

**Human Rights Council****Forty-fifth session**

14 September–2 October 2020

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Arbitrary detention****Report of the Working Group on Arbitrary Detention****Summary*

In 2019, the Working Group on Arbitrary Detention, under its regular procedure, adopted 85 opinions concerning the detention of 171 persons in 42 countries. It also transmitted 61 urgent appeals to 31 Governments and, in one case, to other actors, as well as 80 letters of allegations and other letters to 43 Governments and, in one case, other actors, concerning at least 377 identified individuals. Some States informed the Working Group that they had taken measures to remedy the situations of detainees and, in multiple cases, the detainees were released. The Working Group is grateful to those Governments that responded to its appeals and took steps to provide it with the information requested on the situation of detainees.

As part of its continuous dialogue with States, the Working Group conducted country visits to Qatar, from 3 to 14 November 2019, and to Greece, from 2 to 13 December 2019.

The Working Group continued to formulate deliberations on matters of a general nature to assist States and stakeholders in preventing and addressing cases of arbitrary deprivation of liberty. This included development of deliberation No. 10 on reparations for arbitrary deprivation of liberty and deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies.

Furthermore, in cooperation with the Working Group on discrimination against women and girls, the Working Group developed a joint *amicus curiae* brief addressing the arrest and detention of applicants who were among 71 women suspected of being sex workers and allegedly physically and sexually assaulted while in custody.

In the report, the Working Group also examines the following thematic issues: (a) women deprived of liberty; (b) the right to legal assistance in preventing arbitrary deprivation of liberty; (c) modern technologies and alternatives to detention.

In its recommendations, the Working Group calls for States to increase their cooperation with regard to their responses to regular communications, by reporting through

* The annexes are being circulated without formal editing, in the language of submission only.



the follow-up procedure on the implementation of the opinions of the Working Group (and on reparations undertaken) and by providing positive responses to requests for country visits.

It also encourages States to address the situation of female detainees, to ensure the right to legal assistance and to address the issue of modern technologies in the context of deprivation of liberty.

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I. Introduction

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. It was entrusted with the investigation of cases 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. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was extended for a three-year period in Council resolution 42/22 of 26 September 2019.

2. During the period from 1 January to 31 December 2019, the Working Group was composed of Sètonджи Roland Jean-Baptiste Adjovi (Benin), José Antonio Guevara Bermúdez (Mexico), Seong-Phil Hong (Republic of Korea), Elina Steinerte (Latvia) and Leigh Toomey (Australia).

3. Mr. Hong served as Chair-Rapporteur of the Working Group from April 2018 to April 2019, and Ms. Steinerte and Ms. Toomey as Vice-Chairs. At the eighty-fourth session of the Working Group in April 2019, Mr. Guevara Bermúdez was elected as Chair-Rapporteur and Ms. Steinerte and Ms. Toomey were re-elected as Vice-Chairs. Ms. Toomey was designated focal point for reprisals and Ms. Steinerte was reappointed focal point on linkages between torture and arbitrary deprivation of liberty.

4. The Working Group learned with sadness that, on 22 September 2019, Louis Joinet had passed away. Mr. Joinet played a key role in establishing the Working Group. In 1990, the Commission on Human Rights requested its Sub-Commission on Prevention of Discrimination and Protection of Minorities to undertake a study on arbitrary detention. Mr. Joinet, an independent expert of the Sub-Commission, presented a report on the practice of administrative detention that led to the adoption of Commission resolution 1991/42. During his years as a member of the Working Group (from 1992 to 2003), Mr. Joinet put in place procedures for the Working Group to carry out its mandate, laying the foundation for the Working Group to develop as the only non-treaty-based human rights mechanism mandated to consider individual complaints of arbitrary detention around the world. His legacy in establishing the Working Group and his lifelong service in promoting and protecting human rights will always be remembered.

II. Activities of the Working Group

5. During the period from 1 January to 31 December 2019, the Working Group held its eighty-fourth, eighty-fifth and eighty-sixth sessions.

6. The Working Group also undertook a visit to Qatar, from 3 to 14 November 2019 (A/HRC/45/16/Add.2). From 2 to 13 December 2019, the Working Group conducted a country visit to Greece (A/HRC/45/16/Add.1).

7. In order to facilitate outreach and information-sharing, the Working Group met with a group of non-governmental organizations during its eighty-fifth session to gather information on issues relating to arbitrary deprivation of liberty and to enhance understanding by civil society of the Working Group's methods of work and its operations.

A. Deliberations

8. The Working Group continued to formulate deliberations on matters of a general nature to assist States and stakeholders in preventing and addressing cases of arbitrary deprivation of liberty.

9. Deliberation No. 10 on reparations for arbitrary deprivation of liberty (annex I) was adopted at the eighty-sixth session of the Working Group, in November 2019. In the

deliberation, the Working Group identified comprehensive reparations to which victims of arbitrary deprivation of liberty were entitled. In doing so, it elaborated on what were to be understood as measures as referenced in the follow-up procedure established by the Working Group in 2016.¹

10. The Working Group further formulated deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies (annex II). In the deliberation, the Working Group sets out guidance for avoiding occurrences of arbitrary deprivation of liberty in the implementation of various public health emergency measures, such as the ones related to the coronavirus disease (COVID-19) pandemic.

B. Submission of a joint amicus curiae brief

11. During the reporting period, the Working Group commenced work in developing a joint amicus curiae brief,² in cooperation with the Working Group on discrimination against women and girls. The brief relates to the arrest and detention of applicants who were among 71 women suspected of being sex workers and allegedly physically and sexually assaulted while in custody.

12. In the submission it was argued that States had a duty to protect the enjoyment of human rights by sex workers, including their rights to equality and non-discrimination, to be free from inhuman and degrading treatment, to liberty and security, to a fair trial, to private and family life and to health. It also contained expert advice on the international human rights standards applicable to a range of issues falling within the Working Group's mandate, including detention based on vague laws, the requirements to provide reasons for an arrest and to ensure meaningful access to judicial review of detention, forced guilty pleas, and the duty to provide an effective remedy for human rights violations. The amicus brief was filed in February 2020 and was under consideration by the relevant judicial authorities in the country concerned at the time of writing of the present report.

13. The Working Group welcomed that opportunity to utilise its expertise to assist national courts in deliberating on issues relating to arrest and detention, as well as the opportunity to work collaboratively with other special procedure mandate holders.

C. Study on arbitrary detention relating to drug policies

14. In its resolution 42/22, the Human Rights Council requested the Working Group to undertake a study on arbitrary detention relating to drug policies. The preparation for the study commenced in 2019, with the Working Group undertaking initial consultations, developing a questionnaire and calling for inputs from States and other stakeholders on drug policies. A report on the study will be presented by the Working Group to the Council at its forty-seventh session.

D. Handling of communications addressed to the Working Group during 2019

1. Communications transmitted to Governments

15. At its eighty-fourth, eighty-fifth and eighty-sixth sessions, the Working Group adopted a total of 85 opinions concerning 171 persons in 42 countries (see the table below).

2. Opinions of the Working Group

16. Pursuant to its methods of work,³ in addressing its opinions to Governments, the Working Group drew their attention to Commission on Human Rights resolutions 1997/50

¹ A/HRC/36/37, paras. 10–11.

² See www.ohchr.org/Documents/Issues/Women/WG/Amicus_Brief_1_Nigeria.pdf.

³ A/HRC/36/38.

and 2003/31 and Human Rights Council resolutions 6/4, 24/7 and 42/22, in which those bodies requested States 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 a 48-hour deadline following transmission of the opinion to the Governments concerned, the opinions were transmitted to the relevant sources.

Opinions adopted at the eighty-fourth, eighty-fifth and eighty-sixth sessions of the Working Group

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
1/2019	Australia	Yes	Premakumar Subramaniyam	Detention arbitrary, categories II, IV and V	None
2/2019	Australia	Yes	Huyen Thu Tran and Isabella Lee Pin Loong	Detention arbitrary, categories II, IV and V	None
3/2019	Cambodia	No	Uon Chhin and Yeang Sothearin	Detention arbitrary, categories I, II and III	None
4/2019	Thailand	No	Siraphop Kornaroot	Detention arbitrary, categories I, II and III	None
5/2019	Gabon	No	Hervé Mombo Kinga	Detention arbitrary, categories I, II, III and V	Mr. Kinga had been released (due to procedural irregularities) and a new procedure is ongoing. If he is acquitted, he will be able to present a request for reparations. No request has yet been received. Legislative amendments were promulgated in 2019. (Information from the Government.)
6/2019	Spain	Yes	Jordi Cuixart I Navarro, Jordi Sánchez I Picanyol and Oriol Junqueras I Vies	Detention arbitrary, categories II, III and V	No action taken to implement the opinion. (Information from the source.)
7/2019	Canada	Yes	Ebrahim Toure	Detention arbitrary, category IV	Mr. Toure remains on conditional release until his removal from Canada. (Information from the Government.)

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
8/2019	Viet Nam	Yes	Duy Nguyen Huu Quoc	Detention arbitrary, categories I, II and III	None
9/2019	Viet Nam	No	Trần Thị Xuân	Detention arbitrary, categories I, II, III and V	None
10/2019	Azerbaijan and Turkey	Yes	Mustafa Ceyhan	Detention arbitrary, categories I, III and V	No action taken to implement the opinion. (Information from the source.) Mr. Ceyhan was sentenced to nine years but the case is still pending; no compensation has been claimed. (Information from the Government.)
11/2019	Russian Federation	No (late)	Dimitry Mikhaylov	Detention arbitrary, categories I, II, III and V	None
12/2019	Spain	Yes	Joaquín Forn I Chiariello, Josep Rull I Andreu, Raúl Romeva I Rueda and Dolores Bassa I Coll	Detention arbitrary, categories II, III and V	No action taken to implement the opinion. (Information from the source.)

