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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Working Group on Arbitrary Detention

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Introduction

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights at its forty-seventh session, in 1991, by resolution 1991/42. The Commission decided to set up a working group composed of five independent experts with the task of investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the international instruments adopted by the States concerned. The Working Group consists of the following five independent experts: Mr. R. Garretón (Chile); Mr. L. Joinet (France); Mr. L. Kama (Senegal); Mr. K. Sibal (India) and Mr. P. Uhl (Czech Republic and Slovakia). At its first session, the Working Group elected Mr. L. Joinet as its Chairman-Rapporteur and Mr. R. Garretón as its Vice-Chairman. At its eighteenth session (in May 1997), the Group, at the proposal of its Chairman, Mr. Joinet, decided to amend its methods of work to the effect that at the end of each mandate the Chairman and the Vice-Chairman of the Group should resign, and an election be held to replace them. In pursuance to the adoption of the amendment, the Group elected Mr. K. Sibal as Chairman-Rapporteur and Mr. L. Joinet as Vice-Chairman. The Group has so far submitted six reports to the Commission, covering the period 1992-1997 (E/CN.4/1992/20, E/CN.4/1993/24, E/CN.4/1994/27, E/CN.4/1995/31 and Add.1-4, E/CN.4/1996/40 and Add.1, and E/CN.4/1997/4 and Add.1-3). The Working Group's initial three-year mandate was extended by the Commission in 1994 for a further three years.

2. At its fifty-third session, the Commission adopted resolution 1997/50, entitled “Question of arbitrary detention”, in which, inter alia, it decided to renew, for a three-year period, the mandate of the Working Group, composed of five independent experts entrusted with the task of investigating cases of deprivation of liberty imposed arbitrarily, provided that no final decision has been taken in such cases by domestic courts in conformity with domestic law, with the relevant international standards set forth in the Universal Declaration of Human Rights and with the relevant international instruments accepted by the States concerned. It further requested the Working Group to submit to it, at its fifty-fourth session, a report on its activities and on the implementation of resolution 1997/50, and to include any suggestions and recommendations which would enable it to discharge its task in the best possible way, and to continue its consultations to that end within the framework of its terms of reference.

I. ACTIVITIES OF THE WORKING GROUP

3. The present report covers the period from January to December 1997, during which the Working Group held its eighteenth, nineteenth and twentieth sessions.

A. Handling of communications addressed to the Working Group

1. Communications transmitted to Governments and currently being dealt with

4. During the period under review, the Working Group transmitted 26 communications concerning 119 new cases of alleged

arbitrary detention (5 women and 114 men) involving the following countries (the number of cases for each country is given in parenthesis): Algeria (1), Bahrain (5), Bolivia (1), Bhutan (4), Cuba (2 communications - 5), Eritrea (1), Ethiopia (2 communications - 3), Indonesia (1), Iraq (30), Israel (4 communications - 33), Kyrgyzstan (2), Maldives (1), Mexico (1), Myanmar (1), Peru (1), Republic of Korea (2), United Arab Emirates (1), United States of America (1), Viet Nam (2 communications - 5) and Yugoslavia (20).

5. Out of the 20 Governments concerned, 9 provided information on all or some of the cases transmitted to them. They were the Governments of the following countries: Algeria, Bahrain, Bhutan, Cuba (on 1 communication regarding 1 person), Israel (on 1 communication regarding 5 persons), Kyrgyzstan, Myanmar, United Arab Emirates and United States of America.

6. Apart from the above-mentioned replies, certain Governments (Colombia, Ethiopia, the Islamic Republic of Iran, Malaysia, the Republic of Korea, Sri Lanka and the Syrian Arab Republic) communicated information concerning cases on which the Group had already adopted decisions or opinions (see paras. 13-15 below).

7. The Governments of Bolivia, Ethiopia (regarding 1 communication concerning 2 persons), Indonesia, Iraq, Israel (regarding 2 communications concerning 18 persons), Peru, Viet Nam and Yugoslavia did not provide the Working Group with any reply concerning cases submitted to them, though the 90-day deadline had expired. With regard to the Governments of the other countries mentioned in paragraph 4 above (Cuba (regarding 1 communication concerning 4 persons), Eritrea, Ethiopia (regarding 1 communication concerning 1 person), Israel (regarding 1 communication concerning 3 persons), Maldives, Mexico and the Republic of Korea), the 90-day deadline had not yet expired when the present report was adopted by the Group (5 December 1997).

8. In respect of communications transmitted prior to the period January-December 1997, the Working Group received replies from the Governments of Bahrain, France, Mexico and the United States of America.

9. A description of the cases transmitted and the contents of the Governments' replies will be found in the relevant decisions and opinions adopted by the Working Group (see E/CN.4/1998/44/Add.1 and annex III to the present report).

10. As regards the sources which reported alleged cases of arbitrary detention to the Working Group, it may be noted that of the 119 individual cases submitted by the Working Group to Governments during the period under consideration, 15 were based on information communicated by the detained persons themselves or by members of their families or relatives, 46 on information communicated by local or regional non-governmental organizations, and 58 on information provided by international non-governmental organizations enjoying consultative status with the Economic and Social Council.

2. Opinions of the Working Group

11. It may be noted that the Working Group, in order to avoid any controversy over the interpretation of its mandate, decided to refer to its conclusions on individual cases submitted to it as “opinions”, and no longer as “decisions”, applicable as of the Group’s eighteenth session in May 1997.

12. During the three sessions held in 1997, the Working Group adopted 21 opinions concerning 122 persons in 17 countries. Some details of the opinions adopted in 1997 appear in the table hereunder and the complete text of opinions 1/1997 to 15/1997 (as well as that of decisions 37/1996 to 49/1996, adopted during the Working Group’s seventeenth session, in December 1996) is given in addendum 1 to this report. Opinions 16/1997 to 21/1997 are reproduced in annex III to the present report.

13. In accordance with its methods of work (annex I, para. 18), the Working Group, in addressing its opinions to Governments, drew their attention to Commission resolution 1997/50 requesting them to take account of the Working Group's 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 had taken. On the expiry of a three-week deadline the opinions were also transmitted to the source.

Opinions adopted in 1997 by the Working Group on Arbitrary Detention

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
1/1997	Iraq	No	Qadir Rasoul Ismail and 29 others*	Arbitrary, category III
2/1997	Syrian Arab Republic	Yes	Mazen Kana	Arbitrary, category III
3/1997	Kuwait	Yes	Issam Mohammed Saleh al Adwan	Case closed due to lack of sufficient information, file transmitted to Working Group on Enforced or Involuntary Disappearances
4/1997	Malaysia	No	Nasiruddin bin Ali and 8 others*	Arbitrary, category III
5/1997	Indonesia	No	Cesaitino Correla and 20 others*	Arbitrary, category III

