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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF TORTURE AND DETENTION

Opinions adopted by the Working Group on Arbitrary Detention

The present document contains the opinions adopted by the Working Group on Arbitrary Detention at its thirty-eighth, thirty-ninth and fortieth sessions, held in November/December 2003, May 2004 and September 2004, respectively. A table listing all the opinions adopted by the Working Group and statistical data concerning these opinions are included in the report of the Working Group to the Commission on Human Rights at its sixty-first session (E/CN.4/2005/6).

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OPINION No. 19/2003 (THAILAND)

Communication addressed to the Government on 18 June 2003.

Concerning: Abdelkader Tigha.

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention, in accordance with its methods of work and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information transmitted by the Government concerned in respect of the case in question within 90 days of the transmittal of the case by the Working Group.

3. The Working Group also takes note with appreciation of the information received from the source stating that Abdelkadet Tigha is no longer in detention, that he left Thailand on 22 September 2003 and that he is presently in Jordan.

4. Having examined all the available information, and without determining the arbitrary or not arbitrary character of the detention, the Working Group decides to file the case of Abdelkader Tigha, in accordance with paragraph 17 (a) of its revised methods of work.

Adopted on 27 November 2003

OPINION No. 20/2003 (VIET NAM)

Communication addressed to the Government on 28 May 2002.

Concerning: Thadeus Nguyen Van Ly, a Catholic priest

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified by resolution 1997/50 and extended by resolution 2003/31. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having submitted information concerning the case.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. It has transmitted the reply provided by the Government to the source, which provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information received, Thadeus Nguyen Van Ly, a Vietnamese citizen, Catholic priest, professor at the Christian Seminary of Hue and former secretary to the Bishop of Hue, was arrested on 17 May 2001 in central Thua Thien-Hue province by police officers under order of the provincial People's Executive Committee for his alleged "failure to abide by the decisions on his probation issued by authorized State agencies". It was alleged that at the time of his arrest the police used excessive force, beating some parishioners. Police officers were armed with electric whips, rifles and pistols. Father Ly had just published on the Internet a statement

on the situation of human rights and religious freedom in Viet Nam. It was said that this document was widely available internationally but unlikely to be read by the majority of Vietnamese people.

6. Father Ly had been sentenced in December 1983 to 10 years' imprisonment for "opposing the revolution and destroying the people's unity". He had previously spent one year in prison from 1977 to 1978, without charge or trial. He spent nine more years in prison, deportation and forced-labour camps, between May 1983 and July 1992. Released, he was kept under strict police surveillance.

7. Authorities first detained Father Ly in 1977, after he distributed copies of a bishop's letter criticizing arrests of Buddhist monks and alleged religious intolerance in Viet Nam. In November 1994, he published a "ten-point statement on the state of the Catholic Church in the Hue diocese", criticizing alleged State appropriation of Church propriety, the interference of the State in Church teaching and the lack of places in seminaries for men to train for the priesthood. In 1999, he organized the distribution of relief supplies to people who had lost basic necessities in the heavy flooding that affected Viet Nam that year, and established various relief projects after the flooding. According to the source, these activities, financed with aid from abroad, were regarded with suspicion by the authorities.

8. In December 2000, Father Ly became involved in a stand-off with the authorities over the right of villagers to cultivate Church land, which the authorities reportedly wished to confiscate; he then issued several appeals, calling for more religious freedom, for the return of Church properties, for the end of the State interference in religious affairs and for the release of all prisoners detained for their religious beliefs.

9. The official media in Viet Nam have on several occasions waged a public vilification campaign against Father Ly. On 26 March 2001, an article was published in *Quan Doi Nhan Dan*, the army newspaper, accusing him of being "a puppet for the reactionary and hostile forces in foreign countries" and asking why, in spite of the surveillance order imposed on him, he continued to display provocative behaviour and to spread lies about the party and the State, with the intention of inciting and causing rifts among Catholics.

10. On 19 October 2001, Father Ly was sentenced to 15 years in prison and five years in probationary detention by a People's Court in Hue in application of articles 87 and 269 of the Penal Code. He was found guilty of undermining national unity, sabotaging the national solidarity police and refusing to obey his house arrest order. Father Ly was then taken to Thua Phu prison at Hue. In November 2001, he was transferred to Ba Sao Nam Ha camp in Phu Ly district, Ha Nam province in north Viet Nam, a forced-labour camp under the authority of the Ministry of the Interior.

11. It was alleged that Father Ly's last trial took only fours hours and was held in closed session. He was not allowed to be assisted by a defence lawyer nor allowed to call witnesses on his behalf. According to the source, his trial did not conform to international minimum standards for a fair trial.

12. Father Ly has spent much of the last 27 years attempting to peacefully exercise his rights to freedom of expression, belief and worship. He has never used or advocated violence. He has been detained and sentenced solely for his non-violent religious and political views.

13. In its reply, the Government stated that it is totally untrue that Nguyen Van Ly's detention and sentence are a punishment for peacefully exercising his rights and freedoms, that in Viet Nam no one shall be detained or punished for exercising his legal rights and freedoms, and that only those who are charged with having violated the law shall be tried, in strict compliance with the law.

14. According to the Government, Nguyen Van Ly is a recidivist. In 1983 he was convicted by the provincial People's Court of Binh Tri Thien province to 10 years of imprisonment for having violated the law by committing crimes of undermining the people's unity and provoking serious public disorder. On 17 May 2001, Ly was arrested for repeating acts in violation of the law as such. After a thorough investigation process, a public trial of his case was held on 19 October 2001 by the People's Court of Thua Thien - Hue province. The trial was conducted in strict accordance with the law. Two procurators defended Ly: Hoang Minh Duc and Tran Dinh Chau. The court convicted Ly for the crimes of undermining the national unity policy (article 87, 1 of the Penal Code of Viet Nam) and refusing to abide by the relevant administrative decisions of competent State agencies (article 269 of the Penal Code of Viet Nam).

15. Acting in accordance with its methods of work, the Working Group forwarded the information supplied by the Government to the source, so that it could make additional comments, which it has done. The source stated that the Government's response failed to supply facts or additional information to support allegations regarding compliance with Vietnamese laws and procedures, and also failed to provide any documentation and information to support their assertions. The source concluded that the Government detained Nguyen Van Ly in connection with the peaceful expression of his beliefs and has failed to afford him the procedural protections guaranteed by domestic law and international treaties.

16. The Government has declared that Thadeus Nguyen Van Ly has been condemned for endangering national unity and disrupting public order and that the national law has been applied accordingly, without giving any specific details of the nature of the charges against him and without invalidating the argument submitted by the source, that the detention and sentencing of Nguyen Van Ly followed the peaceful exercise of religious, trade union and political activities.

17. The Government has not presented convincing arguments to invalidate the allegations from the source, who argues that Nguyen Van Ly was sentenced to 13 years of detention because he had published articles critical of the Government and of the Communist Party and his trial had not respected international norms.

18. Consequently, the Working Group is led to conclude that Father Nguyen Van Ly was arrested and sentenced to prison for having peacefully exercised his right to freedom of opinion and expression guaranteed in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

19. As the Working Group has indicated in several opinions concerning Viet Nam and in the report following its visit to that country, vague and imprecise charges such as those mentioned in articles 87 and 269 of the Penal Code do not allow a distinction between armed and violent acts that endanger national security and the peaceful exercise of the right to freedom of opinion and expression. For this reason, the Working Group is convinced that Thadeus Nguyen Van Ly has been arrested and detained only for his opinions, in violation of article 19 of the Universal Declaration of Human Rights and of article 19 of the International Covenant on Civil and Political Rights, to which Viet Nam is a party.

20. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Father Thadeus Nguyen Van Ly is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

21. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 27 November 2003

OPINION No. 21/2003 (CHINA)

Communication addressed to the Government on 18 June 2003.

Concerning: Li Ling and Pei Jilin.

The State is not a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group conveys its appreciation to the Government for having submitted information regarding the case in good time.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. The Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

5. The source states that Li Ling, former director of the Guta District Labour Bureau, was arrested on 28 May 2002 at her home by police officials. She was sent to the No. 1 Detention Centre in Jinzhou city. Later, she was sentenced to four years' imprisonment. On 15 November 2002, she was sent to Dabei prison, Liaoning province, where, despite her critical health condition, she was forced to do heavy labour. Her current whereabouts are unknown.

6. It was further reported that Li Ling was previously arrested in late 1999, when she went to Beijing to appeal for Falun Gong. On that occasion the Beijing Dongcheng District Court sentenced her to 1½ years in jail.

7. Pei Jilin, aged 50, resident of Jilin city, Jilin province, employee of the No. 101 Factory of the Jilin Chemical Company, was arrested on the night of 16 June 2002 at his temporary home in Jilin city by police officials and taken to the Wenmiao police station in Jilin city. It was reported that he managed to escape from the police station, but was arrested again and sent to a labour camp.

8. It was further reported that Pei Jilin was previously arrested on three occasions on charges of being a Falun Gong practitioner: In October 1999, he was detained for 15 days in the Paoziyan detention centre, on his way to Beijing to appeal for Falun Gong. In December 1999, he was arrested again. After his release, on 1 October 2000, Pei Jilin went to Beijing again to appeal for Falun Gong and was rearrested. He was sent to the Jilin City Liaison Office in Beijing where he went on a hunger strike to protest his detention. Three days later, he was escorted back to No. 3 Detention Centre of Jilin city. One month later, Pei Jilin was sentenced to three years of forced labour. Later, he was transferred to the Jiutai City Labour Camp in Jiutai city. In September 2001, in critical health, he was released.

9. The Government in its reply reported that on 27 October 1999, Li Ling and others demonstrated illegally in a public place without making a previous application as required by the

law. On 17 January 2000, the District People's Procuratorate brought a case before the Eastern District People's Court, charging Li with breaking the law against illegal demonstrations. The court tried the case, found that Li's conduct amounted to illegal demonstration and sentenced her, under article 296 of the Chinese Penal Code, to 18 months' imprisonment. Li appealed and the Intermediate People's Court upheld the original judgement.

10. After her release upon completion of her sentence, Li again disrupted public order, making use of a heretical group to undermine law enforcement. The Guta District People's Procuratorate in Jinzhou city brought a case, charging Li with the crime of using a heretical group to undermine law enforcement. She was sentenced to four years' imprisonment, and appealed. On 4 November 2002, the Jinzhou Municipal Intermediate People's Court ruled that the facts established in the original judgement were clear, the evidence was true and ample, the offence had been correctly identified, the sentence was proportionate and the trial procedure had been in accordance with the law; it rejected the appeal and upheld the original judgement.

11. These cases were in open hearings, the prosecutorial organs presented a large volume of evidence and testimony which the courts accepted once the witnesses' accounts had been confirmed for the record and challenged by the defendant and her counsel. In both cases, since the defendant did not appoint counsel, the courts designated defence counsel for her and amply safeguarded her procedural rights and interests.

12. On 5 October 2000, Pei Jilin was assigned by the Jilin Province Re-education through Labour Committee to three years' re-education through labour for disrupting the social order. Because, during his term of re-education, he developed high blood pressure and became physically weak, the re-education facility allowed him to seek outside medical treatment in October 2001. While receiving treatment, Pei continued to disrupt the social order. On 18 June 2002, the Jilin Municipal Re-education through Labour Management Committee assigned him to a further two years' re-education on account of his unlawful activities.

13. In its response, the source states that to avoid international criticism, the Government has carried on a campaign of misinformation about Falun Gong. Contrary to the Government's claim of Li Ling's right to a fair trial being safeguarded, she was given show trials instead of fair trials. The legal counsel contacted by the Government coerced her instead of defending her. The source adds that after Li Ling's first imprisonment, she wrote a letter clearly stating that her appeal for Falun Gong was the real reason for her arrest and detention. The second sentencing of Li Ling took place in secret, sometime between May and November 2002, and her family was not informed of the trial.

14. As for Pei Jilin, also a Falun Gong practitioner, the source contends that re-education through labour punishments in China are based on instructions from the Chinese State Council and are therefore administrative measures, with no safeguards provided for the right to fair trial.

15. The Working Group observes that the Government has not denied that Li Ling and Pei Jilin were detained in connection with the practice of Falun Gong.

16. As there is no evidence that Li Ling and Pei Jilin used violence in their practice of Falun Gong, their free exercise of the practice should be protected by article 18 on freedom of belief and article 19 on freedom of opinion and expression of the Universal Declaration of Human Rights.

17. The restriction of the peaceful exercise of these liberties may imply a violation of international law norms. Neither the accusation of participating in an illegal demonstration against Li Ling, nor the accusation of causing social disturbance against Pei Jilin stated that acts of a violent nature had been committed. Consequently, the Working Group determines that Li Ling and Pei Jilin were detained for the mere fact of their practice and defence of Falun Gong, in a peaceful manner and in exercise of the rights to freedom of belief, freedom of opinion and expression, to assemble and to demonstrate, which are guaranteed by international human rights law.

18. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Li Ling and Pei Jilin is arbitrary, as being in contravention of articles 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

19. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of these two persons and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights. The Working Group encourages the Government to ratify the International Covenant on Civil and Political Rights.

Adopted on 27 November 2003

OPINION No. 22/2003 (ALGERIA)

Communication addressed to the Government on 12 June 2003.

Concerning: Khaled Matari.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group conveys its appreciation to the Government for having submitted information regarding the case in good time.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. According to the information received, Mr. Khaled Matari, born on 7 June 1978, of Algerian nationality, a second year student in the Algiers Law Faculty, normally resident at Cité Desslier, Bourouba, Algiers, was arrested at his home on 24 October 1999 at 11.45 p.m. by four armed individuals dressed in civilian clothes who said that they were police officers. They asked Khaled's brother, Smail Matari, if he had any brothers. Khaled was coming out of his bedroom and the armed civilians made him get into an unmarked car. No warrant or other court order was displayed during the arrest. A few minutes later the individuals who had carried out the arrest returned and demanded Khaled's passport. They promised his mother that she could visit him in prison within 10 days. However, no information as to what had happened to him was communicated to his family. On 10 November 1999, at 2 p.m., the individuals who had carried out the arrest returned to Mr. Matari's home and demanded his passport, although they had taken the passport at the time of the arrest, this time representing themselves as being from the military security services.

