

Working Group on Arbitrary Detention

Deliberation No. 10 on reparations for arbitrary deprivation of liberty

I. Introduction

1. The Working Group on Arbitrary Detention is the only body in the international human rights system entrusted by the Commission on Human Rights and subsequently by the Human Rights Council with a specific mandate to receive and examine cases of arbitrary deprivation of liberty. In accordance with Commission resolutions 1991/42 and 1997/50 and Council resolutions 6/4 and 42/22, the Working Group also has a mandate to formulate deliberations on matters of a general nature to assist States in preventing and addressing cases of the arbitrary deprivation of liberty.

2. In the present deliberation, the Working Group intends to identify comprehensive reparations to which victims of arbitrary deprivation of liberty are entitled.

3. In preparing the present deliberation, the Working Group reviewed its practices and those of international and regional bodies in the protection of human rights. In 2016, in accordance with its methods of work (see A/HRC/36/38), the Working Group introduced a new procedure to follow up on the implementation of the opinions it adopts. In accordance with that procedure, States must, within six months of the date of the transmission of the opinion, report to the Working Group on the implementation of the opinion, including on whether reparations have been made to the victim.¹ The follow-up procedure does not specify all forms of reparations. For that reason, the Working Group decided that such measures required further elaboration in the form of a deliberation.

II. Right to reparations for victims of arbitrary deprivation of liberty

4. Victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute arbitrary deprivation of liberty.² Victims may also include family members or dependants of the detained person and those who have suffered harm in intervening to assist.

¹ Such as whether (a) the victim has been released; (b) compensation or other reparations have been made to the victim; (c) an investigation has been conducted into the violation of the victim's rights; (d) changes have been made to harmonize the law and practice of the country with its international human rights obligations; and (e) any other action has been taken to implement the opinion. See A/HRC/36/37, paras. 10–11.

² See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 8.

5. The prohibition of arbitrary detention is a peremptory norm of international law (*jus cogens*). The absolute prohibition of arbitrary deprivation of liberty stems from both international and regional human rights treaties³ supported by the extensive practice of international and regional tribunals supervising the implementation of these instruments.⁴

6. Faced with numerous violations of the absolute prohibition of arbitrary deprivation of liberty around the world, the Working Group reiterates the obligation of States to provide effective judicial, administrative and other remedies for victims of violations of international human rights law.⁵ Moreover, in instances where it has been established that an individual has been arbitrarily deprived of liberty, States have an obligation to provide adequate, effective and prompt reparations.⁶ Such reparations must cover all aspects of the deprivation of liberty by a State, including acts or omissions by its public officers or by individuals acting on its behalf or with its authorization, support or acquiescence in any territory under a State's jurisdiction or wherever the State exercises effective control.⁷

7. The Working Group recalls that all victims of arbitrary deprivation of liberty are entitled to an enforceable right before the competent national authority to prompt and adequate reparations.⁸ Reparations should be proportional to the gravity of the violations and the harm suffered.⁹

III. Forms of reparations for arbitrary deprivation of liberty

8. States should promote comprehensive reparations, which may include material and symbolic reparations on an individual and collective basis, as well as priority access to services. Given the serious types of harm inflicted on victims of arbitrary detention, a combination of different forms of reparation is necessary. Consultations with victims are important to ensure that their views on the specific nature of reparation are taken into account.

9. Some of the forms of reparations for arbitrary deprivation of liberty are described below.

A. Restitution

10. Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights law.¹⁰ In the case of arbitrary deprivation of liberty, restitution must be in its most direct form, which is the restoration of the liberty of the individual, including in the context of health detention policies.¹¹ In addition to releasing the individual, competent authorities should review the reasons for the deprivation of liberty

³ See Universal Declaration of Human Rights, art. 9 and International Covenant on Civil and Political Rights, arts. 9 and 14; and African Charter on Human and Peoples' Rights, art. 6, American Convention on Human Rights, art. 7 and European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 5.

⁴ See A/HRC/19/57, para. 69, A/HRC/22/44, para. 75 and A/HRC/30/37, para. 11. The Human Rights Committee has given an overview of its jurisprudence when requiring States parties to make full reparation to individuals whose rights under the International Covenant on Civil and Political Rights have been violated; see CCPR/C/158.

⁵ See Universal Declaration of Human Rights, art. 8 and International Covenant on Civil and Political Rights, art. 2 (3).

