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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,  
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,  
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the Working Group on Arbitrary Detention**

**Chairperson-Rapporteur: Leïla ZERROUGUI**

## Summary

During 2007, the Working Group visited Norway and the Republics of Angola and Equatorial Guinea at the invitation of the Governments of these countries. The reports on these visits are contained in addenda 2, 3 and 4 to the present document.

During that period, the Working Group adopted 40 Opinions concerning 146 persons in 24 countries. These Opinions are contained in addendum 1 to the present document.

Also during the period 9 November 2006 to 30 November 2007, the Group transmitted a total of 169 urgent appeals concerning 1,344 individuals, including 129 women, 119 boys and 4 girls, to 55 Governments. Governments informed the Working Group that they had taken measures to remedy the situation of the detainees: in some cases, the detainees were released in other cases, the Working Group was assured that the detainees concerned would enjoy fair trial guarantees.

The Working Group has continued to develop its follow-up procedure and has sought to engage in a continuous dialogue with those countries visited by the Group, in respect of which it had recommended changes of domestic legislation governing detention. Information about the implementation of the Working Group's recommendations was received from the Governments of Belarus and Latvia, countries visited by the Working Group in 2004.

The present report includes several issues which have given rise to concern during 2007. In particular, the Working Group identifies several shortcomings it has observed in connection with the detention of illegal immigrants and asylum-seekers. The Working Group recalls the obligation of States to consider alternatives to administrative custody from which foreigners can benefit.

The report also analyses the situation of certain vulnerable groups of detainees and prisoners susceptible to sexual violence by co-inmates and prison staff, including minors, young women, the mentally disabled, indigenous people, vulnerable men and the poor.

The Working Group recommends that States establish an effective complaint procedure to assure that abuses do not go unpunished.

The Working Group reiterates its concerns that states of emergency are a root cause of arbitrary detentions. It recalls that, in addition to those enumerated in article 4, paragraph 2 of the International Covenant on Civil and Political Rights, certain other rights are non-derogable during a state of emergency, such as the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention. The Working Group also reiterates its concern about the recourse to military, special or emergency codes, especially in the context of countering terrorism.

The report also considers the question of registration systems in detention facilities as well as the establishment by law of time limits for pretrial detention.

The Working Group recommends that the Human Rights Council carry out an in depth urgent deliberation on illegal immigrants and asylum-seekers in detention around the world, in view of their specific vulnerability. To that effect, the Working Group recommends the organization of a seminar with the participation of all stakeholders. It also recommends that States use detention of these persons only as a last resort. Concerning vulnerable groups in detention susceptible to sexual abuse, the Working Group recommends that States ensure that juveniles are held separately from adults and women separately from men. Detention facility staff should be appropriately trained to ensure that sexual abuses in detention do not occur. There should be no impunity for perpetrators of sexual abuse and victims of such abuse should enjoy access to an effective complaints procedure.

The report also includes recommendations regarding measures to be adopted in the context of counter-terrorism and in states of emergency, as well as for registration books at detention facilities.

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## **Introduction**

1. Working Group on Arbitrary Detention was established by the former Commission on Human Rights in its resolution 1991/42 and entrusted with the investigation of instances of alleged arbitrary deprivation of liberty, according to the standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned. The mandate of the Working Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum-seekers and immigrants. At its sixth session the Human Rights Council assessed the mandate of the Working Group and adopted resolution 6/4 which confirmed the scope of its mandate and extended it for a further three-year period.
2. During 2007, the Working Group was composed of the following experts: Manuela Carmena Castrillo (Spain); Soledad Villagra de Biedermann (Paraguay); Leïla Zerrougui (Algeria); Tamás Bán (Hungary) and Seyed Mohammad Hashemi (Islamic Republic of Iran).
3. On 30 November 2007, Leïla Zerrougui was confirmed as Chairperson-Rapporteur of the Working Group and Manuela Carmena Castrillo was appointed as the Working Group's Vice-Chairperson.

### **I. ACTIVITIES OF THE WORKING GROUP IN 2007**

4. During the period 1 January to 30 November 2007, the Working Group held its forty-eighth, forty-ninth and fiftieth sessions. It also carried out official missions to Norway (22 April-2 May 2007), Equatorial Guinea (8-13 July 2007) and Angola (17-27 September 2007) (see addenda 2, 3 and 4).

#### **A. Handling of communications addressed to the Working Group during 2007**

##### **1. Communications transmitted to Governments**

5. A description of the cases transmitted and the contents of the replies of Governments will be found in the relevant Opinions adopted by the Working Group (A/HRC/7/4/Add.1).
6. During its forty-eighth, forty-ninth and fiftieth sessions, the Working Group adopted 40 Opinions concerning 146 persons in 24 countries. Some details of the Opinions adopted during that session appear in the table below and the complete texts of Opinions Nos. 1/2007 to 13/2007 and 32/2007 to 47/2007 are reproduced in addendum 1 to the present report.

##### **2. Opinions of the Working Group**

7. Pursuant to its methods of work,<sup>1</sup> the Working Group, in addressing its Opinions to Governments, drew their attention to Commission on Human Rights resolutions 1997/50 and

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<sup>1</sup> E/CN.4/1998/44, annex I.

2003/31 and Human Rights Council resolution 6/4, requesting them to take account of the Working Group's Opinions and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they had taken. On the expiry of the three-week deadline the Opinions were transmitted to the source.

**Table 1**

**Opinions adopted during the forty-eighth, forty-ninth and fiftieth sessions of the Working Group**

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
1/2007	Canada	Yes	Ms. Nathalie Gettlife	Case filed (paragraph 17 (a) of the Working Group's methods of work - person released).
2/2007	Myanmar	Yes	Ms. Aung San Suu Kyi	Detention arbitrary, categories II and III.
3/2007	Egypt	No	Mr. Ahmed Ali Mohamed Moutwala and 45 other persons	Detention arbitrary, categories II and III.
4/2007	Saudi Arabia	No	Messrs. Faiz Abdel Moshen Al Qaid and Khaled B. Mohamed Al Rashed	Detention arbitrary, categories II and III.
5/2007	Qatar	Yes	Mr. Hamed Alaa Eddine Chehadia	Case filed (paragraph 17 (a) of the Working Group's methods of work - person released).
6/2007	Mauritania	No	Mr. Mohamed Sidiya Ould Ajdoud	Detention arbitrary, category I.
7/2007	Australia	Yes	Messrs. Amer Haddara, Shane Kent, Izzydeen Attik, Fadal Sayadi, Abdullah Merhi, Ahmed Raad, Ezzit Raad, Hany Taha, Aimen Joud, Shoue Hammoud, Majed Raad, Bassan Raad, and Abdul Nacer Benbrilsa	Detention not arbitrary.
8/2007	Syrian Arab Republic	Yes	Messrs. Ayman Ardenli and Muhammad Haydar Zammar	Mr. Ayman Ardenli: Since August 2003 until his release: Detention arbitrary, category I. Mr. Muhammad Haydar Zammar: Detention arbitrary, category III.