5. Mr. Matari was held in secret at the Ben Aknoun barracks in Antar, Algiers, then in the Blida military prison for 13 months. In 2000 the family wrote to the President, to the Minister of Justice and to the National Human Rights Office requesting information, but to no avail. During this period no one knew where he was being held or what the charges against him were. Neither was he able to contact a lawyer. His family spent a year looking for him, after having gone around all the possible places of detention. The officials contacted by letter failed to reply. It was only in October 2000 that the family learned of his whereabouts at the Blida military prison. They had to insist to obtain visiting rights.

6. On 15 October 2000 Mr. Matari, together with several other people, appeared before the military prosecutor, who had requested the opening of a judicial investigation on the charges of membership in a terrorist organization operating abroad and terrorist acts, under article 87 bis of the Criminal Code. The investigating judge then organized a face-to-face meeting between the group of accused and a witness, unknown to Mr. Matari. The witness reportedly stated: "These are not the people I spoke to you about."

7. The military investigating judge then charged Mr. Matari and placed him in pre-trial detention. However, the Blida military prosecutor subsequently determined that the case did not fall under military jurisdiction and thus stopped dealing with the case, which was referred to the prosecutor at the Birmandreis court. After he had been notified of the charges, Mr. Matari was reportedly placed in pre-trial detention by order of the investigating judge.

8. On 10 September 2001 Mr. Matari and the other accused were brought before the investigating judge in the civil court; they refused to answer questions in the absence of their lawyers. On 12 January 2002 they were again brought before the court, and, in the presence of their lawyers, were charged and placed in pre-trial detention.

9. According to the source, Mr. Matari, almost four years after his arrest, is still being held without trial in the civilian prison at El Harrache.

10. The source adds that, during his 13 months-long detention in secret, Mr. Matari was beaten with sticks and iron bars and subjected to mock executions with the aim of compelling him to testify against a third party. He reportedly received electric shocks to his genitals and was subjected to the so-called "rag" torture (placing of a rag soaked in dirty water and disinfectant in the mouth until the person suffocates).

11. According to the reply submitted by the Algerian Government, Khaled Matari was arrested by the military branch of the criminal investigation police during the dismantling of a vast network of terrorists active outside Algeria. On 15 October 2000 he was brought before the military prosecutor, who requested the opening of a judicial investigation on charges of belonging to a terrorist organization operating abroad and terrorist crimes, offences punishable under articles 87 bis et seq. of the Criminal Code.

12. The military prosecutor requested the opening of a judicial investigation into the facts concerning the person brought before the military investigating judge, who charged him then placed him in pre-trial detention. The military judge, considering that the military court was not competent to hear the case, handed down a decision by which the case was referred back to the military prosecutor for submission to the competent court, pursuant to article 93 of the Code of Military Justice. Thus the Blida military prosecutor referred the case to the prosecutor at the Bir Mourad Rais court, who brought it before the examining judge in the second chamber in an application for the opening of an investigation dated 19 August 2001.

13. After he had been notified of the charges, Khaled Matari was placed in pre-trial detention on the order of the examining judge. The judicial investigation concluded with the case coming before the trial chamber of the Algiers court, which, on 16 May 2003, referred the decision to the criminal court as the sentencing court, before which Khaled Matari and his fellow defendants are due to appear at its next session.

14. Subsequent to the response by the Algerian Government, the source submitted the following comments:

(a) In their response the Algerian authorities failed to state the exact date of Khaled Matari's arrest, which was on 24 October 1999, almost a year before he was brought before the military prosecutor on 15 October 2000 (which was mentioned by the Algerian authorities);

(b) Armed civilians, claiming to be police officers, and without any warrant, carried out the arrests in the middle of the night, without informing the family where Mr. Matari had been taken or providing any reason for the arrest;

(c) Khaled Matari disappeared for 12 months, despite the efforts of his family to find him; officials at all the places of detention and the authorities systematically denied that he had been arrested. The source recalls that the brother of the individual concerned disappeared in the same circumstances on 22 March 1995, following his arrest by police officers from the Montagne, Bourouba, police station, and has never been found;

(d) Over the 12 months' detention, when Mr. Matari was held in secret at the Ben Aknoun, Antar, barracks, he had no access to a lawyer, and was, according to his statement, brutally tortured to make him testify against a third party;

(e) He was located quite by chance when someone who had seen him at Blida military prison informed his family, who then had a great deal of difficulty in obtaining visiting rights;

(f) Mr. Matari has thus been held for over four years without being tried.

15. The Government has contented itself with stating that Mr. Khaled Matari was arrested by military personnel as part of a vast terrorist network active abroad and that, pursuant to article 87 et seq. of the Criminal Code, was brought before the military prosecutor. But the military prosecutor, considering that the military court was not competent under article 93 of the Criminal Code, referred the case to the criminal court. Pending convening of the competent chamber the accused was placed in pre-trial detention.

16. The Working Group notes that almost a year elapsed between Mr. Khaled Matari's arrest on 24 October 1999 and his being brought before the military prosecutor on 15 October 2000. The Government has offered no convincing argument to refute the source's allegation that Mr. Matari spent more than four years in pre-trial detention without any decision as to his guilt. Further, Mr. Matari was not allowed the assistance of counsel, either private or court appointed. These facts, pointed out by the source, have not been contested by the Government in its replies.

17. The Working Group also notes that in its reply the Government fails to state the exact date of Mr. Khaled Matari's arrest, whereas the source asserts that he was secretly held in a barracks for over a year.

18. Accordingly the Working Group considers that Mr. Khaled Matari did not receive a fair hearing, in violation of article 14 of the International Covenant on Civil and Political Rights, to which Algeria is party.

19. In the light of the foregoing, the Working Group renders the following opinion:

> The arrest of Mr. Khaled Matari is arbitrary, under articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the People's Democratic Republic of Algeria is party, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

20. The Working Group requests the Algerian Government to take the necessary steps to rectify the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 27 November 2003

OPINION No. 23/2003 (CHINA)

Communication addressed to the Government on 11 July 2003.

Concerning: Xu Wenli.

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. The Working Group regrets that the Government has not provided it with information about the facts alleged and its position on the merits of the case, despite an invitation to do so. Nevertheless, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case in the context of the substantiated allegations made.

5. According to the information submitted to the Group Xu Wenli is 60 years old, born on 1 January 1943, a resident of Beijing, currently being held at Yanqing prison in Beijing, considered a veteran pro-democracy activist, reportedly suffers from hepatitis B and shows signs of severe illness. He was arrested on 30 November 1998 at his home by members of the Beijing Public Security Bureau. A search warrant was presented after his arrest, to his wife, He Xintong, and his home was searched. Mr. Xu was accused of attempting to establish the Beijing and Tianjin branches of an organization called the China Democracy Party and was charged with endangering State security under article 105 of the Criminal Law as amended in March 1997.

6. On 21 December 1998, after a one-day trial that was closed to the public, Xu Wenli was sentenced to 13 years of imprisonment. He was denied legal representation and forced to present his own defence.

7. According to the source, since 1982 Xu Wenli has been in and out of prisons and detention centres as a result of his activities promoting democracy. He has initiated numerous movements and groups to promote human rights and democracy. Xu Wenli has spent much of his life, under constant public security surveillance. On 8 June 1982, he was sentenced to 15 years' imprisonment for "illegally organizing a clique to overthrow the Government". He was released in 1993. After his release, he was repeatedly held for questioning and accused of violating his parole. Five years later, in 1998, Xu Wenli attempted to officially establish an independent human rights monitoring group. After his efforts failed and he published two issues of an unauthorized newsletter, he was held at a Beijing police station for 24 hours and warned not to publish any material without first seeking official approval.

8. The source further reports that Xu Wenli participated in the 1979-1981 "democracy wall" movement. At that time, he helped to launch the April Fifth Forum, a major journal of

dissidence, wrote a 20-point list of suggestions to the Central Committee of the Communist Party, circulated a private newsletter, gave numerous interviews emphasizing the need for further democracy in a Marxist society and published several articles in Hong Kong.

9. The source adds that Xu Wenli is in need of immediate medical attention and should be treated outside prison. He has received only cheap and basic medicines from the prison authorities and has been denied proper medical treatment for his hepatitis. He has also lost all his teeth and his hair has turned white.

10. According to the source, Xu Wenli was imprisoned, for having published two unauthorized issues of a newspaper in March 1998. He has also been imprisoned, in violation of article 20 of the Universal Declaration of Human Rights and article 21 of the International Covenant on Civil and Political Rights, for his efforts to form an independent human rights monitoring group and the Beijing and Tianjin branches of the China Democracy Party as an opposition political party, for which he was charged with "endangering State security".

11. The source alleges that the detention of Mr. Wu is also in violation of the 1995 Johannesburg Principles on National Security, Freedom of Expression and Access to Information, principle 7 of which states that "the peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties". According to the source, the authorities' interpretation of "State security" violates both the letter and the spirit of the Johannesburg Principles.

12. The source lastly adds that Xu Wenli's one-day trial, closed to the public and without right to a legal defence, was in violation of article 10 of the Universal Declaration of Human Rights.

13. According to the information received by the Working Group, Xu Wenli, who had previously been arrested in 1998 for acts of peaceful disobedience against the Government, was detained again on 30 November 1998. He was judged in only one day. He was not allowed the assistance of a lawyer and had to present his own defence. He was accused of endangering State security and was sentenced to 13 years in prison. The charges were based on the fact that since 1998 Xu Wenli had intended to organize a human rights group in China and a political organization. He had also written articles for an unauthorized magazine, for which he was warned that he was not allowed to publish any article without previous authorization from the Government. At present, Xu Wenli is serving his sentence and is very ill.

14. It appears that the activities of Xu Wenli were expressions of the legitimate right to freedom of expression and association as contained in articles 10, 19 and 20 of the Universal Declaration of Human Rights.

15. The trial of Xu Wenli failed to respect the minimal norms for a fair trial, because it was not public and the accused was not allowed the assistance of a lawyer or public defender.

16. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Xu Wenli is arbitrary, being in contravention of articles 10, 19 and 20 of the Universal Declaration of Human Rights, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

17. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Xu Wenli. The Working Group also encourages the Government to ratify the International Covenant on Civil and Political Rights.

Adopted on 27 November 2003

OPINION No. 24/2003 (ISRAEL)

Communication addressed to the Government on 2 May 2003.

Concerning: Matan Kaminer, Adam Maor, Noam Bahat and Jonathan Ben-Artzi.

The State has ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which has submitted comments on it. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted to the Working Group, upon being drafted into the Israeli Defence Forces (IDF) Matan Kaminer appeared at the Bakun Classification Base on his induction date (9 December 2002) but refused to be inducted. He was then arrested, his detention confirmed by the Military Court in Jaffa.

6. Adam Maor presented himself on 12 December 2002 when he was drafted into the IDF but also refused to be inducted and was immediately arrested. He was confined in a military camp pending judicial proceedings against him. He was held in open detention, meaning that he may temporarily leave the camp with the permission of the court.

7. Noam Bahat was arrested by the military on 10 December 2002 for non-compliance with an order to be inducted into the IDF. He was sentenced to imprisonment. He was also detained in open detention pending judicial proceedings. He requested to be released from military service because he was against the occupation of the Palestinian territories and the human rights violations taking place there. His request was rejected, as his arguments were of a political nature. It is submitted that under Israeli law conscientious objection may be recognized by a military committee in cases of "complete pacifism". It is alleged that Mr. Bahat's request to be heard by this committee was rejected. On 15 January 2003 he began a hunger strike protesting against his detention and that of all conscientious objectors and against the violations of the rights of the Palestinian people.

8. Jonathan Ben-Artzi was arrested by the military on 8 August 2002, upon refusing to be inducted into the IDF. He received a disciplinary sentence of 28 days' imprisonment, said to have been confirmed by a military court. Subsequently he received three separate sentences of 28, 28 and 23 days, because under Israeli law each refusal to serve constitutes a separate offence. He offered to perform alternative service, but this was denied. He requested to meet the military conscientious objection committee to present his arguments, but was denied. A military

disciplinary court sentenced Mr. Ben-Artzi to a prison term, which was confirmed by a military appeal court. He requested that the Supreme Court review his case, or, alternatively, that a civilian court hear it.

9. The source expressed doubts that a military court under Israeli law would comply with the criteria for an independent and impartial tribunal, arguing that only the presiding judge is a trained lawyer, the two other judges being army officers. To support his contention that the convictions were unlawful, the source invokes article 18, paragraph 2, of the International Covenant on Civil and Political Rights (ICCPR), which provides that "no one shall be subjected to coercion which would impair his freedom to have or to adopt a religion or belief of his choice".

10. The Government provided the Working Group with the following information. With regard to the specific allegations raised by the source, Israel's Security Service Law and the Military Judicial Law apply military jurisdiction to the four persons concerned as of the date on which they were obliged to enter military service. They enjoy the same rights and are subject to the same obligations as soldiers. Under the applicable legislation, a refusal to obey a legally given order by such persons constitutes a martial offence actionable either by disciplinary or by criminal proceedings. The Government goes on to say that no military system can reconcile itself with the existence of a principle whereby soldiers can dictate to it where they will serve and under what circumstances.

11. Matan Kaminer, Noam Bahat and Adam Maor did not at any point claim to be pacifists; their refusal to serve was based solely on their opposition to certain policies of the Israeli Government. Moreover, and contrary to the information provided by the source, Noam Bahat appeared before the Advisory Committee on 7 October 2002, and was found not to be a conscientious objector.

12. Mr. Kaminer, Mr. Bahat and Mr. Maor served disciplinary sentences for refusal to obey military orders and, following repeated refusals (each constituting a separate offence), they were indicted in a military court. An agreement was reached with each of them that they would remain in open detention for the duration of the proceedings. The terms of their open detention included leave from the base every third weekend, as is the general practice of soldiers in military service in Israel.

13. Adam Maor's military service has since been postponed on medical grounds as of 12 May 2003. He was released on that date, and is no longer in military service.

14. Prior to the date of his induction, Jonathan Ben-Artzi claimed to be a conscientious objector to military service. He appeared before the Advisory Committee three times in order to make his case, contrary to the contention of the source. The Committee did not find that he was a pacifist, and Jonathan Ben-Artzi appealed to the Supreme Court sitting as High Court of Justice. The Supreme Court determined that the Committee's conclusions were reasonable and rejected the appeal. The Government notes that, during his testimony, Mr. Ben-Artzi expressly stated that he did not object to the concept of war per se.

