



人权理事会

第四十五届会议

2020年9月14日至10月2日

议程项目3

促进和保护所有人权——公民权利、政治权利、
经济、社会及文化权利，包括发展权

任意拘留

任意拘留问题工作组的报告*

概要

2019年，任意拘留问题工作组根据其常规程序通过了85项意见，涉及42个国家对171人的拘留。工作组还向31个国家政府和(在一起案件中)其他行为体发出了61份紧急呼吁，向43个国家政府和(在一起案件中)其他行为体发出了80封指控信和其他信件，涉及至少377名确认身份的个人。一些国家通报工作组，它们已采取措施对被拘留者的状况作出补救，在多处案件中，被拘留者已被释放。工作组感谢有关政府回应工作组的呼吁并采取步骤向工作组提供它所要求的关于被拘留者状况的信息。

作为与各国持续对话的一部分，工作组于2019年11月3日至14日对卡塔尔进行了国别访问，并于2019年12月2日至13日对希腊进行了国别访问。

工作组继续就一般性问题制定审议意见，以协助各国和利益攸关方预防和
处理任意剥夺自由的案件。这包括制定关于就任意剥夺自由予以赔偿的第10号
审议意见和关于防止公共卫生紧急情况下的任意剥夺自由的第11号审议意见。

此外，工作组与歧视妇女和女童问题工作组合作，编写了一份联合法庭之友
书状，处理申诉人遭到逮捕和拘留的问题，包括这些申诉人在内的71名涉嫌为
性工作者的妇女据称在被拘留期间遭到人身侵犯和性侵犯。

* 附件未经正式编辑，原文照发。



在报告中，工作组还审查了以下专题问题：(a) 被剥夺自由的妇女；(b) 确保获得法律援助的权利以防止任意剥夺自由；(c) 现代技术和替代拘留的措施。

工作组在其建议中呼吁各国在答复常规程序来文方面加强合作，通过后续程序报告工作组意见的执行情况(以及所作的赔偿)，并对国别访问请求作出积极回应。

工作组还鼓励各国处理女性被拘留者的状况，确保获得法律援助的权利，并处理使用现代技术剥夺自由的问题。

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一. 引言

1. 任意拘留问题工作组系根据人权委员会第 1991/42 号决议设立。任意拘留问题工作组受命根据《世界人权宣言》和有关国家接受的相关国际文书中规定的标准，调查所指称的任意剥夺自由情况。委员会第 1997/50 号决议澄清并扩大了工作组的任务授权范围，列入了对寻求庇护者和移民的行政拘留问题。根据大会第 60/251 号决议和人权理事会第 1/102 号决定，人权理事会接管了人权委员会的任务。理事会在 2019 年 9 月 26 日第 42/22 号决议中将工作组的任期延长三年。
2. 2019 年 1 月 1 日至 12 月 31 日期间，工作组成员包括：塞东吉·罗兰·让-巴蒂斯特·阿兆维(贝宁)、何塞·安东尼奥·盖瓦拉·贝穆德斯(墨西哥)、洪晟弼(大韩民国)、埃利娜·施泰纳特(拉脱维亚)和利·图米(澳大利亚)。
3. 2018 年 4 月至 2019 年 4 月，洪先生担任工作组主席兼报告员，施泰纳特女士和图米女士为副主席。2019 年 4 月，盖瓦拉·贝穆德斯先生在工作组第八十四届会议上当选主席兼报告员，施泰纳特女士和图米女士再次当选副主席。图米女士被指定为报复行动问题协调人，施泰纳特女士被再次任命为酷刑与任意剥夺自由之间的联系问题协调人。
4. 工作组悲伤地获悉，路易·茹瓦内于 2019 年 9 月 22 日去世。茹瓦内先生在设立工作组方面发挥了重要作用。1990 年，人权委员会请其防止歧视及保护少数小组委员会就任意拘留问题进行研究。小组委员会独立专家茹瓦内先生提交了一份关于行政拘留做法的报告，该报告促使委员会通过了第 1991/42 号决议。茹瓦内先生在担任工作组成员期间(1992 年至 2003 年)，制定了工作组执行任务的程序，为工作组发展成为以审议世界各地关于任意拘留的个人申诉为任务的唯一非条约人权机制奠定了基础。他为建立工作组所做的工作以及他在促进和保护人权方面的终生服务将被永远铭记。

二. 工作组的活动

5. 2019 年 1 月 1 日至 12 月 31 日期间，工作组举行了第八十四、第八十五和第八十六届会议。
6. 工作组还于 2019 年 11 月 3 日至 14 日访问了卡塔尔(A/HRC/45/16/Add.2)。2019 年 12 月 2 日至 13 日，工作组对希腊进行了国别访问(A/HRC/45/16/Add.1)。
7. 为了促进外联和信息共享，工作组在第八十五届会议期间会见了一组非政府组织，以收集有关任意剥夺自由问题的信息，并增进民间社会对工作组工作方法及其运作情况的了解。

A. 审议意见

8. 工作组继续就一般性问题制定审议意见，以协助各国和利益攸关方预防和处理任意剥夺自由的案件。

9. 2019 年 11 月，工作组第八十六届会议通过了关于就任意剥夺自由予以赔偿的第 10 号审议意见(附件一)。在该审议意见中，工作组确定了任意剥夺自由行为受害者有权获得的全面赔偿。在此过程中，工作组阐述了哪些措施应被理解为工作组 2016 年制定的后续程序中提及的措施。¹

10. 工作组还制定了关于防止公共卫生紧急情况下的任意剥夺自由的第 11 号审议意见(附件二)。在审议意见中，工作组提出了在实施各种公共卫生紧急措施，例如与冠状病毒病(COVID-19)大流行有关的措施时避免任意剥夺自由的指导意见。

B. 提交联合法庭之友书状

11. 在本报告所述期间，工作组开始与歧视妇女和女童问题工作组合作，编写一份联合法庭之友书状。² 该书状涉及申诉人遭到逮捕和拘留的问题，包括这些申诉人在内的 71 名涉嫌为性工作者的妇女据称在被拘留期间遭到人身侵犯和性侵犯。

12. 该书状指出，国家有责任保护性工作者享有人权，包括平等和不受歧视的权利、免受不人道和有辱人格的待遇的权利、自由和安全的权利、公正审判权、私人生活和家庭生活权以及健康权。它还载有关于适用于工作组任务范围内一系列问题的国际人权标准的专家意见，包括基于模糊法律的拘留、提供逮捕理由和确保对拘留进行有意义的司法审查的要求、强迫认罪以及就侵犯人权行为提供有效补救的义务。法庭之友书状于 2020 年 2 月提交，在编写本报告时，有关国家的相关司法当局正在审议该书状。