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
13/2019	Bolivarian Republic of Venezuela	Yes	Oscar Doval García, Marco Tulio Ortega Vargas, Jesús Guillermo Irausquín Herrera, Carlos Martín Lorenzo López, Liz Carolina Sánchez de Rojas, Teresa María de Prisco Pascale, Carmen Teresa Lorenzo Lander, Cosme Eduardo Betancourt Quarto, Pedro Pablo Pernía Madrid, David Antonio Romero Romero and Belinda Beatriz Omaña Payares	Detention arbitrary, categories I and III	None
14/2019	Mexico	Yes	Rafael Méndez Valenzuela	Detention arbitrary, categories I, III and V	The detention was carried out in accordance with the law, the competent judge handed down a conviction and Mr. Méndez Valenzuela is currently serving his sentence. Since 2017, there has been an ongoing investigation into the allegations of torture of the detainee. (Information from the Government.)
15/2019	China	No (late)	Yu Wensheng	Detention arbitrary, categories I, II, III and V	No action taken to implement the opinion. (Information from the source.)
16/2019	Nicaragua	No	Carlos Ramón Brenes Sánchez	Detention arbitrary, categories I, II and III	None

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
17/2019	Tajikistan	No (late)	Buzurgmehr Yorov	Detention arbitrary, categories I, II, III and V	None
18/2019	Libya	No	Mohamed Arjili Ghoma	Detention arbitrary, categories I and III	None
19/2019	Nicaragua	No	Tomás Ramón Maldonado Pérez	Detention arbitrary, categories I, II and III	None
20/2019	China	Yes	Zhen Jianghua and Qin Yongmin	Detention arbitrary, categories I, II, III and V	Mr. Zhen was released. (Information from the source.)
21/2019	Egypt	No	Rawda Samir Saad Khater, Amal Majdi al-Husseini Hassan, Habiba Hassan Shatta, Sara Hamdi Anwar el-Sayed Mohammed, Heba Osama Eid Abu Eisa, Fatma Mohammed Ayad, Sara Mohamed Ramadan Ali Ibrahim, Esraa Abdo Ali Farahat, Mariam Imad el-Deen Abu Tork, Fatima Imad el-Deen Ali Abu Tork, Aya Essam al-Shahat Omar, Kholod al-Sayed Mohammed al-Sayed el-Fallahgy and Safa Ali Farahat	Detention arbitrary, categories I, II and III	None
22/2019	Saudi Arabia	Yes	Ahmad Khaled Mohammed Al Hossan	Detention arbitrary, categories I and III	None
23/2019	Morocco	Yes	Laaroussi Ndor	Detention arbitrary, categories I, II, III and V	None

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
24/2019	Rwanda	Yes	Diane Shima Rwigara and Adeline Rwigara	Detention arbitrary, categories I, II and III	None
25/2019	Panama	No	Ricardo Traad Porras	Detention arbitrary, category III	Mr. Traad was released in January 2010, on the condition that he appear before the court twice a month; this measure is still in force. Panama has not granted compensation and other reparations to Mr. Traad and there has been no investigation into possible human rights violations related to the case. (Information from the Government.)
26/2019	Saudi Arabia	Yes	Abdelkarim Mohamed Al Hawaj and Mounir Abdullah Ahmad Aal Adam	Detention arbitrary, categories I, II, III and V	None
27/2019	Cameroon	Yes	Yves Michel Fotso	The Working Group decided not to revise opinion No. 40/2017.	Mr. Fotso was evacuated to Morocco for medical reasons. (Information from the source.)

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
28/2019	United Arab Emirates	Yes	Abdallah Sami Abedalafou Abu Baker and Yasser Sami Abedalafou Abu Baker	Detention arbitrary, categories I and III	No action taken to implement the opinion. (Information from the source.) Individuals are still serving their sentences and did not request reparations or investigations. The national legislation is compliant with human rights. (Information from the Government.)
29/2019	Egypt	No	One minor	Detention arbitrary, categories I, III and V	None
30/2019	Mozambique	No	Amade Abubacar	Detention arbitrary, categories I, II and III	None
31/2019	Bahrain	No (late)	Najah Ahmed Habib Yusuf	Detention arbitrary, categories I, II and III	None
32/2019	Islamic Republic of Iran	No	Saeed Malekpour	Detention arbitrary, categories I, II, III and V	Mr. Malekpour fled the Islamic Republic of Iran in August 2019. There has been no implementation of the opinion. (Information from the source.)
33/2019	Islamic Republic of Iran	Yes	Golrokh Ebrahimi Iraee	Detention arbitrary, categories I, II and III	None
34/2019	Russian Federation	No (late)	Vladimir Alushkin	Detention arbitrary, categories I, II and V	None
35/2019	China	Yes	Cao Sanqiang (John Cao)	Detention arbitrary, categories II, III and V	None

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
36/2019	China	No (late)	Wang Yi and Jiang Rong	Detention arbitrary, categories I, II and III	No action taken to implement the opinion. (Information from the source.)
37/2019	Burundi	No	Germain Rukuki	Detention arbitrary, categories I, II and III	None
38/2019	Colombia	No	Alexandre Vernot	Detention arbitrary, category III	The Government is not in a position to release Mr. Vernot. (Information from the Government.) No action taken to implement the opinion. (Information from the source.)
39/2019	Bolivarian Republic of Venezuela	Yes	Pedro Jaimes Criollo	Detention arbitrary, categories I, II and III	Mr. Jaimes Criollo was conditionally released. (Information from the source.)
40/2019	Bolivarian Republic of Venezuela	Yes	Juan Carlos Requesens Martínez	Detention arbitrary, categories I, II, III and V	None
41/2019	Egypt	No	Ebrahim Abdelmonem Metwally Hegazy	Detention arbitrary, categories I, II, III and V	No action taken to implement the opinion. (Information from the source.)
42/2019	Egypt	No	Gehad El-Haddad and Essam El-Haddad	Detention arbitrary, categories I, II, III and V	Gehad El-Haddad was acquitted on some charges and sentenced to 10 years of imprisonment on other charges. No action taken to implement the opinion. (Information from the source.)

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
43/2019	Nicaragua	No	Amaya Eva Coppens Zamora	Detention arbitrary, categories I, II, III and V	Ms. Coppens Zamora was conditionally released through an amnesty law, which did not expunge criminal records. She was then arrested again. (Information from the source.)
44/2019	Viet Nam	Yes	Nguyễn Văn Hoá	Detention arbitrary, categories I, II, III and V	No action taken to implement the opinion. (Information from the source.)
45/2019	Viet Nam	Yes	Le Dinh Luong	Detention arbitrary, categories I, II, III and V	None
46/2019	Cameroon	Yes	Mancho Bibixy Tse	Detention arbitrary, categories I and III	None
47/2019	Panama	Yes	Ricardo Martinelli	Detention arbitrary, category III	Mr. Martinelli was acquitted and released prior to adoption of the opinion. An investigation is ongoing, based on a complaint filed by the defence lawyer. (Information from the Government.)
48/2019	Mauritania	No	Abderrahmane Weddady and Cheikh Mohamed Jiddou	Detention arbitrary, categories I, II and V	None
49/2019	Indonesia	Yes	Mathias Echène	Detention arbitrary, categories I and III	None
50/2019	France	Yes	Mohammed Alashram	Filed	None

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
51/2019	Islamic Republic of Iran	No	Nizar Zakka	Detention arbitrary, categories I, III and V	None
52/2019	Democratic People's Republic of Korea	Yes	Eun Sil Kang	Detention arbitrary, category I	None
53/2019	Turkey	Yes	Melike Göksan and Mehmet Fatih Göksan	Detention arbitrary, categories I, II, III and V	No action taken to implement the opinion. (Information from the source.)
54/2019	Mexico	Yes	José de la Paz Ferman Cruz and Aren Boyazhyan	Detention arbitrary, categories I, II and IV	None
55/2019	United Arab Emirates	No (late)	Abdulmalik Mohammad Ahmad Mohammad al-Mukhanqi and Abdullah Mohammad Ahmad Attiah	Detention arbitrary, categories I and III	None
56/2019	Saudi Arabia	Yes	Abbas Haiji Al-Hassan	Detention arbitrary, categories I, III and V	None
57/2019	Democratic People's Republic of Korea	Yes	Lee Hak Su	Detention arbitrary, category I	None
58/2019	Qatar	Yes	John Wesley Downs	Detention arbitrary, category III	Mr. Downs was released upon special amnesty. (Information from the Government.)
59/2019	Bahrain	Yes	Mohamed Merza Ali Moosa	Detention arbitrary, categories I, II, III and V	Mr. Moosa was released and received an alternative sentence to work with a charitable fund, following amnesty. (Information from the source.)
60/2019	Belarus	Yes	Four minors	Detention arbitrary for three minors, category I; case filed for one minor.	None

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
61/2019	Plurinational State of Bolivia	No	José María Leyes Justiniano	Detention arbitrary, categories I, II and III	Mr. Leyes Justiniano was released. The opinion was partially implemented. (Information from the source.)
62/2019	Gabon	No	Magloire Ngambia	Detention arbitrary, categories I and III	The trial is ongoing; Mr. Ngambia is still in pretrial detention. With regard to the question of the partiality of a judge, the Supreme Council of Justice was seized of the matter. Some legislative amendments concerning the rights of the defence were made in 2019. (Information from the Government.)
63/2019	Cuba	Yes	Josiel Guía Piloto, Marbel Mendoza Reyes and Iván Amaro Hidalgo	Detention arbitrary, categories I, II and III	None
64/2019	Mexico	Yes	Ricardo Rodríguez Advíncula and Luciano Rodríguez Ramos	Detention arbitrary, categories I, II, III and V	None
65/2019	Egypt	No	Ammar Yasser Abdelaziz el-Sudany, Belal Hasnein Abdelaziz Hasnein and two other minors	Detention arbitrary, categories I, III and V	Three of the minors were acquitted; the fourth minor was sentenced to three years of imprisonment. (Information from the source.)

