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Arbitrary detention

Report of the Working Group on Arbitrary Detention*

Summary

In 2018, the Working Group on Arbitrary Detention, under its regular procedure, adopted 90 opinions concerning the detention of 246 persons in 47 countries. It also transmitted 75 urgent appeals to 34 Governments concerning 117 identified individuals and 94 letters of allegations and other letters to 52 Governments. States informed the Working Group that they had taken measures to remedy the situations of detainees and, in an increasing number of cases, the detainees were released. The Working Group is grateful to those Governments that responded to its appeals and took steps to provide it with the information requested on the situation of detainees.

The Working Group engaged in continuous dialogue with countries that it visited, in particular in connection with its recommendations. The Working Group undertook a follow-up visit to Hungary. The visit, scheduled to take place from 12 to 16 November 2018, was suspended. The Working Group also conducted a country visit to Bhutan from 14 to 24 January 2019.

In the present report, the Working Group examines the following thematic issues: (a) deprivation of liberty in the context of conscientious objection to military service; (b) use of registers to avoid arbitrary detention; (c) use of the Working Group's opinions in domestic proceedings; and (d) comprehensive reparations to victims of arbitrary detention.

In its recommendations, the Working Group calls for increased cooperation from States, especially in relation to its requests for country visits, in relation to their responses to urgent appeals and communications and for the implementation of its opinions. Furthermore, the Working Group urges Member States to provide adequate and predictable human resources in order to allow it to fulfil its mandate in an effective and sustainable manner.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. It was entrusted with the investigation of cases of alleged arbitrary deprivation of liberty, according to the standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned. The mandate of the Working Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum seekers and immigrants. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. During the period from 1 January to 31 December 2018, the Working Group was composed of Sètondji Roland Jean-Baptiste Adjovi (Benin), José Antonio Guevara Bermúdez (Mexico), Seong-Phil Hong (Republic of Korea), Elina Steinerte (Latvia) and Leigh Toomey (Australia).

3. Mr. Guevara Bermúdez served as Chair-Rapporteur of the Working Group from April 2017 to April 2018, and Ms. Steinerte and Ms. Toomey as Vice-Chairs. At the eighty-first session of the Working Group, held in April 2018, Mr. Hong was elected as Chair-Rapporteur and Ms. Steinerte and Ms. Toomey were re-elected as Vice-Chairs. Mr. Guevara Bermúdez was designated focal point for reprisals and Ms. Steinerte was appointed focal point on linkages between torture and arbitrary deprivation of liberty.

II. Activities of the Working Group

4. During the period from 1 January to 31 December 2018, the Working Group held its eighty-first, eighty-second and eighty-third sessions.

5. The Working Group also undertook a follow-up visit to Hungary. The visit, scheduled to take place from 12 to 16 November 2018, was suspended. From 14 to 24 January 2019, the Working Group conducted a country visit to Bhutan (A/HRC/42/39/Add.1).

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

7. During its eighty-first session, the Working Group held a meeting with the Committee against Torture to consider approaches to the prevention of torture and arbitrary detention. The two bodies agreed to hold coordination meetings regularly.

A. Handling of communications addressed to the Working Group during 2018

1. Communications transmitted to Governments

8. At its eighty-first, eighty-second and eighty-third sessions, the Working Group adopted a total of 90 opinions concerning 246 persons in 47 countries (see the table below).

2. Opinions of the Working Group

9. Pursuant to its methods of work (A/HRC/36/38), in addressing its opinions to Governments, the Working Group drew their attention to Commission on Human Rights resolutions 1997/50 and 2003/31 and Human Rights Council resolutions 6/4, 24/7 and 33/30, in which those bodies requested States to take account of the Working Group's opinions and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they had

taken. On the expiry of a 48-hour deadline following transmission of the opinion to Governments concerned, the opinions were transmitted to the relevant sources.

Opinions adopted at the eighty-first, eighty-second and eighty-third sessions of the Working Group

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
1/2018	Mexico	Yes	Pedro Zaragoza Fuentes and Pedro Zaragoza Delgado	Detention arbitrary categories I, II, III and V	No action taken to implement opinion; information from the source.
2/2018	Tajikistan	No[a]	Haritos Mahmadali Rahmonovich Hayit	Detention arbitrary, categories I, II and III	No action taken to implement opinion, and Mr. Hayit is suffering from serious medical condition and sub-standard detention conditions; information from the source.
3/2018	Thailand	No[b]	Chayapha Chokepornbudsri	Detention arbitrary, categories I, II and III	There has been a revocation of a number of orders of the National Council for Peace and Order on jurisdiction of military courts. As a result, a number of ongoing legal proceedings in military courts have been dismissed; information from the Government.
4/2018	Turkmenistan	No	Gaspar Matalaev	Detention arbitrary categories I, II, III and V	No action taken to implement opinion; information from the source.
5/2018	Congo	No	André Okombi Salissa	Detention arbitrary, categories I, III and V	No action taken to implement opinion; information from the Government and the source.
6/2018	Ecuador	Yes	Alberto Javier Antonio March Game	Detention arbitrary, categories I and III	No action taken to implement opinion; information from the source.

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
7/2018	Burundi	No	Vital Ndikumwenayo, Innocent Manirambona, Alphonse Akimana, Firmin Niyonkuru, Dismas Nduwayezu, Claude Nkeshimana, Télesphore Mbazumutima, Denis Bigirimana, Jean-Pierre Kantungeko, Dismas Birigimana, Thadée Kantungeko, Bernard Bigirimana, Berchmans Manirakiza, Sylvestre Nzambimana, Elias Hakizimana, Jean-Marie Nshimirimana, Astère Nahimana, Audace Nizigiyimana and Bernard Ndayisenga	Detention arbitrary, categories I, III and V	No action taken to implement opinion; information from the source.
8/2018	Japan	No[c]	Mr. N (whose name is known by the Working Group)	Detention arbitrary, categories I and V	Investigation has been conducted and Mr. N. was treated in accordance with national and international law. It is not possible to provide further details on Mr. N due to article 8 of the Act on Protection of Personal Information Held by Administrative Organs, information from the Government. The subject is currently voluntarily hospitalized; information from the source.
9/2018	Cambodia	No	Kem Sokha	Detention arbitrary, categories I, II, III and V	No action taken to implement opinion; information from the Government.
10/2018	Saudi Arabia	No	Waleed Abulkhair	Detention arbitrary, categories I, II, III and V	No action taken to implement opinion; information from the source.

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
11/2018	Pakistan and Turkey	No (Pakistan)[d] Yes (Turkey)	Mesut Kaçmaz, Meral Kaçmaz and two minors (whose names are known by the Working Group)	Detention arbitrary, categories I, III and V	Mr. and Ms. Kaçmaz were convicted and sentenced by two courts. The couple have appealed and were subsequently conditionally released pending their appeal; information from the Government and the source.
12/2018	Azerbaijan	Yes	Rashad Ramazanov	Detention arbitrary, categories I, II and III	Mr. Ramazanov has been released by presidential pardon; information from the Government and the source.
13/2018	Bahrain	No	Nabeel Ahmed Abdulrasool Rajab	Detention arbitrary, categories II and V	No action taken to implement opinion. Mr. Rajab's five-year sentence was upheld by the High Criminal Court of Appeal; information from the Government and the source.
14/2018	Guatemala	Yes	Gustavo Alejos Cámbara	Case filed	N/A
15/2018	Equatorial Guinea	No	Ramón Nsé Esono Ebalé	Detention arbitrary, categories I, II, III and V	
16/2018	Mexico	Yes	George Khoury Layón	Detention arbitrary, categories I and III	No action taken to implement opinion; information from the Government and the source. However, there is an ongoing investigation into alleged violations of the human rights violations of Mr. Khoury Layón.
17/2018	Romania	No[e]	Ronnen Herscovici	In accordance with para. 17 (c), case kept pending without prejudice	N/A