15. Jonathan Ben-Artzi served disciplinary sentences for refusal to obey military orders and, following repeated refusals (each constituting a separate offence), he was indicted in a military

court. During the proceedings in the military court, Mr. Ben-Artzi raised the claim of double jeopardy. The claim was rejected, as he had committed numerous offences of disobedience and the case before the court did not relate to any of the offences for which he had previously been indicted. An agreement was reached with him that he would remain in open detention for the duration of the proceedings.

16. Jonathan Ben-Artzi further claimed that his case should be tried before a civil and not a military court, and appealed to the Supreme Court sitting as High Court of Justice on these grounds. The appeal was rejected in a detailed and reasoned judgement, inter alia on the grounds that the military court system is professional, objective and impartial, applying legal proceedings similar to those applied in the civil court system, with meticulous safeguards to guarantee the defendant's rights. The defendant is represented by legal counsel of his choice and may summon witnesses; a right of appeal to the Supreme Court is equally available from both court systems.

17. In conclusion, the Government asserts that all of the above-mentioned individuals are not conscientious objectors to military service, as this term is generally understood. As explained in detail above, none of them is currently held in closed detention.

18. In its comments on the Government's reply the source acknowledges that Mr. Ben-Artzi had appeared before the conscientious objection committee three times, but he was on each occasion denied the right to be eligible, as pacifist, to refuse military service. The source also acknowledges that Mr. Ben-Artzi could not affirm before the military court that he would not have served with the Allies during the Second World War. This was the reason why the court concluded that, like Mr. Maor, Mr. Bahat and Mr. Kaminer, he could not be considered a pacifist, as he is not opposed to war per se. The source affirms that the basic ground for the four men refusing to perform military service is their conscientious moral objection to the military occupation of the Palestine territories.

19. The source asserts that although Adam Maor was in fact released temporarily, after his operation he was taken back to detention.

20. The source affirms that the Human Rights Committee in general comment No. 22 on article 18 of ICCPR interprets this article as permitting the right to conscientious objection to be derived therefrom.

21. The source refers to the 2001 annual report of the Working Group on Arbitrary Detention (E/CN.4/2001/14, paras. 91-94), in which the Working Group observed that repeated incarceration of conscientious objectors is directed towards changing their conviction and opinion and is therefore incompatible with article 18, paragraph 2, of ICCPR.

22. Finally, the source contests the admissibility of the Government's argument that the four people are not held in a closed detention system.

23. To assess whether the detention of these four individuals is arbitrary, the following questions need to be addressed:

(a) Has the holding of these four conscripts at a military base amounted to deprivation of liberty within the meaning of the Working Group's mandate?

(b) Have the international norms relating to the right to a fair trial been observed during the proceedings conducted against them?

(c) Is their prosecution for failing to obey a military order in breach of Israel's international obligations?

(d) Are the repeated penalties imposed on them for refusing to serve in the armed force in compliance with the requirements of the right to a fair trial?

24. The Government argued that Matan Kaminer, Adam Maor, Noam Bahat and Jonathan Ben-Artzi are being detained under an open detention system. The Working Group wishes to point out that according to the information provided by both the source and the Government it is beyond any doubt that they are forcibly held under conditions that are equivalent to deprivation of liberty, regardless of the fact that the terms of the open detention include leave from the military base every third weekend.

25. The source did not contest the detailed information provided by the Government that individuals who are denied conscientious objector status and are prosecuted for failing to comply with military orders enjoy the same protection under criminal procedural law as do civilians.

26. The source contends that the deprivation of liberty of Matan Kaminer, Adam Maor, Noam Bahat and Jonathan Ben-Artzi is arbitrary because it is imposed to punish the exercise of their freedom of conscience, which is a right protected under international law, inter alia by article 18 of ICCPR, to which Israel is a signatory.

27. The Working Group welcomes the growing body of national legislation that abandons the system of compulsory armed military service and the preparations being made in a number of States to replace this system with alternatives. International law is also undoubtedly evolving towards the recognition of the right of the individual to refuse, on grounds of religious belief or conscience, to bear and use arms or to serve in the army. But at the present time it cannot be said that this evolution has reached a stage where the rejection by a State of the right to conscientious objection is incompatible with international law. The Working Group also noted the reference by the source to general comment No. 22 of the Human Rights Committee.

28. The source also contends that the repeated penalties imposed on Matan Kaminer, Adam Maor, Noam Bahat and Jonathan Ben-Artzi for the same offence are incompatible with the principle of *non bis in idem* embodied in article 14, paragraph 7, of ICCPR.

29. The Government has made it clear to the Working Group that under Israeli law all four individuals in question have served disciplinary sentences more than once for refusing to obey military orders. Although the Government did not specify the number and duration of the detentions, it unequivocally stated that several, hence more than one, disciplinary sanctions entailing deprivation of liberty have been imposed against the four conscripts in question: "following repeated refusals (each constituting a separate offence) they were indicted in a military court". Moreover, the Government explained to the Working Group that one of the four persons, Mr. Ben-Artzi, raised before the court the claim of double jeopardy, but that the claim was rejected "… as he had committed numerous offences of disobedience, and the case before the court did not relate to any of the offences for which he had previously been indicted".

30. The explanation of the Government that after one conviction for not having obeyed an order to serve in the military repeated acts of disobedience are considered new offences did not convince the Working Group. Very much along the lines of its reasoning in its opinion No. 36/1999, and bearing in mind its recommendation 2 on detention of conscientious objectors (E/CN.4/2001/14, paras. 91-94), the Working Group is of the opinion that if after an initial conviction the convicted persons exhibit, for reasons of conscience, a constant resolve not to obey the subsequent summonses, additional penalties imposed for disobedience have the same content and purpose: to compel an individual to serve in the army. Therefore, the second and subsequent penalties are not compatible with the principle of *non bis in idem*, as contained in article 14, paragraph 7, of ICCPR, which states that "no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted …". Moreover, repeated penalties for refusing to serve in the military would be tantamount to compelling someone to change his/her mind for fear of being deprived of liberty if not for life, then at least until the age at which citizens cease to be liable for military service.

31. In the light of the foregoing, the Working Group expresses the following opinion:

> The second and subsequent deprivations of liberty of Matan Kaminer, Adam Maor, Noam Bahat and Jonathan Ben-Artzi are contrary to article 14, paragraph 7, of the International Covenant on Civil and Political Rights. The non-observance of the international norms relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty an arbitrary nature, falling within category III of the categories applicable to the consideration of cases submitted to the Working Group.

32. The Working Group therefore requests the Government to take the necessary steps to remedy the situation so as to bring it into line with the norms set forth in the International Covenant on Civil and Political Rights.

Adopted on 28 November 2003

OPINION No. 25/2003 (CHINA)

Communication addressed to the Government on 17 July 2003.

Concerning: Di Liu.

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2 The Working Group regrets that the Government has not replied within the 90-day deadline.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. The Working Group deplores the fact that the Government has not provided it with information about the facts alleged and its position on the merits of the case, despite repeated invitations to do so. Nevertheless, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case in the context of the substantiated allegations made.

5. According to the information submitted to the Group, Di Liu was arrested on 7 November 2002 because she had published various articles in the Xizi Tribune web site that criticized the restrictions imposed by the Government regarding the use of the Internet, the closing of cyber cafes and because she had expressed solidarity with Huang Qi, a human rights Internet activist arrested in June 2000.

6. It appears to the Working Group that all these activities are legitimate uses of the right to freedom of expression as recognized in articles 19 and 20 of the Universal Declaration of Human Rights. Ms. Di's detention, as such, is contrary to human rights.

7. The Working Group also takes into account the fact that Di Liu has been detained since 7 November 2002 under article 105 of the Criminal Law as amended in March 1997. She was formally accused of endangering State security but has not been told of the date of her trial and has not been given any assistance for her defence. Di Liu has been in detention for more than a year without any fair trial norms having been observed.

8. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Di Liu is arbitrary, being in contravention of articles 10, 19 and 20 of the Universal Declaration of Human Rights, and falls within categories II and III of the categories applicable to the consideration of cases submitted by the Working Group.

9. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Di Liu. The Working Group also encourages the Government to ratify the International Covenant on Civil and Political Rights.

Adopted on 28 November 2003

OPINION No. 26/2003 (CHINA)

Communication addressed to the Government on 12 June 2003.

Concerning: Ouyang Yi and Zhao Changqing.

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group regrets that the Government failed to provide it with the information concerning the allegations of the source.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. Nevertheless, despite the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the source, Ouyang Yi was born on 18 June 1968. He is a high school teacher, a member of the organization called the China Democracy Party and one of the managers of a commercial web site (www.5633.com). When the communication was sent to the Working Group, he was detained at the Chengdu detention centre, in Chengdu, Sichuan province.

6. In the absence of any information from the Government, the Working Group cannot but proceed on the assumption that he is still being detained. It is alleged that so far no date has been set for trial. Ouyang Yi was reportedly apprehended on 4 December 2002 by members of the security police who searched his home and confiscated a number of documents, many of which were articles that Ouyang Yi had posted on the Internet. On 7 January 2003, Mr. Ouyang was formally charged by the Public Security Bureau with "inciting the overthrow of the State power" under article 105 of the Criminal Law as amended in March 1997. The relevant text of article 105, made available by the source, reads as follows:

> "Whoever organizes, plots, or acts as a ringleader to subvert the political power of the State and overthrow the socialist system, shall be sentenced to life imprisonment, or not less than 10 years of imprisonment; active participants are to be sentenced to not less than three years to not more than 10 years of imprisonment; other participants are to be sentenced to not more than three years of imprisonment and deprivation of political rights.
>
> "Whoever instigates the subversion of the political power of the State and overthrows the socialist system through spreading rumours, slandering, or other ways shall be sentenced to not more than five years of imprisonment and deprivation of political rights; the ringleaders and those whose crimes are grave shall be sentenced to not less than five years of imprisonment."

7. Ouyang Yi had previously signed open letters and petitions calling for the release of political prisoners, which resulted in arrests and interrogations on a number of occasions, including a three-month detention. In 1999, he was evicted, along with his family, from his home and lost his teaching position. The source believes Mr. Ouyang's detention is related to the arrest of other Internet activists and for his open letter to the Sixteenth National Congress of the Chinese Communist Party (CPC).

8. The activities of which he is accused are criticizing the Government for its failure to conduct an appropriate economic policy and signing, together with 192 other people, an open letter to the National People's Congress calling for political reforms containing six initiatives: to reassess the 1989 democratic movement; to allow political exiles to return to China; to release Zhao Ziyang from house arrest and restore his political rights; to release all political prisoners; to ratify the International Covenant on Civil and Political Rights; and to expand, to the national level, the system of democratic village and municipal elections. At least seven other signatories of the petition were also arrested.

9. According to the source, Zhao Changqing was arrested on 7 November 2002 in Xi'an by Public Security Bureau (*Xi'an shi gong an ju*) officers, who failed to provide a proper arrest warrant. They had searched his flat a few days before his arrest. Mr. Zhao was kept in secret detention until 27 November 2002. On that day, Xi'an Public Security Bureau officials delivered an official notice of his detention (*xing shi zhu liu de tong zhi*) to his sister. On 27 December 2002, they delivered an official notice of arrest (*zheng shi bei bu*) to his elder brother, thus starting Mr. Zhao's formal arrest (*dai bu*). Mr. Zhao was charged with "incitement to subvert State power" (*shan dong dian fu guo jia zheng quan*), which falls under article 105 of the Criminal Law (whose text is reproduced above), a charge for which he could be sentenced to up to 15 years in prison.

10. The charges against Zhao Changqing are in connection with his efforts to draft and circulate an open letter to China's Sixteenth National CPC Congress in November 2002 (see paragraph 8).

11. Mr. Zhao is currently being held in the Xi'an Kangfu hospital under the supervision of the Xi'an Public Security Bureau. His health has drastically deteriorated since the start of his detention in November 2002. His tuberculosis became worse while in custody. His admittance to the hospital indicates the severity of his illness. No trial date has been set yet. Mr. Zhao has been denied bail. His family has hired legal counsel to defend him.

12. Zhao Changqing was previously arrested in June 1989 for taking part in the democracy demonstrations that year in Beijing. He was imprisoned in Xincheng prison in Beijing for more than half a year. In 1997, he gathered enough signatures to stand for election as a local representative to the National People's Congress, but soon afterward he was arrested and sentenced to three years in prison for endangering State security. He was released in March 2001 and since then he has continued his political activism.

13. According to the source, Mr. Zhao was arrested and is being held in detention for the peaceful exercise of his right to freedom of opinion and expression. The source further alleges

that the detention of this person is in violation of articles 64 and 65 of the Chinese Criminal Procedure Law, because a proper detention warrant was not presented at the time of his arrest and the arrest and detention procedures were improperly handled.

14. The Working Group believes that the above activities, as critical of the Government as they might have been, remain within the boundaries of Ouyang Yi's and Zhao Changqing's freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds orally, in writing, in print or by any other media, including the Internet, regardless of frontiers. In the present case, the Working Group does not possess any information that would indicate that such serious measures - detention and criminal proceedings - were necessary or unavoidable to protect public order. The wording of article 105 of the Chinese Criminal Law rather convinces the Working Group that the purpose of their detention is to oppress political opponents of the Government. Their activities represented an effort to take part in the government of the country by petitioning their representatives.

15. On the basis of the allegations made, which the Government has not denied, although it had the opportunity to do so, the Working Group concludes that the detention of Ouyang Yi and Zhao Changqing is motivated exclusively by their human rights and political activities, activities constituting the peaceful exercise of the right to freedom of expression as guaranteed by article 19 of the Universal Declaration of Human Rights.

16. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Ouyang Yi and Zhao Changqing is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

17. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Ouyang Yi and Zhao Changqing. The Working Group also encourages the Government to ratify the International Covenant on Civil and Political Rights.

Adopted on 28 November 2003

OPINION No. 1/2004 (MOROCCO)

Communication addressed to the Government on 18 September 2003.

Concerning: Ali Lmbrabet.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group conveys its appreciation to the Government for having provided the requisite information concerning the above case within the 90-day deadline from the transmission of the letter from the Working Group.

3. The Working Group notes that the Government has informed it that the person concerned is no longer in detention. This fact has also been confirmed by the source which submitted the communication.

4. Having examined all the information submitted to it and without prejudging the arbitrary nature of the detention, the Working Group, on the basis of paragraph 17 (a) of its methods of work, decides to file the case.

Adopted on 24 May 2004

OPINION No. 2/2004 (GEORGIA)

Communication addressed to the Government on 20 January 2004.