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
6/1997	United States of America	No (Reply received after adoption of opinion)	Felix Gomez, Angel Benito and Candido Rodriguez Sanchez	Arbitrary, category I
7/1997	Kyrgyzstan	Yes	Topchubek Turgunaliev Timur Stamkulov	Not arbitrary Case filed, person was not detained
8/1997	France	Yes	Miloud Mekadem	Released - case filed
9/1997	Viet Nam	Yes	Le Duc Vuong	Released - case filed
10/1997	Mexico	Yes	Gonzalo Sanchez Navarrete and 7 others*	Released - case filed
11/1997	Mexico	Yes	David John Carmos	Pending for further information
12/1997	Ethiopia	Yes	Mammo Wolde	Arbitrary, category III
13/1997	Tunisia	Yes	Khemais Chamari	Released - case filed
14/1997	Russian Federation	Yes	Aleksandr Nikitin	Pending for further information
15/1997	Bahrain	Yes	Ahmed Ali Abdul Shahid and 7 others* Maythem Omran Hussain and 24 others*	Arbitrary, category III Pending for further information
16/1997	Bolivia	No	Juan Carlos Pinto Quintanilla	Arbitrary, category III
17/1997	Removed for technical reasons			
18/1997	Peru	No	Gustavo Adolfo Cesti Hurtado	Arbitrary, categories II and III

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
19/1997	Ethiopia	No	Amanuel Taye and Jambare Bulti	Arbitrary, categories II and III
20/1997	Myanmar	Yes	Khin Sint Aung	Arbitrary, category II
21/1997	Viet Nam	No	Dang Phuc Tue, Quang Vinh, Huyn Van Ba	Arbitrary, category II Arbitrary, categories II and III

* The complete list of the persons concerned is available for consultation at the secretariat of the Working Group.

3. Governments' reactions to decisions and opinions

14. The Working Group received information from a number of Governments following the transmittal of its decisions and, since May 1997, its opinions with regard to the cases reported in their countries. The Governments concerned were those of the following countries (the decision or opinion to which the information refers is given in parenthesis): Colombia (26/1994), Ethiopia (opinion 12/1997), Islamic Republic of Iran (14/1996), Malaysia (opinion 4/1997), Nigeria (2/1996 and 6/1996), Peru (decisions 42/1995, 33/1996, 34/1996 and 46/1996), Republic of Korea (1/1995, 49/1995, 25/1996 and revised decision 2/1996), Sri Lanka (1/1996), Syrian Arab Republic (29/1996, 30/1996, 31/1996 and opinion 2/1997) and Tunisia (5/1996).

15. The following Governments informed the Working Group of the release of persons concerned: Malaysia (all 9 persons concerned, opinion 4/1997); Republic of Korea (Kim Sun-Myung, 1/1995; Ki Seh-Moon and Lee Kyung-Ryol, 49/1995; Yang Kyu-Hun, 25/1996; Ahn Young-Min, Kim Sung-Hwan, Jong Chang-Soo and Kim Jin-Bae, revised decision 2/1996); Peru (Maria Elena Loayza Tamayo, 46/1996); Sri Lanka (K.A.J. Arachchige, K.S.C. Perera, K.P.G. Jayasiri, Chandrapala alias Siripala Abeypitiya, Gunasena Geemunige, Rohana Gallage, Suddha Hewage alias Sudasinghe, 1/1996; furthermore, as regards D.D.T.S. Diwelage, no person by this name had been taken into custody); Syrian Arab Republic (Usama Ashour Askari, Taysir Nazim Hasun, Bassam Muhammad Bedour, Al-Hareth Muhammad Nabhan, 29/1996; Firhas Abdul Yunis, 31/1996; Abdul Karim Ibrahim Issa, Yasin Ibrahim al-Haj Salih, Yusha' al-Khatib, 31/1996; in addition, Hussein Ali Subayrani, 29/1996 and Mustafa al-Hussein, 31/1996 were reportedly due to complete their sentence on 19 December 1997 and 20 November 1997, respectively); Tunisia (Nejib Hosni, 5/1996).

16. In other reactions to decisions or opinions adopted by the Group, the Governments of Colombia, Ethiopia and Nigeria contested the conclusions reached by the Working Group (decision 26/1994, opinion 12/1997 and decisions 2/1996 and 6/1996, respectively). The Government of Nigeria

provided detailed information on the cases of General Obasonjo and 22 others, and Mr. Kanranwi and Mr. Mittee. The Government of Colombia requested that the Group revise its decision 26/1994 (see Working Group's decision on that matter in annex III to the present report). The Government of Ethiopia, with regard to the case of Captain Mamo Wolde (opinion 12/1997), objected to the conclusion that the detention was arbitrary.

17. The Working Group welcomes the release of the persons whose detention it had declared to be arbitrary and thanked the Governments for taking account of its recommendations, particularly concerning respect for the principles and standards laid down in the relevant international instruments. The Working Group would like to reiterate its appreciation to the Governments mentioned in paragraph 15 above and, in accordance with the Commission's wish, to encourage the other Governments to take similar measures.

4. Communications that gave rise to urgent appeals

18. During the period under review the Working Group transmitted 55 urgent appeals to 37 Governments (as well as to the Palestinian Authority) concerning 563 individuals, including at least 11 women (whose names were given). In conformity with paragraphs 22-24 of its revised methods of work (annex I), the Working Group, without in any way prejudging the final assessment of whether the detention was arbitrary or not, drew the attention of each of the Governments concerned to the specific case as reported and appealed to it to take the necessary measures to ensure that the detained persons' right to life and to physical integrity was respected. When the appeal made reference, in accordance with the source, to the critical state of health of certain persons or to particular circumstances such as failure to execute a court order for release, the Working Group also requested the Government concerned to undertake all necessary measures to have them released without delay.

19. During the period under review urgent appeals were transmitted by the Working Group as follows (the number of persons concerned by these appeals is given in parenthesis): four appeals were addressed to the Government of Yemen (103); three to the Governments of Cameroon (42), Nigeria (21) and Tunisia (4); two to the Governments of Colombia (13), Egypt (2), Ethiopia (15), Haiti (2), the Islamic Republic of Iran (5), Israel (8), Lebanon (2), Pakistan (4) and Saudi Arabia (2); and one each to the Governments of Algeria (1), Armenia (1), Austria (9), Bahrain (4), Bhutan (1), China (1), Cuba (1), the Democratic People's Republic of Korea (1), Eritrea (1), Guatemala (1), Indonesia (1), Mexico (1), Myanmar (300), Niger (3), Oman (1), the Philippines (1), Rwanda (1), Sierra Leone (1), Swaziland (4), Tajikistan (1), Turkey (1), the United States of America (1), Venezuela (1) and Viet Nam (1), as well as to the Palestinian Authority (1).

20. Of the above-mentioned messages, three were urgent appeals put out jointly by the Working Group with other thematic or geographical special rapporteurs. These were addressed to the Governments of Myanmar, Nigeria and Rwanda.

21. The Working Group received replies to the urgent appeals addressed to the Governments of the following countries: Algeria, Bahrain, Bhutan, China, Colombia, Ethiopia, Guatemala, Mexico, Niger, Pakistan, Saudi Arabia, Tunisia

and Yemen. In some cases it was informed, either by the Government or by the source, that the persons concerned had never been detained or that they had been released, in particular in the following countries: Algeria, Ethiopia, Guatemala, Niger, Pakistan, Saudi Arabia, Tunisia and Yemen. The Working Group wishes to thank those Governments which heeded its appeal and took the necessary steps to provide it with information on the situation of the persons concerned, and especially the Governments which released those persons.

B. Field missions

22. During the period under consideration, the Working Group visited the People's Republic of China. The report on that visit is contained in addendum 2. It may be noted that the Working Group, in its previous report to the Commission on Human Rights (E/CN.4/1997/4, para. 35), informed the Commission of its decision to defer all deliberations regarding communications received by the Working Group on China until after the visit to that country. Upon completion of its visit, the Working Group is resuming consideration of such cases.