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
18/2018	Poland	No[f]	Mateusz Piskorski	Detention arbitrary, categories II and III	A bill of indictment has been presented; information from the Government. No action taken to implement the opinion; information from the Government and the source.
19/2018	Iran (Islamic Republic of)	No	Arash Sadeghi	Detention arbitrary, categories II, III and V	No action taken to implement opinion; information from the source.
20/2018	Australia	Yes	William Yekrop	Detention arbitrary, categories IV and V	No action take to implement opinion; information from the Government and the source.
21/2018	Australia	Yes	Ghasem Hamedani	Detention arbitrary, categories II, IV and V	No action taken to implement opinion; information from the Government. Mr. Hamedani has been released to a community placement; information from the source.
22/2018	China	Yes	Liu Feiyue and Huang Qi	Detention arbitrary, categories II and III	No action taken to implement opinion; information from the source.
23/2018	Democratic Republic of the Congo	No	Gustave Bagayamukwe Tadji	Detention arbitrary, categories I, III and V	Mr. Tadji has been released (amnesty); information from the source.
24/2018	Colombia and Venezuela (Bolivarian Republic of)	Yes (Colombia) No (Venezuela)	Lorent Gómez Saleh and Gabriel Vallés Sguerzi	Detention arbitrary, category III (Colombia and Venezuela) and categories II and V (Venezuela)	No action taken to implement opinion; information from the Government of Colombia.

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
25/2018	Gabon	Yes	Étienne Dieudonné Ngoubou	Detention arbitrary, categories I and III	The health of Mr. Ngoubou has deteriorated; information from the source. In May 2019, the Government explained that it had released him on bail and that an internal investigation was ongoing.
26/2018	Egypt	Yes	Ola Yusuf al-Qaradawi and Hosam al-Din Khalaf	Detention arbitrary, categories I, III and V	No release or reparations; information from the source.
27/2018	Egypt	Yes	A minor (whose name is known by the Working Group)	Detention arbitrary, categories I and III	The minor has received a presidential pardon and may be released; information from the source. (April 2019).
28/2018	Egypt	Yes	Bakri Mohammed Abdul Latif, Hamdy Awad Mahmoud Abdel Hafez, Abdelkader Harbi Mohieddin Mohamed, Ammar Mohamed Refaat, Magdy Farouk Ahmed Mohamed, Mohsen Rabee Saad El Din, Mohamed Bahloul Mohamed Ghazali, Mohamed Azmy Mohamed Ahmed, Mohammed Yousef Mohamed Hassan, Mostafa Kamel Mohamed Taha, Mounir Bashir Mohammed Bashir, Maysiruh Abd Alaziz Muhammad Ali, Walid Fouad Abdeen Nasser and Yahya Mohammed Abdul Khaliq Sulaiman	Detention arbitrary, categories II, III and V	The final judgment has been issued. Some of the individuals have been released and some have been acquitted.
29/2018	Qatar	No	Abdulrahman bin Omair Rashed al Jabr al Nuaimi	Detention arbitrary, category I and III	The individual was released on bail; information from the Government.

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
30/2018	United Arab Emirates	Yes	Bahaa Adel Salman Mattar and Maher Atieh Othman Abu Shawareb	Detention arbitrary, categories I and III	No implementation of the recommendation; information from the source and the Government.
31/2018	Morocco	Yes	Mohamed Al-Bambary	Detention arbitrary, categories II, III and V	
32/2018	Venezuela (Bolivarian Republic of)	No	Ángel Machado, Luis Aguirre, Alberto Cabrera, Wuilly Delgadillo, Romer Delgado, José Gregorio González, Dehlor De Jesús Lizardo, Nirso López, Pedro Marval, Antonio Medina, Arcilo Nava Suárez, Geovanny Nava Suárez, Kendry Parra, Jesled Rosales, Franklin Tovar, Ender Victa and Kiussnert Zara	Detention arbitrary, categories I, II, III and V	
33/2018	Mauritania	Yes	Mohamed Ould Ghadde	Detention arbitrary, categories I and II	Mr. Ghadde has been released; information from the source.
34/2018	Israel	No	Salah Hammouri	Detention arbitrary, categories I, III and V	Mr. Hammouri has been released subject to several conditions; information from the Government.
35/2018	Viet Nam	Yes	Luu Van Vinh	Detention arbitrary, categories I, II, III and V	No action taken to implement opinion. The authorities have extended the investigation period until 13 July 2018; information from the source.
36/2018	Viet Nam	Yes	Ngô Hào	Detention arbitrary, categories I, II, III and V	No action taken to implement opinion; information from the source.

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
37/2018	Malaysia	No[g]	A minor (whose name is known by the Working Group)	Detention arbitrary, categories I and III	Actions taken by the authorities were conducted pursuant to domestic laws and policies in light of their sovereign responsibility within the territory. Malaysia is taking necessary actions to implement the opinion, such as to review Act 297 and to introduce the Diversion Programme; information from the Government.
38/2018	Iraq	No[h]	Mohammed Hamid Ali Abdullah Al Jabouri, Mohammed Nehme Abbas Mahmoud Al Jabouri, Ahmad Ali Najim Rsan Al Abadi, Omar Ali Najim Rsan Al Abadi, Uday Hafiz Abbas Ali Al Ali, Ali Adel AbdelKarim Ismail Al Hashemi, Mazen Ahmad Sattar Hasan Al Obaidi, Riad Abdullah Razik, Mohammad Shawki Saoud Rahim Al Kubaisi, Buraq Abdel Ilah Jassim Mohamad Al Habsh, Qusay Saeed Abed Abbas Al Mashhadani, Malik Abed Sultan Hamad, Mohammad Firas Bahr Shati, Hammad Zaidan Khalaf Al Fahdawi, Abdul Razak Abdul Rahman Hasan Al Dulaimi, Rafid Walid Rachid Majid Al Obaidi, Hicham Ali Nayef Shatr, Mustafa Mohammad AbdelKarim Salih Al Samurai Al Hasani, Ismail Nasif Jassim Al Mashhadani, Ali	Detention arbitrary, categories I, III and V	Seven of the individuals have been released. The case is pending before the Court of Cassation; information from the source.

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
			Moussa Hussein Al Ameri, Salam Ashour Khalil Ibrahim Al Jumaili, Qusay Obaid Ibrahim Salloum, Loay Obaid Ibrahim Salloum and Saad Alwan Hamadi Yassin Al Mashhadani		
39/2018	Libya	No	Abdu Ahmed Abdel Salam	Detention arbitrary, categories I and III	
40/2018	Republic of Korea	Yes	Jeong-in Shin and Seung-hyeon Baek	Detention arbitrary, categories I, II and V	The Government is undertaking measures to introduce alternative service. It aims to enact relevant laws by 2019 and enforce them by 2020. In December 2018, it announced that it would enact a new law “Act on Assignment and Performance of Alternative Service” and amend the Military Service Act. Mr. Shin was released on 14 August 2018 on parole. While Mr. Baek is not eligible for release on parole as his appeal is currently pending before the appellate court, he was released on 30 May 2018 on bail; information from the Government.
41/2018	Venezuela (Bolivarian Republic of)	No	Juan Pedro Lares Rangel	Detention arbitrary, categories I, III and V	Mr. Lares Rangel was liberated prior to the adoption of the opinion; information from the source.
42/2018	Turkey	Yes	Mestan Yayman	Detention arbitrary, categories I, II, III and V	No action taken to implement opinion; information from the Government.