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
66/2019	Tajikistan	No (late)	Saidumar Husaini, Muhammadali Faiz-Muhammad, Rahmatulloi Rajab, Zubaidulloi Roziq, Vohidkhon Kosidinov, Kiyomiddin Avazov, Abduqahar Davlatov, Hikmatulloh Sayfulloza, Sadidin Rustamov, Sharif Nabiev and Abdusamat Ghayratov	Detention arbitrary, categories I, II, III and V	None
67/2019	Morocco	No (late)	Brahim Moussayih, Mustapha Burgaa, Hamza Errami, Salek Baber, Mohamed Rguibi, Elkantawi Elbeur, Ali Charki, Aomar Ajna, Nasser Amenkour, Ahmed Baalli, Aziz El Ouahidi, Mohammed Dadda, Omar Baihna and Abdelmoula El Hafidi	Detention arbitrary, categories I, II, III and V	The conditions have deteriorated and there has been violence against Mr. El Ouahidi in prison (reprisals). The conditions of detention of Messrs. Elbeur, Dadda and El Hafidi have deteriorated, and Mr. Baalli has been rearrested. No action has been taken to implement the opinion. (Information from the source.)
68/2019	El Salvador	No (late)	Sara del Rosario Rogel García, Berta Margarita Arana Hernández and Evelyn Beatriz Hernández Cruz	Detention arbitrary, categories I, III and V	None
69/2019	Democratic People's Republic of Korea	Yes	Hwang Won	Detention arbitrary, categories I and II	None
70/2019	United States of America	No	Mohammed al Qahtani	Detention arbitrary, categories I, III and V	None

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
71/2019	Saudi Arabia	Yes	Issa al-Nukheifi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid	Detention arbitrary, categories I, II, III and V	None
72/2019	China	Yes	Mark Swidan	Detention arbitrary, categories I and III	None
73/2019	Bahrain	Yes	Nine minors	Detention arbitrary, categories I, III and V	Two minors were released. (Information from the Government.)
74/2019	Australia	Yes	Sayed Akbar Jaffarie	Detention arbitrary, categories IV and V	None
75/2019	Bolivarian Republic of Venezuela	Yes	Roberto Eugenio Marrero Borjas	Detention arbitrary, categories II, III and V	None
76/2019	China	No (late)	Chen Shuqing and Lü Gengsong	Detention arbitrary, categories I, II, III and V	None
77/2019	Egypt and Sudan	Egypt: No; Sudan: Yes	Mohamed Hassan Alim Shareef, also known as Mohamed Boshi	Detention arbitrary, categories I, II and III	None
78/2019	Morocco	No (late)	Mounir Ben Abdellah	Detention arbitrary, categories I, II and III	No action taken to implement the opinion. (Information from the source.)
79/2019	Turkey	Yes	Ercan Demir	Detention arbitrary, categories II and V	Following the adoption of the opinion, Mr. Demir was acquitted and granted pecuniary and non- pecuniary compensation. (Information from the source.)

<i>Opinion No.</i>	<i>State(s)</i>	<i>Government reply</i>	<i>Person(s) concerned</i>	<i>Opinion</i>	<i>Follow-up information received</i>
80/2019	Bolivarian Republic of Venezuela	Yes	Carlos Marrón Colmenares	Detention arbitrary, categories I, II, III and V	Mr. Marrón Colmenares was released. (Information from the Government.)
81/2019	Bolivarian Republic of Venezuela	Yes	Carlos Miguel Aristimuño de Gamas	Detention arbitrary, categories I and III	None
82/2019	Kuwait	Yes	Waleed Antoine Moubarak	Detention arbitrary, categories I and III	Mr. Moubarak was no longer detained, and has fled the country. (Information from the Government.)
83/2019	Togo	Yes	Foly Satchivi	Detention arbitrary, categories I, II, III and V	None
84/2019	Israel	No	Avraham Lederman, Pinhas Freiman and Mordechai Brizel	Detention arbitrary, categories I, II, III and V	None
85/2019	Libya, Senegal and United States of America	No	Salem Gheryby	Detention arbitrary, categories I and III	No action taken to implement the opinion. (Information from the source.)

3. Follow-up procedure

17. The table above shows information received by the Working Group as of 30 June 2020 pursuant to the follow-up procedure adopted by the Working Group at its seventy-sixth session, held in August 2016.

18. The Working Group thanks the sources and the Governments for their responses in the context of its follow-up procedure and invites all parties to cooperate and provide such responses. It notes, however, that these responses do not necessarily imply the implementation of its opinions. The Working Group encourages sources and Governments to provide comprehensive information on the release of individuals who have been the subject of its opinions, as well as other information, such as on the payment of compensation and/or reparations, the investigation of alleged violations of human rights and any other changes in legislation or practices, in accordance with the recommendations made.

4. Release of the subjects of the Working Group's opinions

19. The Working Group notes with appreciation the information received during the period 1 January to 31 December 2019 on the release of the following subjects of its opinions:

- Gustave Bagayamukwe Tadj (opinion No. 23/2018, Democratic Republic of the Congo) – released following amnesty
- Mounir Bashir Mohammed Bashir; Hamdy Awad Mahmoud Abdel Hafez, Bakri Mohammed Abdul Latif, Magdy Farouk Ahmed Mohamed, Mohsen Rabee Saad El Din, Mostafa Kamel Mohamed Taha (opinion No. 28/2018, Egypt)
- Reem Qutb Bassiouni Qutb Jabbara (opinion No. 63/2018, Egypt) – provisional release
- Jeong-Ro Kim (opinion No. 69/2018, Republic of Korea) – released on bail
- Alexi José Álvarez Martínez, Juan Carlos Arellano de la Horta, Diego Binel Artunduaga Pineda, Januel Barrios Hernández, Pedro Nelson Berrío, Eduardo Blanco Castilla, Israel Cáceres Esteban, David Canencia Calderón, Arley Castaño del Toro, Joaquín Contreras Berrío, Deivis Manuel Crespop Constante, Glisel D'Arcos Ramos, Alver Enrique De León, Martín José Escorcía Cassiani, Helder Escorcía, Luis Espita Ávila, German Espita, William Estemor Ruiz, Juan David Fernández Viloría, Marlon Ernesto Fuentes Oviedo, Iván Antonio Galán Ramos, Paterson García Julio, Emerson González Barrios, Helen Katherine Hincapié Brochero, Ever José Julio Agresoth, Deivis Julio Agresoth, Héctor José Machado, Víctor Alfonso Márquez Chiquillo, Norbeys Martínez Torres, José Abigaíl Miranda Zúñiga, Enoc Montemiranda Molinares, Blas Elías Moreno Ochoa, José Stalin Moreno, Isaac Núñez Padilla, Edilberto Ortega Silgado, Nerio Ortiz Aujebet, Sahadys Palomino Vanegas, Jader Pardo, Franklin Víctor Pérez, Luis Alberto Pérez Díaz, Darwin Quiroz, Edelberto Ramos Terán, Jorge Rodríguez Vitola, Carlos Alberto Rodríguez, Luis Fernando Rodríguez, Daniel Rojano Villa, Deison Sandoval Marimon, William Enrique Sarabia Ospino, José Calazán Sarmiento Martelo, Ronald Soto Llerena, Luis Suarez, Pedro Suarez, Yair Tapias Valdez, Wilfredo Teherán, Jesús Alberto Terán Munzón, José Luis Torres, Fernando Valencia, Luis Gabriel Villa and Doiler Yépez Carrillo (opinion No. 72/2018, Bolivarian Republic of Venezuela)
- Sabeur Lajili (opinion No. 77/2018, Tunisia) – conditional release
- Hervé Mombo Kinga (opinion No. 5/2019, Gabon)
- Zhen Jianghua (opinion No. 20/2019, China)
- Golrokh Ebrahimi Iraee (opinion No. 33/2019, Islamic Republic of Iran)
- Pedro Jaimes Criollo (opinion No. 39/2019, Bolivarian Republic of Venezuela) – conditional release
- Amaya Eva Coppens Zamora (opinion No. 43/2019, Nicaragua) – conditional release in June 2019 through an amnesty law, which did not expunge the criminal records; in November 2019, she was arrested on unrelated charges

- Ricardo Martinelli (opinion No. 47/2019, Panama)
- Abderrahmane Weddady and Cheikh Mohamed Jiddou (opinion No. 48/2019, Mauritania) – conditional release
- John Wesley Downs (opinion No. 58/2019, Qatar) – released upon special amnesty
- Foly Satchivi (opinion No. 83/2019, Togo) – released upon presidential pardon

20. The Working Group expresses its gratitude to those Governments that took positive action and released detainees who had been subject of its opinions. However, it regrets that various States have not cooperated in implementing the opinions and urges those States to do so as a matter of urgency. The Working Group recalls that the continuous detention of those individuals is a continued violation of their right to liberty under article 9 of the Universal Declaration of Human Rights and, for States parties, under article 9 of the International Covenant on Civil and Political Rights.

5. Reactions from Governments concerning previous opinions

21. During the reporting period, the Working Group received several reactions from Governments concerning its previous opinions.

22. On 5 June 2019, the Government of Kazakhstan replied to opinion No. 67/2018, indicating that its conclusions could not be reconciled with the facts or with provisions of international law.

23. On 17 June 2019, the Government of Rwanda replied to opinion No. 24/2019, noting that the detention of Diane Shima Rwigara and Adeline Rwigara was in accordance with the law and that due process had been followed. The Government stated that it remained committed to the rule of law and that it considered the case as concluded by the Rwandan judiciary and would not engage any further on it.

24. On 9 July 2019, following the death of Kamal Eddine Fekhar, the subject of opinion No. 34/2017, the Government of Algeria provided information on his health situation during his detention.

25. In relation to opinions No. 1/2019, No. 2/2019 and No. 74/2019, the Government of Australia stated that it had always engaged in good faith with the Working Group. However, the Government respectfully disagreed with the recommendations set out in the opinions.

6. Requests for review of opinions adopted

26. The Working Group considered the requests for review of the following opinions:

- Opinion No. 93/2017, concerning Muhammed al-Saqr (Saudi Arabia)
- Opinion No. 63/2018, concerning Reem Qutb Bassiouni Qutb Jabbara (Egypt)
- Opinion No. 77/2018, concerning Sabeur Lajili (Tunisia)
- Opinion No. 85/2018, concerning Toufik Bouachrine (Morocco)
- Opinion No. 6/2019, concerning Jordi Cuixart I Navarro, Jordi Sánchez I Picanyol and Oriol Junqueras I Vies (Spain)
- Opinion No. 12/2019, concerning Joaquín Forn I Chiariello, Josep Rull I Andreu, Raul Romeva I Rueda and Dolores Bassa I Coll (Spain)
- Opinion No. 38/2019, concerning Alexandre Vernot (Colombia)

27. After examining the requests for review, the Working Group decided to maintain its opinions on the basis that none of those requests met the criteria outlined in paragraph 21 of its methods of work.

28. In its opinion No. 27/2019 (Cameroon), concerning the case of Yves Michel Fotso, the Working Group, after considering the request admissible, embarked on an in-depth analysis for the request of review and found that it did not meet the requirements of paragraph 21 of the methods of work.

7. Reprisals against subjects of the opinions of the Working Group

29. The Working Group notes with grave concern that it continues to receive information, including in the context of its follow-up procedure, on reprisals suffered by individuals who have been the subject of an urgent appeal or opinion or whose cases have given effect to a recommendation of the Working Group.