23. During the same period, the Government of Peru reiterated its invitation to the Working Group to carry out a visit to that country. It may be recalled that the visit was scheduled for January 1997 but, due to the hostage crisis at the residence of the Japanese Ambassador in Lima, and after consultations, in particular with the UNDP representatives in Lima, it was decided to postpone the visit until a later date. Following further contacts with the Peruvian authorities it was agreed that the visit would take place at the end of January and beginning of February 1998. The report on that visit will be published at a later date.

C. Cooperation with the Commission on Human Rights

24. In resolution 1997/50 the Commission on Human Rights made several specific requests to the Working Group. These included to continue to re-examine its methods of work, in particular those relating to the admissibility of communications received, to the "urgent appeals" procedure and to the deadline set for Governments to reply to requests concerning individual cases, and, in the application of the 90-day deadline for replies, to show flexibility as appropriate by granting an extension of this deadline where necessary (para. 2 (b)).

25. Recognizing Governments' difficulties, and in response to the above requests by the Commission, the Working Group has continued to adjust and amend its methods of work (see annex I). In particular, it decided, as of its eighteenth session in May 1997, to indicate to Governments to which it addresses individual cases that if they desire an extension of the 90-day deadline for providing a reply, they should inform the Working Group of the reasons for such a request so that it may be able, if necessary, to grant a further period of a maximum of two months for providing their reply.

26. In addition to the consideration given by the Working Group to the above requests the Group continued, as in the past, to accord particular attention to the Commission's other resolutions having to do with the Group's mandate, and more generally with other matters affecting the thematic procedures. This

concerns, in particular, resolutions 1997/16 (Rights of persons belonging to national or ethnic, religious and linguistic minorities), 1997/27 (Right to freedom of opinion and expression), 1997/28 (Hostage-taking), 1997/37 (Human rights and thematic procedures), 1997/42 (Human rights and terrorism), 1997/44 (The elimination of violence against women), 1997/46 (Advisory services, technical cooperation and the Voluntary Fund for Technical Cooperation in the Field of Human Rights), 1997/56 (Cooperation with representatives of United Nations human rights bodies), 1997/62 (Human rights in Cuba), 1997/63 (Situation of human rights in East Timor), 1997/69 (Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action), 1997/75 (Human rights and mass exoduses) and 1997/78 (Rights of the child).

27. In paragraph 4 of resolution 1995/50 the Commission requested the Working Group to devote all necessary attention to reports concerning the situation of immigrants and asylum seekers who were allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy, and to include observations on this question in its next report. In compliance with that request, the Working Group has included in the present report the following preliminary observations on this question.

II. SITUATION REGARDING IMMIGRANTS AND ASYLUM SEEKERS

28. The Working Group takes note of the fact that, under its mandate, the task of the Working Group on Arbitrary Detention is to investigate cases of deprivation of liberty imposed arbitrarily. The Working Group believes that its mandate entitles it to look at situations of immigrants and asylum seekers whose detention, in the context of the law applicable in the relevant jurisdiction, may be considered arbitrary. On several occasions in the past the Working Group considered situations involving detained asylum seekers, including the problem of Vietnamese asylum seekers in Hong Kong and that of Cuban and Puerto Rican asylum seekers in Guantánamo, in addition to certain individual cases which had been brought to the attention of the Group. For reasons peculiar to each of those situations, however, the Group neither adopted a decision nor conducted a mission. Against this background the request of the Commission is looked upon as specific in the context of reports of prolonged administrative detention without the possibility of administrative or judicial remedy. Following are the Working Group's preliminary observations in this context.

Definition of the mandate

29. The word “asylum”, though of wider amplitude, signifies, for the purposes of our discussion, a place of refuge. In the case of “political asylum” refuge is sought in another jurisdiction, when the person concerned is in immediate peril of persecution either in his country of origin, country of nationality or country of regular residence. In this context the asylum seeker is also an immigrant. However, there are immigrants who are not asylum seekers but who might also be detained for prolonged periods without the possibility of an effective administrative or judicial remedy. These immigrants may have made or may have attempted to make illegal entry into a country which under its laws is entitled to detain them, though not necessarily as persons having committed a criminal offence, but pending the

determination of their status under the applicable laws. Such determination may result in their being granted the right to enter the country legally or be deported to where they came from. In the process of such determination certain appropriate procedures may have to be followed to ensure that their detention is not arbitrary.

Relevant texts

30. The following international instruments are applicable:

Universal Declaration of Human Rights: articles 13 (2), 14 (1) and 14 (2);

International Covenant on Civil and Political Rights (for States parties): article 13;

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (for States parties): article 3;

Convention relating to the Status of Refugees (for States parties): article 1A (2);

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (for States parties): articles 16 (4) and 22 (1);

31. The following regional texts are relevant:

(a) Europe:

European Convention for the Protection of Human Rights and Fundamental Freedoms;

Report of the Parliamentary Assembly of the Council of Europe of 12 September 1991 on the arrival of asylum seekers at European airports;

Recommendation R (94) 5 of the Committee of Ministers of 21 June 1994 on guidelines to inspire practices of the member States of the Council of Europe concerning the arrival of asylum seekers at European airports;

Reports of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);

(b) Africa:

OAU Convention governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969;

(c) Latin America:

Convention on Political Asylum of 26 December 1933;

Convention on Diplomatic Asylum of 28 March 1954;

Convention on Territorial Asylum of 28 March 1954.

Contacts with the Council of Europe

32. Reports concerning the situation of immigrants and asylum seekers and practices affecting such persons by member States of the Council of Europe have come to the attention of the Working Group. In this context, the Group believes that the problems faced by immigrants and asylum seekers in this regard require to be addressed. For this purpose the Group held consultations with Mr. Ivan Zakine and Mr. Trevor Stevens, the President and the Permanent Secretary, respectively, of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Having regard to these consultations, it is clear that the categories of persons required to be considered, in consonance with the request of the Commission, may be divided into four main categories:

1. Persons who have been refused entry to the country concerned.

2. Persons who have entered the country illegally and have subsequently been identified by the authorities.

3. Persons whose authorization to stay in the country has expired.

4. Asylum seekers whose detention is considered necessary by the authorities.

Issues to be addressed

33. With reference to the above-mentioned categories of persons the following issues require to be addressed:

(a) Strategies to protect the legal rights of detainees including, eventually, the adoption of a unified approach by the international community, and the undesirability of treating asylum seekers as aliens under the immigration laws;

(b) The need to provide for a limited period of detention, if not already provided by legislation, and the necessity of applying the restrictive period, where provided for, strictly, to ensure that the detention is not prolonged unreasonably;

(c) Appeal and review procedures to be made effective and not a mere formality. These procedures are of three kinds: (i) an automatic review by a judge after a specific period; (ii) a review before the authorities which took the initial decision to detain; and (iii) a right of appeal before a court or tribunal. Efforts should be made to ensure that these procedures, either

independently or together, are effective and result-oriented. Where it is not in existence, a compulsory hearing before a tribunal or judge may be provided for;

(d) The need for special legislative provisions for the detention of minors and/or dealing with minors who accompany asylum seekers or immigrants;

(e) Access to legal counselling and representation. This is of exceptional importance. Aliens seeking immigration or asylum are ill equipped to pursue effectively their legal rights or remedies that they might have under the applicable legislation. They would invariably suffer from material constraints or constraints of language disabling them from representing their cause effectively. Many might not be informed of the legal remedies available.