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
43/2018	Turkey	Yes	Ahmet Caliskan	Detention arbitrary, categories I, II, III and V	Mr. Caliskan has been released pending appeal of his sentence; information from the Government.
44/2018	Turkey	Yes	Muharrem Gençtürk	Detention arbitrary, categories I, II, III and V	Mr. Gençtürk has been sentenced and appealed against his sentence. No action taken to implement opinion; information from the Government.
45/2018	Viet Nam	Yes	Hoang Duc Binh	Detention arbitrary, categories I, II, III and V	No action taken. The conditions and health situation of the individual have worsened; information from the source.
46/2018	Viet Nam	Yes	Lê Thu Hà, Nguyen Trung Ton and Nguyen Trung Truc	Detention arbitrary, categories I, II, III and V	
47/2018	Egypt	No	Hisham Ahmed Awad Jaafar	Detention arbitrary, categories I, II, III and V	
48/2018	Cuba	Yes	Omar Rosabal Sotomayor	Detention arbitrary, category III	No action taken to implement opinion; information from the source.
49/2018	Venezuela (Bolivarian Republic of)	Yes	José Vicente García Ramírez	Detention arbitrary, categories I, II, III and V	
50/2018	Australia	Yes	Edris Cheraghi	Detention arbitrary, categories II, IV and V	Mr. Cheraghi was released from immigration detention and transferred to correctional services custody due to outstanding criminal charges; information from the Government.
51/2018	Bahrain	Yes	Sayed Nazar Naama Baqqer Ali Yusuf Alwadaei, Mahmood Marzooq Mansoor and Hajar Mansoor Hassan	Detention arbitrary, categories I, III and V	Yes; information from the source.[i]

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
52/2018	Iran (Islamic Republic of)	Yes	Xiyue Wang	Detention arbitrary, categories I, II, III and V	No action taken to implement opinion; information from the source.
53/2018	Mexico	Yes	Raudel Gómez Olivas	Detention arbitrary, categories I and III	Mr. Gómez was conditionally released; information from the Government. The source claims that there has been no compliance with the opinion as the release was not based on the Working Group's decision.
54/2018	China and Democratic People's Republic of Korea	No (China) Yes (Democratic People's Republic of Korea)	Kyeong-Hee Kang, Seung Cheol Kim, Keum Nam Lee and Myung-Ju Lee	Detention arbitrary, categories I, III and V (China) and categories I, II and III (Democratic People's Republic of Korea)	
55/2018	Japan	Yes	Yamashiro Hiroji	Detention arbitrary, categories II and V	The Government reported that the Supreme Court has upheld the judgment, which became binding on 8 May 2019. No action to implement the opinion.
56/2018	Congo	No	Jean-Marie Michel Mokoko	Detention arbitrary, categories I, II and III	
57/2018	Cameroon	No	Jean-Simon Ngwang	Detention arbitrary, categories I and III	No action taken; information from the source.
58/2018	Morocco	Yes	Ahmed Aliouat	Detention arbitrary, categories I, II, III and V	No action taken to implement opinion and conditions have worsened; information from the source.
59/2018	Cuba	Yes	Ariel Ruiz Urquiola	Detention arbitrary, categories I and III	

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
60/2018	Morocco	Yes	Mbarek Daoudi	Detention arbitrary, categories I, II, III and V	Mr. Daoudi was released at the end of his sentence; information from the source.
61/2018	Philippines	No	Leila Norma Eulalia Josefa De Lima	Detention arbitrary, categories I, II, III and V	No action taken to implement opinion; information from the source.
62/2018	China	Yes	Wang Quanzhang, Jiang Tianyong and Li Yuhan	Detention arbitrary, categories I, II and III	No action taken to implement opinion; information from the source.
63/2018	Egypt	No	Reem Outb Bassiouni Outb Jabbara	Detention arbitrary, categories I, II, III and V	Individual was provisionally released; information from the Government.
64/2018	Chile	No[j]	Francisca Linconao Huircapán	Detention arbitrary, categories III and V	
65/2018	Comoros	No	Ahmed Abdallah Mohamed Sambi	Detention arbitrary, categories I and II	No implementation of the opinion; to the contrary, conditions of detention have worsened; information from the source.
66/2018	Cuba	No[k]	Eduardo Cardet Concepción	Detention arbitrary, categories I, II and III	The Government has categorically rejected the opinion.
67/2018	Kazakhstan	Yes	Iskander Yerimbetov	Detention arbitrary, categories I and III	
68/2018	Saudi Arabia	Yes	Mohammed Abdullah Al Otaibi	Detention arbitrary, categories I, II and III	

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
69/2018	Republic of Korea	No[l]	Jeong-ro Kim	Detention arbitrary, categories I, II and V	Mr. Kim was released on bail on 6 July 2018. On 13 December 2018, the verdict was reversed and remanded by the Supreme Court. On 28 June 2018 the Constitutional Court ruled that article 5 of the Military Service Act, which does not stipulate alternative service for conscientious objectors, is incompatible with the Constitution; information from the Government.
70/2018	Japan	Yes	Ms. H (whose name is known by the Working Group)	Detention arbitrary, categories I and V	
71/2018	Chad	No	Mathias Tsarsi, Peter Ambe Akoso, Service Alladoum and Mahamat Seïd Abdelkadre	Detention arbitrary, categories I and III	No action taken to implement the opinion; information from the source.
72/2018	Venezuela (Bolivarian Republic of)	No	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	Detention arbitrary, categories I and IV	No action taken to implement opinion; information from the source.

Opinion No.	States(s)	Government reply	Person(s) concerned	Opinion	Follow-up information received
			Ruiz, Juan David Fernández Viloria, Marlon Ernesto Fuentes Oviedo, Iván Antonio Galán Ramos, Paterson García Julio, Emerson González Barrios, Helen Katherine Hincapié Brochero, Ever José Julio Agresoth, Deivis Julio Agresoth, Héctor José Machado, Víctor Alfonso Márquez Chiquillo, Norbeys Martínez Torres, José Abigaíl, Miranda Zúñiga, Enoc Montemiranda Molinares, Blas Elías Moreno Ochoa, José Stalin Moreno, Isaac Núñez Padilla, Edilberto Ortega Silgado, Nerio Ortiz Aujebet, Sahadys Palomino Vanegas, Jader Pardo, Franklin Víctor Pérez, Luis Alberto Pérez Díaz, Darwin Quiroz, Edelberto Ramos Terán, Jorge Rodríguez Vitola, Carlos Alberto Rodríguez, Luis Fernando Rodríguez, Daniel Rojano Villa, Deison Sandoval Marimon, William Enrique Sarabia Ospino, José Calazán Sarmiento Martelo, Ronald Soto Llerena, Luis Suarez, Pedro Suarez, Yair Tapias Valdez, Wilfredo Teherán, Jesús Alberto Terán Munzón, José Luis Torres, Fernando Valencia, Luis Gabriel Villa and Doiler Yépez Carrillo		
73/2018	Israel	No	A minor (whose name is known by the Working Group)	Detention arbitrary, categories I, II, III and V	
74/2018	Australia	Yes	Ahmad Shalikhan	Detention arbitrary, categories II and IV	Mr. Shalikhan has recently been refused a protection visa; information from source.