30. Between 1 January and 21 December 2019, the Working Group received allegations of reprisals against:

- Ahmed Aliouat (opinion No. 58/2018, Morocco)
- Mounir Ben Abdellah (opinion No. 78/2019, Morocco)
- Ebrahim Abdelmonem Metwally Hegazy (opinion No. 41/2019, Egypt)
- Hajer Mansoor Hassan (opinion No. 51/2018, Bahrain) and Medina Ali (letter of allegation 3/2019, Bahrain)
- Aziz El Ouahidi, Elkantawi Elbeur, Mohammed Dadda and Abdelmoula El Hafidi (opinion No. 67/2019)
- Issa al-Nukheifi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (opinion No. 71/2019, Saudi Arabia)

31. In its resolutions 12/2 and 24/24, the Human Rights Council called upon Governments to prevent and refrain from all acts of intimidation or reprisal against those who sought to cooperate or had cooperated with the United Nations, its representatives and mechanisms in the field of human rights, or who had provided testimony or information to them. The Working Group encourages Member States to take all measures possible to guard against reprisals.

8. Urgent appeals

32. During the period from 1 January to 31 December 2019, the Working Group sent 61 urgent appeals to 31 Governments and, in one case, to other actors, and 80 allegation letters and other letters to 43 Governments and, in one case, to other actors, concerning at least 377 identified individuals.

33. The list of countries concerned by urgent appeals is as follows: Australia (1), Burkina Faso (1), Chile (1), China (4), Democratic Republic of the Congo (1), Ecuador (2), Egypt (7), Equatorial Guinea (1), France (1), India (1), Iran (Islamic Republic of) (8), Iraq (1), Ireland (1), Israel (4), Kuwait (1), Lebanon (1), Mozambique (1), Myanmar (2), Pakistan (1), Philippines (1), Russian Federation (1), Saudi Arabia (4), Singapore (1), Sri Lanka (1), Sudan (2), Thailand (1), Turkey (3), United Arab Emirates (2), Viet Nam (2), Yemen (1) and Zimbabwe (1); 1 urgent appeal concerned other actors.⁴

34. In conformity with paragraphs 22 to 24 of its methods of work, the Working Group, without prejudging whether a detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported and appealed to them, often jointly with other special procedure mandate holders, to take the measures necessary to ensure that the detained persons' rights to life, liberty and physical and psychological integrity were respected.

35. When an appeal made reference to the critical state of health of certain persons or to particular circumstances, such as the failure to execute a court order for release or to give effect to a previous opinion of the Working Group seeking the release of the person, the Working Group requested that all measures necessary for the immediate release of the detained person be taken. 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 for Special Procedures Mandate Holders of the Human Rights Council relating to urgent appeals and applies them.

⁴ The full text of urgent appeals will be available at www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

36. During the period under review, the Working Group also sent 80 letters of allegation and other letters to other actors (1) and to 43 States, namely: Algeria (3), Australia (1), Azerbaijan (1), Bahrain (4), Belarus (3), Belgium (1), Cambodia (2), Cameroon (3), China (2 allegation letters and 1 other letter), Côte d'Ivoire (1), Cuba (1), Egypt (5), Equatorial Guinea (1), France (1), Gabon (1), India (4 allegation letters and 1 other letter), Indonesia (1), Iran (Islamic Republic of) (3), Jordan (1), Kazakhstan (1), Kenya (1), Lebanon (1), Mexico (1 allegation letter and 1 other letter), Morocco (4), Myanmar (4), Nicaragua (2), Nigeria (2), Pakistan (1), Peru (2), Russian Federation (1), Saudi Arabia (2), South Sudan (1), Spain (1), Switzerland (1), Turkey (1), Turkmenistan (2), Uganda (1), United Kingdom of Great Britain and Northern Ireland (1), United States of America (1), Venezuela (Bolivarian Republic of) (2), Viet Nam (1), Yemen (1) and Zimbabwe (2).

37. The Working Group wishes to thank those Governments that responded to its appeals and that took steps to provide it with information on the situation of the individuals concerned, especially the Governments that released such individuals. The Working Group recalls that, in paragraph 4 (f) of its resolution 5/1, the Human Rights Council requested all States to cooperate and engage fully with the United Nations human rights mechanisms.

E. Country visits

1. Requests for visits

38. During 2019, the Working Group made requests to Morocco (10 May 2019) and Tunisia (9 May 2019) to conduct country visits. The Working Group has also sent reminders of its earlier requests to visit Iran (Islamic Republic of) (19 July 2019), Maldives (5 March 2019), Myanmar (2 October 2019), the Republic of Korea (2 October 2019), Turkey (9 August 2019) and Venezuela (Bolivarian Republic of) (2 October 2019).

39. During the course of the year, the Working Group met with the Permanent Missions of Australia, Bahrain, Chile, Colombia, Greece, Hungary, Japan, Maldives, Mexico, Morocco, Qatar, the Republic of Korea, Tunisia, Turkey and Venezuela (Bolivarian Republic of) to discuss the possibility of a country visit.

2. Responses of Governments to requests for country visits

40. In a note verbale dated 27 March 2019, the Permanent Mission of Australia replied that the proposed time period for carrying out a country visit in either February or March 2020 was acceptable for the Government. In its correspondence of 2 December 2019, the Permanent Mission of Australia invited the Working Group to undertake the visit from 10 to 23 March 2020.

41. In a note verbale dated 9 October 2019, the Permanent Mission of Maldives replied that the Government of Maldives would be happy to invite the Working Group to conduct a country visit in 2020 or at the earliest possible opportunity.

42. In a note verbale dated 8 November 2019, the Permanent Mission of Myanmar replied that, due to other prior commitments, it was not ready to facilitate a country visit at that time.

43. In correspondence dated 22 September 2019, the Permanent Mission of Tunisia confirmed the Government's willingness to invite the Working Group for an official visit during the first semester of 2020.

III. Thematic issues

44. During the reporting period, the Working Group considered thematic issues raised in its jurisprudence and practice.

A. Women deprived of their liberty

45. As the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) approaches its tenth

anniversary, the Working Group considers it an opportune moment to reflect on the unique challenges that women face when deprived of their liberty in a wide variety of settings. The Bangkok Rules are aimed at addressing the specific needs of women in conflict with the law, including through admission procedures, gender-specific health care, safety and security in detention facilities, and the implementation of non-custodial measures such as diversion, alternatives to pretrial detention and sentencing alternatives.⁵

46. Despite the important progress made in developing global standards that promote the rights of women deprived of their liberty,⁶ the arbitrary deprivation of liberty of women continues to be of serious concern across the world. During the reporting period, the Working Group considered the situation of women deprived of their liberty in a variety of contexts, including detention resulting from the lack of access to reproductive health care; the protective custody of women in social care facilities; the de facto detention of women through restrictions imposed by private actors; and the detention of women in facilities not appropriate for the needs of female detainees.

47. In its opinions, communications and country visit reports, the Working Group has presented several key findings and made recommendations with regard to preventing the arbitrary deprivation of liberty of women, including:

(a) A law, judgment or public policy that criminalizes conduct relating to the consequences of a lack of women's access to the highest attainable standard of health or that criminalizes the exercise of women's reproductive rights must be considered to be *prima facie* discriminatory. States must bring such laws and policies urgently into line with international standards;⁷

(b) While homes and shelters provide vital social care to vulnerable groups, particularly women and children facing domestic violence, efforts must be made by States to ensure that residents in such facilities are able to leave if they wish, including through regular monitoring of the facilities and support in reintegrating into the community;⁸

(c) The right to personal liberty requires States to put an end to the de facto deprivation of liberty of women by private actors, such as guardianship systems that prevent women from leaving their family homes without the permission of a guardian; employers who prevent migrant domestic workers (who are often mainly women) from leaving the residences where they are employed,⁹ or armed groups who deprive women of their liberty during situations of armed conflict;¹⁰

(d) States must ensure that dedicated and appropriate detention facilities are available to accommodate women detainees, including pretrial detention facilities and prisons for convicted women. Dedicated operational drug rehabilitation facilities should be provided for the treatment of drug-dependent women;¹¹

(e) When introducing emergency measures or powers to address public health emergencies, States must ensure that all such measures do not breach the principle of equality and non-discrimination based on the grounds of, *inter alia*, gender, as well as take into

⁵ In particular rules 2–4, 10–13, 19–21, 48–52, and 57–63.

⁶ See also the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rules 11 (a), 28, 45 (2), 48 (2), 58 (2) and 81; and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), rule 26.4.

⁷ Opinion No. 68/2019, paras. 114–115 (considering the case of women who had been tried and sentenced to lengthy imprisonment after experiencing obstetric emergencies or miscarriages). See also Opinion No. 19/2020 and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25680&LangID=E.

⁸ A/HRC/42/39/Add.1, paras. 81, 88 and 94 (b). See also A/HRC/39/45/Add.2, para. 89 (b), and A/HRC/27/48, paras. 78–79.

⁹ See A/HRC/45/16/Add.2. See also A/HRC/41/33, para. 59.

¹⁰ See TUR 12/2019, available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

¹¹ A/HRC/42/39/Add.1, paras. 47–50, 76, 92 (c) and 93 (c) (also noting, in para. 76, that treatment for all drug-dependent persons should consist of voluntary, evidence-informed and rights-based health services in the community, rather than compulsory drug detention facilities).

account the disparate impact of such measures upon vulnerable groups who already experience disadvantage (which often include women).¹²

48. The common element of all these cases was that the individuals were women and the Working Group found that this was the key reason for their deprivation of liberty. The Working Group shares the view of the Working Group on discrimination against women and girls that women's deprivation of liberty is a significant concern around the world and severely infringes upon their human rights.¹³ As is clear from the above examples, such deprivation of liberty not only takes place in the criminal justice context, but women are also detained in the context of migration, in other administrative detention settings and in health-care settings.

49. While the Working Group has made significant progress in considering the situation of women deprived of their liberty, there is scope for further analysis. In 2019, approximately 20 per cent of detainees whose situation was considered in the Working Group's opinions were women.¹⁴ It is hoped that stakeholders will continue to bring the situation of detained women to the Working Group's attention.

B. Right to legal assistance in preventing arbitrary deprivation of liberty

50. The right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty. In its jurisprudence, the Working Group has observed numerous breaches of this fundamental safeguard that have rendered the detention of a person arbitrary and wishes to highlight the importance of strict adherence to it. Noting the thirtieth anniversary of the Basic Principles on the Role of Lawyers, the Working Group calls upon all States to adhere to the principles contained therein

51. The right to legal assistance applies from the moment of deprivation of liberty and across all settings of detention, including criminal justice,¹⁵ immigration detention,¹⁶ administrative detention, detention in health-care settings¹⁷ (including in the context of public health emergencies¹⁸), and detention in the context of migration.¹⁹ This is essential to preserve the right of all those deprived of their liberty to challenge the legality of detention, which is a peremptory norm of international law.²⁰ Therefore, the right to legal assistance must be ensured from the moment of deprivation of liberty and, in the context of the criminal justice setting, prior to questioning by the authorities.²¹ All persons deprived of their liberty must be made aware of their right to legal assistance from the moment of detention²² and should have access to legal aid services if they cannot afford such assistance themselves.²³

52. The right to legal assistance is also essential to preserve the right to fair trial, as it safeguards the principle of the equality of arms envisaged in articles 10 and 11 (1) of the Universal Declaration of Human Rights, article 14 (3) (b) and (d) of the International Covenant on Civil and Political Rights, article 7 (1) of the African Charter on Human and Peoples' Rights, article 8 (2) of the American Convention on Human Rights and article 6 (3) (c) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). It is therefore incumbent upon all States to ensure

¹² Deliberation No. 11 (annex II of the present report), paras. 26–27.