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
9/2007	Saudi Arabia	No	Messrs. Hussain Khaled Albuluwiy, Abdullah b. Slimane Al Sabih, Sultan b. Slimane Al Sabih, Salah Hamid Amr Al Saidi, Ahmed Abdo Ali Gubran, Manna Mohamed Al Ahmed Al Ghamidi and Jasser b. Mohamed Al Khanfari Al Qahtani	Detention arbitrary, category I.
10/2007	Lebanon	Yes	Mr. Youssef Mahmoud Chaabane	Detention arbitrary, category III.
11/2007	Afghanistan and United States of America	No	Mr. Amine Mohammad Al Bakry	Detention arbitrary, category I.
12/2007	Ecuador	Yes	Mr. Antonio José Garcés Llor	Detention not arbitrary.
13/2007	Viet Nam	Yes	Dr. Pham Hong Son	Between 27 March 2002 and 30 August 2006: Detention arbitrary, categories II and III.
14/2007	United Kingdom	Yes	Mr. Abdesslam Mahdi	Case filed (paragraph 17 (a) of the Working Group's methods of work - person released).
15/2007	Central African Republic	No	Mr. Bertrand Namour	Detention arbitrary, category I.
16/2007	Libyan Arab Jamahiriya	No	Mr. Mohamed Hassan Aboussedra	Detention arbitrary, category I.
17/2007	United States of America	Yes	Mr. Ahmed Mohamed Barodi	Case filed (paragraph 17 (a) of the Working Group's methods of work - person deported to third country).
18/2007	Jordan	Yes	Mr. Issam Mohamed Tahar Al Barqaoui Al Uteibi	Detention arbitrary, category II.
19/2007	Saudi Arabia	Yes	Mr. Zhiya Kassem Khammam Al Hussain	Detention arbitrary, category I.
20/2007	Mexico	Yes	Messrs. Jorge Marcial Zompaxtle Tecpile, Gerardo Zompaxtle Tecpile and Gustavo Robles López	Detention arbitrary, category III.
21/2007	Egypt	Yes	Mr. Yasser Essayed Chaabane Al Dib and 18 other persons	Detention arbitrary, category I and II.
22/2007	Egypt	Yes	Mr. Abdeldjouad Mahmoud Ameer Al Abadi	Detention arbitrary, category I and III.
23/2007	Eritrea	Yes	Mr. Petros Solomon and 10 more persons	Detention arbitrary, category I and II.
24/2007	Egypt	Yes	Mr. Mustapha Hamed Ahmed Chamia	Detention arbitrary, category I and II.

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
25/2007	Australia	Yes	Mr. Konstantinos Georgiou	Detention not arbitrary.
26/2007	Israel	Yes	Mr. Issam Rashed Hasan Asquar	Detention arbitrary, category III.
27/2007	Saudi Arabia	Yes	Mr. Saud Mukhtar Al Hashimi and 8 other persons	Detention arbitrary, category I and II.
28/2007	Algeria	Yes	Mr. Fouad Lakel	Detention not arbitrary.
29/2007	Mexico	Yes	Messrs. Alfredo Santiago Rivera and Nickel Santiago Rivera	Case filed (paragraph 17 (a) of the Working Group's methods of work - person released).
30/2007	Mexico	Yes	Ms. Concepción Moreno Arteaga	Case filed (paragraph 17 (a) of the Working Group's methods of work - person released).
31/2007	Mexico	Yes	Mr. Pablo Juventino Solano Martinez	Case filed (paragraph 17 (a) of the Working Group's methods of work - person released).
32/2007	China	Yes	Messrs. Jin Haike and Zhang Honghai	Detention arbitrary, category II.
33/2007	China	Yes	Mr. Sonam Gyalpo	Detention arbitrary, category II.
34/2007	Rwanda	Yes	Mr. François-Xavier Byuma	Case filed (paragraph 17 (a) of the Working Group's methods of work - person released).
35/2007	United States of America	Yes	Ms. Vatcharee Pronsivakulchai	Detention not arbitrary.
36/2007	China	Yes	Mr. Dolma Kyab	Detention arbitrary, category II.
37/2007	Lebanon	Yes	Messrs. Jamil Al Sayed and Raymond Azar	Detention arbitrary, category III.
38/2007	Bangladesh	Yes	Mr. Md. Abdul Kashem Palash	Case filed (paragraph 17 (a) of the Working Group's methods of work - person released).
39/2007	Mexico	Yes	Mr. Alvaro Rodríguez Damián	Case filed (paragraph 17 (a) of the Working Group's methods of work - person released).
40/2007	Mexico	Yes	Mr. Jayro Vásquez García	Case filed (paragraph 17 (a) of the Working Group's methods of work - person released).



### 3. Government reactions to Opinions

8. In a letter dated 21 May 2007, the Permanent Representative of Viet Nam to the United Nations Office at Geneva reacted to Opinion No. 13/2007 (Viet Nam) concerning the detention of Mr. Pham Hong Son. According to the communication, Pham Hong Son violated Vietnamese laws. He was arrested and brought to trial in due process of law and according to international human rights standards. His trial was open and fair and the sentence of the Court was completely judicious. During his detention, Pham Hong Son was treated on an equal basis to all other inmates, having access to the same nutritional regime and medical care. In no case did he fall sick in prison without receiving adequate treatment. He refused an operation for his inguinal hernia and considered that, in his capacity as a medical doctor, he could cure himself. The President of Viet Nam, implementing humanitarian and tolerant policy of the State, granted him a special amnesty in August 2006.

9. In a letter dated 23 July 2007, the Permanent Representative of the United States of America to the United Nations Office at Geneva, reacted to Opinion No. 33/2006 (Iraq/United States of America), particularly its paragraphs 9 and 15, concerning Mr. Tariq Aziz. The communication points out that the United States is not aware of any complaint made by Mr. Aziz or his lawyers regarding a lack of privacy or denial of access. Mr. Aziz's meetings with his lawyers are completely private. There are no guards or United States personnel present in these meetings. Likewise, Mr. Aziz and his counsel are free to pass documents, with the only restriction that they are screened by a non-interested party to ensure they do not affect security matters at the detention facility. There has never been a time that a request for a private visit with Mr. Aziz has been denied. A qualified defence attorney has visited Mr. Aziz four times over the last two months (i.e. May and June 2007) and another visit was scheduled for the following week.

10. The communication also notes the long-standing position of the United States that the International Covenant on Civil and Political Rights (ICCPR) does not apply to conduct by the United States Government outside the territory of the United States. Mr. Aziz is being held pending trial by the Iraqi High Tribunal, pursuant to arrangements made between Multi-National Force - Iraq and the Iraqi Ministry of Justice. He awaits adjudication of his case.