Concerning: Giorgi Mshvenieradze.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group regrets that the Government failed to provide it with the information concerning the allegations of the source.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. The Working Group regrets that the Government did not provide it with the requested information, despite repeated invitations to do so. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

5. The source contends that Mr. Mshvenieradze was arrested because of his efforts to document election fraud at polling station 23 in the Kobuleti district, where he was monitoring the proceedings on behalf of the Georgian Young Lawyers Association, in connection with the broader monitoring effort launched by Fair Elections.

6. He sought to alert monitors from the Organization for Security and Cooperation in Europe to the fraud. He also attempted to stop an individual (who, it later emerged, was a policeman in plain clothes) from bringing into the polling station blank ballots apparently intended for stuffing the ballot box. An argument ensued with regard to the incident, which ended with several persons inside the polling station beating Mr. Mshvenieradze. Only he was injured.

7. Mr. Mshvenieradze was subsequently sentenced to three months of imprisonment on charges of hooliganism (article 239.3 of the Georgian Criminal Code), infringing on the expression of the will of the electorate (art. 162), and committing a crime against a government official (art. 353). He was being kept, at the time the communication was submitted, in detention in Batumi prison No. 3.

8. According to the source, these charges are groundless and are aimed at punishing Mr. Mshvenieradze for his role in exposing election fraud. It is particularly outrageous that the authorities have chosen to interpret Mr. Mshvenieradze's attempts to prevent stuffing the ballot box as infringing on the expression of the will of the electorate.

9. The facts alleged, which are not contested by the Government, show that the criminal proceedings conducted against Mr. Mshvenieradze were motivated by an attempt by the authorities to intimidate and punish him for participating in the monitoring activity so as to ensure the free expression of the will of the electorate.

10. According to the foregoing, the Working Group renders the following opinion:

> The detention of Mr. Mshvenieradze is arbitrary, being in contravention of articles 9 and 25 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

11. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Giorgi Mshvenieradze in order to bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights, and to prevent the occurence of similar limitations of citizens' civic rights.

Adopted on 25 May 2004

OPINION NO. 3/2004 (ISRAEL)

Communication addressed to the Government on 26 May 2003

Concerning: 'Abla Sa'adat, Iman Abu Farah, Fatma Zayed and Asma Muhammad Suleiman Saba'neh

The State has ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which submitted comments on it. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted to the Working Group by the source, 'Abla Sa'adat, a human rights defender, was arrested on 21 January 2003 when crossing the border between Israel and Jordan, when she was on her way to Brazil for the Word Social Forum as a delegate representing the Palestinian human rights organization Addamer. She was taken to Beit El military detention centre where she was placed in an isolation cell without being questioned. She was not allowed to leave her cell until her lawyer visited her two days after her arrest.

6. Iman Abu Farah and Fatma Zayed, both university students in Jerusalem, were arrested on 20 January 2003 by the Israeli army in their apartment near Ramallah and also taken to Beit El military detention centre, which has no separate facilities for women, where they suffered harsh treatment amounting to cruel, inhuman and degrading treatment.

7. On 22 January 2003 the three women were served with four-month administrative detention orders. On 30 January 2003, after the judicial review of their detention orders, 'Abla Sa'adat and Iman Abu Farah were transferred to Neve Tirza, the women's section of Ramleh prison. On 26 January 2003, the administrative detention of Fatma Zayed was confirmed by judicial review by the 'Ofer Military Court and she was transferred to the Moskobiyye Interrogation Centre in Jerusalem.

8. Asma Muhammad Suleiman Saba'neh, 40 years old, the mother of six children and a resident of Jenin refugee camp, was arrested on 11 February 2003 in her home by some 50 members of the Israeli army and served, at an unspecified date, with a six-month administrative detention order.

9. According to the source, these four women were held in administrative detention without charge or trial. No criminal charges were filed against them and there was no intention of

bringing them to trial. The detainees or their lawyers could not challenge the reasons for their detention, since these reasons had not been communicated to them. They can be kept in detention on the basis of secret evidence which the military authorities claim cannot be revealed so as not to compromise the source.

10. It was further pointed out that the procedure known as judicial review is in fact only a routine confirmation of the administrative detention order. In most cases administrative detention orders are also confirmed by the military appeal tribunal. The appeal hearing, which the detainees have to initiate themselves, is the first and the only opportunity detainees have to find out why they are detained.

11. The source further considers that administrative detention is being used as a means of circumventing the criminal justice system and avoiding the due process safeguards it provides. Complaints concerning the conditions of detention were also raised by the source.

12. According to the Government, 'Abla Sa'adat was arrested on 21 January 2003 for activities endangering the security of the area and was detained at the Beit El military detention facility. The military commander issued an administrative detention order for her on 23 January 2003. Ms. Sa'adat was transferred to the Neve Tirzah detention facility for women on 29 January 2003. She was released on 6 March 2003 pursuant to an order reducing the period of her administrative detention.

13. Iman Abu Farah was arrested on 20 January 2003 for her involvement with Hamas, an organization responsible for numerous murderous attacks against Israeli citizens. On 23 January 2003 an administrative detention order was issued for her for a five-month period, and a military court approved the detention order on 28 January 2003. The court held that, having seen the evidence against Ms. Abu Farah, it was convinced that her early release would pose a real danger to the security of the area and the safety of civilians. On 29 January 2003 Ms. Abu Farah was transferred to Neve Tirzah detention facility for women. Ms. Abu Farah was indicted on 13 April 2003 and charged with three counts of providing services to an unlawful organization, seven counts of harbouring fugitives (in this case, senior members of Hamas) and illegal possession of weapons.

14. Fatma Zayed was arrested on 20 January 2003, on suspicion of involvement with Hamas. An administrative detention order was issued for her on 23 January 2003 for a period of four months, and she was transferred to the Russian Compound facility for interrogation. Ms. Zayed's meeting with her counsel was postponed by several days, due to compelling reasons of security, following which she has had access to the legal counsel of her choice.

15. The Government further reported that, on 2 February 2003, the administrative detention order against Ms. Zayed was cancelled and her case transferred to the security authorities to examine the possibility of submitting an indictment against her for the commission of security offences. Ms. Zayed was indicted on 6 March 2003 and charged with 17 counts of providing services to an unlawful organization, 10 counts of harbouring fugitives and possession of illegal weapons. Ms. Zayed is being held at Neve Tirzah detention facility for women pursuant to a 6 March 2003 order of a military court to keep her in custody during the course of legal proceedings against her.

16. Asma Muhammad Suleiman Saba'neh was arrested on 11 February 2003 for her involvement in Hamas. An adminisrative detention order was issued for her on 12 February 2003 for a period of six months. The military court upheld Ms. Saba'neh's administrative detention order pursuant to judicial review proceedings.

17. The Government states that administrative detention is resorted to only in cases where there is corroborating evidence that an individual is engaged in illegal acts that endanger the security of the State and the lives of civilians. It is only used in circumstances where the usual judicial procedures are inadequate because of a danger to sources of information or a need to safeguard classified information that cannot be revealed in open court.

18. With regard to Israel's derogation from the provisions of article 9 of the International Covenant on Civil and Political Rights, the Government states that, in spite of the derogation, Israel has adhered to all of the Covenant's provisions, ensuring that no one is subjected to arbitrary detention.

19. The Government adds that before a detention order is issued, military legal counsel must confirm that the information on which it is based has been corroborated by reliable sources. A military commander may issue a detention order for a period of no more than six months. This order can be renewed, but it is subject to appeal.

20. All recipients of detention orders are granted the right to legal representation of their choice, as well as the opportunity to appeal their detention order at two judicial levels. As part of the appeals process, the court may hear evidence presented by security personnel out of the presence of the detainee or his attorney. However, the detainee is always informed of the general reasons for the order against him. At the appeal hearing, the detainee and his attorney may respond to the allegations, call witnesses and ask questions regarding the security information.

21. The source confirmed that 'Abla Sa'adat was released from detention on 7 March 2003 pursuant to an order reducing the period of her administrative detention. It informed the Working Group that it was not able either to confirm or to contest the information of the Government that Iman Abu Farah and Fatma Zayed have been charged with criminal offences.

22. The source reported that Asma Muhammad Suleiman Saba'neh's administrative detention order was renewed on 11 August 2003 for four months. The source states that despite the Government's affirmation that Asma Muhammad Suleiman Saba'neh was arrested for her involvement with the Palestinian group Hamas, no concrete information concerning any specific activities was provided. The source later confirmed that she was released in November 2003.

23. The source contests the reference made by the Government to Hamas as merely a terrorist organization. It states that Hamas is a political party, with tens of thousands of supporters in the West Bank and Gaza Strip, a network of charitable associations which provide assistance with medical care, education and food/basic subsistence, and which also has an armed wing.

24. The source further comments that over the last years the Government of Israel has placed thousands of Palestinians from the occupied territories in administrative detention from periods

varying from a few months to several years. Most of them were never interrogated nor asked about their possible participation in specific illegal activities during the entire period of their administrative detention. In other cases, individuals have been interrogated for prolonged periods, ill-treated and threatened before being placed under administrative detention orders.

25. According to the source, administrative detention has been used by the Government to detain people without presenting any evidence that they had committed any offence. It has been used as a measure of collective punishment and intimidation and in order to put pressure on relatives.

26. According to the information submitted to the Working Group, 'Abla Sa'adat was released on 7 March 2003; this information was provided by the Government and confirmed by the source. The Working Group also took note of the release of Asma Muhammad Suleiman Saba'neh in November 2003.

27. Iman Abu Farah and Fatma Zayed were charged with criminal offences by a military court. They are said to have the right to appeal before a military court and to the High Court.

28. In this regard, it should be said that the Working Group has strong reservations about military jurisdiction. It had stated that "if some form of military justice is to continue to exist, it should observe four rules: (a) it should be incompetent to try civilians; (b) it should be incompetent to try military personnel if the victims include civilians; (c) it should be incompetent to try civilians and military personnel in the event of rebellion, sedition or any offence that jeopardizes or involves risk of jeopardizing a democratic regime; and (d) it should be prohibited [from] imposing the death penalty under any circumstances" (E/CN.4/1999/63, para. 80).

29. Ms. Farah and Ms. Fayed are both civilians. They had been in administrative detention first without access to their lawyers and hampered in the exercise of their defence. They were charged later by a military court and could only defend themselves under military jurisdiction. This process is not contested by the Government, which has explained the system of administrative detention. Even thought detainees might have access to the High Court of Justice, if all the cases follow the same pattern the process could severely undermine their ability to challenge the deprivation of liberty.

30. It should be recalled that the Working Group does not have a mandate to render an opinion about the fairness of the charges made against detainees.

31. In respect of the situation that the Government has described about the state of emergency in the country and its reservation to article 9 of the International Covenant on Civil and Political Rights, the Working Group - without taking any position as to the validity of the

reservation or its extent, or which other United Nations organ may be competent[1] - believes that, even were the State not a party to ICCPR, international human rights standards on protecting the right of liberty would still apply in its territory.

32. In this respect, the right to personal liberty and security gives rise to varying requirements as to when a person may be detained, for how long, and subject to what supervisory mechanisms. In all circumstances, however, such requirements must conform to and be continuously evaluated in accordance with the fundamental principles of necessity, proportionality, humanity and non-discrimination.

33. Should a terrorist situation within a State's jurisdiction be of such nature or degree as to give rise to an emergency that threatens a State's independence or security, that State is nevertheless precluded from suspending certain fundamental aspects of the right to liberty which are considered necessary for the protection of non-derogable rights or which are non-derogable under the State's other international obligations. These include the requirements that the grounds and procedures for the detention be prescribed by law, the right to be informed of the reasons of the detention, prompt access to legal counsel and family, an impartial trial by an independent tribunal, and prescribed limits upon the length of prolonged detention. These protections are also considered to include appropriate and effective judicial review mechanisms to supervise detentions promptly upon arrest or detention and at reasonable intervals when detention is extended.

34. In the cases of Iman Abu Farah and Fatma Zayed, most of these requirements were not met. Judicial review, where it occurred, was not by an independent tribunal. Their defence could not be exercised. A military court in itself is not independent from the executive branch. They had to confront legal counsel difficulties and a total lack of information about the nature of the charges against them.

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[1] ["T]he [Human Rights] Committee remains concerned about the sweeping nature of measures during the state of emergency, [which] appear to derogate from Covenant provisions other than article 9, derogation from which was notified by the State party upon ratification. In the Committee's opinion, these derogations extend beyond what would be permissible under those provisions of the Covenant [that] allow for the limitation of rights (e.g. articles 12, paragraph 3; 19, paragraph 3; and 21, paragraph 3). As to measures derogating from article 9 itself, the Committee is concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territories, entailing restrictions on access to counsel and to the disclosure of full reasons of the detention. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively … "(concluding observations of the Human Rights Committee on the second periodic report of Israel, CCPR/CO/78/ISR, paragraph 12).

35. In the light of the above, the Working Group renders the following opinion:

With regard to 'Abla Sa'adat and Asma Muhammad Suleiman Saba'neh, in view of their release from administrative detention, the Working Group, in accordance with paragraph 17 (a) of its methods of work, decides to file these cases.

With regard to Iman Abu Farah and Fatma Zayed, the Working Group considers that their deprivation of liberty is arbitrary, being in contravention with article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

36. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, and bring it into line with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 25 May 2004

OPINION No. 4/2004 (ETHIOPIA)

Communication addressed to the Government on 17 October 2003.

Concerning: Tadesse Taye.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group regrets that the Government failed to provide it with information concerning the allegations of the source.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. The Working Group regrets that the Government, despite repeated invitations to do so, did not provide it with the requested information. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

5. According to the information received, Tadesse Taye, a 73-year-old businessman and resident of Addis Ababa, was arrested on 27 May 1993 at his place of business by security officers in plain clothes who did not show any arrest warrant. The reason for his arrest was reportedly his alleged membership in the organization called the Oromo Liberation Front.

6. According to the source, Mr. Taye has been detained without charge or trial since May 1993. He has been denied access to legal counsel. The family's appeal to the appropriate administrative authority has gone unanswered. All attempts by the family to obtain his release have been rejected.

7. The source adds that Mr. Taye is being held at Dessie prison, which is approximately 400 km from Addis Ababa. The remote location has made it difficult for the family to visit him and provide food and other supplies. Conditions at the prison are reportedly life threatening because of unsanitary conditions produced by gross overcrowding, inadequate food and water and lack of medicine and medical care. The poor prison conditions have exacerbated the hypertension, rheumatism and gastritis from which Mr. Taye is suffering. In addition, the source alleges that Mr. Taye has been subjected to beatings, threats against his life and other forms of degrading treatment while in prison.

