former Commission on Human Rights in its resolution 1991/42 and entrusted with the investigation of instances of alleged arbitrary deprivation of liberty, according to the standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned. The mandate of the Working Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum-seekers and immigrants. At its sixth session, the Human Rights Council assessed the mandate of the Working Group and adopted resolution 6/4 which confirmed the scope of its mandate. On 30 September 2010, by its resolution 15/18, the Human Rights Council extended the Working Group's mandate for a further three-year period.

2. During 2011, the Working Group was composed of Ms. Shaheen Sardar Ali (Pakistan), Mr. Mads Andenas (Norway), Mr. Roberto Garretón (Chile), Mr. El Hadji Malick Sow (Senegal) and Mr. Vladimir Tochilovsky (Ukraine).

3. El Hadji Malick Sow is the Chair-Rapporteur of the Working Group and Shaheen Sardar Ali its Vice-Chair.

II. Activities of the Working Group in 2011

4. During the period 1 January to 30 November 2011, the Working Group held its sixtieth, sixty-first and sixty-second sessions. It undertook two official missions: to Georgia (15–24 June 2011) and Germany (26 September–5 October 2011) (see addenda 2 and 3, respectively).

5. On 14 November 2011, the Working Group celebrated its twentieth anniversary with a commemorative event organized in Paris with the support of the Governments of France and Norway and the French National Consultative Commission on Human Rights. The event brought together various stakeholders, who engaged in round-table discussions on issues relating to development of the work and jurisprudence of the Working Group and identified best practices to enhance its functions. The Working Group was honoured with the presence of two persons who had been the subject of Opinions of the Working Group, Birtukan Mideksa and Haitham al-Maleh, as well as with a video sent by Aung San Suu Kyi, who thanked the Working Group for the six Opinions rendered regarding her detention. Among members of the panels of the event were Nicole Ameline; Carlos Ayala Corao and Jared Genser; former Working Group Chair-Rapporteurs Louis Joinet and Leïla Zerrougui and former Vice-Chair Tamás Bán. Emmanuel Decaux, Michel Forst, Bacre Ndiaye, Tarald Brautaset, Halvor Saetre, Christian Strohal, and François Zimeray honoured the event with their presence. At the event in Paris, the Working Group launched its database containing over 650 Opinions on individual cases adopted since the establishment of the Group. The database is publicly available at www.unwgaddatabase.org in English, French and Spanish.

6. On 22 November 2011, the Working Group held informal consultations in Geneva with representatives of Governments and civil society in the context of elaborating its Deliberation No. 9 on the definition and scope of arbitrary deprivation of liberty in customary international law. In this connection, by note verbale dated 31 October 2011, the Working Group requested the Governments to provide written comments on the following questions: "(1) is the prohibition of arbitrary deprivation of liberty expressly contained in your country's legislation? If so please refer to the specific legislation; (2) what elements

are taken into account by national judges to qualify the deprivation of liberty as arbitrary? If possible, please provide concrete examples of the judgments".

A. Handling of communications addressed to the Working Group during 2011

1. Communications transmitted to Governments

7. A description of the cases transmitted and the contents of the replies of Governments can be found in the respective Opinions adopted by the Working Group (A/HRC/19/57/Add.1).

8. During its sixtieth, sixty-first and sixty-second sessions, the Working Group adopted 68 Opinions concerning 105 persons in 31 countries. Some details of the Opinions adopted during these sessions appear in the table below and the complete texts of Opinions Nos. 1/2011 to 68/2011 are reproduced in addendum 1 to the present report.

2. Opinions of the Working Group

9. Pursuant to its revised methods of work (A/HRC/16/47, annex), the Working Group, in addressing its Opinions to Governments, drew their attention to resolutions 1997/50 and 2003/31 of the former Commission on Human Rights and resolutions 6/4 and 15/18 of the Human Rights Council, requesting them to take account of the Working Group's Opinions and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they had taken. On the expiry of the two-week deadline, the Opinions were transmitted to the source.

Table 1
Opinions adopted during the sixtieth, sixty-first and sixty-second sessions of the Working Group

Opinion No.	*Country*	*Government's reply*	*Person(s) concerned*	*Opinion*
1/2011	Syrian Arab Republic	No	Messrs. Mohamed Ahmed Mustafa; Hassan Ibrahim Saleh and Maarouf Ahmad Malla Ahmad.	Detention arbitrary, categories II and III.
2/2011	Saudi Arabia	No	Mr. Abdul Hakim Gellani	Detention arbitrary, categories I, II and III.
3/2011	Egypt	Yes	Mr. Tarek Abdelmoujoud al Zumer	Detention arbitrary, category I. Case filed (para. 17 (a) of the Working Group's methods of work – persons released).
4/2011	Switzerland	Yes	Mr. Zaza Yambala	Detention arbitrary, category III.
5/2011	Yemen	No	Messrs. Osama Mohsen Hussein al Saadi and Mohamed Mohsen Hussein al Saadi	Detention arbitrary, categories I and III.

Opinion No.	*Country*	*Government's reply*	*Person(s) concerned*	*Opinion*
6/2011	Libyan Arab Jamahiriya	No	Mr. Imed al Chibani	Detention arbitrary, categories I, II and III.
7/2011	Egypt	No	Mr. Mahmoud Abdelsamad Kassem	Detention arbitrary, categories I and III.
8/2011	Egypt	No	Mr. Nizar Ahmed Sultan Abdelhalem	Detention arbitrary, categories I and III.
9/2011	Palestinian Authority	Yes	Messrs. Mohammad Ahmad Mahmoud Soukyeh; Majd Maher Rebhi Obeid; Ahmad Mohammad Yousri Rateb al-Auyoui; Wael Mohammad Saeed al-Bitar; Wesam Azzam Abdel-Muhsen al-Kawasmi; and Muhanad Mahmoud Jamil Nayroukh	Detention arbitrary, categories I and III.
10/2011	Saudi Arabia	No	Mr. Bachr b. Fahd b. al-Bachr	Detention arbitrary, categories I, II and III.
11/2011	Saudi Arabia	No	Mr. Ali ben Mohamed Hamad al Qahtani	Detention arbitrary, categories I and III.
12/2011	Lebanon	Yes	Mr. Abbas Shadar Zabed al-Lami	Detention arbitrary, categories I, III and IV. Case filed (paragraph 17 (a) of the Working Group's methods of work – persons released).
13/2011	Belarus	No	Mr. Mikalai Statkevich	Detention arbitrary, categories II and III.
14/2011	Lebanon	Yes	Mr. Thaer Kanawi Abed el Zahra el Rimahi	Detention arbitrary, categories I, III and IV. Case filed (paragraph 17 (a) of the Working Group's methods of work – persons released).
15/2011	China	Yes	Mr. Liu Xiaobo	Detention arbitrary, categories II and III.
16/2011	China	Yes	Ms. Liu Xia	Detention arbitrary, categories II and III.
17/2011	Saudi Arabia	No	Mr. Abdulrahim Ali Abdullah al-Murbati	Detention arbitrary, categories I and III.