Some juridical aspects

34. Two questions of principle need to be addressed in particular by the Working Group.

35. The first of these questions concerns the preliminary phase of questioning, preceding custody, especially in the case of identity checks, often followed by a period of police custody preceding detention. The point to be considered is, when such checks are found to be unlawful, whether this factor should entail either the immediate release of the alien in order to avoid falling into a case of arbitrary deprivation of liberty, or the whole procedure being deemed unlawful.

36. The second question, after the event, concerns the effectiveness of guarantees ensuring that the alien is not expelled to a country presenting a serious risk of persecution, in which case the expulsion could be considered as a form of inhuman or degrading treatment.

37. The Working Group should also consider the legal position of the alien when expelled, either by air, by sea, by rail or by road, in the event that the person is under close surveillance or prevented from leaving the means of transport employed.

Premises used for deprivation of liberty

38. While the terminology varies substantially from one country to another, there has been a growing tendency to use the expression “places of custody” (“lieux de rétention”) to distinguish these from places of “detention”, which are run by prison authorities and are more specifically related to the penal imprisonment of offenders.

39. The Working Group, following the terminology used by the Commission on Human Rights in its resolution 1997/50, has therefore opted for the expression “places of custody” (as opposed to “places of detention”) to refer to centres or premises designed for the temporary custody of persons who are not in conformity with current legislation governing the entry and residence of aliens, while still considering the expressions “detention” or “imprisonment”

suitable in the case of aliens brought before the courts either because they are prosecuted for having committed offences, or within the framework of an extradition procedure.

40. A further distinction may be drawn according to the type of measure taken, depending on whether the measure involves deprivation of liberty, such as detention, or simply a restriction of liberty, such as house arrest.

41. According to information gathered by the Working Group, the following categories of premises may be distinguished:

(a) Places of custody situated in frontier areas. These are generally situated either in international or in so-called "transit" areas. The term "frontier areas" should be understood to cover stations, ports and airports connected to foreign countries, in addition to land frontier areas;

(b) Police premises. These are mostly used during the period preceding detention, that is, when the alien, following a check carried out usually in the street, is questioned on police premises (or related premises, such as those of the gendarmerie or customs), as a means of ascertaining whether the person is in conformity with legislation governing the entry and residence of aliens;

(c) Premises under the authority of a prison administration. The drawback in this case, as already pointed out, is that aliens in police custody or in an irregular situation are treated on a par with offenders;

(d) Ad hoc premises. Related to places of "custody". The purpose here is to replace prison with premises which are not under prison authorities, suited to the specific legal status of the aliens concerned. This tendency seems to be a response to an effort to decriminalize offences related to the entry and residence of aliens;

(e) House arrest. Some legislations allow either the administration or the courts to replace custody with a form of restriction of liberty rather than deprivation of liberty, such as house arrest, a measure which would then lie outside the Group's competence. In that respect, account would be taken of the criteria established by the Working Group in its deliberation 01, as follows:

> "Without prejudging the arbitrary character or otherwise of the measure, house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave.
>
> In all other situations, it will devolve on the Working Group to decide, on a case-by-case basis, whether the case in question constitutes a form of detention, and if so, whether it has an arbitrary character."

(f) International or so-called "transit" areas. Legally speaking, the notion of frontiers should be extended to cover all stations, ports and airports connected with foreign countries:

(i) From one point of view, this measure would not constitute deprivation but only restriction of liberty to come and go, on the grounds that, while the area is indeed closed towards the requested country, it remains open to other destinations, with effect that, since the alien may at any time leave for another country, he may not be considered as being in custody;

(ii) From another point of view, however, the possibility for asylum seekers in those circumstances to leave the area of the country where they were seeking asylum appears purely theoretical to the extent that no other country offering a degree of protection comparable to that obtainable in the country where asylum has been requested is prepared or ready to receive the person. This was the view expressed by the European Court of Human Rights, which concluded that maintaining asylum seekers in a transit area, in view of the restrictions imposed, amounted in fact to deprivation of liberty;

(g) Gathering centres. Whatever name they are given, these are premises which are specially prepared - in principle provisionally - to admit large numbers of foreigners (such as the “boat people”) fleeing from their country, usually for political reasons or on account of serious domestic unrest. A distinction would here again need to be drawn on a case-by-case basis between open and closed, or mixed centres;

(h) Hospital premises. These are premises which receive aliens whose state of health, during their custody, requires hospital care. This may amount to deprivation of liberty if police personnel keep a close watch on the alien, who is forbidden to leave the premises.

Conclusion

42. In conclusion, it may be noted that, on the occasion of a meeting held with representatives of the Western Group on 2 December 1997, the Chairman and the Vice-Chairman of the Working Group made a formal request for consent to a possible visit by the Working Group to their respective countries. The Working Group believes that such a visit will enable it to fulfil the specific request made by the Commission in its resolution 1997/50.

Annex I

REVISED METHODS OF WORK

*****

Introduction

1. The methods of work take account of the specific features of the terms of reference of the Working Group on Arbitrary Detention under Commission on Human Rights resolutions 1991/42, 1992/28, 1993/36, 1994/32, 1995/59, 1996/28 and specifically the clarifications contained in resolution 1997/50, which give the Group not only the task of informing the Commission by means of a comprehensive report, but also of “investigating cases of deprivation of liberty imposed arbitrarily” (para. 15).

I. FUNCTIONING OF THE GROUP

2. The Working Group on Arbitrary Detention was set up under Commission on Human Rights resolution 1991/42. The three-year initial mandate of the Working Group was renewed by the Commission in 1994 and in 1997, each time for another period of three years.

3. At the beginning of each renewed mandate the members of the Working Group elect their Chairman and Vice-Chairman for the term of the renewed mandate.

4. The Working Group meets at least three times a year.

5. When the case under consideration or the visit made concerns a country of which one of the members of the Working Group is a national, or in other situations where there may be a conflict of interest, that member shall not participate in the visit or in the discussion.

6. During the course of its deliberations, when dealing with individual cases or situations, the Working Group renders opinions which are incorporated in its annual report submitted to the Commission on Human Rights at its annual session. The opinions of the Working Group are the result of consensus; where consensus is not reached, the view of a majority of the members of the Group is adopted as the view of the Group.

II. IMPLEMENTATION OF THE MANDATE OF THE GROUP

7. The mandate of the Group is to investigate cases of deprivation of liberty imposed arbitrarily. In the discharge of its mandate, the Working Group refers to the relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned, in particular the International Covenant on Civil and Political Rights, as well as, when appropriate, the following standards:

(a) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

(b) Standard Minimum Rules for the Treatment of Prisoners;

(c) United Nations Rules for the Protection of Juveniles Deprived of their Liberty;

(d) United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules");

as well as any other relevant standard.

8. As a general rule, in dealing with situations of arbitrary deprivation of liberty within the meaning of paragraph 15 of resolution 1997/50, the Working Group shall refer, in the discharge of its mandate, to the following three legal categories:

(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 sentence or despite an amnesty law applicable to him) (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 International Covenant on Civil and Political Rights (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).

III. SUBMISSION OF COMMUNICATIONS TO THE GROUP AND CONSIDERATION OF COMMUNICATIONS

A. Submission of communications to the Working Group

9. Communications shall be submitted in writing and addressed to the Secretariat, giving the family name, first name and address of the sender and (optionally) his telephone, telex and telefax numbers, or any other acceptable means of communication.