13. 工作组欢迎有机会利用其专门知识协助国家法院审议与逮捕和拘留有关的问题，以及有机会与其他特别程序任务负责人合作。

C. 关于与禁毒政策有关的任意拘留问题的研究报告

14. 人权理事会第 42/22 号决议请工作组就与禁毒政策有关的任意拘留问题编写研究报告。报告编写工作于 2019 年开始，工作组进行了初步磋商，编制了一份调查问卷，并呼吁各国和其他利益攸关方就禁毒政策提供投入。工作组将向理事会第四十七届会议提交研究报告。

D. 2019 年期间提交工作组的来文处理情况

1. 向各国政府发送的信函

15. 工作组第八十四、第八十五和第八十六届会议共通过了 85 项意见，涉及 42 个国家的 171 人(见下表)。

¹ A/HRC/36/37，第 10-11 段。

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

2. 工作组的意见

16. 根据其工作方法，³ 工作组在将意见通知各国政府之时，提请它们注意人权委员会第 1997/50 号和第 2003/31 号决议及人权理事会第 6/4 号、第 24/7 号和第 42/22 号决议，这些决议要求各国考虑工作组的意见，并在必要时采取适当措施，纠正被任意剥夺自由者的状况，并将其采取的措施通知工作组。在向政府转交意见的 48 小时期限结束后，意见转交给相关来文方。

³ A/HRC/36/38。

工作组第八十四届、第八十五届和第八十六届会议通过的意见

意见编号	国家	政府的回复	当事人	意见	收到的后续信息
1/2019	澳大利亚	有	Premakumar Subramaniam	任意拘留，第二、第四和第五类	无
2/2019	澳大利亚	有	Huyen Thu Tran 和 Isabella Lee Pin Loong	任意拘留，第二、第四和第五类	无
3/2019	柬埔寨	无	Uon Chhin 和 Yeang Sothearin	任意拘留，第一、第二和三五类	无
4/2019	泰国	无	Siraphop Kornaroot	任意拘留，第一、第二和第三类	无
5/2019	加蓬	无	Hervé Mombo Kinga	任意拘留，第一、第二、第三和第五类	Kinga 先生已被释放(由于程序违规)，新的程序正在进行中。如果被判无罪，他将能够提出赔偿请求。尚未收到任何请求。2019 年颁布了立法修正案。(政府提供的信息。)
6/2019	西班牙	有	Jordi Cuixart I Navarro、Jordi Sánchez I Picanyol 和 Oriol Junqueras I Vies	任意拘留，第二、第三和第五类	未采取任何行动执行该意见。(来文方提供的信息。)
7/2019	加拿大	有	Ebrahim Toure	任意拘留，第四类	Toure 先生在被驱逐出加拿大前一直处于假释状态。(政府提供的信息。)
8/2019	越南	有	Duy Nguyen Huu Quoc	任意拘留，第一、第二和第三类	无
9/2019	越南	无	Trần Thị Xuân	任意拘留，第一、第二、第三和第五类	无

意见编号	国家	政府的回复	当事人	意见	收到的后续信息
10/2019	阿塞拜疆和土耳其	有	Mustafa Ceyhan	任意拘留，第一、第三和第五类	未采取任何行动执行该意见。 (来文方提供的信息。) Ceyhan 先生被判处 9 年徒刑，但此案仍在审理；没有提出索赔。(政府提供的信息。)
11/2019	俄罗斯联邦	无 (逾期)	Dimitry Mikhaylov	任意拘留，第一、第二、第三和第五类	无
12/2019	西班牙	有	Joaquín Forn I Chiariello、 Josep Rull I Andreu、Raúl Romeva I Rueda 和 Dolores Bassa I Coll	任意拘留，第二、第三和第五类	未采取任何行动执行该意见。 (来文方提供的信息。)
13/2019	委内瑞拉玻利瓦尔共和国	有	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 和 Belinda Beatriz Omaña Payares	任意拘留，第一和第三类	无
14/2019	墨西哥	有	Rafael Méndez Valenzuela	任意拘留，第一、第三和第五类	拘留是依法进行的，主管法官宣布了一项定罪，Méndez Valenzuela 先生目前正在服刑。自 2017 年以来，一直在对该被拘留者遭受酷刑的指称进行调查。 (政府提供的信息。)
15/2019	中国	无 (逾期)	余文生	任意拘留，第一、第二、第三和第五类	未采取任何行动执行该意见。 (来文方提供的信息。)

意见编号	国家	政府的回复	当事人	意见	收到的后续信息
16/2019	尼加拉瓜	无	Carlos Ramón Brenes Sánchez	任意拘留，第一、第二和第三类	无
17/2019	塔吉克斯坦	无 (逾期)	Buzurgmehr Yorov	任意拘留，第一、第二、第三和第五类	无
18/2019	利比亚	无	Mohamed Arjili Ghoma	任意拘留，第一和第三类	无
19/2019	尼加拉瓜	无	Tomás Ramón Maldonado Pérez	任意拘留，第一、第二和第三类	无
20/2019	中国	有	甄江华和秦永敏	任意拘留，第一、第二、第三和第五类	甄先生已被释放(来文方提供的信息。)
21/2019	埃及	无	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 和 Safa Ali Farahat	任意拘留，第一、第二和第三类	无
22/2019	沙特阿拉伯	有	Ahmad Khaled Mohammed Al Hossan	任意拘留，第一和第三类	无
23/2019	摩洛哥	有	Laaroussi Ndor	任意拘留，第一、第二、第三和第五类	无
24/2019	卢旺达	有	Diane Shima Rwigara 和 Adeline Rwigara	任意拘留，第一、第二和第三类	无