Opinion No.	*Country*	*Government's reply*	*Person(s) concerned*	*Opinion*
18/2011	Saudi Arabia	No	Mr. Abdulrahmane al-Faqasi al-Ghamdi	Detention arbitrary, categories I and III.
19/2011	Saudi Arabia	No	Mr. Fouad Yahya Ali al-Samhi	Detention arbitrary, categories I and III.
20/2011	Islamic Republic of Iran	Yes	Mr. Kiarash Kamrani	Detention arbitrary, categories II and III.
21/2011	Islamic Republic of Iran	Yes	Ms. Nasrin Sotoudeh	Detention arbitrary, categories II and III.
22/2011	Azerbaijan	Yes	Messrs. Dmitri Pavlov; Maksim Genashilkin and Ruslan Bessonov	Detention arbitrary, category III.
23/2011	China	Yes	Mr. Liu Xianbin	Detention arbitrary, category II.
24/2011	Viet Nam	Yes	Mr. Cu Huy Ha Vu	Detention arbitrary, category II.
25/2011	Myanmar	Yes	Messrs. Thagyi Maung Zeya and Sithu Zeya	Detention arbitrary, category II.
26/2011	Syrian Arab Republic	Yes	Mr. Muhannad al-Hassani	Detention arbitrary, categories II and III.
27/2011	Venezuela (Bolivarian Republic of)	No	Mr. Marcos Michel Siervo Sabarsky	Detention arbitrary, category III.
28/2011	Venezuela (Bolivarian Republic of)	No	Mr. Miguel Eduardo Osío Zamora	Detention arbitrary, category III.
29/2011	China	Yes	Mr. Zhou Yung Jun	Detention arbitrary, categories I and III.
30/2011	Saudi Arabia	No	Mr. Saleh bin Awad bin Saleh al Hweiti	Detention arbitrary, categories I, II and III.
31/2011	Saudi Arabia	No	Mr. Bilal Abu Haikal	Detention arbitrary, categories I and III.
32/2011	Cameroon	Yes	Mr. Pierre Roger Lambo Sandjo	Detention arbitrary, categories II and III. Case filed (paragraph 17 (a) of the Working Group's methods of work – persons released).
33/2011	Saudi Arabia	No	Mr. Mohamed Abdullah al Uteibi	Detention arbitrary, categories I, II and III.

Opinion No.	*Country*	*Government's reply*	*Person(s) concerned*	*Opinion*
34/2011	United Arab Emirates	Yes	Messrs. Abdelsalam Abdallah Salim and Akbar Omar	Detention arbitrary, category III.
35/2011	Morocco	Yes	Mr. Mohamed Hassan Echerif el-Kettani	Detention arbitrary, categories II and III.
36/2011	Mexico	Yes	Ms. Basilia Ucan Han	Detention arbitrary, category III. Case filed (para. 17 (a) of the Working Group's methods of work).
37/2011	Syrian Arab Republic	No	Mr. Abdul Rahman	Detention arbitrary, categories II and III.
38/2011	Syrian Arab Republic	No	Ms. Tal al-Mallouhi	Detention arbitrary, categories II and III.
39/2011	Syrian Arab Republic	Yes	Ms. Tuhama Mahmoud Ma'ruf	Detention arbitrary, categories II and III.
40/2011	Bhutan	Yes	Mrs. Dechen Wangmo	Case filed (paragraph 17 (c) of the Working Group's methods of work – pending further information).
41/2011	Saudi Arabia	No	Mr. Ali Khassif Saïd al Qarni	Detention arbitrary, categories I, II and III.
42/2011	Saudi Arabia	No	Mr. Thamer Ben Abdelkarim Alkhodr	Detention arbitrary, categories I, II and III.
43/2011	Saudi Arabia	No	Mr. Mohamed b. Abdullah b. Ali al-Abdulkareem	Detention arbitrary, categories I, II and III.
44/2011	Saudi Arabia	No	Mr. Muhammad Geloo	Detention arbitrary, categories I, II and III.
45/2011	Saudi Arabia	No	Messrs. Chérif al Karoui and Hichem Matri	Detention arbitrary, category III.
46/2011	Viet Nam	No	Mmes. Tran Thi Thuy and Pham Ngoc Hoa; Messrs. Pham Van Thong; Duong Kim Khai; Cao Van Tinh; Nguyen Thanh Tam and Nguyen Chi Thanh	Detention arbitrary, categories II and III.
47/2011	Argentina	Yes	Mr. Carlos Federico Guardo	Detention arbitrary, category III.
48/2011	Indonesia	No	Mr. Filep Jacob Semuel Karma	Detention arbitrary, categories II and III.

Opinion No.	*Country*	*Government's reply*	*Person(s) concerned*	*Opinion*
49/2011	Sri Lanka	No	Mmes. Jegasothy Thamotharampillai and Sutharsini Thamotharampillai	Detention arbitrary, category III.
50/2011	Egypt	No	Mr. Maikel Nabil Sanad	Detention arbitrary, categories II and III.
51/2011	Lao People's Democratic Republic	Yes	Mrs. Kingkeo Phongsely	Paragraph 33 (a) of the Working Group's methods of work.
52/2011	Argentina	Yes	Messrs. Iván Andrés Bressan Anzorena and Marcelo Santiago Tello Ferreira	Detention arbitrary, category III.
53/2011	Uzbekistan	Yes	Mr. Akzam Turgunov	Detention arbitrary, categories II and III.
54/2011	Angola	No	Messrs. José António da Silva Malembela; José Muteba; Sebastião Lumani; Augusto Sérgio and Domingos Henrique	Detention arbitrary, categories II and III.
55/2011	Lebanon	Yes	Mr. Jawad Kazem Mhabes Mohammad al Jabouri	Detention arbitrary, categories I and IV.
56/2011	Lebanon	Yes	Mr. Hamid Ali	Detention arbitrary, categories I and IV.
57/2011	Egypt	No	Messrs. Mohammed Amin Kamal and Ahmed Jaber Mahmoud Othman	Detention arbitrary, category III.
58/2011	Iran (Islamic Republic of)	Yes	Mr. Heshmatollah Tabarzadi	Detention arbitrary, categories II and III.
59/2011	Iraq	No	Ms. Hasna Ali Yahya Husayn; Mohamed, Maryam and Fatima Ali Yahya Husayn (minors)	Detention arbitrary, categories I and III.
60/2011	Jordan	Yes	Mr. Issam Mahamed Tahar Al Barquaoui al Uteibi	Detention arbitrary, category II.

