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

Opinions adopted by the Working Group on Arbitrary Detention

The present document contains the opinions adopted by the Working Group on Arbitrary Detention at its forty-first, forty-second and forty-third sessions, held in November/December 2004, May 2005 and September 2005, respectively. A table listing all the opinions adopted by the Working Group and statistical data concerning these opinions are included in the report of the Working Group to the Commission on Human Rights at its sixty-second session (E/CN.4/2006/7).

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OPINION No. 20/2004 (COLOMBIA)

Communication addressed to the Government on 8 June 2004.

Concerning Mr. Orlando Alberto Martínez Ramírez.

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

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

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

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

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

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

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

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

5. The former army major Orlando Alberto Martínez Ramírez is currently detained in Tolemaida military prison in the municipality of Melgar, department of Cundinamarca, in connection with case No. 53.918, which is being handled by the terrorism sub-unit of the ninth prosecutor's office at the criminal court of the Bogotá special circuit. He was arrested because his signature was found on three falsified end-user certificates used to import weapons from Bulgaria (end-user certificates Nos. 101, 102 and 103 of 7 April 1999). The certificates were used to import AK-47 rifles that ended up in the hands of Colombian paramilitary groups.

6. In his initial statement to the investigating judge, Mr. Martínez Ramírez insists that his signature was forged, alleging that it was copied from another official document which he had signed to authorize a donation of AK-47 spare parts to the army shooting club. The source points out that the court record contains references to intermediaries, or "brokers", who use sophisticated techniques to falsify documents for the acquisition of weapons abroad. The record specifically refers to previous cases where falsified end-user certificates had been used to acquire weapons in Bulgaria.

7. According to the source, Mr. Martínez Ramírez' arrest, while consistent with the legislation in force, was a violation of his rights, since it was carried out in violation of the principles of reasonableness, proportionality and predictability. It was an unreasonable measure on the part of the public authorities, was incompatible with the State's general duty to provide protection and violated the human rights of the person concerned. Mr. Martínez Ramírez was charged with "manufacturing, trafficking and carrying weapons and ammunition reserved for the exclusive use of the armed forces", a criminal offence under article 366 of Act No. 599 of 2000 (the Criminal Code).

8. According to the source, the following evidentiary proceedings went ahead at the investigation stage without a defence lawyer being present: the extension of the charges, the collection of handwriting samples; graphological tests; and fingerprinting. In principle, the defence lawyer must be informed of such proceedings and should be able to attend and challenge them. It is thus alleged that the right to legal counsel was violated.

9. The right to a legal defence, as set forth in article 8 of the Code of Criminal Procedure, was also allegedly violated. The prosecutor attached to the terrorism sub-unit of the criminal court of the Bogotá special circuit rejected the defendant's application for leave to supplement his initial statement, arguing that the investigation stage had been completed, although at that point no notification of the initial decision to close the investigation had yet been served and, consequently, the time limit for executing the decision had not expired. The first stage of the proceedings, namely the investigation carried out by the public prosecutor, can only be taken as completed if this time limit is observed. According to the source, the above-mentioned procedural step could have been completed in the one-month period during which the file was with the prosecution service.

10. The decision to close the investigation was surprising and premature. This is why the defence did not apply earlier for leave to supplement the defendant's initial statement. In any case, when this application was being prepared, other requests for evidentiary proceedings were still pending. Among them, the source mentions the request for a supplementary graphological report, which was ultimately used to justify the security measure (detention) applied to Mr. Martínez Ramírez. The prosecutor's office has also failed to respond to other requests filed at this stage of the proceedings.

11. The application for leave to supplement his initial statement was submitted before the prosecutor's office announced its decision to close the investigation and before this decision was implemented. The application states that the purpose of the supplementary statement was to introduce new evidence; supplement the information provided in the initial statement by the accused; fill in a number of gaps; and supplement the defendant's version of the events. In the source's view, the application should have been granted in order to guarantee the defendant's

right to a legal defence. By denying the defendant the opportunity to supplement his initial statement and to introduce new evidence testifying to his innocence, the prosecutor's office violated Mr. Martínez Ramírez' right to a legal defence.

12. The source claims that Mr. Martínez Ramírez was denied the right to submit evidence that his signature had been forged, and that he was the victim of a set-up. No technical expert was allowed to examine the seals of the Ministry of Foreign Affairs that appear on the photocopied faxes of the end-user certificates. Such an examination would have been opportune, necessary and beneficial.

13. The source indicates that Mr. Martínez Ramírez' right to personal liberty and the principle of the presumption of innocence have also been violated. In their statements, both the accused and Mr. Jorge Ernesto Rojas Galindo, the owner of the company Equipos y Repuestos, assert that Mr. Martínez Ramírez' signatures on the aforementioned end-user certificates were forged. The graphological test raises doubts about the authorship of the signature, since the expert says he is unable to determine authorship with certainty on the basis of photocopies of a fax. The expert report itself points out that the test was not conducted in ideal circumstances, since the originals were unavailable. Nevertheless, this report was accepted as sufficient grounds and the sole basis for ordering the defendant's detention, which the source considers arbitrary.

14. The source also alleges that the defendant's right to equality has been violated. He was arbitrarily dismissed from the army when the charges were brought against him, whereas other army officers facing charges, and some convicted offenders, are still in active service, earning an income and living in their homes. Mr. Martínez Ramírez was held in a maximum security cell of the military police battalion, when he should have been restricted to the officers' barracks of the same battalion. Although he is merely a suspect, he was sent to Tolemaida military prison, where only convicted criminals are held. This transfer was carried out without the authorization of the National Institute of Prisons and Penitentiaries (INPEC).

15. As the proceedings are being conducted in Bogotá, the detention of the accused in Tolemaida military prison, which is in the department of Cundinamarca, has seriously infringed his right to a defence. His request to be transferred to a detention centre in Bogotá was turned down three times. Furthermore, the source indicates that the treatment ordered for the accused by the commander-in-chief of the army is discriminatory: he is subject to special surveillance; visits by reporters and journalists are prohibited; and prison guards have been instructed to keep a separate record of the visits he receives.

16. The defendant was also allegedly subjected to discrimination and ill-treatment by the prison authorities. When a mobile phone was stolen, the authorities ordered a search of all cells. In the case of Mr. Martínez Ramírez, they also ordered a body search, with special attention to the genital area. He was the only detainee subjected to such treatment, which caused him pain and suffering. His relatives and visitors are also subjected to more rigorous and extensive checks and can only enter with the special permission of the prison governor. His wife and 4-year-old child find it even more difficult to gain access to the premises. As a result, the child has psychological and educational problems, and is experiencing language and learning difficulties. Appeals and requests to the prison governor have gone unanswered.

17. In conclusion, the source considers that Mr. Martínez Ramírez' rights to personal liberty, legal guarantees and due process have been violated. The judicial proceedings against him have not been impartial and he has been subjected to discriminatory, humiliating and degrading treatment in detention. His right to equality and non-discrimination has also been violated.

18. The Government's response to the claims made by the source is summarized below.

19. In a decision dated 14 May 2002, the prosecutor in the case opened pretrial proceedings against Mr. Martínez Ramírez and others accused of manufacturing, trafficking and carrying weapons and ammunition reserved for the exclusive use of the armed forces. An arrest warrant was issued for Mr. Martínez Ramírez, who was accused of having signed three of the four end-user certificates used by the company Equipos y Repuestos to acquire and procure the weapons later seized from members of the United Self-Defence Forces of Colombia.

20. Mr. Martínez Ramírez was arrested on 16 May 2002. Under examination on 17 May, he denied having ordered weapons of any kind, as well as authorship of the signature on the end-user certificates, although he admitted that certain features of the signature in question were similar to his.

21. On 30 January 2003, the fourth criminal court of the Bogotá special circuit dismissed the application for a review of the legality of Mr. Martínez Ramírez' detention. The testimony of one witness was disregarded by the prosecutor's office because the statement by Jorge Ernesto Rojas had not yet been processed when Mr. Martínez Ramírez' legal status was determined. The legal status of the accused was determined on 24 May 2002; the statement in question was received on 6 June 2002.

22. According to the fourth criminal court, which is hearing the case, Mr. Martínez Ramírez prefers his own opinion of the expert report to that of the prosecutor's office. Thus it cannot be said that the expert report is incorrect. Rather, the appellant has an erroneous or different understanding of its merit.

23. Page 91 of Mr. Martínez Ramírez' case file describes the taking of handwriting samples on 11 July 2002 in the presence of his defence lawyer and the prosecutor.

24. The motion submitted by the lawyer Luis Castellanos requesting a supplementary graphological report was denied, in conformity with articles 254 and 255 of the Code of Criminal Procedure, as the request did not meet the requirements set out in these articles. The motion challenging the expert report was therefore not taken up. The lawyer appealed against this decision, but this appeal was not heard, since the motion challenging the report had been denied on procedural grounds. Mr. Castellanos was requested to identify the alleged errors in the report and to provide evidence for those allegations in accordance with the procedural requirements mentioned.

25. It is not true that Mr. Martínez Ramírez' request for an expert opinion on the seals of the Ministry of Foreign Affairs was denied. On the contrary, on 6 September 2002 it was decided to order a forensic test to determine the authenticity of the seals on the end-user certificates, as

requested by the defence lawyer, as well as other tests requested by the defence. A formal written request for the test to be carried out was submitted to the criminology section of the Technical Investigation Unit on 12 December 2002.

26. On 13 November 2002, Mr. Martínez Ramírez' lawyer requested leave to supplement his initial statement. The request was dealt with in a decision dated 14 November 2002: the request was found to be inadmissible, since the investigation had been completed. Moreover, from the time when Mr. Martínez Ramírez was detained, his lawyer had had six months to submit the request. The judge therefore rejected the request, arguing that it had been submitted only two months before the end of the period allowed for completing the investigation, as set forth in article 393 of the Code of Criminal Procedure.

27. On 18 November 2002, Mr. Castellanos submitted a petition calling for a review of the legality of the custodial measure to the criminal court of the Bogotá specialized circuit and submitted an appeal against the decision to close the investigation. These submissions were dealt with in decisions dated 26 November and 16 December 2002, which ruled that the evidence found to date was sufficient to decide on the merits of the case, in conformity with article 393 of the Code of Criminal Procedure.

28. On 15 January 2003, the decision was taken to prosecute Mr. Martínez Ramírez and others on charges of aggravated trafficking in weapons reserved for the exclusive use of the armed forces.

29. On 15 September 2004, the information provided by the Government was forwarded to the source, who has failed to respond.

30. In the light of the allegations made, which have been partly refuted by the Government without further comment from the source, the Working Group considers that the criminal proceedings against Mr. Orlando Alberto Martínez Ramírez were instituted on the basis of evidence that implicated him in a serious crime and that has been challenged by the defence from the start. The Government has denied allegations by the source that Mr. Martínez Ramírez provided handwriting samples for the graphological test without his lawyer being present, quoting entries in the court record testifying to the presence of defence counsel during the graphological test.

31. The Government also denies allegations by the source that no expert examined the seals of the Ministry of Foreign Affairs, and provides detailed information on the appeals filed by Mr. Martínez Ramírez' lawyer.

32. The Government acknowledges that the judge in the case denied the lawyer's request for a supplementary report by a handwriting expert, but justifies this decision using the judge's argument that the request had not been submitted in accordance with the relevant procedural rules.

33. The Government also acknowledges that the judge denied the request for leave to supplement his initial statement, but justifies this on the grounds that the investigation phase had been nearly completed and the defence lawyer had had six months to submit this request.

34. During the pretrial investigation arising from the accusations levelled against him, Mr. Martínez Ramírez had access to a lawyer, who represented him and was able to submit a number of procedural motions in his defence. The fact that some of these motions were denied by the investigating judge cannot be interpreted as a denial of the right to a defence.

35. The legitimate right to a defence must not be mistaken for an absolute right to have all kinds of tests performed. In conformity with the criminal procedure in each country, the investigating judge may refuse to have certain tests performed, provided that when the case comes to trial, the court trying the defendant decides there is sufficient evidence to justify the charges, and provided that the sentence, and thus the deprivation of liberty of the accused, are in conformity with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

36. Accordingly, in the light of the charges brought against the defendant and the length of time he spent in custody, his pretrial detention does not seem disproportionate.

37. In the light of the information received, the Working Group considers that neither Mr. Orlando Alberto Martínez Ramírez' right to personal liberty nor his right to a fair trial have been violated. The allegedly humiliating, degrading and discriminatory conditions of his detention do not fall within the remit of the Working Group.

38. In conclusion, the Working Group considers that there is insufficient evidence for it to consider the deprivation of liberty of Mr. Orlando Alberto Martínez Ramírez as arbitrary.

Adopted on 23 November 2004

OPINION No. 21/2004 (COLOMBIA)

Communication addressed to the Government on 21 June 2004.

Concerning Mr. Israel Morales Hernández.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

5. Mr. Israel Morales Hernández, a Colombian citizen, is currently detained in the Pereira judicial district prison in the department of Risaralda. He was arrested on 6 October 1999 and charged with attempted homicide and the illegal bearing of firearms for personal defence. His case, No. 2000-0104-00, is before the single criminal court of the Guadalajara de Buga special circuit.

6. The public hearing of the trial took place on 22 June 2001. According to the law, the judge was required to deliver a judgement within the 15 days following the hearing, which he failed to do. Thirteen months later, in July 2002, Mr. Morales Hernández filed a writ of habeas corpus. On 9 August 2002, the writ of habeas corpus was rejected by the Pereira circuit criminal court, which found that the court concerned had been unable to deliver a judgement because of bottlenecks or a heavy workload.

7. On 19 November 2002, Mr. Morales Hernández applied for an injunction (*acción de tutela*), or *amparo*, as provided for by article 86 of Colombia's Constitution, to obtain protection of his fundamental right to due process. On 13 December 2002, the case was heard by the high court of the Guadalajara de Buga judicial district, which rejected the complainant's application. The Court argued that although the administration of justice had clearly been delayed, the delay was fully justified.

8. On 14 March 2003, Mr. Morales Hernández exercised his right of petition to appeal to the Ombudsman's Office; this appeal was also rejected.

9. According to the source, Mr. Morales Hernández has been deprived of his liberty for four years and eight months, without any decision having been taken on his legal status.

10. The source believes that the failure to comply with the procedural time limits has resulted in an illegal prolongation of the deprivation of liberty of Mr. Morales Hernández for more than four years, thus making his detention arbitrary.

11. The right to due process includes the right to judicial proceedings free of delays, the right to be tried within a reasonable period of time and the right to receive a reasoned judgement within a reasonable period of time. The Buga special circuit high court and the Pereira circuit criminal court cited bottlenecks in the judicial system, a heavy workload and the priority given to other decisions to excuse the failure to deliver a judgement. According to the source, that does not excuse the excessive delay in delivering a judgement, because through such delay, Mr. Morales Hernández has de facto been sentenced to a penalty of deprivation of liberty. In the opinion of the source, that is totally at odds with the principle of the presumption of innocence. The source concludes that the detention of Mr. Morales Hernández is arbitrary and calls upon the Working Group to declare it as such.

12. In its reply, the Government confines itself to saying that, according to the National Institute of Prisons and Penitentiaries (INPEC), the legal situation with regard to Mr. Morales Hernández was as follows. Offence: attempted homicide with the use of a weapon. Authority: Special court of Buga, Valle. Status: defendant. Date of arrest: 10 October 1999. Date of incarceration in Pereira prison: 4 April 2002. The Government points out that it requested information from the Office of the Attorney-General, which replied that, as the case was sub judice, it could not provide any information on it.

13. The source has not replied, although the Government's reply was transmitted to it on 22 October 2004.

14. In its reply, the Government acknowledges the information provided by the source in its original communication. Mr. Israel Morales Hernández was arrested on 10 October 1999, but the court dealing with his case has yet to deliver a judgement. That a person should be deprived of liberty for more than five years without trial is clearly an unacceptable delay that makes that person's detention unjust. The backlog of cases pending in the courts cannot be accepted as a justification.

15. Article 9 of the International Covenant on Civil and Political Rights, which Colombia has ratified, states the following: "3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."

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

> The deprivation of liberty of Mr. Israel Morales Hernández is arbitrary, being in contravention of article 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

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

Adopted on 23 November 2004

OPINION No. 22/2004 (UNITED ARAB EMIRATES)

Communication addressed to the Government on 11 June 2004.

Concerning Mr. Cherif Mohammed Haidera.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

2. The Working Group expresses its appreciation to the Government for the information it has provided.

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government, which has replied within the 90-day deadline.

5. Mr. Cherif Mohammed Haidera, a citizen of Niger, born on 11 November 1960, a diplomat of Niger, resident of Niamey, currently detained at Dubai Central Prison, United Arab Emirates, was arrested on 20 May 1998 at the General Prosecution Building in Dubai, following an interview with the Attorney-General. He had been summoned to appear before the Attorney-General, Mr. Ibrahim Bin Milha. Mr. Haidera was first transferred to Bahrain and later to Dubai Central Prison. Later, he was accused of involvement in a case of counterfeiting Bahraini dinars and depositing them in the Dubai Islamic Bank.

6. Mr. Haidera was sentenced to three years' imprisonment. According to the source, he completed his prison term on 20 May 2001 and should have been released. According to the federal law, he was to have been released on 19 August 2000, when he had completed two thirds of his sentence. Mr. Haidera has been in prison for more than six years, in spite of having been sentenced to only three years of imprisonment.

7. The Government replied that on 28 June 2000, Mr. Haidera was sentenced in a criminal case (No. M-1998/2681) to three years' imprisonment for the offences of fraud and use of magic to appropriate other people's property. The sentence also included an order for the deportation of Mr. Haidera. Mr. Haidera served his term of imprisonment, which ran until December 2002, but could not be released and deported owing to the fact that he had also been sentenced in a civil suit linked to the criminal case and imposed following proceedings brought by the Dubai Islamic Bank (case No. 44/2002). Mr. Haidera, along with his co-defendants, was ordered by the court to pay the Bank the amount of 888,881,097 U.A.E. dirhams as compensation for damages incurred from the date of the misappropriation until such time as the entire amount, and any taxes due, were paid. The court also suspended the deportation order (decision of the court of first instance, case No. 375/2000).

8. The Working Group transmitted the reply provided by the Government to the source, which insisted that Mr. Haidera had been arrested in May 1998 and sentenced in absentia to three years' imprisonment. No fine was imposed by the court at that time. The full sentence was completed on 20 May 2001. The source wonders why the Government considers that the sentence was completed on 5 December 2002, and not on 20 May 2001, in view of the three-year sentence. Furthermore, it is still unclear to the source why he remained in jail in November 2004.

9. The source further reports that the Dubai Islamic Bank brought a civil complaint against Mr. Haidera in Miami, Florida, United States of America, in 1998 (case No. 98-14580). Judgement was pronounced, in absentia, against the defendant and assets were seized from Mr. Haidera's Merrill Lynch account in New York. The Dubai authorities are now saying that the Dubai Islamic Bank (which belongs to the Government) has brought another civil complaint, this time before a Dubai court, against Mr. Haidera and are seeking reimbursement of 888,881,097 U.A.E. dirhams and 100,000,000 U.A.E. dirhams as compensation. The source points out that in the Miami suit brought by the Dubai Islamic Bank's lawyers while Mr. Haidera was detained in Dubai, he is said to have received, by electronic transfers, a total sum of US$ 2,850,000.

10. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

11. The Government confirms that Mr. Haidera completed his term of imprisonment on 5 December 2002. With regard to the claim in civil court for amounts corresponding to debts arising from a criminal sentence, the Government explains that Mr. Haidera's release and expulsion were suspended, but that the order by which he was kept in detention was not. The Government has not specified what judicial authority or decision is responsible for Mr. Haidera's remaining in prison, nor has it indicated how long he is to remain in detention. Such deprivation of liberty for an unspecified period of time is contrary to the principles set out in the Universal Declaration of Human Rights.

12. The Working Group therefore considers that, as from 5 December 2002, Mr. Haidera's continued detention without any legal basis, which under international standards a detention order may constitute, is arbitrary.

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

> The deprivation of liberty of Mr. Cherif Mohamed Haidera since December 2002 is arbitrary as being in contravention of article 9 of the Universal Declaration of Human Rights and falls within category I of the categories applicable to the consideration of the cases by the Working Group.

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

Adopted on 24 November 2004

OPINION No. 23/2004 (ALGERIA)

Communication addressed to the Government on 10 August 2004.

Concerning Mr. Hafnaoui El Ghoul.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. The Working Group also notes that the Government has informed it that on 24 November 2004 the Djelfa court ordered the release of the above-mentioned person and that this order was carried out on the same day.

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

Adopted on 26 November 2004

OPINION No. 24/2004 (CHINA)

Communication addressed to the Government on 7 April 2004.

Concerning Mr. Zhang Yinan.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

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

6. The source informed the Working Group of the detention of Mr. Zhang Yinan, a Chinese citizen, born on 2 November 1957, a writer and leading historian of the unofficial House Churches in central Henan Province.

7. According to the information received, Christian House Churches choose not to register with the State-sponsored Three-Self Patriotic Movement Churches. Mr. Zhang played a central role in the unity movement which brought together four of the largest unofficial House Churches. He authored a united appeal to the official Three-Self Patriotic Movement Churches on behalf of four and wrote "The Unity Movement's Joint Confession of Faith of House Churches in China", two documents that were a catalyst in the national unification of House Churches. The "Joint Confession" explains reasons why the House Churches feel compelled to remain underground.

8. Mr. Zhang was arrested on 26 September 2003 at 9 a.m. at his home by police officers of the Public Security Bureau (PSB), who did not show an arrest warrant. Later that day, neighbours saw PSB officers searching Mr. Zhang's house and confiscating his computer and books. On 11 October 2003, he was charged with "conspiracy to subvert the national Government and the socialist order", under article 105 of the Criminal Law of China of 1997.

9. Mr. Zhang was found guilty of having drafted, on 2 October 1999, a document entitled "The Christian Constitution", which proposed to establish a federal Government that would use religion to govern China and overthrow the Communist Party and the current Government. He denied these charges. He was also found guilty of having distributed, in August 2003, the articles "Where does China go?", "Christ is the only way" and "The decrees of Christian House Churches in Henan", among other allegedly anti-Communist Party and anti-socialist writings.

10. On 3 November 2003, the Re-education Through Labour (RTL) Commission of Ping Ding Shan City, Lushan County, Henan Province, after having held a single hearing, issued verdict No. (2003) 203 sentencing Mr. Zhang to two years of re-education through labour, under the Temporary Law of Re-education Through Labour, article 10, item 1, and article 13. The sentence was reportedly pronounced without a trial or other adversarial proceeding. It was reported that during his hearing, Mr. Zhang was not allowed to have a lawyer, to rebut the Commission's evidence, or to present evidence in his own defence. The RTL Commission based its sentence solely upon the above-mentioned writings confiscated at his home.

11. According to the source, the RTL Commission disregarded international norms relating to a fair trial. Mr. Zhang was sentenced without trial; he was arrested without a warrant; he was detained without charges for 15 days; and he was denied access to a lawyer and to his family for 15 days.

12 The source considers that Mr. Zhang has been arrested and imprisoned for exercising his fundamental rights to freedom of opinion and expression, religious belief and peaceful association. His punishment is motivated by his Christian beliefs and activities. The source alleges that Mr. Zhang continues to be singled out by prison guards in the re-education through labour camp because of his faith.

13. The source states that Mr. Zhang has not expressed any anti-Government or anti-socialist sentiments and does not advocate the overthrow of the Government. Regrettably, the RTL Commission has taken his articles and writings out of context and distorted his ideas, which are based on the spiritual principles which lead his Church.

14. The Government replied to the source's allegations, reporting that:

(a) Zhang Yinan, male, age 46, from Henan Province: On 5 September 2003 the Public Security organs in Pingding Shan City, Henan Province, arrested him pursuant to article 61 of the Criminal Procedure Law for being illegally in possession of many classified State documents. On 31 October 2003, the RTL Commission of the Pingding Shan Municipal People's Government assigned Zhang to two years' re-education through labour under article 10, paragraph 1, of the Experimental Methods of Re-education Through Labour;

(b) Citizens have freedom of speech under the Chinese Constitution, but in exercising their rights and freedoms, they must not harm the interests or security of the State. Even the Universal Declaration of Human Rights clearly states that, when exercising their rights and freedoms, people are subject to the restrictions prescribed by law. The coercive measures taken by the Chinese law enforcement authorities against Mr. Zhang were all based on his suspected violation of Chinese law and have nothing to do with freedom of speech and opinion;

(c) In the course of dealing with this case, the Chinese law enforcement authorities abided strictly by legal procedure. China was one of the first States to become a party to the Convention against Torture, and prohibiting torture and other cruel, inhuman or degrading treatment or punishment has been the Chinese Government's constant policy. The Chinese Penal Code and Police Act, among other laws, contain exceptionally strict provisions on the prohibition of torture with a view to preventing and punishing the practice of torture or other cruel, inhuman or degrading treatment or punishment by State employees, law enforcement

personnel in particular, and protecting the legitimate rights and interests of detainees while in custody. During the handling of the present case, Mr. Zhang's legal rights have been fully guaranteed. There is no question of his having been tortured.

15. According to the source, the Chinese Government's response does not contest any of the facts set forth in its initial petition; it insists that Mr. Zhang was:

(a) Arrested without a warrant;

(b) Detained without charges and sentenced without trial by the RTL Commission to two years of re-education through labour;

(c) He was not allowed to appoint a lawyer, to challenge the basis of the Commission's charges against him, or to present any evidence in his own defence prior to being sentenced.

16. The source concludes that Mr. Zhang was arrested, sentenced and punished solely on the basis of the Government's opposition to some of his Christian writings, in which he expressed his religious belief in Christianity and his support for the theological independence of China's Christian House Churches.

17. As stated by the source, the Government, in its response, has not denied that Mr. Zhang was arrested and detained without charges, was not provided with a lawyer, was denied access to his family, and finally was sentenced to two years in an RTL labour camp.

18. The Working Group noted, but is not convinced by, the arguments of the Government that the detention of Mr. Zhang is not arbitrary because in taking the decision to commit him to an RTL facility, the relevant laws have been respected.

19. The Working Group points out first that the Government did not refute the allegation of the source that Mr. Zhang has abstained, during all his activities, from any form of violence. Second, the system of re-education through labour, as regulated under Chinese law, shares many common features with criminal law sanctions. The administrative decision to place someone in an RTL facility is tantamount to blaming him for actions that are between errors and crimes. Third, RTL involves deprivation of liberty, a feature typical of criminal law sanctions.

20. On that basis Mr. Zhang ought to have enjoyed, during the administrative procedure that ended with a decision against him, all the due process safeguards provided by international law and standards, including being able to argue his case before a tribunal. Instead, he was committed to RTL after a summary procedure before an administrative organ obviously lacking the elements of the requisite independence and impartiality.

21. Moreover, the Working Group takes into account that the reasons stated by the Government for which the administrative authority decided to confine Mr. Zhang in an RTL camp constituted only the peaceful exercise of his freedom of expression, a right recognized in articles 19 and 20 of the Universal Declaration of Human Rights and in articles 18 and 19 of the International Covenant on Civil and Political Rights, which prevent his being deprived of his liberty for this reason alone.

