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

Report of the Working Group on Arbitrary Detention

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Executive summary

The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42 and entrusted with the investigation of instances of alleged arbitrary deprivation of liberty. The mandate of the Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum-seekers and immigrants.

During 2002, the Working Group visited Australia and Mexico at the invitation of the Governments of those countries. The reports on these visits are contained in addenda 2 and 3 to the present document.

During the same period, the Working Group adopted 21 Opinions concerning 125 persons in 17 countries. In 92 cases, it considered the deprivation of liberty to be arbitrary.

Also during the period 1 November 2001-22 November 2002, the Working Group transmitted a total of 87 urgent appeals concerning 1,658 individuals to 47 Governments; 75 were joint appeals with other thematic or country-oriented mandates of the Commission on Human Rights. Twenty-one concerned Governments informed the Working Group that they had taken measures to remedy the situation of the detainees.

The Working Group has continued to develop its follow-up procedure and has sought to engage in continuous dialogue with those countries visited by the Group, in respect of which it had recommended changes of domestic legislation governing detention. Following its thirty-fourth session, the Group requested the Government of Indonesia to provide follow-up information on the recommendations resulting from the Group's visit to that country in 1999. It also received important information from the Governments of Bahrain and the United Kingdom of Great Britain and Northern Ireland concerning follow-up to the Working Group's recommendations following its visit to those countries in 2001 and 1999, respectively.

In its recommendations in this annual report, the Working Group attaches particular importance to the following questions:

(a) The use of detention as a means of combating terrorism;

(b) The use of detention as a means of protecting victims;

(c) The arbitrary character - on the ground of discrimination - of detention motivated by sexual orientation.

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Introduction

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in resolution 1991/42. Commission resolution 1997/50 spells out the revised mandate of the Group, which is to investigate cases of deprivation of liberty imposed arbitrarily, provided that no final decision has been taken in such cases by local courts in conformity with domestic law, with the standards set forth in the Universal Declaration of Human Rights and with the relevant international instruments accepted by the States concerned. Under this resolution, the Group is also given the mandate to examine issues relating to the administrative custody of asylum-seekers and immigrants.

2. During 2002, the Working Group was composed of the following experts: Ms. Soledad Villagra de Biedermann (Paraguay), Ms. Leïla Zerroügui (Algeria), Mr. Tamás Bán (Hungary), Mr. Seyyed Mohammad Hashemi (Islamic Republic of Iran) and Mr. Louis Joinet (France).

3. The Working Group has so far submitted 11 reports to the Commission, covering the period 1991-2001 (E/CN.4/1992/20, E/CN.4/1993/24, E/CN.4/1994/27, E/CN.4/1995/31 and Add.1-4, E/CN.4/1996/40 and Add.1, E/CN.4/1997/4 and Add.1-3, E/CN.4/1998/44 and Add.1 and 2, E/CN.4/1999/63 and Add.1-4, E/CN.4/2000/4 and Add.1 and 2, E/CN.4/2001/14 and Add.1 and E/CN.4/2002/77 and Add.1-2). The Working Group's initial three-year mandate was first extended by the Commission in 1994 and again extended in 1997 and in 2000 for another three years.

4. As a result of Commission on Human Rights decision 2000/109 on enhancing the effectiveness of the mechanisms of the Commission, the composition of the Working Group will have to change gradually. Pursuant to the decision, Mr. Kapil Sibal (India) resigned from the Working Group during the thirty-second session and was replaced in August 2002 by Mr. Hashemi.

5. On 3 December 2001, Mr. Joinet was unanimously elected Chairperson-Rapporteur of the Working Group, after resigning as Vice-Chairperson. At its thirty-fourth session, in September 2002, the Working Group unanimously elected Ms. Zerroügui as its new Vice-Chairperson.

I. ACTIVITIES OF THE WORKING GROUP

6. During 2002, the Working Group held its thirty-third, thirty-fourth and thirty-fifth sessions.

A. Handling of communications addressed to the Working Group

1. Communications transmitted to Governments

7. A description of the cases transmitted and the contents of the Governments' replies will be found in the relevant Opinions adopted by the Working Group (E/CN.4/2003/8/Add.1).

8. Concerning the sources which reported alleged cases of arbitrary detention to the Working Group, of the 125 individual cases submitted by the Working Group to Governments during 2002, 31 were based on information communicated by local or regional non-governmental organizations (NGOs), 81 on information provided by international NGOs in consultative status with the Economic and Social Council and 13 by private sources.

9. During its three 2002 sessions, the Working Group adopted 21 Opinions concerning 125 persons in 17 countries. Some details of the Opinions adopted during those sessions appear in the table hereunder and the complete texts of Opinions Nos. 1/2002 to 14/2002 are reproduced in addendum 1 to the present report. The table also provides information about seven Opinions adopted during the thirty-fifth session, details of which could not, for technical reasons, be included in an annex to the present report.

2. Opinions of the Working Group

10. Pursuant to its methods of work (E/CN.4/1998/44, annex I, para. 18), the Working Group, in addressing its Opinions to Governments, drew their attention to Commission resolutions 1997/50 and 2000/36 requesting them to take account of the Working Group's Opinions and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they had taken. On the expiry of a three-week deadline the Opinions were transmitted to the source.

Opinions adopted during the thirty-third, thirty-fourth and thirty-second sessions of the Working Group

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
1/2002	China	Yes	Cao Maobing	Detention arbitrary, category I
2/2002	Myanmar	Yes	Ms. Aung San Suu Kyi	Detention arbitrary, categories II and III
3/2002	Eritrea	Yes	Mahmoud Sherifo, Petro Solomo, Haile Woldensae, Ogbe Abraha, Berraki Ghebreslasse, Berhane Ghebregzabher, Stefanos Syuom, Slih Idris Kekya, Hamed Himed, Germano Nati and Ms. Aster Feshazion	Detention arbitrary, categories II and III
4/2002	Togo	Yes	Yawowi Agboyibo	Case filed (paragraph 17 (a) of the Working Group's methods of work - person released)
5/2002	China	Yes	Ms. Tan Xi Tao, Ms. Han Yuejuan, Zhao Ming, Yang Chanrong	Detention arbitrary, category II