¹³ A/HRC/41/33, para. 12.

¹⁴ See the table above on the opinions adopted at the eighty-fourth, eighty-fifth and eighty-sixth sessions of the Working Group.

¹⁵ Basic Principles on the Role of Lawyers, paras. 1 and 5.

¹⁶ Revised deliberation No. 5 (A/HRC/39/45, annex); see also opinion No. 2018/73, para. 63.

¹⁷ Deliberation No. 7 (E/CN.4/2005/6, sect. II), para. 58; see also A/HRC/39/45/Add.2, para. 58.

¹⁸ Deliberation No. 11, para. 19.

¹⁹ See, for example, opinion No. 72/2017.

²⁰ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principles 8 and 9.

²¹ *Ibid.*, principle 9. See also A/HRC/39/45/Add.2, paras. 28–29.

²² A/HRC/42/39/Add.1, para. 54, and A/HRC/39/45/Add.2, paras. 28–29. See also opinion No. 64/2019.

²³ A/HRC/42/39/Add.1, paras. 56–57.

that the legal representation provided promotes effective representation,²⁴ including the ability to communicate with legal counsel.²⁵

53. Legal assistance should be available at all stages of criminal proceedings, namely, during pretrial, trial, re-trial and appellate stages, to ensure compliance with fair trial guarantees.²⁶ For example, the presence of legal counsel during interrogations is an essential safeguard in ensuring that any admissions by an individual are given freely. The Working Group considers that confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings.²⁷ Legal assistance should be provided free of charge if the detained person cannot afford such, through an effective legal aid system, including paralegal services.²⁸ Adequate time and facilities, preserving the client-lawyer privilege, should be ensured.²⁹

54. The Working Group is concerned at the various forms of retaliatory measures reportedly taken against lawyers solely for providing professional legal services to their clients.³⁰ It is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide remedy whenever a violation still occurs.³¹ The Working Group recalls that the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court state, in principle 9, that legal counsel are to be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.³²

55. The Working Group is mindful of the key role that lawyers have in preventing instances of arbitrary deprivation of liberty and therefore wishes to underline the importance of preserving the independence and impartiality of the profession. In particular, professional bodies that represent the legal profession in each country, such as bar associations and law societies, should never be part of a government ministry or other executive body. In addition, there should be no government interference with the process of registering lawyers, or in initiating disciplinary proceedings that bar associations and law societies undertake as part of their own regulation or that come before independent courts.³³ States should also give due consideration to the development of the legal profession through university and other professional legal education courses.³⁴

C. Modern technologies and alternatives to detention

56. Recalling that liberty of person, as enshrined in article 3 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, as well as in regional human rights instruments,³⁵ is the principle to which deprivation of liberty constitutes an exception, the Working Group has advocated for States to resort to measures that are alternatives to deprivation of liberty in all detention settings, including criminal justice and administrative detention. In some contexts, such as migration and pretrial

²⁴ Ibid., para. 55. See also Human Rights Committee, *Borisenko v. Hungary*, communication No. 852/1999, para. 7.5.

²⁵ See A/HRC/45/16/Add.2, para. 59.

²⁶ A/HRC/42/39/Add.1, para. 54. See also the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9.

²⁷ See opinions No. 59/2019, No. 14/2019, No. 1/2014 and No. 40/2012. See also E/CN.4/2003/68, para. 26 (e).

²⁸ A/HRC/42/39/Add.1, paras. 56–57.

²⁹ See opinions No. 53/2019, No. 83/2018 and No. 76/2018.

³⁰ See opinions No. 66/2019, No. 70/2017, No. 36/2017, No. 34/2017, No. 32/2017 and No. 29/2017.

³¹ See deliberation No. 10 (annex I of the present report).

³² See also the Basic Principles on the Role of Lawyers, paras. 16–22.

³³ A/HRC/45/16/Add.2, para. 56.

³⁴ Basic Principles on the Role of Lawyers, paras. 9–11. See also A/HRC/42/39/Add.1, para. 53.

³⁵ African Charter on Human and Peoples' Rights, art. 6, American Convention on Human Rights, art. 7, and European Convention on Human Rights, art. 5.

detention, the recourse to alternatives to detention is essential to ensure that detention meets the international standards, since detention in the migration context is permissible only as a measure of last resort.³⁶

57. Over the past few years, the Working Group has observed new opportunities that the use of modern technologies, such as electronic monitoring devices and telephone and Internet reporting, offers to minimize the need for States to resort to traditional modes of deprivation of liberty, depending on the legal regime.³⁷ In principle, the use of digital technologies in providing alternatives to detention is a positive move. It limits the need for physical confinement of an individual in a closed environment, which usually represents a high cost to society and may lead to extended breaches of the rights of the individual concerned. The Working Group therefore welcomes the use of modern technologies to allow for alternatives to detention.

58. However, modern technologies must be used within the existing international human rights framework and the safeguards against their arbitrary application must be respected. The Working Group is particularly mindful of instances it has seen in its practice whereby the use of modern technologies has led to de facto discrimination.³⁸ For example, tools such as electronic tags can be expensive, which has led some countries to pass the associated cost on to the individual concerned.³⁹ This in turn means that those from poorer backgrounds are not able to afford the associated cost and must therefore remain in detention facilities. This is an unacceptable situation and the Working Group recalls that the right to personal liberty belongs equally to everyone, irrespective of their economic or other status. Therefore, the application of modern technology to provide alternatives to detention must always be publicly funded and available to everyone on an equal basis.⁴⁰

59. Moreover, the decision for the application and use of such technology must be subject to judicial oversight to ensure that the use complies with the established legal framework, considering the combined principles of necessity and proportionality in fulfilling a legitimate objective, and is not otherwise arbitrary. The application and use of modern technology should never lead to disproportionate invasion of an individual's privacy.

60. Noting the wide variety of approaches adopted by States worldwide, the Working Group calls upon the Human Rights Council to seek a thorough study on the use of modern technologies as alternatives to deprivation of liberty, in order to provide the requisite guidance for all States.

IV. Conclusions

61. **In 2019, the Working Group continued its work in addressing the large number of submissions received, including through its regular communications procedure. To that end, the adoption of opinions was set as a priority, resulting in the adoption of a total of 85 opinions, concerning 171 persons in 42 countries.**

62. **The Working Group notes with concern the response rate from States under its regular communications procedure and in the context of its follow-up procedure. In particular, States provided a timely response to the Working Group's communications and requests for information in approximately 56 per cent of the cases in which the Working Group adopted an opinion in 2019. The Working Group received follow-up information from either the source or relevant Government in approximately 38 per cent of cases in 2019.**

63. **While the Working Group continues to respond to as many requests for its action as possible and to process cases in a timely and efficient manner in accordance with**

³⁶ Revised deliberation No. 5, paras. 14 and 16, and opinion No. 72/2017.

³⁷ See, for example, opinions No. 37/2018, paras. 24–25 and No. 84/2018. The relevance of electronic bracelets was also noted during the Working Group's country visit to Greece.

³⁸ A/HRC/36/37/Add.2, para. 30, and A/HRC/39/45/Add.1, para. 83 (c).

³⁹ A/HRC/36/37/Add.2, paras. 36 and 53.

⁴⁰ A/HRC/39/45/Add.1, paras. 37–38. See also A/HRC/36/37/Add.2.

paragraph 15 of Human Rights Council resolution 42/22, it continues to face an ongoing backlog of cases.

64. Throughout the reporting period, the Working Group continued to explore various thematic issues to assist stakeholders in preventing arbitrary detention. This included formulating two deliberations and a joint amicus brief, elaborating on thematic topics in the present report and embarking on the study of arbitrary detention relating to drug policies.

V. Recommendations

65. The Working Group calls on States to continue to increase their cooperation with regard to responses to regular and other communications, by reporting through the follow-up procedure on the implementation of the Working Group's opinions (including on the provision of appropriate remedies and reparations to victims of arbitrary detention), and by responding positively to requests for country visits.

66. The Working Group encourages States and other stakeholders to address the situation of female detainees, including by giving full effect to safeguards embodied in global standards such as the Bangkok Rules and continuing to bring the situation of women deprived of their liberty to its attention.

67. The Working Group encourages States to ensure the enjoyment of the right to effective legal assistance by all persons deprived of their liberty, particularly by guaranteeing the independence and impartiality of the legal profession and its self-regulation, as well as the provision of opportunities for lawyers to engage in ongoing professional legal development.

68. The Working Group encourages States to use modern technologies to allow for alternatives to detention and to minimize the need to resort to deprivation of liberty.

69. The Working Group urges States to provide it with the assistance necessary for it to be able to effectively and sustainably fulfil its mandate, in particular by putting sufficient, assured and predictable human resources at its disposal so that it can continue to take action and address the backlog of cases.

Annex I

Deliberation No. 10 on reparations for arbitrary deprivation of liberty

I. Introduction

1. The Working Group on Arbitrary Detention is the only body in the international human rights system entrusted by the Commission on Human Rights and subsequently by the Human Rights Council with a specific mandate to receive and examine cases of arbitrary deprivation of liberty. In accordance with Commission resolutions 1991/42 and 1997/50 and Council resolutions 6/4 and 42/22, the Working Group also has a mandate to formulate deliberations on matters of a general nature to assist States in preventing and addressing cases of the arbitrary deprivation of liberty.

2. In the present deliberation, the Working Group intends to identify comprehensive reparations to which victims of arbitrary deprivation of liberty are entitled.

3. In preparing the present deliberation, the Working Group reviewed its practices and those of international and regional bodies in the protection of human rights. In 2016, in accordance with its methods of work (see A/HRC/36/38), the Working Group introduced a new procedure to follow up on the implementation of the opinions it adopts. In accordance with that procedure, States must, within six months of the date of the transmission of the opinion, report to the Working Group on the implementation of the opinion, including on whether reparations have been made to the victim.¹ The follow-up procedure does not specify all forms of reparations. For that reason, the Working Group decided that such measures required further elaboration in the form of a deliberation.

