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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20–24 November 2017

Opinion No. 88/2017 concerning Thirumurugan Gandhi (India)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/36/38), on 8 September 2017, the Working Group transmitted to the Government of India a communication concerning Thirumurugan Gandhi. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

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

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Thirumurugan Gandhi, aged 42 at the time of his arrest, is a citizen of India resident in Chennai, Tamil Nadu. Mr. Gandhi is a supporter of the Tamil peoples' cause and founder of the "May 17 Movement", established in remembrance of Tamils who lost their lives on that day in 2009. Furthermore, Mr. Gandhi advocates for the self-determination of Tamils, Palestinians, Kurds, Kashmiris, Sahrawis and Sikhs. He regularly lobbies the diplomatic community on behalf of these groups, as well as on behalf of indigenous peoples and communities that allege to have been subjected to war crimes.

5. Moreover, Mr. Gandhi reportedly advocates for the right to life of migrant workers, the right of farmers to water and the rights of workers, refugees, persons with disabilities, persons belonging to linguistic and religious minorities and transgender persons. Mr. Gandhi has been active in protesting against the World Trade Organization's rules concerning public distribution systems, privatization of electricity, projects that could be potentially detrimental to the environment, such as hydraulic fracturing, and building nuclear reactors in densely populated areas. Mr. Gandhi is a supporter of protests against the use of nuclear power plants and has led such protests in Kudankulam since 2012.

6. The source states that the May 17 Movement has been holding annual silent peaceful gatherings since 2010. A candlelight vigil reportedly took place on 21 May 2017 in Kamaraj Salai, near the Marina Beach in Chennai, and comprised more than 500 participants. The source notes that, on earlier occasions, the police had denied permission for such gatherings, citing orders under section 41 of the Madras City Police Act. However, since this gathering was intended to be a silent, non-violent candlelight vigil, no police permission was formally received.

7. The source reports that the Tamil Nadu police arrested two groups of individuals participating in the vigil. These arrests were carried out according to sections 147, 148, 341 and 506 (2) of the Indian Penal Code; section 7 (1) (a) of the Criminal Law Amendment Act and section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act. Mr. Gandhi was included in a group comprising 35 persons. The source indicates that no arrest warrant was shown at the time, contrary to the provisions of section 41 B (b) (i) and (ii) and (c) of the 1973 Code of Criminal Procedure.

8. The source notes that the entire arrest was captured live on television, with the press following the arrested individuals and interviewing them. The video evidence therefore clearly demonstrates the fact that those participating at the vigil had no weapons and carried only candles and banners.

9. The source further specifies that the arrested persons were transported from the Community Hall to the Government Royapettah Hospital and, by midnight on 21 May 2017, to the police station. At 1.30 a.m. on 22 May 2017, the arrested individuals were moved from the police station to the Metropolitan Magistrate's Court for their remand hearing. Some 17 persons were reportedly detained on the night of 21 to 22 May. Eighteen other individuals, notably 1 woman and 17 students, were released. The source maintains that the detained individuals were beaten and suffered injuries in police custody.

10. According to the source, all those detained, except four individuals, were subsequently released on bail. The source states that the duration of the preventive detention without bail for Mr. Gandhi was set at one year. He was held in custody in the Puzhal Central Prison in Chennai.

11. On 29 May 2017, Mr. Gandhi and three other individuals were charged by the City Police Commissioner under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No. 14 of 1982), commonly known as the Tamil Nadu Goondas Act.

12. According to the source, Mr. Gandhi later appeared before the Advisory Committee, which upheld his detention. Mr. Gandhi then challenged this decision in the Madras High Court. Case hearings had been postponed at the time the source made the submission.

13. The source points to a number of procedural irregularities. The source maintains that the facts recorded by the police in their arrest report do not correspond to the above-mentioned sequence of events. Furthermore, one of the witnesses, who supposedly signed the arrest report, denies ever having done so. In addition, the police allegedly confiscated some property from Mr. Gandhi on 21 May 2017. Court documents indicate that it was received by the Metropolitan Magistrate's Court only 10 days after the arrest, on 31 May 2017.