Opinion No.	*Country*	*Government's reply*	*Person(s) concerned*	*Opinion*
61/2011	Mexico	No	Messrs. Tomintat Marx Yu and Zhu Wei Yi	Detention arbitrary, category III.
62/2011	Venezuela (Bolivarian Republic of)	No	Mr. Sabino Romero Izarra	Detention arbitrary, category III.
63/2011	Bolivia (Plurinational State of)	Yes	Mr. Elöd Tóásó	Detention arbitrary, category III.
64/2011	United Arab Emirates	No	Mr. Ahmed Mansoor	Detention arbitrary, categories II and III.
65/2011	Venezuela (Bolivarian Republic of)	No	Messrs. Hernán José Sifontes Tovar; Ernesto Enrique Rangel Aguilera and Juan Carlos Carvallo Villegas	Detention arbitrary, category III.
66/2011	Bangladesh	No	Messrs. Motiur Rahman Nizami; Abdul Quader Molla; Mohammad Kamaruzzaman; Ali Hasan Mohammed Mujahid; Allama Delewar Hossain Sayedee and Salhuddin Quader Chowdhury	Detention arbitrary, category III.
67/2011	Mexico	No	Mr. Israel Arzate Meléndez	Detention arbitrary, category III.
68/2011	Qatar	No	Mr. Salem al Kuwari	Detention arbitrary, categories I and III.

3. Information received concerning previous opinions

10. By letter dated 11 February 2011, the Government of the Bolivarian Republic of Venezuela informed the Working Group that María Lourdes Afiuni Mora, subject of Opinion No. 20/2010 (Bolivarian Republic of Venezuela), has been under house arrest since 3 February 2011 following a judgment rendered by Judge 26 of the Metropolitan Area of Caracas.

11. By letter dated 31 May 2011, the Permanent Representative of Belarus to the United Nations Office at Geneva took note of Working Group's Opinion No. 13/2011 (Belarus) and considered that it was non-objective and biased. The subject of the Opinion, Mr. Statkevich, had taken part in an attempted coup d'état in Belarus organized by some ex-presidential candidates. These persons were involved in masterminding and participating in mass disturbances and in an attempt to seize the House of Government and the Parliament. The authorities took forceful measures to subdue those attempts. The Government added

that the right to freedom of assembly must be exercised without violence leading to public disorder.

12. The Government of Indonesia submitted additional information concerning Working Group's Opinion No. 48/2011 (Indonesia). It stated that all stages of the legal proceedings had been exhausted in the case of Mr. Karma, from the District to the Constitutional Court. The sentence against him, according to the Government, is justified and proportionate and can be carried out by the Government for the sake of the broader national security of Indonesians throughout the archipelago. Mr. Karma enjoys access to health facilities and the right to receive visits from his attorney and his relatives.

13. The source reported that Mr. Haytham Al-Maleh, the subject of Opinion No. 27/2010 (Syrian Arab Republic), was released on 8 March 2011, and that Messrs. Mustafa, Saleh and Ahmad, the subjects of Opinion No. 1/2011 (Syrian Arab Republic), were released on 17 May 2011.

14. The source also reported that Mr. Al Chibani, who had been the subject of Opinion No. 6/2011 (Libya), was released on 15 September 2011.

15. Further, information was received from the source that Mr. Al Karoui, the subject of Opinion No. 45/2011 (Saudi Arabia) was released on 7 November 2011.

16. The source reported that Mr. González, one of the five persons subject of Opinion No. 19/2005 (United States of America), was released on 7 October 2011, after having served his sentence. However, he is to remain in the territory of the United States of America for another three year period under the regime of conditional liberty pursuant to a decision by Judge of the South District of Florida.

17. The source reported that Mr. Ziad Wasef Ramadan, a witness in the Hariri murder investigations, and subject of the Working Group's Opinion No. 24/2010 (Syrian Arab Republic), was sentenced to six years' imprisonment.

4. Requests for review

18. By letter of 22 August 2011, the Government of Switzerland reacted to Opinion No. 4/2011 (Switzerland) adopted on 3 May 2011 and concerning Mr. Yambala. The Government requested the Group to review its Opinion. Mr. Yambala is at the prison of the airport of Zurich Kloten where he has been held since 25 March 2010, with the view to his expulsion. According to the Government, the maximum delay of 18 months in detention has not been exceeded. Mr. Yambala has had the possibility to exit Switzerland on several occasions had he cooperated with the authorities, in particular regarding the verification of his citizenship. The modalities of the application of the measures of detention taken against Mr. Yambala are in conformity with the Swiss law and comply with the requirements of necessity and proportionality.

19. At its sixty-first and sixty-second sessions, the Working Group examined the request for review from the Government of Switzerland in accordance with paragraph 21 of its methods of work. The Working Group held that the Government did not submit new facts which were not known to it at the time of adoption of its Opinion. The Working Group decided to maintain the text of its Opinion as originally adopted.

20. The Working Group acknowledges receipt of the response of the Government of Qatar to the case of Mr. Mohamed Farouk Ghareeb Al Mahdi (Opinion No. 25/2010). The Working Group considered that the response was received outside the deadline granted and decided to maintain the text of its opinion as adopted on 19 November 2010. The Working Group notes that Mr. Al Mahdi was released on 14 September 2010.

21. The Working Group also decided to maintain the text of its Opinion No. 32/2010 (Peru) concerning the detention of Mr. Polo Rivera. The Working Group considered that the Government has not provided it with new facts within the meaning of paragraph 21 of its methods of work so as to warrant a review of its Opinion.