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
6/2002	Yugoslavia	Yes	Ms. Arieta Agushi, Sylejman Bytiqi, Avni Dukaj, Deme Ramosaj and Yilber Topalli	Cases filed (paragraph 17 (a) of the Working Group's methods of work - persons released)
7/2002	Egypt	Yes	Yasser Mohamed Salah and 54 other persons	Detention arbitrary
8/2002	Saudi Arabia	Yes	Said al Zu' air	Detention arbitrary, category III
9/2002	Philippines	Yes	Manuel Flores, Felix Cusipag, Hadji Salic Camarodin and Michael Guevarra	Case filed (paragraph 17 (a) of the Working Group's methods of work - persons released). Detention of Michael Guevarra was considered not arbitrary
10/2002	Mauritania	Yes	Sidi Fall	Between 22 March 1998 and 10 April 1999, detention arbitrary, category I. Since 11 April 1999, detention not arbitrary
11/2002	Syrian Arab Republic	Yes	Fawaz Tello, Habib Issa, Walid al-Bouni, Hasan Saadoun, Habib Saleh, Aref Dalila, Kamal Labouani, Riad al-Turk, Riad Seef, Mohamed Maamum al-Homsi	Mohamed Maamum al-Homsi: detention arbitrary, category II. Other persons: detention arbitrary, categories II and III
12/2002	Syrian Arab Republic	Yes	Mohamed Rame Osman, Taraq Shukri, Abdel Naser Arab, Mohamed Joum' a Msetto, Hilal Msetto, Mohamed Yazan al Kojak and Mohamed Ayman al Kojak	Abdel Naser Arab: case provisionally filed (paragraph 17 (d) of the Working Group's methods of work) Other persons: cases filed (paragraph 17 (a) of the Working Group's methods of work - persons released)
13/2002	Lebanon	Yes	Hanna Youssef Chalita	Detention arbitrary, category III

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
14/2002	Djibouti	Yes	Mohammed Abdillahi God, Ahmed Faden, Daher Hassan Ahmed, Houssein Vuelden Boulalaleh, Houssein Farah Ragueh, Abdourahim Mahmoud Hersi, Doualeh Egoueh Offleh, Nasri Ilmi Maidaneh, Moustapha Khaireh Darar, Hassan Djama Meraneh, Aden Ali Guedi and Moussa Guedi	Detention not arbitrary
15/2002	China	Yes	Yao Fuxin	Detention arbitrary, category II
16/2002	United Arab Emirates	Yes	George Atkinson	From 1 March 1997 till 13 December 1999, detention arbitrary, category III (Opinion 17/1998). Since 14 December 1999, not enough elements were found to state the arbitrary or not character of the detention
17/2002	Syrian Arab Republic	Yes	Joseph Amine Houeiss Georges Ayoub Chalaweet	Case filed (paragraph 17 (d) of the Working Group's methods of work Detention arbitrary, category III
18/2002	Central African Republic	No	Lieutenant Col. Bertrand Mamour	Detention arbitrary, category III
19/2002	Peru	Yes	Rolando Quispe Berrocal	Detention arbitrary, category III
20/2002	Tunisia	Yes	Hamma Hamami, Abdeljabar Madouri, Samar Taamallah	Cases filed (paragraph 17 (a) of the Working Group's methods of work - persons released)
21/2002	United States of America	Yes	Ayub Ali Khan, Azmath Jaweed	Detention arbitrary, category III

Note: Opinions 15/2002 to 21/2002, adopted during the thirty-fifth session, could not be reproduced in the annex to the present report; they will be reproduced as an annex to the next annual report. In conformity with paragraph 25 (d) of its methods of work (non bis in idem), the Working Group decided, at its thirty-fifth session, to transmit the cases of Yuri Bandazhevsky (Belarus) and Marco Antonio Arboleda Saldarriaga (Colombia) to the Human Rights Committee, given that the matter had also been referred to that body and the persons and facts involved were the same.

3. Government and source reactions to Opinions

11. The Governments of Algeria and the Syrian Arab Republic and a source in Australia requested the reconsideration of opinions. Other Governments sent only comments on the Group's opinions.

12. By a note verbale dated 30 January 2002, the Permanent Mission of Algeria to the United Nations Office at Geneva requested the Working Group to review its Opinion concerning the detention of Abassi Madani and Ali Belhadj. The Government asserted that its previous communication, dated 26 June 2001, which had been considered by the Group at the time of the adoption of its Opinion, was merely an objection on procedural grounds against the Working Group's dealing with the case, not a reply to the invitation to comment on the merits of the communication. The Working Group decided not to reopen the case for the following reasons:

(a) One of the fundamental requirements of the procedure used by the Working Group is that it should be expeditious; the need for an accurate procedure follows from the very nature of the Group's mandate;

(b) The procedure must be adversarial in order to give the parties an equal opportunity to provide all the information which they deem necessary;

(c) The Permanent Mission of Algeria, instead of providing the Working Group with all the necessary information, reserved the right to respond when it deemed necessary. However, when the adopted Opinion was communicated to it, the Permanent Mission provided the Working Group with information which, had the Group been aware of it when it adopted its Opinion, could have led to a different decision.

13. The Government of the Syrian Arab Republic asked the Working Group to review its Opinion No. 11/2002 on the grounds that the Group did not take into account its reply concerning some of the detainees which the Permanent Mission had transmitted to the Working Group in August 2002. The Group considered the reply from the Government dated 20 June 2002 (note No. 02/14 relating to Rjad Al-Turk and Riad Seef), but not the reply dated 8 July 2002 (note No. 499/02) relating to Fawaz Tello, Habib Issa, Walid Al-Boumi, Hasan Saadoun, Habib Saleh, Aref Dalila and Kamal Labouani.

14. In its reply dated 8 July 2002, the Government of the Syrian Arab Republic stated that the persons concerned had been detained in accordance with a decision by the Attorney-General accusing them of "attempt to change the Constitution illegally, holding meetings without the permission stipulated by law, as well as giving speeches and lectures calling for armed disobedience, in order to bring down the regime. These persons were brought before the concerned court which has not yet issued a verdict. Several lawyers, among them Hassan Azime, Khalil Matouk, Haitham Maleh, Mohamed Radoun, Hassan Dalila, Razan Zietouneh and Sami Dahi, are defending the above-mentioned persons. Relatives, journalists and friends are attending the trial and are allowed to visit the above-mentioned detainees in prison".

15. The Working Group regrets that this information was not considered at the time of the adoption of its Opinion No. 11/2002 (Syrian Arab Republic). Nevertheless, it was not found in the records. The Working Group, taking note of the Government's position, finds no new elements that would change the arguments on which its Opinion was based.