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
75/2018	Mexico	Yes	Gerardo Pérez Camacho	Detention arbitrary, categories I, III and V	
76/2018	Russian Federation	No[m]	Shapi Shakhshaev	Detention arbitrary, category III	
77/2018	Tunisia	Yes	Sabeur Lajili	Detention arbitrary, categories I and III	Provisional release; information from the Government.
78/2018	Turkey	Yes	Hamza Yaman	Detention arbitrary, categories I, III and V	No action taken to implement the opinion; information from the source and from the Government. The source has specified that the conditions have worsened.
79/2018	Bahrain	Yes	Husain Ebrahim Ali Husain Marzooq, Husain Abdulla Juma Maki Mohamed, Jalila Sayed Ameen Jawad Mohamed Shubbar, Mohamed Ahmed Ali Hasan Mohsen and Hameed Abdulla Hasan al-Daqqaq	Detention arbitrary, categories I (all), II (Mr. Shubbar and Mr. Mohsen) and III (all)	
80/2018	Eritrea	No	Bitweded Abraha	Detention arbitrary, categories I, II and III	
81/2018	Nigeria	No	Ibraheem El-Zakzaky and Zeenah Ibraheem	Detention arbitrary, categories I, II and III	
82/2018	Egypt	No	Ezzat Ghoneim	Detention arbitrary, categories I, II, III and V	
83/2018	Iran (Islamic Republic of)	No	Atena Daemi	Detention arbitrary, categories I, II, III and V	
84/2018	Turkey	Yes	Andrew Craig Brunson	Detention arbitrary, categories I, III and V	Mr. Brunson has been released; information from the source.
85/2018	Morocco	Yes	Toufik Bouachrine	Detention arbitrary, categories I, II and III	

Opinion No.	*States(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
86/2018	Venezuela (Bolivarian Republic of)	No	Aristides Manuel Moreno Méndez	Detention arbitrary, categories I, III and V	
87/2018	Egypt	No[n]	Salah-Eldeen Abdel-Haleem Soltan, Ibrahim Ahmed Mahmoud Mohamed al-Yamani and Bassem Kamal Mohamed Ouda	Detention arbitrary, categories I, II, III and V	
88/2018	Mexico	Yes	Eduardo Valencia Castellanos	Detention arbitrary, categories I, III and V	No action taken to implement opinion; information from the source.
89/2018	Russian Federation	Yes	Alexey Vladimirovich Pichugin	Detention arbitrary, categories I, III and V	
90/2018	Malaysia	Yes	Mohd Redzuan Bin Saibon	Detention arbitrary, categories I and III	

[a] The Government of Tajikistan submitted a late response.

[b] Although the Government of Thailand submitted initial clarifications containing general arguments within the deadline, this cannot be considered a reply.

[c] The Government of Japan submitted a late response.

[d] The Government of Pakistan submitted a late response.

[e] The Government of Romania submitted a late response.

[f] The Government of Poland submitted a late response.

[g] The Government of Malaysia submitted a late response.

[h] The Government of Iraq submitted a late response.

[i] See section on reprisals.

[j] The Government of Chile submitted a late response.

[k] The Government of Cuba submitted a late response.

[l] The Government of the Republic of Korea submitted a late response.

[m] The Government of the Russian Federation submitted a late response.

[n] The Government of Egypt submitted a late response.

3. Follow-up procedure

10. The table above shows information received by the Working Group as of 30 June 2019 pursuant to the follow-up procedure adopted by the Working Group at its seventy-sixth session, held in August 2016.

11. The Working Group continues to notice an increased response rate in the context of its follow-up procedure, both from sources and from Governments. However, an increased response rate does not necessarily imply increased implementation of the opinions. The Working Group encourages sources and Governments to provide comprehensive information on the release of individuals, the payment of compensation and/or reparations, the investigation of alleged violations of human rights and any other changes in legislation or practice.

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

12. The Working Group notes with appreciation the information received during the period 1 January to 31 December 2018 on the release of the following subjects of its opinions:

- Liu Xia, (opinion No. 16/2011, China)
- Eskinder Nega (opinion No. 62/2012, Ethiopia)
- Damián Gallardo Martínez (opinion No. 23/2014, Mexico)
- Andargachew Tsege (opinion No. 2/2015, Ethiopia)
- Librado Baños (opinion No. 19/2015, Mexico)
- Mohammed Nasheed (opinion No. 33/2015, Maldives)
- Jesús Eduardo Sánchez Silva, Diblallin Islas Rojas, Jaime García Matías, Luis Enrique Matías Hernández, Erik Omar Rodríguez Santiago, Germán Guadalupe Mendoza Cruz, Santiago García Espinoza, Felipe López Morales, José Alberto Andrés López, Javier López Martínez, José Usiel Matías Hernández, Erick González Guillén, Javier Aluz Mancera, José Enrique Ordaz Velasco, Humberto Castellanos López, Eduardo Palma Santiago, Jorge Chonteco Jiménez, Luis Enrique López, José de Jesús Martínez Castellanos, Bailón Rojas Gómez, Eugenio Hernández Gaitán, Celso Castillo Martínez, Eleuterio Hernández Bautista, Roque Coca Gómez and Feliciano García Matías (opinion No. 17/2016, Mexico)
- Mohammed Nazim, conditional release (opinion No. 59/2016, Maldives)
- Nguyen Van Dai (opinion No. 26/2017, Viet Nam)
- Nguyen Ngoc Nhu Quynh (opinion No. 27/2017, Viet Nam)
- Cornelius Fonya, conditional release (opinion No. 40/2017, Cameroon)
- Murat Sabuncu (opinion No. 41/2017, Turkey)
- Hasnat Karim (opinion No. 45/2017, Bangladesh)
- Andualem Aragie Walle (opinion No. 60/2017, Ethiopia)
- Can Thi Theu (opinion No. 79/2017, Viet Nam)
- Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla Touré, Moussa Biram, Khatry Rahel, Mohamed Jaroulah, Abdallahi Matala Saleck and Abdallah Abou Diop, three individuals acquitted and released (opinion No. 90/2017, Mauritania)
- Imran Abdullah (opinion No. 91/2017, Maldives)
- Rashad Ramazanov (opinion No. 12/2018, Azerbaijan)
- Mesut Kaçmaz and Meral Kaçmaz, conditional release (opinion No. 11/2018, Pakistan and Turkey)

- Ramón Nsé Esono Ebalé (opinion No. 15/2018, Equatorial Guinea)
- Ghasem Hamedani, conditional release (opinion No. 21/2018, Australia)
- Lorent Gómez Saleh and Gabriel Vallés Sguerzi (opinion No. 24/2018, Colombia/Venezuela (Bolivarian Republic of))
- Abdulrahman bin Omair Rashed al Jabr al Nuaimi (opinion No. 29/2018, Qatar): conditional release on 24 January 2018
- Mohamed Ould Ghadde (opinion No. 33/2018, Mauritania)
- Salah Hammouri, conditional release (opinion No. 34/2018, Israel)
- Mohammed Hamid Ali Abdullah Al Jabouri, Mohammed Nehme Abbas Mahmoud Al Jabouri, Omar Ali Najim Rsan Al Abadi, Mazen Ahmad Sattar Hasan Al Obaidi, Buraq Abdel Ilah Jassim Mohamad Al Habsh, Abdul Razak Abdul Rahman Hasan Al Dulaimi and Ismail Nasif Jassim Al Mashhadani, conditional release of 7 individuals (opinion No. 38/2018, Iraq)
- Juan Pedro Lares Rangel (opinion No. 41/2018, Venezuela (Bolivarian Republic of))
- Ahmet Caliskan, conditional release (opinion No. 43/2018, Turkey)
- Raudel Gómez Olivas, conditional release (opinion No. 53/2018, Mexico)
- A minor (whose name is known by the Working Group) (opinion No. 73/2018, Israel)
- Andrew Craig Brunson (opinion No. 84/2018, Turkey)

13. The Working Group expresses its gratitude to those Governments that undertook positive actions and released detainees. However, it regrets that various Member States have not cooperated in implementing the opinions and urges them to do so urgently.

5. Reactions from Governments concerning previous opinions

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

15. Opinion No. 4/2015 (Senegal) concerning Karim Wade: in response to the Working Group's follow-up letter dated 21 December 2018, the Government explained that Mr. Wade had been pardoned by presidential decree and did not have to serve his sentence.