11. In relation to this observation the Working Group notes that the Human Rights Committee, which monitors implementation of the Covenant, has clarified that "a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party".<sup>2</sup> Similarly, the International Court of Justice (ICJ) in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*<sup>3</sup> recognized that the jurisdiction of States is primarily territorial, but concluded that the ICCPR extends to "acts done by a State in

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<sup>2</sup> Human Rights Committee, general comment No. 31 (2004) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 10.

<sup>3</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, Advisory Opinion of 9 July 2004.

the exercise of its jurisdiction outside its own territory”.<sup>4</sup> Accordingly, the Working Group considers that the ICCPR applies to the conduct of the United States Government in cases in which it exercises jurisdiction outside its territory.

12. By note verbale dated 3 August 2007, the Permanent Mission of Egypt reacted to the adoption of Opinion No. 3/2007 (Egypt) concerning the detention of Mr. Ahmed Ali Mohammed Moutawala and 44 other persons. According to the communication, the 45 persons mentioned in the Opinion were released on various dates. However, 17 of them resumed their radical activities, thereby endangering security and public order, and have been returned to detention, in accordance with the State of Emergency Act No. 162 of 1958, in order to prevent their criminal activities aimed at committing acts of terrorism.

13. By note verbale dated 9 October 2007, the Permanent Mission of the Kingdom of Saudi Arabia reacted to the adoption of Opinion No. 9/2007 (Saudi Arabia) concerning, inter alia, the detention of Mr. Salah Hamid Amr Al Saidi. The Government reported that Mr. Al Saidi was arrested after returning from a visit to Iran for the purpose of participating in activities in Afghanistan after the events of September 2001. He had also contacted members of Al-Qaida and collected funds for terrorist operations. During his detention he was treated in accordance with the standards of justice applicable in the Kingdom which respect human rights. In conformity with those standards, an accused person has the right to avail himself of the services of a lawyer and to receive family visits. It is prohibited to subject an accused person to degrading treatment or physical or mental harm and he is guaranteed a fair trial by the judiciary, which enjoys full independence to deliver its judgements following conviction.

14. The Government of Saudi Arabia reaffirmed its willingness to cooperate with the Working Group by providing the requested information on individual cases while, at the same time, trusting that the Working Group understands the high priority that the Government must currently accord to the campaign against terrorism.

#### **4. Request for review of Opinions**

15. The Permanent Mission of the Syrian Arab Republic to the United Nations Office at Geneva, in a note verbale dated 7 November 2007, reacted to Opinion No. 8/2007 (Syrian Arab Republic) concerning the detention of Messrs. Ayman Ardenli and Muhammad Haydar Zammar. The Government reported that the trials of these two persons were conducted in conformity with Syrian law and the international norms law to which the Syrian Arab Republic subscribes and requested the Working Group to review its Opinion.

16. The Government confirmed that Mr. Ardenli was sentenced to 12 years' imprisonment and released on 2 November 2005 pursuant to an amnesty decree issued by the President of the Republic. Mr. Zammar was sentenced to 12 years' imprisonment and he is serving his sentence. In addition to this confession, compelling evidence was provided establishing that he had

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<sup>4</sup> Ibid., para. 111.

committed the offences with which he had been charged. Both of them are Syrian citizens who joined a terrorist organization, which is an offence under Syrian law. The Syrian courts had competence to hear their cases and both persons were given a fair trial.

17. The Government further confirmed that Mr. Zammar received consular assistance from the German Embassy, as he has German as well as Syrian nationality. He has received regular visits to verify his state of well-being and has access to free health care.

18. Acting in conformity with paragraph 21 of its methods of work,<sup>5</sup> the Working Group decided to maintain its Opinion No. 8/2007 (Syrian Arab Republic) given that the facts on which the request of review was based were not new and had been known by the Government and the Working Group at the moment it rendered its Opinion.

19. In connection with these cases, on 18 May 2007 the Working Group wrote to the Permanent Representative of Germany to the United Nations Office at Geneva requesting information on the circumstances of Mr. Zammar's arrest, detention, interrogation and subsequent transfer to Syria. On 23 May 2007 it also wrote to the Government of the Kingdom of Morocco requesting the same information. No response to these communications has been received.

20. In communications dated 14 February 2007 and 31 October 2007, the Government of Colombia requested the Working Group to review its Opinion No. 30/2006 (Colombia) in which the Working Group had considered the arbitrary detention of Ms. Natalia Tangarife Avendaño and seven other students of the University of Antioquia. The Government reported on 31 October 2007 that the eight students were already at liberty at the moment of the adoption of Opinion No. 30/2006 (Colombia) on 1 September 2006. The Working Group considered that in its reply to the Working Group before the adoption of the Opinion, the Government did not submit that information.

21. Acting in conformity with paragraph 21, paragraph (b) of its methods of work,<sup>6</sup> the Working Group decided to maintain its Opinion, given that the facts had been known to the Government at the moment on which the Opinion was rendered.

### **5. Communications giving rise to urgent appeals**

22. During the period 9 November 2006 to 30 November 2007, the Working Group transmitted 169 urgent appeals to 55 Governments concerning 1,348 individuals (799 men, 129 women, 119 boys, 4 girls and 297 unidentified persons). In conformity with paragraphs 22 to 24 of its methods of work,<sup>7</sup> the Working Group, without prejudging whether the detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported, and appealed to them to take the necessary measures to ensure that the detained

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<sup>5</sup> E/CN.4/1998/44, annex I.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

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

23. During the period under review, 169 urgent appeals were transmitted by the Working Group as follows:

**Table 2**

**Urgent appeals transmitted to Governments by the Working Group**

Government concerned	Number of urgent appeals	Persons concerned	Persons released/Info received from
Algeria	2	2 men	1 (Source)
Azerbaijan	1	2 men	
Bahrain	5	6 men and 3 minors (boys)	3 (Government) 2 (Source)
Bangladesh	6	7 men, 1 woman	1 (Source)
Bulgaria	1	1 man	1 (Source)
Burundi	2	12 men, 1 woman	2 (Source)
Cameroon	1	11 men	11 (Source)
Canada	1	3 men	
Central African Republic	1	1 man	
Chad	2	2 men	
China (People's Republic of)	14	17 men, 10 women, 6 boys	
Colombia	2	5 men	
Democratic Republic of the Congo	4	7 men, 1 woman, 2 unidentified persons	
Egypt	1	17 men, 140 unidentified persons	
Eritrea	3	12 men, 76 unidentified persons	9 (Government)
Ethiopia	2	7 men, 2 women, 70 unidentified persons	
Georgia	1	3 men	
Honduras	1	1 man	