16. The source challenged the conclusions of the Working Group's Opinion 15/2001 (Australia). In conformity with article 21 of its methods of work, the Working Group examined the request for a review and decided to confirm its Opinion that the detention of Carlos Cabal Peniche and Marcos Pasini Bertran was not arbitrary. It concluded that the alleged detention of these persons as convicts, the related treatment to which they were subjected over the previous three years and the arbitrary nature of the procedure by which it was decided that they should be detained under a maximum security regime were matters relating to their conditions of detention and consequently not covered by the Working Group's mandate.

17. By note verbale dated 30 July 2002, the Government of Egypt stated that it does not agree with Opinion No. 7/2002 for the following reasons:

> "(a) There is no article anywhere in Egyptian legislation which authorizes the prosecution of a citizen on the grounds of his or her sexual orientation. The philosophy of Egyptian law is founded on the protection of personal freedom, so that no Egyptian can be punished merely on account of his or her sexual orientation;
>
> "(b) The citizens who are the subject of the Opinion were prosecuted under the Prevention of Prostitution Act, and not for being homosexuals. The term 'debauchery' refers to the indiscriminate practice, on numerous occasions, of homosexual acts with men, in contrast to the habitual practice by women of indiscriminate sex with men (prostitution). In other words, the term refers to male prostitution;
>
> "(c) In the case of homosexual acts with men, the offence refers to the illegality of exploiting the prostitution of others by any means whatsoever, regardless of the person by whom such an offence is committed. In other words, it is material conduct, namely the perpetration by each student of an immoral act and offence against public decency, that is characterized as a criminal offence, regardless of whether it is perpetrated by a man (debauchery) or a woman (prostitution), and without reference to his or her sexual orientation;
>
> "(d) The accused persons were guilty of material criminal conduct. The charge against them contained no reference to their sexual orientation.
>
> "It follows from the foregoing that there has been no discrimination between Egyptian citizens on grounds of sex or on any other grounds specified in article 2 of the International Covenant on Civil and Political Rights."

18. By letter dated 8 March 2002, the Permanent Mission of Morocco to the United Nations Office at Geneva transmitted observations on Opinion No. 27/2001 (Morocco) concerning the case of Captain Mustapha Adib. According to the Government, proceedings were initiated against the person concerned on the grounds that he had committed unlawful acts, consisting in

the infringement of military rules and contempt of the Army, by releasing information to the foreign press without the prior authorization of the High Command of the Royal Armed Forces, contrary to the provisions of article 27 of the General Code of Discipline. This bears no relation to the right of freedom of expression, which is not absolute, but may be subject to certain restrictions, as provided in article 19 of the International Covenant on Civil and Political Rights.

19. The jurisdiction of military courts is recognized in several countries under democratic rule. The standing military court of the Royal Armed Forces is presided over by civilian judges, the nomination, promotion and sanction of whom are governed by the organizational statute of the magistrature of 1974. The court's judgements are subject to judicial review by the Supreme Court. During the trial, defence counsel called for witnesses to be heard, but, by virtue of its discretionary power, the court decided to reject the request on the grounds that the evidence presented would not be of relevance to the case. Counsel was allowed, however, to put forward all arguments for the defence.

20. The following Governments and sources have submitted information concerning the situation of persons whose detention had been considered by the Working Group.

21. By a communication dated 21 February 2002, the Government of Mexico advised the Working Group that General José Francisco Gallardo Rodríguez was released on 7 February 2002. His detention had been considered arbitrary by the Working Group in its Opinion No. 28/1998 (Mexico).

22. The Government of Mexico, by communication dated 20 June 2002, transmitted information regarding the legal situation and health status of Jacobo Silva Nogales and Gloria Arenas Agis, whose detention had been declared arbitrary by the Working Group in its Opinion No. 37/2000 (Mexico). The Government reported that those prisoners had undertaken a hunger strike from 19 April to 18 June 2002 in Federal Social Rehabilitation Centre No. 1 "La Palma" and in the Social Rehabilitation Centre of Nezahualcóyotl, Bordo de Xochiaca, State of Mexico, respectively. Although both had lost several kilograms, their general state of health and hydration were good, with no negative effects on their cardio-pulmonary or gastric systems. The hunger strike was in support of a draft amnesty law for the indigenous Zapotec people from the Loxicha region accused of membership of the Revolucionario (EPR) and the Ejercito Revolucionario Popular Independiente (ERPI).

23. The source reported that Jaweed Al-Ghussein was released by the Palestinian Authority. His detention was considered arbitrary by the Working Group in its Opinion No. 31/2001 (Palestinian Authority).

24. The source advised the Working Group that Ngawang Choephel, a Chinese citizen of Tibetan origin was released by the Chinese authorities. His detention had been considered arbitrary by the Working Group in its Opinion No. 2/1999 (China).

25. The source reported that Aung San Suu Kyi was released. Her detention had been considered arbitrary by the Working Group in its Opinion No. 2/2002 (Myanmar).

26. The Group welcomes the release of the aforementioned persons and recognizes the efforts made by the Governments of China, Mexico, Myanmar and the Palestinian Authority in considering its opinions.

4. Communications giving rise to urgent appeals

27. During the period 1 November 2001-22 November 2002, the Working Group transmitted 87 urgent appeals to 47 Governments concerning 1,658 individuals (1,588 men and 70 women). In conformity with paragraphs 22 to 24 of its methods of work, the Working Group, without prejudging whether the detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported, and appealed to them to take the necessary measures to ensure that the detained persons' rights to life and to physical integrity were respected. When the appeal made reference to the critical state of health of certain persons or to particular circumstances, such as failure to execute a court order for release, the Working Group requested the Government concerned to take all necessary measures to have the persons concerned released.