16. Opinion No. 1/2016 (Islamic Republic of Iran) concerning Zainab Jalalian: by note verbale of 19 December 2017, the Government reported that Ms. Jalalian was currently serving her life sentence in Khoy prison and that her legal rights were being fully respected.

17. Opinion No. 85/2017 (Rwanda) concerning Frank Rusagaram, Tom Byagamba and François Kabayiza: the Government indicated that it was not aware of the communication and therefore provided a late reply in February 2018 rejecting all of the allegations, and stating that the subjects had been arrested, detained and tried in accordance with Rwandan law.

18. Opinion No. 90/2017 (Mauritania) concerning Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla Touré, Moussa Biram, Khatry Rahel, Mohamed Jaroulah, Abdallahi Matala Saleck and Abdallah Abou Diop: on 15 March 2018, the Government explained that the detention was legal, the procedure had been respected and that some of the individuals had been acquitted.

19. Opinion No. 10/2017 (Saudi Arabia) concerning Salem ibn Abdullah Hussain Abu Abdullah: the Government provided a reply and contested the allegations.

20. Opinion No. 11/2018 (Pakistan and Turkey) concerning Mesut Kaçmaz, Meral Kaçmaz and two minors: in a letter dated 4 May 2018, the Government of Pakistan

regretted that the Working Group had not considered Pakistan's response dated 16 April 2018. It considered the opinion one-sided and lacking balance and objectivity.[1]

21. Opinion No. 66/2018 (Cuba) concerning Eduardo Cardet Concepción: in a letter dated 22 March 2019, the Government rejected the opinion and stated that the proceedings against Mr. Cardet had been conducted in accordance with international human rights standards.

22. Opinion No. 55/2017 (Cuba) concerning Manuel Rodríguez Alonso: in a note verbale dated 18 July 2018, the Government rejected the findings of the opinion.

6. Requests for review of opinions adopted

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

- Opinion No. 38/2013 (Cameroon), concerning Michel Thierry Atangana Abega, adopted on 13 November 2013
- Opinion No. 26/2016 (Morocco), concerning Hamo Hassani, adopted on 23 August 2016
- Opinion No. 27/2016 (Morocco), concerning Abdelkader Belliraj, adopted on 23 August 2016
- Opinion No. 11/2017 (Morocco), concerning Salah Eddine Bassir, adopted on 20 April 2017
- Opinion No. 40/2017 (Cameroon) concerning Yves Michel Fotso, adopted on 28 April 2017
- Opinion No. 28/2018 (Egypt) concerning Bakri Mohammed Abdul Latif, Hamdy Awad Mahmoud Abdel Hafez, Abdelkader Harbi, Mohieddin Mohamed, Ammar Mohamed Refaat, Magdy Farouk Ahmed Mohamed, Mohsen Rabee Saad El Din, Mohamed Bahloul Mohamed Ghazali, Mohamed Azmy Mohamed Ahmed, Mohammed Yousef Mohamed Hassan, Mostafa Kamel Mohamed Taha, Mounir Bashir Mohammed Bashir, Maysiruh Abd Alaziz Muhammad Ali, Walid Fouad Abdeen Nasser and Yahya Mohammed Abdul Khaliq Sulaiman, adopted on 24 April 2018
- Opinion No. 18/2018 (Poland) concerning Mateusz Piskorski, adopted on 20 April 2018

24. After examining the requests for review, the Working Group decided to grant the request for review of opinion No. 40/2017 and to maintain its other opinions on the basis that none of the other requests met the criteria outlined in paragraph 21 of its methods of work.

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

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

26. During the reporting period, the Working Group received allegations of reprisals against Sayed Nazar Naama Baqqer Ali Yusuf Alwadaei, Mahmood Marzooq Mansoor and Hajar Mansoor Hassan (opinion No. 51/2018, Bahrain).

27. In addition, the Working Group remains concerned regarding the recent sentencing, on 21 March 2019, of Judge María Lourdes Afiuni Mora, the subject of opinion No. 20/2010. Prior to this ruling, Judge Afiuni spent 3 1/2 years deprived of her liberty. The Working Group considers that the case against her is a measure of reprisal, and reiterates its

[1] The Government of Pakistan submitted a late response.

call upon the Government of the Bolivarian Republic of Venezuela to quash this sentence and provide her with effective and adequate reparations.

28. In its resolutions 12/2 and 24/24, the Human Rights Council called upon Governments to prevent and refrain from all acts of intimidation or reprisal against those who cooperate with the United Nations, or who have provided testimony or information to them.

8. Urgent appeals

29. During the period from 1 January to 31 December 2018, the Working Group sent 75 urgent appeals to 34 Governments, concerning at least 189 identified individuals, as follows:

Afghanistan (1); Algeria (1); Azerbaijan (1); Bahamas (1); Bahrain (3); Bangladesh (1); Cambodia (1); China (7); Democratic Republic of the Congo (1); Egypt (7); France (1); India (2); Indonesia (1); Iran (Islamic Republic of) (5); Iraq (1); Israel (2); Japan (1); Kosovo[2] (1); Lebanon (1); Libya (2); Nigeria (1); Russian Federation (3); Saudi Arabia (5); South Sudan (1); Sri Lanka (1); Sudan (1); Syrian Arab Republic (2); Thailand (2); Tunisia (1); Turkey (4); United States of America (3); Venezuela (Bolivarian Republic of) (4); Viet Nam (3); Yemen (2); and other actors (1).

30. The full text of the urgent appeals can be consulted in the joint reports on communications.[3]

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

32. When an appeal made reference to the critical state of health of certain persons or to particular circumstances, such as the failure to execute a court order for release or to give effect to a previous opinion, the Working Group requested that all measures necessary for the immediate release of the detained person be taken. In accordance with Human Rights Council resolution 5/2, the Working Group integrated into its methods of work the prescriptions of the Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council relating to urgent appeals and applies them.

33. During the period under review, the Working Group also sent 94 letters of allegation and other letters to Algeria (2), Armenia, Bahrain, Bangladesh, Belarus, Belgium, Cameroon (2), Canada, China (5), Comoros, Denmark, Ecuador, Egypt (4), Equatorial Guinea, Eritrea (2), France (2), Gabon, Gambia, Ghana, Guatemala, Haiti, Honduras, India (3), Indonesia, Iraq, Israel (2), Jordan (2), Kazakhstan, Kenya, Kosovo, Kyrgyzstan, Lebanon, Madagascar, Maldives, Mexico (7), Nicaragua (2), Niger, Pakistan, Russian Federation (4), Saudi Arabia (2), Sri Lanka, Sudan (2), Togo (2), Tunisia, Turkey (5), Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland (2), United Republic of Tanzania (2), United States of America (4), Venezuela (Bolivarian Republic of), Yemen and other actors (5).

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

[2] All references to Kosovo in the present document should be understood to be in compliance with Security Council resolution 1244 (1999).

[3] For communications reports of the special procedures, see www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

B. Country visits

1. Requests for visits

35. During 2018, the Working Group made requests to visit Burkina Faso (19 February 2018), Cambodia (26 April 2018), Canada (11 May 2018), Chile (14 March 2018), Costa Rica (11 June 2018), Ecuador (11 June 2018), El Salvador (20 April 2018), Gambia (17 September 2018), Greece (5 September 2018), Lao People's Democratic Republic (26 April 2018), Lebanon (11 June 2018), Pakistan (11 June 2018), Poland (22 March 2018), Qatar (23 February 2018), Rwanda (13 April 2018), Togo (14 June 2018), United Kingdom (23 February 2018) and Zimbabwe (5 April 2018).