II. Right to reparations for victims of arbitrary deprivation of liberty

4. Victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute arbitrary deprivation of liberty.² Victims may also include family members or dependants of the detained person and those who have suffered harm in intervening to assist.

5. The prohibition of arbitrary detention is a peremptory norm of international law (*jus cogens*). The absolute prohibition of arbitrary deprivation of liberty stems from both international and regional human rights treaties³ supported by the extensive practice of international and regional tribunals supervising the implementation of these instruments.⁴

¹ Such as whether (a) the victim has been released; (b) compensation or other reparations have been made to the victim; (c) an investigation has been conducted into the violation of the victim's rights; (d) changes have been made to harmonize the law and practice of the country with its international human rights obligations; and (e) any other action has been taken to implement the opinion. See A/HRC/36/37, paras. 10–11.

² See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 8.

³ See Universal Declaration of Human Rights, art. 9 and International Covenant on Civil and Political Rights, arts. 9 and 14; and African Charter on Human and Peoples' Rights, art. 6, American Convention on Human Rights, art. 7 and European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 5.

⁴ See A/HRC/19/57, para. 69, A/HRC/22/44, para. 75 and A/HRC/30/37, para. 11. The Human Rights Committee has given an overview of its jurisprudence when requiring States parties to make full reparation to individuals whose rights under the International Covenant on Civil and Political Rights have been violated; see CCPR/C/158.

6. Faced with numerous violations of the absolute prohibition of arbitrary deprivation of liberty around the world, the Working Group reiterates the obligation of States to provide effective judicial, administrative and other remedies for victims of violations of international human rights law.⁵ Moreover, in instances where it has been established that an individual has been arbitrarily deprived of liberty, States have an obligation to provide adequate, effective and prompt reparations.⁶ Such reparations must cover all aspects of the deprivation of liberty by a State, including acts or omissions by its public officers or by individuals acting on its behalf or with its authorization, support or acquiescence in any territory under a State's jurisdiction or wherever the State exercises effective control.⁷

7. The Working Group recalls that all victims of arbitrary deprivation of liberty are entitled to an enforceable right before the competent national authority to prompt and adequate reparations.⁸ Reparations should be proportional to the gravity of the violations and the harm suffered.⁹

III. Forms of reparations for arbitrary deprivation of liberty

8. States should promote comprehensive reparations, which may include material and symbolic reparations on an individual and collective basis, as well as priority access to services. Given the serious types of harm inflicted on victims of arbitrary detention, a combination of different forms of reparation is necessary. Consultations with victims are important to ensure that their views on the specific nature of reparation are taken into account.

9. Some of the forms of reparations for arbitrary deprivation of liberty are described below.

A. Restitution

10. Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights law.¹⁰ In the case of arbitrary deprivation of liberty, restitution must be in its most direct form, which is the restoration of the liberty of the individual, including in the context of health detention policies.¹¹ In addition to releasing the individual, competent authorities should review the reasons for the deprivation of liberty or retry the case.¹² Human rights protection bodies request that a final decision be taken as soon as possible in proceedings instituted against a detained person,¹³ and that records, including those linking the person subjected to arbitrary deprivation of liberty to the commission of the crime, be eliminated.¹⁴ A person subject to prolonged pretrial detention

⁵ See Universal Declaration on Human Rights, art. 8 and International Covenant on Civil and Political Rights, art. 2 (3).

⁶ See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 11.

⁷ See A/HRC/30/37, annex, para. 25. See also opinion Nos. 50/2014, 52/2014 and 70/2019.

⁸ A/HRC/30/37, para. 92. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 17.

⁹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 15.

¹⁰ *Ibid.*, para. 19.

¹¹ See for example opinions Nos. 68/2017, 8/2018 and 70/2018.

¹² CCPR/C/158, para. 7.

¹³ See Inter-American Court of Human Rights, *Wong Ho Wing v. Peru* (2015); European Court of Human Rights, *N. v. Romania* (Application no. 59152/08); African Commission on Human and Peoples' Rights, cases No. 275/03, *Article 19 v. Eritrea* and No. 204/97, *Mouvement burkinabé des droits de l'homme et des peuples v. Burkina Faso*; and Human Rights Committee, *Achille Benoit Zogo Andela v. Cameroon* (CCPR/C/121/D/2764/2016).

¹⁴ Inter-American Court of Human Rights, *Norín and others v. Chile* (2014) and *Ruano Torres and others v. El Salvador* (2015). See also opinions No. 69/2018, para. 29 and No. 40/2018, para. 53.

must be released until the criminal court proceedings against that person have been decided.¹⁵ In addition, in the context of immigration policies, States are required to release any arbitrarily detained persons even if they intend to deport such persons, whenever said deportation cannot be carried out promptly,¹⁶ such as when the deportation may constitute a violation of the principle of *non-refoulement*.¹⁷ Furthermore, in cases where the close relatives of a person who was arbitrarily detained have been suspended from their duties in a State-run organization, the Working Group has requested, as a measure of restitution, the reinstatement of their employment.¹⁸

B. Rehabilitation

11. Rehabilitation should include medical, psychological and other care, as well as the legal and social services that the victim of arbitrary deprivation of liberty may require. Such rehabilitation measures, including other health services, should be available, accessible and culturally acceptable;¹⁹ for example, medical and psychological care should be free of charge and be provided immediately, adequately and effectively, and in a place close to the victim's residence.²⁰ To that end, prior, clear and sufficient information about treatment must be provided, and the consent of the victim to receive such treatment and services must be given at all times.²¹ Medication should be provided free of charge, and treatments must take into account the circumstances and needs of the victim. Treatment on an individual, family or collective basis should also be provided.²²

C. Satisfaction

12. Satisfaction measures, aimed at repairing non-quantifiable, intangible damage suffered by the victim, may include commemorations and homages or tributes to victims; public apologies; the verifications of facts; public and complete disclosure of the truth; assistance in the recovery, identification, return and reburial of bodies in accordance with the expressed or presumed wish of the victims;²³ and judicial and administrative penalties imposed on those responsible. Other means of satisfaction include the publication in national newspapers and on websites, national radio and television broadcasts of the summaries of court resolutions in which the innocence of the victim or the arbitrariness of the deprivation of liberty is acknowledged.²⁴ The victim must be involved in the design of these measures.²⁵

13. Satisfaction may also involve the granting of study scholarships for either direct or indirect victims of arbitrary deprivation of liberty;²⁶ public acts acknowledging

¹⁵ Human Rights Committee, *Floresmillo Bolaños v. Ecuador* (CCPR/C/36/D/238/1987) and *Achille Benoit Zogo Andela v. Cameroon* (CCPR/C/121/D/2764/2016).

¹⁶ A/HRC/39/45, annex, para. 27.

¹⁷ A/HRC/13/30, para. 83. See also opinions Nos. 20/2018, 21/2018, 50/2018 and 74/2018.

¹⁸ See opinion No. 83/2017, para. 94.

¹⁹ Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 12. See also Committee against Torture, general comment No. 3 (2012) on the implementation of article 14 by States parties, para. 32.

²⁰ Inter-American Court of Human Rights, *Yarce y otras v. Colombia* (2016) and *Ruano Torres and others v. El Salvador* (2015). See also opinion No. 46/2018, para. 76.

²¹ Inter-American Court on Human Rights, *Yarce y otras v. Colombia* (2016) and *Ruano Torres and others v. El Salvador* (2015).

²² *Ibid.*

²³ See opinion No. 56/2019.

²⁴ Since 2018, the Working Group on Arbitrary Detention has included in its opinions the request that States disseminate widely the opinions adopted.

²⁵ See Inter-American Court of Human Rights, *Norín and others v. Chile* (2014), *García Asto and Ramírez v. Peru* (2005), *Chaparro Álvarez and Lapo Íñiguez v. Ecuador* (2007), *Wong Ho Wing v. Peru* (2015), *López Álvarez v. Honduras* (2006) and *López Álvarez v. Honduras* (2006). See also Human Rights Committee, *Albert Womah Mukong v. Cameroon* (CCPR/C/51/D/458/1991).

²⁶ Inter-American Court of Human Rights, *Norín and others v. Chile* (2014), *García Asto and Ramírez v. Peru* (2005) and *López Álvarez v. Honduras* (2006).

responsibility;²⁷ the placement of commemorative plaques;²⁸ and the obligation to carry out comprehensive, impartial, effective and prompt criminal and/or administrative investigations in order to prosecute and punish those responsible for the arbitrary deprivation of liberty.²⁹

D. Compensation

14. Compensation must be granted in an appropriate and proportional manner, taking into account the gravity of the violation and the circumstances of the case. This measure is aimed at addressing the physical and psychological damage experienced by the victim of arbitrary deprivation of liberty,³⁰ by ensuring:

(a) Compensation for the loss of income of the victim or of his or her family members, including pensions, social security benefits and other amounts of money as a result of the arbitrary deprivation of liberty;

(b) Return of any asset seized by the State or that has been appropriated in any other way on the grounds of a conviction, sentence or court resolution;

(c) Indemnification for lack of health care;

(d) Accessible and reasonable rehabilitation in the place where the person is held;

(e) Reimbursement of fines and legal expenses imposed on the victim as a result of the execution of the conviction or sentence that kept the victim arbitrarily detained;

(f) Payment of the victim's legal expenses and other expenses.³¹

15. Compensation should also be aimed at addressing any non-material harm or moral damage caused, which includes damage caused to the victim, such as loss of reputation, stigma, or broken family or community relations.³²

E. Guarantees of non-repetition

16. Guarantees of non-repetition are aimed at preventing the recurrence of a situation that gave rise to violations of human rights. In general, the States have an obligation to take measures to prevent similar violations from being committed in the future while guaranteeing prompt, adequate and effective remedies.³³ In the context of arbitrary detention, this may include:

²⁷ Inter-American Court of Human Rights, *Yarce and otras v. Colombia* (2016).

²⁸ Inter-American Court of Human Rights, *Ruano Torres and others v. El Salvador* (2015).

²⁹ Since 2018, the Working Group on Arbitrary Detention has included a standard paragraph in its opinions in which it urges the Government concerned to ensure a full and independent investigation into the circumstances surrounding the arbitrary deprivation of liberty of the victim, and to take appropriate measures against those responsible for the violation of the victim's rights. See Inter-American Court of Human Rights, *Chaparro Álvarez and Lapo Íñiguez v. Ecuador* (2007) and *López Álvarez v. Honduras* (2006). See also Human Rights Committee, *Albert Womah Mukong v. Cameroon* (CCPR/C/51/D/458/1991).