Government concerned	Number of urgent appeals	Persons concerned	Persons released/Info received from
India	3	2 men, 1 boy	
Iran (Islamic Republic of)	20	53 men, 28 women	22 (Source)
Iraq	4	37 men, 2 women, 1 boy	3 (Government) 7 (Source)
Israel	3	3 men	
Jordan	2	2 men	
Kyrgyzstan	1	1 man	
Lebanon	1	1 man	
Liberia	1	1 man	
Libyan Arab Jamahiriya	2	3 men	
Malaysia	1	30 men, 3 women, 2 boys	
Maldives	1	15 men, 1 woman	
Mexico	6	124 men, 37 women, 6 boys, 2 unidentified persons	
Myanmar	9	90 men, 6 women, 4 girls, 4 unidentified persons	1 (Source)
Nepal	3	5 men, 6 boys	
Pakistan	2	32 men, 24 women	55 (source)
Peru	1	8 men	
Philippines	5	3 men, 5 women	
Qatar	1	3 women	
Russian Federation	4	7 men, 1 woman, 2 unidentified persons	7 (Source)
Rwanda	1	1 man	1 (Source)
Saudi Arabia	5	10 men, 1 woman, 2 boys, 3 unidentified persons	
Somalia	1	2 men	
Sri Lanka	2	4 men	
Sudan	4	16 men	15 (Source)
Switzerland	1	1 man	
Syrian Arab Republic	4	14 men	4 (Government)

Government concerned	Number of urgent appeals	Persons concerned	Persons released/Info received from
Thailand	2	60 men, 90 boys	1 (Source)
Tonga	1	Undetermined	
Tunisia	3	11 men, 1 woman	
Ukraine	1	1 man	
United Arab Emirates	1	1 man	
United Kingdom of Great Britain and Northern Ireland	2	2 men	
United States of America	2	2 men	
Uzbekistan	6	5 men, 1 boy	
Viet Nam	4	14 men, 1 woman, 1 boy	
Yemen	5	10 men	
Zimbabwe	4	116 men, 1 woman	

24. Governments reported that 19 persons had been released. Sources reported the release of 127 persons. The Working Group wishes to thank those Governments that heeded its appeals and took steps to provide it with information on the situation of the persons concerned, especially the Governments that released those persons. In other cases, the Working Group was assured that the detainees concerned would receive fair trial guarantees.

## **B. Country missions**

### **1. Request for visits**

25. The Working Group has been invited to visit Italy, Malta, Mauritania, Senegal and the United States of America, although no concrete dates have yet been established. The Government of Malta has suggested that the visit take place during the months of March or April 2008. During its forty-eighth session, the Chairperson of the Working Group held meetings with representatives of the Government of Japan in order to examine the possibility of visiting that country during 2008.

26. During its fiftieth session, the Working Group also held meetings with representatives of the Governments of Mauritania and the United States to discuss possible dates for visits in the first semester of 2008. The Working Group has also asked to visit Colombia and Sierra Leone, two countries which, in spite of having extended an open formal invitation to all the thematic mechanisms of the Human Rights Council, have not yet replied to the Working Group's requests. It has also made requests to visit Afghanistan, Ethiopia, Guinea Bissau, India, the Libyan Arab Jamahiriya and Turkmenistan. The Working Group decided during its fiftieth session to request an invitation for a visit to Egypt, Malaysia, the Russian Federation, Saudi Arabia, Thailand, Ukraine and Uzbekistan.

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

27. In accordance with its methods of work, the Working Group decided in 1998 to address a follow-up letter to the Governments of the countries it visited, together with a copy of the relevant recommendations adopted by the Group contained in the reports on its country visits.<sup>8</sup>

28. In 2007, communications were addressed to the Governments of Canada and South Africa requesting information on such initiatives as the authorities might have taken to give effect to the recommendations contained in the Group's reports to the Commission on its visits to these countries in 2005.<sup>9</sup> During 2006, communications were also addressed to the Governments of Belarus and Latvia.

29. In 2007 the Working Group received replies from the Governments of Belarus and Latvia. In a note verbale dated 6 February 2007, the Permanent Mission of Belarus to the United Nations Office at Geneva submitted information on the implementation of the Working Group's recommendations after its visit to the country in August 2004. In a note verbale dated 10 January 2007, the Permanent Mission of Latvia to the United Nations Office at Geneva submitted a report on the implementation of the recommendations of the Working Group pursuant to its visit to Latvia in February 2004. The Working Group wishes to express its appreciation for the comprehensive responses provided by the two Governments. Both Governments went to great trouble to provide detailed comments on each recommendation the Working Group had made in its reports on these country visits, a methodology welcomed by the Working Group.

### **Belarus**

30. In response to the recommendation relating to the conditions of pretrial detention, the Government informed the Working Group that the National Programme for the Enhancement of the Penal Correction System on the Ministry of Internal Affairs (2006-2010) was approved by Decision No. 1564 of the Council of Ministers of 29 December 2005 and is currently being implemented. This programme specifies arrangements for the construction of short-stay prisons within correctional institutions and remand centres (SIZO). This will address the problem of overcrowding in such facilities, as well as improving conditions of detention.

31. The Government also informed the Working Group that the Code on the Judicial System and the Status of Judges was adopted on 29 June 2006 and entered into force on 13 January 2007. This enactment defines the legal framework of the judicial system and the status of judges in Belarus, the functions and jurisdiction of the courts, measures to safeguard judicial independence, and the rights and duties of judges.

32. The Government further reported that the powers of defence counsel in criminal proceedings have been significantly broadened. Defence counsel has the right of access to all

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<sup>8</sup> E/CN.4/1999/63, para. 36.

<sup>9</sup> E/CN.4/2006/7/Add.2 and 3.

evidence in the case, on the same footing as the prosecutor. He or she is provided with all inculpatory evidence as soon as a case is referred to court; this enables him or her to file motions, which the court must consider, and to work out a defence strategy and tactics. In respect of the other recommendations of the Working Group, the Government explained in detail how existing legislation addressed the concerns of the Working Group.

## **Latvia**

33. In its communication the Government of Latvia went into great detail to explain the numerous measures it had adopted to comply with each recommendation contained in the report of the Working Group. These measures are contained in a number of recent legislative developments.

34. In relation to access to counsel, the Government informed the Working Group that in cases where a person cannot afford a lawyer due to lack of financial means, legal costs and expenses shall be paid by the State. In order to bring this provision into life, a specific Law on State-provided Legal Aid was adopted, by which a special governmental agency - the State-provided Legal Aid Administration - was established.

35. The Latvian Government further reported that the maximum terms of detention on remand for different types of crimes are now strictly fixed in article 277 of the Criminal Procedure Law (which entered into force on 1 October 2005) - the shortest maximum term of detention on remand is 3 months (2 months for the pretrial investigation stage and 1 month for adjudication). The longest maximum term provided for especially serious crimes is 24 months (15 months for investigation, 9 months for adjudication).

36. The Working Group was informed that the State Police has carried out extensive work to improve conditions in places of temporary detention. The new Law on Procedure of the Apprehension of Individuals of 21 October 2005 contains provisions regarding conditions of detention, internal regulation and health care in police temporary detention units.

37. In response to the recommendations on the detention of juveniles, the Government of Latvia informed the Working Group that the provisions of the Criminal Procedure Law provide for a wide set of alternative security measures, which may be applied to juveniles. Discussions are currently ongoing on the juvenile justice system, including the necessity to introduce a separate system. A draft policy concept on juvenile imprisonment and detention for 2006-2010 is pending approval in the Cabinet of Ministers.