36. Reminders of its earlier requests were also sent to Botswana (5 September 2018), Colombia (30 August 2018), Côte d'Ivoire (14 June 2018), Egypt (19 February 2018), Ethiopia (19 February 2018), Guatemala (9 February 2018), India (22 February 2018), Indonesia (22 February 2018), Japan (2 February 2018), Kenya (19 February 2018), Maldives (22 February 2018), Mexico (9 February 2018 and 18 December 2018), Nepal (11 June 2018), Philippines (22 February 2018), Republic of Korea (24 September 2018), Russian Federation (23 February 2018), Singapore (11 June 2018), South Africa (19 February 2018), Uzbekistan (5 November 2018), Venezuela (Bolivarian Republic of) (14 February 2018), Viet Nam (11 June 2018).

37. During the course of the year, the Working Group met with the Permanent Missions of Australia, Bhutan, Brazil, Canada, Chile, Colombia, Cuba, Ecuador, El Salvador, Greece, Guatemala, Hungary, Japan, Kazakhstan, Mexico, Morocco, Nicaragua, Poland, Qatar, Rwanda, Venezuela (Bolivarian Republic of) and Viet Nam to discuss the possibility of a country visit.

2. Responses of the Governments to requests for country visits

38. In a note verbale of 13 December 2017, the Permanent Mission of Kazakhstan conveyed the Government's readiness to arrange a visit and proposed discussing the dates at a subsequent time.

39. In a note verbale dated 28 February 2018, the Permanent Mission of Indonesia stated that Indonesia had a number of prior commitments to receive special procedure mandate holders in 2018, and that it would further consult the capital on an appropriate time for the visit.

40. In a note verbale dated 21 March 2018, the Government of Chile stated that the request for a visit had been forwarded to the authorities and that it was unlikely that the visit would take place in 2018 in the light of other requests by special procedure mandates.

41. In a note verbale dated 26 March 2018, the Permanent Mission of Mexico stated that, due to the busy international agenda in the area of human rights in 2018, Mexico could not accommodate the visit. The Government reiterated its willingness to strengthen cooperation with the Working Group and to share relevant information.

42. In a note verbale dated 27 March 2018, the Permanent Mission of the Russian Federation responded that, given the tight schedule of confirmed visits by human rights mechanisms, it was difficult to identify an appropriate period for a visit by the Working Group. The authorities also expressed their readiness to return to the discussion at a later stage.

43. In a note verbale dated 12 April 2018, the Permanent Mission of Poland stated that the Government would be pleased to welcome the Working Group, in accordance with its standing invitation. The Government requested a postponement of the visit due to the scheduled visits of two mandate holders in 2018 and in 2019.

44. In a letter dated 30 April 2018, the Government of Australia reaffirmed its readiness to facilitate a visit in early 2019. In a letter of 27 March 2019, the Government of Australia confirmed that the proposed period (February/March 2020) was acceptable.

45. In a letter dated 30 April 2018, the Permanent Mission of the United Kingdom stated that the Government would be pleased for the Working Group to visit. Due to previous requests for visits by other special procedure mandate holders, the United Kingdom would welcome a visit as from the latter part of 2019.

46. In a note verbale dated 21 May 2018, the Permanent Mission of Colombia thanked the Working Group for its interest in conducting a visit and noted that, given the electoral period, the authorities would need to identify a more convenient time.

47. In a note verbale dated 7 June 2018, the Permanent Mission of Guatemala stated that the Government had other commitments in the area of human rights in 2018 and proposed that the Working Group visit at the end of 2019.

48. In a note verbale dated 30 July 2018, the Permanent Mission of Hungary informed that the Government is ready to organize the visit between 12 and 16 November 2018.

49. In a note verbale dated 6 July 2018, the Permanent Mission of Singapore stated that the Government did not currently plan to invite the Working Group and would approach it if the situation should change.

50. In a note verbale dated 22 October 2018, the Permanent Mission of Qatar approved the suggested dates of 3 to 14 November 2019 for the visit.

51. On 22 October 2018, the Permanent Mission of Canada stated that the Government is unable to accommodate a visit within the requested time frame, and indicated that it would propose different dates.

52. In a letter dated 4 December 2018, the Permanent Mission of Greece expressed the Government's agreement to the visit taking place from 2 to 13 December 2019.

3. Follow-up visit to Hungary

53. At the invitation of the Government, the Working Group undertook a follow-up visit to Hungary, which was scheduled to take place from 12 to 16 November 2018. On 14 November, the Working Group decided to suspend its visit following the denial of access by the authorities to two "transit zones" at Röszke and Tompa, on the border of Hungary with Serbia, which house asylum seekers. The authorities explained that the individuals in those facilities are free to leave for Serbia and are therefore not considered to be deprived of their liberty. Subsequently, the Hungarian authorities also noted that since the visit was a follow-up one and the two facilities did not exist at the time of the Working Group's previous visit in 2013, they should not have formed part of the visit.

54. The Working Group pursued its dialogue with the Government of Hungary following its visit to the country. It noted that in accordance with the terms of reference for visits by independent experts appointed by the Human Rights Council, Governments are required to guarantee freedom of inquiry, particularly with regard to "confidential and unsupervised contacts with … persons deprived of their liberty".[4] This includes the right to freely choose which facilities to visit and whether to announce such visits in advance. Without such unimpeded access, the Working Group is unable to ascertain the applicable regime and its implementation on the ground, which in turn prevents it from making a decision as to whether de facto detention is taking place. The Working Group wishes to recall that whether a particular place is a place of deprivation of liberty is to be determined on the basis of examination of the applicable laws and regulations, the regime as implemented on the ground, as well as international human rights norms and standards related to deprivation of liberty. Such an assessment cannot rest solely upon the assessment of the local authorities as to whether the place is one of deprivation of liberty. During its visits to other countries the Working Group has visited facilities and concluded that they did not constitute places of detention.[5]

[4] See www.ohchr.org/Documents/HRBodies/SP/ToRs2016.pdf.

[5] See A/HRC/42/39/Add.1.

55. With regard to the scope of its follow-up visits, the Working Group wishes to clarify that while follow-up visits primarily focus on the implementation of previous recommendations, there is nothing in the terms of reference for visits by independent experts appointed by the Human Rights Council or in the Working Group's methods of work that prevents it from examining other issues which have arisen since the original visit. To hold otherwise would prevent the Working Group from addressing issues that are current and pertinent to the country and would therefore significantly reduce the effectiveness of the visit.

56. The Working Group wishes to highlight its report following its 2013 visit, in which it concluded that "the concerns expressed about the prolonged periods of administrative detention of asylum seekers and immigrants in an irregular situation deserved to be addressed as a matter of priority".[6] The Working Group thus considers that the proposed visit to the two "transit zones" is a follow-up to the recommendations concerning the administrative detention of migrants issued in 2013. The fact that these facilities did not exist in 2013 should not be a reason not to visit them.

57. The Working Group appreciates ongoing engagement with the Government of Hungary and the various opportunities to clarify its mandate and methods of work. The Working Group regrets that despite its repeated efforts, the Government has not invited it to resume the visit.

58. The Working Group recalls Human Rights Council resolution 33/30 in which the Council called upon all States to cooperate with the Working Group fully and specifically encouraged States to extend invitations to the Working Group to visit. The Working Group also recalls that Hungary has maintained a standing invitation to the special procedures since March 2001. The Working Group therefore respectfully urges the Council to encourage the Government of Hungary to continue to engage fully with the Working Group, including by issuing an invitation to conduct a thorough visit in accordance with the terms of reference for visits by independent experts appointed by the Council.