³⁰ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 20.

³¹ A/HRC/30/37, guideline 16, paras. 88–91. See also opinion No. 78/2018, para. 36.

³² See Inter-American Court of Human Rights, *Norín and others v. Chile* (2014), *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *Cabrera García and Montiel Flores v. México*, *Maritza Urrutia v. Guatemala* (2003), *Yarce y otras v. Colombia* (2016), *López Álvarez v. Honduras* (2006) and *Ruano Torres and others v. El Salvador* (2015). See also European Court of Human Rights, *N. v. Romania* (Application no. 59152/08), *Baranowski v. Poland* (Application no. 28358/95), *Čalovskis v. Latvia* (Application no. 22205/13), *L.M. v. Slovenia* (Application no. 32863/05), *Garayev v. Azerbaijan* (Application no. 53688/08), *Ryabikin v. Russia* (Application no. 8320/04), *Labita v. Italy* (Application no. 26772/95), *Witold Litwa v. Poland* (Application no. 26629/95), *Varbanov v. Bulgaria* (Application no. 31365/96), *Hilda Hafsteinsdóttir v. Iceland* (Application no. 40905/98) and *James, Wells and Lee v. United Kingdom* (Applications nos. 25119/09, 57715/09 and 57877/09).

³³ See Human Rights Committee, *Albert Womah Mukong v. Cameroon* (CCPR/C/51/D/458/1991), *Alex Soteli Chambala v. Zambia* (CCPR/C/78/D/856/1999), *Achille Benoit Zogo Andela v. Cameroon*

- (a) Repealing or amending laws or regulations that are found to be in breach of international obligations, or in the absence of relevant legal provisions, adopting laws or regulations prohibiting the arbitrary deprivation of liberty;³⁴
- (b) Introducing legal and administrative amendments to prevent the arbitrary deprivation of liberty and to facilitate the use of effective remedies against it;³⁵
- (c) Educating all sectors of society to respect international human rights and humanitarian law;
- (d) Ensuring ongoing training of public law enforcement officers and, inter alia, members of the armed forces and security forces, medical personnel, public defenders, guards and custody officers;³⁶
- (e) Promoting mechanisms aimed at preventing, monitoring and solving social conflicts;
- (f) Clarifying the obligation of the judiciary to implement international human rights obligations in its adjudicative work;³⁷
- (g) Introducing measures to improve the registry of detained persons;³⁸
- (h) Improving physical training and the sanitary and other conditions in imprisonment and detention centres;³⁹
- (i) Requiring amendments to the selection of legal defenders to guarantee their suitability and technical capability.⁴⁰

17. In its jurisprudence, the Working Group has adopted a similar approach, and often requests in the concluding paragraphs of its opinions that the State in question amend or repeal certain laws and provisions that are inconsistent with its obligations under the Covenant and/or the Universal Declaration of Human Rights.⁴¹

[Adopted on 22 November 2019]

(CCPR/C/121/D/2764/2016), *Hugo van Alphen v. Netherlands* (CCPR/C/39/D/305/1988), *Teofila Casafranca de Gomez v. Peru* (CCPR/C/78/D/981/2001), *Arshidin Israi v. Kazakhstan* (CCPR/C/103/D/2024/2011), *F.K.A.G. et al. v. Australia* (CCPR/C/108/D/2094/2011), *Fongum Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002) and *Yan Melnikov v. Belarus* (CCPR/C/120/D/2147/2012).

³⁴ CCPR/C/158, para. 13. See Inter-American Court of Human Rights, *Norín and others v. Chile* (2014), *Chaparro Álvarez and Lapo Íñiguez v. Ecuador* (2007) and *Cabrera García and Montiel Flores v. México* (2010); and Human Rights Committee, *F.K.A.G. et al. v. Australia* (CCPR/C/108/D/2094/2011).

³⁵ See European Court of Human Rights, *N. v. Romania* (Application no. 59152/08) and *Garayev v. Azerbaijan* (Application no. 53688/08). See also African Court on Human and Peoples' Rights (App. No. 003/2012), *Peter Joseph Chacha v. United Republic of Tanzania*.

³⁶ See Inter-American Court of Human Rights, *Chaparro Álvarez and Lapo Íñiguez v. Ecuador* (2007), *Cabrera García and Montiel Flores v. México* (2010), *Yarce and otras v. Colombia* (2016), *López Álvarez v. Honduras* (2006) and *Ruano Torres and others v. El Salvador* (2015). See also African Commission on Human and Peoples' Rights (communication No. 339/2007), *Patrick Okiring and Agupio Samson (represented by Human Rights Network and ISIS-WICCE) v. Republic of Uganda*.

³⁷ Inter-American Court of Human Rights, *Norín and others v. Chile* (2014).

³⁸ *Ibid.*, *Cabrera García and Montiel Flores v. México* (2010).

³⁹ *Ibid.*, *López Álvarez v. Honduras* (2006).

⁴⁰ Inter-American Court of Human Rights, *Ruano Torres and others v. El Salvador* (2015).

⁴¹ See for example opinions No. 48/2016, para. 62, No. 14/2017, para. 64, No. 82/2017, para. 50 and No. 73/2018, para. 77. This includes requests for amendments to constitutional provisions found to be at variance with international law (see for example opinion No. 1/2018, para. 65).

Annex II

Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies

I. Introduction

1. The events of recent weeks have brought about a profound change in the lives of everybody globally as the spread of the new coronavirus (COVID-19) has led to the adoption of stringent measures by States in an attempt to combat it. The Working Group on Arbitrary Detention acknowledges the unprecedented nature of the circumstances and the need for a wide range of public health emergency measures introduced to combat the pandemic in a manner respectful of international law.

2. The Working Group is nonetheless mindful of the fact that not all measures taken by States pay due respect to the international human rights obligations undertaken by them, and therefore calls for their urgent review.

3. Furthermore, the Working Group recalls that, in instances where a public health emergency has required States to resort to the introduction of an emergency regime, all States should act in accordance with their obligations under international law and with their constitutional and other provisions of law governing the proclamation of a state of emergency and the exercise of emergency powers.¹ All such measures must be publicly declared, be strictly proportionate to the threat to the public caused by the emergency, be the least intrusive means to protect public health and be imposed only for the time required to combat the emergency.

4. The Working Group is aware of the valuable statements and advice that have already been issued by numerous international and regional organizations,² which it encourages all States to consider. The aim of the present deliberation is to set out a guidance to avoid cases of arbitrary deprivation of liberty in the implementation of public health emergency measures

¹ See Human Rights Committee, general comment No. 29 (1999) on states of emergency, para. 2.

² See Office of the United Nations High Commissioner for Human Rights (OHCHR), COVID-19 Guidance (www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx), OHCHR and the World Health Organization (WHO), COVID-19: Focus on Persons Deprived of Their Liberty: Interim Guidance, March 2020 (<https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>); OHCHR, Guidance on the Human Rights Dimensions of COVID-19: Migrants (available from <https://interagencystandingcommittee.org/other/iasc-interim-guidance-covid-19-focus-persons-deprived-their-liberty-developed-ohchr-and-who>); advice of the Subcommittee on Prevention of Torture to States parties and national preventive mechanisms relating to the coronavirus pandemic (adopted on 25 March 2020); WHO Regional Office for Europe, “Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance”, 15 March 2020; Advice of the Subcommittee on Prevention of Torture to the National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland regarding compulsory quarantine for Coronavirus, adopted at its fortieth session (10 to 14 February 2020); Organization of American States (OAS), *Practical Guide to Inclusive Rights-Focused Responses to COVID-19 in the Americas* (see www.oas.org/en/media_center/press_release.asp?sCodigo=E-032/20), 7 April 2020; Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic issues by the European Committee for the Prevention of Torture, 20 March 2020 CPT/Inf (2020)13 (19 March 2020); African Commission on Human and Peoples’ Rights, press statement of 28 February 2020 on the coronavirus (COVID-19) crisis, (available from www.achpr.org/pressrelease/detail?id=480) and press Statement of 24 March 2020 on human rights-based effective response to the novel COVID-19 virus in Africa (available from www.achpr.org/pressrelease/detail?id=483). See also OHCHR, “COVID-19 and its human rights dimensions”, at www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx.

aimed at combating the COVID-19 pandemic and, *mutatis mutandis*, in the event of other public health emergencies.

II. Absolute prohibition of arbitrary deprivation of liberty

5. The Working Group is mindful of the fact that a person's right to liberty is only one of the rights particularly affected by the wide variety of measures that have been recently taken by many States. While the right to liberty is not an absolute right, and derogations from it are permitted under international law,³ the Working Group wishes to emphasize that the prohibition of arbitrary deprivation of liberty is absolute and universal.⁴ Arbitrary detention can never be justified, whether it be for any reason related to national emergency, maintaining public security or health. The prohibition applies in any territory under a State's jurisdiction or wherever the State exercises effective control, or otherwise as the result of its actions or omissions of its agents or servants.⁵ Consequently, the Working Group calls upon all States to respect the absolute prohibition of arbitrary deprivation of liberty as public health emergency measures are introduced to combat the pandemic.

6. Furthermore, any derogation from a person's right to liberty must strictly comply with the limits imposed upon a State party's power to derogate from that right by international law. In particular, States must adhere rigorously to the requirements of strict necessity and proportionality; such derogations are only permissible for the time period justified by the exigencies of the prevailing circumstances of the public health emergency.

III. Regimes of deprivation of liberty

7. The Working Group recalls that the prohibition of arbitrary deprivation of liberty extends to all types of detention regimes, including detention within the framework of criminal justice, administrative detention, detention in the context of migration and detention in the health-care settings.⁶

8. Moreover, the deprivation of liberty is not only a question of legal definition but also a question of fact; therefore if the person concerned is not at liberty to leave a premise, that person is to be regarded as deprived of his or her liberty.⁷ To this end, it is of critical importance that, irrespective of what such places are called, the circumstances in which an individual is detained are examined to determine whether the person has been deprived of liberty.⁸ The Working Group wishes to clarify that mandatory quarantine in a given premise, including in a person's own residence that the quarantined person may not leave for any reason, is a measure of de facto deprivation of liberty.⁹ When placing individuals under quarantine measures, States must ensure that such measures are not arbitrary. The time limit for placement in mandatory quarantine must be clearly specified in law and strictly adhered to in practice.