22. Forced confinement in an RTL camp, ordered by an administrative authority and without the relevant judicial control available through a trial, with all the necessary guarantees, is not in conformity with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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

> The deprivation of liberty of Mr. Zhang Yinan is arbitrary, as being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

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

Adopted on 26 November 2004

OPINION No. 25/2004 (SAUDI ARABIA)

Communications addressed to the Government on 3, 5 and 10 August 2004.

Concerning Dr. Matrouk b. Hais b. Khalif Al-Faleh, Dr. Abdellah Al-Hamed and Mr. Ali Al-Damini.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

5. According to the information submitted by the source:

(a) Dr. Matrouk b. Hais b. Khalif Al-Faleh, born in Sekaka on 17 May 1953, former Professor of International Relations at the King Sa'ud University in Riyadh, is currently detained in El-Alicha detention camp in Riyadh, a detention centre of the Ministry of the Interior. He is

particularly known for having written a widely published study calling for political reforms in the Kingdom and an article in the London newspaper *Al Qods Al Arabi*. He lost his position at the university in 2003 for having written those papers. It was reported that this person was arrested on 16 March 2004 at his offices in Riyadh by agents of the Saudi Arabian General Intelligence Service, who failed to provide a proper arrest warrant. No reasons were given to justify his arrest;

(b) Dr. Abdellah Al-Hamed, born on 12 July 1950, Professor of Contemporary Literature at the Imam Mohammed bin Sa'ud University in Riyadh, member of the Saudian Reformer Movement, is also currently detained in El-Alicha detention camp. It was reported that he was also arrested on 16 March 2004 at his offices in Riyadh by agents of the Saudi Arabian General Intelligence Service, who failed to provide a proper arrest warrant. No reasons were given to justify his arrest;

(c) Mr. Ali Al-Damini, born on 10 May 1948, a writer, poet and author of numerous articles and books, is also currently detained in El-Alicha detention camp. It was reported that he was arrested on 16 March 2004 on his way to his home in Riyadh by agents of the Saudi Arabian General Intelligence Service, who failed to provide a proper arrest warrant. No reasons were given to justify his arrest;

6. It is submitted that none of the men have been given an opportunity to be heard by a judicial authority. They were not immediately brought before a judge, nor charged. They were requested to remove their signatures from an open letter addressed in January 2003 to Crown Prince Abdellah Ben Abdelaziz and to sign pledges to consult with the authorities before carrying out any public activity. The letter, which was signed by 104 Saudi intellectuals, petitioned the Government on several political issues, including the necessity of adopting comprehensive institutional reforms in order to establish a constitutional monarchy, to strengthen relations between the leadership and the community and to guarantee the unity and the stability of the Kingdom. It observed that the lack of freedom of expression and assembly fosters the growth of intolerance and extremism.

7. All three were later charged with the following criminal offences: propagation of discord and dissonance; incitement and encouragement against the State; rebellion against authority; doubting the independence and equity of the judiciary; holding political meetings; and commission of crimes against national unity. According to the source, all these charges are of a political nature.

8. The source reports that the treatment given to the co-signatories to the open letter has been different in each case, and thus discriminatory. Some co-signatories were never questioned; others were arrested and later released after agreeing to remove their signatures; others, like Dr. Al-Faleh, Dr. Al-Hamed and Mr. Al-Damini, were arrested and formally charged; and others are being kept arbitrarily in detention without having been brought before a judge, without charges and without clear expectations of being tried soon. A number of those arrested were released on the condition that they pledge not to sign petitions or comment publicly on political issues.

9. The source further alleges that none of the three individuals has had judicial recourse to contest the lawfulness of his detention. There is no evidence that they took actions that violate laws of the Kingdom or that threaten public order. The source further alleges that the detention of these persons is also in violation of Saudi Arabia domestic law, particularly article 36 of the Saudi Basic Law, which guarantees that no citizen may be detained without due process of law, and articles 2 and 4 of Royal Decree No. M.39 of 16 October 2001, which provide for the presentation of a proper arrest warrant and for bringing detainees before a judicial authority to establish the lawfulness and the length of their detention.

10. It is the position of the source that the signing by these persons of the letter to the Crown Prince was in exercise of their right to peaceful freedom of opinion and expression. It was also an effort to take part in the Government of their country by petitioning the authorities. Their detention is related to their efforts to petition the Government, and is a violation of article 21 (1) of the Universal Declaration of Human Rights. According to the source, the letter was a peaceful expression of the political aspirations of the signatories and within the legal bounds of international standards.

11. The Government made the following statement with regard to the allegations of the source:

> "The said persons were arrested for holding a number of suspicious meetings. Following an investigation, they were charged with engaging in acts which, inter alia, justified terrorism, encouraged violence and incited civil disturbance. The investigation of Mr. Matrouk b. Hais b. Khalif Al-Faleh, Dr. Abdellah Al-Hamed and Mr. Ali Al-Damini showed that they were responsible for organizing the above-mentioned meetings. The accusations against them were therefore found to be substantiated and they were referred to the courts for judgement. All the accused have enjoyed the rights guaranteed to them under the Kingdom's Code of Criminal Procedure, including the right to have the charges against them heard by a court of law, and their trial, at a first public hearing attended by their lawyers, their families and representatives of the media in which the Public Prosecutor read out the indictment against them, started on 9 August 2004. The second hearing is scheduled to be held on 23 August 2004. In the light of the above information, the Government of Saudi Arabia does not consider their arrest as arbitrary detention but rather as arrest for the commission of an ordinary criminal act."

12. The source took issue with the assertions of the Government, and put forward, among other things, the following arguments, brought to the attention of the Government:

> "Such a reply requires us to bring to your attention some highly important issues concerning the current situation in the Kingdom of Saudi Arabia and all attempts at moderate and peaceful reform, as well as with regard to the participation in the building of a country governed by the rule of law and the main principles of justice of Islam, in accordance with international legality in human rights matters. Because for these reformists, there is no conflict between the values of Islam and the international bill of human rights.

"These representatives of the reformist movement have indeed held various meetings of which the Saudi authorities were very much aware, some of them having taken place with representatives of the authorities themselves. Such meetings aimed at identifying the best solutions to leave behind the difficult situation currently experienced by the Kingdom. The situation is characterized by the escalating confrontation between local armed groups and the security services, by the rising corruption, the deteriorating economic crisis, and the absence of fundamental freedoms. All these factors constitute a cause of instability, particularly so for the youth, who let off steam through violence as they lack peaceful and legal means of expression."

13. The main issue in the present communication, which the Working Group shall address, is whether in the decision-making process leading to the deprivation of liberty of Dr. Al-Faleh, Dr. Al-Hamed and Mr. Al-Damini their human rights and freedoms as guaranteed by international norms and standards, above all by the Universal Declaration of Human Rights, have been duly taken into consideration.

14. Even assuming that the prosecution giving rise to the detention of Dr. Al-Faleh, Dr. Al-Hamed and Mr. Al-Damini did have a legal basis in the criminal law of Saudi Arabia - an assertion of the Government not contested by the source - the Working Group notes that no State can be absolved from responsibility for human rights violations on the sole argument that the act of the State causing harm to human rights is not prohibited, or - even worse - is allowed under the legislation of that State. The Working Group is of the opinion that what is provided for, or permitted by national legislation, is not necessarily lawful under international law. It is the position of the Working Group that the freedoms protected by the Universal Declaration, in particular by articles 19, 20 and 21 (1), may only be restricted by the operation of criminal law if the conditions required of such restrictions under international law are met. It follows that only restrictions aimed at protecting national security, public order, public health, as well as the rights and reputation of others, are compatible with international law.

15. To support its allegation that the detention of Dr. Al-Faleh, Dr Al-Hamed and Mr. Al-Damini was necessary to protect public interest, even to the detriment of their freedoms enshrined in international law, the Government ought to have specified why and how their activity endangered public order. But all the Government put forward to support its position was that the three persons were arrested for holding a number of suspicious meetings and that they were charged with engaging in acts that justified terrorism, encouraged violence and incited civil disturbance.

16. In the specific context of the present case, however, the unsubstantiated references by the Government to suspicious meetings and attempts to justify terrorism did not convince the Working Group. It is clear from the information available that what the three individuals concerned were doing was engaging in a peaceful dialogue with the Government aimed at the improvement of the governance of the country. The Working Group is of the view that any peaceful action the objective of which is to bring about progress in a given country is protected by article 21 (1) of the Universal Declaration. Such activity necessarily entails the holding of meetings, where arguments, sometimes critical of the existing State structure, take place.

17. On that basis, the Working Group concluded that the Government had failed to adduce convincing arguments that the detention of the above-mentioned three individuals was necessary for the protection of public order. Hence, the restriction of their right to freedom of opinion, expression and assembly, as well as their right to take part in the conduct of public affairs in the country, was not compatible with international law.

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

> The detention of Matrouk Al-Faleh, Abdellah Al-Hamed and Ali Al-Damini is arbitrary, being in contravention of articles 19, 20 and 21 (1) of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

19. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Dr. Matrouk Al-Faleh, Dr. Abdellah Al-Hamed and Mr. Ali Al-Damini in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

20. The Working Group recommends that the Government consider signing and ratifying the International Covenant on Civil and Political Rights.

Adopted on 26 November 2004

OPINION No. 1/2005 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 11 June 2004.

Concerning Mr. Aktham Naisseh.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. The Working Group further notes that the Government concerned has informed the Group that the above-named person is no longer in detention. This information has also been confirmed by the source of the original communication, according to which the State Security Supreme Court has granted Mr. Naisseh its petition to be released on bail.

4. Having examined the available information, and without prejudging the arbitrary nature of the detention, the Working Group decides, in accordance with paragraph 17 (a) of its revised methods of work, to file the case of Mr. Aktham Naisseh.

Adopted on 23 May 2005

OPINION No. 2/2005 (TURKMENISTAN)

Communication addressed to the Government on 9 December 2004.

Concerning Mr. Vepa Tuvakov and Mr. Mansur Masharipov.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

5. According to the information submitted by the source, Mr. Vepa Tuvakov and Mr. Mansur Masharipov, both citizens of Turkmenistan and members of the Jehovah's Witnesses, were arrested in May 2004 and charged with refusing to perform military service on religious grounds. Both were sentenced to 18 months' imprisonment. The source submitted that there are no civilian alternatives to armed military service in Turkmenistan.

6. The allegations of the source have been brought to the attention of the Government. In a statement made on 18 April 2005 the Government informed the Working Group that the President of Turkmenistan, guided by the humane tradition of the Turkmen people and by the principles of justice and humanity, had granted pardons to Mr. Tuvakov and Mr. Masharipov on 16 April 2005. On 4 May 2005, the Working Group forwarded this information to the source for comments.

7. Since the source did not rebut the statement of the Government, the Working Group, on the basis of paragraph 17 (a) of its revised methods of work, decided to file the case.

Adopted on 24 May 2005

OPINION No. 3/2005 (QATAR)

Communication addressed to the Government on 3 August 2004.

Concerning Mr. Hashem Mohamed Shalah Mohamend Al Awadi.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

5. According to the information submitted by the source, Mr. Hashem Mohamed Shalah Mohamend Al Awadi, president of the Foundation for Projects of a Charitable Character, was arrested on 3 March 2003 by the General Intelligence Police of Qatar. Neither upon arrest nor later was any ground justifying his deprivation of liberty provided to him. For approximately two months he was held in incommunicado detention. He was not given an opportunity to be heard by a judicial authority, and he was not allowed to appoint a defence lawyer. While the source is not aware of any reason why the authorities should have arrested and held him in detention, it is assumed that his detention is linked to his activities as president of a charitable foundation.

6. The allegations of the source have been brought to the attention of the Government. In a statement made on 31 March 2005 the Government announced to the Working Group that Mr. Al Awadi had been released from detention on 6 March 2005. On 25 April 2005 the Working Group invited the source to submit, by 17 May, observations concerning the reply of the Government.

7. Since the source did not rebut the statement of the Government, the Working Group, on the basis of paragraph 17 (a) of its revised methods of work, decided to file the case.

Adopted on 24 May 2005

OPINION No. 4/2005 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 25 October 2004.

Concerning Mr. 'Abdel Rahman al-Shaghouri.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

5. According to the information submitted, Mr. Abdel Rahman al-Shaghouri was arrested by security personnel on 23 February 2003 at a checkpoint between the towns of Qunaytra and Damascus. No warrant was issued for his arrest. On the same day, secret police agents entered his house and confiscated his computer, fax, CDs and other computer-related items. He was held incommunicado in solitary confinement, without access to his family or lawyers, and was allegedly beaten in custody. Later, he was transferred to Sednaya prison, on the outskirts of Damascus, where he is now held.

6. On 20 June 2004, Mr. al-Shaghouri was sentenced to three years' imprisonment by the Supreme State Security Court (SSSC) on charges of disseminating in Syria false and exaggerated information that sap the morale of the nation, in accordance with article 286 of the Penal Code. However, the sentence was immediately reduced to 2½ years. The charges relate to his sending via the Internet e-mail articles which were mainly obtained from the Akhbar al-Sharq Internet site, www.thisissyria.net. The prosecution charge sheet notes that material on this Internet site is considered "detrimental to the reputation and security of the nation" and "full of ideas and views opposed to the system of government in Syria".

7. The source considers that SSSC is neither independent nor impartial. Trials before it fall short of international standards for fair trial. SSSC places severe restrictions on the defendant's right to obtain effective legal representation and its verdicts are not subject to appeal before a higher tribunal.

8. The source adds that Mr. al-Shaghouri's trial was grossly unfair. His lawyers were not allowed to see all the court documents relating to the case, despite repeated requests.

9. According to the source, this person was detained and condemned solely for the peaceful exercise of his right to freedom of expression through the Internet. His sole fault was to download material from a banned émigré website and to e-mail it to friends. His sentence is considered a dangerous precedent.

10. The allegations of the source have been brought to the attention of the Government. The Government informed the Working Group that 'Abdel Rahman al-Shaghouri was in fact arrested on 23 March 2003 "for using the Internet to disseminate to persons living in the country and abroad articles that were detrimental to the country's security and reputation. He was arraigned before the Supreme State Security Court on 30 June 2003". The source made comments on the reply of the Government.

11. The position of the Working Group can be summarized as follows: the Working Group notes at the outset that the information provided by the Government is fairly terse. It fails to reveal how and to what extent the information disseminated by Mr. al-Shaghouri through the Internet was detrimental to the security and reputation of the country. However, it appears from the Government's reply that Mr. al-Shaghouri was punished for having imparted information to others. Yet, under international law the freedom of expression includes the freedom to impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice, hence through the Internet.

12. The freedom of expression may only be subject to restrictions that are necessary for the respect of the rights and reputation of others, and for the protection of national security.

13. The unsubstantiated references by the Government to the interests of national security and the reputation of the country did not convince the Working Group that the restrictions on Mr. al-Shaghouri's freedom of expression through the operation of criminal law were absolutely necessary and were proportionate to the aim pursued. The Working Group is of the opinion that the language used by the prosecution sheet, referred to by the source and not contested by the Government, stating that the Internet site in question was full of ideas and views opposed to the system of government in Syria, clearly shows that the charges brought against Mr. al-Shaghouri were motivated by the intention to punish the expression of an opinion that was not in line with the official policy of the Government.

14. The source also complained of the alleged unfairness of the procedure conducted before the Supreme State Security Court. The Working Group notes that the Government did not comment on this allegation. The Working Group finds that the allegations of the source concerning the lack of procedural guarantees during the hearing of Mr. al-Shaghouri's case have been satisfactorily substantiated. The Working Group takes into account the concluding observations of the Human Rights Committee following its consideration of the second periodic report submitted by Syria under article 40 of the International Covenant on Civil and Political Rights (CCPR/CO/71/SYR), which state that the procedures of the Supreme State Security Court are incompatible with the provisions of article 14, paragraphs 1, 3 and 5, of the Covenant.

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

> The deprivation of liberty of Mr. 'Abdel Rahman al-Shaghouri is arbitrary, being in contravention of articles 14 and 21 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is a party, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

16. Consequent upon the opinion rendered, the Working Group requests the Government to remedy the situation of 'Abdel Rahman al-Shaghouri in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Right and in the International Covenant on Civil and Political Rights.

Adopted on 24 May 2005

OPINION No. 5/2005 (EGYPT)

Communication addressed to the Government on 6 January 2005.

Concerning Mr. Mohamed Ramadan Mohamed Hussein El-Derini.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

5. According to the information received, Mohamed Ramadan Mohamed Hussein El-Derini, a citizen of Egypt, born on 28 November 1962, is a well-known representative of Egypt's Shia community and the Secretary-General of the Supreme Council for the Care of the Prophet's Descendants (al-Majlis al-A'la li Re'ayat Al al-Beit), an unlicensed non-governmental organization. He was arrested on 22 March 2004, at his home, by members of the State Security Intelligence service (SSI). The SSI agents did not present any arrest warrant or other document justifying Mr. El-Derini's arrest. They also searched his home and seized cash, a computer, books, newspapers and documents. They then proceeded to search another apartment used by Mr. El-Derini in the Matareya district and his office, seizing items from both.

6. Mr. El-Derini was first taken to SSI headquarters in Lazoghly, where he was detained for two days before being transferred to the SSI branch in Nassr City. He was detained there for 40 days. For the entire period, Mr. El-Derini was forced to sit on the floor, blindfolded, bound and barefoot. SSI agents interrogated him about his Shia faith and about fellow Shia Muslims. On several occasions, SSI agents subjected him to serious physical assaults.

7. On 6 April 2004, lawyers with a non-governmental organization acting on behalf of Mr. El-Derini filed a complaint with the Prosecutor-General's Office calling for a clarification of his fate and for him to be either charged and referred to a competent court or to be immediately and unconditionally released. This complaint received no response from the Office of the Prosecutor-General.

8. Lawyers acting on behalf of Mr. El-Derini also appealed the (presumed) order for Mr. El-Derini's detention (appeal No. 14122/2004). The case was closed, however, on 3 May 2004, because no order for his detention existed.

9. On around 5 May 2004, the Egyptian Minister of the Interior issued an administrative detention order against Mr. El-Derini under article 3 of Law No. 162/1958 on the State of

Emergency (the "Emergency Law"). As usual with orders for administrative detention in Egypt, the order did not contain any specific reasons for the detention of Mr. El-Derini. He was again detained for about 20 days at SSI headquarters and subsequently transferred to the Wadi el-Natroun Prison, where he is still detained.

10. The lawyers acting on behalf of Mr. El-Derini filed a second appeal (appeal No. 18140/2004), following which the State Security Emergency Court ordered his release on 8 June 2004. The Ministry of the Interior appealed against this order, but the Court upheld it in a decision of 5 July 2004. However, this ruling was not implemented. Possibly, a new detention order was issued against Mr. El-Derini to circumvent implementation of the release order.

11. On 11 August 2004, lawyers acting on behalf of Mr. El-Derini sent another letter to the Office of the Prosecutor-General asking for his release. No response was received. Lawyers acting on behalf of Mr. El-Derini also submitted a second and third complaint to the Office of the Prosecutor-General on 14 September and 27 December 2004, respectively. No response was received.

12. On 25 November 2004, the State Security Emergency Court issued a second decision ordering the release of Mr. El-Derini (case No. 35961/2004). The Ministry of the Interior did not implement this ruling and issued a new administrative detention order. The lawyers acting on behalf of Mr. El-Derini filed a lawsuit challenging the legality of the third detention order.

13. The source alleges that Mr. El-Derini was arrested and is being detained solely because he belongs to the Shia Muslim community and of his peaceful activities as the Secretary-General of the Supreme Council for the Care of the Prophet's Descendants. The source argues that this contention is borne out not only by the questions posed to him by his interrogators (see paragraph 6 above), but also by the fact that his arrest and detention are part of a larger crackdown by SSI agents on Egypt's Shia community. The source refers to the arrest (respectively on 8, 22 and 27 December 2003) and administrative detention by SSI of three other Shia Muslims, Mohammed 'Omar, Ahmad Gom'a and 'Adel el-Shazli. As in the case of Mr. El-Derini, they were interrogated by SSI agents about their Shia Muslim beliefs and practices.

14. In its reply, the Government stated that Mr. El-Derini is among those extremist elements who use religion to conceal the dissemination of their destructive ideas throughout the Republic. Preventive measures were taken against him because of his involvement in prohibited activities. The Government added that administrative detention is only used when a state of emergency has been declared in the country. The measure, which must be approved by the Minister for Internal Affairs, is used in cases where a person poses a threat to public order. Such decisions can be appealed before the courts.

15. In its response, the source states that the Government's response identifying Mr. El-Derini as "one of the Shia Egyptians" further proves the allegation that he continues to be detained solely on the basis of his religious beliefs. It also submitted that a detention order dated 11 July 2004, of which the source was able to obtain a copy after the submission of the case to the Working Group, states that Mr. El-Derini is "under the influence of Shia ideas and seeks to spread them in his circles". Nonetheless, for close to 14 months the Government has failed to refer the applicant for prosecution and has not charged or tried him.

16. The source added that in its response the Government fails to acknowledge that Egypt has been under a state of emergency since 1981. The response also fails to address the fact that Mr. El-Derini has obtained final court rulings ordering his release, which the Minister of the Interior refuses to implement. Besides the 5 July 2004 ruling mentioned in the original application, the source has obtained copies of final rulings by the State Security Emergency Court ordering Mr. El-Derini's release on 25 November 2004 and on 27 February 2005. None of the three rulings has been implemented. Instead, the Minister issued a new administrative detention decree every time the Court nullified the old one.

17. The source concluded that Mr. El-Derini is part of the larger population of administrative detainees incarcerated under the state of emergency in Egypt. While the Government has repeatedly refused to disclose the exact number of administrative detainees, even to the national human rights council, the number of these detainees estimated by independent human rights groups ranges between 16,000 and 20,000. Most of them were never charged or tried and the rest have served their judicial sentences but were never released by the Minister of the Interior.

18. In the light of the above, the Working Group notes that the Government acknowledges that Mr. El-Derini has been in administrative detention since 22 March 2004 on the basis of legislation applicable to the state of emergency, which allows the Minister of the Interior to adopt such measures against persons representing a risk to public security. It further states that decisions ordering administrative detention can be challenged before the courts. The Government fails, however, to address the allegation of the source that the courts seized have several times annulled the decisions of the Minister of the Interior and that the Minister refuses to comply with the court decisions. As the Government does not dispute the allegations of the source in this respect, the Working Group concludes that they are well founded.

19. The Working Group considers that maintaining a person in administrative detention once his release has been ordered by the court competent to exercise control over the legality of detention renders the deprivation of liberty arbitrary. The Working Group is of the opinion that in the present case no legal basis can be invoked to justify the detention, least of all an administrative order issued to circumvent a judicial decision ordering the release.

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

> The deprivation of liberty of Mohamed Ramadan Mohamed Hussein El-Derini is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Egypt is a party, and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

21. Having found the detention of Mr. El-Derini to be arbitrary, the Working Group requests the Government of Egypt to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 24 May 2005

OPINION No. 6/2005 (LATVIA)

Communication addressed to the Government on 18 November 2004.

Concerning Ms. Viktoria Maligina.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which did not submit any reply.

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

6. The source informed the Working Group that:

(a) Ms. Viktoria Maligina, born on 15 October 1983, permanent resident of Latvia, was arrested on 2 March 2001, at the age of 17, by the police of the First Department of Latvia, and is currently detained at Riga Women's Prison;

(b) Ms. Maligina was arrested when she came to testify as a witness. She became a suspect and was held in custody for the first 72 hours by the police of the First Department of Latvia. On 5 March 2001, she was notified of her formal detention for a period of 30 days by the judge of the Kurzemkiy District of Riga. On 5 April 2001, the Special Prosecutor for Organized Crime of Latvia confirmed her detention. On 5 September 2001, the District Court of Riga maintained the detention order up to trial. On 5 March 2003, the Senate prolonged her detention for another six months, extending it again until 30 April 2004;

(c) The trial of Ms. Maligina for the offence of which she was accused of committing with others (participation in a grave but non-violent crime) had been scheduled to start in July 2002 but did not take place until April 2003, when it was immediately postponed until February 2004. On 30 March 2004 the verdict was rendered and Ms. Maligina was sentenced to five years' imprisonment in a medium-security prison. Other co-accused in the same criminal procedure appealed the verdict.

7. According to the source, the detention of Ms. Maligina is arbitrary because she has been held for more than three years in pretrial detention in a closed facility, even though she was a

minor when the alleged offence took place and when she was arrested. Ms. Maligina spent about seven months detained while a minor and still remains detained in a closed facility pending appeal by her co-accused, although sentenced to serve in a medium-security facility.

8. The Government replied to the source's allegations that the statement provided to the Working Group by the source is not fully correct. The facts as established by the Latvian court during adjudication of the applicant's criminal case are as follows:

(a) The applicant was connected to a group of five other persons, all of whom have long criminal records and who, during the period in question, committed several violent and non-violent crimes, including murder, burglary, robbery and brigandage using firearms, and illegal acquisition and storage of firearms and explosives;

(b) The applicant had established de facto family life with one of the gang members, who became the accomplice to the crime for which she was arrested and sentenced;

(c) The applicant was aware of the details of at least some of the crimes committed by the criminal gang, as well as of the fact that her de facto husband and accomplice had firearms;

(d) The applicant had a record of drug addiction;

(e) On 1 March 2001, the applicant was interviewed as a witness. She was apprehended on 2 March 2001;

(f) The applicant was accused under article 176 of the Criminal Law of a robbery using firearms. The circumstances of the case were as follows: the applicant told one of the members of the criminal gang (the one who has previously committed murder) with an intent to commit a robbery, about a well-off acquaintance. From 15 to 27 February 2001, the applicant and her accomplice, while preparing for the crime, followed the victim in order to acquaint themselves with his daily schedule. The applicant and her accomplice carefully planned the crime, divided the roles and decided to use the gun of her accomplice. According to the plan, the accomplice was supposed to approach the victim from the back, threatening him with the gun. The applicant was supposed to stay on guard, outside the victim's sight since he knew her, while the accomplice was supposed to find out from the victim where the money was located and take it. On 27 February 2001, the applicant and her accomplice arrived at the victim's residence. When the victim arrived, the accomplice approached him from the back, threatening him with the loaded gun, and ordered him to enter his apartment and give up the money. However, the victim resisted and during the struggle, the accomplice shot the victim twice and killed him. The applicant and her accomplice then escaped from the scene;

(g) It also appears from the criminal case file that the applicant had previously stolen money from the victim, although he did not report her to the police;

(h) During pretrial investigation, the applicant did not cooperate with the authorities, made contradictory statements and tried to hide the details of the crime and of others of which she was aware;

(i) The adjudication of the criminal case involving the applicant started on 10 April 2003. The first instance court judgement was delivered on 29 and 30 March 2004. The court had to interrupt the adjudication twice to establish the mental capacity of one of the co-accused. The appellate court delivered its judgement on 4 February 2005. This judgement has not yet become final, as the applicant has the right to submit an appeal on cassation;

(j) The applicant was sentenced for attempted robbery using firearms, in accordance with article 15, paragraph 4, article 176, paragraph 4, and article 49 of the Criminal Law, to 9½ years' imprisonment with police supervision for 2 years. The applicant started serving her sentence in a partly closed prison facility. The court took into account that the applicant did not have previous convictions, as well as the fact that the applicant pleaded guilty, that she committed the crime while being under age, as well as the fact that her mother and other relatives died while she was in pretrial detention, and imposed a sanction that is lower than the minimum sanction allowed by the relevant article of the Criminal Law. The court also took into account the applicant's role in the crime (the idea of robbing the victim was the applicant's initiative), her reluctance to cooperate with the investigative authorities and her negative attitude, including the fact that she did not study, did not work and had a record of drug addiction, as well as the particularly grave consequences of the crime committed.