III. Thematic issues

A. Deprivation of liberty in the context of conscientious objection to military service

59. Over the past 27 years, the Working Group has developed a considerable body of legal analysis relating to the freedom of conscience. The Working Group continues to receive communications that raise issues relating to the freedom of conscience, particularly the right to conscientious objection to military service. During the reporting period, the Working Group adopted opinions in which it upheld the right to conscientious objection to military service,[7] drawing upon its jurisprudence and country visit reports as well as the approach taken by the Human Rights Committee and other human rights mechanisms.

60. In its opinion 40/2018,[8] the Working Group set out the key principles that it applies in its consideration of cases involving conscientious objection to military service as follows:

(a) While the International Covenant on Civil and Political Rights does not explicitly refer to a right to conscientious objection, such a right derives from the freedom of thought, conscience and religion protected under article 18, and under article 18 of the Universal Declaration of Human Rights.[9] The obligation of an individual to use lethal force

[6] A/HRC/27/48/Add.4, para. 124.

[7] See opinions No. 69/2018 and No. 40/2018.

[8] See the Government's follow-up information, available at: www.ohchr.org/Documents/Issues/Detention/Opinions/ ROK-Reply_to_letter_WGAD_2019-02-25_10-50-23.pdf.

[9] See opinions No. 43/2017, No. 16/2008, No. 8/2008 and No. 24/2003; A/HRC/16/47/Add.3, para. 68; and A/HRC/10/21/Add.3, para. 66. See also Human Rights Council resolutions 20/2, 24/17 and 36/18

within a military institution may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. [10] While not explicitly raised in opinion No. 40/2018, the Working Group considers that persons performing military service who may not have had conscientious objections may develop such objections as they proceed with the service;[11]

(b) In its earlier jurisprudence, the Working Group considered conscientious objection to military service to be a manifestation of one's conscience, which could be subject to limitations under article 18 (3) of the Covenant that are prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.[12] However, a more progressive approach that ensures more comprehensive protection of human rights, and reflects a growing consensus regarding the harm to society involved in obliging individuals to take up arms and to take part in a military process involving training in the use of force despite their convictions, is now warranted. The Working Group takes the view that detention of a conscientious objector is a violation per se of article 18 (1) of the Covenant.[13] That is, the right to conscientious objection to military service is part of the absolutely protected right to hold a belief under article 18 (1) of the Covenant, which cannot be restricted by States;

(c) The right to conscientious objection entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual's religion or beliefs.[14] States should refrain from imprisoning individuals solely on the basis of their conscientious objection to military service, and should release those that have been so imprisoned.[15] However, a State may compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. Alternative service must not be punitive; it must be a real service to the community and compatible with respect for human rights;[16]

(d) All States should adopt appropriate legislative or other measures to ensure that conscientious objector status is recognized and attributed. Repeated prosecution and incarceration of conscientious objectors should not be used to force individuals to change their beliefs.[17]

61. In applying these principles to the deprivation of liberty of individuals who refuse to enlist in military service as the direct result of their genuinely held religious and conscientious beliefs, the Working Group has found violations of categories I, II and V of its methods of work.[18] While each case depends on its own facts, the Working Group considers that the detention of conscientious objectors is a per se violation of article 18 (1) of the Covenant and such a detention will therefore usually lack a legal basis according to category I. Moreover, given that the detention of conscientious objectors results from the exercise of the right to freedom of thought, conscience and religion under article 18 of the Covenant, it will also often fall within category II. Finally, when the detention of conscientious objectors to military service involves discrimination on the basis of religion or belief, it will amount to a category V violation.

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and Commission on Human Rights resolutions 1989/59, 1991/65, 1993/84, 1995/83, 1998/77, 2000/34, 2002/45 and 2004/35.

[10] Human Rights Committee, general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 11.

[11] Human Rights Council resolution 24/17 and Commission on Human Rights resolutions 1993/84, 1995/83 and 1998/77.

[12] Opinion No. 16/2008, para. 36.

[13] See opinions No. 69/2018, paras. 19–20; No. 40/2018, para. 44; and No. 43/2017, para. 34. See also Human Rights Committee, *Young-kwan Kim et al. v. Republic of Korea* (CCPR/C/112/D/2179/2012).

[14] Human Rights Committee, *Min-Kyu Jeong et al. v. Republic of Korea* (CCPR/C/101/D/1642-1741/2007), paras. 7.2–7.4. See also AL KOR 2/2018 and the State's response.

[15] Human Rights Council resolution 24/17, paras. 10–11.

[16] Human Rights Committee, *Min-Kyu Jeong et al. v. Republic of Korea*, para. 7.3.

[17] E/CN.4/2001/14, paras. 91–94.

[18] See opinions No. 43/2017, No. 40/2018 and No. 69/2018. In addition, category III violations of the right to fair trial may also be found in any individual case.

62. When the Working Group determines that the deprivation of liberty of conscientious objectors to military service is arbitrary, it will require the relevant State to immediately release the individuals involved (if they are not already at liberty, for example, on bail), to accord them an enforceable right to compensation and other reparations and to expunge their criminal records.[19] The Working Group will also request the State to bring its laws, particularly the provisions found to have resulted in the arbitrary deprivation of liberty of conscientious objectors, into conformity with the State's commitments under international human rights law.

63. The Working Group also reminds States to respect, protect and fulfil the right to personal liberty of conscientious objectors to military service by exercising due diligence to prevent their expulsion, return (refoulement) or extradition to another State where there are substantial grounds for believing that they would be in danger of being subjected to arbitrary deprivation of liberty.

64. The Working Group notes the recent developments in the Republic of Korea on this specific issue. In June 2018, the Constitutional Court issued an opinion that the mandatory military service without an alternative for a conscientious objector does not align with the Constitution. The Working Group anticipates that this jurisprudential development will benefit all those in the country who had been subjected to the previous legal regime, while it should serve as an example to other countries.

B. Use of registers to avoid arbitrary detention

65. Depriving an individual of liberty signals an inevitable power shift in the relationship between the detained individual and the authorities depriving that individual of liberty. International human rights has put in place safeguards to ensure that no arbitrary deprivation of liberty takes place. These safeguards include the right to be informed of the reasons for arrest and prompt notification of the charges, the right to be presented before a judicial authority without delay as well as the right to challenge the legality of detention before a judicial authority (article 9 (2), (3) and (4) of the Covenant). International human rights law also requires compliance with a number of other safeguards aimed at preventing the possibility of arbitrary detention. These include the right of the detained person to notify family members of his or her whereabouts, the right to request and receive legal assistance, as well as the right to request and receive medical assistance.[20]

66. In its jurisprudence and during its country visits, the Working Group has highlighted how the failure to observe these safeguards can lead to arbitrary deprivation of liberty.[21] The Working Group views detention registers as crucial tools in preventing arbitrary detention[22] as the obligation to duly maintain these registers minimizes the risk that the authorities would not comply with the safeguards.[23]

67. During its visits to different places of deprivation of liberty, the Working Group observed various registers including registers for incidents, family visits, doctors' visits and transfers.[24] The Working Group commends the use of such other registers, but these cannot be substitutes for the detainee register which records essential information.

68. In the view of the Working Group, the detainee registers should be duly compiled, promptly updated and conform to the minimum requirements as set out in article 17 (3) of the International Convention for the Protection of All Persons from Enforced Disappearance. Detainee registers should be duly maintained at each place of deprivation of liberty irrespective of the type of such facility, in particular at non-traditional places of

[19] CCPR/C/KOR/CO/4, paras. 44–45.

[20] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rules 6–10, 24–25, 30–34 and 58. See also opinions No. 78/2017, No. 2/2018, No. 4/2018, No. 42/2018, No. 43/2018, No. 67/2018 and No. 79/2018.

[21] See opinions No. 67/2018, No. 70/2018 and No. 79/2018; and A/HRC/7/4, paras. 69–73.