⁶ See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 11.

⁷ See A/HRC/30/37, annex, para. 25. See also opinion Nos. 50/2014, 52/2014 and 70/2019.

⁸ A/HRC/30/37, para. 92. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 17.

⁹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 15.

¹⁰ *Ibid.*, para. 19.

¹¹ See for example opinions Nos. 68/2017, 8/2018 and 70/2018.

or retry the case.¹² Human rights protection bodies request that a final decision be taken as soon as possible in proceedings instituted against a detained person,¹³ and that records, including those linking the person subjected to arbitrary deprivation of liberty to the commission of the crime, be eliminated.¹⁴ A person subject to prolonged pretrial detention must be released until the criminal court proceedings against that person have been decided.¹⁵ In addition, in the context of immigration policies, States are required to release any arbitrarily detained persons even if they intend to deport such persons, whenever said deportation cannot be carried out promptly,¹⁶ such as when the deportation may constitute a violation of the principle of *non-refoulement*.¹⁷ Furthermore, in cases where the close relatives of a person who was arbitrarily detained have been suspended from their duties in a State-run organization, the Working Group has requested, as a measure of restitution, the reinstatement of their employment.¹⁸

B. Rehabilitation

11. Rehabilitation should include medical, psychological and other care, as well as the legal and social services that the victim of arbitrary deprivation of liberty may require. Such rehabilitation measures, including other health services, should be available, accessible and culturally acceptable;¹⁹ for example, medical and psychological care should be free of charge and be provided immediately, adequately and effectively, and in a place close to the victim's residence.²⁰ To that end, prior, clear and sufficient information about treatment must be provided, and the consent of the victim to receive such treatment and services must be given at all times.²¹ Medication should be provided free of charge, and treatments must take into account the circumstances and needs of the victim. Treatment on an individual, family or collective basis should also be provided.²²

C. Satisfaction

12. Satisfaction measures, aimed at repairing non-quantifiable, intangible damage suffered by the victim, may include commemorations and homages or tributes to victims; public apologies; the verifications of facts; public and complete disclosure of the truth; assistance in the recovery, identification, return and reburial of bodies in accordance with the expressed or presumed wish of the victims;²³ and judicial and administrative penalties imposed on those responsible. Other means of satisfaction include the publication in national newspapers and on websites, national radio and television broadcasts of the summaries of

¹² CCPR/C/158, para. 7.

¹³ See Inter-American Court of Human Rights, *Wong Ho Wing v. Peru* (2015); European Court of Human Rights, *N. v. Romania* (Application no. 59152/08); African Commission on Human and Peoples' Rights, cases No. 275/03, *Article 19 v. Eritrea* and No. 204/97, *Mouvement burkinabé des droits de l'homme et des peuples v. Burkina Faso*; and Human Rights Committee, *Achille Benoit Zogo Andela v. Cameroon* (CCPR/C/121/D/2764/2016).

¹⁴ Inter-American Court of Human Rights, *Norín and others v. Chile* (2014) and *Ruano Torres and others v. El Salvador* (2015). See also opinions No. 69/2018, para. 29 and No. 40/2018, para. 53.

¹⁵ Human Rights Committee, *Floresmilo Bolaños v. Ecuador* (CCPR/C/36/D/238/1987) and *Achille Benoit Zogo Andela v. Cameroon* (CCPR/C/121/D/2764/2016).

¹⁶ A/HRC/39/45, annex, para. 27.

¹⁷ A/HRC/13/30, para. 83. See also opinions Nos. 20/2018, 21/2018, 50/2018 and 74/2018.

¹⁸ See opinion No. 83/2017, para. 94.

¹⁹ Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 12. See also Committee against Torture, general comment No. 3 (2012) on the implementation of article 14 by States parties, para. 32.

²⁰ Inter-American Court of Human Rights, *Yarce and otras v. Colombia* (2016) and *Ruano Torres and others v. El Salvador* (2015). See also opinion No. 46/2018, para. 76

²¹ Inter-American Court on Human Rights, *Yarce y otras v. Colombia* (2016) and *Ruano Torres and others v. El Salvador* (2015).