8. The alleged facts, which are not contested by the Government, show that Tadesse Taye was arrested by security officers in plain clothes who did not show any arrest warrant. He has been detained without charge or trial and has been denied access to legal counsel.

9. In the light of the above, the Working Group renders the following opinion:

> The deprivation of liberty of Tadesse Taye is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and falls within category I of the categories applicable to the consideration of cases submitted to the Working Group.

10. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Tadesse Taye in order to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 26 May 2004

OPINION NO. 5/2004 (VIET NAM)

Communication addressed to the Government on 4 November 2003.

Concerning: Thich Tri Luc.

The State is a Party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group notes with appreciation the information received from the Government within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group further notes that the Government has informed the Group that the above-mentioned person is no longer in detention.

4. Having examined the available information, and without prejudging the nature of the detention, the Working Group decides to file the case of Thich Tri Luc under the terms of paragraph 17 (a) of its methods of work.

Adopted on 25 May 2004

OPINION No. 6/2004 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 13 February 2004.

Concerning: Mohammad Shahadeh, Hassan Qi Kurdi, Bashshar Madamani, Haytham Al Hamoui, Yahia Shurbaji, Tarek Shurbaji, Mou' taz Mourad, Abdel Akram Al-Sakka, Ahmad Kuretem, Mohammed Hafez and Moustafa Abou Zeid.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group regrets that the Government did not reply within the 90-day time limit.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The cases summarized hereafter have been reported to the Working Group on Arbitrary Detention as follows:

(a) Mohammad Shahadeh, born in 1978 and living in Darayya, a Syrian citizen, assistant professor at the Faculty of English Literature of Damascus University, was arrested on 14 May 2003 in Darayya by members of the Intelligence Service of the army;

(b) Hassan Qi Kurdi, born in 1976 in Darayya, a Syrian citizen living in Al Tal, was arrested on 8 May 2003 in Darayya by members of the Intelligence Service of the army;

(c) Bashshar Madamani, born in 1979 in Darayya, a Syrian citizen living in Darayya-Kornishe Raissi, was arrested on 3 May 2003 in Darayya by members of the Intelligence Service of the army;

(d) Haytham Al Hamoui, born in 1976 in Damascus, a Syrian citizen living in Darayya, researcher and assistant professor at the Faculty of Medicine of Damascus University, was arrested on 3 May 2003 in Darayya by members of the Intelligence Service of the army;

(e) Yahia Shurbaji, born in 1979 and living in Darayya, a Syrian national, a student at the Faculty of Administration of Damascus University, was arrested on 3 May 2003 in Darayya by members of the Intelligence Service of the army;

(f) Tarek Shurbaji, born in 1976 in Darayya, a Syrian citizen living in Sahnaya, a graduate of the Faculty of Economics of Damascus University, was arrested on 3 May 2003 in Darayya by members of the Intelligence Service of the army;

(g) Mou'taz Mourad, born in 1978 and living in Darayya, a Syrian citizen, a student at the Faculty of Engineering of Damascus University, was arrested on 3 May 2003 in Darayya by members of the Intelligence Service of the army;

(h) Abdel Akram Al-Sakka, born in 1944 and living in Darayya, a Syrian citizen, researcher and writer and owner of a publishing house, was arrested on 3 May 2003 in Darayya by members of the Intelligence Service of the army. He is reportedly suffering from serious illnesses;

(i) Ahmad Kuretem, born in 1977 and living in Darayya, a Syrian citizen, a graduate of the Faculty of Engineering of Damascus University, was arrested on 3 May 2003 in Darayya by members of the Intelligence Service of the army;

(j) Mohammed Hafez, born in 1970 and living in Darayya, a Syrian citizen, a graduate of the Institute of Technology, was arrested on 3 May 2003 in Darayya by members of the Intelligence Service of the army; and

(k) Moustafa Abou Zeid, a factory worker, born in 1967 in Yabroud, a Syrian citizen living in Darayya, was arrested on 3 May 2003 in Darayya by members of the Intelligence Service of the army.

6. According to the information received, these 11 persons were arrested solely for their political and social convictions. They had agreed to start a programme to "clean up" Darayya, encouraging local civil servants to refrain from accepting bribes and the townspeople to stop smoking.

7. The source adds that these persons were exposed to physical and psychological pressure after their arrests and during the interrogation period and were held in incommunicado detention for long periods in Sednaya prison. They were reportedly compelled to sign pledges to give up their political and religious activities as a condition of their release. Later, they were accused of membership in a non-authorized organization. They were not allowed to contact their relatives, medical doctors or defence lawyers.

8. Some months later, they were tried before a military court and sentenced to terms of three and four years' imprisonment. According to the source, it was the first time since 1984 that civilians were tried before a military court for their social activities. During their trial, they were not allowed to be assisted by defence lawyers. No family members were permitted to attend the trial. There was no possibility of appealing the sentences since they were issued by a military court.

9. The Government has not contested the allegations made by the source, despite having had an opportunity to do so.

10. The fact that these persons have been prevented from consulting lawyers, and the fact that the subsequent proceedings were also held without the presence of lawyers, in a military court and with no possibility of appeal, constitute very serious breaches of the right to due process and the right to a fair trial recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

11. The grounds for their arrest, and the fact that they were tried and sentenced to prison terms of three or four years for the simple act of exercising their civil liberties, also constitute serious violations of the right to freedom of opinion, expression and association.

12. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mohammad Shahadeh, Hassan Qi Kurdi, Bashshar Madamani, Haytham Al Hamoui, Yahia Shurbaji, Tarek Shurbaji, Mou'taz Mourad, Abdel Akram Al-Sakka, Ahmad Kuretem, Mohammed Hafez and Moustafa Abou Zeid is arbitrary, being in contravention of articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights, and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

13. The Working Group, having rendered this opinion, requests the Government to take the necessary steps to remedy the situation, which could have irreparable consequences, in order to bring it into conformity with the standards and principles contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 26 May 2004

OPINION No. 7/2004 (UNITED ARAB EMIRATES)

Communication addressed to the Government on 12 February 2004.

Concerning: Janie Model.

The State is not a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group conveys its appreciation to the Government for having provided it with the requested information.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, but the latter did not provide the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the communication, Janie Model, a British citizen, was arrested in November 1999 in Dubai. After being found guilty of credit card fraud he was sentenced to imprisonment and is still detained. In December 2003 he was granted amnesty and requested his relatives to provide him with an air ticket to return to the United Kingdom. Later however, he was informed by the authorities that until he pays a fine of UAE dirhams 94,000 (the equivalent to approximately US$ 25,000), an amount which neither he nor his family was able to pay, he would not be released. According to the source, his detention became arbitrary on the day the amnesty was granted.

6. In its reply the Government provided the Working Group with the following information. Mr. Model was tried and found guilty of not only one single offence - credit card fraud - as the source contended, but of six different offences. He was sentenced altogether to six year's imprisonment. In addition, he was sentenced to pay UAE dirhams 600,000 or, in case of failure to pay that fine, to serve another six-year prison term, beginning on the last day of his prison sentence and ending on 19 June 2007. The reply of the Government does not specify whether the enforcement of the second six-year prison term for non-payment of the fine has ever been ordered. However, the Government's information is unambiguous: "This person was included in the amnesty decree issued by His Highness Sheikh Mohammed Bin Rashid Al Maktum, the Crown Prince of Dubai and Minister of Defence, on the occasion of the month of Ramadan and the Id Festival. However, his release was suspended because he was implicated in a civil case."

7. In 2002 the Working Group adopted opinion No. 16/2002 (George Atkinson - United Arab Emirates), the facts of which were similar to the present communication. Mindful of the importance of a consistent jurisprudence, the Working Group thoroughly analysed the facts of the present case in the light of its conclusions reached in the Atkinson case. It found that on one important point a meaningful difference exists between the two cases. Mr. Atkinson's release was denied on the ground that although he had served three quarters of his prison sentence, which made him eligible for release (article 41 of Federal Law No. 43

provides that “Everyone sentenced to a punishment that restricts his liberty for a period of one month or more, shall be released if he has served three quarters of the sentenced period … ”), he did not discharge his duty to pay the fine imposed on him.

8. In contrast, the entitlement of Mr. Model to release is based on an amnesty decree and not his having served three quarters of his sentence. The Government did not refer to any specific term in the amnesty decree which would exclude any convict from the amnesty who has not discharged an ancillary pecuniary obligation imposed by the sentencing court. The only ground for excluding Mr. Model from the amnesty was his alleged implication in a civil case, which apparently has nothing to do with his criminal conviction. In addition, the Government did not invoke any legal basis explaining how and why involvement in a civil case could hinder someone’s release from prison after being amnestied.

9. The Working Group believes that a civil law debt or pending civil law litigation may exceptionally give rise to some form of limitation against the debtor to leave a country until a guarantee is given for the discharge of the debt. The postponement, however, of one’s release from prison after being amnestied or pardoned cannot be justified under international law.

10. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Janie Model subsequent to the date he should have been released after being amnestied is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights, and falls within category I of the categories applicable to the consideration of cases submitted to the Working Group.

11. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Model in order to bring it into conformity with the provisions and principles contained in the Universal Declaration of Human Rights and encourages it to take appropriate initiatives with a view to the United Arab Emirates becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 27 May 2004

OPINION No. 8/2004 (REPUBLIC OF MOLDOVA)

Communication addressed to the Government on 19 January 2004.

Concerning: Andrei Ivantoc.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group regrets that the Government in its reply failed to provide it with information concerning the allegations of the source.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. The Working Group has brought the communication to the attention of the Government, but the Government failed to provide the Working Group with information that would have enabled the Working Group to take a position on the merits of the communication. The reply of the Government has been forwarded to the source, which offered no comments on it.

5. According to the information submitted to the Working Group by the source, Andrei Ivantoc, born in 1961, a Romanian citizen since 2001, a former member of the Popular Front of Moldova opposed to Transnistria separatism and to the authorities of the self-proclaimed Dniester Moldovan Republic (DMR), has been arbitrarily held in detention in Tiraspol for over 11 years.

6. Mr. Ivantoc was arrested on 2 June 1992 in Tiraspol, in the aftermath of the armed conflict in Moldova's eastern territories. In 1993, he was charged with high treason and "terrorism actions against the Soviet power". It is alleged that those charges were politically motivated and brought because of Mr. Ivantoc's opposition to Transnistrian secessionism. On 9 December 1993, Mr. Ivantoc was sentenced to 15 years' imprisonment by a court in the DMR. His property and personal assets were ordered confiscated.

7. According to the source, the court that convicted Mr. Ivantoc had neither jurisdiction nor competence. It was an illegitimate tribunal established by the administration of an unrecognized political entity. Consequently, his detention is illegal.

8. In addition, Mr. Ivantoc's right to due process was grossly violated. Violations included denial of his right to legal counsel, politically motivated charges and gross mistreatment in detention. He was subjected to torture, food deprivation, lack of medical attention and random beatings. Mr. Ivantoc is currently confined in an isolated and unheated cell, without adequate apparel. He is being held in a regime tantamount to incommunicado detention, being refused medical care and contact with his family and the outside world.

9. The source adds that Mr. Ivantoc is under medical observation for psychiatric and physiological disorders. On 28 December 2003, he went on a hunger strike after the prison authorities refused to pass on to him the food and winter hat sent by his wife.

10. The source adds that Moldovan authorities are responsible for the foregoing human rights violations because they have not taken adequate measures to put a stop to them. The Government of the Republic of Moldova has not taken an active stand to ensure that the fundamental safeguards against arbitrary detention and against torture and ill-treatment of detainees are observed in Transnistria. Such conduct should be part of its responsibility to monitor the observance of human rights standards on the entire territory under its jurisdiction, even though the authorities in Chisinau cannot regulate the conduct of the administrative structures established de facto in Tiraspol.

11. In its reply the Government made reference to the case of *Ilascu v. the Republic of Moldova and the Russian Federation*, in which one of the applicants is Mr. Ivantoc. This case was lodged in 1999 with the European Court of Human Rights and is still pending. The Government, arguing that any decision by the Working Group in this case would provoke a conflict of competence between two international human rights mechanisms, informed the Working Group that the requested information will be provided after the European Court has completed its examination of the case.

12. The source has not offered any comment on the reply of the Government, despite the Working Group's invitation to do so.

13. The Working Group examined first whether the case that is pending before the European Court is identical to the communication submitted to the Working Group. On the basis of the decision on admissibility of the Grand Chamber of the European Court of Human Rights, taken on 4 July 2001, it ascertained that one of the complaints submitted to the European Court on behalf of Mr. Ivantoc is that he is being detained arbitrarily. Therefore, that part of the application to the European Court seems to coincide with the allegations of the source submitted to the Working Group.

14. On the basis of paragraph 25 of its methods of work, the Working Group does not consider itself precluded from the examination of a communication on the sole basis that an identical or the same application is pending before the European Court.

15. The International Covenant on Civil and Political Rights, to which the Republic of Moldova is a party, provides in its article 2 that each State party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant.

16. In the consideration of the present communication the following question should be addressed first: How can a State that has been divested, by force and against its will, of being capable, in the physical sense, to exercise its sovereign powers on a territorial entity discharge its obligation under article 2 of the International Covenant on Civil and Political Rights, and under what conditions could it be made accountable for the violation of human rights that have been committed on the territorial entity on which it is prevented by force from exercising control? In

this context, the Working Group notes that the source itself acknowledges that the authorities of the Republic of Moldova cannot regulate the conduct of the administrative structures established de facto in Tiraspol, where Mr. Ivantoc is being detained.

17. Since, however, neither the source nor the Government provided the Working Group with sufficient information to enable it to examine the relevant facts and circumstances of the case, on which its opinion could be based, the Working Group decides, with reference to paragraph 17 (d) of its methods of work, to provisionally file the case.

Adopted on 27 May 2004

OPINION No. 9/2004 (MYANMAR)

Communication addressed to the Government on 27 October 2003.

Concerning: Daw Aung San Suu Kyi.

The State is not a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. In the light of the allegations made, the Working Group welcomes the Government's cooperation. It transmitted the Government's reply to the source of the communication, which has made known its comments thereon.

5. According to the information received, Daw Aung San Suu Kyi, General Secretary of the political party National League for Democracy (NLD) and a Nobel Peace Prize laureate, was arrested on 31 May 2003 at Yawayoo, in northern Myanmar, following grave incidents near Depayin, Sagaing division.