10. As far as possible, each case shall form the subject of a presentation indicating family name, first name and any other information making it possible to identify the person detained, as well as the latter's legal status, particularly:

(a) The date and place of the arrest or detention or of any other form of deprivation of liberty and the identity of those presumed to have carried them out, together with any other information shedding light on the circumstances in which the person was deprived of liberty;

(b) The reasons given by the authorities for the arrest and/or the deprivation of liberty;

(c) The legislation applied in the case;

(d) The action taken, including investigatory action or the exercise of internal remedies, in terms of both approaches to the administrative and judicial authorities, particularly for verification of the measure of deprivation of liberty, and steps at the international or regional levels, as appropriate, the results of such action or the reasons why such measures were ineffective or were not taken; and

(e) An account of the reasons why the deprivation of liberty is deemed arbitrary.

11. In order to facilitate the Group's work, it is hoped that communications will be submitted by using the model questionnaire available from the Working Group’s secretariat.

12. Communications addressed to the Working Group may be received from the individuals concerned, their families or their representatives. Such communications may also be transmitted by Governments and intergovernmental and non-governmental organizations.

13. In accordance with the provisions of paragraph 4 of resolution 1993/36, the Working Group may, on its own initiative, take up cases which might constitute arbitrary deprivation of liberty. When the Working Group is not in session, the Chairman, or in his absence the Vice-Chairman, may decide to bring the case to the attention of the Government, but must refer the matter

to the Group at its next session. When acting on its own initiative, the Working Group shall give consideration to the thematic or country situations drawn to its attention by the Commission on Human Rights.

14. Situations of armed conflict, covered by the Geneva Conventions of 12 August 1949 and their Additional Protocols, do not fall within the competence of the Group.

C. Consideration of communications

15. In the interest of ensuring mutual cooperation, communications shall be brought to the attention of the Government and the reply of the latter shall be brought to the attention of the source of the communication for its further comments. They shall be transmitted by the Chairman of the Group or, if he is not available, by the Vice-Chairman. In the case of Governments, the letter shall be transmitted through the Permanent Representative to the United Nations. It shall request the Government to reply within 90 days after having carried out such inquiries as may be appropriate so as to furnish the Group with the fullest possible information.

16. However, if the Government desires an extension of this time limit, it shall inform the Group of the reasons for requesting one, so that it may be granted a further period of a maximum of two months in which to reply. Even if no reply has been received upon expiry of the time limit set, the Working Group may render an opinion on the basis of all the information it has obtained.

D. Action taken on communications

17. In the light of the information obtained, the Working Group shall take one of the following measures:

(a) If the person has been released, for whatever reason, following the reference of the case to the Working Group, the case is filed; the Group, however, reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned;

(b) If the Group considers that the case is not one of arbitrary detention, it shall render an opinion to that effect;

(c) If the Group considers that further information is required from the Government or from the source, it may keep the case pending until that information is received;

(d) If the Group considers that it is unable to obtain sufficient information on the case, it may file the case provisionally or definitively;

(e) If the Group considers that the arbitrary nature of the detention is established, it shall render an opinion to that effect and make recommendations to the Government.

18. The opinions rendered by the Group shall be transmitted to the Government concerned. Three weeks after their transmittal to the Government they shall be transmitted to the source.

19. The opinions rendered by the Group shall be brought to the attention of the Commission on Human Rights in the annual report of the Working Group.

20. The Working Group shall take all appropriate measures to ensure that Governments inform it of the follow-up action taken on the recommendations made, thus enabling it to keep the Commission informed of the progress made and of any difficulties encountered in implementing the recommendations, as well as of any failure to take action.

E. Procedure of review of opinions

21. In exceptional circumstances, the Group may, at the request of the Government concerned or the source, reconsider its opinions under the following conditions:

(a) If the facts on which the request is based are considered by the Group to be entirely new and such as to have caused the Group to alter its decision had it been aware of them;

(b) If the facts had not been known or had not been accessible to the party originating the request;

(c) In the case where the request comes from a Government, on condition that the latter has observed the time limit for reply referred to in paragraphs 15-16 above.

IV. URGENT ACTION PROCEDURE

22. A procedure known as “urgent action” may be resorted to in the following cases:

(a) In cases in which there are sufficiently reliable allegations that a person is being arbitrarily deprived of his liberty and that the continuation of such deprivation constitutes a serious threat to that person's health or even to his life;

(b) In cases in which, even when no such threat is alleged to exist, there are particular circumstances that warrant an urgent action.

23. Such appeals - which are of a purely humanitarian nature - in no way prejudge any opinion the Working Group may render if it later has to determine whether the deprivation of liberty was arbitrary or not, except in cases where the Working Group has already determined the arbitrary character of such deprivation of liberty.

24. The Chairman, or in his absence the Vice-Chairman, shall transmit the appeal by the most rapid means to the Minister for Foreign Affairs of the country concerned.

V. COORDINATION WITH OTHER HUMAN RIGHTS MECHANISMS

25. Desiring to respond to the request of the Commission for a strengthening of the good coordination which already exists between the various United Nations bodies working in the field of human rights (resolution 1997/50, para. 1 (b)), the Working Group takes action as follows:

(a) If the Working Group, while examining allegations of violations of human rights, considers that the allegations could be more appropriately dealt with by another thematic working group or special rapporteur, it would refer them to the relevant group or rapporteur within whose competence they fall, for appropriate action;

(b) If the Working Group receives allegations of violations of human rights which fall within its competence as well as within the competence of another thematic mechanism, it may consider taking appropriate action jointly with the working group or special rapporteur concerned;

(c) If communications concerning a country for which the Commission has appointed a special rapporteur, or another appropriate mechanism with reference to that country, are referred to the Group, the latter, in consultation with the rapporteur or the person responsible, shall decide on the action to be taken;

(d) If a communication addressed to the Group is concerned with a situation that has already been referred to another body, action shall be taken as follows:

(i) If the function of the body to which the matter has been referred is to deal with the general development of human rights within its area of competence (e.g. most of the special rapporteurs, representatives of the Secretary-General, independent experts), the Working Group shall retain competence to deal with the matter.

(ii) However, if the body to which the matter has already been referred has the function of dealing with individual cases (Human Rights Committee and other treaty bodies), the Working Group shall transmit the case to that other body if the person and facts involved are the same.

26. Furthermore, the Group shall not make visits to countries for which the Commission has already appointed a country rapporteur, or another appropriate mechanism with reference to that country, unless the rapporteur or the person responsible requests the Group to make the visit.

Annex II

STATISTICS

(Covering the period from January to December 1997. The figures given in parentheses are the corresponding figures from last year's report.)