38. Lastly, the Government reported that the draft law on asylum in the Republic of Latvia is currently pending approval in the Cabinet of Ministers before being submitted to Parliament. A new law on psychiatric assistance is currently being drafted, which will establish a new procedure on involuntary committals to psychiatric hospitals.

39. The Working Group has also received information from non-governmental organizations on the implementation of the Working Group's recommendations after its visits to Australia and Mexico. It has transmitted them to these Governments for their comments. During its forty-ninth and fiftieth sessions, the Working Group received a delegation from Oaxaca, Mexico, which reported the detentions carried out in Oaxaca State during 2006.



## II. INTERNATIONAL TRENDS ON DEPRIVATION OF LIBERTY OF CONCERN TO THE WORKING GROUP

40. During the course of the period reported upon, the Working Group has observed a number of disturbing trends related to the issue of deprivation of liberty. Some of the more general themes have been taken up by the Working Group on earlier occasions. The Working Group feels inclined to raise them again in view of new facets observed. The issues discussed below relate to the detention of non-citizens, to the situation of vulnerable groups in detention susceptible to sexual abuse, to detention in the context of counter-terrorism measures and in states of emergency, as well as to the demarcation of competences amongst the various State authorities involved in the deprivation of liberty and to registration at detention facilities.

### A. Detention of non-citizens

41. In its resolution 1997/50, the Commission on Human Rights requested the Working Group to devote all necessary attention to reports concerning the situation of immigrants and asylum-seekers allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy, and to include observations on this question in its report. Recent country visits as well as communications received and Opinions adopted within the past year or so prompted the Working Group yet again to make the following comments.

42. The phenomenon of immigration has been steadily increasing worldwide. Nowadays immigration concerns not only the wealthier countries located for the most part in the northern hemisphere, to some of which the Working Group has paid a visit and has laid particular emphasis in its reports and Opinions on problems faced by (illegal) immigrants and asylum-seekers.<sup>10</sup> During some of its most recent country visits the Working Group observed that migration has also become an issue for other countries in the southern hemisphere, whose level of preparation to deal with the matter varies. There are enormous differences between immigration regulations in the respective countries. In this report the Working Group addresses issues of concern observed in both developed and developing countries.

43. Some States are entirely lacking a legal regime governing immigration and asylum procedures. Others have enacted immigration laws, but have omitted to provide for a legal framework of detention, which, however, does not always guarantee that these States are not resorting to detention. If there is a legal framework for detention, its design differs. States allow for detention of asylum-seekers and immigrants outside the criminal or national security context in order to establish the identity of illegal immigrants and rejected asylum-seekers or to secure expulsion to their countries of origin. In other States detention is mandatory and is sometimes even used as a means of deterring future refugee or migration flows. In some countries there is legislation which provides for a maximum period of detention, whereas others are lacking such a time limit. Some national laws require that detention be ordered by a judge but most States resort

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<sup>10</sup> See the respective reports on the missions to the United Kingdom (E/CN.4/1999/63/Add.3), Australia (E/CN.4/2003/8/Add.2) and Canada (E/CN.4/2006/7/Add.2). See also Opinions Nos. 45/2006 (addendum 1 to this report), 34/1999 (E/CN.4/2001/14/Add.1), 18/2004 (E/CN.4/2005/6/Add.1).

to administrative detention. The degree of procedural safeguards varies in terms of the possibilities for review of the legality of detention and its frequency. In practice some States misleadingly label immigration detention centres as “transit centres” or “guest houses” and detention as “retention” in the absence of legislation authorizing deprivation of liberty.

44. The Working Group has witnessed numerous problems surrounding the detention of asylum-seekers and illegal immigrants, which are informed by the existence of different legal frameworks, or a lack thereof, or by practices which are in violation of national immigration legislation or applicable international human rights laws.

45. Mandatory detention of illegal immigrants or even of asylum-seekers, who are not criminals, is an issue of growing concern for the Working Group. A straight analysis of the statistics indicates that in some countries the numbers of non-citizens in administrative detention exceeds the number of sentenced prisoners or detainees, who have or are suspected of having committed a crime. Some States even make it a criminal offence punishable with imprisonment to enter a country illegally.

46. While administrative detention of asylum-seekers and illegal immigrants is not prohibited a priori by international human rights law, it can amount to arbitrary detention if it is not necessary in all circumstances of the case. Moreover, detention during the period when attempts are being made to establish the identities and nationalities of asylum-seekers and illegal immigrants or to secure their deportation cannot usually be considered an effective solution. Expulsion proceedings require the cooperation of the country of origin of the person concerned. The lack of interest or the inability of the country of origin to effectively cooperate with the country of entry often prevent the completion of such proceedings or cause long delays. In some countries the immigration rate has significantly increased, others are simply overwhelmed by a phenomenon new to their Governments, even if the influx of aliens is relatively limited in numbers. Consequently, illegal immigrants and asylum-seekers, including children and trafficked persons, may face a detention term of several months or years or even a (potentially) indefinite one in countries where it is mandatory to keep them in custody, or which otherwise resort to unlimited or indefinite detention provided for by domestic laws. During its country missions the Working Group met with many non-citizens who had been detained for months, some for years.

47. Instances of excessive administrative custody of illegal immigrants may occur even in countries with strong safeguards against arbitrary detention, particularly if the expulsion of an illegal immigrant cannot be carried out for legal, logistical or other reasons; for example, if deportation would violate the principle of non-refoulement, or if means of transportation to the country of origin are simply not available.

48. In its Opinion 45/2006<sup>11</sup> the Working Group declared arbitrary, inter alia on the grounds of its excessive length, the detention of a Somali citizen liable for removal which could not be

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<sup>11</sup> Addendum 1 to this report.

carried out because of security concerns regarding his country of origin. The person concerned had been detained for four and a half years under immigration powers after having served a criminal sentence.

49. In addition to the length of their stay in immigration or other facilities and the uncertainty about its actual duration, non-citizens are at times facing harsh conditions in detention. The Working Group has been able to observe during missions over the past few years the deplorable situation in the detention facilities in former conflict countries, countries otherwise in transition, or countries experiencing a large influx of foreigners either from a neighbour in crisis or because they are perceived to be a destination to realize the dream of a better life. Illegal immigrants, irrespective of their age, are detained for months, and held together with other detainees who are kept in custody pursuant to criminal law. They are often kept in custody without sufficient water, food, and bedding or any possibility of leaving the cells to go to the yard, to communicate with their relatives, lawyers, interpreters or consulates, or to challenge the legality of the deprivation of their liberty or deportation orders. At times they are even left in the dark as to the reasons for their custody.