²² *Ibid.*

²³ See opinion No. 56/2019.

court resolutions in which the innocence of the victim or the arbitrariness of the deprivation of liberty is acknowledged.²⁴ The victim must be involved in the design of these measures.²⁵

13. Satisfaction may also involve the granting of study scholarships for either direct or indirect victims of arbitrary deprivation of liberty;²⁶ public acts acknowledging responsibility;²⁷ the placement of commemorative plaques;²⁸ and the obligation to carry out comprehensive, impartial, effective and prompt criminal and/or administrative investigations in order to prosecute and punish those responsible for the arbitrary deprivation of liberty.²⁹

D. Compensation

14. Compensation must be granted in an appropriate and proportional manner, taking into account the gravity of the violation and the circumstances of the case. This measure is aimed at addressing the physical and psychological damage experienced by the victim of arbitrary deprivation of liberty,³⁰ by ensuring:

(a) Compensation for the loss of income of the victim or of his or her family members, including pensions, social security benefits and other amounts of money as a result of the arbitrary deprivation of liberty;

(b) Return of any asset seized by the State or that has been appropriated in any other way on the grounds of a conviction, sentence or court resolution;

(c) Indemnification for lack of health care;

(d) Accessible and reasonable rehabilitation in the place where the person is held;

(e) Reimbursement of fines and legal expenses imposed on the victim as a result of the execution of the conviction or sentence that kept the victim arbitrarily detained;

(f) Payment of the victim's legal expenses and other expenses.³¹

15. Compensation should also be aimed at addressing any non-material harm or moral damage caused, which includes damage caused to the victim, such as loss of reputation, stigma, or broken family or community relations.³²

²⁴ Since 2018, the Working Group on Arbitrary Detention has included in its opinions the request that States disseminate widely the opinions adopted.

²⁵ See Inter-American Court of Human Rights, *Norín and others v. Chile* (2014), *García Asto and Ramírez v. Peru* (2005), *Chaparro Álvarez and Lapo Íñiguez v. Ecuador* (2007), *Wong Ho Wing v. Peru* (2015), *López Álvarez v. Honduras* (2006) and *López Álvarez v. Honduras* (2006). See also Human Rights Committee, *Albert Womah Mukong v. Cameroon* (CCPR/C/51/D/458/1991).

²⁶ Inter-American Court of Human Rights, *Norín and others v. Chile* (2014), *García Asto and Ramírez v. Peru* (2005) and *López Álvarez v. Honduras* (2006).

²⁷ Inter-American Court of Human Rights, *Yarce and otras v. Colombia* (2016).

²⁸ Inter-American Court of Human Rights, *Ruano Torres and others v. El Salvador* (2015).

²⁹ Since 2018, the Working Group on Arbitrary Detention has included a standard paragraph in its opinions in which it urges the Government concerned to ensure a full and independent investigation into the circumstances surrounding the arbitrary deprivation of liberty of the victim, and to take appropriate measures against those responsible for the violation of the victim's rights. See Inter-American Court of Human Rights, *Chaparro Álvarez and Lapo Íñiguez v. Ecuador* (2007) and *López Álvarez v. Honduras* (2006). See also Human Rights Committee, *Albert Womah Mukong v. Cameroon* (CCPR/C/51/D/458/1991).

³⁰ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 20.

³¹ A/HRC/30/37, guideline 16, paras. 88–91. See also opinion No. 78/2018, para. 36.

³² See Inter-American Court of Human Rights, *Norín and others v. Chile* (2014), *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *Cabrera García and Montiel Flores v. México*, *Maritza Urrutia v. Guatemala* (2003), *Yarce and otras v. Colombia* (2016), *López Álvarez v. Honduras* (2006) and *Ruano Torres and others v. El Salvador* (2015). See also European Court of Human Rights, *N. v. Romania* (Application no. 59152/08), *Baranowski v. Poland* (Application no. 28358/95), *Čalovskis v. Latvia* (Application no. 22205/13), *L.M. v. Slovenia* (Application no. 32863/05), *Garayev v. Azerbaijan* (Application no. 53688/08), *Ryabikin v. Russia* (Application no. 8320/04), *Labita v. Italy* (Application

E. Guarantees of non-repetition

16. Guarantees of non-repetition are aimed at preventing the recurrence of a situation that gave rise to violations of human rights. In general, the States have an obligation to take measures to prevent similar violations from being committed in the future while guaranteeing prompt, adequate and effective remedies.³³ In the context of arbitrary detention, this may include:

(a) Repealing or amending laws or regulations that are found to be in breach of international obligations, or in the absence of relevant legal provisions, adopting laws or regulations prohibiting the arbitrary deprivation of liberty;³⁴

(b) Introducing legal and administrative amendments to prevent the arbitrary deprivation of liberty and to facilitate the use of effective remedies against it;³⁵

(c) Educating all sectors of society to respect international human rights and humanitarian law;

(d) Ensuring ongoing training of public law enforcement officers and, inter alia, members of the armed forces and security forces, medical personnel, public defenders, guards and custody officers;³⁶

(e) Promoting mechanisms aimed at preventing, monitoring and solving social conflicts;

(f) Clarifying the obligation of the judiciary to implement international human rights obligations in its adjudicative work;³⁷

(g) Introducing measures to improve the registry of detained persons;³⁸

(h) Improving physical training and the sanitary and other conditions in imprisonment and detention centres;³⁹

(i) Requiring amendments to the selection of legal defenders to guarantee their suitability and technical capability.⁴⁰

17. In its jurisprudence, the Working Group has adopted a similar approach, and often requests in the concluding paragraphs of its opinions that the State in question amend or

no. 26772/95), *Witold Litwa v. Poland* (Application no. 26629/95), *Varbanov v. Bulgaria* (Application no. 31365/96), *Hilda Hafsteinsdóttir v. Iceland* (Application no. 40905/98) and *James, Wells and Lee v. United Kingdom* (Applications nos. 25119/09, 57715/09 and 57877/09).

³³ See Human Rights Committee, *Albert Womah Mukong v. Cameroon* (CCPR/C/51/D/458/1991), *Alex Soteli Chambala v. Zambia* (CCPR/C/78/D/856/1999), *Achille Benoit Zogo Andela v. Cameroon* (CCPR/C/121/D/2764/2016), *Hugo van Alphen v. Netherlands* (CCPR/C/39/D/305/1988), *Teofila Casafranca de Gomez v. Peru* (CCPR/C/78/D/981/2001), *Arshidin Israi v. Kazakhstan* (CCPR/C/103/D/2024/2011), *F.K.A.G. et al. V. Australia* (CCPR/C/108/D/2094/2011), *Fongum Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002) and *Yan Melnikov v. Belarus* (CCPR/C/120/D/2147/2012).

³⁴ CCPR/C/158, para. 13. See Inter-American Court of Human Rights, *Norín and others v. Chile* (2014), *Chaparro Álvarez and Lapo Íñiguez v. Ecuador* (2007) and *Cabrera García and Montiel Flores v. México* (2010); and Human Rights Committee, *F.K.A.G. et al. v. Australia* (CCPR/C/108/D/2094/2011).

³⁵ See European Court of Human Rights, *N. v. Romania* (Application no. 59152/08) and *Garayev v. Azerbaijan* (Application no. 53688/08). See also African Court on Human and Peoples' Rights (App. No. 003/2012), *Peter Joseph Chacha v. United Republic of Tanzania*.

³⁶ See Inter-American Court of Human Rights, *Chaparro Álvarez and Lapo Íñiguez v. Ecuador* (2007), *Cabrera García and Montiel Flores v. México* (2010), *Yarce and otras v. Colombia* (2016), *López Álvarez v. Honduras* (2006) and *Ruano Torres and others v. El Salvador* (2015). See also African Commission on Human and Peoples' Rights (communication No. 339/2007), *Patrick Okiring and Agupio Samson (represented by Human Rights Network and ISIS-WICCE) v. Republic of Uganda*.

³⁷ Inter-American Court of Human Rights, *Norín and others v. Chile* (2014).

³⁸ *Ibid.*, *Cabrera García and Montiel Flores v. México* (2010).

³⁹ *Ibid.*, *López Álvarez v. Honduras* (2006).

⁴⁰ Inter-American Court of Human Rights, *Ruano Torres and others v. El Salvador* (2015).

repeal certain laws and provisions that are inconsistent with its obligations under the Covenant and/or the Universal Declaration of Human Rights.⁴¹

[Adopted on 22 November 2019]

⁴¹ See for example opinions No. 48/2016, para. 62, No. 14/2017, para. 64, No. 82/2017, para. 50 and No. 73/2018, para. 77. This includes requests for amendments to constitutional provisions found to be at variance with international law (see for example opinion No. 1/2018, para. 65).