9. The Working Group considers that although it is not desirable to extend the period of pretrial detention for so long, in this case from 3 March 2001 until March 2004, the specific circumstances seem to justify such duration. This criminal trial involved serious crimes, with several co-accused, all of them Russian-speaking and without the ability to express themselves in Latvian, which made it necessary to translate the 50 volumes and 151 pages of documents.

10. Although the Working Group understands that the length of the procedure is justifiable, it nonetheless regrets the lack of a separate juvenile justice system, as observed during its visit to Latvia in February 2004, which should have been in charge of the case of Viktoria Maligina.

11. However, the irregularities that may relate to the extension of pretrial detention, the length of the procedure and the lack of a separate juvenile justice system for minors are not sufficient in this case to confer an arbitrary character on the detention of Viktoria Maligina.

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

The deprivation of liberty of Ms. Viktoria Maligina is not arbitrary.

Adopted on 25 May 2005

OPINION No. 7/2005 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 10 February 2005.

Concerning Mr. Muhannad Qutaysh, Mr. Haytham Qutaysh and Mr. Mas'oud Hamid.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. The source reported that Mr. Muhannad Qutaysh is being held in Sednaya Prison on the outskirts of Damascus. He has been imprisoned since December 2003 for writing articles for an Internet newspaper based in the United Arab Emirates. He was charged with "obtaining information that must remain secret for the safety of the State and in the interest of a foreign State". He was also charged with "disseminating false news abroad". In July 2004, he was sentenced to four years in prison by the Supreme State Security Court (SSSC).

5. Mr. Haytham Qutaysh, brother of Muhannad Qutaysh, is also being held in Sednaya Prison, since December 2003, charged with "incitement of obtaining information that must remain secret for the safety of the State and in the interest of a foreign State" and with "producing written material not approved by the Government which expose Syria and the Syrians to the threat of hostile acts that harm Syria's relations with a foreign State". In July 2004, SSSC sentenced him to three years' imprisonment.

6. Mr. Mas'oud Hamid, student, member of the Kurdish minority in Syria, is being held in incommunicado detention at 'Adra Prison, near Damascus. He was arrested on 24 July 2003 for taking photographs of a peaceful Kurdish demonstration and posting them on the Internet. He was charged with unlawful use of the Internet. In October 2004, he was sentenced by SSSC to five years in prison.

7. According to the source, the judicial procedures followed in the cases of these three defendants before SSSC were seriously flawed and fell far short of international standards of fairness. SSSC, which was created under 1963 emergency legislation, is not bound by the rules of the Syrian Code of Criminal Procedure. Judges, especially the President of the Court, have been granted wide discretionary powers. In addition, the defendants' access to defence lawyers was restricted. Lastly, SSSC verdicts are not subjected to appeal.

8. The source recalls that in April 2001, the United Nations Human Rights Committee expressed concern about the procedures of SSSC, stating that they were "incompatible with the provisions of article 14, paragraphs 1, 3 and 5, of the International Covenant on Civil and Political Rights"; that SSSC rejects torture allegations even in flagrant cases, and that its decisions are not subject to appeal (see CCPR/CO/71/SYR, para. 16).

9. The Government replied to the source's allegations that:

(a) Mr. Muhannad Qutaysh and Mr. Haytham Qutaysh were investigated and found to have been engaged in spying activities, to have established contacts with foreign agencies and to have disseminated false information about Syria. In July 2004, Muhannad Qutaysh was convicted and sentenced to three years in prison with hard labour while Haytham Qutaysh was given a term of four years in prison with hard labour;

(b) Mr. Mas'oud Hamid has been arrested for committing an offence which is punishable by law, i.e. being a member of a proscribed Kurdish party called "Yakiti"; for disseminating inflammatory propaganda; and for publishing articles, under a pseudonym, in an unauthorized magazine called DEM. The magazine, several copies of which Mr. Hamid had distributed on the university campus, advocates racist ideas. Mr. Hamid also printed 1,000 copies of a calendar showing a map of what purports to be Kurdistan, with the intention of distributing it among Kurdish students at Damascus University. He sought to stir up racial tensions, undermine national unity and malign the State, participating in demonstrations which had not been authorized by the competent authorities. He is still awaiting trial;

(c) The above-mentioned persons were detained in accordance with the due process of law.

10. In response to the Government's reply, the source reported that Muhannad Qutaysh and Haytham Qutaysh had been informed that the charges against them were "spreading false information" obtained from websites banned in Syria.

11. In the case of Mas'oud Hamid, the source was unaware of the allegations that he had written for the unauthorized magazine DEM, which is said to advocate racist ideas, and that he had allegedly printed a calendar to stir up racial tensions. However, in relation to the Government's reply that Mas'oud Hamid is awaiting trial, the source adds that he was sentenced to five years' imprisonment on 10 October 2004 by SSSC on charges of being a member of an unauthorized organization and attempting to sever part of the Syrian territory and annex it to a foreign State, and that he remains incommunicado in solitary confinement.

12. With regard to the Government's reply on due process of law, the source stated that it had consistently documented gross violations of the right to fair trial in proceedings before SSSC.

13. The Working Group considers:

(a) That Muhannad Qutaysh and Haytham Qutaysh have been sentenced to three and four years' imprisonment respectively by the Supreme State Security Court on the sole grounds that they exercised their freedom of expression, since the information received from the Government does not indicate that they carried out the spying and incitement to racism of which they are accused;

(b) The description of the acts carried out by Muhannad Qutaysh and Haytham Qutaysh indicates only that they expressed their opinions, which differ from those of their Government, in writing in an Internet magazine published in the United Arab Emirates. Article 19 of the Universal Declaration of Human Rights defines freedom of expression as the right of everyone to freedom of opinion and expression, to hold opinions without interference, and to seek, receive and impart information and ideas through any media and regardless of frontiers;

(c) Mas'oud Hamid has been sentenced to five years' imprisonment by the Supreme State Security Court for having peacefully exercised his freedom of expression and assembly in Syria in connection with the demands of the Kurdish minority to which he belongs. Article 20 of the Universal Declaration of Human Rights lays down that everyone has the right to freedom of peaceful assembly and association;

(d) In April 2001 the Human Rights Committee found the procedure followed by the Supreme State Security Court to be incompatible with article 14, paragraphs 1 and 3, of the International Covenant on Civil and Political Rights. In addition, none of these three persons has been able to appeal against his conviction to a higher court.

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

> The deprivation of liberty of Mr. Muhannad Qutaysh, Mr. Haytham Qutaysh and Mr. Mas'oud Hamid is arbitrary, as being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 18 and 19 of the International Covenant on Civil and Political Rights, and falls within categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

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

Adopted on 25 May 2005

OPINION No. 8/2005 (SRI LANKA)

Communication addressed to the Government on 22 June 2004.

Concerning Mr. Maxilan Anthonypillai Robert, Ms. Thirumagal Robert, Mr. Loganathan Saravanamuthu, Mr. Aarokiyarasa Yogarajah, Mr. Selvarasa Sinnappu, Mr. Sritharan Suppiah, Mr. Selvaranjan Krishnan, Mr. Krishnapillai Masilamani, Mr. Akilan Selvanayagam, Mr. Mahesan Ramalingan, Mr. Rasalingam Thandavan, Mr. Sarma C.I. Ragupathy and Ms. Sarma Raguphaty R.S. Vasanthy.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

5. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government.

6. The source reported that:

(a) Mr. Maxilan Anthonypillai Robert, resident of Marnhoy Road, Jaffna, was arrested on 8 September 1996 in Kollupitiya, Colombo, by police officers in plain clothes;

(b) Ms. Thirumagal Robert, 25 years old, resident of 20 Third Cross Street, Jaffna, was arrested on 8 September 1996 in Kollupitiya, Colombo, by police officers;

(c) Mr. Loganathan Saravanamuthu, 21 years old, resident of Alaveddy, Jaffna, was arrested on 29 August 1996 at a checkpoint in Vavuniya by members of the Army;

(d) Mr. Aarokiyarasa Yogarajah, aged 21, resident of Anaikoddai East, Jaffna, was arrested on 20 August 1996 at a checkpoint in Vavuniya by members of the Army;

(e) Mr. Selvarasa Sinnappu, aged 32, resident of 333 KKS Road Kokuvil, Jaffna, was arrested on 29 August 1996 at a checkpoint in Dehiwala, Colombo, by police officers;

(f) Mr. Sritharan Suppiah, 20 years old, resident of Puttalam, was arrested on 2 September 1996 in Puttalam during a house-to-house search by members of the police;

(g) Mr. Selvaranjan Krishnan, aged 21, resident of Natchinor Koruladdy, Jaffna, was arrested on 11 July 1995 at a checkpoint in Colombo by police officers;

(h) Mr. Krishnapillai Masilamani, aged 35, resident of Karathivu, Batticaloa, was arrested on 12 December 1998 while travelling in a public bus in Mannampitiya by members of the Army;

(i) Mr. Akilan Selvanayagam, 21 years old, resident of 10th Canal, Uruthirapuram, was arrested on 9 September 1997 in Colombo during a joint round-up operation by members of the Army and the police;

(j) Mr. Mahesan Ramalingam, aged 23, resident of Dutch Road, Jaffna, was arrested on 9 September 1997 in Colombo during a joint operation by members of the police and the Army;

(k) Mr. Rasalingam Thandavan, 27 years old, resident of Baddula, was arrested on 29 September 1999 in Baddula by members of the Army and the police;

(l) Mr. Sarma C.I. Ragupathy, 38 years old, a Hindu temple priest, resident of Sivan Kovil Road, Jaffna, was arrested on 9 February 2000 in his temple in Colombo by members of the police, along with his wife;

(m) Ms. Sarma Raguphaty R.S. Vasanthy, aged 36, resident of Sivan Kovil Road, Jaffna, was arrested on 24 February 2000 in a Hindu temple in Colombo by members of the police.

7. It was reported that the above-mentioned 13 persons are being kept in detention in Wellikadai Prison in Colombo. All these persons were arrested on ethnic grounds, i.e. for the simple fact of being ethnic Tamils, and under suspicion of involvement with the Liberation Tigers of Tamil Eelam (LTTE), the main armed opposition group. They were held without charge or trial for several months, at the end of which they were charged under the Prevention of Terrorism Act (PTA) of 20 July 1979, and obliged to sign self-incriminatory statements, sometimes under torture. Their trials are allegedly progressing very slowly. Most of the charges were reportedly fabricated. The self-incriminatory statements were written in Sinhalese, a language most of them do not understand.

8. It is further reported that PTA allows confessions made under torture to be accepted as evidence against those arrested. Arrests under PTA should no longer take place, according to article 2.12 of a memorandum of understanding signed on 22 February 2002 between the Government of Sri Lanka and LTTE, entitled "Measures to restore normalcy". The PTA facilitates arbitrary arrest, lengthy detention of suspects without trial and attendant abuses.

9. The Government replied that there are no persons in detention other than under valid judicial orders. PTA was introduced as temporary legislation owing to the extraordinary security situation that prevailed in the country, with a view to preventing acts of terrorism and other unlawful activities. The Government acknowledged that under the provisions of PTA a confession made to a police officer of a rank not lower than assistant superintendent of police may be admitted as evidence, provided that such confession was not made under threat, coercion or promise. Accordingly, there exists no possibility of admitting as evidence any confession made under torture.

10. After the signing of the Ceasefire Agreement between the Government of Sri Lanka and LTTE in February 2002, all arrests and investigations are carried out under the normal law of the land. Since the signing of the Ceasefire Agreement over 1,000 indictments under PTA pending in the High Courts were withdrawn by the Attorney-General. The Attorney-General, who reviewed all PTA cases, decided to go ahead only with cases where the indictments included charges of a very serious nature.

11. In addition to its response mentioned above, the Government provided a list of persons who were detained in judicial custody under provisions of PTA. Only one of the persons referred to in the present opinion was mentioned in this list.

12. The Working Group recalls that confessions made to police officers in the circumstances described violate the principles of article 14 of the International Covenant on Civil and Political Rights, regardless of whether the legislation concerned is of an emergency nature. Article 14 states that all persons have the right to be heard in public by an independent and impartial tribunal with the guarantees of a fair trial, which prevents the use of confessions made to police officers as elements of proof.

13. In the view of the Working Group, the 13 persons concerned in the present opinion remain under the application of the provisions of PTA, and as such have not received a fair trial.

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

> The deprivation of liberty of Mr. Maxilan Anthonypillai Robert, Ms. Thirumagal Robert, Mr. Loganathan Saravanamuthu, Mr. Aarokiyarasa Yogarajah, Mr. Selvarasa Sinnappu, Mr. Sritharan Suppiah, Mr. Selvaranjan Krishnan, Mr. Krishnapillai Masilamani, Mr. Akilan Selvanayagam, Mr. Mahesan Ramalingan, Mr. Rasalingam Thandavan, Mr. Sarma C.I. Ragupathy and Ms. Sarma Raguphaty R.S. Vasanthy is arbitrary, as being in contravention of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

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

Adopted on 25 May 2005

OPINION No. 9/2005 (MEXICO)

Communication addressed to the Government on 17 November 2004.

Concerning Mr. Alfonso Martín del Campo Dodd.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. In the light of the complaints 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 comments by the source.

5. According to the information received:

(a) Mr. Alfonso Martín del Campo Dodd, a Mexican citizen, was arrested on 30 May 1992 and was sentenced to 50 years' imprisonment on 28 May 1993 by criminal court

No. 55 for murdering two people. He was convicted on the basis of his confession to murders because, in Mexican case law, the principle of procedural immediacy attaches special importance to a detainee's first statements;

(b) Mr. del Campo indeed confessed to the murders, but did so without even reading the statement which he signed under torture at Bureau of Investigation No. 10 of the Office of the Attorney-General in the Benito Juárez municipality of the Federal District;

(c) The acts of torture consisted of a beating, in which he was kicked and punched for more than five hours, followed by bouts of suffocation, in which a plastic bag was placed over his head;

(d) Mr. del Campo was brought before criminal court No. 55 on 1 June 1992. In his initial statement to the investigating judge, he complained of the acts of torture to which he had been subjected, but the judge took no action. On 12 December 1997, the fourth collegiate criminal court upheld his conviction;

(e) On 14 February 1994, the Internal Control Unit of the Office of the Attorney-General of the Federal District, initiated administrative proceedings against Juan Marcos Badillo Sarabia and Javier Zamora Cortés, officers of the Public Prosecutor's Office in Benito Juárez, and Sotero Galván Gutiérrez, an officer of the judicial police. The latter was found to have incurred administrative responsibility and was barred from public service for three years after it was proved that he had hit Alfonso Martín del Campo Dodd.

6. In its reply, the Government states that:

(a) In 1998, Alfonso Martín del Campo Dodd submitted a complaint to the Inter-American Commission on Human Rights alleging that he had received a final sentence from the high court of justice of the Federal District without benefiting from the minimum guarantees of a fair trial required by the Universal Declaration of Human Rights, despite the fact that Mr. del Campo's appeals for a review of the court's decision and recognition of his innocence had been conducted with full respect for procedural guarantees and human rights;

(b) In January 2003, the Inter-American Commission on Human Rights decided to bring the case before the Inter-American Court of Human Rights and lodged a complaint against the Government of Mexico concerning the alleged violations mentioned above;

(c) The Government of Mexico reacted to the complaint by raising preliminary objections to the competence of the Inter-American Court on the grounds that the events giving rise to the case had taken place in 1992, whereas Mexico had not recognized the adjudicatory jurisdiction of the Inter-American Court of Human Rights until 1998;

(d) On 13 September 2004, the Inter-American Court notified the Government of Mexico that it had rejected the complaint lodged by the Inter-American Commission;

(e) The Government therefore does not consider it appropriate that the Working Group on Arbitrary Detention should consider this complaint, since the Inter-American Court of Human Rights has already rendered a judgement;

(f) Moreover, the Government considers that it has not been proved that the criminal proceedings in any way violated the right to a fair trial. While it does not expressly deny that the torture complained of by Mr. del Campo took place, it contends that this would not have any bearing on the sentence whatsoever since, in the investigation into the murders in question, other evidence that justifies the sentence was produced;

(g) Lastly, the Government emphasizes that various inquiries were conducted into the complaint of torture and that Mr. del Campo could have availed himself of other procedural remedies, which he failed to do.

7. Although the Government considers that this Working Group is not competent to consider the complaint made by Alfonso Martín del Campo Dodd, the complaint is related to the specific tasks set forth in resolution 1991/42 of the Commission on Human Rights. The Working Group has in the past declared itself competent to deal with other cases which had also been considered by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (in the cases of José Francisco Gallardo Rodríguez, opinion No. 28/1998 (Mexico) and Lori Berenson, opinion No. 26/1998 (Peru)).

8. Furthermore, perusal of the supporting documentation provided by the source and the Government indicates that the Inter-American Court of Human Rights rejected Mr. del Campo's claim on the grounds that, at the time when the facts took place, the Mexican Government was not bound by the adjudicatory jurisdiction of the Inter-American Court, which it did not recognize until 1998.

9. The accounts of the source and the Government reveal that Alfonso Martín del Campo Dodd was tortured on 30 May 1992 while he was in Bureau of Investigation No. 10 of the Office of the Attorney-General of the Federal District in Benito Juárez and that he confessed under torture to the murders of which he was convicted.

10. No kind of proceedings based on torture can be fair. All evidence for the prosecution in a criminal trial must be obtained in a manner in keeping with the guarantees established in article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights.

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

> The deprivation of liberty of Mr. Alfonso Martín del Campo Dodd is arbitrary, being in contravention of articles 5, 9 and 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of 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 into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 25 May 2005

OPINION No. 10/2005 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government of the Syrian Arab Republic on 3 February 2005.

Concerning Mr. Farhan al-Zu'bi.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. According to the information received, Mr. Farhan al-Zu'bi, a citizen of the Syrian Arab Republic, born on 30 December 1942, was tried before a special military court in 1967 on charges of having taken part in a conspiracy to overthrow the Government that culminated in the attempted coup d'état of 8 September 1966. He was acquitted. In 1970 he was a lieutenant in the Syrian Armed Forces. In September 1970, Syria participated in the conflict in Jordan opposing the Palestine Liberation Army and the Jordan Arab Army. Lieutenant al-Zu'bi was part of the Syrian Armed Forces in Jordan, where he was captured and detained by the Jordanian governmental forces.

5. Mr. al-Zu'bi's wife, Ms. Sabah Damer at-Turkmani, was informed by the authorities of Syria that her husband was missing in action, and started to receive a monthly payment from the Government as a widow of a fallen soldier. In 1974, the authorities of Jordan handed Mr. al-Zu'bi over to the authorities of Syria. His family was not informed of this.

6. The source adds that in February 1995, however, the Syrian authorities stopped the monthly payments to Ms. at-Turkmani and informed her that her husband was alive. His place of detention was not disclosed to her, and neither she nor anyone else has been allowed to visit or otherwise contact Mr. al-Zu'bi.

7. In July 1999, Lieutenant-General Ali Issa Douba, then Head of the Syrian Military Intelligence Department (SMID), ordered the military police to transfer Mr. al-Zu'bi to the detention facility "Branch No. 293", where he is currently detained in solitary confinement. According to the source, Branch No. 293 (the so-called Officers' Branch) is a detention facility under the authority of the Ministry of Defence, located within the new residence of the SMID leadership, between the Al-Baramkah and Kufr Susah neighbourhoods in Damascus.

8. The source alleges that Mr. al-Zu'bi's detention is without any legal basis. Mr. al-Zu'bi was acquitted of the charges against him in connection with the attempted coup d'état of 8 September 1966. Moreover, Mr. al-Zu'bi has been held in unacknowledged incommunicado detention for more than 30 years.

9. The Government, which had the possibility of answering these questions, did not contest the allegations.

10. The Working Group observes that this is a case in which no possible legal basis can be found to justify Farhan al-Zu'bi's long detention, which is in serious contravention of the principle that no one shall be subjected to arbitrary detention and no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law.

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

> Mr. Farhan al-Zu'bi's deprivation of liberty is arbitrary, being contrary to article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and falls within category I of the categories applicable to the consideration of 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 into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 26 May 2005

OPINION No. 11/2005 (MYANMAR)

Communication addressed to the Government of Myanmar on 12 October 2004.

Concerning U Tin Oo.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. According to the information received, U Tin Oo, a citizen of Myanmar born on 3 March 1927, Vice-President of the National League for Democracy (NLD), was arrested by police and military forces on 30 May 2003 at around 7 p.m. in Kyi village near the Dipeyin (Tabayin) township, Sagaing Division, when an NLD convoy was attacked by Government-affiliated thugs during a speaking tour of northern Myanmar. Scores were killed and hundreds were wounded during the attack. U Tin Oo received blows to the head.

5. U Tin Oo was taken to Kale (Kalay) prison, Sagaing Division, and detained there. He was later transferred to Mandalay-Ohpho Prison. The detention of U Tin Oo was ordered by the State Peace and Development Council. No arrest warrant or detention order was issued against U Tin Oo, nor any charges raised against him. The detention might be based on the 1975 State Protection Law.

6. On 14 February 2004, U Tin Oo was shifted from Kale Prison to house arrest. However, he is still not allowed to see anyone. His home in Yangon is being guarded by armed security personnel and his phone has been cut off.

7. The source alleges that no charges have been raised against U Tin Oo and no trial is envisaged; his detention is not subjected to judicial review; he is held in incommunicado detention and denied access to a lawyer;

8. The Government, which had the possibility of answering these allegations, did not contest them.

9. The Working Group finds that U Tin Oo could not take advantage of the fundamental guarantees of due process, being in administrative detention. No arrest warrant was issued and no charges have been brought against him; he has not been allowed an independent public judicial process, with access to defence counsel.

10. As to the situation of his house arrest, the Working Group has already stated in its deliberation No. 1 that 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, which, as the Government has not denied, is the case here.

11. The Government was also unable to provide information as to the facts that gave rise to U Tin Oo's arrest during a speaking tour for NLD. The Working Group considers his deprivation of liberty to be for the mere exercise of his political rights and the exercise of the rights of freedom of movement, peaceful demonstration and freedom of expression, all protected under the Universal Declaration of Human Rights.

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

> The deprivation of liberty of U Tin Oo is arbitrary, being in contravention of articles 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

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

Adopted on 26 May 2005

OPINION No. 12/2005 (BOLIVIA)

Communication addressed to the Government on 2 February 2005.

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

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. The Working Group on Arbitrary Detention, on the basis of paragraph 17 (c) of its revised methods of work, adopted opinion No. 13/2004 (Bolivia), and decided to maintain the case under review pending further information from both the Government and the source on the following points:

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

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

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

5. Both the Government and the source have responded to those points, and the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

6. In its reply, the Government explains the legislation on which the criminal prosecutor based the charges, of involvement in organized crime, terrorism, armed uprising threatening the security and sovereignty of the State, falsification, the use of forged documents, and the manufacturing, trading or possession of explosives. The prosecutor for matters involving controlled substances charged Francisco Cortés Aguilar, Claudio Ramírez Cuevas and Carmelo Peñaranda Rosas with the crime of trafficking in controlled substances.

7. The Government also reports that the detainees did not engage in violence. It states that Mr. Cortés has requested the termination of his pretrial detention and that this request has been granted and a series of alternative measures have been taken.

8. Responding to the same questions, the source claims that both the accusation and the charge were formulated in a general manner, making it impossible to determine the specific allegations being made against the accused or the nature of the specific evidence that led to charges being brought against them. It is claimed that a single generic charge was brought against 19 individuals, including Messrs. Cortés, Ramírez and Peñaranda, making it impossible

to link the alleged crimes to specific acts or to substantiate the allegations. It is claimed that all that was done was to draw up a long list of undefined acts and evidence of unclear relevance, and that this situation prevented the defence from going about its work in an organized and methodical manner.

9. The source reaffirms that the detention took place in an atmosphere designed to make a scapegoat of Colombian human rights defender Francisco Cortés Aguilar, by using his detention as a piece of political propaganda to convince public opinion that it constituted a step forward in the fight against terrorism. It is claimed that the judge in the case travelled to Bogotá, where, at the request of the prosecutor, he illegally took statements from two Colombian citizens who are used by the Colombian army to give false testimony in trials in Colombia. All of this took place outside the presence of the parties.

10. The principle of the presumption of innocence has been gravely breached, and there have also been attacks on individuals working either directly or indirectly for the release of this Colombian citizen.

11. The source also refers to the harassment of a Colombian woman lawyer and member of the Colombian campaign to free Francisco Cortés, who went to Bolivia in connection with the trial and was repeatedly filmed, photographed and questioned at all the airports in that country.

12. The source also claims that all the judicial proceedings had been delayed unnecessarily, rendering the defence mechanisms provided by the Bolivian system ineffective. Francisco Cortés Aguilar, Carmelo Peñaranda Rosas and Claudio Ramírez Cuevas have been deprived of liberty since 10 April 2003 and continue to be held in pretrial detention.

13. Lastly, the source affirms that Francisco Cortés Aguilar is being held in a private jail, and is continually being harassed by intelligence agents. He is filmed, photographed and placed under microphone surveillance, guarded round the clock by four wardens and subjected to subhuman conditions of detention, which have affected his health.

14. Having received the additional information requested, the Working Group is in a position to analyse the circumstances of the case and to see if they correspond to one of the categories applicable to its methods of work.

15. Serious doubts exist as to the manner in which the arrest was conducted, and these doubts have not been dispelled by the information received. The Government has not denied that when the homes of the accused were raided and the accused were arrested in the early morning hours, they were portrayed in a large-scale media operation as guilty of the crimes with which they were charged. Nor has the Government denied that the detainees are farm workers' leaders, or that Francisco Cortés Aguilar has no record as a subversive or terrorist in Colombia, that he has denied any link with subversive organizations, and that, on the contrary, he had to seek exile in Bolivia with his family as a result of being threatened by paramilitary organizations.

16. The Government has not denied that the media's portrayal of the arrest of the accused individuals was potentially damaging to their defence and in contravention of the principle of the presumption of innocence. Similarly, there has been no denial of the allegation that evidence found in the home of the accused had been planted there hours earlier.

17. Nor has there been any denial of a series of acts of intimidation and harassment of the lawyers who were working for the defence initially. These lawyers received death threats, and, at the start of the case, were denied copies of the case file, which prevented them from properly presenting evidence in rebuttal. Furthermore, it has been noted that the public nature and seriousness of the charges have led to threats against other lawyers and defence attorneys associated with Francisco Cortés.