50. Budgetary constraints and lack of appropriate facilities often prevent authorities from ensuring that all illegal immigrants are detained with dignity and in a humane fashion in accordance with article 1 of the Universal Declaration of Human Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>12</sup> The magnitude of the international migratory phenomenon the Working Group has been able to observe during its recent visits to certain countries allows it to affirm that it is impossible to assume that all countries, which currently face a significant influx of aliens, are able to provide suitable facilities for all illegal immigrants. According to the observations of the Working Group, there are others, however, which would be able, but are unwilling to provide the necessary services, and subject asylum-seekers and illegal immigrants to harsh detention conditions as a deterrent.

51. The Working Group understands that some countries, especially in the southern hemisphere, might be experiencing a novel situation. Prior to economic development it was their citizens who tried their luck in neighbouring countries to gain more favourable economic conditions for themselves and their families. However, it is necessary to remind all States that illegal immigrants placed in administrative detention are not criminals or suspects. Therefore, detention must be the exception, not the rule. The Working Group considers that taking aliens into custody without a legal basis is totally unjustifiable and amounts to arbitrary detention under category I of the categories applicable to the consideration of cases submitted to the Working Group.

52. Furthermore, the Working Group feels inclined to remind Governments of the principles developed in its Deliberation No. 5,<sup>13</sup> particularly principles 3, 6, 7, 8, and 9:

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<sup>12</sup> Adopted by the General Assembly in resolution 43/173.

<sup>13</sup> E/CN.4/2000/4, annex II. See also the guarantees laid down in the annual report Working Group for 1998 (E/CN.4/1999/63, paras. 69 and 70).

- On the right to be brought promptly before a judicial or other authority after having been taken into custody;
- On the necessity of founding the decision on custody on criteria of legality established by the law by a duly empowered authority;
- On the desirability to set a maximum period of detention by law which must in no case be unlimited or of excessive length;
- On the requirement of notification of the custodial measure in a language understood by the immigrant or asylum-seeker, including the conditions for applying for a remedy to a judicial authority, which shall decide promptly on the lawfulness of the measure and be competent to order the release of the person concerned, if appropriate;
- On the obligation of States to place asylum-seekers or immigrants in premises separate from those persons imprisoned under criminal law.

In all cases detention must not be for a potentially indefinite period of time.

53. The Working Group would further recall the obligation of States to consider alternatives to administrative custody from which the alien can benefit in accordance with Guarantee 13 as developed by the Working Group in its legal opinion on the situation regarding immigrants and asylum-seekers.<sup>14</sup> In the view of the Working Group, criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary detention.

54. The Working Group was able to satisfy itself during country missions that there are alternatives to detention for illegal immigrants, which have been successfully implemented. In countries which allow for illegal immigrants to be taken into custody but refrain from resorting to administrative detention, the law provides for strong procedural safeguards, including the obligation to have a judge decide on the legality of and continuing reasons for detention, and generally only permits detention as a last resort.

#### **B. Groups in detention which are susceptible to sexual abuse**

55. The Working Group is aware that certain vulnerable groups of detainees and prisoners are specifically susceptible to sexual violence by co-inmates and prison staff, including young women, minors, non-citizens, the poor, mentally disabled, indigenous people, and vulnerable men. This list is not exhaustive. The Working Group has made observations relating to this particularly disturbing trend during some of its country missions. It has received credible information that women and minors are subjected to sexual exploitation and abuse by prison staff or by their co-inmates in detention facilities. From its experience, the Working Group can verify that when juveniles are detained together with adults they are almost systematically subject to sexual abuse. As far as women are concerned, it has been regularly reported that

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<sup>14</sup> E/CN.4/1999/63, para. 69.

corrupt prison staff facilitate sexual relations between male and female detainees or that prison staff themselves have sexual relations with female detainees in exchange for favourable treatment. It is a serious issue of concern and a particularly contemptible form of corruption when even release from custody may depend on providing sexual favours to the police, immigration officers or prison authorities. The same goes for the example of a young woman met by the Working Group during one of its visits who was detained pending her expulsion and reported that she had received offers from detention facility personnel to remain in the country in return for sexual services.

56. Such situations fall squarely within the mandate of the Working Group insofar as a structural lack of legal procedures, the absence or non-observance of legal criteria governing deprivation of liberty and a culture of impunity for abuses prevail. In the event that officials in charge of detention facilities offer victims release from custody in return for sexual services, this also falls within the scope of the mandate of the Working Group. Against this background the Working Group would like to bring to the attention of the Council the complete picture of allegations received and observations made.

57. In this context the Working Group reiterates the obligation of States to protect those who are held in their custody from assaults and abuses by fellow detainees. It is imperative to allocate entirely separate premises to women in institutions which receive both men and women, if it is not possible to detain women in separate institutions, and to keep young prisoners separate from adults as, for example, envisaged by paragraph 8 of the Standard Minimum Rules for the Treatment of Prisoners. The obligation to protect the right to freedom from violence is even more obvious as far as abuses committed by State authorities are concerned.

58. The Working Group considers that if the penitentiary system is functioning properly, no abuses will be found. If there are cases, an effective complaint procedure will ensure that they do not go unpunished and an efficient correctional service system with professional staff will guarantee prevention of such incidents in the future. Drawing on the foregoing, the Working Group would like to highlight the importance of a well-organized penitentiary system with well-trained staff.

### **C. Detention in the context of counter-terrorism measures and states of emergency**

59. The Working Group requests States to refrain from directly or indirectly supporting, or otherwise tolerating terrorist organizations or individual terrorists in their territory planning or preparing terrorist actions abroad, and welcomes measures taken to combat international terrorism. However, another issue of concern for the Working Group remains the continuing tendency towards deprivation of liberty by States abusing states of emergency or derogation, invoking special powers specific to states of emergency without formal declaration, having recourse to military, special or emergency courts, not observing the principle of proportionality between the severity of the measures taken and the situation concerned, and employing vague definitions of offences allegedly designed to protect State security and combat terrorism.

## 1. Situations illustrating the concerns of the Working Group

60. The Working Group has in several Opinions and Decisions<sup>15</sup> considered the detention of individuals to be arbitrary who were or had been preventively detained for a considerable period of time, ranging up to more than 13 years, without charge or trial by States invoking emergency laws and allegedly in the context of countering terrorism. The individuals concerned remain in detention despite one or even numerous decisions taken by various courts ordering their release. In these cases, the executive simply disregarded the ruling of the courts or issued a new warrant of administrative detention upon which the individuals concerned were immediately taken into custody again.

61. Other cases the Working Group has dealt with in the context of countering terrorism and pursuant to special powers attached to states of emergency, concern, for example, potentially indefinite administrative detention orders alleged to have been carried out for security reasons;<sup>16</sup> or detention for security reasons ordered or legalized by a court of law where, however, the persons subsequently charged with a crime were not in a position to defend themselves effectively since the incriminating evidence was kept secret by invoking the necessity to protect the State;<sup>17</sup> detention of immigrants deemed to pose a terrorist threat;<sup>18</sup> or detention following trials before special courts seriously lacking fair trial guarantees.<sup>19</sup>

62. The Working Group is further concerned about general tendencies in some States to make use of old security laws adopted to combat a specific threat, which have remained in force after the disappearance of that particular situation. Nowadays they are resorted to by Governments to preventively detain without judicial scrutiny, charge or trial, opposition politicians, academics, trade unionists, human rights activists, or even individuals who have committed relatively minor offences, labelling them as extremists, militants, or deviants.