28. During the period under review, 87 urgent appeals were transmitted by the Working Group as follows (the number of persons concerned is given in parentheses): 9 appeals to the Sudan (105 men, 3 women); 8 appeals to Nepal (11 men, 3 women); 6 appeals to China (27 men, 22 women); 4 appeals to Algeria (17 men); 4 appeals to the Democratic Republic of the Congo (4 men); 3 appeals to Uzbekistan (1 man, 21 women); 2 appeals to Bangladesh (3 men); 2 appeals to Cameroon (15 men); 2 appeals to Cuba (4 men); 2 appeals to Ethiopia (13 men); 2 appeals to Israel (2 men); 2 appeals to the Kyrgyzstan Republic (3 men); 2 appeals to Liberia (8 men, 1 woman); 2 appeals to Myanmar (9 men); 2 appeals to the Russian Federation (2 men); 2 appeals to Rwanda (3 men); 2 appeals to Tunisia (3 men); 2 appeals to Zimbabwe (4 men); 1 appeal to Argentina (187 men); 1 appeal to Azerbaijan (1 man); 1 appeal to Burundi (1 man); 1 appeal to Chad (2 men); 1 appeal to Colombia (200 people); 1 appeal to Ecuador (7 men, 1 woman); 1 appeal to Egypt (4 men); 1 appeal to Guatemala (4 men); 1 appeal to Guinea (1 man); 1 appeal to Honduras (801 men); 1 appeal to the Islamic Republic of Iran (1 man); 1 appeal to Jamaica (2 men; 1 pregnant woman); 1 appeal to Jordan (1 man); 1 appeal to Lebanon (23 men); 1 appeal to the Libyan Arab Jamahiriya (6 men); 1 appeal to Malaysia (64 men); 1 appeal to Mauritania (3 men); 1 appeal to Mexico (6 men, 1 girl child); 1 appeal to Morocco (22 men, 16 women); 1 appeal to Pakistan (1 man); 1 appeal to Saudi Arabia (3 men); 1 appeal to the Syrian Arab Republic (3 men); 1 appeal to Gambia (1 man); 1 appeal to Turkmenistan (1 man); 1 appeal to Turkey (1 man); 1 appeal to Uganda (1 man); 1 appeal to Venezuela (1 man, 1 woman); 1 appeal to Viet Nam (1 man); and 1 appeal to Zambia (4 men).

29. Of these urgent appeals, 75 were appeals issued jointly by the Working Group and thematic or geographical special rapporteurs. These were addressed to the Governments of Algeria, Argentina, Azerbaijan, Bangladesh, Burundi, Cameroon, Chad, China, Colombia, Cuba, the Democratic Republic of the Congo, Ecuador, Egypt, Ethiopia, Gambia, Guatemala, Guinea, Honduras, the Islamic Republic of Iran, Israel, Jamaica, Lebanon, Liberia, the Libyan Arab Jamahiriya, Malaysia, Mauritania, Mexico, Morocco, Myanmar, Nepal, Kyrgyzstan, Pakistan, the Russian Federation, Rwanda, Saudi Arabia, the Sudan, Tunisia, Turkey, Turkmenistan, Uganda, Uzbekistan, Venezuela, Viet Nam, Zambia and Zimbabwe.

30. The Working Group received replies to the urgent appeals addressed to the Governments of the following countries: Algeria (reply to 4 actions), Bangladesh (reply to 2 actions), Burundi, China (reply to 2 actions), Cuba (reply to 2 actions), Ecuador, Egypt, Ethiopia (reply to 2 appeals), Guatemala, Liberia, Malaysia, Morocco (reply to 2 actions), Myanmar (reply to 2 appeals), Nepal (reply to 2 actions), Sri Lanka (reply to 2 actions), Tunisia (reply to 2 actions),Turkey, Venezuela, Viet Nam, Zambia and Zimbabwe. The Working Group wishes to thank those Governments that heeded its appeals and took steps to provide it with information on the situation of the persons concerned, especially the Governments that released those persons.

31. In some cases, the Working Group was informed, either by the Government or by the source, that the persons concerned had been released, in particular in the following countries: Algeria (1 person released, 14 persons conditionally released); Bangladesh (1 person released on bail); China (1 person released); Ecuador (7 persons released, 1 person deported to her country); Egypt (5 persons released following an appeal); Liberia (4 persons released); Nepal (2 persons released); Tunisia (2 persons released); Sri Lanka (1 person released) and Turkey (13 persons released). In other cases (relating to Burundi, China, Cuba, Ecuador, Guatemala, Malaysia, Morocco, Myanmar, Tunisia, Venezuela, Zambia and Zimbabwe), the Working Group was assured that the detainees concerned would receive fair trial guarantees.

32. The Government of Algeria reported that Allalou Farid, investigated in connection with the activities of a terrorist group, was released on 28 October 2001. No charges were filed against him. On 5 August 2002, 14 persons convicted of illegal assembly, incitement to illegal assembly, arson and corruption of minors were freed by order of the examining magistrate. The case is still pending before the judge. The Government of Bangladesh reported that Shahriar Kabir, arrested on suspicion of having committed a criminal act, was released on bail and will have a free and fair trial. The Government of China reported that Wang Lianrong was released in early January 2001 upon expiry of her term of detention. She had been sentenced by the Hebei public security authorities for disturbing public order. The Government of Ecuador reported that seven people arrested while participating in a demonstration against the Heavy Crude Oil Pipeline were released even prior to the 48 hours provided for by the criminal legislation. Another person, a United States citizen also arrested during the demonstration, was deported for having engaged in activities that were incompatible with her immigration status as a tourist.

33. The Government of Egypt reported that the Damanhour court sentenced Yassir Ahman Fouad, Mansour Hassan Muhamad, Ali Rizq Muhammad, Muhammad Ahmad Hussein and Samir Mahmud Ali to three years' imprisonment. The accused were released after they appealed against the Court's judgement. The Government of Liberia informed the Working Group that four journalists called in for questioning on 13 February 2002, among them Stanley Sankor and James Llody, were released on the same day and that there are no journalists held in detention in that country. The Government of Nepal reported that Jitendra Mahaseth was released on 5 January 2002 and that Gajendra Karna, arrested in possession of some suspicious papers, was released on 6 January 2002. The Government of Tunisia reported that Zouhair Makhlouf and Chédli Tourki, called in for questioning on 4 September 2002 in the context of investigations concerning matters of common law, were released on 8 September 2002. The Government of Sri Lanka reported that,

on 15 March 2002, Krishnasamy Thivviyan was released after the three High Court cases filed against him were terminated. The Government reported that the Attorney-General had started a process aimed at withdrawing indictments filed against persons whose involvement in terrorist activity, for which they had been indicted, was minimal.

34. Finally, the Government of Turkey informed the Working Group that Abdülkerim Koçhan, Faruk Kiliç, Mikail Bülbül, Abdülaziz Yücedag, Mahsun Bilen, Zübeyir Avci, Nusrettin Demir, Mahmut Kuzu, Lokman Koçhan, Sermin Erbas, Ahmet Öktem and Yakup Basboga, arrested on the grounds of violating the Anti-Terror Law, were released between 13 May 2002 and 3 June 2002. Abdurrahman Tasçi, Chairman of the People' s Democratic Party (HADEP) in Siirt Central District, was released on 31 August 2001, on the same day he was arrested.

35. The Group notes that only 37.93 per cent of its urgent appeals were replied to and consequently invites Governments to increase their cooperation under the urgent action procedure.