意见编号	国家	政府的回复	当事人	意见	收到的后续信息
25/2019	巴拿马	无	Ricardo Traad Porras	任意拘留，第三类	Traad 先生于 2010 年 1 月获释，条件是他每月出庭两次；这项措施仍然有效。巴拿马没有向 Traad 先生提供补偿和其他赔偿，也没有对与此案有关的可能侵犯人权行为进行调查。(政府提供的信息。)
26/2019	沙特阿拉伯	有	Abdelkarim Mohamed Al Hawaj 和 Mounir Abdullah Ahmad Aal Adam	任意拘留，第一、第二、第三和第五类	无
27/2019	喀麦隆	有	Yves Michel Fotso	工作组决定不修订第 40/2017 号意见。	Fotso 先生因医疗原因被送往摩洛哥。(来文方提供的信息。)
28/2019	阿拉伯联合酋长国	有	Abdallah Sami Abedalafou Abu Baker 和 Yasser Sami Abedalafou Abu Baker	任意拘留，第一和第三类	未采取任何行动执行该意见。(来文方提供的信息。) 这些个人仍在服刑，没有提出赔偿或调查要求。国家立法符合人权。(政府提供的信息。)
29/2019	埃及	无	一名未成年人	任意拘留，第一、第三和第五类	无
30/2019	莫桑比克	无	Amade Abubacar	任意拘留，第一、第二和第三类	无
31/2019	巴林	无 (逾期)	Najah Ahmed Habib Yusuf	任意拘留，第一、第二和第三类	无
32/2019	伊朗伊斯兰共和国	无	Saeed Malekpour	任意拘留，第一、第二、第三和第五类	Malekpour 先生 2019 年 8 月逃离了伊朗伊斯兰共和国。该意见一直未得到执行。(来文方提供的信息。)

意见编号	国家	政府的回复	当事人	意见	收到的后续信息
33/2019	伊朗伊斯兰共和国	有	Golrokh Ebrahimi Iraee	任意拘留，第一、第二和第三类	无
34/2019	俄罗斯联邦	无 (逾期)	Vladimir Alushkin	任意拘留，第一、第二和第五类	无
35/2019	中国	有	曹三强(John Cao)	任意拘留，第二、第三和第五类	无
36/2019	中国	无 (逾期)	王怡和蒋蓉	任意拘留，第一、第二和第三类	未采取任何行动执行该意见。(来文方提供的信息。)
37/2019	布隆迪	无	Germain Rukuki	任意拘留，第一、第二和第三类	无
38/2019	哥伦比亚	无	Alexandre Vernot	任意拘留，第三类	政府无法释放 Vernot 先生。(政府提供的信息。) 未采取任何行动执行该意见。(来文方提供的信息。)
39/2019	委内瑞拉玻利瓦尔共和国	有	Pedro Jaimes Criollo	任意拘留，第一、第二和第三类	Jaimes Criollo 先生已获得假释。(政府提供的信息。)
40/2019	委内瑞拉玻利瓦尔共和国	有	Juan Carlos Requesens Martínez	任意拘留，第一、第二、第三和第五类	无
41/2019	埃及	无	Ebrahim Abdelmonem Metwally Hegazy	任意拘留，第一、第二、第三和第五类	未采取任何行动执行该意见。(来文方提供的信息。)
42/2019	埃及	无	Gehad El-Haddad 和 Essam El-Haddad	任意拘留，第一、第二、第三和第五类	Gehad El-Haddad 在一些指控上被判无罪，在其他指控上被判处 10 年监禁。未采取任何行动执行该意见。(来文方提供的信息。)
43/2019	尼加拉瓜	无	Amaya Eva Coppens Zamora	任意拘留，第一、第二、第三和第五类	Coppens Zamora 女士通过大赦法获得假释，但没有清除犯罪记录。她随后再次被捕。(来文方提供的信息。)

意见编号	国家	政府的回复	当事人	意见	收到的后续信息
44/2019	越南	有	Nguyễn Văn Hoá	任意拘留，第一、第二、第三和第五类	未采取任何行动执行该意见。(来文方提供的信息。)
45/2019	越南	有	Le Dinh Luong	任意拘留，第一、第二、第三和第五类	无
46/2019	喀麦隆	有	Mancho Bibixy Tse	任意拘留，第一和第三类	无
47/2019	巴拿马	有	Ricardo Martinelli	任意拘留，第三类	Martinelli 先生在意见通过之前被无罪释放。正在根据辩方律师的申诉进行调查。(政府提供的信息。)
48/2019	毛里塔尼亚	无	Abderrahmane Weddady 和 Cheikh Mohamed Jiddou	任意拘留，第一、第二和第五类	无
49/2019	印度尼西亚	有	Mathias Echène	任意拘留，第一和第三类	无
50/2019	法国	有	Mohammed Alashram	Filed	无
51/2019	伊朗伊斯兰共和国	无	Nizar Zakka	任意拘留，第一、第三和第五类	无
52/2019	朝鲜民主主义人民共和国	有	Eun Sil Kang	任意拘留，第一类	无
53/2019	土耳其	有	Melike Göksan 和 Mehmet Fatih Göksan	任意拘留，第一、第二、第三和第五类	未采取任何行动执行该意见。(来文方提供的信息。)
54/2019	墨西哥	有	José de la Paz Ferman Cruz 和 Aren Boyazhyan	任意拘留，第一、第二和第四类	无
55/2019	阿拉伯联合酋长国	无 (逾期)	Abdulmalik Mohammad Ahmad Mohammad al-Mukhanqi 和 Abdullah Mohammad Ahmad Attiah	任意拘留，第一和第三类	无
56/2019	沙特阿拉伯	有	Abbas Haiji Al-Hassan	任意拘留，第一、第三和第五类	无
57/2019	朝鲜民主主义人民共和国	有	Lee Hak Su	任意拘留，第一类	无

意见编号	国家	政府的回复	当事人	意见	收到的后续信息
58/2019	卡塔尔	有	John Wesley Downs	任意拘留，第三类	Downs 先生因特赦令而被释放。(政府提供的信息。)
59/2019	巴林	有	Mohamed Merza Ali Moosa	任意拘留，第一、第二、第三和第五类	在大赦之后，Moosa 先生被释放，并获得了一个非拘禁刑罚，要求他在一家慈善基金工作。(来文方提供的信息。)
60/2019	白俄罗斯	有	四名未成年人	对三名未成年人的拘留为任意拘留，第一类；对一名未成年人的案件进行存档。	无
61/2019	多民族玻利维亚国	无	José María Leyes Justiniano	任意拘留，第一、第二和第三类	Leyes Justiniano 先生被释放。该意见得到部分执行。(来文方提供的信息。)
62/2019	加蓬	无	Magloire Ngambia	任意拘留，第一和第三类	审判正在进行中；Ngambia 先生仍被审前拘留。关于法官不公正的问题，最高司法委员会正在处理此事。2019 年就辩护方的权利进行了一些立法修订。(政府提供的信息。)
63/2019	古巴	有	Josiel Guía Piloto、Marbel Mendoza Reyes 和 Iván Amaro Hidalgo	任意拘留，第一、第二和第三类	无
64/2019	墨西哥	有	Ricardo Rodríguez Advíncula 和 Luciano Rodríguez Ramos	任意拘留，第一、第二、第三和第五类	无
65/2019	埃及	无	Ammar Yasser Abdelaziz el-Sudany、Belal Hasnein Abdelaziz Hasnein 和另外两名未成年人	任意拘留，第一、第三和第五类	三名未成年人被无罪释放；第四名未成年人被判处三年徒刑。(来文方提供的信息。)