22. The Working Group is examining a request for review of its Opinion No. 46/2011 (Viet Nam) submitted by the Government of Viet Nam.

23. The Working Group is also examining a request for review of its Opinions Nos. 15/2011 (China) and 16/2011 (China) submitted by the Government of the People's Republic of China.

5. Communications giving rise to urgent appeals

24. During the period 18 November 2010–17 November 2011, the Working Group transmitted 108 urgent appeals to 45 Governments concerning 1,629 persons (1,526 men, 99 women and four minors). In conformity with paragraphs 22–24 of its revised methods of work (A/HRC/16/47, annex), the Working Group, without prejudging whether the detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported, and appealed to them to take the necessary measures to ensure that the detained persons' right to life and to physical integrity were respected.

25. When the appeal made reference to the critical state of health of certain persons or to particular circumstances, such as failure to execute a court order for release, the Working Group requested the Government concerned to take all necessary measures to have the person concerned released. In accordance with Human Rights Council resolution 5/2, the Working Group integrated into its methods of work the prescriptions of the code of conduct relating to urgent appeals and has since applied them.

26. During the period under review, 108 urgent appeals were transmitted by the Working Group as follows:

Table 2
Urgent appeals transmitted to Governments by the Working Group

Government concerned	*Number of urgent appeals*	*Persons concerned*	*Persons released/Information received from*
Afghanistan	1	2 men	
Armenia	1	80 men	
Bahrain	5	20 men, 6 women, 1 minor	Released: 3 (source)
Bangladesh	1	1 man, 1 woman	
Belarus	3	8 men, 4 women	
Cambodia	1	1 man	
China	12	423 men, 29 women	Released: 1 (Government)
Côte d'Ivoire	1	1 man	
Cyprus	1	3 men	

Government concerned	*Number of urgent appeals*	*Persons concerned*	*Persons released/Information received from*
Djibouti	2	3 men	
Egypt	4	18 men, 7 women	
India	3	10 men, 1 woman, 1 minor	Released: 9 (source)
Iran (Islamic Republic of)	8	95 men, 28 women	
Iraq	2	8 men	Released: 6 (source)
Israel	1	1 man	
Kazakhstan	3	28 men, 1 woman	
Kyrgyzstan	2	4 men, 2 women	
Kuwait	1	1 man	
Lebanon	2	6 men	
Former Libyan Arab Jamahiriya	3	39 men	Released: 2 (source)
Malaysia	1	81 men, 4 women, 2 minors	
Mexico	2	10 men	
Morocco	2	2 men	
Myanmar	1	1 woman	
Nigeria	1	1 man	
Oman	1	9 men	
Pakistan	1	4 men	
Peru	1	2 men	
Philippines	1	4 men	
Qatar	1	1 man	
Russian Federation	3	4 men, 1 woman	
Saudi Arabia	6	9 men	
Sudan	2	9 men, 3 women	
Sri Lanka	2	2 men	
Syrian Arab Republic	7	495 men, 7 women	
Thailand	2	61 men	

Government concerned	*Number of urgent appeals*	*Persons concerned*	*Persons released/Information received from*
Tunisia	1	4 men	
Turkey	2	4 men, 2 women	
Turkmenistan	1	1 man	
Ukraine	1	8 men	
United Arab Emirates	5	11 men	
Uzbekistan	1	5 men	
Viet Nam	2	6 men, 2 women	
Yemen	2	Undetermined	
Zimbabwe	1	45 men	

27. The Working Group wishes to thank those Governments that heeded its appeals and took steps to provide it with information on the situation of the persons concerned, especially the Governments that released those persons. In other cases, the Working Group was assured that the detainees concerned would receive fair trial guarantees.

B. Country visits

1. Requests for visits

28. The Working Group has been invited to visit on official mission Argentina (a follow-up visit), Azerbaijan, Burkina Faso, El Salvador, India, Japan, the former Libyan Arab Jamahiriya, Spain and the United States of America.

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

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

30. In accordance with its methods of work, the Working Group decided in 1998 to address a follow-up letter to the Governments of countries it had visited, requesting information on such initiatives as the authorities might have taken to give effect to the relevant recommendations adopted by the Working Group contained in the reports on its country visits (E/CN.4/1999/63, para. 36).

31. During 2011, the Working Group requested information from Angola, Italy, Malta and Senegal. It received information from the Governments of Angola and Colombia.

Angola

32. By letter of 12 April 2011, the Government of Angola informed the Working Group of the measures taken in compliance with the recommendations issued in the Working

Group's report on its official mission to Angola from 17 to 27 September 2007 (A/HRC/7/4/Add.4). In the context of the Working Group's recommendation to avoid arbitrary detention, the Government points out to Law No. 18-A of 17 July 1992, Pre-trial Imprisonment Law, which establishes a maximum detention period of five days before a person is brought to the Public Prosecutors. Article 3 of the aforementioned law allows the detainees to be kept incommunicado prior to the first interrogation. In case of strong suspicion of commission of the crime in flagrante delicto, and depending on the nature of the offence, a citizen may be placed in pretrial detention for a period from 30 to 135 days.

33. Article 64 of the 2010 Constitution of Angola provides that an ordinary law may deprive a citizen of his liberty. Article 73 of the Constitution provides that citizens have the right to take legal action, file complaints or denounce acts that undermine their rights. Article 74 of the Constitution allows the right for popular action and article 75 provides for disciplinary and criminal measures for any Government officials and agents responsible for violations of rights, freedoms and guarantees enshrined in the Constitution.

34. According to the Government, the constitutional framework has reinforced the work of the Attorney General's Office. All prosecutors are required to abide by pretrial detention periods prescribed by law and to oversee arbitrary deprivation of liberty. In this context, article 64 of the 2010 Constitution indicates the conditions under which public entities may detain a person and establishes the institution of the investigating judge, who has as his or her main function to protect the rights and freedom of citizens. The Government notes the elaboration of the following bills to modify the provisions of the 1929 Code of Criminal Procedure and to further avoid any unlawful detention: (a) amendment and revocation of various provisions of the Code of Criminal Procedure and of Executive Order No. 35007 of 13 October 1945; (b) Statute governing the special proceeding for missing persons; (c) Statute governing measures for interim relief, in all phases of the criminal proceeding; (d) Statute governing habeas corpus, and; (e) Statute governing searches, seizures and arrests.