A. Cases of detention in which the Working Group adopted an opinion regarding their arbitrary or not arbitrary character

1. Cases of detention declared arbitrary

	Female	Male	Total
Cases of detention declared arbitrary falling within category I	-(3)	2(34)	2(37)
Cases of detention declared arbitrary falling within category II	-(5)	3(54)	3(59)
Cases of detention declared arbitrary falling within category III	-(-)	71(23)	71(23)
Cases of detention declared arbitrary falling within categories II and III	-(4)	4(56)	4(60)
Total number of cases of detention declared arbitrary	-(12)	80(167)	80(179)

2. Cases of detention declared not arbitrary

Female	Male	Total
-(2)	1(4)	1(6)

B. Cases which the Working Group decided to file

	Female	Male	Total
Cases filed because the person was released, or was not detained	4(3)	8(60)	12(63)
Cases filed because of insufficient information	-(-)	1(-)	1(-)

C. Cases pending

	Female	Male	Total
Cases which the Working Group decided to keep pending for further information	-(4)	27(17)	27(21)
Cases transmitted to Governments on which the Working Group has not yet Adopted an opinion	5(8)	72(137)	77(145)
Total number of cases dealt with by the Working Group during the period January to December 1997	9(29)	198(385)	207(414)

Annex III

OPINIONS ADOPTED BY THE WORKING GROUP AT ITS TWENTY-EIGHTH SESSION

(NOVEMBER-DECEMBER 1997)

OPINION No. 16/1997 (Bolivia)

Communication addressed to the Government on 14 July 1997

Concerning: Juan Carlos Pinto Quintanilla

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

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

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

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 by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

III. When the total or partial non-observance of the relevant 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 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 would have welcomed the cooperation of the Government. In the absence of any information from the latter, 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 communication, Juan Carlos Pinto Quintanilla was arrested on 13 April 1992 by eight armed personnel of the CEIP (Police Intelligence). He disappeared for four days, and appeared before his parents at the place where he was detained until 21 April, although they were unable to speak to him. It is claimed that during the eight days when he was on police premises he was tortured and had no access to counsel. Though he has been deprived of liberty for five and a half years, his case has not gone beyond the investigation stage, basically due to the fact that the relevant documents were transferred successively, owing to problems of competence, to the Second, Third and Fourth Courts.

6. It is alleged that he faces 12 charges of rebellion and sedition, although in fact the only real accusation relates to his alleged militancy in a group known as the Ejército Guerrillero Tupaj Katari (EGTK).

7. When the facts of the complaint were brought to the attention of the Bolivian Government, the latter did not issue any report nor requested more time to prepare its reply.

8. In the light of the foregoing, the Working Group considers only the following facts to be ascertained: (a) that Pinto Quintanilla was arrested on 13 April 1992; (b) that he is accused of militancy in the EGTK; (c) that he has not been convicted under this charge.

9. The Government has not reported any act of violence attributed to Pinto, nor has it denied that, after five and a half years of deprivation of liberty, he has not yet been brought to trial.

10. That in accordance with article 16 of the Bolivian Constitution, “from the moment of his detention or imprisonment, a person held has the right to be assisted by a defender”, while article 297 of the Code of Criminal Procedure establishes that the failure to designate an official counsel for the accused is ground for nullifying the case. Article 171 of the latter Code further provides that the investigation of a case has to be completed within 20 days.

11. That the torture to which Pinto was submitted was corroborated by a report of the Commission on Human Rights of the Bolivian Chamber of Deputies.

12. That the fact that Pinto was deprived of liberty for five years without being brought to trial, and that he was not allowed to consult a lawyer during the first eight days of his deprivation of liberty, constitutes such a serious violation of the rules of the due process of law enshrined in Bolivian legislation, and of articles 9, 10 and 14 of the International Covenant on Civil and Political Rights, as well as articles 9, 10 and 11 of the Universal Declaration of Human Rights, that the imprisonment may be considered arbitrary, falling within Category III of the Group's Methods of Work referred to above.

13. In addition, the report of the aforementioned Bolivian Parliamentary Commission gives accounts of the torture denounced by Pinto and other prisoners belonging to the EGTK and other groups considered to be subversive, pointing out that this ill-treatment occurred during the period of illegal incommunication, since the legal time limits had already been exceeded, and

that it occurred in several places of detention. The report adds that such treatment was presumably aimed at obtaining self-incrimination.

14. That under article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, no statement made as a result of torture may be invoked as evidence in any proceedings.

15. That the complaint refers to a further 34 persons, who are named, who are alleged to be suffering "the same situation of violations of their human rights, in similar circumstances, at a similar time and in similar ways".

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

(a) The deprivation of liberty of Juan Carlos PINTO Quintanilla is arbitrary, as being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9, 10 and 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;

(b) The content of the complaint is to be passed to the Special Rapporteur on the question of torture;

(c) Acting on its own initiative, as authorized by its methods of work, the Working Group is also to transmit the other 34 cases included in the communication to the Government of Bolivia.

17. Consequent upon the opinion rendered, the Working Group requests that the Government take the necessary steps to remedy the situation, in 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 28 November 1997.

OPINION No. 17/1997

REMOVED FOR TECHNICAL REASONS

OPINION No. 18/1997 (Peru)

Communication addressed to the Government on 14 July 1997

Concerning: Gustavo Adolfo CESTI Hurtado

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

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

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

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 by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

III. When the total or partial non-observance of the relevant 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 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 would have welcomed the cooperation of the Government. In the absence of any information from the latter, 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 communication, Gustavo Adolfo Cesti Hurtado was arrested on 28 February 1997 by order of a military court (which is not mentioned by name) and detained at the Simón Bolívar Military Barracks. Anticipating his arrest, Cesti had previously lodged an appeal of habeas corpus, on the grounds that he felt threatened in his right to personal liberty, which was duly received by the competent court.

6. When he was arrested, the Thirtieth Criminal Court of Lima ordered his immediate release, considering the deprivation of liberty to be illegal. Nevertheless, Cesti is still detained by order of the Military Court, which considers itself competent on the grounds that Cesti is retired from the army.

7. The Peruvian Ombudsman considered that the Military Court's procedure was arbitrary and ordered the ruling given on the habeas corpus appeal to be given effect.

8. Moreover, according to the complaint, the imprisonment is supposed to be based on the fact that the detainee publicly denounced a misappropriation of public funds in a 90-per-cent State-owned enterprise.

9. When the Government of Peru was consulted regarding the facts of the complaint, it did not provide any information, nor did it request the Group to extend the deadline for its reply.

10. In the circumstances, the Group considers only the following facts to be established: (a) that Cesti Hurtado was arrested on 28 February 1997; (b) that he is accused of having denounced a common offence; (c) that a court order has been issued for his release and has not been implemented.

11. The Government has not reported any type of offence which may be attributed to Cesti.

12. That the Group for the time being does not have sufficient information on the basis of which to evaluate Cesti's misappropriation complaint, which might be remedied in the course of its visit to Peru in January and February 1998.

13. That the failure to obey a release order issued by a competent judge, maintaining a person deprived of liberty, constitutes a contravention of international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, of such gravity as to give the deprivation of liberty an arbitrary character.

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

(a) The deprivation of liberty of Gustavo Adolfo Cesti Hurtado is arbitrary, as being in contravention of articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 10, 14 and 19 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;

(b) In the course of its visit to Peru, the Group will assess whether, furthermore, the detention is arbitrary as a case which might fall within category I and/or category II of its working methods.

15. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, in 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 28 November 1997.

OPINION No. 19/1997 (ETHIOPIA)

Communication addressed to the Government on 11 July 1997.

Concerning: Amanuel Taye and Bulti Jambare

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

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

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

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, by 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 relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial 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 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 communications received from the sources, a summary of which was forwarded to the Government, concerned the following persons:

(a) Amanuel Taye, aged 28, teacher, was reportedly arrested in April 1996 by the Ethiopian government security force at Yubdo elementary school, Wellega, Ethiopia. The detention was reportedly ordered by the Ethiopian government administrative authority of the region of Oromia. The

arrest was apparently linked to accusations that he and 13 other local people were involved in a politically motivated killing. He was detained in Guliso prison until June 1996 and then transferred to Gimbi prison. Allegedly, no warrant nor any other decision by a public authority was shown to uphold the arrest. Also, no formal charge has been brought against him so far and he was being kept incommunicado. The source reported that this was the fourth time that he was imprisoned since 1992 and believed that the arrest was politically motivated because of his ethnic origin (Oromo) and because of his sympathizing and supporting the Oromo Liberation Front (OLF) between 1991 and 1992 when the OLF was in the transitional government.