意见编号	国家	政府的回复	当事人	意见	收到的后续信息
66/2019	塔吉克斯坦	无 (逾期)	Saidumar Husaini、 Muhammadali Faiz- Muhammad、Rahmatulloi Rajab、Zubaidulloi Roziq、 Vohidkhon Kosidinov、 Kiyomiddin Avazov、 Abduqahar Davlatov、 Hikmatulloh Sayfulloza、 Sadidin Rustamov、Sharif Nabiev 和 Abdusamat Ghayratov	任意拘留，第一、第二、 第三和第五类	无
67/2019	摩洛哥	无 (逾期)	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 和 Abdelmoula El Hafidi	任意拘留，第一、第二、 第三和第五类	情况有所恶化，El Ouahidi 在监狱中遭受了暴力行为 (报复)。Elbeur 先生、 Dadda 先生和 El Hafidi 先生 的拘留条件恶化，Baalli 先生 再次被捕。未采取任何行动 执行该意见。(来文方提供 的信息。)
68/2019	萨尔瓦多	无 (逾期)	Sara del Rosario Rogel García、Berta Margarita Arana Hernández 和 Evelyn Beatriz Hernández Cruz	任意拘留，第一、第三和 第五类	无
69/2019	朝鲜民主主义人民共和国	有	Hwang Won	任意拘留，第一和第二类	无
70/2019	美利坚合众国	无	Mohammed al Qahtani	任意拘留，第一、第三和 第五类	无
71/2019	沙特阿拉伯	有	Issa al-Nukheifi、 Abdulaziz Youssef Mohamed al-Shubaili 和 Issa Hamid al-Hamid	任意拘留，第一、第二、 第三和第五类	无
72/2019	中国	有	马克·斯威丹	任意拘留，第一和第三类	无

意见编号	国家	政府的回复	当事人	意见	收到的后续信息
73/2019	巴林	有	九名未成年人	任意拘留，第一、第三和第五类	两名未成年人被释放。(政府提供的信息。)
74/2019	澳大利亚	有	Sayed Akbar Jaffarie	任意拘留，第四和第五类	无
75/2019	委内瑞拉玻利瓦尔共和国	有	Roberto Eugenio Marrero Borjas	任意拘留，第二、第三和第五类	无
76/2019	中国	无 (逾期)	陈树庆和吕耿松	任意拘留，第一、第二、第三和第五类	无
77/2019	埃及和苏丹	埃及：无； 苏丹：有	Mohamed Hassan Alim Shareef (又名 Mohamed Boshi)	任意拘留，第一、第二和第三类	无
78/2019	摩洛哥	无 (逾期)	Mounir Ben Abdellah	任意拘留，第一、第二和第三类	未采取任何行动执行该意见。(来文方提供的信息。)
79/2019	土耳其	有	Ercan Demir	任意拘留，第二和第五类	意见通过后，Demir 先生被无罪释放，并获得金钱和非金钱补偿。(来文方提供的信息。)
80/2019	委内瑞拉玻利瓦尔共和国	有	Carlos Marrón Colmenares	任意拘留，第一、第二、第三和第五类	Marrón Colmenares 先生被释放。(政府提供的信息。)
81/2019	委内瑞拉玻利瓦尔共和国	有	Carlos Miguel Aristimuño de Gamas	任意拘留，第一和第三类	无
82/2019	科威特	有	Waleed Antoine Moubarak	任意拘留，第一和第三类	Moubarak 先生不再被拘留，他已经逃离该国。(政府提供的信息。)
83/2019	多哥	有	Foly Satchivi	任意拘留，第一、第二、第三和第五类	无
84/2019	以色列	无	Avraham Lederman、 Pinhas Freiman 和 Mordechai Brizel	任意拘留，第一、第二、第三和第五类	无
85/2019	利比亚、塞内加尔和 美利坚合众国	无	Salem Ghereby	任意拘留，第一和第三类	未采取任何行动执行该意见。(来文方提供的信息。)

3. 后续程序

17. 上表显示工作组根据 2016 年 8 月举行的第七十六届会议通过的后续程序，截至 2020 年 6 月 30 日收到的资料。

18. 工作组感谢来文方和各国政府在工作组后续程序中提供的答复，并请所有各方合作并提供这种答复。然而，工作组指出，这些答复不一定意味着委员会意见得到执行。工作组鼓励来文方和各国政府根据所提建议，提供关于工作组意见当事人获释的全面信息，以及其他信息，如支付赔偿和/或补偿、对指称的侵犯人权行为的调查以及立法或做法的任何其他变化。

4. 工作组意见当事人获释情况

19. 工作组赞赏地注意到 2019 年 1 月 1 日至 12 月 31 日期间收到的关于释放下列工作组意见当事人的情况说明：

- Gustave Bagayamukwe Tadj (第 23/2018 号意见，刚果民主共和国)——大赦后获释
- 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 (第 28/2018 号意见，埃及)
- Reem Qutb Bassiouni Qutb Jabbara (第 63/2018 号意见，埃及)——临时释放
- Jeong-Ro Kim (第 69/2018 号意见，大韩民国)——被保释
- 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 Escorcia Cassiani, Helder Escorcia, 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 和 Doiler Yépez Carrillo (第 72/2018 号意见，委内瑞拉玻利瓦尔共和国)

- Sabeur Lajili (第 77/2018 号意见, 突尼斯) — 假释
- Hervé Mombo Kinga (第 5/2019 号意见, 加蓬)
- 甄江华(第 20/2019 号意见, 中国)
- Golrokh Ebrahimi Iraee (第 33/2019 号意见, 伊朗伊斯兰共和国)
- Pedro Jaimes Criollo (第 39/2019 号意见, 委内瑞拉玻利瓦尔共和国) — 假释
- Amaya Eva Coppens Zamora (第 43/2019 号意见, 尼加拉瓜) — 2019 年 6 月通过大赦法获得假释, 但没有清除犯罪记录; 2019 年 11 月, 她因与此无关的指控被捕。
- Ricardo Martinelli (第 47/2019 号意见, 巴拿马)
- Abderrahmane Weddady 和 Cheikh Mohamed Jiddou(第 48/2019 号意见, 毛里塔尼亚) — 假释
- John Wesley Downs (第 58/2019 号意见, 卡塔尔) — 因特赦令而被释放
- Foly Satchivi (第 83/2019 号意见, 多哥) — 因总统赦免令而被释放