35. With regard to pretrial detention, the Government notes that, for crimes carrying a correctional penalty, the detention period ranges from 3 to 30 days; for crimes punishable by long-term imprisonment – from 45 to 135 days; and for crimes against State security – from 90 to 125 days. The Government notes the overall level of compliance with these periods.

36. In respect of the Working Group's recommendation to reduce overcrowding in prisons, the Government of Angola points to a number of measures undertaken during the period 2007–2010, such as restoration, construction and expansion of prisons. The Angolan Judiciary created a special commission within the Provincial Court of Luanda to hear defendants who had been awaiting trial for a period of two to five years and a technical commission of judges and the Public Prosecutor, prison directors and clerks to better monitor the overcrowding in prisons.

37. The Government stresses that these and other measures have contributed to the decrease in the number of defendants awaiting trial. At present, the period for detainees awaiting trial has dropped to approximately one year. This improvement is also due to the expansion of the training programme at the National Institute of Legal Studies intended for judges and prosecutors in Angola.

38. The Government indicates that 1,570 prisoners were released nationwide for a variety of reasons, some of them involving irregularities and illegal detentions. Of the 1,570, 1,347 were in pretrial detention and 223 convicted.

39. As part of an effort to reduce the overcrowding, the President granted a pardon in April 2009 to mark the seventh year of actual peace in Angola, set forth in Presidential Decree No. 11 of 3 April 2009, which permitted all convicted prisoners who had served half of their sentence by 31 March 2009 and those whose sentences did not exceed a period

of 12 years of imprisonment, to be released. Persons whose sentences exceeded 12 years had their sentences reduced by a quarter.

40. In its letter, the Government provided detailed information on the institution of parole in Angola. It noted that during the period of 2007–2010, orders were filed in favour of granting parole that resulted in some prisoners being released. As an example, in Luanda, where the prison population was the highest in the country from 2008 to 2010, 95 petitions were granted and 28 not granted on objective reasons. At the moment of submission of the information to the Working Group, 106 proceedings were in progress.

41. In relation to the recommendation by the Working Group to have more frequent inspections and visits by the Ombudsman and Office of the Attorney General to prison and detention centres, the Government notes that these have gradually increased since 2007. The Government mentions the ongoing programmes developed by a number of NGOs working directly with prisoners and detainees in Angola.

42. Regarding the recommendations for special treatment of minors in detention, the Government notes that the majority age in Angola is 18 years. However, minors aged 16 and 17 years are criminally liable. Such criminal responsibility is relative, as not all of the sentences set forth in the Criminal Code are applicable to these minors. The heaviest sentences do not apply to these minors. Hence, minors aged 16 or 17 cannot be sentenced to more than eight years in prison and the judge has the authority to reduce that sentence to one year in prison pursuant to articles 94 and 108 of the Criminal Code. Minors aged 16 and 17 are separated from the adults in accordance with article 22 of Law No. 8 of 29 August 2008. The Government nevertheless notes that, owing to overcrowding, a strict separation and prevention of incidents between minors and adults is not yet entirely satisfactory. Minors under 16 years suspected of having committed an offence are protected by a special legal regime of the Juvenile Court. They can only be subject to a proceeding for application of crime prevention measures and proceeding for application of social protection measures.

43. The Government notes that following the adoption of the 2010 Constitution, the action of habeas corpus, which was already available in chapter VII, article 312, of the Angolan Code of Criminal Procedure, acquired a constitutional dimension through article 68.

44. Concerning the recommendation of the Working Group to place the prison administration under the authority of the Ministry of Justice, the Government notes that no final decision has yet been reached on this matter. The Government states that the Criminal Investigation Police and Prison Services are two entirely separate bodies under the authority of the Ministry of the Interior.

45. With regard to the possibility of establishing a mechanism that ensures the revision of the decisions of military courts by the civil Supreme Court, the Government recognizes the need for revising the laws pertaining to military justice. According to the Government, the possibility of control or oversight by the civil courts of the decisions of military courts would probably lead to a conflict of jurisdiction. The Government considers that the military judges under the Public Prosecutor ensure sufficient oversight of the decisions by the military courts. The Government reports that common crimes, even if these are committed by military personnel, are tried in the civil courts.

Colombia

46. By letter of 7 December 2010, The Government of Colombia informed the Working Group about the measures it had taken to implement the Working Group's recommendations contained in the report on its visit to the country, carried out in October 2008 (A/HRC/10/21/Add.3). The Government reported that Draft Law No. 113 (Civil

Coexistence Code) was submitted by the Executive Organ to the House of the Representatives on 5 October 2010. The Draft Code was approved in the first instance by the Senate on 1 December 2010. The new Code, based on the principles of respect to the right to liberty and the right of security, would unify in a sole legal text all norms concerning the Police. By Decree 3445 of 17 September 2010, the Government had established the post of High Presidential Adviser for Civil Coexistence and Citizen Security (Alta Consejería Presidencial para la Convivencia y la Seguridad Ciudadana).

47. The Government of Colombia made reference to the National Plan of Judicial Decongestion 2009–2010 (Plan Nacional de Descongestión 2009–2010) in order to try to reduce a significant backlog of cases. The National Plan had facilitated the issue of 54,238 judicial resolutions as well as the process and treatment of 1,023,674 judicial files. The fight against corruption had motivated a thorough review of the structure of the Prosecutor General's Office (Fiscalía General de la Nación) as well as the creation of a specialized body against corruption at the Judicial Police. Lastly, concerning another concrete recommendation of the Working Group, the Government informed that the Special Rapporteur on the independence of judges and lawyers had visited the country in December 2009.

III. Thematic considerations

A. Pretrial detention as an exceptional measure

48. In view of the communications received and findings resulting from its country visits, the Working Group notes with concern the increasing use of pretrial detention and its excessive length.

49. Whilst the resolution 1991/42 of the former Commission on Human Rights establishing the mandate of the Working Group on Arbitrary Detention did not provide a definition of "detention", the use of the term "deprivation of liberty" in resolution 1997/50 made it clear that the Working Group can be seized of all forms of detention.

50. Pretrial detention constitutes a grave limitation on the freedom of movement, a fundamental and universal human right. It places an individual's life under the authority of agents responsible for his or her custody.

51. The question of pretrial detention is regulated by article 9 of the International Covenant on Civil and Political Rights. Paragraph 3 of this article provides that "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release".