B. Country missions

1. Visits carried out

36. During 2002, a delegation of the Working Group visited Australia (May-June) to examine the question of the detention of unauthorized arrivals in that country, and Mexico (October-November). The reports on those visits are contained in addenda 2 and 3 to the present report.

2. Visits scheduled

37. The Working Group has expressed interest in visiting the following countries:

(a) Angola;

(b) Guinea-Bissau. No response has been received from the Governments of those African countries. The Working Group hopes to receive invitations to visit in the near future;

(c) Belarus. During the fifty-first session of the Sub-Commission on the Promotion and Protection of Human Rights (August 2002), the Permanent Representative of Belarus to the United Nations Office at Geneva stated that the Government of Belarus would invite the Working Group on Arbitrary Detention to visit the country. By letter dated 4 December 2001, the Deputy Permanent Representative of Belarus to the United Nations Office at Geneva informed the Chairman of the Working Group that the issue of the organization of the Working Group's visit to Belarus was under consideration by the competent authorities and that final dates would be agreed upon through diplomatic channels;

(d) Islamic Republic of Iran. In October 2002 the Working Group initiated consultations with the Permanent Mission of the Islamic Republic of Iran to the United Nations Office at Geneva, with a view to conducting a mission to that country. The Government has

issued a standing invitation to all thematic mechanisms of the Commission on Human Rights. By letter dated 28 October 2002, the Permanent Representative of the Islamic Republic of Iran to the United Nations Office at Geneva welcomed a visit by the Working Group to Iran. Arrangements are being made to find a mutually convenient and suitable time during 2003;

(e) Latvia. The Government of Latvia has also issued a standing invitation to all thematic mechanisms of the Commission. In January 2002 the Working Group initiated consultations with the Permanent Mission of Latvia to the United Nations Office at Geneva, with a view to conducting a mission to that country to study the legal, judicial and administrative aspects of the question of detention in Latvia. By letter dated 21 January 2002, the Permanent Representative of Latvia to the United Nations Office at Geneva requested the Working Group to propose a time frame during which the visit might be carried out. The Working Group is in contact with the Permanent Mission to find a suitable time for the visit;

(f) Nauru; and

(g) Papua New Guinea. The Working Group has written to both Governments expressing its interest in receiving an invitation to visit those countries during 2003 in order to study the question of the administrative detention of unauthorized arrivals, asylum-seekers and refugees. No response has been received so far. The Working Group's request to visit those countries is a consequence of the recent mission to Australia. Since September 2001, large numbers of asylum seekers arriving without authorization in Christmas Island, Cocos Island and Ashmore Reef were transported to Nauru and Manus Island in Papua New Guinea where they are reportedly housed in detention centres pending an asylum determination process.

3. Follow-up to country visits of the Working Group

38. By resolution 1998/74, the Commission on Human Rights requested those responsible for the Commission's thematic mechanisms to keep the Commission informed about the follow-up to all recommendations addressed to Governments in the discharge of their mandates. In response to this request, the Working Group decided, in 1998 (see E/CN.4/1999/63, para. 36), to address a follow-up letter to the Governments of the countries it visited, together with a copy of the relevant recommendations adopted by the Group contained in the reports on its country visits.

39. A letter was addressed on 30 September 2002 to the Government of Indonesia, requesting information on such initiatives as the authorities might have taken to give effect to the recommendations contained in the Group's report to the Commission on its visit to that country in 1999 (E/CN.4/2000/4/Add.2). No reply has yet been received.

40. By letter dated 17 May 2002, the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva provided the Working Group with information concerning the measures undertaken by his Government in implementing the recommendations of the Working Group following its visit. The Government reported that initial detention is authorized by a chief immigration officer or an inspector. The continued detention of all cases is subject to administrative review at regular intervals. Detention is reviewed after 24 hours by an inspector and weekly by another inspector.

After 28 days the Management of Detained Cases Unit (MODCU) takes responsibility for reviewing detention. MODCU is part of the Immigration Service and is independent of the detaining port or enforcement office. The Senior Executive Officer at MODCU has the authority to maintain detention up to two months. From 2 to 11 months, detention reviews are conducted monthly by the Deputy Director, Immigration Service. In most circumstances a detainee may apply for bail. There is no body which reviews cases of detention and which is entirely independent of the Immigration Service, and there are no plans to establish one.

41. The Government added that the Detention Centres Rules provide for reasonable access of legal representatives to immigration detainees. Relatives and representatives of organizations such as the Office the United Nations High Commissioner for Refugees may visit as often as desired within reasonable time limits. The Government is committed to speeding up the asylum process so that removals are effected rapidly and time spent in detention is kept to a minimum. It is unlikely that a person who is fully absorbed into society from which his removal is sought will be detained. Government policy is that detention is used only sparingly and for the shortest period necessary and there is a presumption of granting temporary admission or release. Each case is considered on its individual merits.

42. Unaccompanied minors are never detained except in exceptional circumstances and then normally for one night only, with appropriate adult supervision, until suitable accommodation can be found. Staff at the Detention Services Policy Unit of the Immigration Service provide oral and written guidance on detention policy and practice. Staff employed by private contractors who are contracted to manage removal centres are properly trained to deal with the sensitive nature of the detention.

43. In a report dated 21 October 2002, the Permanent Mission of Bahrain gave a precise and detailed reply, which was welcomed by the Group, to the request for information concerning the follow-up to the visit made to the country from 19 to 24 October 2001. The Government's reply was expressed in the form of a commentary on the eight recommendations contained in the Group's report on the visit (E/CN.4/2002/77/Add.2) and an annex giving legislative and regulatory provisions adopted since the visit, which take account of some of those recommendations.

44. With regard to recommendation 2, concerning the protection of migrant workers against trafficking originating in the "free visa" scheme, the Government noted that the protection of migrant workers against abuse by employers was ensured by two regulations, issued in 2001 and 2002, and has been further strengthened with the promulgation in September 2002 of the Act on the workers' union, which makes no distinction between nationals and non-nationals. With regard to recommendation 8, concerning consular assistance for incarcerated foreigners, the Government pointed out that this concern had been incorporated in the new Code of Penal Procedure, the Prison Code and in posters displayed in every place of detention.

45. With regard to recommendation 3, concerning courts martial, the Government enclosed provisions of the new Act on courts martial, passed in 2002, and announced the completion of a draft law modifying the rules governing police services, in order to bring them into line with the

new courts martial rules. These apparently do not fully comply with the Group's recommendation, since the decisions of courts martial do not always allow appeals to the Court of Cassation.