14. The source further argues that Mr. Gandhi should not have been remanded in custody in the light of the judgment of the Supreme Court of India in Criminal Appeal No. 1277 of 2014. In that judgment, the Supreme Court seeks to ensure that police officers do not arrest persons unnecessarily and that magistrates do not authorize detention casually and mechanically. As such, the Supreme Court stated that the police should comply with a specified checklist and present it to the magistrate. The source notes that, in the present case, the remand order does not confirm that the police report prescribed by the Supreme Court was used. The source therefore maintains that the police arrested Mr. Gandhi illegally and that the magistrate mechanically ordered remand measures.

15. Moreover, the source indicates that five pending cases have been cited as the grounds for the preventive detention order of the Chennai Police Commissioner, dated 29 May 2017. Those offences are merely first information reports registered by the police, which have not been investigated for 805, 624, 387, 189 and 255 days, respectively. The Code of Criminal Procedure states that, under section 167, investigations are to be concluded in a period ranging from 60 to 90 days. The source therefore argues that the detention order, which relies on five cases that were filed between 2015 and 2016, is irregular.

16. The source further maintains that any person who fights for the rights of the people is a human rights defender and cannot be portrayed as a member of a gang under the Tamil Nadu Goondas Act or as a person habitually committing offences. The source argues that, if this practice continues to go unchallenged, human rights defenders will be placed at a great risk of being detained arbitrarily under the above-mentioned Act.

17. The source further states that a complaint concerning the arrest and subsequent detention of Mr. Gandhi was presented to the National Human Rights Commission. The Commission, however, did not consider itself able to intervene and transmitted the complaint to the State Human Rights Commission of Tamil Nadu for appropriate action.

Response from the Government

18. On 8 September 2017, the Working Group transmitted the allegations from the source to the Government through its regular communication procedure. The Working Group requested the Government to provide detailed information by 9 November 2017 about the current situation of Mr. Gandhi and any comments that it might have on the source's allegations.

19. The Working Group regrets that it did not receive a response from the Government to this communication, and the Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Recent developments

20. It has come to the Working Group's attention that Mr. Gandhi and his associates were released on 20 September 2017, one day after the Madras High Court, on 19 September 2017, reportedly quashed the Chennai Police Commissioner's preventive detention order of 29 May 2017 under the Tamil Nadu Goondas Act.[1]

[1] Mohamed Imranullah S., "HC quashes order detaining Thirumurugan Gandhi under Goondas Act", *The Hindu*, 19 September 2017. Available at www.thehindu.com/news/national/tamil-nadu/hc-quashes-order-detaining-thirumurugan-gandhi-under-goondas-act/article19714081.ece.

Discussion

21. At the outset, the Working Group welcomes the release of Mr. Gandhi on 20 September 2017 after the ruling by the Madras High Court on 19 September 2017. Following his release, the Working Group has the option of filing the case or rendering an opinion as to the arbitrariness of the detention, in conformity with paragraph 17 (a) of its methods of work. In this particular case, the Working Group has decided to render the present opinion, and given the absence of a response from the Government, in conformity with paragraph 15 of its methods of work. In making this decision, the Working Group gives particular weight to the fact that, although Mr. Gandhi and his associates have all been released, (a) the circumstances in which they were detained were serious and warrant further attention[2] as they were initially detained for taking part in an assembly and then held in preventive detention under the Tamil Nadu Goondas Act; (b) Mr. Gandhi was deprived of his liberty for four months; and (c) the Government has failed to inform the Working Group about the guarantees of non-repetition let alone the Government's version of events or Mr. Gandhi's release ordered by the Madras High Court.