18. In this regard, the Working Group has been informed that several Colombian citizens and one Peruvian citizen, all of whom had been granted refugee status by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Bolivia, were forced to leave Bolivia because the police threatened to arrest them if they did not denounce Francisco Cortés. Consequently, an urgent appeal has been made on their behalf, without prejudging the merits of the case.

19. Likewise, on the basis of the information received, the Working Group notes that the serious charges made in this case were formulated in a general and imprecise manner, without defining the specific acts that constituted the criminal offences concerned.

20. It is also noted that the detainees have been deprived of their liberty since 10 April 2003, that this situation has not changed since then - although there has been a change in the place of detention in one case - and that they continue to be held in pretrial detention.

21. In these circumstances, and given the gravity of the charges, it is essential to respect international standards concerning the right to a fair trial.

22. The Working Group notes, however, that in the foregoing case, the accused have not been able to enjoy the fundamental guarantees stemming from the right to a fair trial; the failure to observe these guarantees is of such gravity that it imparts an arbitrary character to the deprivation of their liberty.

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

> The deprivation of liberty of Francisco José Cortés Aguilar, Carmelo Peñaranda Rosas and Claudio Ramírez Cuevas is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and articles 9, 14 and 15 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases presented to the Working Group.

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

Adopted on 26 May 2005

OPINION No. 13/2005 (LIBYAN ARAB JAMAHIRIYA)

Communication addressed to the Government of the Libyan Arab Jamahiriya on 7 February 2005.

Concerning Mr. Muhammad Umar Salim Krain.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. According to the information received, Mr. Muhammad Umar Salim Krain, an accountant working in the Financial Department of the Public Services Enterprise for the Benghazi City Council, aged 39, of Libyan nationality, was arrested after a confrontation in January 1989 between an armed opposition group and security forces that allegedly took place near the motorway to Benghazi airport. Although it is indicated that Mr. Krain was not involved in this incident, he was arrested and is being detained on the suspicion of being a political opponent. The source mentions that Mr. Krain is currently detained incommunicado in an undisclosed location presumed to be in Tripoli, and has not yet been brought to trial.

5. The Government, which had the possibility to answer these allegations, did not contest them.

6. In the light of the foregoing, the Working Group finds that Mr. Muhammad Umar Salim Krain has been imprisoned without any legal procedure, and therefore his deprivation of liberty is contrary to the relevant international provisions laid down in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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

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

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

Adopted on 26 May 2005

OPINION No. 14/2005 (UNITED ARAB EMIRATES)

Communication addressed to the Government of the United Arab Emirates on 5 November 2004.

Concerning Mr. Djamel Muhammad Abdullah Al-Hamadi, Mr. Yunus Muhammad Chérif Khouri, Mr. Khaled Gharib, Mr. Abdul Rahman Abdullah Ben Nasser Al Nuaimi, Mr. Ibrahim Al Kouhadji, Mr. Djemaa Salam Marrane Al Dahiri, Mr. Abdullah Al Moutawaa, Mr. Muhammad Djemaa Khedim Al Nuaimi, Mr. Ibrahim Al Qabili, Mr. Saleh Salem Marrane Al Dahiri, Mr. Khalifa Ben Temmim Al Mehiri, Mr. Seïf Salem Al Waidi, Mr. Muhammad Al Sarkal, Mr. Mohamad Khellil Al Husni, Mr. Jassem Abid Al Naqibi, Mr. Mohammad Ahmad Saleh Abd Al Krim Al Mansouri, Mr. Khaled Muhammad Ali Hathem Al Balouchi, Mr. Thani Amir Aboud Al Balouchi, Mr. Meriem Ahmed Hassan Al Har and Mr. Hassan Ahmad Al Zahabi.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. The information provided concerned the following persons:

(a) Mr. Djamel Muhammad Abdullah Al-Hamadi, 36 years old, a teacher, resident of Khawr Fakkan, arrested on 11 September 2001 by the Khawr Fakkan Police, presently in detention at the State Security and Intelligence Detention Centre of Abu Dhabi, without charges;

(b) Mr. Yunus Muhammad Chérif Khouri, born in 1966, an aeroplane pilot, resident of Al'Ayn, detained incommunicado and without charges by the State Security for three years;

(c) Mr. Khaled Gharib, 35 years old, a civil servant, resident of Dubai, detained incommunicado and without charges by the State Security for three years;

(d) Mr. Abdul Rahman Abdullah Ben Nasser Al Nuaimi, born in 1970, resident of Khawr Fakkan, a civil servant in the Armed Forces, detained incommunicado and without charges by the State Security for three years;

(e) Mr. Ibrahim Al Kouhadji, 35 years old, resident of Abu Dhabi, a civil servant in the Armed Forces, detained incommunicado and without charges by the State Security for three years;

(f) Mr. Djemaa Salam Marrane Al Dahiri, born in 1964, resident of Al'Ayn, former commander of the Armed Forces, detained incommunicado and without charges by the State Security for three years;

(g) Mr. Abdullah Al Moutawaa, 26 years old, resident of Al Badia (Al Fujayrah), detained incommunicado and without charges by the State Security for three years;

(h) Mr. Muhammad Djemaa Khedim Al Nuaimi, born in 1963, resident of Al'Ayn, former commander of the Armed Forces, detained incommunicado and without charges by the State Security for three years;

(i) Mr. Ibrahim Al Qabili, 45 years old, resident of Al Rams, Ra's al Khaymah, lieutenant-colonel in the Armed Forces, detained incommunicado and without charges by the State Security for three years;

(j) Mr. Saleh Salem Marrane Al Dahiri, born in 1962, resident of Al'Ayn, lieutenant-colonel in the Armed Forces, detained incommunicado and without charges by the State Security for three years;

(k) Mr. Khalifa Ben Temmim Al Mehiri, born in 1972, resident of Dubai, detained incommunicado and without charges by the State Security for three years;

(l) Mr. Seïf Salem Al Waidi, born in 1980, resident of Al Shariqah, member of the Armed Forces, detained incommunicado and without charges by the State Security for three years;

(m) Mr. Muhammad Al Sarkal, born in 1964, resident of Dubai, detained incommunicado and without charges by the State Security for three years;

(n) Mr. Mohamad Khellil Al Husni, born in 1972, resident of Khawr Fakkan, member of the Armed Forces, detained incommunicado and without charges by the State Security for three years;

(o) Mr. Jassem Abid Al Naqibi, 26 years old, resident of Khawr Fakkan, a civil servant in the Aviation Department, detained incommunicado and without charges by the State Security for three years;

(p) Mr. Mohammad Ahmad Saleh Abd Al Krim Al Mansouri, born in 1980, member of the Armed Forces, resident of Khawr Fakkan, detained incommunicado and without charges by the State Security for three years;

(q) Mr. Khaled Muhammad Ali Hathem Al Balouchi, born in 1978, member of the Armed Forces, resident of Al'Ayn, detained incommunicado and without charges by the State Security for three years;

(r) Mr. Thani Amir Aboud Al Balouchi, born in 1964, commander in the Armed Forces, resident of Al'Ayn, detained incommunicado and without charges by the State Security for three years;

(s) Mr. Meriem Ahmed Hassan Al Har, a civil servant in the Telecommunications Department, resident of Ra's Al Khaymah, arrested in early July 2004 and detained incommunicado and without charges by the State Security since his arrest;

(t) Mr. Hassan Ahmad Al Zahabi, born in 1969, a civil servant in the Telecommunications Department, resident of Abu Dhabi, arrested on 1 August 2004, and detained without charges since his arrest.

5. The source states that these persons are all being held in incommunicado detention by the State Security Services of the United Arab Emirates and that no arrest warrant was shown nor reasons given for their arrest. The source further mentions that no charges have been filed against these 20 persons and that requests by families and relatives to ascertain the legal grounds for their arrest and detention have been unsuccessful.

6. According to the source, these persons have been detained for the peaceful expression of their concerns regarding the political situation in the country, in public by some and in private by others (including all the members of the Armed Forces).

7. The Government, which had the possibility of answering these allegations, did not contest them.

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

> Mr. Djamel Muhammad Abdullah Al-Hamadi, Mr. Yunus Muhammad Chérif Khouri, Mr. Khaled Gharib, Mr. Abdul Rahman Abdullah Ben Nasser Al Nuaimi, Mr. Ibrahim Al Kouhadji, Mr. Djemaa Salam Marrane Al Dahiri, Mr. Abdullah Al Moutawaa, Mr. Muhammad Djemaa Khedim Al Nuaimi, Mr. Ibrahim Al Qabili, Mr. Saleh Salem Marrane Al Dahiri, Mr. Khalifa Ben Temmim Al Mehiri, Mr. Seïf Salem Al Waidi, Mr. Muhammad Al Sarkal, Mr. Mohamad Khellil Al Husni, Mr. Jassem Abid Al Naqibi, Mr. Mohammad Ahmad Saleh Abd Al Krim Al Mansouri, Mr. Khaled Muhammad Ali Hathem Al Balouchi, Mr. Thani Amir Aboud Al Balouchi, Mr. Meriem Ahmed Hassan Al Har and Mr. Hassan Ahmad Al Zahabi have been imprisoned without any legal procedure. Consequently, their deprivation of liberty is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights, and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

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

Adopted on 26 May 2005

OPINION No. 15/2005 (UNITED STATES OF AMERICA)

Communication addressed to the Government of the United States of America on 12 September 2004.

Concerning Mr. Leonard Peltier.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

2. The Working Group regrets that the Government has not replied within the 90-day deadline and has not provided any information on the case in question. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

3. (Same text as paragraph 1 of opinion No. 20/2004.)

4. According to the information received, Mr. Leonard Peltier, born on 12 September 1944, Native American (Chippewa, Lakota), leader and advocate of the American Indian Movement (AIM), was reportedly arrested on 7 February 1976 at Smallboy's Camp, Alberta, Canada, by the Royal Canadian Mounted Police and immediately extradited to the United States. Mr. Peltier is currently detained at the Leavenworth Federal Penitentiary in Leavenworth, Kansas, United States of America. Mr. Peltier was arrested in Canada and extradited to the United States for the murder of two FBI agents. He was convicted on 18 April 1977 on two counts of first-degree murder and sentenced to two consecutive life sentences by a jury trial presided over by Federal District Judge Benson in Fargo, North Dakota.

5. The communication alleges that the criminal proceedings against Mr. Peltier displayed substantial flaws of such gravity as to give an arbitrary character to his imprisonment. To support this allegation the source makes the following points:

(a) The trial and conviction of Mr. Peltier were concluded on coerced, perjured and fabricated evidence from the FBI and, contrary to United States criminal law and procedure, the defence was not allowed to present critical witnesses or evidence at trial;

(b) Exculpatory evidence in the hands of the prosecution was withheld from the defence at trial;

(c) Mr. Peltier has served time significantly longer than required in order to be released on parole in similar cases and parole has been denied on the basis of the conviction for murder of FBI agents, although the Government admitted to the Court of Appeal that it did not know who killed these agents. Furthermore, the source reports that in September 2004, Mr. Peltier filed a lawsuit in the District of Columbia Federal Court concerning the alleged illegal extension of his sentence by the United States Parole Board. It is alleged that the Parole Board extended Mr. Peltier's parole to 2008, at a time when it should have set his release date under applicable federal guidelines;

(d) The Government selected a trial judge and venue racially prejudiced against indigenous peoples in order to ensure that Mr. Peltier would be convicted.

6. The Working Group ascertained that the majority of the issues set out under (a)-(d) of the previous paragraph have been addressed by the appeals filed on behalf of Mr. Peltier, namely:

(a) At the first appeal (published as *United States v. Peltier*, 585 F. 2nd 314 (1978)), issues of FBI misconduct, allowing of prejudicial and inflammatory evidence not relevant to the case and disallowance of evidence favourable to the defendant were raised. The court examined the evidence and affirmed the conviction;

(b) The second appeal (published as *United States v. Peltier*, 731 F. 2nd 550 (1984)), concerned the appellant's request for a new trial based on the release of thousands of pages of previously unreleased FBI documents detailing the Bureau's misconduct and alleged use of fabricated, false and perjured testimony. The Circuit Court remanded the case for an evidentiary hearing at the trial court level, before the same judge who had convicted the defendant, and denied a new trial, over defence objections. The issues at this evidentiary hearing were limited and the appellate Circuit Court asked the trial judge to rule again on the motion of a new trial;

(c) The third appeal (published as *United States v. Peltier*, 800 F. 2nd 772 (1986)), reviewed the trial judge's evidentiary hearing and reaffirmed the denial of a new trial;

(d) The fourth appeal (published as *Peltier v. Henman*, 997 F. 2nd 461 (1993)), raised the issue that the Government admitted that it had no proof that Mr. Peltier had shot the FBI agents. The court, on appeal, concluded that even if that were so, the appellant was somehow involved and that was enough to sustain the conviction.

7. From the above, the Working Group concluded that Mr. Peltier could exercise his right to remedy before national courts against the procedural flaws of which he was allegedly the victim and that the competent appellate jurisdiction heard those appeals on the merits, but dismissed all of them for various reasons.

8. As to the selection of an allegedly racially prejudiced judge, the source is silent on why the selection of that judge had not been challenged by the defence, which would have been able to do so.

9. As to the failure of Mr. Peltier to be granted a parole, the information provided by the source is not sufficient to conclude that the allegedly longer time before the grant of parole than usually required would have made the prison sentence being served by Mr. Peltier arbitrary.

10. Mr. Peltier was given an opportunity to raise all the complaints listed in the communication before the national appellate courts, which, in well-reasoned decisions, dismissed them. Therefore, the Working Group, noting that it is not mandated to be a substitute for national appellate courts, renders the following opinion:

The deprivation of Mr. Leonard Peltier is not arbitrary.

Adopted on 26 May 2005

OPINION No. 16/2005 (PAKISTAN)

Communication addressed to the Government of Pakistan on 4 November 2004.

Concerning Mr. Jamal Abdul Rahim.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. According to the information received, Mr. Jamal Abdul Rahim was born in Beirut on 5 September 1969, a son of Palestinian refugees in Lebanon. According to a Special Identity Card for the Palestinian Refugees (No. 06911D) issued by the Lebanese Ministry of the Interior, Directorate General of the Administration of Palestinian Refugees Affairs, dated 28 January 1999, Jamal Abdul Rahim "is Palestinian, resides in Lebanon". He is also registered as a Palestinian refugee by the United Nations Relief and Works Agency for Palestine Refugees (certificate No. 310813).

5. On a date unspecified by the source, Mr. Rahim was convicted by a court in Pakistan for participating in the terrorist hijacking of Pan Am Flight 73 in Karachi, on 5 September 1986, which resulted in the death of 21 passengers and crew.

6. In June 2001, Mr. Rahim completed the sentence imposed on him. He was not, however, released from detention and continues to be detained at the Central Jail in Rawalpindi, Pakistan. The reason for his continued detention is that under Pakistani migration laws, an alien in detention in Pakistan cannot be released from detention unless and until he has been issued travel documents. The Directorate General for General Security of the Republic of Lebanon opposed his repatriation on the ground that it had not found any registration records for him in Lebanon, as stated in a note from the Embassy of Lebanon in Pakistan to the Pakistani Ministry for Foreign Affairs dated 18 March 2002. In the same note, the Directorate General requested that the Ministry be provided with a copy of any registration documents that the above-mentioned person may possess, so that it could examine and verify them.

7. It was further reported that Mr. Rahim was brought before the Federal Review Board of the Supreme Court of Pakistan (FRB-SC) on more than one occasion. FRB-SC is competent to review the legality of his detention under the Foreigners Act 1946. On 13 April 2002, FRB-SC ruled that the Government of Pakistan should register Jamal Abdul Rahim with the National Authority for the Registration of Foreigners, which is equivalent to ordering the Government to release him from detention and legalize his position as an alien in Pakistan. In the course of the year 2003, FRB-SC again issued an identical order to the Government. Both orders were ignored by the authorities, who instead extended his detention every three months under the Foreigners Act 1946.

8. The source argues the following:

(a) Jamal Abdul Rahim is kept in detention although he completed his sentence more than three years ago. The reason for his continued detention is that the authorities are seeking a possibility of deporting him, instead of setting him free on Pakistani territory, as ordered by FRB-SC;

(b) Jamal Abdul Rahim is kept in detention in violation of the provisions of the Foreigners Act 1946, which limits the administrative detention of aliens deprived of their liberty in view of deportation to a maximum of two years.

9. It appears from the above-mentioned information that Jamal Abdul Rahim was sentenced to a prison term that was completed in June 2001. Since then he is detained awaiting deportation to Lebanon. The source states that the legal framework concerning administrative detention of foreigners limits the duration of detention to a maximum of two years and that the judicial body supervising his detention has ordered his release on two separate occasions; nevertheless, the authorities refuse to carry it out. The Government has not contested these allegations, although it was given the possibility of doing so.

10. The Working Group considers that keeping in administrative detention a person who has fully served his sentence, and whose release has been ordered by the body in charge of controlling the legality of administrative detention in the framework of a deportation process, confers an arbitrary character on the deprivation of liberty. The Working Group is of the opinion that the detention of Jamal Abdul Rahim does not have any legal basis.

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

> The deprivation of liberty of Mr. Jamal Abdul Rahim is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

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

Adopted on 26 May 2005

OPINION No. 17/2005 (CHINA)

Communication addressed to the Government of China on 6 and 12 October 2004.

Concerning Mr. Liu Fenggang and Mr. Xu Yonghai.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. According to the information received, Mr. Liu Fenggang, a citizen of China born on 23 December 1959, is a religious activist usually resident in Beijing. On 6 August 2004, the Hangzhou Intermediate People's Court found him guilty of illegally sending State secrets abroad, an offence punishable under article 111 of the Criminal Law of China, and sentenced him to a three-year prison term. The charges brought against Mr. Liu arise from his transmitting a report on the suppression of religious activities in China to publications organizations based outside China, such as the United States-based *Christian Life Quarterly* and the Christian Aid Association. The Hangzhou Intermediate People's Court delivered the sentence of 6 August 2004 publicly, but the trial took place in secret and Mr. Liu is currently serving his sentence at an undisclosed location.

5. According to the court judgement, Mr. Liu was ordered to live under surveillance on 13 October 2003 and formally detained on 14 November 2003. The source, however, asserts that Mr. Liu had in fact been arrested without an arrest warrant by the Hangzhou Public Security Bureau on 13 October 2003 and detained at a secret location until his formal detention started. The judgement also notes that Mr. Liu received an order to live under surveillance on 14 May 2004, which suggests that he had been released from detention. The source, however, alleges that Mr. Liu was not released at that time. The judgement gives Mr. Liu credit for the time already served in detention before his conviction, but not for the periods lived under surveillance, so that his three-year term expires on 4 February 2007.

6. The source argues that the detention of Mr. Liu is arbitrary because it results from the exercise of his right to freedom of conscience and religion and his right to freedom of expression. Also, the source mentions that the investigation and reporting of incidents of governmental oppression of religion, in particular of Home churches, does not involve any questions of national intelligence and national security that would justify limiting the freedom of expression; that article 111 of the Criminal Law of China is overly broad and was misused to punish the legitimate exercise of freedom of expression as a crime against State security; and that the conviction and detention of Mr. Liu violate articles 35 (freedom of speech), 36 (freedom of religion) and 41 (right to criticize abuses by State organs) of the Constitution of the People's Republic of China.

7. The source further states that Mr. Liu did not benefit from due process of law and a fair trial because his detention in secret by the Hangzhou Public Security Bureau from 13 October to 14 November 2003 violated article 64 of the Criminal Procedure Law of China (CPL). The detention was not based on an arrest warrant and he was detained informally at an undisclosed location. In the absence of an arrest warrant, his subsequent detention was also unlawful. The request for the approval of the arrest was not submitted within the three-day time limit provided by article 69 of CPL, and the requirements for the exceptional extension of this time limit to up to 30 days were also not met. The source also argues that in searching Mr. Liu's home and seizing a variety of items, officials of the Hangzhou Public Security Bureau failed to

present a search warrant, thereby violating article 111 of CPL. Mr. Liu was tried behind closed doors, in violation of his right to a fair and public hearing, guaranteed by international law and by article 111 of CPL. There were no circumstances justifying such restriction of the trial.

8. Mr. Xu Yonghai, a 43-year-old man born on 26 November 1960, citizen of China, a medical doctor at a Beijing hospital considered to be a freedom of religion activist, was detained on 9 November 2003 and formally arrested on 4 December 2004. As he was already being held in detention at an undisclosed location when his formal arrest took place, the location of the arrest is unknown. From details known later, it is likely that he was detained in the Xiaoshan District of Zejiang Province.

9. According to the source, as a result of his activities to promote freedom of religion, Mr. Xu had previously been harassed by Government authorities. He spent three years in a Re-education Through Labour camp. After his detention in November 2003, he was charged with illegally revealing State secrets overseas for printing a report on the alleged suppression of religious groups in Xiaoshan District, Zejiang Province. He was tried in secret and, on 6 August 2004, convicted. Only a portion of the judgement has been made public. Mr. Xu was sentenced to two years' imprisonment.

10. The Government did not challenge the allegations of the source, although it was given the opportunity to do so. The Working Group therefore finds that the complaint against Mr. Liu Fenggang and Mr. Xu Yonghai is in fact that indicated in the communication, namely: having transmitted reports critical of the restrictions on or repression of religious freedom to foreign-based non-governmental organizations. The Working Group finds that this activity, although critical of the Government, relates nonetheless to the right to freedom of expression, which includes freedom to search for, receive and disseminate information and ideas of any kind, without restrictions of borders, in oral, written, printed or any other form. The Working Group concludes that the case under consideration relates to the peaceful exercise of the right to freedom of expression and opinion, a right guaranteed by article 19 of the Universal Declaration of Human Rights.

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

> The detention of Mr. Liu Fenggang and Mr. Xu Yonghai is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

12. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Liu Fenggang and Mr. Xu Yonghai in order to bring it into conformity with the provisions and principles enshrined in the Universal Declaration of Human Rights.

13. The Working Group recommends that the Government consider ratifying the International Covenant on Civil and Political Rights.

Adopted on 26 May 2005

OPINION No. 18/2005 (VIET NAM)

Communication addressed to the Government on 1 December 2004.

Concerning Mr. Thich Quang Do (Dang Phuc Thue) and Mr. Thich Huyen Quang (Le Dinh Nhan).

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. According to the information submitted by the source, Mr. Thich Quang Do (Dang Phuc Tue), a Vietnamese citizen and Buddhist monk, born on 27 November 1928, is the head of the Vien Hoa Dao, the Executive Institute of the Unified Buddhist Church of Vietnam (UBCV). His religious name, by which he will be referred to hereafter, is Thich Quang Do.

5. On 9 October 2003, at 9.30 a.m., Thich Quang Do was arrested by the Nhatrang City Security Police as he was driving towards Ho Chi Minh City with a group of Buddhist monks. The arrest took place on Highway 1A, the main road from Binh Dinh Province to Ho Chi Minh City, near the Luong Son Police Station close to Nhatrang City. A squad of Security Police armed with electric truncheons intercepted the monks and placed them under arrest. The police took the monks into the courtyard of the police station and searched the vehicle. They then searched the monks, confiscating Thich Quang Do's mobile phone. They then separated the monks, taking them to different places for interrogation. Thich Quang Do was taken to Ho Chi Minh City.

6. According to the source, at no time during the arrest did the police (or any other authority) present Thich Quang Do with any written document justifying the arrest, nor did they otherwise inform him of the reasons for his arrest or of any charges against him.

7. On 10 October 2003, officials from the Ho Chi Minh City People's Committee and the Ho Chi Minh City Security Police orally informed Thich Quang Do that he had been placed in administrative detention for an indefinite period. Since then Thich Quang Do has been in solitary confinement in his room in Thanh Minh Zen Monastery. Members of the Security Police are stationed both inside and outside the monastery. Thich Quang Do is locked inside his room for long periods, prevented from receiving visits and otherwise communicating with the outside world. The authorities cut his telephone line and confiscated his mobile phone.

8. The source adds that he was not informed of any charges against him and no criminal proceedings against him are taking place. On 11 October 2003, however, in a statement to foreign media correspondents in Hanoi, the spokesman of the Foreign Ministry of Viet Nam announced that Thich Quang Do had been found in possession of "documents classified as State secrets", and had been placed under investigation.

9. The source asserts that the restrictions on Thich Quang Do's liberty are so severe that they are equivalent to detention. The source argues that the deprivation of liberty is arbitrary because it results from Thich Quang Do's exercising his right to freedom of religion. The source states that the detention of Thich Quang Do is part of the repression of UBCV by the Government, which has banned it.

10. The allegations of the source were brought to the attention of the Government, which took issue with them. It stated that in Viet Nam freedom of religion is enshrined in the Constitution and the laws, and is guaranteed in practice. The Government's position is that the information provided by the source concerning the deprivation of liberty of Thich Quang Do is a sheer fabrication. The Government contended that "Thich Quang Do still lives and practises his religion as usual at Thanh Minh pagoda, completely free from any administrative surveillance or detention".

11. Concerning Mr. Thich Huyen Quang (Le Dinh Nhan), the source reported that he is a Vietnamese citizen and Buddhist monk, aged 87, the Fourth Supreme Patriarch of UBCV. His religious name, by which he will be referred to hereafter, is Thich Huyen Quang. He is usually resident at Nguyen Thieu Buddhist Monastery, Tuy Phuoc District, Binh Dinh Province.

12. According to the information submitted, Thich Huyen Quang was arrested with Thich Quang Do (see paragraph 5 above). Thich Huyen Quang was escorted by police back to the Nguyen Thieu Monastery and placed under house arrest.

13. According to the source, at no time during the arrest did the police (or any other authority) present Thich Huyen Quang with any written document justifying the arrest, nor did they otherwise inform him of the reasons for his arrest or of any charges against him.

14. It was said that since 9 October 2003, Thich Huyen Quang has been under house arrest at Nguyen Thieu Monastery, Binh Dinh Province. The authorities informed him that he was prohibited from leaving the monastery, which is under permanent surveillance by the Binh Dinh police. The authorities cut his telephone line and confiscated his mobile phone.

15. No public authority has issued a decision justifying the deprivation of Thich Huyen Quang's liberty, nor was he otherwise informed of the reasons for the deprivation of his liberty or the duration thereof. He was not informed of any charges against him and no criminal proceedings against him are taking place. On 11 October 2003, however, in a statement to foreign media correspondents in Hanoi, the spokesman of the Foreign Ministry of Viet Nam announced that Thich Huyen Quang had been found in possession of documents classified as "State secrets", and had been placed under investigation.

16. The source asserts that the restrictions on Thich Huyen Quang's liberty are so severe that they are equivalent to detention. The source argues that the deprivation of liberty of Thich Huyen Quang is arbitrary because it is devoid of any legal basis. The authorities have so far failed to provide any decision justifying his arrest and detention. Thich Huyen Quang has been detained for 13 months, and no proceedings have been initiated against him.