6. Daw Aung San Suu Kyi was reportedly taken to Insein prison and later to a military guest house in the north of Yangon. She is being held in detention and without charge. She has no access to relatives or lawyers. She has been allowed to be visited only by independent observers.

7. The source adds that Daw Aung San Suu Kyi is allegedly being held in detention under sections 7-9 and 10-15 of the 1975 State Protection Law. It was reported that under this law, anyone perceived to be a threat to State security can be detained without charge, trial or judicial appeal for up to five years.

8. The Government replied to the Working Group in three separate communications. The first, dated 27 June 2003, refers to the Group's urgent appeal of 2 June 2003. The second, dated 1 September 2003, appears to be essentially a reply to another urgent appeal sent by the Group on 18 July 2003. The third is a note verbale dated 14 May 2004 containing the reply to the Working Group's communication of 27 October 2003.

9. According to the Government's reply, Daw Aung San Suu Kyi has not been arrested, but has only been taken into protective custody, for her own safety. This protection, in the Government's view, was made necessary by an incident which occurred on 30 May 2003 between supporters and opponents of Daw Aung San Suu Kyi.

10. The Government also describes Daw Aung San Suu Kyi's activities between June 2002 and April 2003, stating that it had facilitated her work as General Secretary of the National League for Democracy by granting her the status of distinguished person. However, as a result

of the activities of her supporters and members of the party, unlawful and violent acts had recently taken place, causing disturbances which endangered the process of national reconciliation.

11. The Government states that Daw Aung San Suu Kyi has been visited by the Special Representative of the United Nations Secretary-General and the Special Rapporteur of the Commission on Human Rights for Myanmar. She has also held meetings with representatives of her party, and she has been given medical care, including hospitalization in a private hospital in Yangon in September 2003.

12. According to the Government, it could have instituted legal action against her under the country's domestic legislation. However, it has preferred to adopt a magnanimous attitude, and is providing her with protection in her own interests.

13. The source contests the information supplied by the Government, stating that Daw Aung San Suu Kyi is under arrest and that the alleged protective custody in her home has been imposed on her totally against her will. The source adds that the telephone line to the place where she is being held has been disconnected. It is not possible to hold a person in protective custody for a year. According to the source, she is being detained solely in order to prevent her from playing an effective role as leader of the opposition.

14. The Working Group has already published two opinions (decision No. 8/1992 and opinion No. 2/2002), in which it declared the detention of Daw Aung San Suu Kyi to be arbitrary. At present Daw Aung San Suu Kyi continues to be deprived of her liberty without charges or a trial, and to be subject to restrictions of all kinds in her communications and visits, which are permitted at the Government's discretion.

15. Accordingly, the situation in which Daw Aung San Suu Kyi finds herself is a violation of article 9 of the Universal Declaration of Human Rights which cannot be justified on the grounds that her detention is for her own benefit, for her protection or for the purpose of preventing confrontations or incidents of any other kind. No one may be arbitrarily deprived of his or her liberty. This is the third time since 1990 that Daw Aung San Suu Kyi has been placed under house arrest, without having been charged or brought to court.

16. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Daw Aung San Suu Kyi is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights, and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

17. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and to take the appropriate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 28 May 2004

OPINION No. 10/2004 (MALAYSIA)

Communication addressed to the Government on 20 February 2004

Concerning: Muhammad Radzi bin Abdul Razak, Nurul Mohd Fakri bin Mohd Safar, Mohd Akil bin Abdul Raof, Eddy Erman bin Shahime, Muhammad Ariffin bin Zulkarnain, Abi Dzar bin Jaafar, Falz Hassan bin Kamarulzaman, Mohd Ikhwan Abdullah and Shahrul Nizam Amir Hamzah

The State is not a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group regrets that the Government has not replied within the 90 day deadline and has not provided any information on the case in question.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been refuted by the Government.

5. The cases summarized hereafter have been reported to the Working Group as follows: Muhammad Radzi bin Abdul Razak, 19 years old, Nurul Mohd Fakri bin Mohd Safar, 17 years old, Mohd Akil bin Abdul Raof, 21 years old, Eddy Erman bin Shahime, 19 years old, Muhammad Ariffin bin Zulkarnain, 18 years old, Abi Dzar bin Jaafar, 18 years old, Falz Hassan bin Kamarulzaman, 17 years old, Mohd Ikhwan Abdullah, 19 years old, Shahrul Nizam Amir Hamzah, 21 years old, all of Malaysian nationality, and students at the University of Islamic Studies in Karachi, Pakistan, were initially arrested in Karachi on 20 September 2003. They were suspected of involvement in the activities of the organization called Jemaah Islamiyah, which has been accused of terrorist bombings in the South-East Asian region. The students were arrested during a pre-dawn raid on three religious schools in Karachi, together with four other Malaysian students.

6. On 25 September 2003, Malaysian authorities announced that the 13 students were being groomed to take over the leadership of Jemaah Islamiyah. On 10 November 2003, Pakistani security forces deported the 13 students to Malaysia, where they were immediately arrested and detained under sections 73 (1) and 8 of the Internal Security Act 1960 (ISA). They are being held by order of the Home Minister of Malaysia at unknown locations, although they are reported to be at Kamunting detention centre. ISA empowers the police to arrest and detain anyone threatening national security for 60 days without trial. When the first 60-day detention period lapses, the Home Minister can extend the detention without trial for a further two years under section 8 of the ISA, and then indefinitely.

7. On 11 November 2003, Malaysian police authorities confirmed that the 13 students had been in police custody since their arrest on their return in a special aircraft. Their detention was carried out under the powers enacted in the ISA. On 12 November 2003, the Government of

Malaysia defended the detention of the students, arguing that investigations were under way to clarify their links with the Jemaah Islamiyah. On 24 November 2003, 4 of the 13 students were released unconditionally. The persons named in the communication are the other nine, who remain in detention.

8. The source also indicates that on 22 November 2003, the nine students met with their lawyers at police headquarters in Kuala Lumpur for the first time since their arrest. The lawyers were given only 20 minutes for each student. Police officers were reportedly sitting behind the lawyers and could see and hear the interviews. The police officers allegedly listened and took notes of the conversations between the detainees and their lawyers. According to the source, the police were present in order to intimidate the detainees.

9. On 8 December 2003, the Home Minister decided to extend the detention orders issued against five of the students by a further two years, under section 8 of the ISA. They continue to be interrogated by the police. On 9 December 2003, Muhammad Ariffin bin Zulkarnain, Falz Hassan bin Kamarulzaman, Shahrul Nizam Amir Hamzah and Nurul Fakri bin Mohd Safar were released and placed under Restricted Order for two years. The Restricted Order prevents them from leaving the district where they were sent and obliges them to report to the police at least three times a month. They must be in their houses by a certain time of the day.

10. According to the source, the ISA should not be used to detain and interrogate the young men, as it exposes them to a high risk of physical and psychological ill-treatment and, potentially, torture. Their incommunicado detention without trial is a violation of their fundamental human rights. The authorities should produce them before a competent and impartial court and present evidence of their alleged acts, or release them immediately if evidence cannot be provided.

11. The Working Group, based on the information it received, which has not been contested by the Government, observes that the five Malaysian students who remain in detention - Muhammad Radzi bin Abdul Razak, Mohd Akil bin Abdul Raof, Eddy Erman bin Shahime, Abi Dzar bin Jaafar and Mohd Ikhwan Abdullah - were detained in Pakistan and deported to Malaysia, where they are kept in detention without trial. The administrative detention has been extended by the Home Minister based on an internal law. No criminal charges have been brought against them. They have not been given the opportunity of a fair trial before an independent judicial authority.

12. The Working Group considers that administrative detention on such grounds, even when in conformity with a domestic law, constitutes denying the opportunity of a fair trial by an independent and impartial judicial authority. In addition, these persons were not allowed to appoint a lawyer or to communicate with their relatives. Their detention is therefore a serious contravention of international norms and constitutes a violation of the due process of law of such gravity as to confer upon the deprivation of liberty an arbitrary character.

13. In the light of the above, the Working Group renders the following opinion:

With regard to Muhammad Ariffin bin Zulkarnain, Falz Hassan bin Kamarulzaman, Nurul Mohd Fakri bin Mohd Safar and Shahrul Nizam Amir Hamzah, the Working Group, in view of their release and on the basis of section 17 (a) of its methods of work, decides to file their cases.

With regard to Muhammad Radzi bin Abdul Razak, Mohd Akil bin Abdul Raof, Eddy Erman bin Shahime, Abi Dzar bin Jaafar and Mohd Ikhwan Abdullah, their deprivation of liberty is arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

14. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into line with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 28 May 2004.

OPINION No. 11/2004 (MADAGASCAR)

Communication addressed to the Government on 30 October 2003

Concerning: Azihar Salim.

The State is a party to the International Covenant on civil and political rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group conveys its appreciation to the Government for having submitted information regarding the case in good time.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Government's response has been transmitted to the source, which has not seen fit to transmit observations thereon. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information received, Mr. Azihar Salim was arrested on 27 June 2003 in his home at Nosy-Be by some 20 soldiers, who failed to produce an arrest warrant. There had not been any preliminary investigation, and he was not informed of the reasons for his arrest.

6. The source states that Mr. Salim was beaten and physically ill-treated by the soldiers, who confiscated his personal effects. Initially he was held in a cell in the Nosy-Be police station. One week later he was transferred by air to the capital and placed in detention at the Betongolo special brigade. The source alleges that during the transfer by air he was again physically ill-treated and beaten.

7. On 13 July 2002 Mr. Salim and his fellow detainees were questioned by the police. On 17 July 2002 Mr. Salim was charged before the Antananarivo court and held in pre-trial detention at Tsiafahy prison. He was accused of having supplied logistical aid to the local administration in support of former president Didier Radsiraka in the political crisis of February to June 2002.

8. The source adds that Mr. Salim was not assisted by counsel during his questioning by the police and judge. His relatives were not allowed access to the detention centres during the investigation into the alleged offences. The source asserts that Azahir Salim and the other detainees were arrested simply to settle political or personal scores and that, 16 months after their arrest, they are still being held without trial.

9. The source devotes part of the communication to describing the poor conditions of detention and overcrowding in the prison in which Azahir Salim is being held, and adds that no special treatment has been accorded him in comparison with ordinary prisoners.

10. According to the response submitted by the Government of Madagascar, Mr. Azihar Salim was tried on 15 December 2003 and convicted to two years' imprisonment. He was arrested by members of the gendarmerie and questioned concerning facts relating to the charges. He was brought before a judge for questioning and was the subject of an order of committal issued on 17 July 2002. His conviction is in accordance with offences provided for under article 263 (offences against the peace) of the Malagasy Criminal Code and punishable under article 266 (forced labour, imprisonment of six months to five years, and a minimum fine of 180,000 Malagasy francs).

11. The Government of Madagascar adds that the status of the detainee is governed by article 334 bis of the Malagasy Code of Criminal Procedure, which provides that: "For both crimes and offences the validity of the order of committal issued by the investigating judge or by the chamber ruling on pre-trial detention is established at eight months from the date of notification. The same applies to the arrest warrant once the person charged has been arrested." Lastly, Mr. Salim's interests were defended, both during the investigation and during the trial, in that he was assisted by several lawyers.

12. From the foregoing it is apparent that the source makes several complaints, the most pertinent in terms of the Working Group's mandate being arrest without a warrant and denial of the right to be assisted by counsel. In its response the Government contests the information from the source, and the latter, duly informed of the Government's response, has not commented thereon to the Group.

13. The Working Group is thus of the view that, even if certain facts, including facts relating to the arrest and questioning of Mr. Salim by the police, might constitute an infringement of his fundamental rights, it would appear, according to information not contested by the source, that he was tried in connection with facts punishable under the national law in effect and was assisted by several lawyers, both during the investigation and in the trial. It has thus not been demonstrated that Mr. Salim's detention is arbitrary.

14. In the light of the foregoing, the Working Group renders the following opinion:

Mr. Azihar Salim's arrest is not arbitrary.

15. Having rendered this opinion, the Working Group, on the basis of paragraph 17 (b) of its revised methods of work, decides to file the case.

Adopted on 27 May 2004.

OPINION No. 12 /2004 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 9 October 2003

Concerning: Ms. Dianellys Morato

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group notes with appreciation the information forwarded by the Government in respect of the cases in question.

3. The Working Group further notes that the Government has informed it that Dianellys Morato was released from detention on 8 January 2004.

4. The response of the Government was transmitted to the source, which did not communicate any comments.

5. Having examined the available information, and without prejudging the nature of the detention, the Working Group decides to file the case of Dianellys Morato under the terms of paragraph 17 (a) of its methods of work.

Adopted on 15 September 2004

OPINION No. 13/2004 (BOLIVIA)

Communication addressed to the Government on 5 February 2004

Concerning: Francisco José Cortés Aguilar, Carmelo Peñaranda Rosas and Claudio Ramírez Cuevas.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group conveys its appreciation to the Government for having submitted information regarding the case in good time.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. In view of the complaints submitted, the Working Group welcomes the cooperation of the Government. The Working Group has transmitted the Government's reply to the source. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. The cases summarized hereafter have been reported to the Working Group on Arbitrary Detention as follows:

(a) Francisco José Cortés Aguilar, a Colombian citizen, identity card No. 79,584,240; 41 years of age; former agricultural and trade union leader in Colombia; member of the National Association of Farm Users - Unity and Reconstruction (ANUC-UR); Director-General of the Social Corporation for Counselling and Community Capacity-building (COSPACC); participant in the Ministry of the Interior witness protection programme;

(b) Carmelo Peñaranda Rosas; 30 years of age; agricultural labourer; leader of the Progress towards Socialism Movement (MAS) in Cochabamba;

(c) Claudio Ramírez Cuevas; agricultural labourer; former mayor of Asunta, Yungas, who lodged Cortés Aguilar in his home.

6. It is reported that these three individuals are in pre-trial detention in the maximum security facility for convicts at Chonchocoro, El Alto, La Paz. According to the source the three individuals were arrested in the early morning of 10 April 2003 at the home of Claudio Ramírez Cuevas in Villa Adela, El Alto, by hooded members of military intelligence (Special State Investigation Centre) carrying machine guns and other automatic weapons. The arrest took place as part of operation "Early Warning". At the time of their arrest they were taken to military intelligence headquarters with their hands tied and blindfolded.