20. 工作组对已采取积极行动释放工作组意见所涉被拘留者的政府表示感谢。然而, 工作组也对许多国家未合作执行其意见表示遗憾, 并促请这些国家作为紧急事项执行其意见。工作组回顾, 根据《世界人权宣言》第九条和《公民及政治权利国际公约》第九条(对缔约国而言), 继续拘留这些人是对其自由权的继续侵犯。

5. 各国政府对以前意见作出的反应

21. 在本报告所述期间, 工作组收到了各国政府对其以前意见的一些反应。

22. 2019 年 6 月 5 日, 政府哈萨克斯坦对第 67/2018 号意见作出了答复, 称该意见的结论与事实或国际法规定不符。

23. 2019 年 6 月 17 日, 卢旺达政府对第 24/2019 号意见作出答复, 指出对 Diane Shima Rwigara 和 Adeline Rwigara 的拘留是依法进行的, 并遵循了正当程序。该国政府表示, 该国一直致力于法治, 并认为该案是由卢旺达司法机构审结的, 不会就此进行进一步接触。

24. 2019 年 7 月 9 日, 第 34/2017 号意见的当事人 Kamal Eddine Fekhar 死亡后, 阿尔及利亚政府提供了关于他被拘留期间健康状况的资料。

25. 关于第 1/2019 号、第 2/2019 号和第 74/2019 号意见, 澳大利亚政府表示它一直善意地与工作组进行接触。然而, 该国政府不同意意见中提出的建议。

6. 对通过的意見的复审请求

26. 工作组审议了对以下意見的复审请求：

- 第 93/2017 号意見，涉及 Muhammed al-Saqr (沙特阿拉伯)
- 第 63/2018 号意見，涉及 Reem Qutb Bassiouni Qutb Jabbara (埃及)
- 第 77/2018 号意見，涉及 Sabeur Lajili (突尼斯)
- 第 85/2018 号意見，涉及 Toufik Bouachrine (摩洛哥)
- 第 6/2019 号意見，涉及 Jordi Cuixart I Navarro, Jordi Sánchez I Picanyol 和 Oriol Junqueras I Vies (西班牙)
- 第 12/2019 号意見，涉及 Joaquín Forn I Chiariello, Josep Rull I Andreu, Raul Romeva I Rueda 和 Dolores Bassa I Coll (西班牙)
- 第 38/2019 号意見，涉及 Alexandre Vernot (哥伦比亚)

27. 工作组对复审请求进行审议后，决定维持其意見，因为没有任何一项请求满足其工作方法第 21 段规定的标准。

28. 在关于 Yves Michel Fotso 一案的第 27/2019 号意見(喀麦隆)中，工作组在认为请求可予受理后，对复审请求进行深入分析，认定它不满足工作方法第 21 段的要求。

7. 对工作组意見当事人的报复

29. 工作组严重关切地注意到，它继续收到一些资料(包括在后续行动程序范围内)，这些资料称，紧急呼吁或意見当事人或工作组因其案件而提出建議的个人遭到报复。

30. 2019 年 1 月 1 日至 12 月 21 日，工作组收到关于以下人员遭到报复的指称：

- Ahmed Aliouat (第 58/2018 号意見，摩洛哥)
- Mounir Ben Abdellah (第 78/2019 号意見，摩洛哥)
- Ebrahim Abdelmonem Metwally Hegazy (第 41/2019 号意見，埃及)
- Hajer Mansoor Hassan (第 51/2018 号意見，巴林)和 Medina Ali (第 3/2019 号指控信，巴林)
- Aziz El Ouahidi、Elkantawi Elbeur、Mohammed Dadda 和 Abdelmoula El Hafidi (第 67/2019 号意見)
- Issa al-Nukheifi、Abdulaziz Youssef Mohamed al-Shubaili 和 Issa Hamid al-Hamid (第 71/2019 号意見，沙特阿拉伯)

31. 在第 12/2 和第 24/24 号决议中，人权理事会呼吁各国政府防止并避免针对在人权领域试图与联合国及其代表和机制进行合作或已有过合作，或者向其提供证词和信息的人的一切恐吓或报复行为。工作组鼓励会员国采取一切可能措施，防范报复行为。

8. 紧急呼吁

32. 在 2019 年 1 月 1 日至 12 月 31 日期间，工作组向 31 个国家政府(在一起案件中)和其他行为体发出了 61 项紧急呼吁，向 43 个国家政府(在一起案件中)发出了 80 封指控信和其他信件，涉及至少 377 名确认身份的个人。

33. 紧急呼吁所涉国家清单如下：澳大利亚(1)、布基纳法索(1)、智利(1)、中国(4)、刚果民主共和国(1)、厄瓜多尔(2)、埃及(7)、赤道几内亚(1)、法国(1)、印度(1)、伊朗伊斯兰共和国(8)、伊拉克(1)、爱尔兰(1)、以色列(4)、科威特(1)、黎巴嫩(1)、莫桑比克(1)、缅甸(2)、巴基斯坦(1)、菲律宾(1)、俄罗斯联邦(1)、沙特阿拉伯(4)、新加坡(1)、斯里兰卡(1)、苏丹(2)、泰国(1)、土耳其(3)、阿拉伯联合酋长国(2)、越南(2)、也门(1)和津巴布韦(1)；一项紧急呼吁涉及其他行为体。⁴

34. 根据其工作方法第 22 至第 24 段，工作组在不预判拘留是否是任意性的前提下，提请各有关政府注意所报告的具体案件，并呼吁它们经常与其它特别程序任务负责人一起，采取必要措施，确保被拘留者的生命权、自由权和身心完整性得到尊重。

35. 如果呼吁提及某些人员的危急健康状况或某些特殊情况，例如没有执行法院的释放令，或没有执行工作组要求释放有关人员的以往意见，工作组即请有关政府采取一切必要措施，立即释放被拘留者。根据人权理事会第 5/2 号决议，工作组在工作方法中纳入了《人权理事会特别程序任务负责人行为守则》关于紧急呼吁的规定，并予以适用。