17. The source argues that the deprivation of liberty is arbitrary because it results from Thich Huyen Quang's exercising his right to freedom of religion, guaranteed in article 18 of the Universal Declaration of Human Rights. It states that the detention of Thich Huyen Quang is part of the repression of UBCV by the Government of Viet Nam, which has allegedly banned it.

18. Concerning the situation of Thich Huyen Quang, the Government further responded that:

(a) The information in the communication is false and should be considered just another sheer fabrication of those who wish to pursue an erroneous policy and activities against the State of Viet Nam;

(b) Thich Huyen Quang is still practising his religion as usual at Nguyen Thieu pagoda, completely free from any administrative surveillance or detention;

(c) In March/April 2003, Thich Huyen Quang went to Hanoi for medical treatment at the K hospital, which specializes in cancer treatment, and he was well taken care of by leading physicians. Ten accompanying persons, including his personal nurse, were also allowed to be with him in the hospital for the whole time of his medical treatment. During his stay in the capital, at his own request, Thich Huyen Quang was cordially received by the Prime Minister of Viet Nam, H.E. Mr. Phan Van Khai. After the treatment in Hanoi, Thich Huyen Quang went back to Nguyen Thieu pagoda, Binh Dinh Province;

(d) According to recent information, Thich Huyen Quang recently suffered a gastric haemorrhage and is now under medical treatment in Binh Dinh Province General Hospital. Thanks to timely intensive medical care and adequate treatment from the hospital, he has recovered consciousness. Many people, including Buddhist clerics and followers, as well as representatives of local authorities, have visited and wished him well. While receiving the Chairman of the People's Committee of Binh Dinh Province, Mr. Quang expressed his gratitude to the local authorities for their kind attention and assistance. He also hoped that he would soon recover and return to the pagoda to continue his translation work. Up to now, Mr. Quang's health has gradually improved.

19. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the replies provided by the Government to the source, which offered comments on them. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of these cases, in the context of the allegations made and the responses of the Government thereto.

20. In the case of Thich Quang Do, the source has commented on the Government's reply as follows: the Government's statement that "Thich Quang Do is completely free from any administrative surveillance or detention" contradicts the declaration made by Mr. Le Dung, Viet Nam's Foreign Ministry spokesman, on 10 October 2003 to the foreign media, in which he declared that Thich Quang Do and Thich Huyen Quang had both been "placed under investigation" for alleged possession of "many documents classified as State secrets". Whilst neither of the monks was ever informed of this investigation, the Government is clearly aware of the affair. Later in October 2003, when the United States Ambassador-at-Large for International Religious Freedom, John Hanford, asked to visit Thich Quang Do during a trip to Viet Nam, the Foreign Ministry refused on the grounds that Thich Quang Do was "under police investigation".

21. On 23 November 2004, Thich Quang Do was summoned to the Phu Nhuan Ward People's Committee (in Ho Chi Minh City) for questioning about "appropriation of State secrets". This was the first time he had ever been questioned or even informed about this accusation, and he firmly denied the charge. After four hours of intensive questioning, the People's Committee officials ordered Thich Quang Do to come back that afternoon and again the following day for further questioning. He refused, and told officials that if they believed him to be guilty, they should arrest him and continue questioning him in prison.

22. More recently, on 29 April 2005, Mr. Sam Taylor, correspondent of Deutche Presse Agentur (DPA) in Hanoi, sent a written request to the Vietnamese Foreign Ministry to visit Thich Quang Do for an interview on the thirtieth anniversary of the end of the Viet Nam war. He received no reply, but when he went to the Thanh Minh Zen Monastery, he was stopped by Security Police who banned him from visiting Thich Quang Do on the grounds that he was "under investigation for possession of State secrets". Mr. Taylor also said that the DPA office in Hanoi received numerous phone calls from Security officials warning him against making contact with Thich Quang Do.

23. These incidents indicate that the investigation into "State secrets" is still pending, in violation of Vietnamese law. According to the Vietnamese Criminal Procedure Code, accused parties under investigation must remain under house arrest until the investigation is concluded, after which they are either declared innocent and the investigation is formally suspended in writing (art. 139), or they are prosecuted. Until Thich Quang Do and Thich Huyen Quang have received written notification that the investigation is concluded, the Government cannot claim that they are free.

24. Moreover, as Thich Quang Do pointed out in a letter to the Vietnamese leadership dated 21 October 2004, this excessively long detention pending investigation is also a violation of Vietnamese law: "I have been detained beyond the legal limits stipulated in article 71 of the Vietnamese Criminal Procedures Code, which states that pretrial detention for investigation must not exceed 6 months in less grave offences, or 12 months in case of grave offences, after which the defendant must either be put on trial or immediately released."

25. On 29 March 2005, Thich Quang Do recorded a video message for the sixty-first session of the United Nations Commission on Human Rights in Geneva, in which he called for the respect of human rights in Viet Nam and described his own situation: "As I speak to you today, I am under house arrest at the Thanh Minh Zen Monastery in Saigon. Secret Police keep watch on me day and night. My telephone is cut, my communications are monitored, and I am forbidden to travel …" Thich Vien Phuong, the young monk who filmed the message, was arrested by Security Police as he left Thanh Minh Zen Monastery and detained for several hours of intensive questioning. Security Police confiscated the video camera and the film, and continued to summon Thich Vien Phuong for interrogations over several days.

26. Furthermore, while the Government claims that Thich Quang Do and Thich Huyen Quang are not subject to administrative surveillance or detention, both monks were indeed sentenced "verbally" to administrative detention by the local Security Police and People's Committee officials in Binh Dinh Province and Ho Chi Minh City, respectively, on 9 October 2003.

27. Furthermore, the source made the following comments regarding the Government's replies:

(a) The Government refers to Thich Huyen Quang's visit to Hanoi in April 2003, where he had medical treatment in hospital and met with Prime Minister Phan Van Khai. This information is correct - it was the very first time Thich Huyen Quang was allowed out of house arrest since 1982. But this information has no bearing on the case in question, since Thich Huyen Quang was arrested again only months after this meeting (October 2003). In fact, Thich Huyen Quang was arrested because, following promises of increased religious tolerance made by Prime Minister Phan Van Khai during their meeting in Hanoi, Thich Huyen Quang decided to call an assembly of UBCV at his monastery in October 2003 to elect a new leadership. In violation of these promises, however, the authorities reacted by launching a brutal clamp-down on UBCV, arresting 11 members of the new leadership, including Thich Huyen Quang and Thich Quang Do;

(b) The Government states that Thich Huyen Quang received medical treatment at Binh Dinh Province General Hospital. Again, this is correct, but it by no means proves that he is no longer under house arrest. On 18 November 2004, Thich Huyen Quang fell gravely ill and was taken to the emergency ward, suffering from failing kidneys, a heart condition and pneumonia. After receiving treatment, he was taken back to the Nguyen Thieu Monastery and placed back under administrative detention. While he received visits from local officials in hospital, Security Police physically impeded Thich Quang Do and other UBCV monks as they attempted to travel from Ho Chi Minh City to visit him.

28. The information available to the Working Group supports the allegation of the source that Thich Quang Do was placed under administrative detention on 10 October 2003 for an indefinite time, and since then he is confined to solitary confinement in his room in the monastery, where he is living. He is often locked inside his room for long periods. Security Police are stationed inside and outside the monastery.

29. Under the terms of its deliberation No. 1 the Working Group is of the opinion that his situation is to be considered deprivation of liberty within the meaning of the Working Group's mandate.

30. As a Buddhist priest and one of the leading figures of the Unified Buddhist Church of Vietnam, Thich Quang Do is obviously restricted in his liberty for his religious belief.

31. Despite the Government's rebuttal of the source's allegations, the Working Group considers that the deprivation of liberty suffered by the Buddhist Patriarch Thich Huyen Quang has been established. The source acknowledges that Thich Huyen Quang was indeed hospitalized in April 2003, received medical treatment and met Prime Minister Phan Van Khai, while pointing out that the date of the Patriarch's arrest was 9 October 2003. The source also acknowledges that the Patriarch received medical treatment in Binh Dinh Province General Hospital, but adds that on completion of the treatment was taken back to the Nguyen Thieu Monastery.

32. Thich Huyen Quang is under permanent detention in the monastery without having been notified of any charges against him. He is unable to go in and out and is under permanent surveillance. The administrative authorities have denied him permission to visit Ho Chi Minh City despite repeated requests, and have also taken away the fax machine and the telephone line for international calls.

33. As the source alleges, the deprivation of liberty suffered by Thich Huyen Quang is tantamount to house arrest, although no procedures have been respected and no charges of any kind have been laid, in violation of the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and on no apparent grounds other than his status as a Buddhist patriarch.

34. On the basis of the above findings the Working Group renders the following opinion:

> The deprivation of liberty of Thich Quang Do (Dang Phuc Thue) and Thich Huyen Quang (Le Dinh Nhan) is arbitrary, being in contravention of article 18 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

35. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Thich Quang Do and Thich Huyen Quang and to bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 26 May 2005

OPINION No. 19/2005 (UNITED STATES OF AMERICA)

Communication addressed to the Government of the United States of America on 8 April 2004.

Concerning Mr. Antonio Herreros Rodríguez, Mr. Fernando González Llort, Mr. Gerardo Hernández Nordelo, Mr. Ramón Labaniño Salazar and Mr. René González Schweret.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

5. The Working Group considered this case during its fortieth session and decided, in accordance with paragraph 17 (c) of its revised methods of work, to request additional information. It has received responses both from the Government and the source.

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

7. The source informed the Working Group about the following persons:

(a) Mr. Antonio Guerrero Rodriguez, American citizen, born in Miami, Florida, on 16 October 1958, resident of South Florida, a poet and graduate in aerodrome construction engineering of the University of Kiev, Ukraine;

(b) Mr. Fernando González Llort (Rubén Campos), Cuban citizen, born in Havana, on 18 August 1963, resident of Oxford, Florida, a graduate in international political relations of the Higher Institute of International Relations attached to the Cuban Ministry for Foreign Affairs;

(c) Mr. Gerardo Hernández Nordelo (Manuel Viramontes), Cuban citizen, born in Havana, on 4 June 1965, married to Adriana Pérez O'Connor, a writer and cartoonist who has exhibited in various galleries and published articles in the Cuban press, a graduate in international political relations and resident of Lompoc, Florida;

(d) Mr. Ramón Labanino Salazar (Luis Medina), Cuban citizen, born on 9 June 1963 in Havana, a graduate in economics of the University of Havana and resident of Beaumont, Florida; and

(e) Mr. René González Sehwerert, American citizen, born on 13 August 1956 in Chicago, married to Olga Salanueva, a pilot and flight instructor and resident of Bradford, Florida.

8. It was reported that these five persons were arrested in September 1998 in Florida on charges of spying for the Government of Cuba. They did not offer resistance at the time of their arrest. It was also reported that they were denied the right to bail and were held for 17 months in solitary confinement. During the 33 months they spent in preventive detention, they were unable to communicate among themselves or with their families.

9. In June 2001, these five persons were tried in Miami Dade County. Lawyers for the defendants requested that the trial be conducted in another city in Broward County, because they considered that impartiality could not be guaranteed in Miami. It was reported that several anti-Cuban Government right-wing organizations are based in that city and that many people there have biased, prejudiced and strongly held feelings against the Government of Cuba. According to the source, these organizations have created in the city such feeling against the Government of Cuba that it is impossible for artists and athletes from Cuba to perform or compete in Miami.

10. The lawyers' request was, however, rejected. The District Attorney opposed the application for a change of venue and argued that Miami has a heterogeneous and non-monolithic population in which the bias and prejudice which could exist in the community could be diffused.

11. According to the source, the trial was conducted in an emotionally charged atmosphere of media and public intimidation and in an environment virulently opposed to the defendants. Unknown individuals appeared in the courthouse with paramilitary-style uniforms. Outside the courtroom, noisy demonstrations were organized by Cuban-American organizations. Relatives of the four persons killed during the incident of 24 February 1996, in which two civilian aircraft were shot down by the Cuban Air Force, gave press conferences on the courthouse steps while jurors were arriving for hearings.

12. Antonio Guerrero Rodriguez was sentenced to life imprisonment plus 10 years; Fernando González Llort was sentenced to 19 years' imprisonment; Gerardo Hernández Nordele was sentenced to two life sentences plus 15 years; Ramón Labanino Salazar was sentenced to life imprisonment plus 18 years; and René González Sehwerert to 15 years' imprisonment.

13. The Government replied to the source's allegations by informing the Working Group that the FBI had arrested 10 people in September 1998 in connection with their covert activity in the United States on behalf of the Cuban Directorate of Intelligence. Of those 10, 5 admitted guilt, cooperated with the prosecution, were convicted and served their sentences. The other five were convicted by a jury in United States Federal Court in 2001. It was established in an open public trial that three of the five were "illegal officers" of the Directorate of Intelligence.

14. The Government stated that the defence at the trial did not deny the defendants' covert service with the Directorate of Intelligence, but rather attempted to present the defendants' activities as fighting terrorism and protecting Cuba against "counter-revolutionaries". Nearly three months of the seven-month trial were devoted to the presentation of evidence by the defence, including video depositions taken by the defence in Cuba.

15. It is stated that the accused received the full protection of the United States legal system, including counsel, investigators and experts provided at the expense of the United States Government. The jury, chosen following a week-long selection process, reflected Miami's diverse population. The defence attorneys had the opportunity to remove potentially biased jurors, and they used that opportunity to ensure that no Cuban-Americans served on the jury.

16. All five men are now serving their sentences in Federal penitentiaries, held among the general prison population. They are allowed to receive visits by family members, Cuban Government officials and their lawyers, and they have the same privileges available to the general prison population. They have in fact received numerous, lengthy visits from family members. Sixty visas had been issued for them. The only family members to whom the United States Government has not issued visas are the wives of two of the accused.

17. The Government stated that evidence presented at the trial revealed that one of the wives was a member of the Wasp Network; she was later deported from the United States for engaging in activity related to espionage and was ineligible for return. The other wife was a candidate for training in Cuba to become an intelligence agent when the United States authorities broke up the network. All of their appeals concerning the issuance of visas are pending before the United States Eleventh Circuit Court of Appeals.

18. In a very extensive submission in reply, the source denounces arbitrary acts committed in the course of the trial. It reiterates that the defendants did not enjoy a fair trial, pointing out primarily that they were denied access to a lawyer during the first two days following their arrest and that they were under pressure to confess their guilt. Subsequently, they were kept in solitary confinement during the 17 months preceding the trial.

19. The source alleges that because the case has been declared to fall under the Classified Information Procedures Act (CIPA), all the documents constituting the evidence against the accused persons were classified as secret. Thereby, the effective exercise of the right to defence was impaired.

20. The source adds that all the documents in the case file seized from the defendants were declared classified, including cooking recipes and family and other papers. Such classification under CIPA allegedly had a negative impact on the right to defence, as the defendants were thereby limited in the choice of their lawyers to lawyers approved by the Government, and both lawyers' and defendants' access to the evidence was limited.

21. It is alleged that before and during the trial, all the evidence in the case file was kept in a room under the court's control, and that the defence lawyers could access this room only after going through a bureaucratic procedure. The defence lawyers were also prohibited from making copies of the documents in evidence and from taking notes about them in order to analyse them. Moreover, the defence lawyers were prevented from taking part in the establishment of the criteria for the selection of evidence, as they were excluded from an ex parte conference between the prosecution and the court in which such criteria were defined.

22. According to the source, during the defence preparatory stage the documents presented as evidence by the Government side were identified with a specific code, which was changed in an arbitrary manner a few days before the start of the trial, damaging the work of defence counsel.

23. The source insisted that holding the trial in an inappropriate place affected the partiality of the jury because the jury members were under considerable pressure from the Miami American-Cuban community. The source added that only a year after the sentencing of the accused, the same United States Government, in another case where it was itself accused, asked for a change of venue, presenting the argument that Miami was an inappropriate place for a trial because it was almost impossible to empanel an impartial jury for a trial concerning Cuba, given the prevailing strong opinions and feelings over this issue.

24. In accordance with its methods of work, the Working Group decided at its fortieth session to address the Government of the United States and the petitioners on three questions that would facilitate the work of the Group:

(a) How was the Classified Information Proceeding Act (CIPA) applied in this case?

(b) Did the eventual application of the Act affect the case in terms of access to evidence?

(c) If a case is classified as a national security case, what are the criteria for selecting evidence?

The Working Group has received information from both the Government and the source on these questions.

25. The Government indicated that CIPA provides for an appellate review of decisions made by the trial court (as in this case) and that CIPA as such is only a procedural statute that neither adds to nor detracts from the substantive rights of the defendant and the discovery of evidence obligations of the Government. Rather, it balances the rights of a criminal defendant with the right of the Government to know in advance of a potential threat, from a criminal prosecution, to its national security. The CIPA provisions are designed to prevent unnecessary or inadvertent disclosures of classified information and to advise the Government of the national security risk in going forward with proceedings.

26. The source replied that it had never contested the validity of the law, but rather its incorrect enforcement. It states that after collecting over 20,000 pages of documents (non-classified) through the above process, all of which were documents of the defendants, the Government classified each and every page "Top Secret" as if they were secret Government documents. Then the Government invoked the provisions of CIPA, which allowed the Government to restrict the access of the defence to the defence's own documents and thereby control the evidence available at trial.

27. The Working Group must decide, in the light of what precedes, if in this trial there has been an adherence to the international norms of a fair trial. The competence of the Working Group, therefore, does not imply either any pronouncement concerning the guilt of the individuals deprived of their liberty or the validity of the evidence, and even less replacing the Appellate Court that is handling the case. To have full information about the case, the Working Group would have preferred to see the judgement of the Appellate Court; however, since the appeals have been delayed the Working Group cannot postpone any longer the opinion that it has been asked to issue within the terms of its mandate.

28. From the information received, the Working Group observes the following:

(a) Following their arrest, and notwithstanding the fact that the detainees had been informed of their right to remain silent and have their defence provided by the Government, they were kept in solitary confinement for 17 months, during which communication with their attorneys and access to evidence and, thus, possibilities of an adequate defence were weakened;

(b) As the case was classified as a matter of national security, access by the detainees to the documents that contained evidence was impaired. The Government has not contested the fact that defence lawyers had very limited access to evidence because of this classification, which affected their ability to present counter-evidence. This particular application of the legal provisions of CIPA, as the information available to the Working Group reveals, has also undermined the equal balance between the prosecution and the defence;

(c) The jury for the trial was selected following an examination process in which the defence attorneys had the opportunity, and availed themselves of the procedural tools, to reject potential jurors, and ensured that no Cuban-Americans served on the jury. Nevertheless, the Government has not denied that, even so, the climate of bias and prejudice against the accused in Miami persisted and helped to portray the accused as guilty from the beginning. It was not contested by the Government that one year later it admitted that Miami was an unsuitable place for a trial as it proved almost impossible to select an impartial jury in a case linked with Cuba.

29. The Working Group notes that it arises from the facts and circumstances in which the trial took place and from the nature of the charges and the harsh sentences handed down to the accused that the trial did not take place in the climate of objectivity and impartiality that is required in order to conform to the standards of a fair trial as defined in article 14 of the International Covenant on Civil and Political Rights, to which the United States of America is a party.

30. This imbalance, taking into account the severe sentences received by the persons under consideration in this case, is incompatible with the standards contained in article 14 of the International Covenant on Civil and Political Rights which guarantee that each person accused of a crime has the right, in full equality, to all the facilities adequately to prepare his/her defence.

31. The Working Group concludes that the three elements enunciated above, combined together, are of such gravity that they confer an arbitrary character on the deprivation of liberty of these five persons.

32. In light of the preceding, the Working Group issues the following opinion:

> The deprivation of liberty of Mr. Antonio Herreros Rodríguez, Mr. Fernando González Llort, Mr. Gerardo Hernández Nordelo, Mr. Ramón Labaniño Salazar and Mr. René González Schweret is arbitrary, being in contravention of article 14 of the International Covenant on Civil and Political Rights and corresponds to category III of the categories applicable to the examination of the cases submitted to the Working Group.

33. Having issued this opinion, the Working Group requests the Government to adopt the necessary steps to remedy the situation, in conformity with the principles stated in the International Covenant on Civil and Political Rights.

Adopted on 27 May 2005

OPINION No. 20/2005 (CHINA)

Communication addressed to the Government on 11 June 2004.

Concerning Mr. Yong Hun Choi.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

5. According to the information received, Mr. Yong Hun Choi, born on 9 March 1963, a citizen of the Republic of Korea and a salesman of heavy equipment in northern China, was arrested on 18 January 2003 in Yantai City, Shandong Province, by officers of the People's Public Prosecutor's Office, who did not inform Mr. Choi of the reasons for his arrest. Mr. Choi was accompanying 15 nationals of the Democratic People's Republic of Korea who were seeking to reach Japan by fishing boat, with the ultimate destination being the Republic of Korea. All of them were arrested, including Mr. Jae Hyun Seok, a freelance journalist from the Republic of Korea, Mr. Piao Longgao and Mr. Yong Sun Jo. They were taken to Detention Office No. 2 of Yantai City and interrogated by security officers.

6. The arrested nationals of the Republic of Korea were taken to Dalian, then to Dandong border guard station, and repatriated to Sinuiju, Republic of Korea, on 25 January 2003. Mr. Choi was accused of assisting the 15 persons from the Democratic People's Republic of Korea in departing from China for Japan and ultimately the Republic of Korea by fishing boat.

7. According to the source, Mr. Choi was interrogated without legal counsel and advice. He was not informed about his right to obtain counsel and did not have an opportunity to choose a defence attorney for himself. Before his trial, which started on 22 April 2003, he was only given permission to communicate with his wife on three different occasions via telephone. The police officers reportedly requested Mr. Choi to give money to the court to appoint an attorney. On 21 April 2003, his wife hand-delivered money to the police, through an interpreter of the court, to appoint the attorney.

8. On 22 May 2003, Mr. Choi was sentenced by the Intermediate People's Court of Yantai City Development District to five years' imprisonment and to pay a fine of 30,000 yuan renminbi in accordance with articles 25, 26-14, 27, 35, 64, 68-1, 72 and 318-1 of

the Penal Code of the People's Republic of China. The execution of the trial was flawed and prejudicial to the defendants, without regard to internationally recognized standards for due process of law. The defence attorney and the Vice-Consul of the Republic of Korea were not informed of the date of the issuance of the sentence.

9. One female Han Chinese interpreter was assigned to interpret both the prosecution and the defence, interpreting Chinese into Korean and vice versa. According to the source, no defendant can rely on an interpreter employed by and working for those seeking to prosecute him. The interpreter misinterpreted important words into Korean, such as "nationality" and "international". She was unable to differentiate between past and present tenses and between passive and active voices of the Korean language. The interpreter was unable to translate the word "Westerner" into Korean, when Mr. Choi was asked whether any Westerners participated in the planning of the incident. The source concludes that Mr. Choi was deprived of the right to understand the accusations against him. This fact impeded him in preparing an adequate defence against the accusations lodged against him.

10. Mr. Choi was not allowed an attorney of his own choosing. His attorney was appointed by the court on 21 April 2003. He was not approved by either Mr. Choi or his family, who were given no opportunities to consult with the attorney before the trial. Furthermore, the defence attorney did not understand the Korean language, precluding him from identifying misinterpretations and to communicate adequately with Mr. Choi.

11. Mr. Choi requested copies of the transcripts of the trial, but a court official told him that the transcripts had been submitted to the judge. On 2 June 2003, Mr. Choi filed an appeal. The court has not yet announced the date and time of the appeal hearing. Mr. Choi was finally able to obtain a new defence attorney to represent him, but he has been authorized to meet him only once since 2 June 2003.

12. The source further reports that Mr. Choi has serious health problems, including hypertension, diabetes and asthma. Additionally, in November 1999, he had diverticulectomy surgery after being diagnosed with acute diverticulitis. His diet while in detention has been extremely poor. The guards have refused to give him the medications provided by his wife. During the trial, she made several attempts to give him his medications.

13. In its reply, the Government stated that Mr. Park Yong-chol, a co-defendant in the applicant's case, entered China illegally from the Democratic People's Republic of Korea, made contact with Yong Hun Choi and tried, through him, to escape clandestinely to the Republic of Korea. Under Mr. Choi's instruction he organized and guided 10 individuals from Yanji to Yantai in Shandong Province in late December 2002, where Mr. Choi had told Mr. Park to meet him, and put them up at a residence in Yantai District while they awaited an opportunity to escape. On 13 January 2003, Mr. Choi and Mr. Seok Jae-hyun, another co-defendant in the case, received instruction from an NGO in the Republic of Korea and, carrying funds from that NGO, left the Republic and travelled to Yantai, where Mr. Choi and his co-defendants made preparations, in accordance with the NGO's plans, for the illegal Korean immigrants to be smuggled by boat from Yantai to the Republic of Korea; they photographed the arrangements and made a video of the escapees to report the story abroad. Mr. Choi gave the money to buy two fishing boats and pick some fishermen to crew them. On 17/18 January 2003, public

security personnel and frontier guards from Yantai seized the five defendants and 23 individuals waiting to be smuggled abroad. Meanwhile, public security personnel were led by Mr. Choi to Mr. Seok and some of the escapees.

14. The Government added that the Yantai Intermediate People's Court found that Mr. Choi was party to the plot and to a concrete attempt to smuggle third parties out of China; that his conduct amounted to criminal organized smuggling of third parties out of the country; and that he played an important role - as ringleader - in the collective offence. As he had performed the meritorious service of assisting the public security organs in arresting his fellow criminals, he could be given a light punishment. On 16 May 2003, the court sentenced him to five years' imprisonment for organized people-smuggling, a fine of 30,000 yuan, and deportation. Mr. Choi appealed his sentence. On 28 November 2003, the Shandong Province People's Court rejected the appeal and upheld the original judgement. The argument by Mr. Choi and his defence counsel that he had had no part in the plot could not be sustained.

15. The Government refutes the allegations concerning the violations of a fair trial. It states that the procedure was strictly followed. Mr. Choi was informed of the reasons for his arrest and of the charges held against him, as well as his right to benefit from the assistance of a lawyer, and he chose to give up this right during the preliminary phase of the trial. His renunciation is mentioned in the verbatim of his interview bearing his signature. After being charged with the offences, he was notified by the prosecutor of his right to be assisted by a lawyer of his choice, and it was because he did not avail himself of this opportunity that he was assigned a lawyer from legal aid to assist him during the trial. He was informed of this assignment on 18 April 2003. The Government adds that a Korean interpreter translated the preliminary procedure and that his presence is mentioned in the official documents of the trial. The Government provided a highly competent interpreter who performed the translations during the trial.

16. The Government states that Mr. Choi was visited on numerous occasions by representatives of his embassy, who were able to attend, with his family, the trial as well as the hearing before the Court of Appeal. The Government denies the allegations concerning the poor conditions of detention and is of the opinion that the prison where Mr. Choi has been placed is one of the best in the region. The Government acknowledges that his family was not authorized to provide him with medication, but this stipulation is imposed by the regulations in the interest of the detainees. However, the State ensures a proper follow-up of each detainee's health condition. Mr. Choi is being treated for his hypertension and is in good health.