7. The source indicates that Cortés Aguilar has no record as a subversive or terrorist in Colombia. On various occasions he has been threatened by members of paramilitary organizations, as a result of which he decided to seek exile with his family in Bolivia. In 2001 he made a first trip, lasting six days, to Bolivia to take part in an international conference by the

anti-globalization organization Peoples' Global Action. He returned to Bolivia in 2002 to begin formalities for purchasing a home. He made a third trip in April 2003 to finalize purchase of the house and accept an invitation extended by Bolivian social organizations. Six days after his arrival he was arrested.

8. Cortés Aguilar was presented to the press as a guerrilla fighter and member of the so-called National Liberation Army (ELN) organization in Colombia; it was stated that he had travelled to Bolivia to organize a guerrilla group, the Bolivian National Liberation Army (ELN-B), and provide military training. Cortés Aguilar denied any link with subversive organizations.

9. In the operation on 10 April 2003 the following minors were also arrested: Nelly Ramírez, 17, daughter of Claudio Ramírez Cuevas, and her cousin, Betty Nina Díaz, also 17. An application for habeas corpus was also reportedly filed in July 2003 on behalf of these minors before the Constitutional Court. The Court reportedly ordered their immediate release.

10. According to the source, the authorities showed the press the following items as proof of guilt: military uniforms; an ELN flag; photographs of Cortés Aguilar with Evo Morales, MAS leader; books by Lenin and Mao Zedong; US$ 4,000; and two kilos of cocaine paste. According to the detainees the drug was planted in the house by the arresting officers at the time of the arrest. The security forces also reportedly attempted to plant booby-traps, but were prevented by the neighbours. The money found reportedly belonged to Cortés Aguilar, who had taken it to Bolivia with the intention of purchasing a house. However, it was represented to the press as the proceeds of drug trafficking and proof of funding of a guerrilla organization. It is stated that these finds were presented to the press some hours after the arrests and search of the house.

11. It is also stated that in accordance with Bolivian law, the prosecutor should have brought charges within six months, which he failed to do. Instead, he asked the judge for an extension of the time limit. According to the source of the communication, this was because of a lack of firm evidence. At the time of their arrest, the individuals were held incommunicado in solitary confinement, reportedly for two months.

12. The source adds that these persons were arrested for political reasons only, in the context of a confrontation between the Government of then President Gonzalo Sánchez de Lozada and MAS. The continued detention of these individuals, notwithstanding Sánchez de Lozada's flight to the United States and subsequent change of Government, was reportedly the result of inertia on the part of the judiciary and prosecution services. It adds that the then Minister of the Interior sought to exploit the arrest of these individuals as evidence that MAS was involved in narco-terrorist activities, which the organization refuted immediately through statements by its parliamentary spokespersons.

13. The source adds that the capture of these individuals was exploited politically by the then government party in El Chapare, where photographs of Cortés Aguilar, represented as a drug trafficker, with Evo Morales, were distributed, with the aim of attacking Evo Morales. Operation "Early Warning" was then represented as a timely blow against the resurgence of terrorism in the country.

14. Cortés Aguilar's Bolivian lawyers have reportedly received death threats. They have been denied access to the court file and evidence. This indicates obstruction of the right to defence, disclosure and due process. The source concludes that these individuals were arrested only for internal partisan political reasons, with the aim of displaying before the press successes in efforts to counter terrorism and drug trafficking and undermining the prestige of MAS and its leaders.

15. The Government, in its response, states that the public prosecutor conducted an investigation concerning Francisco Cortés Aguilar and other individuals in accordance with the Code of Criminal Procedure of 1999 and trial procedure, and in full respect for the rights and guarantees of the individuals charged. The Government states that the arrest was carried out on the orders of the examining judge in the city of La Paz, in accordance with established procedures, under press scrutiny.

16. The Government states that it did not present Francisco Cortés to the press, but that after the hearing on interim measures, the press had attended a press conference, at which Cortés himself stated that he had been arrested on a charge of being a guerrilla and for alleged links with ELN in Colombia.

17. The Government states that the arrests of the minors Nelly Ramírez and Betty Nina Díaz were not linked to the measures taken against Francisco Cortés, but, rather, to action by the public prosecutor against trafficking in controlled substances. It further states that the evidence regarding possible liability on the part of Francisco Cortés and the other persons charged was formally admitted with the bringing of the charges by the public prosecutor. Prosecutors on the case and the national press witnessed events at the home of Claudio Ramírez when Francisco Cortés was arrested.

18. The Government states that article 134 of the Code of Criminal Procedure provides that "in the event of a complex investigation owing to the fact that the circumstances relate to offences committed by criminal organizations, the prosecutor may ask the investigating judge to extend the preparatory stage to a maximum period of 18 months". On the basis of this legal provision the prosecutor in the case sought an extension in accordance with the law, the investigating judge ordering interim measures having extended the time limit for the preparatory stage.

19. The Government states that the public prosecutor was not aware that the accused had been incommunicado for two months. It also indicates that the public prosecutor played no role in the supposed politicization of the case. It further states that access to the evidence collected by the public prosecutor fell within the discretion of the court at the time of the hearing for interim measures. It states, however, that the file relating to the investigation is public and is open to the parties concerned at any time on request to the prosecutor handling the case or, if appropriate, to the district prosecutor or investigating judge, so that the lack of access claimed is not apparent.

20. The Government concludes by stating that the relationship supposedly existing between the accused and the political party known as the Progress towards Socialism Movement did not

form part of the criminal investigation conducted by the public prosecutor. The accused were not arrested by military intelligence officers; the arrest and subsequent detention were by the National Police, in the exercise of criminal investigation police functions.

21. The Working Group considers that to render an opinion it must receive additional information from both the source and the Government on the following points:

(a) The legislation under which the charge is brought and the nature of the charge levelled by the public prosecutor and of the penalties should the accused be convicted;

(b) Information as to whether the accused resorted to violence of any kind;

(c) The judicial phase of the proceedings at present and the steps open to the accused.

22. In the light of the foregoing, the Working Group, on the basis of paragraph 17 (c) of its methods of work, decides to maintain the case under review pending further information.

Adopted on 15 September 2004

OPINION No. 14/2004 (CHINA)

Communication addressed to the Government on 3 November 2003

Concerning: Jae Hyun Seok

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group notes with appreciation the information received from the Government in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group further notes that the source has informed the Group that the above-mentioned person is no longer in detention.

4. Having examined the available information, and without prejudging the nature of the detention, the Working Group decides to file the case of Jae Hyun Seok under the terms of paragraph 17 (a) of its methods of work.

Adopted on 15 September 2004

OPINION No. 15/2004 (CHINA)

Communication addressed to the Government on 23 October 2003

Concerning: Huang Qi

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments.

5. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

6. According to the information received, Huang Qi, 40 years old, resident in Chengdu Shi, Sichuan Sheng, a former computer engineer, was arrested on 5 June 2000 at his home by four members of the Political Security Division of the Chengdu Public Security Bureau.

7. Huang Qi is the founder of two web sites: Scream Online and Tianwang Web. Various articles were published on the second of these sites on social issues such as the situation of 200 fishermen in Sichuan province and the demonstrations in Tiananmen Square in 1989. As a result of these activities, and before his detention, Huang Qi received threats from provincial government officials and the Chengdu Public Security Bureau closed down the Tiangwang web site. However, this web site was later relaunched by others, who published articles on the deaths in prison of Falun Gong followers and on an organization called the China Democracy Party (CDP).

8. Huang Qi was arrested without an arrest warrant and subsequently accused of trying to undermine national unity by organizing separatist movements and organizing and carrying out subversive activities intended to overthrow the socialist system. On 14 August 2001, Huang Qi was tried by the Chengdu Intermediate Court in Sichuan. His trial was held in camera. Neither relatives nor journalists were allowed to attend. Only his two lawyers were allowed to be present; they had been authorized to have a single meeting with Huang Qi before the trial.

9. On 9 May 2003, about three years after his arrest, the Chengdu Intermediate Court in Sichuan sentenced Huang Qi to five years' imprisonment. He was given only 10 days to file an appeal, on which no decision has yet been forthcoming.

10. While Huang Qi was detained in detention centre No. 1 of the Chengdu Public Security Bureau, he was brutally beaten. He was injured in the testicles and the face and one of his teeth was broken, but he was given no treatment for his injuries. It is also reported that his relatives were not permitted to visit him.

11. The Government disputes the facts as reported by the source. The Government's assertions are summarized as follows:

(a) It admits that Huang Qi was indeed arrested on 5 June 2000, but claims that there was an arrest warrant and that his family was duly notified of his arrest. The Government states that Huang Qi was arrested for publishing rumours and defamatory and other material on the Internet to incite the masses to engage in activities that undermined the political authority of the State;

(b) With regard to the irregularities reported by the source in connection with the delay in holding the trial, the Government says that the trial began on 13 February 2001 and that, for procedural reasons, it had to be held in camera, as the case dealt with matters relating to State security. However, the sentencing hearings were held in open sessions, which were duly publicized;

(c) The trial had to be suspended on account of the state of Huang Qi's health and was resumed once his health was restored. On 9 May 2003, Huang Qi was finally sentenced to five years' imprisonment;

(d) According to the Government, Huang Qi's trial was suspended not only in accordance with the law, but also on basically humanitarian grounds. In addition, because of revelations in the course of the trial of new allegations against Huang Qi, the time limits on the investigation and custody had to be recalculated, and it was found that they could be longer. This was done in accordance with article 128 of the Code of Criminal Procedure;

(e) With regard to the source's assertion that there were no visits from family members, the Government states that while Huang Qi was in pre-trial detention his family took him money and gifts but never requested permission to see him. There was thus no refusal to allow visits. His two lawyers were able to meet with him on a total of four occasions and were able to fully exercise his right to a defence;

(f) The alleged ill-treatment of Huang Qi in the Chengdu detention centre is categorically denied. The Government explains the different legal measures taken in China to incorporate into domestic law the provisions adopted by the United Nations to prevent torture and ill-treatment. The Government reports that, while he was in custody in Chengdu, Huang Qi once injured himself with a pen in order to avoid being interrogated;

(g) The Government adds that Huang Qi did not accept the verdict and filed an appeal. On 7 August 2003, the Sichuan Supreme Court upheld the verdict;

(h) The Government concludes that the detention, trial and sentencing of Huang Qi complied fully with the Universal Declaration of Human Rights, which stipulates that freedom of expression is subject to such limitations as are determined by law. Huang Qi spread false

rumours and defamatory material over the Internet in order to incite subversion against State policy and this, in the Government's view, has nothing to do with the peaceful exercise of freedom of expression.

12. The source appreciates the amount of detail given in the Government's reply, but disagrees on several key points, for the following reasons:

(a) The long delay in the trial of Huang Qi was not due to health problems, since the longest period of delay came after the court sessions and before the verdict was handed down. Over two years passed between the beginning of the oral proceedings on 13 February 2001 and the handing down of the verdict on 9 May 2003, even though, under China's own legislation, the period between the beginning of oral proceedings and sentencing may not exceed 4½ months. In any case, there is no evidence that the new charges which the Government claims were brought against the defendant during the trial justified a delay in the proceedings. The only offences of which the defendant was convicted were those defined in articles 103-105 of the Criminal Code of the People's Republic of China, that is, those contained in the initial indictment;

(b) Nor is there any evidence that Huang Qi's health was the grounds for postponing the trial, since there has not yet been any investigation into the deterioration of his health as a result of the ill-treatment to which he was subjected or into the ill-treatment itself;

(c) With regard to the absence of visits from family members, the latter insist that they did ask to visit Huang Qi on several occasions and that each time they were refused permission to do so;

(d) The ill-treatment to which Huang Qi was subjected was reported in June 2000 to the Special Rapporteur on the question of torture of the Commission on Human Rights and is fully documented, with objective evidence such as the scar on his head, his missing tooth and the fact that several persons who saw him spoke of a suicide attempt by a man who, to use his own words, could "stand no more of this hell". Huang Qi was continually beaten and ill-treated by prison guards and fellow prisoners, which caused his physical and mental health to deteriorate.

13. The Working Group considers that the reported procedural delay in the trial of Huang Qi does not appear to have been excessive or sufficiently long to be considered as unreasonable or as constituting a limitation on the right set out in article 10 of the Universal Declaration of Human Rights and in article 14 of the International Covenant on Civil and Political Rights. It has been established that Huang Qi fainted during the first hearing, so that it was right to postpone the trial.

14. Any restrictions on the exercise of the right to freedom of expression must meet the following criteria: they must be specifically provided for in domestic legislation; they must be absolutely necessary in a democratic society; and they must be justified by the need to protect a legitimate national security interest. Articles 103-105 of the Criminal Code of the People's Republic of China refer to the subversion of State power and the overthrow of the socialist system, which leaves government authorities and judges broad discretion in their interpretation of these articles. The Government has not adequately explained to the Working Group to what extent the publication on the Internet of Huang Qi's articles and web pages could be so serious as to affect the peaceful exercise of his right to freedom of expression.

15. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Huang Qi is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

16. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, to take the adequate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights, and to study the possibility of amending its legislation in order to bring it into line with the Universal Declaration and the other relevant international standards accepted by that State.

Adopted on 15 September 2004

OPINION No. 16/2004 (MYANMAR)

Communication addressed to the Government on 5 March 2004

Concerning: the case of Maung Chan Thar Kyaw

The State is not a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. According to the information received, Maung Chan Thar Kyaw, a 15-year-old child, a recent high school graduate, living in Monywa township, was arrested on 3 June 2003 and accused of having thrown rocks at police officers who were securing an area after a confrontation with members of the National League for Democracy. The confrontation took place on 30 May 2003. In spite of the fact that he emphatically denied the act, he was charged under section 333/114 of the Penal Code.

5. On 7 July 2003, Maung Chan Thar Kyaw was found guilty of obstructing the police. Under section 47 (d) of the Child Law, the Monywa township court sentenced him to be committed to the custody of the Nge Awsan Training School juvenile detention camp in Yangon division where he must stay until 4 October 2005, when he turns 18. According to the source, when he turns 18 he could be charged again, this time as an adult, and transferred to a common prison.

6. According to the information received, Maung Chan Thar Kyaw had no legal counsel, nor were his parents permitted to assist him. He appeared before the court alone, in contravention of section 42 (c) of the Child Law and article 37 (d) of the Convention on the Rights of the Child. The deputy township law officer appeared as witness for the prosecution.