63. Recent events have yet again brought to light the relevance of the Working Group's concerns and recommendations made earlier. States of emergency are still being declared with the constitutional order, including fundamental rights and freedoms, suspended. In the course of the imposition of a state of emergency high ranking judges, lawyers and bar association members, human rights defenders, and opposition politicians are arrested or put under house

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<sup>15</sup> Opinions Nos. 21/2007, 22/2007 and 24/2007 (to be published in the next annual report), Opinions Nos. 3/2007, 6/2007, and 9/2007 (addendum 1 to this report), Opinion No. 5/2005 (E/CN.4/2006/7/Add.1), Decision No. 45/1995 (E/CN.4/1997/4/Add.1), and Decision No. 61/1993. See also Opinion No. 3/2003 (E/CN.4/2004/3/Add.1).

<sup>16</sup> E/CN.4/2006/7/Add.2, paras. 84-85.

<sup>17</sup> Opinion No. 43/2006 (addendum 1 to this report), Opinion No. 26/2007 (to be published in the next annual report).

<sup>18</sup> Opinion No. 37/2007 (to be published in the next annual report).

<sup>19</sup> Opinion No. 8/2007 (addendum 1 to this report).

arrest. Some have been held incommunicado at undisclosed places of detention, where they are at risk of ill-treatment. The Working Group was further informed of cases in which military laws had been amended by executive decree during a state of emergency in order to give power to military courts to try civilians for a wide range of offences and in some cases with retroactive effect.

## 2. Concerns

64. The Working Group reiterates its concerns and recalls that it has continuously considered that states of emergency are a root cause of arbitrary detentions and cautioned against their promulgation. Given the frequency of arbitrary detentions occurring in such situations, it would like to remind Governments that they may only be imposed in strict compliance with the principle of proportionality. Each measure taken thereunder, including the suspension of and restrictions on derogable fundamental rights and freedoms, must also pursue a legitimate goal, be necessary and appropriate to the goal to be achieved.<sup>20</sup> Whatever the threat, under no circumstances may detention based on emergency legislation last indefinitely. The Working Group attaches particular importance to the existence of effective internal control mechanisms over the legality of detention. It considers the remedy of habeas corpus as one of the most effective means of preventing and combating arbitrary detention. It must not be suspended or rendered impracticable in states of emergency.

65. Broadening military jurisdiction in order to try civilians with retroactive effect during states of emergency inevitably touches upon the right to fair trial guarantees entrenched in article 14 of the International Covenant on Civil and Political Rights (ICCPR) and article 10 of the Universal Declaration of Human Rights. In the light of its experience, the Working Group has always taken a cautious approach regarding military or special jurisdictions in general and extending such jurisdiction to civilians in particular. It has done so since, in almost all cases, military courts involve serious risks of arbitrariness, because of the applicable procedure and the corporative nature of their membership. They all too often give the impression of applying a double standard, depending on whether the person on trial is a civilian or a member of the military.

66. The Working Group understands that article 14 of the ICCPR does not rule out trials before military courts as long as all fair trial standards set out in article 14 are guaranteed. However, it is of the opinion that States must provide objective and serious justification for trying civilians before military courts. Such trials may only be conducted if civilian courts are unable to deal with a specific class of individuals or offences. Trials of civilians before military or special courts must be the exception.<sup>21</sup>

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<sup>20</sup> Human Rights Committee general comment No. 29 (2001) on derogations during a state of emergency, in particular paragraphs 4 and 5.

<sup>21</sup> Human Rights Committee general comment No. 32 (2007) on article 14: Right to equality before courts and tribunals and to a fair trial, paragraph 22.

67. As regards those States which have not ratified the ICCPR, the Working Group concurs with the legal analysis by the Human Rights Committee in its general comment No. 29.<sup>22</sup> There it is rightfully stated that, in addition to those enumerated in article 4, paragraph 2 of the ICCPR, certain other rights are non-derogable even during a state of emergency, such as the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention. In the view of the Working Group these guarantees represent peremptory norms of (customary) international law so that they are also binding on States which are not parties to the Covenant.

68. Likewise, the Inter-American Court of Human Rights<sup>23</sup> concluded that the writ of habeas corpus is among those judicial remedies that are essential for the protection of various rights. The African Commission on Human and Peoples' Rights has held that proceedings to decide on the lawfulness of detention must be brought before a court that is independent of the executive authority that ordered the detention, in particular in emergency situations where administrative detention is practised. The European Court of Human Rights has similarly stressed the requirement that the review of the legality of detention be undertaken by a body which is independent of the executive.

#### **D. Detention registries and powers to release prisoners**

69. During recent country missions to Latin America and Africa the Working Group was able to observe the absence of a functioning registry system in detention facilities. In some facilities different registries were used for different stages of detention. The Working Group was particularly disturbed by the fact that in exceptional cases names of detainees interviewed during visits to detention facilities did not appear in any record. It is obvious that a proper registration book is essential for preventing disappearances, abuse of power for corruption purposes and excessive detention beyond the authorized period of time, which amounts to arbitrary detention without any legal basis.

70. While visiting these Latin American, African and other countries the Working Group could observe that the law does not provide for a time limit for pretrial detention or that the maximum length of detention on remand appeared to have been exceeded for a number of pretrial detainees. Authorities in charge of detention centres took the stance that, even if it meant keeping a person in detention without a legal basis, they could not release anyone without an order from a judge, the Attorney-General, a prosecutor, or authorities other than correctional services personnel competent to formally order the release. In other words, while the law provides for a maximum length of detention, the prison authorities are not empowered to set the person concerned free unless they have received a document from the authority competent to formally

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<sup>22</sup> Human Rights Committee general comment No. 29 (2001) on article 4 (states of emergency), paragraph 16.

<sup>23</sup> Advisory Opinion OC-8/87, Habeas Corpus in Emergency Situations (arts. 27 (2), 25 (1) and 7 (6), American Convention on Human Rights); Advisory Opinion OC-9/87, Judicial Guarantees in States of Emergency (arts. 27 (2), 25 and 8, American Convention on Human Rights).



order the release. Consequently, they may have to keep the person in detention beyond the maximum time limit. In addition, the Working Group received information from prisoners serving their sentence, who had accrued the right to benefits such as conditional release, or had even served their prison term in full, but remained in detention, because they had no means to exercise those rights in practice.

71. In order to avoid excesses in relation to detention, the Working Group calls upon States to establish maximum time limits for pretrial detention in their domestic legislation. The Working Group is pleased to note that a number of countries to which it had paid a visit and made recommendations to that effect, have amended their respective laws to address the concern of the Working Group.