22. The Working Group notes that Mr. Gandhi's arrest and detention largely concerned the laws and officials under the jurisdiction of the federal state of Tamil Nadu in India. The Working Group nevertheless reminds the central Government of India that the provisions of the Covenant extend to all parts of federal states without any limitations or exceptions under article 50 of the Covenant. In addition, the provisions of the Universal Declaration of Human Rights extend no less universally to all subsidiary political units of decentralized States.

23. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

24. The Working Group considers that it is entitled to assess the proceedings of a court and the law itself to determine whether they meet international standards.[3] However, the Working Group reiterates that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of national law by the judiciary.[4]

25. The Working Group also reiterates that it applies a heightened standard of review in cases in which the freedom of expression and opinion is restricted or where human rights defenders are involved.[5] Mr. Gandhi's role as a social activist and human rights defender for the self-determination of various peoples, for migrant workers and refugees, for persons with disabilities, for linguistic and religious minorities and for transgender persons requires the Working Group to undertake this kind of strict scrutiny.[6]

[2] See opinion No. 50/2017, para. 53 (c).

[3] See opinion No. 33/2015, para. 80.

[4] See opinions No. 63/2017, para. 45; No. 59/2016, para. 60; No. 12/2007, para. 18; No. 40/2005, para. 22; and No. 10/2002, para. 18.

[5] See opinions No. 57/2017, para. 46; No. 41/2017, para. 95; No. 62/2012, para. 39; No. 54/2012, para. 29; and No. 64/2011, para. 20. Domestic authorities and international supervisory bodies should apply the heightened standard of review of government action, especially when there are claims of a pattern of harassment (see opinion No. 39/2012, para. 45). See also General Assembly resolution 53/144 (Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms), article 9 (3).

[6] Human rights defenders, in particular, have the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through those and other appropriate means, to draw public attention to such matters, see the Declaration on Human Rights Defenders, article 6 (c). Human rights defenders have the right to investigate, gather information regarding human rights violations and report on them, see opinion No. 8/2009, para. 18.

Category I

26. The Working Group will examine the relevant categories applicable to its consideration of this case, including category I, when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.

27. While the Government has failed to offer any evidence to rebut the source's claim, the source has made a prima facie case that the police did not observe the relevant rules of the international norms on detention at the time of the arrest of Mr. Gandhi, including the right to be presented with an arrest warrant, except in flagrante delicto, which is inherent in the right to liberty and security of a person under article 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.

28. The Working Group also notes that a number of procedural irregularities took place while making judicial records of the event, which adds doubt to the whole process of criminal administration concerning the present case.

29. The Working Group also considers that the five pending cases cited as the basis for the preventive detention order of 29 May 2017 under the Tamil Nadu Goondas Act are obsolete and not convincing enough to warrant the validity of the order. Furthermore, there has not been an individualized application of the law to the case. This belief is further strengthened by the fact that the Madras High Court, on 19 September 2017, quashed the same order.

30. The Working Group underlines that the right to liberty and security of the person prohibits arbitrary arrest and detention as guaranteed in articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the Covenant. As stated in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, deprivation of liberty is regarded as unlawful when it is not on such grounds and in accordance with procedures established by law.[7]

31. The Working Group therefore considers that the arrest and detention of Mr. Gandhi lack any legal basis in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the Covenant. The Working Group thus concludes that his detention is arbitrary, falling under category I.

Category II

32. The Working Group recalls that holding and expressing opinions, including those that are not in accordance with official government policy, are protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. In the same manner, the Government must respect, protect and fulfil the right to assemble peacefully and to associate with others even if the peaceful assembly and association stand for causes not to its liking in accordance with article 20 of the Universal Declaration of Human Rights and articles 21 and 22 of the Covenant.

33. Mr. Gandhi, as a social activist and human rights defender, was exercising these fundamental freedoms under international human rights law when he advocated for the self-determination[8] of Tamils, Palestinians, Kurds, Kashmiris, Sahrawis and Sikhs. He later

[7] See A/HRC/30/37, para. 12.