36. 在本报告所述期间，工作组还向其他行为体(1)和以下 43 个国家发出了 80 封指控信和其他信函：阿尔及利亚(3)、澳大利亚(1)、阿塞拜疆(1)、巴林(4)、白俄罗斯(3)、比利时(1)、柬埔寨(2)、喀麦隆(3)、中国(2 封指控信和 1 封其他信函)、科特迪瓦(1)、古巴(1)、埃及(5)、赤道几内亚(1)、法国(1)、加蓬(1)、印度(4 封指控信和 1 封其他信函)、印度尼西亚(1)、伊朗伊斯兰共和国(3)、约旦(1)、哈萨克斯坦(1)、肯尼亚(1)、黎巴嫩(1)、墨西哥(1 封指控信和 1 封其他信函)、摩洛哥(4)、缅甸(4)、尼加拉瓜(2)、尼日利亚(2)、巴基斯坦(1)、秘鲁(2)、俄罗斯联邦(1)、沙特阿拉伯(2)、南苏丹(1)、西班牙(1)、瑞士(1)、土耳其(1)、土库曼斯坦(2)、乌干达(1)、大不列颠及北爱尔兰联合王国(1)、美利坚合众国(1)、委内瑞拉玻利瓦尔共和国(2)、越南(1)、也门(1)和津巴布韦(2)。

37. 工作组谨对响应其呼吁并采取步骤提供有关人员情况的国家政府、尤其是释放了这些人员的政府表示感谢。工作组回顾指出，在第 5/1 号决议的第 4(f)段中，人权理事会请所有国家与联合国人权机制充分合作并参与其中。

E. 国别访问

1. 访问请求

38. 2019 年期间，工作组向摩洛哥(2019 年 5 月 10 日)和突尼斯(2019 年 5 月 9 日)提出了进行国别访问的请求。工作组还向伊朗伊斯兰共和国(2019 年 7 月 19 日)、马尔代夫(2019 年 3 月 5 日)、缅甸(2019 年 10 月 2 日)、大韩民国(2019 年 10 月

⁴ 紧急呼吁的全文可查阅 www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx。

2 日)、土耳其(2019 年 8 月 9 日)和委内瑞拉玻利瓦尔共和国(2019 年 10 月 2 日)发送了以往提出的访问请求的提醒。

39. 在这一年中,工作组会见了澳大利亚、巴林、智利、哥伦比亚、希腊、匈牙利、日本、马尔代夫、墨西哥、摩洛哥、卡塔尔、大韩民国、突尼斯、土耳其和委内瑞拉玻利瓦尔共和国的常驻代表团,讨论进行国别访问的可能性。

2. 各国政府对国别访问请求作出的答复

40. 澳大利亚常驻代表团在 2019 年 3 月 27 日的普通照会中答复说,政府可以接受 2020 年 2 月或 3 月进行国别访问的拟议时间段。澳大利亚常驻代表团在其 2019 年 12 月 2 日的信函中邀请工作组于 2020 年 3 月 10 日至 23 日进行访问。

41. 马尔代夫常驻代表团在 2019 年 10 月 9 日的普通照会中答复说,马尔代夫政府愿邀请工作组在 2020 年或尽早进行国别访问。

42. 缅甸常驻代表团在 2019 年 11 月 8 日的普通照会中答复说,由于其他先前承诺,该国未准备好在所述时段为国别访问提供便利。

43. 突尼斯常驻代表团在 2019 年 9 月 22 日的信函中确认,该国政府愿意邀请工作组在 2020 年上半年进行正式访问。

三. 专题问题

44. 在本报告所述期间,工作组审议了其判例和实践中提出的专题问题。

A. 被剥夺自由的妇女

45. 随着《联合国女性囚犯待遇和女性罪犯非监禁措施规则》(《曼谷规则》)即将迎来十周年,工作组认为这是一个反思妇女在各种环境中被剥夺自由时所面临的独特挑战的良机。《曼谷规则》旨在满足触犯法律的妇女的具体需求,包括通过接纳程序、与性别相关的保健、拘留设施的安全和保障,以及实施非拘禁措施,如转送、审前拘留替代安排和量刑替代安排。⁵

46. 尽管在制定促进被剥夺自由妇女权利的全球标准方面取得了重要进展,⁶但任意剥夺妇女自由仍然是全世界严重关切的问题。在本报告所述期间,工作组审议了在各种情况下被剥夺自由的妇女的状况,包括因无法获得生殖保健而被拘留的情况;社会护理机构对妇女的保护性拘押;通过私人行为者施加限制事实上拘留妇女;以及将妇女拘留在不适合女性被拘留者需要的设施中。

47. 工作组在其意见、信函和国别访问报告中,就防止任意剥夺妇女自由提出了一些重要结论和建议,包括:

⁵ 特别是规则 2-4、10-13、19-21、48-52 和 57-63。

⁶ 另见《联合国囚犯待遇最低限度标准规则》(《曼德拉规则》),规则 11(a)、28、45(2)、48(2)、58(2)和 81;和《联合国少年司法最低限度标准规则》(《北京规则》),规则 26.4。

(a) 将与妇女无法获得可达到的最高健康标准而导致的后果有关的行为定为刑事犯罪或将行使妇女生殖权利的行为定为刑事犯罪的法律、判决或公共政策必须被认为有初步证据表明具有歧视性。各国必须立即使这些法律和政策符合国际标准；⁷

(b) 虽然收容所和庇护所为弱势群体，特别是面临家庭暴力的妇女和儿童提供重要的社会照顾，但各国必须努力确保这些设施中的居住者能够在他们愿意的情况下离开，包括通过定期监测设施和支持他们重新融入社区；⁸

(c) 人身自由权要求各国终止私人行为者事实上剥夺妇女自由的行为，例如防止妇女未经监护人许可离开家庭的监护制度；阻止移民家政工人(通常主要是妇女)离开受雇住所的雇主，⁹或在武装冲突局势下剥夺妇女自由的武装团体；¹⁰

(d) 各国必须确保有拘留女性被拘留者的专门和适当的拘留设施，包括审前拘留设施和被定罪妇女的监狱。应为吸毒妇女的治疗提供专门的戒毒设施；¹¹

(e) 在采取紧急措施或利用权力处理公共卫生紧急情况时，各国必须确保所有此类措施不违反平等原则和不基于性别等理由歧视的原则，并考虑到此类措施对已经处于不利地位的弱势群体(通常包括妇女)的不同影响。¹²