46. With regard to recommendation 5, concerning the appointment of women to positions of responsibility and their admission to the ranks of judicial officers, the Government stated that Bahrain had ratified the Convention on the Elimination of All Forms of Discrimination against Women in 2002; it had signed the Convention on the establishment of the Organization of Arab Women; and it had established the Women's High Council (chaired by the Queen of Bahrain) for the promotion of women. It added that political posts and judicial posts had been opened up to women, pending adoption of the draft new Code of the Magistrature, which would allow them to be appointed as judges. With regard to recommendation 6, concerning domestic violence against women, the Government stated that this concern had been taken into account in the new Penal Code, insofar as all violence committed against women by members of their families was considered to be an aggravating circumstance.

47. With regard to recommendation 7, concerning civil society, the Government reported that several bills were being finalized regulating societies, sports clubs and journalists. In its comments concerning recommendations 1 and 4, moreover, the Government maintained that the country's legislation in that respect complied with international standards.

48. The Working Group thanks the Governments of Bahrain and the United Kingdom for their cooperation; it welcomes the positive measures adopted in order to implement its recommendations and encourages them to continue current reforms and to keep the Working Group informed.

II. LEGAL ANALYSIS OF ALLEGATIONS CONCERNING THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

49. The Working Group on Arbitrary Detention received three communications that concern the International Criminal Tribunal for Rwanda (ICTR), as follows:

(a) One communication concerning Ignace Bagilishema, a case which had been submitted to the Working Group on 16 July 2001. This person had been kept in detention, despite having been acquitted on 7 June 2001 by the ICTR, which had ordered his release under conditions which had apparently been met.

(b) Two communications concerning Jean-Bosco Barayagwiza and Laurent Semenza, arrested at the same time, on 26 March 1996, by the Cameroonian authorities, pursuant to extradition proceedings initiated by the Rwandese authorities, and kept in detention at the request of the ICTR Prosecutor, prior to being officially charged and transferred to Arusha for trial.

50. In all three communications, the Working Group had been asked to give its opinion regarding the arbitrary nature of the detention of the above-mentioned persons.

A. Admissibility of communications

51. Referring to its Deliberation No. 6 (E/CN.4/2001/14), the Working Group considers that the communications directed against international courts do not fall under the Opinion procedure provided for in section III.A of its revised methods of work (E/CN.4/1998/44, annex I). This procedure presupposes that the communications contain a complaint against a State, which is not the case in the present instance, since the ICTR is a subsidiary body of the Security Council. The Working Group does, however, consider that, having received allegations of arbitrary detention, it is entitled to state its views. Since it cannot do so in the form of an Opinion for the above reasons, it has decided to proceed as it has done in the past, by issuing a "legal opinion".

52. The case of Ignace Bagilishema was submitted to the Working Group because the person concerned had been kept in detention after being acquitted by the ICTR, on the ground that no country could be found to receive him. The issue then arose of the significance and scope of the obligation for all States to cooperate with the ICTR. The difficulty was eventually overcome and the decision to release him was followed by effect, since the country where he is currently residing has agreed to cooperate by granting him asylum. His acquittal was definitely confirmed on 3 July 2002 by the Appeal Chamber of the ICTR. The Working Group, which might have remained competent if the person concerned had been kept in detention as a result of the failure of States to cooperate with the ICTR, notes with satisfaction that Ignace Bagilishema has been finally acquitted after having been released and taken in by a third country. Should the Working Group ever receive another similar case, it would remain competent, since the continued detention is attributable not to the International Criminal Tribunal, but to non-cooperation on the part of States. The Working Group considers that States should cooperate in either case.

53. In the cases of Jean-Bosco Barayagwiza and Laurent Semenza, the allegations concern the lawfulness of the establishment of the ICTR, on the one hand, and the conformity with international law of decisions handed down by ICTR judges, on the other.

54. With regard to the objection to the lawfulness of the establishment of the ICTR raised in Jean-Bosco Barayagwiza's communication, the Working Group recalls that, according to the terms of its mandate as set out in Commission on Human Rights resolution 1991/42 and further specified in the Commission's resolution 1997/50, the Working Group is competent to investigate cases of deprivation of liberty imposed arbitrarily or in any other manner incompatible with the international standards set forth in the Universal Declaration of Human Rights and with the relevant international instruments, accepted by the States concerned. In view of this, an allegation contesting the lawfulness of the establishment of an international court hardly appears to fall within the Working Group's mandate.

B. Validity of allegations

55. It should be pointed out that the lawfulness of the establishment of the ICTR and the International Criminal Tribunal for the former Yugoslavia (ICTY) and their jurisdiction have been contested in the past, in particular in the *Tadic* case before the ICTY and in the *Kanyabashi* case before the ICTR. Legal arguments were put forward by those courts rejecting the

allegations, on the grounds, inter alia, that the Security Council holds a discretionary power, derived from the United Nations Charter, authorizing it to take any steps it considers necessary for the maintenance of peace and security in the world, including setting up an international court.

56. In this respect, the Working Group recalls that the ICTR was established under a Security Council resolution, considered by the International Court of Justice as being equivalent to the provisions of the United Nations Charter. In its ruling delivered in the Lockerbie case, (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*), the International Court of Justice confirmed that equivalence between the Articles of the United Nations Charter and resolutions of the Security Council by considering that in the event of a discrepancy between the provisions of a Security Council resolution and those of any other international treaty, the provisions of the former resolution would prevail.

57. The Working Group therefore concludes that it is not competent to rule on the validity of these allegations.

58. With regard to the alleged absence of legal guarantees of a fair trial, which the communication attributes to the unlawfulness of the establishment of the ICTR and the interference it has been subjected to by the Security Council and the Rwandan authorities, the Working Group recalls that, with regard to the legal norms applied by the ICTR, it has already expressed its view on the matter in the aforementioned Deliberation No. 6, concluding that "insofar as the administration of justice by an international criminal court is concerned, the legal guarantees of a fair trial such as those provided by the Statute and Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia are consistent with the relevant international norms". This conclusion applies equally to the ICTR, whose Statute and Rules of Procedure and Evidence lay down the same rules. These allegations are therefore unfounded.

59. With regard to the allegations against decisions of the ICTR, it is objected in particular that the Appeal Chamber of the Tribunal had recognized that the rights of the accused had been violated owing to the fact that they had not been informed immediately of the nature of the accusations brought against them and the fact that their habeas corpus request to challenge the validity of their detention had not been examined by the Trial Chamber, but that the latter had not drawn the conclusion to which its own observations led, namely that the release of the accused should be ordered immediately. The Appeal Chamber had considered instead that the remedy the plaintiffs had requested, namely their release, was in the event disproportionate, and had decided to allow financial compensation for the violation of their rights, in the case of a discharge, or a shorter sentence in the case of conviction.