52. General comment No. 8 (1982) on the right to liberty and security of persons of the Human Rights Committee explains the notion of "promptly" by reference to a period of a few days. Pretrial detention must be as short as possible.

53. Article 9, paragraph 3, of the International Covenant on Civil and Political Rights sets forth two cumulative obligations, namely to be promptly brought before a judge within the first days of the deprivation of liberty and to have a judicial decision rendered without undue delays, in the absence of which the person is to be released.

54. This provision is completed by the second part of paragraph 3 of article 9 which provides that "it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement". It

follows that liberty is recognized as a principle and detention as an exception in the interests of justice.

55. The rationale in paragraph 3 of article 9 also indicates that alternative measures including house arrest, judicial monitoring, release on bail shall not be regarded as compulsory vis-à-vis a pretrial detention but rather optional. The consideration of alternative non-custodial measures allows it to be ascertained whether the principles of necessity and proportionality have been met.

56. The provisions contained in paragraph 3 of article 9 of the Covenant can be summarized as follows:

> Any detention must be exceptional and of short duration and a release may be accompanied by measures intended only to ensure representation of the defendant in judicial proceedings.

57. The Working Group expresses its desire that the present understanding of paragraph 3 of article 9 of the Covenant be commonly subscribed to and invites States to further promote it among agents responsible for the application of the law, with a view to contributing to the eradication of unjustified and prolonged pretrial detention, which constitutes arbitrary deprivation of liberty.

58. The above position finds further support in the presumption of innocence and individual liberty equally recognized in the Covenant. Finally, it should be noted that the rule contained in article 9 is applicable only to criminal procedure and not civil procedure.

B. Habeas corpus

59. Since its second report, which covered the activities in 1992, the Working Group has repeatedly addressed the issue of habeas corpus.[1] It has consistently emphasized that habeas corpus is, in itself, a human right, as may be inferred from a careful reading of articles 8, 9 and 10 of the Universal Declaration of Human Rights, and more explicitly, article 9, paragraph 4, of the International Covenant on Civil and Political Rights, which provides that: "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." The Working Group maintains that habeas corpus "should be regarded not as a mere element in the right to a fair trial but ... as a personal right" (E/CN.4/2004/3, para. 62). Similarly, principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person or his counsel "shall be entitled at any time to take proceedings according to domestic law" for the same purposes. This is also the understanding of the Human Rights Committee in its general comment No. 8, paragraph 1, which prescribes that "the important guarantee laid down in paragraph 4, i.e. the right to control by a court of the legality of the detention, applies to all persons deprived of their liberty by arrest or detention".

60. Moreover, States parties have the obligation, in accordance with article 2, paragraph 3, of the Covenant, to ensure that an effective remedy is provided to any person whose rights as recognized therein are violated; and they have that obligation specifically in any

[1] See the reports of the Working Group, documents E/CN.4/1993/24, para. 43 (c); E/CN.4/1994/27, para. 36; E/CN.4/1995/31, para. 45; E/CN.4/1996/40, paras. 110 and 124 (5); E/CN.4/2004/3, paras. 62, 85 and 87; E/CN.4/2005/6, paras. 47, 61, 63–64, 75 and 78; A/HRC/7/4, paras. 64, 68 and 82 (a); A/HRC/10/21, paras. 53–54 and 73; A/HRC/13/30, paras. 71, 76–80, 92 and 96.

case in which an individual claims to be deprived of his or her liberty in violation of the Covenant, as stated in the paragraph 1 of general comment No. 8. The former Commission on Human Rights, in its resolution 1994/32, also encourages States to establish habeas corpus as "a personal right" not subject to derogation, including during states of emergency.

61. In the light of the above, the absence of a remedy of habeas corpus constitutes, per se, a human rights violation by depriving the individual – in effect, all individuals – of the human right to protection from arbitrary detention. For that reason, the Working Group recommended, for example, in its report on its mission to Senegal in 2009, that the Government should "consider the possibility of establishing habeas corpus as a means of combating arbitrary detentions" (A/HRC/13/30/Add.3, para. 82 (a)). As the Working Group has already stated, that habeas corpus is "indispensable in a State governed by the rule of law as a safeguard against arbitrary detention" (E/CN.4/1994/27, para. 36).

62. The Human Rights Committee points out that article 9, paragraph 1, of the Covenant is applicable to all forms of deprivation of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, reasons of public security, accusations of terrorism, prolonged pretrial detention, secret prisons or incommunicado detention. The Working Group had done the same, noting that, as part of the so-called "war against terrorism", instances of arbitrariness and unacceptable limitations on the exercise of the human right of habeas corpus have been committed against political opponents, religious dissenters, and other persons exercising their freedoms of opinion, expression, conscience and religion (E/CN.4/2005/6, para. 63). In the course of its country visits, the Working Group pays particular attention to constitutional and legal provisions relating to personal freedom, and remedies for contesting arbitrary detention.

63. The Working Group is of the view that, in their domestic legislation, States should ensure that the remedy of habeas corpus meets the following minimum requirements in order to comply with international human rights law:

(a) Informality: in other words, there may be no requirement of legal formalities that, if not complied with, might lead to the inadmissibility of the remedy. Any individual should therefore be able to apply for it in writing, orally, by telephone, fax, e-mail or any other means, without the need for prior authorization;

(b) Judicial level: it must be adjudicated by a judicial authority superior in rank to that of the public servant or judge who ordered the arrest;

(c) Effectiveness and accessibility: the decision to grant habeas corpus must be implemented immediately, either through the release of the person deprived of liberty or by unobstructed rectification of any flaws discovered, as recommended by the Committee against Torture (see CAT/C/CR/34/UGA, paras. 6 (b) and para. 10 (f));

(d) Cost-free access: the detained person or his or her family should not be required to post bail or incur any cost whatsoever;

(e) Urgency of habeas corpus proceedings and judgement: ("without delay", as indicated in article 9, para. 4, of the Covenant) meaning that the court must request the case file with a view to reaching a decision within a matter of hours;

(f) Prohibition of the intervention of a lawyer as a criterion for admissibility of the appeal;

(g) Universality: not only may it be sought regardless of the offence with which the detainee is charged, including treason and terrorism, but any person deprived of liberty, irrespective of his or her nationality, may exercise the right;

(h) Non-derogability: even in cases provided for in article 4 of the Covenant, and in cases of armed conflict – whether between two or more States parties or within the same State party – in conformity with the Geneva Conventions. Provision to that effect has been made by all human rights bodies of the United Nations system (see Commission on Human Rights resolution 1993/36, para. 16, and many others, including resolution 1994/32, which refers to habeas corpus as "a personal right not subject to derogation, including during states of emergency").

