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**Human Rights Council**

**Working Group on Arbitrary Detention**

Opinions adopted by the Working Group on Arbitrary Detention at its number session, dates

Opinion No. ##/#### concerning Person (Country)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group’s mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on date the Working Group transmitted to the Government of Country a communication concerning Person. The Government [has not replied to the communication] [replied to the communication on date]. The State [is] [is not] a party to the International Covenant on Civil and Political Rights.

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

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

Response from the Government

Discussion [[The two paragraphs below are included only when paragraph 15 of the methods of work is applicable]]

##. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

##. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

Disposition

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

The deprivation of liberty of Person, being in contravention of articles […] of the Universal Declaration of Human Rights and of articles […] of the International Covenant on Civil and Political Rights, is arbitrary and falls within [category …] [categories … ].

##. The Working Group requests the Government of Country to take the steps necessary to remedy the situation of person without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights [and the International Covenant on Civil and Political Rights].

##. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to [release person immediately and] accord [him] [her] [person] an enforceable right to compensation and other reparations, in accordance with international law.

Follow-up procedure

##. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Person has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Person;

(c) Whether an investigation has been conducted into the violation of Person’s rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Country with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

##. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

##. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

##. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken. [[1]](#footnote-2)

[*Adopted on date*]

1. See Human Rights Council resolution 33/30, paras. 3 and 7. [↑](#footnote-ref-2)