[22] A/HRC/42/39/Add.1.

[23] See also A/HRC/7/4, para. 69.

[24] Nelson Mandela Rules, rules 6–10, 24–25, 30–34, 36–41 and 58.

deprivation of liberty such as institutions for persons with psychosocial disabilities, hostels and shelters for asylum migrants and other such facilities.[25] These registers should clearly note, in a unified manner, the requisite personal details of each detained person and record the details of when, why and how the person arrived at the facility and the date of release or transfer to another facility. Such registers must also record the steps taken to ensure that the detention remains legal, including the dates on which the individual was presented before a judicial authority for the periodic review of the legality of continued detention.

69. The registers should be compiled and updated in such detail as to allow any independent inspection or monitoring body, including the Working Group, to ascertain whether the safeguards have been observed. This would always require not only the recording of the date and time when the detainee arrived in the facility but also the date and time of the arrest, to allow verification of whether the time spent in transit from the place of arrest to the facility was excessive.

70. The Working Group calls upon all States to review the use of detention registers in all places of deprivation of liberty with a view to maximizing the use of these registers as tools in the prevention of arbitrary detention.

C. Use of the Working Group's opinions in domestic proceedings

71. Since introducing a new follow-up procedure in the concluding paragraphs of its opinions in August 2016,[26] the Working Group has continued to inform the Human Rights Council of the progress made in addressing specific cases of arbitrary deprivation of liberty, as well as any failure to take action. As part of this follow-up procedure, the Working Group seeks information from sources and Governments on implementation of its recommendations, including whether the victim has been released, whether compensation or other reparations have been made, whether an investigation has been conducted into the violation of the victim's rights, whether changes have been made to harmonize the domestic law and practice of the country with its international human rights obligations and any other action taken to implement the opinion.

72. The Working Group wishes to highlight the importance of national judiciaries in implementing the recommendations made in its opinions, particularly in ordering the release and compensation of detained individuals.[27] During the reporting period, the Working Group was informed that two of its opinions had been raised by defence counsel during legal argument in domestic proceedings. According to the information received, the Working Group's opinions were taken into account by national courts in conditionally releasing two detained individuals in Turkey,[28] and during a public hearing before the Supreme Court of the Republic of Korea on conscientious objection to military service and its status under international human rights law.[29] In the latter case, the Government informed the Working Group that in November 2018, the Supreme Court reversed its jurisprudence, which had previously considered the punishment of conscientious objectors as necessary to public safety, and that this could result in detained objectors being eligible to file a claim for compensation.[30]

73. While the use of Working Group opinions in domestic proceedings has had a positive impact in some cases, there is scope for greater use to be made of the opinions in national courts. As the Working Group has confirmed in its jurisprudence, there is no

[25] A/HRC/36/37, paras. 50–56.

[26] A/HRC/36/37, paras. 10–11.

[27] A/HRC/19/57, para. 82.

[28] Minutes of judicial hearing of the Istanbul 37th Criminal Court, 3 July 2018 (citing opinion No. 11/2018).

[29] Transcript of closing statements made in a public hearing held by the Supreme Court of the Republic of Korea on 30 August 2018 (citing opinion No. 40/2018).

[30] See opinion No. 69/2018, para. 15. See also the Government's follow-up information, available at www.ohchr.org/Documents/Issues/Detention/Opinions/ROK-Reply_to_letter_WGAD_2019-02-25_10-50-23.pdf.

requirement in its methods of work that domestic remedies be exhausted in order for a communication to be considered admissible.[31] As a result, the Working Group's opinions are often available before domestic proceedings are concluded, and therefore have the potential to influence the findings and outcomes involving individuals who have been arbitrarily deprived of their liberty. As the Working Group has previously observed:

> [W]hen national courts are determining the extent of international law obligations that may have a direct or indirect effect on matters before them, the reports and Opinions of the Working Group have provided assistance. This also applies when a national court considers a detention that the Working Group has declared arbitrary in violation of international law. The effectiveness of international human rights protection requires that all national authorities observe international law obligations.[32]

74. The Working Group has on occasion reminded a State that the duty to comply with international human rights rests not only with the Government but with all officials, including judges, prosecutors, police and security officers and prison officers with relevant responsibilities.

75. In addition, the Working Group's opinions have served as a source of information for judges in domestic proceedings in the interpretation and application of national law in accordance with contemporary developments in international human rights law,[33] as a means of raising awareness among the public of their human rights and in providing support to and generating momentum among national actors seeking to change detention laws and practices.

76. The Working Group strongly encourages sources and Governments, as well as any other interested parties, to bring the Working Group's opinions before national courts and to report on the proceedings as part of the follow-up procedure.[34] As demonstrated in the above examples, informing the Working Group of the use of its opinions in domestic proceedings is an opportunity to highlight the important work being undertaken to bring domestic law and practice into conformity with the expectations of the international community.

D. Measures to ensure comprehensive reparations in cases of arbitrary detention

77. The Working Group is undertaking a review of measures to ensure comprehensive reparations in cases of arbitrary detention with a view to developing further analysis of this issue.

IV. Conclusions

78. **During 2018, the Working Group continued its work on addressing the large number of submissions received, including through its regular communications procedure. To that end, the adoption of opinions was set as a priority, resulting in the adoption of a total of 90 opinions.**

79. **The Working Group has continued to work to streamline the process for receiving and responding to requests for its action, always keeping in mind the need to work as effectively and promptly as possible and to keep all parties informed.**

80. **The Working Group has also been continuing to refine its follow-up procedure as well as other aspects of its ability to follow up on the recommendations made in its opinions and country visit reports.**

[31] See opinions No. 11/2000, No. 19/2013, No. 38/2017, No. 41/2017 and No. 11/2018.
[32] A/HRC/19/57, para. 67.
[33] A/HRC/22/44, para. 65.
[34] A/HRC/36/38, para. 20.

81. **Despite the adoption of streamlined processes, the Working Group continues to face an ongoing backlog of cases. The Working Group is therefore gravely concerned that it continues to have insufficient resources to exercise its mandate effectively, particularly in relation to human resources to support the growing demands on the mandate.**

82. **The Working Group notes the slightly lower response rate from States under its regular communications procedure. In particular, States provided a timely response to the Working Group's communications and requests for information in approximately 55 per cent of the cases in which the Working Group adopted an opinion in 2018, as opposed to 60 per cent in 2017.**

83. **The Working Group has also taken note of an increased response rate in the context of its follow-up procedure, both from sources and from Governments, with responses having been received in more than 66 per cent of cases in which follow-up information had been sought from the parties. However, an increased response rate does not necessarily imply increased implementation of the opinions.**

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

V. Recommendations

85. **The Working Group calls on Member States to continue to increase their cooperation, especially by responding positively to requests for country visits, through their responses to urgent appeals and communications and by implementing the Working Group's opinions. The Working Group urges States to continue to engage actively with its follow-up procedure.**

86. **The Working Group encourages States to modify laws and practices on military service, and in particular to comply with international norms that prohibit the detention of persons for their conscientious objection to military service.**

87. **The Working Group encourages sources and practitioners to make use of its opinions in judicial proceedings. The Working Group also encourages judicial bodies to contribute to the implementation of its opinions.**

88. **The Working Group calls upon States to recognize the utility of detainee registers as tools in the prevention of occurrences of arbitrary deprivation of liberty. Such registers should be maintained at every place of deprivation of liberty.**

89. **The Working Group also reiterates its call on the States concerned to take appropriate measures to prevent acts of reprisal against individuals who have been the subject of a communication by the Working Group, to combat impunity and to provide victims with effective remedies.**

90. **The Working Group urges Member States to provide adequate and predictable human resources in order to allow it to fulfil its mandate in an effective and sustainable manner.**