72. In this context the Working Group further urges States to take appropriate measures, if necessary, to ensure that warrants for pretrial detention clearly establish the date of the expiry of the applicable time limit. In order to prevent detention on remand or imprisonment devoid of any legal basis from occurring, domestic legislation should provide that prison authorities have the power and are obliged to release pretrial detainees or prisoners automatically upon expiry of this time limit without a specific release order by a judge, magistrate, prosecutor, or other State authority competent to order detention on remand or imprisonment, in compliance with international human rights standards the respective States have undertaken to observe. An extension of the period of detention on remand should only be possible if domestic laws complying with applicable international human rights laws allow for such prolongation, and the respective orders have been duly served on the prison authorities.

73. The Working Group also considers that it is imperative for safeguarding against the unlawful continuation of pretrial detention devoid of a legal basis or other forms of arbitrary detention and imprisonment, to have a proper written registry system in place in any detention facility, complemented by a computerized database if States so wish. Such registries should be available in any place where individuals are deprived of their liberty by the State. The Working Group would like to remind States of paragraph 7 (1) of the Standard Minimum Rules for the Treatment of Prisoners which provides that “In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received: (a) information concerning his identity; (b) the reasons for his commitment and the authority therefor; (c) the day and hour of his admission and release.”

#### **IV. CONCLUSIONS**

74. The Working Group welcomes the cooperation it has enjoyed from States in the discharge of its mandate, which was renewed for another three-year period on 28 September 2007 by Human Rights Council resolution 6/4. In the great majority of cases in which the Group adopted an Opinion during its three sessions in 2007, the Government concerned had provided submissions regarding the case.

75. The Working Group welcomes the cooperation on the part of Governments that extended invitations to the Group for visits. Thanks to their cooperation, the Working Group was able to visit Norway, Equatorial Guinea and Angola in 2007. The Working Group has also asked to visit

Afghanistan, Ethiopia, Guinea Bissau, India, the Libyan Arab Jamahiriya and Turkmenistan. The Working Group decided during its fiftieth session to request invitations for a visit to Egypt, Malaysia, the Russian Federation, Saudi Arabia, Thailand, Ukraine and Uzbekistan.

76. The Working Group further discusses several issues which have given rise to concern during the period reported upon and addresses recommendations to States. Concerning the detention of non-citizens, the Working Group identifies several shortcomings it has observed in connection with detention of asylum-seekers and illegal immigrants. It calls upon States to make use of detention only as a last resort and to explore alternatives to detention.

77. The Working Group deplores the situation of vulnerable groups in detention susceptible to sexual abuse by co-inmates and correctional services staff. It reminds States of their duty to protect and the necessity of a functioning penitentiary system, with well-trained staff to prevent such abuses and no impunity from prosecution.

78. In view of events throughout 2007, the Working Group reiterates its concerns over deprivation of liberty occurring during states of emergency and over recourse to military, special or emergency courts, especially in the context of countering terrorism, and recalls some of the applicable international human rights norms and standards which must be adhered to at all times.

79. Finally, the Working Group, drawing on its experience, emphasizes the necessity of having a proper registration system in place in every detention facility to safeguard against arbitrary deprivation of liberty. The Working Group stresses that the time limit for pretrial detention should be established by law and that, upon expiry of this time limit or of a term of imprisonment, prison authorities should be competent and obliged to release detainees or prisoners automatically without specific authorization by another State authority.

## V. RECOMMENDATIONS

### Detention of non-citizens

80. **Regarding detention of asylum-seekers and illegal immigrants, the Working Group addresses the following recommendations to States:**

**(a) The Working Group considers that an in-depth and urgent deliberation by the Human Rights Council is required to seek effective alternatives to prevent violations of rights guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights affecting the large numbers of asylum-seekers and illegal immigrants in detention around the world, in view of their specific vulnerability. To that effect a seminar with the participation of all stakeholders involved should be organized under the auspices of the Office of the United Nations High Commissioner for Human Rights;**

**(b) The Working Group requests States to use detention of asylum-seekers and illegal immigrants only as a last resort, and encourages them to explore alternatives to detention, such as supervised release, release on bail, designated residence or regular reporting to authorities.**

### **Vulnerable groups in detention which are susceptible to sexual abuse**

81. As to vulnerable groups in detention which are susceptible to sexual abuse, the Working Group makes the following recommendations:

(a) States in which sexual abuse of detainees by fellow inmates or by State authorities is reported should take measures as a matter of urgency to ensure that juveniles are held separate from adults and women separate from men. Custodians of female prisoners should be women;

(b) States should organize their penitentiary systems in such a way as to guarantee that sexual abuses in detention do not occur. This includes appropriate training of detention facility staff;

(c) Victims of such abuses should enjoy access to an effective complaints procedure before an independent oversight body with decision taking powers;

(d) States should take the necessary steps to make sure that impunity for sexual abuse does not prevail.

### **Detention in the context of counter-terrorism measures and in states of emergency**

82. With regard to detention in the context of counter-terrorism measures and in states of emergency the Working Group recommends that:

(a) States of emergencies must only be imposed, and measures taken thereunder, including deprivation of liberty, must only be carried out, in strict conformity with article 4 of the International Covenant on Civil and Political Rights and in stringent compliance with the principle of proportionality. The right to habeas corpus must not be suspended;

(b) Governments should duly follow release orders rendered by competent judicial authorities and refrain from re-detaining the individual concerned on the same grounds, also during states of emergency;

(c) Countries in legal transition, where civilians may still be tried under military jurisdiction, should provide for an independent and civil judicial authority before which civilians are able to challenge the competence of the military court.

### **Demarcation of competences for release of detainees**

83. Regarding the demarcation of competences between authorities for release of detainees, particularly pretrial detainees, the Working Group addresses the following recommendations to States:

(a) States, which have not done so yet, should establish maximum time limits for pretrial detention in their domestic legislation;

**(b) The Working Group urges States to take appropriate measures, if necessary, to ensure that warrants for detention on remand clearly establish the date of the expiry of the applicable time limit;**

**(c) States should ensure that domestic legislation provides that prison authorities have the power and are obliged to release pretrial detainees or convicted prisoners automatically upon expiry of the prescribed time limit, without a specific release order by a judge, magistrate, prosecutor, or other State authority which is competent to order detention on remand or imprisonment, in compliance with the international human rights, norms and standards the respective States have undertaken to observe.**

#### **Registration at detention facilities**

**84. In addition to the requirements of section 7 (1) of the Standard Minimum Rules for the Treatment of Prisoners relating to registration books at detention facilities, the Working Group is bound to encourage States to further include the following information on the detainee: (i) the signature of the detainee upon entry, transfer or release; (ii) the prescribed maximum duration of detention; (iii) date and time of transfer to another detention facility, if applicable, and the authority therefor; and (iv) if applicable, the date when the prisoner is eligible for early release on probation.**

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