17. The source, rebutting the response from the Government, argues the following:

(a) The activities of Mr. Choi, contrary to the assertion of the Government, were not illegal and criminal. Mr. Choi acted in a humanitarian role by attempting to help the persons from the Democratic People's Republic of Korea to a safe haven in the Republic of Korea through China. The source argues that these persons were duly classifiable as refugees as defined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, to both of which China is a party. The source claims that Mr. Choi and his co-defendants videotaped the testimonies of the persons concerned for the purpose of submitting this information to UNHCR in support of their application for refugee status. The source further claims that China refuses to establish proper procedures to process the refugee status of persons from the Democratic

People's Republic of Korea who enter China, and that instead, the Government of China goes to great lengths to find and forcibly repatriate these persons back to their country of origin, where they will certainly be detained, tortured, and perhaps even executed for having left the country without authorization. These actions by the Government of China violate the refugee convention and basic international laws concerning human rights and refugees and force persons from the Democratic People's Republic of Korea to seek asylum in a third country;

(b) The assertion made by the Government that Mr. Choi's detention in Yantai Municipal Prison No. 2 offers the best conditions in the city is false. The source recalls that Mr. Choi was diagnosed in 1999 with acute diverticulitis and suffers from hypertension, diabetes and asthma. The source states that Mr. Choi is not being given proper and adequate medical and dietary treatment in the prison and that his wife, when she visited him in August 2004, found him even thinner and more frail, in declining health and with low morale. Also, the source reports that Mr. Choi has been transferred to a bigger cell with 20 other inmates, some of them murderers, and that he has been receiving very few of the letters and postcards sent to him;

(c) Mr. Choi did not benefit from the assistance of a high-calibre interpreter during the proceedings and on many occasions during the trial, witnesses reported that the co-defendant and his lawyer had to ask the same interpreter to correct the interpretation because of basic errors. Mr. Choi was not able to communicate properly with his Chinese lawyer because of the poor interpretation and this was prejudicial to him.

18. From the foregoing, it is apparent that the source makes several claims, the most pertinent of which, in terms of the Working Group's mandate, relate to the right of the accused to be informed of the reasons for the arrest and notified of the charges against him, and to various serious infringements of the right to a defence. In particular, these relate to violation of the right to the assistance of counsel during the preliminary investigation, the right to select the court-appointed counsel to present a defence in the hearing, the right to communicate freely with counsel and to have sufficient time for the preparation of a defence, and the right to receive a translated copy of the record of the proceedings in a language that the accused understands. Reservations have also been voiced concerning the competence and independence of the interpreters. The Government having contested the allegations relating to the violation of the right to be informed of the reasons for the arrest and to be notified of the charges, the Working Group is not in a position to give its opinion on these violations. The following arguments relate only to the alleged violations of the right to a defence.

19. The Government has not contested that during the duration of the pretrial proceedings Mr. Choi did not benefit from the assistance of counsel. According to the Government, he was informed of his right to be assisted by counsel, but replied that it was not necessary. The Working Group considers that for a foreigner unable to understand the language used by the court, deprived of freedom and accused of serious offences - he was sentenced to five years' imprisonment, having reportedly benefited from mitigating circumstances - the interest of justice demands that the assistance of counsel be provided from the time charges were brought.

20. The Working Group has many times emphasized that the right of the accused to receive assistance from counsel of his own choosing and, where appropriate, from a court-appointed attorney is a fundamental right of any person accused of a criminal offence, and particularly when the person is deprived of liberty. The presumption of innocence and the principle that both

parties should be present when evidence is heard, especially in an inquisitorial system as in this case, can be effectively respected only if assistance by counsel is guaranteed not only for those who can afford or request such assistance, but on every occasion when the interest of justice so demands.

21. In its reply, the Government has not contested the fact that the attorney appointed to represent Mr. Choi on the day of the proceedings in the court of first instance did not speak Korean, a fact which rendered virtually impossible any communication with counsel without the assistance of an interpreter. The source asserts that Mr. Choi did not meet his attorney until the day before the trial, which seems highly likely, since the Government has said that the prosecutor informed him of the appointment of his counsel on 18 April 2003, while the trial was held on 22 April 2003.

22. With regard to preparation of the defence before the appeal court, the Government does not contest the allegations concerning the refusal of the court to provide a transcript of the proceedings and the restrictions on communication with counsel, an attorney whom Mr. Choi had chosen to defend him at the appeal stage.

23. The Working Group considers that there were serious violations of the right to a defence such that Mr. Choi did not benefit from the norms relating to a fair trial as defined in the relevant international standards, so that the deprivation of liberty was arbitrary.

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

> The deprivation of liberty of Mr. Yong Hun Choi is arbitrary, being in contravention of the provisions of article 10 of the Universal Declaration of Human Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

25. The Working Group, having rendered this opinion, requests the Government to take the necessary steps to rectify the situation, in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Rights, and to take the necessary measures to ratify the International Covenant on Civil and Political Rights.

Adopted on 27 May 2005

OPINION No. 21/2005 (UNITED STATES OF AMERICA)

Communication addressed to the Government of the United States of America on 28 January 2005.

Concerning Mr. Ahmed Ali.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. According to the information received, Mr. Ahmed Ali, born on 1 January 1980, of Somali nationality, a resident of Madison, Wisconsin, United States of America, status pending before legal proceedings in the United States of America, was first arrested on 30 June 2000 and detained since 7 June 2002 by the Department of Homeland Security, is currently at the Tri-County Detention Center in Ullin, Illinois, United States of America. Mr. Ali is a member of the Rahanweyn minority clan of Somalia. He grew up in the city of Baidoa with his family, until clan violence and internal war devastated the country, and many of his family members were killed by armed militias. Mr. Ali and the remainder of his family fled to a town on the border of Somalia and Kenya, and in 1998 to Nairobi, where they lived as refugees before being formally admitted as refugees by the United States in 1999. Mr. Ali and his sister moved to Wisconsin, while the rest of the family settled in Minnesota. Mr. Ali worked at various retail stores and attended classes at a technical college.

5. Mr. Ali was diagnosed with post-traumatic stress disorder and experiences depression and flashbacks, having witnessed traumatic events in Somalia. He has been receiving appropriate medical treatment since September 2000. He was involved in several altercations that led to his arrest and detention. The first incident occurred in April 2000, the second in June 2000. After that incident, Mr. Ali was arrested and detained, but released after two weeks on his own recognizance with some conditions. He was prosecuted, pled guilty and was sentenced on 13 July 2001 to 11 months' imprisonment. The court, however, gave him a status that allowed him to leave jail during the day to continue working and receive his medical treatment.

6. Mr. Ali's detention status was revoked in October 2001 after an argument with a fellow inmate and following harassment by fellow inmates, allegedly because of his observance of his Islamic religion, in the wake of the events of 11 September 2001. On 7 June 2002, the Immigration and Naturalization Service took custody of Mr. Ali, charged him as removable under immigration laws because of his previous conviction, placed him in removal proceedings and transferred him to immigration detention.

7. Mr. Ali appeared before an immigration judge in Chicago on 10 October 2002, at a hearing to determine his immigration status. Although his previous crime caused the revocation of his refugee status, he requested the immigration judge to waive his crime in order to gain permanent residency status and relief from removal either in the form of asylum, withholding of removal or protection under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The immigration judge issued an oral decision denying Mr. Ali asylum status because of his conviction, but granting him withholding of removal because it was found that he had suffered past persecution and faced a clear probability of future persecution if returned to Somalia. During this hearing, counsel for the United States Government presented a memorandum from the FBI characterizing Mr. Ali as a suspected terrorist. The immigration judge found this memorandum unreliable and concluded that Mr. Ali was not a threat to national security.

8. The source further mentions that the United States Government appealed the decision of the immigration judge to the Board of Immigration Appeals (BIA) on 12 November 2002. BIA issued transcripts and requested briefings from the parties on 29 August 2003, and on 14 November 2003, it reversed the decision of the immigration judge to grant withholding of removal. BIA found that Mr. Ali's conviction constituted a "particularly serious crime", rendering him excludable from refuge protection. It remanded the case back to the immigration judge for consideration of Mr. Ali's eligibility for relief under the Convention against Torture.

9. The immigration judge conducted a second hearing on the merits on 10 February 2004 and on the same day issued an oral decision concluding that Mr. Ali faced a clear probability of torture upon return to Somalia and granting him deferral of removal under the Convention. The United States Government again appealed the decision and Mr. Ali cross-appealed to preserve appellate review of all issues in his case. On 14 July 2004, BIA issued a briefing schedule and the case was fully briefed, but BIA has not issued a decision on Mr. Ali's case as of January 2005. During all the proceedings, Mr. Ali continues to be detained.

10. The source states that Mr. Ali has been detained since July 2002 by the Federal Government. At no time during the civil proceedings instituted against him has he been subject to mandatory detention under United States immigration law. Custody determination is vested in the immigration judge, who must determine whether to release Mr. Ali on bond, or if he is a danger to the community or a flight risk. The source indicates that the immigration judge concluded on 1 October 2003 that Mr. Ali was neither dangerous nor a flight risk and ordered him released on a US$ 5,000 bond. The Government appealed this decision, invoking a regulation that unilaterally stayed the immigration judge's bond decision until final resolution of the appeal. BIA overruled the decision of the immigration judge to release Mr. Ali on bond on 3 December 2003, concluding that Mr. Ali was a danger to the community given his criminal conviction and his mental illness, which made him dangerous and a flight risk. Mr. Ali requested again that the immigration judge determine his custody status and on 17 March 2004, the immigration judge denied his release on bond, holding that he was bound by the previous BIA decision. Mr. Ali appealed this decision to BIA and on 9 June 2004 BIA upheld the decision not to release him on bond.

11. Mr. Ali filed a writ of habeas corpus in the Federal District Court in Chicago on 16 April 2004 challenging the constitutionality of the automatic stay provision. On 29 October 2004 the Court denied Mr. Ali's request for a writ because he had had previous opportunity to request release on bond and could not review the BIA factual determination on whether he was or was not dangerous or a flight risk.

12. The source further states that Mr. Ali has been detained in substandard conditions of detention throughout 30 months in civil administrative custody, has been transferred numerous times between different county jail facilities without notice to his family or counsel and has not been provided with adequate medical treatment for his mental health condition, which requires regular psychiatric consultations and oversight.

13. The source mentions that the continued detention of Mr. Ali for this period of time violates the principle of proportionality and that the legal justification for his detention is a bond judgement issued by BIA, which has not been subject to effective judicial review since December 2003. Mr. Ali has been deprived of his liberty during the time necessary to consider

his application for persecution-based relief in the United States, and these proceedings are continuing for an indeterminate duration. Furthermore, Mr. Ali has not been able, during his continued period of detention, to an effective review of the circumstances of his detention.

14. The source also states that the continued detention of Mr. Ali is the result of differential treatment because of his race, religion, or nationality. The source expresses concern that the Government's evaluation of Mr. Ali's right to be released on bond has been influenced by the climate of suspicion and fear of Muslims in the context of the events of 11 September 2001. The source mentions that adult males from Somalia have been subjected to restrictive security measures by immigration authorities since then and that while in custody, Mr. Ali has been provoked and subjected to harassment because of his observance of the Islamic faith. At trial, the Government attorneys submitted specious evidence suggesting that Mr. Ali was a terrorist, although the immigration judge set aside these allegations. The portraying of Mr. Ali as a violent and dangerous criminal, although he has committed only one crime of battery, for which he was convicted and sentenced, amounts to discrimination.

15. Although the Government abstained from commenting on the allegations of the source, although it was given the opportunity to submit observations, the Working Group is able to deliver, on the basis of the detailed information provided by the source, an opinion on the communication.

16. Mr. Ali was detained on 7 June 2002 and charged as removable under immigration legislation. During the almost three years which he spent in detention since then, the immigration authorities conducted various inquiries to find out whether Mr. Ali's release pending determination of his status would represent a danger for the community, or a flight risk. The source asserts that in October 2003 the immigration judge concluded that Mr. Ali was neither dangerous nor a flight risk and ordered his release, but the decision was overruled. Such altercations between authorities competent in immigration matters repeatedly occurred - decisions favourable to Mr. Ali were later set aside by other authorities - but he remained in detention.

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

> The impossibility for Mr. Ahmed Ali to have recourse to a competent authority to present additional evidence regarding his circumstances, despite substantial evidence that he is neither a danger to the community nor a flight risk, or to challenge his continued detention, confers an arbitrary character on his detention as being in contravention of article 9 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

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

Adopted on 27 May 2005

OPINION No. 22/2005 (SAUDI ARABIA)

Communications addressed to the Government on 2 August 2004, 18 October 2004, 2 November 2004 and 28 January 2005.

Concerning Dr. Abdullah b. Ibrahim b. Abd El Mohsen Al-Rayyes, Dr. Said b. Mubarek b. Zair, Mr. Jaber Ahmed Abdellah al-Jalahma and Mr. Abderrahman Al-Lahem.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. The Working Group further notes that the Government and the source have informed the Group that the above-named persons are no longer in detention: Dr. Al-Rayyes was liberated on 8 December 2004, Mr. Jaber Ahmed Abdellah al-Jalahma was liberated on 28 November 2004, both without having been charged or being presented before a judge, and Dr. Said b. Mubarek b. Zair and Mr. Abderrahman Al-Lahem were liberated on 8 August 2005 following a decree of royal amnesty that was promulgated on that date.

4. Having examined the available information, and without prejudging the arbitrary character of the detention, the Working Group decides, in accordance with paragraph 17 (a) of its revised methods of work, to file the case of Dr. Abdullah b. Ibrahim b. Abd El Mohsen Al-Rayyes, Dr. Said b. Mubarek b. Zair, Mr. Jaber Ahmed Abdellah al-Jalahma and Mr. Abderrahman Al-Lahem.

Adopted on 29 August 2005

OPINION No. 23/2005 (AUSTRALIA)

Communication addressed to the Government on 11 October 2004.

Concerning Mr. Wang Shimai, Mr. Tony Bin Van Tran and Mr. Peter Qasim.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

2. The Working Group conveys its appreciation to the Government for having submitted information reporting that the above-mentioned three persons are no longer held in immigration detention.

3. The Working Group notes that Wang Shimai was detained for more than 3 years; Tony Bin Van Tran for 5½ years and Peter Qasim for more than 6½ years, in a regimen of administrative detention.

4. The Working Group further notes that the Government has informed it that Mr. Wang was removed from Australia to China on 9 September 2004. Mr. Tran was released on a Bridging Visa on 6 June 2005 and Mr. Qasim was released on a Removal Pending Bridging Visa (RPBV) on 17 July 2005.

5. The Working Group recalls that in its report on its visit to Australia, carried out in May/June 2002, it recommended to the Government that it review the mandatory, automatic and indeterminate character of immigration detention and its potentially indeterminate duration as well as examine the lack of sufficient judicial review (see E/CN.4/2003/8/Add.2, para. 64).

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

Adopted on 29 August 2005

OPINION No. 24/2005 (MEXICO)

Communication addressed to the Government on 27 January 2005.

Concerning Mr. Roney Mendoza Flores.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. The Working Group takes note of the information received from the source indicating that Mr. Mendoza Flores has been released.

4. Without prejudging the arbitrary nature of the detention, the Working Group, on the basis of paragraph 17 (a) of its revised methods of work, decides to file the case.

Adopted on 29 August 2005

OPINION No. 25/2005 (LEBANON)

Communication addressed to the Government on 30 November 2004.

Concerning Mr. Samir Geagea.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. The Working Group has received reliable information stating that Mr. Samir Geagea was released on 26 July 2005 after 11 years in jail.

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

Adopted on 29 August 2005

OPINION No. 26/2005 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 10 March 2005.

Concerning Mr. Abdullah William Webster.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. The Working Group further notes that the Government has informed it that the above-named person is no longer in detention, having been released on 30 April 2005, which was confirmed by the source.

4. Having examined the available information, and without prejudging the arbitrary character of the detention, the Working Group decides, in conformity with paragraph 17 (a) of its revised methods of work, to file the case of Mr. Abdullah William Webster.

Adopted on 30 August 2005

OPINION No. 27/2005 (LIBYAN ARAB JAMAHIRIYA)

Communication addressed to the Government on 10 May 2005.

Concerning Mr. Abdenacer Younes Meftah Al Rabassi.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

2. The Working Group regrets that the Government has not replied.

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. The Working Group deplores the lack of cooperation by the Government in this case. The Working Group, when sending out the communication to the Government, invited it to provide information concerning the allegations put forward by the source, in respect of both the facts and the applicable legislation. The deadline expired on 10 August 2005 without any reply from the Government. Similarly, no reaction from the Government was provided to the renewed invitation of the Working Group dated 10 August 2005, and neither was a request to extend the time limit for a reply submitted.

5. On the basis of paragraph 16 of its revised methods of work, 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.

6. According to the communication, Mr. Abdenacer Younes Meftah Al Rabassi, an employee of the Social Security Fund of Beni Walid, of Libyan nationality, was arrested on 3 January 2003 at his home in Beni Walid by Internal Security agents. He is currently detained at Abou Salim Prison in Tripoli. No reasons for his arrest were given. He was driven to the Internal Security Office in Beni Walid and was transferred to Tripoli on 5 January 2003. It is also alleged that Mr. Al Rabassi was detained incommunicado at an undisclosed location belonging to the Internal Security Agency for more than a month, where he was allegedly subjected to torture. The source contends that Mr. Al Rabassi was accused, under article 164 of the Libyan Penal Code, of "having undermined the prestige of the Leader of the revolution", by having sent an e-mail to the newspaper *Arab Times* on 8 June 2002, in which he expressed a criticism of the Head of State. He was indicted by the People's Tribunal, a special court, on 26 June 2003 and was sentenced to 15 years of imprisonment. He is now serving his sentence at Abou Salim Prison in Tripoli.

7. Furthermore, according to the information received, prior to his indictment before a special court, Mr. Al Rabassi was not allowed the assistance of a lawyer.

8. The source concludes that the deprivation of liberty of Mr. Al Rabassi is aimed at punishing him for having expressed a critical opinion of a political leader, and asserts that the criminal proceedings against him failed to comply with the requirements of a fair trial.

9. The Working Group notes at the outset that the freedom of expression enshrined in international instruments to which the Libyan Arab Jamahiriya is a party, includes the right to impart one's opinion to others verbally, in writing, or through electronic means like e-mail or the Internet.

10. It is the position of the Working Group that freedom of expression protects not only opinions and ideas that are favourably received or regarded as inoffensive, or as a matter of indifference, but also those that may offend actors in public life and politicians, including political leaders. The peaceful expression of one's opinion, including through e-mail, if it is not carried out violently, and does not constitute incitement to national, racial or religious hatred or violence, is within the boundaries of freedom of expression.

11. The information available to the Working Group in the communication at issue, which is not contested by the Government, does not suggest that the apparently critical opinion of the Head of State expressed by Mr. Al Rabassi in an e-mail addressed to the *Arab Times* newspaper would have transgressed the permissible limits of his freedom of expression.

12. As to the allegation, also not contested by the Government, that Mr. Al Rabassi did not have access to a lawyer during the investigative stage of the criminal proceedings against him, the position of the Working Group is that the denial of the right to defence in a serious charge potentially involving a long prison sentence is incompatible with the right to a fair trial.

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

> The deprivation of liberty of Mr. Abdenacer Younes Meftah Al Rabassi is arbitrary, being in contravention of articles 14 and 19 of the International Covenant on Civil and Political Rights, and falls under categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

14. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the provisions of the International Covenant on Civil and Political Rights.

Adopted on 30 August 2005

OPINION No. 28/2005 (RUSSIAN FEDERATION)

Communication addressed to the Government on 25 February 2005.

Concerning Ms. Svetlana Bakhmina.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. The Working Group welcomes the cooperation of the Government, which provided it with comments on the allegations put forward in the communication. The source, to which those comments were transmitted, made observations on them. 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.

5. According to the information received, Ms. Svetlana Bakhmina, acting Head of the Legal Department at Yukos Oil Company since September 2004, was arrested on 7 December 2004 and is held in detention in Moscow, in connection with the charges brought against the Yukos Oil Company.

6. Ms. Bakhmina was arrested at 4 p.m. at the Procurator-General's Office in Moscow by officers of the Procurator-General's Office acting under the command of Senior Investigator S.K. Karimov. She had gone voluntarily to the Procurator-General's Office at 1 p.m. in response to a summons to appear as a witness. She was questioned for several hours. At 10 p.m., Ms. Bakhmina lost consciousness and was taken to a hospital. At 3 a.m. the next morning she was released from the hospital in response to pressure from the Prosecutor-General's Office. She was conducted to the offices of the Ministry of Internal Affairs where, in the office of one Mr. Florensky, she was interrogated by four men. Ms. Bakhmina again lost consciousness, but this time no medical treatment was provided. Ms. Bakhmina was interrogated for three days in succession.

7. It is alleged that Ms. Bakhmina was not allowed to have a defence lawyer present during her interrogation, in contravention of article 53 of the Criminal Procedure Code of the Russian Federation. Her interrogation also violated article 187 of the Criminal Procedure Code, which states that no interrogation shall be conducted for more than four hours without a break.

8. During the course of her interrogation, threats were made against Ms. Bakhmina and her family. She was also told that in order to be released she would have to provide the information requested by her interrogators. At no time during her questioning was Ms. Bakhmina allowed to contact her family or to receive information on the state of health of her 3-year-old daughter, who is gravely ill.

9. On 10 December 2004, Ms. Bakhmina appeared before the Basmanniy Court in Moscow. The court rejected bail for Ms. Bakhmina and ruled that her detention should continue. Ms. Bakhmina appeared in court again in early February 2005 at which time her detention was renewed until 2 May 2005. It appears that her detention was ordered for the purpose of preventing her from absconding and interfering with evidence in relation to an investigation into an economic crime.

10. Ms. Bakhmina was charged, under section 3, article 160, of the Criminal Code of the Russian Federation entitled "Appropriation or waste", with the theft of property worth approximately 18 billion rubles (about US$ 650 million) from a Yukos subsidiary in 1998. She was also charged with offences that occurred in 1997 in connection with Yukos' purchase of shares of the Vostochno-Neftyanaya Company.

11. According to the source, Ms. Bakhmina's was in fact detained for purposes other than those permitted by the law. She is being held in order to prevent her from carrying out her duties as a senior lawyer for Yukos. Ms. Bakhmina was to prepare the annual Yukos shareholders' meeting that was scheduled for 20 December 2004 and to take important decisions regarding the sale of Ygansknefteqaz, which was to take place on 19 December 2004. According to the stated purpose of the investigators, she is also being held as a hostage pending the return to Russian territory of her superior, the Head of the Legal Department of Yukos Oil Company, Dmitry Gololobov, whose flight to London allegedly enraged investigators. Ms. Bakhmina was told that she would remain in detention until Mr. Gololobov returned to Moscow and appeared at the Prosecutor's Office.

12. It is said that even if the detention of Ms. Bakhmina were properly motivated, it is disproportionate to the attainment of its purpose. Ms. Bakhmina has no criminal record. She

could have been released on bail with sufficient conditions to ensure that she neither absconded nor interfered with evidence. Such conditions were offered, but were rejected. According to article 108 of the Criminal Code of the Russian Federation, placing somebody under arrest is an ultimate measure of restraint, which should be resorted to solely if other, less severe measures cannot be applied.

13. The source further reports that following Ms. Bakhmina's arrest, the Procurator-General's Office issued a prejudicial public statement, which represents a clear breach of the principle of presumption of innocence: "The prosecutors now have every reason to say that the actions of those implicated in the so-called 'Yukos affair' were essentially those of dirty thieves ... It is now clear that Yukos executives, managers and other staff alike were drawn into a range of criminal activities ... The law was broken for a long time, grossly and cynically. The time has now come to reap what one has sown."

14. Finally, it is contended that Ms. Bakhmina's lawyers have been prevented from contacting their client during a particularly critical time after her arrest, making it more difficult for them to organize her defence.

15. In its observations on the allegations of the source, the Government made the following presentation of the facts of the case.

16. The Department for the Investigation of Especially Important Cases in the Office of the Procurator-General of the Russian Federation is handling criminal proceedings against Svetlana Bakhmina, one of the heads of the legal department of the Yukos oil company, in connection with the theft of property worth over 9 billion rubles from the Tomskneft company, and also failure to pay taxes in the amount of 604,040 rubles.

17. During the investigation, sufficient evidence was gathered to justify the indictment of Ms. Bakhmina for offences under article 160, part 2, paragraph (c), and part 3, paragraphs (a) and (b), of the Criminal Code of the Russian Federation (appropriation or conversion) and article 198, part 2 (failure by an individual to pay taxes).

18. On 7 December 2004, Ms. Bakhmina was detained as a suspect. On 10 December 2004, the Basmanny court in Moscow ordered her to be remanded in custody as a preventive measure. When taking this decision, the court took into account Ms. Bakhmina's occupation, her positive characteristics, her state of health and her family situation, as well as the fact that she has two minor children. The court also considered available indications of the suspect's intention to travel abroad to evade the investigation and to obstruct the inquiries. The criminal division of Moscow city court found the lower court's decision to remand Svetlana Bakhmina in custody to be lawful and well founded.

19. Subsequently, when Ms. Bakhmina's remand in custody was extended, the conditions of her detention and the grounds for the application of this preventive measure to her case were reviewed more than once by various courts. No violations of the law were found to have taken place.

20. After Ms. Bakhmina's lawyer lodged a declaration alleging unlawful actions committed by personnel of the Russian Ministry of Internal Affairs following her arrest and abuses during

her questioning, checks were carried out. The report that unlawful actions had been taken against her was not substantiated. On 14 February 2005 it was decided not to institute criminal proceedings in respect of these allegations.

21. The investigations concerning the accused person have been conducted in strict compliance with the applicable Russian legislation governing criminal procedure. She has been able to meet her lawyers without any restrictions on the length or nature of the meetings.

22. The criminal proceedings against Ms. Bakhmina have now been completed and, once she has examined the case file, it will be forwarded to the court for consideration of the substance of the case.

23. Commenting on the observations made by the Government, the source takes issue with elements of the Government's presentation of the events surrounding the arrest and detention of Ms. Bakhmina and deplores the fact that the Government failed to address all the substantive allegations of the communication. It also intimates that Ms. Bakhmina is a victim of trumped-up charges, and her detention merely serves to compel those high-ranking leaders of Yukos who fled from prosecution to the United Kingdom and whose extradition to Russia was denied to return to the Russian Federation.

24. Ms. Bakhmina was arrested on 7 December 2004. According to the information provided by the Government and not contested by the source, the investigation in Ms. Bakhmina's case is close to completion and the charges against her will soon be brought before a court. Bearing in mind the complexity and the seriousness of the charges, the duration of the investigation and the time spent in pretrial detention does not seem to the Working Group to be unreasonably long. She was able to challenge her detention before a court several times, but the courts did not find her detention unlawful.

25. The Working Group is of the opinion that the alleged procedural irregularities referred to by the source - insufficient health care provided to Ms. Bakhmina when she lost consciousness, refusal of her request for bail, prohibition of family contacts, prejudicial statement made by the Procurator-General's Office undermining her right to be presumed innocent until found guilty - many of which were contested by the Government, are not of such gravity as to confer on the deprivation of liberty an arbitrary character.