7. The source further reports that the judgement relied exclusively upon the testimonies of government officers. No witnesses were called on behalf of the accused. However, the prosecution was allowed to call 24 witnesses, including four police officers, two ward Peace and Development Council chairmen and four medical doctors who had treated the police officers for their injuries and were themselves not witnesses to the alleged incident.

8. According to the source, the court's sentence of the accused was based entirely on the characterizations of persons appearing for the prosecution and on a report by a juvenile probation officer.

9. According to the source, his arrest, detention and trial are in contravention of the Child Law and the Convention: he was kept in detention since the time of his arrest and for the duration of the trial; he was charged with non-bailable offences which should not have been

applied to a child offender, he appeared before the court alone, he was sentenced without consulting his parents or others willing to appear on his behalf and without due regard to a range of lesser sanctions available under the law.

10. The Government, which had the possibility to respond, did not contest the allegations.

11. The Working Group believes that having legal assistance and having family members attend the trial are essential rights of due process and defence, in particular when the defendant is a child. These rights were not observed in this case, nor was the right to call witnesses on his behalf under the same conditions as witnesses against him. The failure to observe these international norms relating to the right to a fair trial are of such gravity as to confer on the deprivation of liberty of Maung Chan Thar Kyaw an arbitrary character.

12. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Maung Chan Thar Kyaw is arbitrary, being in violation of articles 9, 10 and 11 of the Universal Declaration of Human Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

13. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 15 September 2004

OPINION No. 17/2004 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 7 May 2004

Concerning: Ansar Mahmood and Sadek Awaed.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group received a communication informing it that 20 named foreigners had been detained in the United States of America in the weeks after 11 September 2001. At the time of the submission of the petition, the source advised that 17 of those persons had already been released. Acting in accordance with its methods of work, the Working Group decided to transmit to the Government only the three cases of persons yet in detention.

3. The Working Group notes with appreciation the information received from the Government in respect of the cases of Mr. Ansar Mahmood, Mr. Sadek Awaed and Mr. Benamar Benatta. (In respect of Mr. Benatta, see opinion No. 18/2004 below.)

4. The Working Group further notes that the Government has informed the Group that Ansar Mahmood and Sadek Awaed were released from detention and deported from the United States on 12 August 2004 and 31 May 2004, respectively.

5. The source confirmed that Ansar Mahmood was released and deported to Pakistan on 12 August 2004 and that Sadek Awaed was released and deported to Egypt in May 2004.

6. Having examined the available information, and without prejudging the nature of the detention, the Working Group decides to file the cases of Ansar Mahmood and Sadek Awaed under the terms of paragraph 17 (a) of its methods of work.

Adopted on 16 September 2004

OPINION No. 18/2004 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 7 May 2004

Concerning: Benamar Benatta

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group regrets that the Government did not reply within the 90-day deadline.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments thereon.

5. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

6. The source informed the Working Group that:

(a) Mr. Benatta entered the United States on 31 December 2000 on a non-immigrant visitor's visa, authorizing him to remain in the country until 30 June 2001;

(b) Mr. Benatta attempted to enter Canada to request political asylum. He was arrested by Canadian officers and handed over to the United States immigration authorities on 12 September 2001;

(c) Mr. Benatta was charged as a removable alien by the Immigration and Naturalization Service and served with a Notice to Appear at Niagara Falls New York, where he was interviewed by agents of the Federal Bureau of Investigation (FBI). He was requested to appear before an immigration court on 25 September 2001. However, on 16 September he was taken by the United States Marshal Service to the Metropolitan Detention Centre in Brooklyn, New York;

(d) Mr. Benatta was placed in a "special housing unit" and assigned high-security status. He was kept in incommunicado detention, in a cell illuminated for 24 hours a day. He was denied access to legal counsel and was woken up every half hour by the guard knocking on his door;

(e) The FBI officially cleared him of suspected terrorist activity on 15 November 2001. He was never told that he was cleared. On 30 April 2002 he was assigned a lawyer for the first time;

(f) During the months he was detained Mr. Benatta appeared before an immigration judge at the facility, without counsel and without having been provided access to the law library. He was brought to the hearings shackled and handcuffed;

(g) On 12 December 2001 he was criminally indicted for possession of a false social security card and possession of a false and procured United States Alien Registration Receipt Card;

(h) In October 2003 the criminal charges against him were dropped. He remains in immigration detention unable to post a $25,000 bond. Mr. Benatta is pursuing his claims for asylum as well as seeking a reduction of bond.

7. The Government in reply to the source's allegations, states that:

(a) Benamar Benatta entered the United States under a B-1 non-immigrant visa on 31 December 2000 with an authorization to remain in the United States until 30 June 2001;

(b) Mr. Benatta attempted to enter Canada to request political asylum. Canada denied Mr. Benatta's entry and returned him to the United States on 12 September 2001. At the time of this return Mr. Benatta was found to be in possession of a fraudulent resident alien registration number and a fraudulent Social Security card

(c) On 12 September 2001 Mr. Benatta was served a Notice to Appear and a Notice of Custody Determination. Mr. Benatta was charged as a removable alien having remained in the United States longer than authorized. On 13 September 2001 Mr. Benatta was taken into custody;

(d) On 25 September 2001 Mr. Benatta was scheduled for his initial hearing. During the interval the FBI examined potential connections between Mr. Benatta and the 11 September terrorist attacks, but cleared him of any involvement on 15 November 2001;

(e) On 12 December 2001 Mr. Benatta was ordered to be removed to Canada or Algeria. He filed an appeal with the Board of Immigration Appeals, which rejected it on 8 April 2002;

(f) Also on 12 December 2001, the District Court for the Western District of New York issued an indictment charging Mr. Benatta with a violation of 18 USC 1028 (a) (6) (knowingly possessing an identification document procured without legal authority) and 546 (possession of a fraudulent alien registration card);

(g) Pursuant to a warrant for his arrest, Mr. Benatta was transferred to the custody of United States marshals on 25 April 2002, but on 3 October 2003 the criminal charges against him were dismissed. On 6 October 2003 he was returned to the custody of the United States Immigration and Customs Enforcement;

(h) The immigration judge again ordered Mr. Benatta's removal to Algeria, but he filed an appeal on 22 April 2004;

(i) Mr. Benatta failed to pay the $25,000 bond set by Immigration and Customs Enforcement as a condition of his release pending the outcome of his appeal.

8. Mr. Benatta's last appeal was rejected on 3 September 2004 and Immigration and Customs Enforcement is in the process of enforcing his departure from the United States.

9. The Working Group considers that:

(a) The versions of events provided by the source and the Government basically correspond as regards the length and handling of Mr. Benatta's detention. Mr. Benatta has in fact been detained for over three years - from 12 September 2001 to the present - in fact for the mere administrative offence of having stayed in the United States after his visa had expired. On 12 December 2001, the District Court for the Western District of New York issued a warrant for Mr. Benatta's arrest, on the basis of possession of fraudulent documentation. Specific charges for that offence were, however, never brought, nor was Mr. Benatta summoned to appear before the trial judge. The accusation proved to be a mere formality, given that when it was dismissed on 3 October 2003, no legal proceedings of any kind had been undertaken. To keep a person in prison awaiting trial for almost three years without actually taking any procedural action on the offence with which he is accused contravenes article 9 of the International Covenant on Civil and Political Rights;

(b) Although both the source and the Government acknowledge that Mr. Benatta was heard by an immigration judge, there is no record of whether the judge ordered or confirmed the detention, since, as the Government has stated, it was Immigration and Customs Enforcement that took the decision to keep Mr. Benatta detained. This deprivation of liberty (from 12 September to 12 December 2001 and from 30 October 2003 to the present) can in no way be justified by the mere fact that Mr. Benatta has been unable to post the $25,000 bond demanded of him on 22 April 2004. The imprisonment Mr. Benatta has endured, at least for the 14 months from 12 September 2001 to 12 December 2001 and from 30 October 2003 to the present, has been a de facto prison sentence, equivalent to what he might have been given had he committed a crime. In no way can the simple administrative offence of having stayed in the United States after his visa had expired justify such a disproportionate punishment;

(c) Finally, the Government has said nothing about the high-security prison regime (involving impositions that could be described as torture) which, for no reason whatsoever, was imposed on him while he was under investigation by the FBI for a possible link to the 11 September attacks. Neither has the Government explained why Mr. Benatta was not told he was under investigation in that connection, or that he was later cleared of all responsibility for the attacks on the Twin Towers on 11 September 2001. These practices violate article 9 of the International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners. They undoubtedly weakened Mr. Benatta's ability to understand his position and defend himself. Their seriousness is such that Mr. Benatta's imprisonment constitutes arbitrary detention.

10. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Benamar Benatta is arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within categories I and III of the categories applicable to the consideration of cases submitted to the Working Group.

11. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 16 September 2004

OPINION No. 19/2004 (VIET NAM)

Communication addressed to the Government on 11 June 2004

Concerning: Dr. Nguyen Dan Que

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)

2. The Working Group conveys its appreciation to the Government for having submitted information concerning the case.

3. (Same text as paragraph 3 of opinion No. 20/2003.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. On 22 June 2004, it transmitted the reply provided by the Government to the source, which provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information received from the source, Dr. Nguyen Dan Que is the founder of the Non-Violent Movement for Human Rights and a long-standing peaceful advocate for democracy and human rights. Dr. Que received a medical degree from Saigon Medical School at the age of 24 and became a teacher at the university's medical school shortly after graduation. He was awarded training scholarships to work in Belgium, France and the United Kingdom in 1968, 1969 and 1972, respectively. He returned to Viet Nam in 1974 to serve on the Faculty of Medicine at Saigon (Ho Chi Minh City) University. The following year, Dr. Que became Director of the Medical Department of Cho-Ray Hospital. Some years later, he was fired from this position when he questioned the Government's medical and social policies.

6. In 1978, Dr. Que formed the National Front for Progress, which explicitly embraced non-violence in its efforts to get the Government to cut down on military spending, invest more in the welfare of the people and hold free and fair elections. On 18 February 1978, he was arrested for rebelling against the regime and forming a reactionary organization. He was detained without trial until his release 10 years later. Upon his release from prison, Dr. Que created the Non-Violent Movement for Human Rights on 11 May 1990 and became the first member of Amnesty International in Viet Nam.

7. On 14 June 1990 he was again arrested. This time he was sentenced to 20 years' imprisonment for attempting to overthrow the Government. In 1998, he was released under a general amnesty. He has been nominated for the Nobel Peace Prize on four occasions and has been awarded several international human rights prizes.

8. According to the source, on 13 March 2003 Dr. Que emailed a statement from an Internet café criticizing the Government's claims that it respects freedom of information, as well as another statement supporting a bill introduced in the United States Congress known as the Freedom of Information in Viet Nam Act of 2003. In his statements, Dr. Que challenged the Government of Viet Nam for its alleged restrictions on freedom of information.

9. On 17 March 2003, Dr. Que was arrested outside his home in Ho Chi Minh City by members of the City Public Security Office and was taken to a local security station. Later, security officials searched his home and seized computers containing his essays, as well as his personal documents. After the search of his house, he was moved to a municipal jail at 237 Nguyen Van Cu Street, District 1, Ho Chi Minh City, where he remains to this day.

10. The source further reports that Dr. Que has not been officially charged. A trial date has not been set. He has been held incommunicado since his arrest and denied access to his family. His relatives have been prohibited from providing him proper medication for his peptic ulcers, kidney stones and high blood pressure. Because of Dr. Que's age and medical conditions, his family is exceedingly worried about his health.

11. Dr. Que was arrested for disseminating statements over the Internet criticizing the Government of Viet Nam for denying citizens their right to freedom of information. The authorities allegedly plan to charge Dr. Que under article 80 (spying) of the Criminal Code of Viet Nam, reportedly for trying to transmit documents that contain information critical of the State. The sentence for this crime ranges from 12 years' imprisonment to the death penalty.

12. The source further considers that the authorities exacerbated the violation of Dr. Que's right to exercise his fundamental freedoms of opinion and expression by failing to provide him with his rights to a prompt hearing, of access to counsel, to be informed of the charges against him, and to be released pending trial. Dr. Que has been held for over one year without charge, hearing or trial date. Dr. Que was never brought before a judicial authority for a determination of the lawfulness of his detention.

13. In its response, the Government stated that the rights to freedom of expression and freedom of information of Vietnamese citizens are clearly enshrined in the Constitution and laws, and in practice these rights are guaranteed and strictly observed. With regard to the case of Dr. Que, the Government assured the Working Group that the information and allegations contained in the communication are not true: Dr. Que was arrested and is held in custody for having committed acts in violation of article 80 of the Criminal Code of Viet Nam. As a result, he will be brought to trial when investigation procedures are completed and, as in any other case, the right of the defendant to a fair proceeding before a court shall be guaranteed in strict accordance with the law.

14. Acting in accordance with its methods of work, the Working Group forwarded the information supplied by the Government to the source, so that it could make additional comments, which it has done. The source stated that the Government's response does not offer evidence to refute its presentation of facts and analysis of law. The source added that in its reply the Government stated that Dr. Que was arrested for having allegedly committed acts in violation of article 80 of the Criminal Code of Viet Nam. However, since the petition and reply, Dr. Que has been charged with and convicted of violating article 258 of the Penal Code, which prohibits abusing "democratic freedom to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens". The source ascertained that after being held incommunicado for 16 months in jail, without being informed of the charges against him or access to counsel of his choosing, Dr. Que was convicted and sentenced, without access to counsel, in a trial closed to all outsiders except for his family.

15. The Working Group notes that the Government did not reply to the detailed allegations of the source, it limited itself to declaring that they are untrue. In its reply, the Government asserts that Dr. Nguyen Dan Que was arrested on the grounds of having committed acts in violation of article 80 of the Criminal Code of Viet Nam, but it elaborates neither on what the charges under article 80 consist of, nor the facts that underlie such charges.

16. On this basis, the Working Group concludes that the acts of which Dr. Nguyen Dan Que is accused are indeed those indicated in the communication, i.e. to have written statements criticizing the Government and expressing his point of view on the freedom of information in the country, and to have disseminated these statements via the Internet. The Working Group concludes that Dr. Que's actions constitute only the peaceful exercise of his freedom of opinion and expression, which is enshrined in article 19 of the Universal Declaration of Human Rights and in article 19 of the International Covenant on Civil and Political Rights, to which Viet Nam is a party.

17. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Dr. Nguyen Dan Que is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

18. Having found that the detention of Dr. Nguyen Dan Que is arbitrary, the Working Group requests the Government of Viet Nam to take the steps necessary to remedy the situation, in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 16 September 2004