60. Regarding these matters, the Working Group considers that it does not have a mandate to express a view on the conformity of a decision taken by an international court with the norms of international law. It recalls in this respect that, in accordance with its methods of work, even when receiving individual communications challenging the action of States, it had always been careful not to take the place of the judicial authorities or to assume the role of a form of supranational jurisdiction.

III. LEGAL OPINION REGARDING THE DEPRIVATION OF LIBERTY OF PERSONS DETAINED IN GUANTANAMO BAY

61. The Working Group has received many communications alleging the arbitrary character of detention measures applied in the United States as part of its investigations into the terrorist acts of 11 September 2001. These communications from the United States may be divided into two categories, the first covering persons detained in prisons on United States territory, and the second persons detained at the Naval Base of Guantanamo Bay adapted as a detention centre.

62. The Chairman-Rapporteur of the Working Group sent a letter dated 22 January 2002 to the Permanent Representative of the United States of America to the United Nations Office at Geneva, asking his Government for an invitation to visit the country in order to examine in situ the legal aspects of the question. The Working Group would take into consideration the provisions of articles 4 and 15, paragraph 2, of the International Covenant on Civil and Political Rights in order to be as rigorous and objective as possible.

63. As this letter remained unanswered, the Chairman-Rapporteur sent a second letter on 25 October 2002, requesting the following information concerning the detainees in Guantanamo Bay:

(a) How many persons are currently being detained in Guantanamo Bay?

(b) When did the first detainees arrive?

(c) Were the detainees informed of any charges and, if so, by what authority were they charged and under what legal proceedings?

(d) Is legal counsel available to the detainees and, if so, are they freely chosen or imposed automatically?

(e) Are detainees allowed to meet with their legal counsel and, if so, are the interviews confidential?

(f) Are detainees brought to a representative of the prosecution and, if so, within what period of time?

(g) Do detainees ultimately appear before a court and, if so, within what period of time?

64. As this second letter also remained unanswered, the Working Group gave its views in the light of the following elements of appreciation:

Category I (persons detained on United States territory). After considering the two cases before it, the Working Group, with regard to this category, arrived at the following position of principle in its Opinion No. 21/2002 (E/CN.4/2003/8/Add.1): "The Working Group considers that Mr. X and Mr. Y have been detained for more than 14 months, apparently in solitary confinement, without having been officially informed of any charge, without being able to

communicate with their families and without a court being asked to rule on the lawfulness of their detention." This situation is such as to confer an arbitrary character on their detention, with regard to articles 9 and 14 of the International Covenant on Civil and Political Rights, which guarantee, respectively, the right to a review of the lawfulness of detention by a competent judicial authority and the right to a fair trial.

Category II (persons detained at Guantanamo Bay). Before giving an opinion as to whether the detention of persons in this category was arbitrary or not, the Working Group determined the relevant legal framework, namely, the third Geneva Convention (relative to the treatment of prisoners of war), and the International Covenant on Civil and Political Rights, to both of which the United States are a party.

With respect to the third Geneva Convention. The Working Group began by noting the interpretation given by the American authorities, whereby these belligerents belonged to the *sui generis* category known as "enemy combatants" and that as such "they are not covered by the Geneva Convention and are not entitled to prisoner-of-war (POW) status under treaty" (statement made by the United States Press Secretary on 2 February 2002).

Besides the fact that this interpretation is open to debate, the Working Group recalls that the authority which is competent to determine prisoner-of-war status is not the executive power but the judicial power, in conformity with the provisions of article 5, paragraph 2, of the third Geneva Convention, which states that: "Should any doubt arise as to whether persons […] belong to any other categories [of prisoners of war] enumerated in article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal" of the detaining power.

The United States court, however, dealing with the case (District Court for the District of Columbia) declared itself incompetent *ratione loci*, on the grounds that, since the territory of Guantanamo Bay was governed by an agreement concluded in 1903 between the United States and Cuba, the detention centre could not be considered as being on American soil.

The Working Group believes that it is worth recalling in this respect that, by letter of 14 September 1995, the United States authorities, agreeing to a request by the Working Group, had invited the Group to visit Haitian migrants and asylum-seekers detained at the Guantanamo Naval Base. The visit had finally had to be postponed indefinitely, following a decision, in 1996, by a United States court (District Court of the Eastern District of New York), which, after declaring itself competent, had ordered the release of the detainees. The Working Group suggested that this precedent should be taken into consideration in the debate taking place regarding the applicability of the above-mentioned article 5, paragraph 2, of the third Geneva Convention.

The Working Group concludes from the above that, so long as a "competent tribunal" in the meaning of the above-mentioned paragraph 2 has not issued a ruling on the contested issue, detainees enjoy "the protection of the … Convention", as provided in paragraph 2, whence it may be argued that they enjoy firstly the protection afforded by its article 13 ("Prisoners of war must at all times be humanely treated"), and secondly the right to have the lawfulness of their

detention reviewed and the right to a fair trial provided under articles 105 and 106 of that Convention (notification of charges, assistance of counsel, interpretation, etc.), so that the absence of such rights may render the detention of the prisoners arbitrary.

With respect to the International Covenant on Civil and Political Rights: Since the United States are party to the Covenant, in the case where the benefit of prisoner-of-war status should not be recognized by a competent tribunal, the situation of detainees would be governed by the relevant provisions of the Covenant and in particular by articles 9 and 14 thereof, the first of which guarantees that the lawfulness of a detention shall be reviewed by a competent court, and the second of which guarantees the right to a fair trial.

The need to combat terrorism undoubtedly requires imposing special restrictions on certain rights, including those concerning detention and fair trial. Such restrictions are in fact provided under article 4 of the Covenant ("In time of public emergency which threatens the life of the nation"), provided that, as the Human Rights Committee recalls in its General Comment No. 29, the notification procedure stipulated in paragraph 3 has been respected, whereby "Any State party […] availing itself of the right of derogation shall immediately inform the other States parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated." This has not so far been the case with the United States.

The Working Group therefore considers that, while it is not competent to comment on whether the status of prisoner of war applies to the persons currently detained in Guantanamo Bay, it does remain within its mandate in considering whether the absence of minimum guarantees provided under articles 9 and 14 of the Covenant may confer on the detention an arbitrary character, all the more so if the Government concerned has failed to provide the information called for in article 4, paragraph 3, of the Covenant.