26. The source also stated that Ms. Bakhmina was not allowed to have a defence lawyer present during her interrogation. However, this is contradicted by the statement in the Government's observations, not contested by the source, that Ms. Bakhmina's lawyer lodged a complaint with the authorities of unlawful actions by the Russian Ministry of Internal Affairs. Nor did the source refute the assertion of the Government that Ms. Bakhmina has been able to meet her lawyers without any restriction on the length and nature of the meetings.

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

The deprivation of liberty of Ms. Svetlana Bakhmina is not arbitrary.

Adopted on 31 August 2005

OPINION No. 29/2005 (UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Communication addressed to the Government on 12 January 2005.

Concerning Edward Reuben Muito.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. The Government, in its response, confirms that Mr. Muito is no longer in detention in the United Kingdom and has been deported to Kenya.

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

Adopted on 1 September 2005

OPINION No. 30/2005 (BRAZIL)

Communication addressed to the Government on 8 December 2004.

Concerning Mr. Urzulas Araújo de Souza, Mr. José dos Passos Rodrigues dos Santos, Mr. Cláudio Bezerra da Costa and Mr. Junior Alves de Carvalho.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. The Working Group notes that the Government has informed it that in February 2005, the judge of the Agrarian Court of Altamira granted provisional liberty to Mr. Urzulas Aráujo de Souza and Mr. Cláudio Bezerra da Costa. Subsequently, the source informed the Working Group that the Supreme Federal Court, on 8 June 2005, considering the excessive time in which these persons were incarcerated, decided to grant provisional liberty to Mr. José dos Passos Rodrigues dos Santos and Mr. Junior Alves de Carvalho.

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

Adopted on 2 September 2005

OPINION No. 31/2005 (TURKMENISTAN)

Communication addressed to the Government on 31 March 2005.

Concerning Mr. Gurbandury Durdykuliyev.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. According to the communication, Mr. Gurbandurdy Durdykuliev, resident of the village of Suvchy in the Balkan region of western Turkmenistan, was arrested and taken away on 13 February 2004 by some six medical personnel and another six in plain clothes. He was taken by ambulance to a psychiatric hospital in the town of Balkanabad (formerly Nebitdag), where he was forcibly confined. Shortly after this forced hospitalization he was transferred across the country to another psychiatric hospital located in a former Soviet pioneer camp in Garashsyzlyk District in the eastern Lebap region of Turkmenistan, where he is confined now.

5. It is reported that a commission at the psychiatric hospital in Balkanabad chaired by an official from the Ministry of Health announced that Mr. Durdykuliyev was mentally ill. He was officially diagnosed as suffering from "wild paranoia in an aggressive form".

6. It is further reported that on 3 January 2004, Mr. Durdykuliyev had sent a letter to President Niyazov and the Governor of the Balkan region, urging them to authorize a two-day peaceful demonstration on the main square of Balkanabad, which was scheduled for 18 and 19 February 2004, to coincide with the President's birthday, and to refrain from using force against the participants. Mr. Durdykuliyev had earlier criticized President Niyazov's policies in interviews he gave to United States-funded Radio Liberty, and had openly spoken about the necessity of forming an opposition political party.

7. The source reports that while in detention at the hospital, Mr. Durdykuliyev's access to his family was severely restricted. His wife was first permitted to visit him in April 2004 - two months after his detention - but was allowed to see him only in the presence of representatives of the hospital administration. One doctor - reportedly referring to instructions received from the authorities - told her that if she passed information about her husband's case on to media outlets abroad, she would not be allowed to visit him again. When Mr. Durdykuliyev's wife travelled to the hospital in Garashsyzlyk with their 4-year-old son at the end of October 2004, she was refused permission to see her husband. Their son was only allowed to spend 10 minutes with his father.

8. The source further alleges that in February 2005, both Mr. Durdykuliyev's wife and son were allowed to meet with him for 10 minutes under the supervision of a medical nurse. Mr. Durdykuliyev's wife tried to visit him on 5 March 2005 in order to give him food, clothing and medicines. However, she was refused permission to see him. Although she has reportedly

travelled to the hospital in Garashsyzlyk many times since his confinement in the hope of being allowed to see him, Mr. Durdykuliyev's wife has seen her husband only twice in more than a year and has never been allowed to meet with him without hospital staff being present.

9. It is also reported that the authorities have disconnected his family's telephone several times in an attempt to prevent their receiving information about his detention.

10. 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.

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

12. The Government described in a general manner the legal framework of detention in the country since the changes brought about by the new democratic Constitution of 1992. It also described its continuous collaboration with all human rights bodies of the United Nations. It did not, however, make any statements in relation to the detention of Gurbandury Durdykuliyev, a summary of whose case had been sent to the Government with the communication to which it was replying.

13. In the face of the Government's vague reply, the source reiterates its allegations.

14. The lack of a concrete response by the Government to the allegations of the source, as well as the way in which the latter describes the situation in which Mr. Durdykuliyev finds himself, indicate that the deprivation of liberty he is subjected to does in fact amount to a form of detention.

15. The Working Group has stated on several occasions, most recently in its last report to the Commission on Human Rights (see E/CN.4/2005/6, para. 58 (e)), that the deprivation of a person's liberty on the ground of mental illness, against that person's will, requires objective control by a judge or independent Government official.

16. In the present case, the allegation that Mr. Durdykuliyev was not allowed to appeal to a judge or independent organ against his internment in a psychiatric facility was not challenged. On the contrary, his activities critical of the Government and the manner in which his internment was carried out (the denial of communication with his family) indicate that he is not undergoing psychiatric treatment, but arbitrary detention, motivated by his having exercised his freedom of expression, and without the observance of the minimum safeguards required by the notion of a fair hearing.

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

> The deprivation of liberty of Mr. Gurbandury Durdykuliyev is arbitrary, as being in contravention of articles 9 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 the cases submitted to the Working Group.

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

Adopted on 2 September 2005

OPINION No. 32/2005 (CHINA)

Communication addressed to the Government on 20 December 2004.

Concerning Ms. Qiu Minghua.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. The Working Group welcomes the cooperation of the Government, which provided it with comments on the allegations put forward in the communication. The source, to which those comments were transmitted, made observations on them. 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.

5. According to the communication, Ms. Qiu Minghua, citizen of China, is living in Wu Zhong District, Suzhou, Jiangsu Province. On 25 November 2004, at about 1 p.m., officers of the Suzhou police station entered the apartment of Ms. Qiu and her husband. Ms. Qiu was away from home at the time. In the presence of Ms. Qiu's husband, they searched the apartment until approximately 5 p.m. and seized several items, among them a computer, a printer, toner cartridges, mobile phones, telephone directories and an address book. Between 2 p.m. and 3 p.m. of the same day Ms. Qiu returned to the apartment. The police detained Ms. Qiu and took her to Detention House No. 1 of the Suzhou Public Security Bureau, located in Lumuzhen, Xiangcheng District of Suzhou, where she remains in detention. Police authorities informed Ms. Qiu that her detention was in connection with her affiliation with Falun Gong. However, they did not present an arrest warrant, detention order, or any other written document justifying the detention.

6. The source alleges that the detention of Ms. Qiu is arbitrary because it is devoid of a legal basis. She did not receive a written order for her detention. She cannot contact legal counsel, and consequently she cannot challenge the lawfulness of her detention. It was also said that the repression of Falun Gong is so harsh that no one dares to assist Ms. Qiu.

7. The source argues that Ms. Qiu's detention results from the exercise of her right to freedom of thought, conscience and religion, protected by article 18 of the Universal Declaration of Human Rights, and of her right to freedom of expression, protected by article 19.

8. Commenting on the allegations put forward in the communications, the Government made the following statement:

> "Qiu Minghua, female, born on 8 October 1950, from Suzhou, Jiangsu Province, an accountant at the Changying Construction Corporation, Suzhou, was detained by order of the Suzhou municipal public order authorities on 26 November 2004 on suspicion of using a sect to hamper law enforcement. On 23 December, with the approval of the procuratorial authorities, she was arrested in accordance with the law. The case is undergoing further investigation.
>
> "Falun Gong is not a religion but an anti-social, anti-scientific, misanthropic sect whose violent leanings are becoming daily more manifest. According to incomplete statistics, several thousand people have died so far as a result of practising it. The Falun Gong organization has repeatedly engaged in destructive activities of every kind, violating public morals and seriously endangering public security. The action the Chinese Government is taking against it is designed to protect the rights and freedoms of the population at large. As the rule of law prevails in China, however, the steps taken to counter the Falun Gong organization are strictly legal. The Government offers warm-hearted assistance and patient education to the vast majority of deluded Falun Gong practitioners, fully guaranteeing all their rights and helping them return to normal life. But the Chinese judicial authorities naturally hold the small number of criminal elements such as Qiu, who take advantage of the cult to inflict serious damage on society, public order and law enforcement, to account.
>
> "The actions of the Chinese judicial authorities in the present case have been strictly guided by the Chinese Penal Code, Code of Criminal Procedure and so forth. There is no question of any 'arbitrary detention'.
>
> "The Government concludes that Qiu's legitimate rights are being safeguarded as the law requires."

9. It appears from the Government's reply that Ms. Qiu was in fact arrested in November 2004 and that she was still in detention on 12 May 2005 (date of the Government's reply). It is also clear from the statement made by the Government that the legal ground on which Ms. Qiu's deprivation of liberty is based is the criminal law. Yet not even the Government contests that no warrant was shown to her upon arrest, and that she has been and is being prevented from contacting a defence lawyer. The position of the Working Group is that in the context of the circumstances of the case, these procedural flaws are of such gravity as to give an arbitrary character to the deprivation of Ms. Qiu's liberty.

10. The Government's information is unambiguous in that Ms. Qiu is being proceeded against because of her affiliation with Falun Gong. Referring to the allegation of the source that Ms. Qiu is being persecuted because of her religious convictions, the Government argues that Falun Gong is not a religion, but rather an anti-social and anti-scientific sect.

11. International law ensures to everyone the right to freedom of thought, conscience or religion (Universal Declaration of Human Rights, art. 18). Therefore, to render an opinion in this case, the Working Group is not called upon to take a position on whether Falun Gong is a religion, a religious denomination, a sect, or a belief. Freedom of religion or belief itself cannot be subjected to any restriction; only the *manifestation* of that freedom can be limited by law, to the extent strictly necessary to protect public safety, order, health or morals, or the fundamental rights and freedom of others. Any restriction shall, however, be justified by a reasoned presentation of the grounds and the cause of that restriction. In the case under review, the Government failed to adduce any argument explaining why and how Ms. Qiu's affiliation with, or profession of, the ideas or principles of Falun Gong was or could have been detrimental to the society as a whole, or to other individuals. A general reference to the dangers of practising Falun Gong did not convince the Working Group that in the context of this particular case the deprivation of liberty imposed on Ms. Qiu is necessary and, if so, is proportionate to the aim pursued.

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

> The deprivation of liberty of Ms. Qiu Minghua is arbitrary, being in contravention of article 9 and article 18 of the Universal Declaration of Human Rights, and falls under categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

13. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Ms. Qiu.

Adopted on 2 September 2005

OPINION No. 33/2005 (CHINA)

Communication addressed to the Government on 14 December 2004.

Concerning Mr. Zhao Yan.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

5. According to the communication, Mr. Zhao Yan, a citizen of China born on 14 March 1962, is a freelance journalist for the publication *China Reform*, and since May 2004 has been employed as a researcher in the Beijing bureau of the *New York Times*. Mr. Zhao's research focuses on the situation and rights of peasants in China and their efforts to organize.

6. On 16 September 2004, at around 9 p.m., Mr. Zhao was approached by two men at the Yaohan shopping centre in Pudong, Shanghai. The two men identified themselves as officers of the Shanghai State Security Bureau and showed Mr. Zhao a written notice, although it is unclear whether this document was an arrest warrant. They took him into custody at the Shanghai State Security Bureau, where he has been in detention ever since.

7. Mr. Zhao was formally arrested (*zhengshi daibu*) on or around 20 October 2004. His family was notified that he is in detention for "illegally providing State secrets abroad" (*wei jingwai tigong guojia mimi zui*). It is not clear whether a decision ordering his detention was issued at that or any other time, nor is it clear whether any steps to bring Mr. Zhao to trial have been initiated.

8. The authorities detaining Zhao Yan have not allowed him to contact his family or a lawyer.

9. The source submits that within the three or four days following the publication on 7 September 2004 of an article in the *New York Times*, revealing that Jiang Zemin would be resigning as Chairman of the Central Military Commission (which was officially announced only on 19 September), Mr. Zhao was twice contacted by the authorities and asked to meet them to discuss the article. Mr. Zhao became increasingly convinced that State security officers suspected him of having leaked the information to the paper. He turned off his mobile phone and stopped going to work. When he turned the phone on again in Shanghai on 16 September 2004, the authorities located and arrested him within an hour. The source also states that the arrest and detention of Zhao Yan may also be connected to his activities as a researcher into the situation and rights of peasants in China. The source received reports that Mr. Zhao intended to stage a hunger strike on behalf of peasant activist Zhang Youren, who is currently under residential surveillance, and that his detention is aimed at preventing him from doing so.

10. The Government replied that Chinese citizen Zhao Yan was arrested by the Beijing State Public Security Bureau on 20 October 2004, with the approval of the Beijing Municipal People's Procuratorate, on suspicion of involvement in illegally providing State secrets abroad. He is currently under investigation by the Beijing State Public Security Bureau, in accordance with the law.

11. China's Constitution and laws clearly state that citizens have freedom of speech and opinion. Article 35 of the Constitution reads, "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration." In exercising their rights and freedoms, however, citizens must honour the associated legal obligations. The Universal Declaration of Human Rights, while acknowledging citizens' various rights, also clearly states that, in exercising their rights and freedoms, people are subject to the limits laid down by law. The present case relates to a breach of the Penal Code:

all actions taken by the Chinese law enforcement authorities against Mr. Zhao have been based on his criminal conduct and are unrelated to his reporting or research activities. The accusations made in the communication are groundless.

12. In handling the case in question, China's law enforcement authorities have acted strictly in accordance with the Code of Criminal Procedure, the Public Security Regulations and so forth; that Mr. Zhao was arrested without an arrest warrant being issued is out of the question.

13. The source replied that the Government's response states that the exercise of the rights and freedoms guaranteed in the Chinese Constitution and recognized in the Universal Declaration of Human Rights are subject to the limits in the law, and that Mr. Zhao's detention and arrest are due to criminal conduct unrelated to his reporting or research activities. The clarification offered by the Government, however, does not offer any supporting documentation or other evidence to support the allegation that Mr. Zhao's detention is in fact unrelated to his activities. More detailed and targeted clarification is necessary to ensure that the criminal charges brought against Mr. Zhao have not been used as a pretext to punish him for his sometimes politically sensitive research and journalism. The lack of information relating to Mr. Zhao's specific criminal conduct, coupled with the additional charge of fraud brought against him in late May 2005, which allows authorities to detain him without trial for an additional six months, suggests that the criminal charges against him have been used simply as retaliation for the exercise of his right to freedom of speech.

14. The source notes that the Government's response states that law enforcement authorities complied with the Chinese Criminal Procedure Code, Public Security Regulations and other applicable laws. The response did not adequately or specifically address the procedural concerns raised in the source's submission with regard to Mr. Zhao's detention and subsequent arrest, specifically why he has not been granted any access to his family or legal counsel, and why he is being held in incommunicado detention without trial. Even before the new charge of fraud was added on 1 June 2005, Mr. Zhao had already been held in detention beyond the legal limit prescribed by Chinese law. The Chinese authorities are manipulating criminal legal procedures to detain Mr. Zhao without trial and deprive him of his due process rights under Chinese and international law.

15. The Working Group observes that in its reply the Government limits itself to justifying the deprivation of liberty of Zhao Yan with reference to the charges brought against him of having divulged State secrets abroad. As the source correctly points out, however, the Government did not provide any specific information that would explain those charges.

16. The Government also did not make any statements with regard to the second accusation, of fraud, which, according to the source, was brought against Zhao Yan to justify the duration of his detention.

17. Finally, the Working Group does not find credible the general assertions made by the Government concerning the strict legality of the process undergone by Zhao Yan to date. The Government did not submit any arguments as to why he is not allowed to be assisted by a lawyer and to stay in contact with his family, and why he was ordered to be detained incommunicado from the time of his arrest.

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

> The deprivation of liberty of Mr. Zhao Yan is arbitrary, being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

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

Adopted on 2 September 2005

OPINION No. 34/2005 (SAUDI ARABIA)

Communications addressed to the Government on 25 February 2005 and 7 March 2005.

Concerning Mr. Abdul Aziz Saleh Slimane Djerboue and Mr. Mahna Abdul Aziz Al-Habil.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

2. The Working Group regrets that the Government has not submitted substantive information on the allegations transmitted concerning the above-mentioned persons.

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government, but regrets that it did not provide the Group with the information it sought. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

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

6. Mr. Abdul Aziz Saleh Slimane Djerboue, a Saudi Arabian citizen born on 12 October 1967 in Riyadh, is a teacher and is being held in detention at El-Hayr prison in Riyadh. Mr. Djerboue was arrested on 1 January 2003 by security agents. He was allegedly ill-treated during his detention. Later, he was charged with publicly criticizing some Government policies and expressing political views opposing the Government. Mr. Djerboue's

trial took place in January 2003. It was alleged that he was not allowed to appoint a defence lawyer, either before or during his trial, which reportedly did not observe other guarantees for a fair trial. At the end of his trial, Mr. Djerboue was sentenced to seven months' imprisonment.

7. Mr. Djerboue should have been released on 1 August 2003, when he finished serving his prison term. However, he continued to be held in detention for another 18 months. All his requests to be released had no results. On 25 December 2004, Mr. Djerboue and other detainees started a hunger strike to obtain their release. As a result, Mr. Djerboue's health seriously deteriorated and fears have been expressed for his life.

8. Mr. Mahna Abdul Aziz Al-Habil, a Saudi Arabian citizen born in 1969, with identity card No. 87266, married and father of six children, a public servant at the Al Houfouf Public Library, is being held in detention at the General Investigation Bureau Detention Centre of Haï Al-Mouassalate, at Dammam. He was arrested on 6 October 2004 at 3 p.m. at his home by agents of the General Investigation Bureau. No arrest warrant was shown to him. His home was searched. No authorization for such a search was shown to him or to his relatives. Later, Mr. Al-Habil was taken to the Office of the Ministry of the Interior in Dammam. According to the source, the reason for his arrest was an interview that Mr. Al-Habil gave at the end of September 2004 to the Al Jazeera satellite television channel announcing a meeting of Saudi intellectuals of different political tendencies to discuss some current issues. Mr. Al-Habil had previously published some notes on the Al Jazeera website.

9. It was alleged that Mr. Al-Habil was ill-treated during his detention and held incommunicado until 11 November 2004. Only on 26 November 2004, i.e. 50 days after his arrest, were his relatives authorized to meet him. On 1 November 2004, Mr. Al-Habil was brought before a judge. He was reportedly charged with "rebellion against authority"; "announcing the establishment of a suspected organization"; "propagation of a spirit of division" and "public criticism against the Government". Mr. Al-Habil was not allowed to appoint a defence lawyer.

10. According to the source, these persons were arrested and are being held in detention for expressing political views opposing the Government and peacefully exercising their rights of freedom of opinion and expression.

11. On 18 August 2005, the Government reported that the cases of the above-mentioned persons are being investigated by the competent authorities in the Kingdom which, being eager to cooperate with the Working Group, will provide all pertinent information as soon as the validity of the allegations has been examined.

12. On the basis of the allegations made, which the Government has not denied despite having been given an opportunity to do so, the Working Group concludes that the detention and sentencing of Abdul Aziz Saleh Slimane Djerboue and Mahna Abdul Aziz Al-Habil are motivated exclusively by their having expressed their political views, which was merely the peaceful exercise of the right to freedom of expression, as guaranteed by article 19 of the Universal Declaration of Human Rights.

13. The fact that these persons have been prevented from consulting lawyers and that the subsequent proceedings were also held without the presence of lawyers constitute very serious breaches of the right to due process and the right to a fair trial recognized in the Universal Declaration of Human Rights.

14. With regard to Abdul Aziz Saleh Slimane Djerboue, the Working Group finds the situation even more serious, as he is kept in prison without any legal basis since he served the entirety of his sentence and should have been released on 1 August 2003.

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

> The detention of Mr. Abdul Aziz Saleh Slimane Djerboue from 1 January to 1 August 2003 is in contravention of articles 10 and 19 of the Universal Declaration of Human Rights and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group, and his detention from 1 August 2003 is in contravention of article 9 of the Universal Declaration of Human Rights and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.
>
> The detention of Mahna Abdul Aziz Al-Habil is in contravention of articles 10 and 19 of the Universal Declaration of Human Rights and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

16. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

17. The Working Group recommends that the Government consider the signing and ratifying of the International Covenant on Civil and Political Rights.

Adopted on 1 September 2005

OPINION No. 35/2005 (SAUDI ARABIA)

Communications addressed to the Government on 6 August 2004, 18 November 2004, 15 February 2005.

Concerning Mr. Mazen Salah ben Mohamed Al Husayn Al Tamimi; Mr. Khalid Ahmed Al-Eleq; Mr. Majeed Hamdane b. Rashed Al-Qaid.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

2. The Working Group regrets that the Government has not submitted substantive information on the allegations transmitted concerning the above-mentioned persons.

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government, but regrets that it did not provide the Group with the information it sought. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

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

6. Mr. Mazen Salah ben Mohamed Al Husayn Al Tamimi, a Saudi national, born on 27 April 1974, married and father of four children aged from 1 to 7, human rights defender, member of the Al Karama Association for Defending Human Rights, suffering from a physical disability, currently detained in Dammam in a detention centre of the Ministry of the Interior, was arrested on 31 May 2004 at his home in Khobar by agents of the General Intelligence Service who failed to provide a proper arrest warrant. No reasons were given to justify his arrest. His wife and children were also arrested but were later released.

7. Mr. Al Tamimi is being kept in incommunicado detention. He has not been given an opportunity to be heard by a judicial authority. He has not been brought before a judge nor charged. Mr. Al Tamimi has been constantly interrogated by members of the General Intelligence Service regarding his membership in the Al Karama Association for Defending Human Rights, a non-governmental human rights organization, and about a recent trip to Doha where he met with the Chairperson of the Association. During his interrogation, Mr. Al Tamimi was allegedly ill-treated. No consideration was given to his physical disability.

8. The source further reports that Mr. Al Tamimi has not been allowed to contact or to appoint a defence lawyer. He has had no judicial recourse to contest the lawfulness of his detention.

9. Mr. Khalid Ahmed Al-Eleq, a citizen of Saudi Arabia born on 25 December 1974, is a Shia religious cleric usually resident in Tarut, Turkia, Eastern Province, Saudi Arabia. It was reported that on 29 September 2004, Mr. Al-Eleq returned to Saudi Arabia from a period of religious study at Islamic seminaries in Qom, Islamic Republic of Iran. Upon his arrival at King Fahd International Airport, Dammam, on a flight from Tehran, he was arrested by officials of the General Directorate of Investigation (Mabahith), a branch of the Saudi Ministry of the Interior. The officials did not show an arrest warrant or other relevant decision by a public authority, nor did they orally inform Mr. Al-Eleq of the reasons for his arrest. Mr. Al-Eleq is currently detained at the Mabahith headquarters in Dammam. No information on the reasons for the arrest or charges against him have been released to date. The family has been allowed to visit him twice.

10. The detention of Mr. Al-Eleq according to the source is aimed at preventing him from exercising his freedom of religion in the future. In particular, the detention is motivated by the Saudi authorities' alleged determination to repress the teaching and learning of Shia religious studies, as also demonstrated by the ban on the establishment of Shia learning centres. In this

respect, the source alleges that it is not the first time that a Saudi citizen who is a Shia Muslim has been detained without charges for long periods after returning from religious studies in Iran. This practice allegedly persists despite the lifting of the ban on travelling to Iran in 2001.

11. Mr. Majeed Hamdane b. Rashed Al-Qaid, a Saudi Arabian citizen, born in 1967 in Sekkaka, Al Jouf, married and father of six children, a graduate in Education Sciences from Ibn Saoud University in Riyadh, employee at the Ministry of Education, was arrested on 7 June 2003 at 1 p.m. at his office at the Ministry by agents of the Saudi intelligence services. No arrest warrant was shown to him nor have charges been brought against him. He was conducted, handcuffed, to his home where his wife and children were present. His home was violently searched and his personal computer and related material were seized. He was held in incommunicado detention at an unknown place for four months.

12. It was further reported that his relatives were not authorized to visit him until 26 October 2003, when they could see signs of bruises on his face and other signs of ill-treatment and torture on his body. Mr. Al-Qaid has not been authorized to appoint a defence lawyer, nor given an opportunity to be heard by a judicial authority. He has not been able to challenge the lawfulness of his detention. The source believes that Mr. Al-Qaid was arrested because of his criticism and political views opposing the Government.

13. According to the source, these persons were arrested and are being held in detention for their activities as human rights defenders and for the peaceful exercise of their rights to peaceful assembly, association, freedom of opinion and expression and freedom of religion. The source adds that the detention of these persons is arbitrary because it is devoid of any legal basis. The authorities have so far failed to provide any decision justifying arrest and detention. The detention of these persons is also contrary to articles 2, 4, 35 and 64 of Royal Decree No. M.39 of 16 October 2001, as a proper warrant was not produced at the time of their arrest and the detainees were not brought before a judicial authority to establish the lawfulness and length of their detention.

14. On 18 August 2005, the Government reported that the cases of the above-mentioned persons are being investigated by the competent authorities in the Kingdom which, being eager to cooperate with the Working Group, will provide all pertinent information as soon as the validity of the allegations transmitted by the Working Group has been examined.

15. On the basis of the foregoing, the source raises several complaints, the most relevant to the Working Group's mandate being those concerning the arrest and detention of Mr. Al-Qaid, since 7 June 2003, of Mr. Al Tamimi since 31 May 2004 and of Mr. Al-Eleq since 29 September 2004, in the absence of a judicial order, without information regarding the charges, without being brought before a judge and denying them the assistance of a lawyer. Although the Government requested and was granted additional time to submit its reply upon the expiry of the original 90-day deadline, it limited itself to stating that the above-mentioned persons are the subject of an investigation. As the allegations of the source have not been disputed, the Working Group can only conclude that the detention of those persons does not have any legal basis. This circumstance in itself already renders their detention utterly contrary to the applicable international norms and constitutes an extremely grave violation of the right to liberty.

16. Additionally, according to the information provided by the source, which has remained unchallenged by the Government, the unlawful detention of Mr. Al Tamimi is motivated solely by his being a member of an association defending human rights and by his activities as a human rights defender, while Mr. Al-Eleq is a Shia cleric detained for his religious activities and to prevent him from teaching his religion.

17. As a consequence, and in the absence of any argument to the contrary by the Government, the Working Group can only conclude that these persons are detained because of their convictions, of the expression of their opinion, and of the legitimate exercise of the rights to freedom of expression, to assemble, and of association in the case of Mr. Al Tamimi, and of the legitimate exercise of religious freedom in the case of Mr. Al-Eleq.