9. The Working Group also wishes to emphasize that secret and/or incommunicado detention constitutes the most serious violation of the norm protecting a person's right to liberty. Arbitrariness is inherent in such forms of deprivation of liberty, as the individual is

³ International Covenant on Civil and Political Rights, art. 4.

⁴ See A/HRC/22/44, paras. 42–43; see also Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 66.

⁵ A/HRC/30/37, para. 25; opinions Nos. 70/2019, 52/2014 and 50/2014.

⁶ A/HRC/36/37, para. 50.

⁷ A/HRC/36/37, para. 56. See also deliberation 1 on house arrest (E/CN.4/1993/24).

⁸ A/HRC/36/37, para. 52.

⁹ See advice of the Subcommittee on Prevention of Torture to States parties and national preventive mechanisms relating to the coronavirus pandemic, para. 10 (5); and advice of the Subcommittee on Prevention of Torture to the national preventive mechanism of the United Kingdom of Great Britain and Northern Ireland regarding compulsory quarantine for coronavirus, para. 2.

left without any legal protection.¹⁰ Such secret and/or incommunicado detention cannot be part of the public health emergency measures introduced to combat a health-related crisis.

IV. Necessity and proportionality of the deprivation of liberty

10. Any deprivation of liberty that has no legal basis or is not carried out in accordance with the procedure established by law is arbitrary.¹¹ Any law authorizing the deprivation of liberty must therefore be scrutinized. Any deprivation of liberty, even if it is authorized by law, may still be considered arbitrary if it is premised upon arbitrary legislation or is inherently unjust, relying for instance on discriminatory grounds, or if there is an overly broad statute authorizing automatic and indefinite deprivation of liberty without any standards or review, or the law does not specify clearly the nature of the conduct that is unlawful.¹²

11. Moreover, even the lawful deprivation of liberty may still be arbitrary if such detention is not strictly necessary or a proportionate measure in pursuance of a legitimate aim.¹³ In particular, States must be mindful that detention that initially satisfied the requirements of necessity and proportionality may no longer be justified insofar as the circumstances may have changed significantly.

12. The Working Group therefore calls upon all States to pay particular attention to the requirements of necessity and proportionality of deprivation of liberty in the context of public health emergencies, such as the newly emerging emergency related to the COVID-19 pandemic.

13. In particular, States should urgently review existing cases of deprivation of liberty in all detention settings to determine whether the detention is still justified as necessary and proportionate in the prevailing context of the COVID-19 pandemic. In doing so, States should consider all alternative measures to custody.

14. Pretrial detention should only be used in exceptional cases.¹⁴ The current public health emergency puts an additional onus of consideration upon the authorities, as they must explain the necessity and proportionality of the measure in the circumstances of the pandemic. The Working Group recalls in particular that automatic pretrial detention of persons is incompatible with international law.¹⁵ The circumstances of each instance of pretrial detention should be assessed; at all stages of proceedings, non-custodial measures should be taken whenever possible, and particularly during public health emergencies.

15. The Working Group is aware that COVID-19 mostly affects persons older than 60 years of age, pregnant women and women who are breastfeeding, persons with underlying health conditions,¹⁶ and persons with disabilities. It therefore recommends that States treat all such individuals as vulnerable. States should also refrain from holding such individuals in places of deprivation of liberty where the risk to their physical and mental integrity and life is heightened.

16. Lastly, noting that overcrowding and poor hygiene pose a particular risk of spreading COVID-19,¹⁷ States should seek to reduce prison populations and other detention populations wherever possible by implementing schemes of early, provisional or temporary release for those detainees for whom it is safe to do so, taking full account of non-custodial measures as

¹⁰ A/HRC/22/44, para. 60.

¹¹ International Covenant on Civil and Political Rights, art. 9. See also opinions Nos. 1/2017, 30/2017, 35/2018, 70/2018 and 49/2019; and Human Rights Committee, general comment No. 35, para. 11.

¹² A/HRC/22/44, para. 63. See also opinions Nos. 41/2017, 52/2018 and 62/2018, paras. 57–59; Human Rights Committee, general comment No. 35, para. 22.

¹³ A/HRC/22/44, para. 61. See Human Rights Committee, general comment No. 35, paras. 11–12.

¹⁴ A/HRC/19/57, paras. 48–58.

¹⁵ See for example opinions Nos. 1/2018, 53/2018, 75/2018, 14/2019, 64/2019. See also Human Rights Committee, general comment No. 35, para. 38.

¹⁶ See www.who.int/news-room/q-a-detail/q-a-coronaviruses.

¹⁷ WHO Regional Office for Europe, “Preparedness, prevention and control of COVID-19 in prisons and other places of detention”.

provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)¹⁸ and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). Noting the obligation arising from the Convention on the Rights of the Child of not detaining children, particular consideration should be given to releasing children and women with children, and also those serving sentences for non-violent crimes.

17. All States must comply with their obligations under international human rights law, including customary international law, the Universal Declaration of Human Rights and relevant international instruments to which they are party, which are interpreted and applied in opinions adopted by the Working Group. When detention has been determined by the Working Group to be arbitrary, the detainee should be released immediately in every case, and as a matter of urgency during public health emergencies.

V. Right to challenge the lawfulness of the deprivation of liberty

18. The right to challenge the lawfulness of detention before a court is a self-standing human right, a peremptory norm of international law that cannot be derogated from¹⁹ that applies to all forms of deprivation of liberty and to all situations of deprivation of liberty.²⁰ The right applies irrespective of the place of detention or the legal terminology used in relevant legislation; consequently, any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.²¹

19. The Working Group wishes to emphasize that the right to challenge the legality of deprivation of liberty applies also to those in mandatory quarantine or otherwise detained in the context of public health emergency measures that are introduced to combat a pandemic. Such individuals must also be ensured that they are able to exercise this right effectively by, *inter alia*, having access to legal assistance.

VI. Right to a fair trial

20. The Working Group is mindful of the fact that the public health emergency measures introduced to combat the pandemic may limit access to detention facilities, which in turn may effectively prevent persons held in places of deprivation of liberty from attending their court and other judicial hearings, meetings with parole boards or other entities empowered to consider their continued deprivation of liberty, or from holding meetings with their legal counsel and family.²² This may have an adverse effect particularly on those in pretrial detention, and on detainees seeking a review of a decision to detain them, as well as those seeking to appeal against a conviction or sentence.

21. If the exigencies of the prevailing public health emergency require restrictions on physical contact, States must ensure the availability of other ways for legal counsel to communicate with their clients, including secured online communication or communication over the telephone, free of charge and in circumstances in which privileged and confidential discussions can take place.²³ Similar measures can be taken for judicial hearings. The introduction of blanket measures restricting access to courts and legal counsel cannot be justified and could render the deprivation of liberty arbitrary.

¹⁸ See advice of the Subcommittee on Prevention of Torture to States parties and national preventive mechanisms relating to the coronavirus pandemic, para. 9 (2).

¹⁹ A/HRC/22/44, para. 49.

²⁰ A/HRC/30/37, paras. 11 and 47 (a)–(b).

²¹ *Ibid.*, para. 47 (b).

²² *Ibid.*, principle 10.

²³ *Ibid.*, paras. 15 and 69.

VII. Use of emergency powers to target certain groups

22. Emergency powers must not be used to deprive particular groups or individuals of liberty. For example, the power to detain persons during public health emergencies must not be used to silence the work of human rights defenders, journalists, members of the political opposition, religious leaders, health-care professionals or any person expressing dissent or criticism of emergency powers or disseminating information that contradicts official measures taken to address the health emergency.

VIII. Detention in the context of migration

23. Detention in the context of migration is only permissible as an exceptional measure of last resort,²⁴ which is a particularly high threshold to be satisfied in the context of a pandemic or other public health emergency.

24. The Working Group reminds all States that migrant children and children with their families should not be detained in the context of migration policies, and should therefore be immediately released.²⁵

25. Asylum seekers should not be held in places of deprivation of liberty during the course of the procedure for the determination of their status, and refugees should be protected by authorities of the recipient State and not detained.

IX. Equality and non-discrimination

26. Emergency measures or powers enacted to address public health emergencies must also be exercised with respect to the principle of equality and non-discrimination based on the grounds of birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or any other status.²⁶

27. Such measures and powers must take into account the disparate impact upon vulnerable groups who already experience disadvantage, including persons with disabilities, older persons, minority communities, indigenous peoples, people of African descent, internally displaced persons, persons affected by extreme poverty, homeless persons, migrants and refugees, persons who use drugs, sex workers and LGBTI and gender-diverse persons,²⁷ who may not have the same capacity to comply with health directives (such as isolation at home, self-funded quarantine in hotels, requirements not to attend work or to pay fines or bail), and may be deprived of their liberty as a result.

X. Independent oversight and cooperation with human rights mechanisms

28. The Working Group emphasizes the importance of independent oversight by national and international human rights mechanisms over all places of deprivation of liberty to minimize the occurrence of instances of arbitrary deprivation of liberty.²⁸ Such mechanisms include prosecutorial and judicial authorities, government human rights departments, national human rights institutions, national preventive mechanisms and civil society at the national level, as well as the Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and other relevant non-governmental organizations at the international level.

29. The Working Group acknowledges the particular challenges that the prevailing public health emergency poses to such independent oversight as those involved in human rights

²⁴ See revised deliberation No. 5 on deprivation of liberty of migrants (A/HRC/39/45), para. 12.

²⁵ A/HRC/36/37/Add.2, para. 21.

²⁶ A/HRC/36/37, paras. 46–49, and A/HRC/36/38, para. 8 (e).

²⁷ A/HRC/36/37, para. 46.

²⁸ A/HRC/39/45/Add.1, para. 17, and A/HRC/39/45/Add.2, paras. 16–17.

monitoring seek to uphold the principle of “do no harm”. However, the prevailing public health emergency cannot be used as a blanket justification to prevent all such independent oversight. The Working Group calls upon all States to allow visits of independent oversight mechanisms to all places of deprivation of liberty during the COVID-19 pandemic and other public health emergencies.²⁹ Due consideration should be given to such practical measures as staggering the visits of oversight bodies, allowing for extra telephone and internet contact and establishing hotlines and the use of personal protection equipment.

30. The Working Group encourages States to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and States that are a party thereto to adhere to the advice of the Subcommittee on Prevention of Torture to States parties and national preventive mechanisms relating to the coronavirus pandemic.

31. All States should maintain their efforts to engage effectively with the special procedures of the Human Rights Council and the Working Group and its procedures during public health emergencies.

[Adopted on 1 May 2020]

²⁹ See advice of the Subcommittee on Prevention of Torture to States parties and national preventive mechanisms relating to the coronavirus pandemic, para. 13.