(b) Bulti Jambare, aged 23, farmer, was reportedly arrested in April 1996 by the Ethiopian government security force at his home in Chalia, Gimbi, Wellega, Oromia, Ethiopia. He was detained in Guliso prison until June 1996, then transferred to Gimbi prison until April 1997 and finally to Karchale prison (Addis Ababa), where he was currently detained. Allegedly, no warrant nor any other decision by a public authority was shown to uphold the arrest. Also, no formal charge has been brought against him so far. The source reported that the family failed to obtain habeas corpus as the authority claimed that he was a political prisoner. The source also believed that the arrest was politically motivated because of his ethnic origin (Oromo) and because of his involvement in the OLF.

6. It appears from the above summary that the detention of Amanuel Taye was ordered by an administrative authority without a mandate. Moreover, that person has so far not been formally charged with any offence while being held incommunicado. It should be noted that, according to the source, this is the fourth time that this person is being deprived of his freedom since 1992. The Working Group therefore deems that the detention of Amanuel Taye is essentially of a political nature, linked to his Oromo origin and to his support of the Oromo Liberation Front between 1991 and 1992 when the OLF was in the transitional government.

7. As for Bulti Jambare who was also arrested without a warrant and has so far not been formally charged, the Working Group has no doubt of the political character of his detention, since it is precisely due to his being considered by the Ethiopian authorities as a political prisoner that he was refused a habeas corpus by the authorities.

8. It follows from the above that the deprivation of liberty of Amanuel Taye and Bulti Jambare is arbitrary since it is in violation of articles 9, 10 and 19 of the Universal Declaration of Human Rights and of articles 9, 14 and 19 of the International Covenant on Civil and Political Rights to which Ethiopia is a Party, as well as of Principles 10, 11, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

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

> The deprivation of liberty of Amanuel Taye and Bulti Jambare is arbitrary, as being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the

International Covenant on Civil and Political Rights, and falls within categories II and III of the applicable categories to the consideration of the 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, and bring it in 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 1 December 1997.

OPINION No. 20/1997 (MYANMAR)

Communication addressed to the Government on 11 July 1997.

Concerning: Khin Sint Aung

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

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. 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 forwarded the requisite information in good time.

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

4. The Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur prepared pursuant to resolution 1997/64 of the Commission on Human Rights (E/CN.4/1997/64).

5. 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. 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 communications received from the sources, a summary of which was forwarded to the Government, after having been released from detention under amnesty on 4 February 1995, Khin Sint Aung, aged 61, doctor and elected member of the National League for Democracy (NLD), was re-arrested on 23 July 1996 by the Myanmar authorities on charge of recent activities in support of the opposition. He had been previously arrested on 3 August 1993 and sentenced on 15 October 1993 to 20 years in prison on charges of destabilizing national unity, printing and publishing material without official registration and improper use of official secret documents. Dr. Khin Sint Aung's case had already been transmitted by the Working Group to the Government in April 1994. The Working Group, by its Decision No. 13/1994, declared his detention to be arbitrary. His re-arrest was believed to be related with his membership of the NLD. He was believed to be currently held in Insein Prison, Rangoon.

7. In its reply the Government provides the Working Group with details concerning the charges under which Dr. Aung Khin Sint had been sentenced in 1993 to 20 years' imprisonment. He was convicted under section 5 (j) of the Emergency Provision Act, under section 17/20 of the Printers and Publishers Registration Law and under the Burma Official Secrets Act, section 5 (1) (4). The Government added that Dr. Aung Khin Sint had been granted an amnesty under section 401 (1) of the Criminal Procedure Code, after he had given a solemn pledge to the authorities that he would henceforth abide by the law. But, added the Government, Dr. Aung Khin Sint did not abide by his solemn pledge and as a consequence, the amnesty extended was revoked and he resumed serving the remainder of his original sentence.

8. The source, in its observations to the Government's reply, reiterated its view that Dr. Aung Khin Sint's detention was based solely on his right to exercise free expression. The charges against him were believed to be specifically related to letters he sent out to NLD members during the January 1993 NLD National Convention.

9. As indicated by the source, the Working Group, in its Decision No. 13/1994, had already declared the detention of Khin Sint Aung to be arbitrary. His re-arrest after being released on 23 July 1996 under the Amnesty Law of 4 February 1995 was motivated, according to the Government, by the fact that "he did not abide by his solemn pledge"; but the Government failed to specify in what way Dr. Aung Khin Sint did not abide by his pledge, what were the activities that led to the revocation of the amnesty extended to him and in what way they constituted a violation of the said pledge.

10. The Working Group deems that the renewed detention of Dr. Aung Khin Sint, just like the first one that was the subject of Decision No. 13/1994, is linked to the fact that he peacefully exercised his right to freedom of opinion and expression, guaranteed by article 19 of the Universal Declaration of Human Rights.

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

> The deprivation of liberty of Khin Sint Aung is arbitrary, as being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights, and falls within category II of the applicable categories to the consideration of the cases submitted to the Working Group.

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

Adopted on 2 December 1997.

OPINION No. 21/1997 (VIET NAM)

Communication addressed to the Government of the Socialist Republic of Viet Nam on 14 July 1997.

Concerning: Phuc Tue Dang (religious name: Thick Quang Do), Quang Vinh (religious name: Thick Tsi Tun) and Van Ba Huyn (religious name: Thich Thien Minh)

Viet Nam is a party to the International Covenant on Civil and Political Rights

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

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

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, by 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 relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial 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 would have welcomed the cooperation of the Government. In the absence of any information from the latter, 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 communication, a summary of which was forwarded to the Government, concerned the following persons:

(a) Phuc Tue Dang (religious name: Thick Quang Do), aged 69, was arrested on 4 January 1995, in Ho Chi Minh City, by the Vietnamese authorities. He is said to be detained in prison B14, near Hanoi, after being transferred from the Ba Sao re-education camp, in the province of Nam Ha, in May 1996. He is reportedly accused “of having sabotaged the Government's policy of religious solidarity”, and “of having abused the rights to liberty and democracy in order to harm the interests of the State”. According to the source, the People's Court of Ho Chi Minh City accuses him of having written and circulated copies of a 40-page document accusing the Government of suppressing Buddhist rights; of having placed an unauthorized notice at the entrance of his residence saying “Unified Buddhist Church of Viet Nam”; and of having faxed information to Buddhist groups abroad concerning alleged persecution against the church's relief activities during recent floods in the south of the country. According to the source, Phuc Tue Dang has spent most of the last 18 years in prison or under house arrest on account of his humanitarian activities and his opposition to government policy concerning religion and civil and humanitarian rights.