In other words, so long as a "competent tribunal" has not declared whether the status of prisoner of war may be considered applicable or not, the persons detained in Guantanamo Bay provisionally enjoy the guarantees stipulated in articles 105 and 106 of the third Geneva Convention.

On the other hand, should such a court issue a ruling on the matter:

- Either it rules in favour of a prisoner-of-war status and the persons concerned are definitely entitled to the guarantees provided by the third Geneva Convention;

- Or it invalidates the prisoner-of-war status, in which case the above-mentioned guarantees of the Covenant (under articles 9 and 14) take over from those of articles 105 and 106 of the third Geneva Convention, which no longer apply.

In conclusion, the Working Group recalls that, in its decision of 12 March 2002, the Inter-American Court of Human Rights requested the United States to take urgent measures to have the legal status of the detainees at Guantanamo Bay determined by a competent tribunal.

IV. USE OF DETENTION AS A MEANS OF PROTECTING VICTIMS

65. In its annual report for 2001 (E/CN.4/2002/77 and Add.1 and 2), the Working Group had recommended, with regard to the detention of women who have been the victims of violence or trafficking, that recourse to deprivation of liberty in order to protect victims should be reconsidered and, in any event, must be supervised by a judicial authority, and that such a measure must be used only as a last resort and when the victims themselves desire it.

66. The Working Group has been informed that the Government of Bangladesh has issued instructions forbidding the detention of women and children in the cells of police stations and in prisons for the purpose of protecting them against their persecutors. In that country, according to information received by the group, it was customary for courts to place women and children who had been the victims of violence in custody. At first, on a complaint by the non-governmental organization Bangladesh National Women's Lawyers Association, the Supreme Court had ruled against placing women victims in prisons, not separated from other detainees. The Government later adopted "the specific directive that safe custody would mean shelter homes not jails". The Working Group welcomes the adoption of this measure by the Government of Bangladesh, so long as it is placed under judicial supervision, and encourages the Governments of countries where detention is practised as a means of protecting victims to adopt similar measures.

67. The Working Group was also informed that the transition authority in Afghanistan was preparing to release women imprisoned by the Taliban for infringing social morality.

V. REGARDING THE ARBITRARY NATURE - ON THE GROUND OF DISCRIMINATION - OF DETENTION MOTIVATED BY SEXUAL ORIENTATION

68. Having received a communication concerning 55 persons prosecuted and detained on account of their homosexuality, the Working Group took the view that their detention was arbitrary because it violated articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights, which guarantee equality before the law and the right to equal legal protection against all forms of discrimination, including "sex".

69. The Working Group based its opinion on that of the Commission on Human Rights, according to which the reference to "sex" in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation (CCPR/C/50/D/488/1992, para. 8.7).

70. On the basis of this opinion, the Working Group may complete category II of its methods of work to include deprivation of liberty ordered in violation of guarantees against discrimination laid down in the aforementioned articles 2, paragraph 1, and 26 of the Covenant.

VI. CONCLUSIONS

71. The Working Group welcomes the increased cooperation it has received from States in the accomplishment of its mandate. The great majority of opinions issued by the group during the three sessions of 2002 met with responses by the Governments regarding the cases brought to their attention.

72. This cooperation on the part of Governments has also been reflected in the greater number of invitations addressed by States to the thematic mechanisms of the Commission on Human Rights to visit their countries. Thanks to such cooperation, the Working Group was able in 2002 to conduct official missions to Australia and Mexico. The Group is in contact with the Governments of Belarus, the Islamic Republic of Iran and Latvia, to visit those countries in 2003. The Group considers that these visits are important for the implementation of its mandate.

73. The results of the missions have merely confirmed the Group's belief in their usefulness from the point of view of implementing its mandate. The Group is in fact the only body able to visit places of detention in order to inquire not about conditions of detention but about the legal status of detainees. For Governments, these visits provide an excellent opportunity to show that the rights of detainees are respected and that progress is being achieved in that area.

74. The Working Group considers that, although it is not competent to pass an opinion on whether the status of prisoner of war applies or not to the persons currently detained in Guantanamo Bay, the task of appreciating whether the absence of minimum guarantees provided under articles 9 and 14 of the International Covenant on Civil and Political Rights may give detention an arbitrary character remains within its mandate. So long as a "competent tribunal" has not ruled on whether the status of prisoners of war applies to the detainees in Guantanamo Bay or not, the latter should provisionally enjoy the guarantees provided under articles 105 and 106 of the third Geneva Convention.

75. The recourse to deprivation of liberty to protect women who have been the victims of violence and trafficking should be reconsidered. At any event, it should be supervised by a judicial authority. This means should be used only as a last resort when the victims themselves desire it. The Working Group welcomes the adoption by the Government of Bangladesh of its "safe custody" directive, so long as it is placed under judicial supervision.

76. The Working Group considered in an Opinion issued in 2002 that articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights guaranteed that all persons are equal before the law and are entitled without discrimination to equal protection of the law. The Group took the view that the reference to "sex" should be considered as covering sexual orientation.

Annex

STATISTICS

(Covering the year 2002. Figures in parentheses are corresponding figures from last year's report)

1. Cases of detention declared arbitrary

	Female	Male	Total
Cases of detention declared arbitrary falling within category I	0 (0)	2 (1)	2 (1)
Cases of detention declared arbitrary falling within category II	2 (0)	59 (20)	61 (20)
Cases of detention declared arbitrary falling within category III	0 (1)	7 (25)	7 (26)
Cases of detention declared arbitrary falling within categories II and III	2 (0)	20 (0)	22 (0)
Cases of detention declared arbitrary falling within categories I and II	0 (0)	0 (1)	0 (1)
Cases of detention declared arbitrary falling within categories I and III	0 (0)	0 (1)	0 (1)
Cases of detention declared arbitrary falling within categories I, II and III	0 (0)	0 (0)	0 (0)
Total number of cases of detention declared arbitrary	**4 (1)**	**88 (48)**	**92 (29)**

2. Cases of detention declared not arbitrary

Female	Male	Total
0 (0)	13 (7)	13 (7)

3. Cases which the Working Group decided to file

	Female	Male	Total
Cases filed because the person was released, or was not detained	1 (0)	17 (32)	18 (32)
Cases filed because of insufficient information	0 (0)	2 (5)	2 (5)

	Female	**Male**	**Total**
Total number of cases dealt with by the Working Group during 2002	**5 (5)**	**120 (162)**	**125 (167)**