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

The detention of Mr. Mazen Salah ben Mohamed Al Husayn Al Tamimi is in contravention of article 9, 19 and 20 of the Universal Declaration of Human Rights and falls within categories I and II of the categories applicable to the consideration of the cases submitted to the Working Group.

The detention of Mr. Majeed Hamdane b. Rashed Al-Qaid is in contravention of articles 9 and 18 of the Universal Declaration of Human Rights and falls within categories I and II of the categories applicable to the consideration of the cases submitted to the Working Group.

The detention of Mr. Khalid Ahmed Al-Eleq is in contravention of article 9 of the Universal Declaration of Human Rights and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

19. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles enshrined in the Universal Declaration of Human Rights.

20. The Working Group recommends that the Government consider signing and ratifying the International Covenant on Civil and Political Rights.

Adopted on 2 September 2005

OPINION No. 36/2005 (TUNISIA)

Communication addressed to the Government on 9 February 2005.

Concerning Mr. Walid Lamine Tahar Samaali.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

5. According to the information received, Mr. Walid Lamine Tahar Samaali, a Tunisian and French national born on 28 October 1976 and residing in Echternarch, Luxembourg, was arrested on 25 April 2002 by police officers acting without a warrant on the orders of the police superintendent of the economic and financial investigations unit, while he was staying with his family in Tunis. Mr. Samaali was charged in two separate cases: one concerned the counterfeiting of six cheques amounting to a total of 180 dinars, and the other the forging of a US$ 100 banknote.

6. In the first case (counterfeit of six cheques), Mr. Samaali was sentenced to 20 years' imprisonment and a fine of 60,000 dinars by the criminal division of the court in Tunis in a judgement delivered on 3 February 2003, which was upheld on appeal. In the second case (forgery of a US$ 100 banknote), Mr. Samaali was sentenced to 10 years' imprisonment in a judgement delivered on 25 May 2004; this sentence was reduced to 2 years following an appeal on 26 October 2004.

7. Mr. Samaali was first imprisoned in a detention cell at the El Gorjani barracks in Tunis, where, according to the information received, he was beaten and attacked by guards and forced to sign a statement drafted by police officers from the economic and financial investigations unit, without knowing its content. He was subsequently held in the "9 April" prison in Tunis and then transferred to Sousse civil prison, and finally returned to the 9 April prison, where he is currently in detention. While detained in these prisons, Mr. Samaali was subjected to numerous restrictions and ill-treatment; complaints about his treatment have not been followed up by the prison authorities.

8. The source mentions that several requests for pardon have been submitted to the Tunisian authorities (including the President of the Republic, the Minister of Justice and Human Rights, and Tunisian embassies abroad) by the detainee himself, his family, his lawyer and the Tunisian League for Human Rights. The source also indicates that the detainee's father, Mr. Lamine Tahar Mohamed Samaali, a retired police officer residing in Tunis, had problems with former colleagues who had participated in his son's interrogation; they allegedly put considerable pressure on him and were responsible for his resignation from the police force, as well for the heavy penalties to which his son was sentenced.

9. According to the source, Mr. Samaali's detention is arbitrary, as the law was wrongly applied, in that he was tried under article 411 bis of the Commercial Code whereas the acts were governed by article 199 of the Criminal Code. The trial and conviction of Mr. Samaali were therefore invalid. The source also mentions that there were no legal grounds for Mr. Samaali's

arrest and that the subsequent searches, seizures of property and investigations were incomplete and improperly conducted. The source adds that the testimony given at the trial and the evidence collected during the forensic examination did not identify Mr. Samaali as the perpetrator of the offences with which he had been charged. Finally, the source is of the opinion that the sentence handed down is disproportionate to the alleged offences.

10. The Government indicates in its response that Mr. Walid Samaali was arrested on 25 April 2005 by the economic and financial investigations unit, at the instigation of the prosecution service of the court of first instance of Tunis, on the grounds of a complaint dated 16 April 2002 submitted by the Banque du Sud concerning the issuance of six forged cheques by a certain "Sallami Walîd". After hearing statements from the recipients of the forged cheques, and on the basis of descriptions given of the suspect and his car, as well as the striking resemblance between the name on the cheques (Sallami Walîd) and the name of the accused (Samaali Walid), the aforementioned unit proceeded to arrest the accused on a public thoroughfare in the southern suburb of the capital where, according to the places where the cheques had been issued, he had been operating.

11. The Government mentions that the search of Mr. Walid Samaali's car enabled the seizure of 18 cheques forged in the same way as those that were the subject of the complaint and bearing the same number and the name of a fictitious branch of a bank. On the basis of this evidence, the economic and financial investigations unit reported the accused to the public prosecutor at the court of first instance in Tunis, within the statutory time limit. The public prosecutor brought the accused before the investigating judge of that court for fraud and forgery of cheques pursuant to article 291 of the Criminal Code and 411 bis of the Commercial Code. The arrest was carried out at the instigation of the prosecution service, in accordance with the legal procedures in force, and was confirmed by a detention order issued by the competent investigating judge; in the course of further inquiries, a search of the house occupied by the accused in Ezzahra, in the southern suburb of the capital, led to the discovery of computer equipment, including a microcomputer and a scanner which had been used in the forgery process.

12. The Government points out that this search was carried out in the presence of the accused and was recorded in a statement signed by him. Furthermore, it led to the seizure, on the premises, of a banknote (in foreign currency) which had also been scanned and forged. After hearing the witnesses, who included Lotfi Bouabid, an employee at an Esso petrol station, who had received one of the six cheques in question and who had identified the accused from a group of several other persons, and after the forgery had been confirmed by a forensic expert who studied the handwriting of the accused, the investigating judge in charge of the case brought the accused before the indictments chamber, which in turn referred the case to the criminal division.

13. The Government states that, having been brought before the court for forgery of six cheques, the individual concerned was sentenced by the criminal division of the court of first instance of Tunis to 20 years' imprisonment. The Tunis court of appeal upheld that judgement. Furthermore, in a separate case, the accused was sentenced to 2 years' imprisonment for forgery of banknotes.

14. The Government notes that the judicial procedure resulting in the sentencing of the individual concerned was carried out in conformity with the applicable rules of procedure, and that all defence guarantees were respected. Mr. Samaali was questioned in accordance with the

law by the economic and financial investigations unit, and was in no way forced to sign the statement drafted in that connection. Furthermore, he has never previously claimed to have been forced to do so. The searches and seizures of property that took place during the investigation into the case were carried out under the control of the public prosecutor and the investigating judge in charge of the case, in conformity with the rules specified in the Code of Criminal Procedure. The scope of the investigation, the searches and seizures of property were determined by the judicial authority and were carried out only by the officers assigned to these tasks. The allegation that the father of the individual concerned had problems with former colleagues who had been involved in questioning his son was groundless, since the case had been instituted by the judicial authorities, not by the police. Furthermore, the judicial authorities who supervised the whole procedure had never believed such allegations. The application of the law to the acts concerned and the determination of the applicable criminal penalty fell under the exclusive jurisdiction and competence of the court, which alone could judge whether the acts of which the person concerned was accused amounted to forgery of cheques and were thus punishable under article 411 bis of the Commercial Code, or to forgery of other documents under article 199 of the Criminal Code.

15. The Government emphasizes that the accused was liable to a sentence of 60 years' imprisonment under article 411 bis of the Commercial Code (10 years' imprisonment for each counterfeit or forged cheque). The court had exercised its discretion under article 14 of the Criminal Code and article 411 bis of the Commercial Code to hand down the minimum sentence of 20 years' imprisonment, in the knowledge that article 53 of the Criminal Code, on attenuating circumstances, was not applicable to the case in point.

16. The Government points out that Mr. Samaali's detention is proceeding in conformity with the prison legislation in force, which is in line with the relevant international standards. His allegation of ill-treatment proved on investigation to be entirely groundless and his complaints on this subject to the competent judicial authorities were dismissed. Moreover, the reason why the prisoner was transferred from the civil prison in Tunis to the one in Sousse was that the investigation in another case involving him was being conducted by the investigating judge of the Sousse court of first instance. As soon as his judicial examination in this case was completed, he was returned to the civil prison in Tunis, where he is now serving his sentence. His repeated allegations on various subjects reflect certain personality traits and are part of his tendentious strategy to draw attention to his case and call into question the grounds for his convictions, which have been upheld by the courts. According to the Government, Mr. Samaali's detention is not arbitrary because it is the result of judicial decisions taken by a competent court after fair trials that were conducted in accordance with the applicable domestic legislation.

17. The source replies to the Government's arguments by pointing out that Mr. Samaali was not arrested by police officers from the economic and financial investigations unit on 25 April 2005, as claimed by the Government, but on 25 April 2002, and that he was arrested in his father's home in Boumhal, not on a public thoroughfare. Moreover, it was not his own residence that was searched, as stated in the Government's reply, but his brother's home in Ezzahra, and that he had not been present on that occasion because he was under arrest in the offices of the economic and financial unit. As a result, police officers from this unit had been able to take the keys for his brother's house and carry out the search, which was illegal as the accused had refused to sign the statements before him.

18. In addition, the source points out that the only testimony heard was that of Lofti Bouabid: the other recipients of the cheques, such as Mehrez Louati, a Mobil filling-station attendant mentioned in the Government's reply, was not heard either in the preliminary stage of the investigation or during the judicial examination. In the view of the source, this nullifies the whole procedure.

19. The source notes that Mr. Samaali refused to sign certain statements, although he agreed to sign others under threat of violence, as he had even been refused a medical examination for fear that it might reveal the marks of an assault. The source also rejects the Government's allegations that the accused's father, Mr. Lamine Samaali, had had problems with his former colleagues. The source concludes that the procedure was tainted with irregularities at both the procedural and substantive levels, so that the detention was of an arbitrary nature.

20. It appears from the above that the complaints submitted by the source concern irregularities in the procedure. According to the information provided by the Government, it would appear that Mr. Walid Lamine Tahar Samaali was tried for acts that are offences under the applicable national criminal legislation, and that all stages of the proceedings relating to the search for the offender, his arrest, the judicial examination, the trial and sentencing were conducted in accordance with criminal procedure. In its reply, the source has not convincingly rebutted the Government's arguments. The Working Group concludes that the detention is therefore not arbitrary.

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

The detention of Mr. Walid Lamine Tahar Samaali is not arbitrary.

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

Adopted on 2 September 2005

OPINION No. 37/2005 (BELARUS)

Communication addressed to the Government on 25 October 2004.

Concerning Mr. Mikhail Marynich.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

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

3. (Same text as paragraph 3 of opinion No. 20/2004.)

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

5. According to the information received, Mr. Mikhail Marynich is a citizen of Belarus, born on 13 January 1940. In 1990, he was elected a member of the Parliament of Belarus. During his career he was also, among others, Mayor of Minsk, Ambassador to the Czech Republic, Hungary, Latvia and Slovakia, and, from 1994 to 1998, Minister of Foreign Economic Relations. In 2001 Mr. Marynich unsuccessfully ran for President of the Republic. In October 2001 he became President of the association Delovaya Initsiativa (Business Initiative).

6. It was reported that on or immediately before 18 April 2004, unknown persons broke into Mr. Marynich's country cottage in the village of Zatsen, Minsk region. Later, a gun and ammunition will be found there and confiscated by investigators, on which the charge of illegal possession of arms will be based.

7. On 26 April 2004, Mr. Marynich was apprehended by members of the State Security Committee (KGB) and placed in the KGB pretrial detention centre in Minsk. At around 11.30 p.m. the same day, he was presented with a decision of the Minsk Public Prosecutor ordering his detention. On 27 April 2004, a criminal investigation was opened against Mr. Marynich in relation to charges under articles 295 (2) (illegal purchase and possession of arms) and 377 (theft of a document containing a State secret) of the Criminal Code. On 29 April 2004, the Prosecutor issued a decision ordering his pretrial detention. On 6 May 2004, the Prosecutor formally charged Mr. Marynich with a violation of article 295 (2) of the Criminal Code. On 25 June 2004 the Prosecutor prolonged the pretrial detention of Mr. Marynich until 26 August 2004.

8. Mr. Marynich's lawyer submitted to the KGB a request to terminate the criminal proceedings against him. This request was rejected on 6 August 2004. Mr. Marynich appealed this decision to the Minsk Prosecutor, who rejected the appeal on 20 August 2004.

9. Also on 20 August 2004, an investigation was opened against Mr. Marynich in relation to a possible violation of article 210 (4) of the Criminal Code. He was suspected of stealing office equipment lent by the United States Embassy in Minsk to the association Delovaya Initsiativa. On 26 August 2004, the Prosecutor prolonged the detention of Mr. Marynich for another month, this time on the basis of the charges under article 210 (4) of the Criminal Code.

10. On 23 September 2004, Mr. Marynich was formally charged with violations of article 295 (2), article 377 (2) and article 210 (2) of the Criminal Code. On 24 September 2004, the Prosecutor ordered his pretrial detention to be prolonged until 26 September 2004. However, since 26 August 2004, no further investigative activity has reportedly taken place.

11. On 2 September 2004, the Central District of Minsk Court ruled to dismiss a motion for release by Mr. Marynich. On 7 September 2004, an appeal against the decision of the

Central District of Minsk Court was rejected. Moreover, since Mr. Marynich was detained, he has lodged with the KGB Investigations Department, the Minsk Prosecutor and the Belarus General Prosecutor more than 70 motions against his detention. They were all dismissed.

12. The source alleges that the detention of Mikhail Marynich is arbitrary for the following reasons:

(a) The charges against him are manifestly devoid of any substance. In particular:

(i) As to the charge of illegal possession of weapons, the fingerprints on the arms confiscated at his country cottage are not identifiable, and it is obvious that persons have broken into the cottage, tampering with various objects but not stealing anything. All this suggests that the evidence found in the country cottage was fabricated;

(ii) Regarding the charge of theft of a document containing a State secret, the document on which these charges are based (a document of the Council of Ministers of 14 May 1998 entitled "Constitution of the Economic Problems Committee of the Ministry of Economy of Belarus") does not contain any State secrets as they are defined by the relevant law. Moreover, the source states that the statute of limitations for this crime (five years) had expired at the time of Mr. Marynich's arrest;

(iii) Regarding the charge of theft of office equipment, members of the association Delovaya Initsiativa have clarified, in the course of interrogation by the investigators, that the storage of the office equipment in Mr. Marynich's garage was agreed as a solution to the temporary lack of office space at the premises of the association;

(b) The proceedings against Mr. Marynich gravely violate the right to a fair trial. In particular:

(i) Since the constitutional and legislative changes in 1996, the judiciary in Belarus is not independent. In this respect, the source refers to the findings made by the former Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, in the report on his visit to Belarus in June 2000 (E/CN.4/2001/65/Add.1). This report states, inter alia, that "guarantees of independence are systematically undermined by the Government's and, in particular, the President's attitude to the judiciary" (para. 36); "Executive control over the judiciary and the manner in which repressive actions are taken against independent judges appear to have produced a sense of indifference among many judges regarding the importance of judicial independence in the system" (para. 108); and "The Special Rapporteur also believes that the constant monitoring of the activities of the judiciary is intended to intimidate members of the judiciary into deciding all cases in line with the Government's wishes, rather than in accordance with the law and the evidence" (para. 109).

(ii) The court hearings concerning Mr. Marynich's applications for release from pretrial detention were conducted in closed session, in the absence of Mr. Marynich and his lawyer, thus depriving Mr. Marynich of the right to a public hearing enshrined in article 10 of the Universal Declaration of Human Rights and article 14 (1) of the International Covenant on Civil and Political Rights.

13. The source adds that the jurisdiction of a court with respect to review of a Prosecutor's decision ordering detention is limited to reviewing the formal correctness of the decision. The procedure for review of pretrial detention orders outlined in the Criminal Procedure Code, as applied in the case of Mr. Marynich, is not, according to the source, in compliance with article 9 (4) of the International Covenant on Civil and Political Rights, which provides that "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention …"

14. The source further states that the detention regime of persons in pretrial detention is decided by the investigating agency which, in the case of Mr. Marynich, is the KGB. Mr. Marynich's contacts with the outside world are severely restricted. In the course of its visit to Belarus from 16 to 26 August 2004, the Working Group requested to visit him, but its request was denied.

15. In its reply, the Government stated that the search of Mr. Marynich's residence was made in connection with the discovery of counterfeit foreign currency in his motor vehicle and it resulted in the seizure of a pistol and documents. The initial inquiry agencies of the KGB detained Mr. Marynich pursuant to article 108 of the Criminal Procedure Code (detention on direct suspicion of the commission of an offence) and a criminal case was initiated against him on the basis of articles 295 (2) and 377 (2). On 29 April 2004, the Prosecutor of Minsk chose detention in custody to be applied as a preventive measure and on 6 May 2004 Mr. Marynich was charged with committing illegal acts involving a firearm (art. 295 (2)). On 26 October 2004, the Prosecutor extended Mr. Marynich's period of detention in custody to seven months.

16. The Government added that furthermore, it was established that as President of the so-called "Belarusian Association Business Initiative", Mr. Marynich planned to appropriate property - 40 items of computer and other office equipment - received on 4 December 2002 by his organization from a foreign State for temporary use free of charge. It is stated that Mr. Marynich did not apply to the competent authorities for the registration of this property under the established procedure, nor did he request the appropriate certification. He did not enter this property in his organization's accounts and, using his official powers, intentionally appropriated the property, worth a total of 21,440,944 Belarusian rubles, without payment.

17. On 20 August 2004, the KGB opened a criminal case against Mr. Marynich under article 210 (4) (embezzlement through abuse of office), and in November 2004 brought another case based on indication of an offence under article 377 (1) (theft or damage of documents, stamps and seals); these cases were joined with the criminal case initiated under article 295 (2)

(illegal acts involving a firearm, ammunition and explosives). On 10 November 2004, the charges under article 377 (1) were dropped on the basis of article 29 (1) and (3) (circumstances excluding proceedings in a criminal case).

18. By a judgement of the Minsk District Court of 30 December 2004, Mr. Marynich was acquitted under article 295 (2), for failure to prove his participation in committing the offence, and found guilty under article 210 (4) (embezzlement through abuse of office). The Court sentenced him to five years' deprivation of liberty in a strengthened-regime correctional colony, with confiscation of property and deprivation of the right to exercise certain duties or undertake certain activities in institutions, organizations or enterprises for three years.

19. The Government concluded its response by providing general information on the implementation of the principle of the rule of law in Belarus and commenting on the report of the Working Group on the restriction of the right to challenge the legality of detention before a court.

20. The source, rebutting the response from the Government, argues the following.

21. The car Mikhail Marynich was driving on the day of his arrest was stopped by a policeman without any reason, since he did not violate any traffic rules. The search of his car was carried out without any authorization.

22. A criminal charge was brought against Mikhail Marynich relating to article 377 and article 295, part 2, of the Criminal Code (storage of arms) after a gun was found in his summer house. However, there were clear traces of someone having broken into the house. Mr. Marynich's fingerprints were not found on the gun. These two facts prove that Mr. Marynich had nothing to do with it. The Government states that some documents were found during the search. Those were copies of documents, not the originals, as well as personal files of Mikhail Marynich, which are not of importance to the State.

23. On 29 April 2004, the Deputy Prosecutor General of the Minsk region issued an order to arrest Mr. Marynich. According to article 126 of the Criminal Code, detention should be used only in very serious cases. Offences under articles 295 and 377 of the Criminal Code do not fall into this category, and alternative sanctions should be applied. Later, the detention was prolonged several times. Judicial review of the lawfulness of the arrest and detention was carried out very informally and did not meet the requirements of the law on objective investigation of the personal data and other conditions of the accused person. According to article 144 of the Criminal Code, the court has a right to invite the person held in custody to participate in the complaint investigation. This was not done, although in every complaint - either by Mr. Marynich himself or by his lawyers - such a request was made.

24. On 30 December 2004, the Court of the Minsk region and the city of Zaslavl issued the following decision: the charge of possession of illegal firearms was dropped as being impossible to prove (article 295, accusation), but Mr. Marynich was sentenced to five years of imprisonment under article 210 of the Criminal Code.

25. It is mentioned in the Government's response that Mr. Marynich's guilt has been proved by witness statements, the results of expertise and some material evidence. The truth is that while charging Mr. Marynich with violation of article 210, part 4, of the Criminal Code, no expertise was carried out at all. All the witnesses denied that Mr. Marynich had misappropriated computers from the United States Embassy. The witnesses also stated that the offices had been emptied because of the end of the rental contract. Mr. Marynich was not present at that time. It is also stated that Mr. Marynich, using his son's vehicle, moved the computers to a garage. Materials of the trial show that the computers were moved from the apartment on Franzysk Skaryna Ave, 38-40, in the absence of Mr. Marynich, who was travelling from 25 January to 17 February 2003.

26. The Embassy of the United States of America in Minsk did not agree with the opinion of the court that computers had been stolen, which also supports Mr. Marynich's innocence. The Embassy sent a letter to the court describing the contractual relationship between it and the organization headed by Mr. Marynich. According to the agreement, the computers were given to the organization for its temporary use. Both sides were to act in accordance with the civil law norms of the Civil Code of the Republic of Belarus.

27. The source noted that Mr. Marynich's conviction for the offence under article 210 (4) of the Criminal Code is being appealed.

28. In summary, the source asserts that the criminal proceedings against Mr. Marynich were marked by motives and considerations alien to a fair criminal procedure. Therefore, his deprivation of liberty is arbitrary.

29. When assessing whether the proceedings against Mr. Marynich met the requirements of a fair trial, the Working Group emphasizes the following elements.

30. On the evidence of the information provided, it is established that the series of charges formulated against Mr. Marynich was triggered by the discovery of counterfeit foreign currency in his car. This was followed by a search of his cottage, which resulted in the seizure of weapons and ammunition, as well as various documents representing, according to the authorities, State secrets. From the first moment of his detention, Mr. Marynich contended that the weapons found never belonged to him, and that they must have been smuggled into his cottage maliciously by someone who had broken in when he was not there, in order to cause him harm. To support his innocence, he pointed out that there were obvious traces of a burglary, that various objects had been tampered with but nothing stolen, and no fingerprints of his were identified on the weapons.

31. The position of the Working Group is that the well-substantiated and plausible version of events given by Mr. Marynich should have been fully investigated by the authorities, irrespective of the dropping, at a later stage, of the charge of illegal possession of arms. In the particular circumstances of the case this would have been indispensable in order to avoid the appearance of his being a victim of charges fabricated by his political foes, bearing particularly in mind the eminent role Mr. Marynich had played earlier in the public life of his country. The fact that Mr. Marynich's version of events was disregarded by the authorities sheds a fairly unfavourable light on the adversarial nature of the criminal proceeding, which requires that the arguments of the defence shall be given the same attention as those of the prosecution.

32. The Working Group also found worrying that although the criminal investigation against Mr. Marynich began by the discovery of counterfeit foreign currency in his car, the Government remained silent on whether Mr. Marynich later became the object of an investigation with regard to the counterfeit money found in his possession. Nevertheless, on the basis of the information provided by the parties, the Working Group shall proceed on the assumption that no charge was brought against Mr. Marynich in this matter. Here again, the Working Group believes that in the fairly controversial context of this case the Government should have addressed this episode to avoid the appearance that the stopping of Mr. Marynich's car on suspicion of his having counterfeit money in his possession was merely a pretext for arresting him.

33. The complaint of the source that no satisfactory and substantive control by the judiciary over the detention of Mr. Marynich was carried out was not addressed on the merits by the Government. The Government limited itself to informing the Working Group that on 29 April 2004 the Prosecutor in Minsk chose detention in custody to be applied as a preventive measure (see paragraph 15 above). The Government did not contest or deny the allegations of the source that the power of the courts to adjudicate on requests by the detainee for judicial review of the Prosecutor's decision to prolong detention is limited to controlling the "formal correctness" of the decision (see paragraph 13 above).

34. This allegation of the source is corroborated by the Working Group's own findings reached during its visit in Belarus. The Working Group did indeed find that under the system in force in Belarus the decision to keep a person in detention or to extend the period of his or her detention is taken not by a judge, but by the public prosecutor, acting on proposals by the investigator, and in the absence of the person concerned or his or her lawyer. The Working Group stated that the prosecutor lacks the requisite impartiality to comply with the requirements of article 9 of the International Covenant on Civil and Political Rights, to which Belarus is a party, and added that although the new Criminal Procedure Code has introduced the possibility of challenging before a court the lawfulness of the prosecutor's decision to detain or to maintain an accused in detention, in practice, arrest and detention depend on the investigator. The court is only allowed to review certain procedural issues. The Working Group noted that this procedure often leads to the confirmation of the prosecutor's decision (see E/CN.4/2005/6/Add.3, paras. 39 and 40).

35. Concerning persons detained by the KGB in places of detention under their authority, as was Mr. Marynich, the Working Group observed that in practice no authority of all those involved in the criminal proceedings, whether the Ministry of the Interior, prosecutors or judges, exercises any effective control over the situation of persons held in detention centres of the KGB. The Working Group concluded that for those detainees, the risk of abuse is high and remedies are only hypothetical (ibid., paras. 56 and 57).

36. The Working Group recalls that in the course of its visit to Belarus it insisted on meeting Mr. Marynich, but the authorities refused the request on the pretext that Mr. Marynich was suspected of extremely serious offences involving State security and State secrets. The Working Group told the authorities that it considered a refusal to allow it to visit a detainee under such pretexts unacceptable. It now appears that those grounds were in fact baseless, as Mr. Marynich was convicted of embezzling goods intended for his association.

37. The only offence for which Mr. Marynich was found guilty was the unlawful appropriation of several computers. The source contended that the computers were lent by the Embassy of the United States of America for temporary use by the organization headed by Mr. Marynich. The source alleges that the Embassy confirmed this in a letter addressed to the trial court. The Government failed to provide an explanation of how someone could be found guilty for the embezzlement of objects which the owner himself gave Mr. Marynich for temporary use. The lack of any explanation of this important point again sheds an unfavourable light on the objectivity, hence the fairness of the criminal procedure.

38. The Working Group, when it examines a communication, never acts as a substitute for a national court, and does not review either the facts established by a court or the application of the domestic laws; it seeks to determine that the principle that everyone shall be tried by an independent and impartial tribunal has been respected.

39. In this regard, the Working Group cannot but rely on the conclusions reached by the former Special Rapporteur on the independence of judges and lawyers following his visit in Belarus, referred to above. The Working Group also refers to its own report adopted after its visit in Belarus, in which it noted with concern that "the procedures relating to tenure, disciplinary matters and dismissal of judges at all levels do not comply with the principle of independence and impartiality of the judiciary" (ibid., para. 44).

40. The elements of the criminal procedure set out above, taken as a whole, and bearing in mind their cumulative detrimental effects on the position of Mr. Marynich as a person charged, led the Working Group to conclude that the failure to observe the international norms relating to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character.

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

> The detention of Mikhail Marynich is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Belarus is a party, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

42. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Mikhail Marynich in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights by releasing Mr. Marynich from detention.

Adopted on 2 September 2005
