Resolution adopted by the Human Rights Council on 26 September 2019

42/22. Arbitrary detention

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming articles 3, 9, 10 and 29 and other relevant provisions of the Universal Declaration of Human Rights,

Recalling articles 9 to 11 and 14 to 22 of the International Covenant on Civil and Political Rights,


Recalling further General Assembly resolution 60/251 of 15 March 2006 on the Human Rights Council,

Recalling Human Rights Council resolution 5/1 on institution-building of the Council and resolution 5/2 on the Code of Conduct for special procedure mandate holders of the Council of 18 June 2007, and stressing that the mandate holder shall discharge his or her duties in accordance with those resolutions and the annexes thereto,

1. Stresses the importance of the work of the Working Group on Arbitrary Detention;

2. Takes note with interest of the latest reports of the Working Group, including the issues and recommendations contained therein;

3. Requests the States concerned to take into account the views of the Working Group and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken;

4. **Notes** the efforts of the Working Group to elaborate basic principles and
guidelines on remedies and procedures on the right of anyone deprived of his or her liberty
by arrest or detention to bring proceedings before a court;

5. **Encourages** all States:

   (a) To give due consideration to the opinions and appeals of the Working Group;

   (b) To take appropriate measures to ensure that their legislation, regulations and
practices remain in conformity with relevant international standards and the applicable
international legal instruments;

   (c) To respect and promote the right of anyone arrested or detained on a criminal
charge to be brought promptly before a judge or other officer authorized by law to exercise
judicial power, and to be entitled to trial within a reasonable time or to be released;

   (d) To respect and promote the right of anyone deprived of his or her liberty by
arrest or detention to bring proceedings before court, in order that the court may decide
without delay on the lawfulness of his or her detention and order his or her release if the
detention is not lawful, in accordance with the State’s international obligations;

   (e) To ensure that the right referred to in subparagraph (d) above is equally
respected in cases of administrative detention, including administrative detentions in
relation to public security legislation;

   (f) To ensure that anyone who is arrested or detained on a criminal charge has
adequate time and facilities for the preparation of his or her defence, including the
opportunity to engage and communicate with the counsel of his or her choice;

   (g) To ensure that the conditions of pretrial detention do not undermine the
fairness of the trial;

   (h) To provide guarantees with respect to any form of detention against unlawful
or arbitrary deprivations of liberty;

   (i) To consider reviewing laws and practices that may give rise to arbitrary
detention, in accordance with the recommendations of the Working Group;

6. **Recognizes** that persons who are unlawfully or arbitrarily deprived of their
liberty are vulnerable to extrajudicial killings, torture and other cruel, inhuman or degrading
treatment or punishment, and to other human rights violations;

7. **Encourages** all States to cooperate with the Working Group and to give
serious consideration to responding favourably to its requests for visits so that it may carry
out its mandate even more effectively;

8. **Notes with concern** that a persistently large proportion of urgent appeals of
the Working Group has been left unanswered, and urges the States concerned to give the
necessary attention to the urgent appeals addressed to them by the Working Group on a
strictly humanitarian basis and without prejudging its possible final conclusions, as well as
to the communication of the same case pursuant to the regular complaint procedure;

9. **Encourages** the Working Group to, in accordance with its working methods,
continue to provide the State concerned with relevant and detailed information concerning
allegations of arbitrary detention in order to facilitate a prompt and substantive response to
these communications without prejudice to the need for the State concerned to cooperate
with the Working Group;

10. **Notes with deep concern** that the Working Group has received increasing
information about reprisals suffered by individuals who were the subject of an urgent
appeal or opinion or who applied a recommendation of the Working Group, and calls upon
the States concerned to take appropriate measures to prevent such acts and to combat
impunity by bringing perpetrators to justice and by providing victims with appropriate
remedies;
11. Expresses its profound thanks to the States that have extended their cooperation to the Working Group and responded to its requests for information, and invites all States concerned to demonstrate the same spirit of cooperation;

12. Notes with satisfaction that the Working Group has been informed of the release of some of the individuals whose situation has been brought to its attention, while deploving the many cases that have not yet been resolved;

13. Decides to extend the mandate of the Working Group for a further period of three years, in accordance with Commission on Human Rights resolutions 1991/42 and 1997/50 and Human Rights Council resolution 6/4;

14. Requests the Working Group to prepare, as suggested by the Working Group in its report submitted to the Human Rights Council at its thirtieth session, in close consultation with Member States, civil society, relevant international and regional organizations, United Nations agencies, funds and programmes, particularly the United Nations Office on Drugs and Crime, in full respect of the mandates of the United Nations Office on Drugs and Crime and of the Working Group, and with the support of the Office of the United Nations High Commissioner for Human Rights, a study on arbitrary detention relating to drug policies to ensure that upholding the prohibition thereon is included as part of an effective criminal justice response to drug-related crimes, in accordance with international law, and that such a response also encompasses legal guarantees and due process safeguards, in accordance with the recommendation on this issue contained in the outcome document adopted by the General Assembly on 19 April 2016 at its special session, and to submit a report thereon to the Council at its forty-seventh session, and to bring the report to the attention of the Commission on Narcotic Drugs as the policymaking body of the United Nations with prime responsibility for drug-control matters;

15. Notes that the Working Group has been receiving an increasing number of submissions concerning allegations of arbitrary detention, and requests the Working Group to reduce and address the backlog of submissions, and to continue to process all new cases in a timely and efficient manner so as to avoid future backlogs;

16. Notes with concern that, according to the Working Group, despite the adoption of a streamlined review process, it continues to have insufficient resources to exercise its mandate effectively, particularly in relation to human resources, of which there is an acute need, and requests the Secretary-General to provide the Working Group with all the assistance necessary for it to be able to effectively and sustainably fulfil its mandate, in particular by putting sufficient, assured and predictable human resources at its disposal;

17. Decides to continue its consideration of the question of arbitrary detention in conformity with its programme of work.

[39th meeting
26 September 2019]

[Adopted without a vote.]