(b) Quang Vinh (religious name: Thich Tri Tuu), aged 44, Superior of the Linh Mu Pagoda in Hue (Unified Buddhist Church of Viet Nam), residing at the Linh Mu Pagoda, Xa Huong Long (Huong Long hamlet), TP Hue (town of Hue), was arrested on 5 March 1997, in the camp of Ba Sao, province of Nam Ha, by the Security Forces (Cong An), who allegedly showed no order or other decision issued by a public authority. As from 7 March 1997, he is said to have been held by the Security Forces of the town of Hue, at the Tay Thien Pagoda (Buddhist Church of Viet Nam, State Church). Thich Tri Tuu had earlier been arrested on 5 June 1993, following a demonstration in favour of religious freedom, and sentenced to four years' imprisonment for disturbing the public order on 15 November 1993. On 4 March 1997, when he was released, he was transferred to the Tay Thien Pagoda, where he is allegedly being held at present, being unable to resume his religious activity at the Linh Mu Pagoda,

where he spent 35 years and where he has been the Superior since 1992. During his detention in the camp of Ba Sao, province of Nam Ha, Thich Tri Tuu is said to have been subjected to ill-treatment and to very hard forced labour, despite a weak state of health. By the time he left the camp of Ba Sao, Thich Tri Tuu's state of health had reportedly worsened considerably.

(c) Van Ba Huynh (religious name: Thich Thien Minh), aged 48, Bonze of the Unified Buddhist Church of Viet Nam, residing in the province of Minh Hai, was arrested in 1979, in the province of Minh Hai. Since 1979, he has been detained in the province of Minh Hai; in camp A20, province of Phu Yen; and finally in camp Z30A, Xuan Loc, province of Dong Nai. He was allegedly sentenced to life imprisonment by the People's Court of Minh Hai, in 1979, for intending to overthrow the revolutionary government. He was reportedly again sentenced to life imprisonment, in 1986, by the People's Court of the province of Phu Khanh for attempted escape.

(d) The source believes this deprivation of liberty is arbitrary for the following reasons:

(i) He appears to have been arrested and sentenced on account of his membership of and ties with the Unified Buddhist Church of Viet Nam;

(ii) The two trials (1979 and 1986) of Thich Thien Minh are said to have been unjust and held in camera. Thich Thien Minh reportedly was denied the benefit of being assisted by counsel of his choosing and was unable to appeal against his sentence. His relatives and family were reportedly not informed by the authorities that the trial was taking place and international observers wishing to attend were said to have been refused access to the courtroom;

(iii) In the course of his detention, Thich Thien Minh is said to have been denied the right to make a complaint (Principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; article 74 of the 1992 Vietnamese Constitution), the reason being that he was reportedly placed in solitary confinement as a punishment for having demonstrated (15-18 November 1995 and 27 May 1996) for the improvement of prisoners' conditions and in favour of human rights.

6. Phuc Tue Dang was detained on the charge of having sabotaged the Government's policy of solidarity and having abused the rights to liberty and democracy in order to harm the interests of the State. The Working Group would like once again to emphasize, as it has done in several previous decisions concerning Viet Nam and in the report it prepared following its visit to that country, that the major drawback of vague and imprecise charges of the kind brought against the above-named person is that they do not distinguish between armed and violent acts capable of threatening national security, on the one hand, and the peaceful exercise of the right to freedom of opinion and of expression, on the other. The Working Group is once again convinced, therefore, that the detention of Phuc Tue Dang is arbitrary because

it is due solely to his opinions and humanitarian activities and that it occurred in violation of the rights guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights, to which the Socialist Republic of Viet Nam is a party (category II).

7. With regard to Quang Vinh, the Group considers that his arrest on 5 March 1993 and his sentencing to four years' imprisonment on 15 November 1993 were the result of his taking part in a demonstration on behalf of religious freedom, which was not reported to have been violent. The Group is therefore of the opinion that his detention was arbitrary, because he was blamed only for having exercised his right to freedom of opinion and expression (article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which the Socialist Republic of Viet Nam is a party) (category II). Furthermore, his present custody in the Tay Thien Pagoda after serving his sentence is also arbitrary.

8. Lastly, in the case of Van Ba Huynh, the Group notes that his arrest and his first sentence of life imprisonment for having “intended to overthrow the Revolutionary Government” were in fact related to his membership of the Unified Buddhist Church of Viet Nam. Moreover, as pointed out by the source, the two trials to which he was reportedly subjected in 1979 and in 1986 following an attempted escape were not fairly held. They are said to have taken place in camera without the assistance of counsel and without the possibility of appealing against the sentences passed.

9. The Group therefore considers the detention of the above-named person to be arbitrary, being in contravention of articles 18 and 19 of the Universal Declaration of Human Rights and of articles 18 and 19 of the International Covenant on Civil and Political Rights, to which the Socialist Republic of Viet Nam is a party (category II). Furthermore, the Group notes a series of violations of the right to a fair trial and in particular of article 14 of the International Covenant on Civil and Political Rights of such gravity as to confer on the detention an arbitrary character (category III).

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

> The deprivation of liberty of Phuc Tue Dang, Quang Vinh and Van Ba Huyn is arbitrary insofar as it contravenes the provisions of articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the International Covenant on Civil and Political Rights, falling within category II of the principles applicable in the consideration of cases submitted to the Working Group. In the case of Van Ba Huyn, his deprivation of liberty is also arbitrary insofar as it contravenes the provisions of article 14 of the International Covenant on Civil and Political Rights, falling within category III of the principles applicable in the consideration of cases submitted to the Working Group.

11. Having rendered that opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 2 December 1997.

Request for revision of Decision 26/1994 (Colombia)

Communication addressed to the Government of Colombia on 12 November 1993.

Decision No. 26/1994, adopted on 29 September 1994

Concerning: Fidel Santana Mejía; Francisco Elías Ramos Ramos; Guillermo Antonio Brea Zapata and Manuel Terrero López

1. The Working Group, in its decision No. 26/94, adopted on 29 September 1994, considered that the deprivation of liberty of Dominican citizens Fidel Santana Mejía, Francisco Elías Ramos Ramos, Guillermo Antonio Brea Zapata and Manuel Terrero López, the first three of whom were arrested in Colombia on 2 October 1992 and the fourth on 13 October 1992, was arbitrary, falling within category III of its methods of work and the principles applicable in the consideration of the cases submitted to it (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, of such gravity as to give the deprivation of liberty, of whatever kind, an arbitrary character).

2. It justified that conclusion on the grounds that the rules of due process of law had been violated, since much of the evidence presented was secret, as were the judge and the prosecutor, while no appropriate action was taken to compensate for not holding proceedings in public, so as to ensure the impartiality and independence of judges; further grounds are that the accused were denied the right to a public hearing as well as adequate time and facilities to prepare their defence and to examine or have examined the witnesses against them, since the identity of the latter was also kept secret.

3. On 17 February 1997, that is, 30 months later, the Government of Colombia requested a reconsideration of the decision, alleging that “the proceedings and communications relating to the criminal investigation undertaken against the Dominican citizens (the content of which was given in the notes referred to of 1 June and 27 November 1995) had led to the clear conclusion that those persons had never been unlawfully deprived of their liberty and that at all times their detention had been in conformity with an order by a competent authority, a circumstance which invalidates any notion of arbitrary detention”.

4. According to the Group's methods of work, any request for a review of opinion must be based on entirely new facts not known to the Group at the time of adopting its decision or opinion, and such as to have caused the Group to alter its decision had it been aware of them.

5. Since the Government's request does not allege any new fact, and merely repeats that in its opinion the detention was not arbitrary, the Group lacks any new elements on which to base a change of opinion, and has no other alternative than to reject the request for reconsideration.