64. Constitutional or legal provisions governing the remedy of habeas corpus must provide safeguards against the following indications of a possible infringement of personal liberty:

(a) The absence of a detention order;

(b) The absence of legal grounds for the detention order;

(c) The judicial body's lack of independence from the authority that ordered the deprivation of liberty;

(d) The authority's lack of legal competence to order the detention of an individual;

(e) Enforcement of a legal detention order by public servants neither authorized to do so nor duly identified;

(f) Failure to show the detention order at the time of the arrest;

(g) Transfer of the detainee to a non-public location not equipped to serve as a place of detention;

(h) Use of prolonged incommunicado detention;

(i) Delay in bringing the detainee before the judicial authority within the shortest period of time provided for by law;

(j) Failure to inform the persons closest to the detainee of all relevant circumstances, especially in the case of minors;

(k) Failure to notify the diplomatic or consular representative of the detainee's country of his or her arrest;

(l) Failure to record the entry into custody of a detainee in the logbook, as required by law, at the actual time of his or her admission, and to log in the corresponding detention order and its justification, the names of the officials who performed the arrest, and the date and time of the detainee's admission and appearance before the court;

(m) Failure to provide notification of the right to an interpreter and the use of same;

(n) Denial of bail, or imposition of excessive bail, for release from custody during the trial;

(o) Detention resulting from the legitimate exercise of a universally recognized human right;

(p) Deprivation of liberty that constitutes the failure, in whole or in part, to comply with international rules relating to the right to a fair trial;

(q) Holding immigrants or asylum-seekers in custody for prolonged periods of time without recourse to other legal remedies for challenging such custody;

(r) Arrest that constitutes an act of discrimination prohibited by international law;

(s) Failure to inform the detainee of his or her rights, especially the right to appoint an attorney and to communicate freely and confidentially with same; the lack of effective remedies for challenging the legality of the detention order or the manner in which the detention is carried out;

(t) Failure to inform the detainee of his or her right to free legal assistance if he or she is unable to pay for such assistance;

(u) Lack of access to all the evidence on which the detention order was based;

(v) Lack of proportion between the act with which the detainee is accused and the extreme measure of deprivation of liberty;

(w) Denial of the right to receive visits from his or her close family members and lawyers;

(x) The failure to treat the detainee humanely and with respect for the inherent dignity of the human being, subjecting him or her to torture or cruel, inhuman or degrading treatment or punishment;

(y) The application of measures to the detainee that amount to some form of discrimination on the basis of race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, economic position, birth or any other condition;

(z) Placement of the detainee with convicted prisoners; and

(aa) Failure to provide the detainee with the necessary medical care.

C. Cases, compliance and remedies

65. The Working Group has from its inception been concerned with fact-finding and the clarification and development of international law on arbitrary detention. It has developed extensive jurisprudence, in particular in its Opinions on individual cases, but also in its deliberations, legal opinions, country visit reports, urgent appeals and joint reports with other mandates of the special procedures on legality and arbitrariness in human rights treaties and customary international law.

66. The Working Group makes reference to its own jurisprudence and to that of other United Nations human rights bodies. For instance, the communications, general comments and reports of the Human Rights Committee and the Committee against Torture are sources of authority on the interpretation of their respective treaties and on available remedies. The jurisprudence of the International Court of Justice, regional human rights courts and national courts is constantly present in the Working Group's deliberations even when express reference is not made thereto. The Working Group's approach reflects a wider practice of cross-fertilization between judicial and quasi-judicial bodies at the national, regional and international level. For instance, the Human Rights Committee, in *Yevdokimov and Rezanov v. Russian Federation* (communication No. 1410/2005, Views adopted on 20 March 2004), made reference to the European Court of Human Rights. Similarly, in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, the International Court of Justice made reference to the jurisprudence developed under the European, African and Inter-American systems for the promotion and protection of human rights.

67. The Working Group welcomes the fact that the findings and recommendations in its reports and Opinions are increasingly made use of by other United Nations human rights bodies and regional human rights courts, such as the Inter-American Court of Human Rights and the European Court of Human Rights. Also, when national courts are

determining the extent of international law obligations that may have a direct or indirect effect on matters before them, the reports and Opinions of the Working Group have provided assistance. This also applies when a national court considers a detention that the Working Group has declared arbitrary in violation of international law. The effectiveness of international human rights protection requires that all national authorities observe international law obligations. The Working Group has on occasion reminded a State that the duty to comply with international human rights rests not only on the Government but on all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations. The Working Group has also made clear that a widespread or systematic practice of detention can constitute a war crime or a crime against humanity.

68. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. Its approach is in line with the ruling of the International Court of Justice in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, which establishes the evidentiary position for claims to succeed in human rights cases, a position which this Working Group has adopted on previous occasions for its own Opinions in individual cases. Where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he or she was entitled, it may be difficult to establish the negative fact that is asserted. A public authority is generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law – if such was the case – by producing documentary evidence of the actions that were carried out. In general the burden rests with the Government: it is for the Government to produce the necessary proof. More generally, the matter of the evidentiary burden arises where the source has established a prima facie case for breach of international requirements constituting arbitrary detention. Regrettably, in some cases, Governments have not responded to the request from the Working Group to provide it with information. In the absence of such information, the Working Group must base its Opinion on the prima facie case as made out by the source. Furthermore, mere assertions that lawful procedures have been followed will not be sufficient to rebut the source's allegations; that follows from the nature of the prohibition of arbitrary detention.

69. The Working Group promotes compliance with international human rights law and standards prohibiting and preventing arbitrary detention, as expressed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Human Rights Committee has authoritatively confirmed that "arbitrary deprivations of liberty" constitute a violation of peremptory norms of international law which are non-derogable (see general comment No. 29 (2001) on derogation during a state of emergency). In agreement with this position, the Working Group continues to apply the prohibition of arbitrary detention as a peremptory norm of international law (or *jus cogens*). The Working Group is preparing a deliberation on arbitrary detention in customary international law, which, among other matters, will provide an overview of statements by other bodies and the Working Group's own practice on what constitutes detention, the legality requirement and the prohibition of arbitrariness, in pre- and post-trial detention and detention during the trial, including the principles of necessity and proportionality which are at the core of the arbitrariness requirement.