48. 所有这些案件的共同点是，当事人是妇女，工作组认定这是她们被剥夺自由的主要原因。工作组同意歧视妇女和女童问题工作组的观点，即妇女被剥夺自由是全世界严重关切的问题，这种做法严重侵犯了她们的人权。¹³从上述例子中可以清楚地看出，这种剥夺自由的行为不仅发生在刑事司法背景下，妇女还在移民背景下、其他行政拘留场所和医疗保健场所中遭到拘留。

49. 虽然工作组在审议被剥夺自由妇女的状况方面取得了重大进展，但仍有进一步分析的余地。2019年，工作组意见中审议的被拘留者中约有20%是妇女。¹⁴希望利益攸关方继续提请工作组注意被拘留妇女的状况。

⁷ 第 68/2019 号意见，第 114-115 段(审议关于妇女在经历产科紧急情况或流产后受审并被判处长期监禁的情况)。另见第 19/2020 号意见和 www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25680&LangID=E。

⁸ A/HRC/42/39/Add.1，第 81、第 88 和第 94(b)段。另见 A/HRC/39/45/Add.2 第 89(b)段和 A/HRC/27/48 第 78-79 段。

⁹ 见 A/HRC/45/16/Add.2。另见 A/HRC/41/33，第 59 段。

¹⁰ 见 TUR 12/2019，可查阅 <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>。

¹¹ A/HRC/42/39/Add.1，第 47-50、第 76、第 92(c)和第 93(c)段(还指出，在第 76 段中，对所有吸毒者的治疗应包括自愿、有实体证据和以权利为基础的社区保健服务，而不是强制性的戒毒拘留设施)。

¹² 第 11 号审议意见(本报告附件二)，第 26-27 段。

¹³ A/HRC/41/33，第 12 段。

¹⁴ 见关于工作组第八十四届、第八十五届和第八十六届会议通过的意見的上表。

B. 确保获得法律援助的权利以防止任意剥夺自由

50. 获得法律援助的权利是防止任意剥夺自由的重要保障之一。工作组在其判例中注意到许多违反这一基本保障致使对个人的拘留具有任意性的行为，并希望着重指出严格遵守这一保障的重要性。工作组注意到今年是《关于律师作用的基本原则》通过三十周年，呼吁所有国家遵守其中所载的原则。

51. 获得法律援助的权利从被剥夺自由的一刻起就适用于所有拘留情况，包括刑事司法、¹⁵ 移民拘留、¹⁶ 行政拘留、卫生保健环境中的拘留¹⁷ (包括在公共卫生紧急情况下¹⁸)和移民背景下的拘留。¹⁹ 这对维护所有被剥夺自由者质疑拘留合法性的权利至关重要，这项权利是国际法的强制性规范。²⁰ 因此，从被剥夺自由的一刻起，以及在刑事司法背景下，在当局讯问之前，必须确保获得法律援助的权利。²¹ 必须使所有被剥夺自由的人从被拘留的一刻起就知道他们有权获得法律援助，²² 如果他们自己负担不起法律援助服务，应当使他们有机会获得这种援助。²³

52. 获得法律援助的权利对于维护公正审判权也至关重要，因为它保障了《世界人权宣言》第十条和第十一条第一款、《公民及政治权利国际公约》第十四条第三款(丑)项和(卯)项、《非洲人权和民族权宪章》第 7(1)条、《美洲人权公约》第 8(2)条和《保护人权与基本自由公约》(《欧洲人权公约》)第 6(3) (c)条所设想的权利平等原则。因此，所有国家都有责任确保所提供的法律代理促进有效代理，²⁴ 包括与法律顾问沟通的能力。²⁵

53. 在刑事诉讼的所有阶段，即审前、审判、重审和上诉阶段，都应提供法律援助，以确保遵守公平审判保障。²⁶ 例如，审讯期间有法律顾问在场是确保个人自由作出任何供认的重要保障。工作组认为，在没有律师在场的情况下作出的供词在刑事诉讼中不能被采纳为证据。²⁷ 如果被拘留者负担不起，应通过有效的

¹⁵ 《关于律师作用的基本原则》，第 1 和第 5 段。

¹⁶ 经修订的第 5 号审议意见(A/HRC/39/45, 附件); 另见第 2018/73 号意见, 第 63 段。

¹⁷ 第 7 号审议意见(E/CN.4/2005/6, 第二部分), 第 58 段; 另见 A/HRC/39/45/Add.2, 第 58 段。

¹⁸ 第 11 号审议意见, 第 19 段。

¹⁹ 例如, 见第 72/2017 号意见。

²⁰ 《联合国与任何被剥夺自由者向法院提起诉讼的权利有关的补救措施和程序的基本原则和准则》, 原则 8 和 9。

²¹ 同上, 原则 9。另见 A/HRC/39/45/Add.2, 第 28-29 段。

²² A/HRC/42/39/Add.1, 第 54 段和 A/HRC/39/45/Add.2, 第 28-29 段。另见第 64/2019 号意见。

²³ A/HRC/42/39/Add.1, 第 56-57 段。

²⁴ 同上, 第 55 段。另见人权事务委员会, Borisenko 诉匈牙利, 第 852/1999 号来文, 第 7.5 段。

²⁵ 见 A/HRC/45/16/Add.2, 第 59 段。

²⁶ A/HRC/42/39/Add.1, 第 54 段。另见《联合国与任何被剥夺自由者向法院提起诉讼的权利有关的补救措施和程序的基本原则和准则》, 原则 9。

²⁷ 见第 59/2019 号、第 14/2019 号、第 1/2014 号和第 40/2012 号意见。另见 E/CN.4/2003/68, 第 26(e)段。

法律援助制度，包括律师助理服务，免费提供法律援助。²⁸ 保护委托人——律师特权的适当时间和设施应得到确保。²⁹

54. 工作组感到关切的是，有报告称，律师仅因为向其客户提供专业法律服务就对遭到了各种形式的报复性措施。³⁰ 国家负有法律义务和积极义务保护其领土上或其管辖下的每个人免遭任何侵犯人权行为，并在这种侵犯行为发生时提供补救。³¹ 工作组回顾，《联合国与任何被剥夺自由者向法院提起诉讼的权利有关的补救措施和程序的基本原则和准则》原则 9 指出，“法律顾问须能有效和独立地开展职能，不遭受报复、干扰、恐吓、阻挠或骚扰”。³²

55. 工作组注意到律师在防止任意剥夺自由事件中的重要作用，因此强调维护职业独立性和公正性的重要性。具体而言，在每个国家代表法律职业的专业机构，如律师协会和法律协会，不应成为政府部门或其他行政机构的一部分。此外，政府不应干预律师注册程序，也不应干预律师协会和法律协会作为其自身监管的一部分或在独立法院提起的纪律诉讼。³³ 各国还应适当考虑通过大学和其他专业法律教育课程发展法律专业。³⁴

C. 现代技术和替代拘留的措施

56. 工作组回顾《世界人权宣言》第三条、《公民及政治权利国际公约》第九条以及区域人权文书³⁵ 所载的人身自由原则，剥夺自由是该原则的例外情况，因此主张各国采取措施，替代在所有拘留环境，包括刑事司法和行政拘留中剥夺自由的做法。在某些背景下，如移民和审前拘留，采取替代拘留的措施对于确保拘留符合国际标准至关重要，因为移民背景下的拘留仅作为最后手段才被允许。³⁶

57. 在过去几年里，工作组注意到，现代技术的使用，如电子监测设备以及电话和互联网报告，提供了新的机会，可根据法律制度最大限度地减少各国采用传统剥夺自由方式的必要性。³⁷ 原则上，使用数字技术提供替代拘留的措施是一个积极的举措。它减少了在封闭环境中对个人进行人身限制的必要性，这种封闭环境中的人身限制通常会给社会带来很高的成本，并可能导致对有关个人权利的长期侵犯。因此，工作组欢迎使用现代技术，采取措施替代拘留。

²⁸ A/HRC/42/39/Add.1, 第 56-57 段。

²⁹ 见第 53/2019 号、第 83/2018 号和第 76/2018 号意见。

³⁰ 见第 66/2019 号、第 70/2017 号、第 36/2017 号、第 34/2017 号、第 32/2017 号和第 29/2017 号意见。

³¹ 见第 10 号审议意见(本报告附件一)。

³² 另见《关于律师作用的基本原则》，第 16-22 段。

³³ A/HRC/45/16/Add.2, 第 56 段。

³⁴ 《关于律师作用的基本原则》，第 9-11 段。另见 A/HRC/42/39/Add.1, 第 53 段。

³⁵ 《非洲人权和民族权宪章》，第 6 条；《美洲人权公约》，第 7 条；《欧洲人权公约》，第 5 条。

³⁶ 经修订的第 5 号审议意见，第 14 和第 16 段，以及第 72/2017 号意见。

³⁷ 例如，见第 37/2018 号意见，第 24-25 段；第 84/2018 号意见。工作组在对希腊进行国别访问期间，还指出了电子手环的相关性。

58. 然而，现代技术必须在现有的国际人权框架内使用，防止其任意应用的保障措施必须得到尊重。工作组特别注意到其在实践中观察到的现代技术的使用导致事实上的歧视的例子。³⁸ 例如，电子标签等工具可能很昂贵，这导致一些国家将相关费用转嫁给相关个人。³⁹ 这又意味着，贫困者无力支付相关费用，因此必须留在拘留设施中。这种情况不可接受，工作组回顾，个人自由权平等地属于每个人，无论其经济状况或其他状况如何。因此，应用现代技术提供替代拘留的措施必须始终由国家出资，并在平等的基础上向所有人提供。⁴⁰

59. 此外，关于应用和使用这种技术的决定必须受到司法监督，以确保其使用符合既定的法律框架，同时考虑到实现合法目标的必要性和相称性相结合的原则，并确保其使用不是任意的。现代技术的应用和使用不应导致对个人隐私的过度侵犯。

60. 工作组注意到世界各国采取了多种多样的方法，呼吁人权理事会对利用现代技术替代剥夺自由的问题进行彻底研究，以便为所有国家提供必要的指导。

四. 结论

61. 2019 年期间，工作组继续开展工作，处理收到的大量来文，包括通过其常规来文程序提交的资料。为此目的，通过意见被定为一个优先事项，总共通过了 85 项意见，涉及 42 个国家的 171 人。

62. 工作组关切地注意到各国根据工作组常规来文程序及其后续程序作出回应的比率。具体而言，在工作组 2019 年通过意见的案件中，各国对工作组的信函和索取资料要求作出了及时回应的案件约占 56%。2019 年，工作组从来文方或相关政府收到后续资料的案件约占 38%。

63. 虽然工作组继续根据人权理事会第 42/22 号决议第 15 段，对尽可能多的要求工作组采取行动的请求作出回应并及时有效地处理案件，但工作组继续面临案件积压问题。

64. 在报告所述整个期间，工作组继续探讨各种专题问题，以协助利益攸关方防止任意拘留。这项工作包括制定了两份审议意见和一份联合法庭之友书状，阐述本报告中的专题并着手研究与禁毒政策有关的任意拘留问题。

³⁸ A/HRC/36/37/Add.2, 第 30 段; A/HRC/39/45/Add.1, 第 83(c)段。

³⁹ A/HRC/36/37/Add.2, 第 36 和第 53 段。

⁴⁰ A/HRC/39/45/Add.1, 第 37-38 段。另见 A/HRC/36/37/Add.2。

五. 建议

65. 工作组呼吁各国在回应常规信函和其他信函方面继续加强合作，通过后续程序报告工作组意见的执行情况(包括向遭到任意拘留的受害者提供适当的补救和赔偿的情况)，并积极回应国别访问请求。
66. 工作组鼓励各国和其他利益攸关方处理女性被拘留者的状况，包括充分落实《曼谷规则》等全球标准所规定的保障措施，并继续提请工作组注意被剥夺自由妇女的状况。
67. 工作组鼓励各国确保所有被剥夺自由者享有获得有效法律援助的权利，特别是通过保障法律职业的独立性和公正性及其自订规章，以及为律师提供实现持续的专业法律发展的机会。
68. 工作组鼓励各国利用现代技术实现拘留的替代办法，并最大限度地减少采取剥夺自由的必要性。
69. 工作组促请各国向其提供切实持续履行任务所需的一切协助，尤其是使之具备充足、有保证和可预测的人力资源，以便工作组能够继续采取行动，处理案件积压问题。

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

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.

detention 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, *Floresmilto 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

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).

prompt, adequate and effective remedies.³³ In the context of arbitrary detention, this may include:

- (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]

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* (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

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.

health emergency measures 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

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”.

measures as 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.