70. In addition to promoting compliance with international human rights law and standards prohibiting and preventing arbitrary detention, the Working Group continues to promote adequate redress when arbitrary detention has occurred, in terms of articles 2, paragraph 3, and 9, paragraphs 4 and 5, of the International Covenant on Civil and Political Rights and the requirements of customary international law. Having established the arbitrariness of detention in its Opinion, the Working Group will request the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles of the Universal Declaration of Human Rights and the Covenant.

The necessary step to be taken to remedy the situation when the detention falls within one of the categories applicable to the cases submitted to the Working Group is typically the immediate release of the detained person, and the Working Group in such cases states this explicitly. Such remedy follows from the generally recognized principle of restitution ad integrum, requiring the immediate restoration of the physical liberty of the arbitrarily detained person. It is also reflected in article 9, paragraph 4, of the Covenant, which requires that a court must be empowered to order the release of an unlawfully detained person. For such remedy to be effective, as required by article 2, paragraph 3, of the Covenant, detaining States are under an obligation to release the arbitrarily detained (foreign) detainee into their own territory, even if they wish to deport the (foreign) detainee, but where deportation of the detainee otherwise liable for removal to the country of origin or to a third country accepting the detainee is not promptly possible. This could occur if a removal would violate the principle of non-refoulement or if it is not possible for any other legal or factual reasons. Otherwise, the international human rights obligation for immediate restoration of the liberty of the arbitrarily detained person would be undermined.

71. When the Working Group finds in its Opinions that the detention of the concerned individual exclusively falls within category III as gravely violating the right to fair trial, the appropriate remedy might take forms different to that of the immediate release of the arbitrarily detained person. An example could be that of affording the detainee a retrial that meets all fair trial guarantees as contained in article 10 of the Universal Declaration of Human Rights and articles 9, paragraph 3, and 14 of the International Covenant on Civil and Political Rights. However, given the gravity of the violation of fair trial guarantees, which is a condition for the Working Group to declare the detention to be arbitrary, immediate release would typically be the appropriate remedy here. Considering the time that the individual concerned has already spent in pretrial detention, conditional release, release on bail or other forms of release pending trial would typically be required.

72. In its reports and Opinions, the Working Group encourages States that have not ratified the International Covenant on Civil and Political Rights to do so. When it wishes to restate or develop its jurisprudence on a matter of importance or on a point of law, or call on States to amend their national legislation or to change their practices so as to bring them into conformity with its international human rights obligations, it may, render an Opinion even though the person has been released. In any given case, the Working Group may remind States of their obligation under article 9, paragraph 5, of the Covenant to provide compensation to a released person.

IV. Conclusions

73. **The Working Group welcomes the cooperation it has received from States with regard to cases that it has considered. During 2011, the Working Group adopted 68 Opinions concerning 105 persons in 31 countries.**

74. **The Working Group welcomes the invitations extended to it as well as the cooperation on the part of the respective Governments. The Working Group conducted two official visits in 2011, to Georgia and Germany. Among all the requested country visits, the Working Group has received invitations from the Governments of Azerbaijan, Burkina Faso, El Salvador, India, Japan, Spain, the former Libyan Arab Jamahiriya and the United States of America. The Working Group reiterates its belief that its country visits are essential in fulfilling its mandate. For Governments, these visits provide an excellent opportunity to show developments and progress in detainees' rights and the respect for human rights, including the right not to be arbitrarily deprived of liberty.**

75. **Moreover, the Working Group considers of utmost importance effective follow-up to its country visits and requests the support of Member States therein. Furthermore, it emphasizes the importance of the follow-up to and implementation of recommendations contained in the Working Group's Opinions.**

76. **The Working Group takes the opportunity to reiterate the exceptional character of the measure of detention under international human rights law. Article 9, paragraph 3, of the International Covenant on Civil and Political Rights sets forth narrowly circumscribed principles for detention on a criminal charge so as to avoid unlawfulness and arbitrariness. The Working Group emphasizes that the notions of a promptness and reasonableness of pretrial detention are to be construed restrictively. The time period referred to in article 9, paragraph 3, shall be no longer than a few days. Whenever possible States shall seek to ensure that measures less restrictive than detention are available so as not to undermine the very core of the human right to liberty and freedom of movement. States are to ensure that these measures are absolutely necessary and proportional to the objective sought.**

77. **With respect to habeas corpus, the Working Group recognizes its existence as a self-standing human right. It lies at the core of combating and preventing the phenomenon of arbitrary deprivation of liberty. The Working Group has consolidated its understanding of the scope and effect of habeas corpus through its Opinions and country visits. It reiterates that the right to habeas corpus is not subject to any exceptions or derogations even in the context of armed conflict. Habeas corpus constitutes the ultimate guarantee of individual liberty and provides the possibility to contest the legality of any form and measure of deprivation of liberty.**

78. **Finally, the Working Group notes with satisfaction the increasing cross-fertilization between its activities and the work of other United Nations bodies as well as international and regional instruments for the promotion and protection of human rights. In this context, the ongoing preparation of Deliberation No. 9 will draw upon the statements by other bodies and the Working Group's own practice on what constitutes detention, the legality requirement and the prohibition of arbitrariness, in pre- and post-trial detention and during the trial. The deliberation is intended to contribute to a harmonious interpretation of human rights norms and standards applicable to deprivation of liberty under customary international law. Collaboration of States and civil society in this context is essential to a successful outcome of the study.**

V. Recommendations

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

80. **In the light of the exceptional nature of the pretrial detention measures, the Working Group requests States to ensure that measures alternative to detention and less restrictive in character are available in domestic legal systems. At the same time,**

it emphasizes that such measures are not compulsory but rather constitute a last resort mechanism to restrict one's liberty pending trial.

81. **The Working Group recommends that States provide for and ensure the right to a habeas corpus in their domestic legislation. The Working Group further recommends that non-governmental organizations, national institutions and United Nations agencies and offices should include relevant information on the action of habeas corpus in their contributions to the universal periodic review mechanism.**

82. **The Working Group recommends that States remedy arbitrary detention mainly by immediate release and compensation as required by international human rights conventions and customary international law, and assist the Working Group in the follow-up of its Opinions in individual cases.**