[8] The Working Group notes that India made a declaration upon its double accession in 1979 to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights that the words "the right of self-determination" appearing in common article 1 "apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation — which is the essence of national integrity". Some States raised objections to the declaration of India, which they regarded as a reservation to the two Covenants. The Working Group is also of the view that the declaration of India is not only contrary to the clear language of the provision but also incompatible with the object and purpose of the Covenants in line with the view expressed by the Human Rights Committee. See the Human Rights Committee, general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to the declarations under article 41 of the Covenant, para. 9.

founded the May 17 Movement and organized annual candlelight vigils, when he was initially arrested without due process on 21 May 2017 and held under a preventive detention order that was subsequently quashed by the Madras High Court on 19 September 2017.

34. According to the source, the Chennai Police Commissioner issued the preventive detention order under the Tamil Nadu Goondas Act based on unproven allegations that the police had failed to investigate for years.

35. The Working Group is convinced that Mr. Gandhi's preventive detention is clearly connected to the exercise of his rights and freedoms as a social activist and human rights defender. The only legitimate limitations to the exercise of such rights and freedoms must be for the purposes of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. However, the Government has offered no such justification in this case. Nor did the Government deny that the candlelight vigil on 21 May 2017 was peaceful. The Working Group therefore considers that Mr. Gandhi's preventive detention was neither legitimate, necessary nor proportionate under its four-prong test.[9]

36. Furthermore, the Working Group notes that the Tamil Nadu police detained over 1,250 persons in 2015 under preventive detention laws, including the Tamil Nadu Goondas Act.[10] The Working Group expresses its concern at the chilling effect that the widespread use of preventive detention against human rights defenders is bound to have on their exercise of the right to freedom of expression, assembly and association.

37. For these reasons, the Working Group is of the opinion that Mr. Gandhi's deprivation of liberty was in violation of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant, falling within category II.

Category III

38. The Working Group has also considered whether the violations of the due process and fair trial rights suffered by Mr. Gandhi were of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III.

39. Article 9 (3) of the Covenant provides for the right to trial within a reasonable time or to release and stipulates the general rule that pretrial detention should be the exception. In accordance with articles 10 and 11 of the Universal Declaration of Human Rights and article 14 of the Covenant, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge against him or her, at which he or she has had all the guarantees necessary for the preparation of his or her defence and during which the individual must be presumed innocent until proven guilty.

40. The Working Group notes that the Tamil Nadu Goondas Act gave the police inspector and other State officials the power to detain any person indefinitely without trial in the name of crime prevention. Although Mr. Gandhi and his associates won a reprieve after the Madras High Court's intervention, they had already been deprived of their liberty for four months due to the preventive detention order and had endured inhuman treatment, such as beatings, during police custody in violation of article 5 of the Universal Declaration of Human Rights and articles 7 and 10 of the Covenant, as well as the Convention against Torture, to which India is a signatory. India is thus obliged to refrain from acts that would defeat the object and purpose of the Convention against Torture in accordance with article 18 of the Vienna Convention on the Law of Treaties. The Working Group is of the view that the prolonged preventive detention and ill-treatment of Mr. Gandhi impermissibly prejudiced his right to the presumption of innocence and negated his right to a fair trial.

41. In the light of the foregoing, the Working Group concludes that the non-observance of the international norms relating to the right to a fair trial established in the Universal

[9] See opinions No. 56/2017, para. 51; No. 41/2017, para. 86; and No. 54/2015, para. 89.

[10] Amnesty International, "Urgent action: activists held under administrative detention", 2 June 2017. Available at www.amnesty.org/download/Documents/ASA2064092017ENGLISH.pdf.

Declaration of Human Rights and the Covenant is of such gravity as to give the deprivation of liberty of Mr. Gandhi an arbitrary character, falling under category III.

Category V

42. The Working Group will now examine whether Mr. Gandhi's deprivation of liberty constitutes illegal discrimination under international law and whether it therefore falls under category V.

43. The Working Group has already established that Mr. Gandhi's arrest and preventive detention resulted from his exercise of the right to freedom of expression, assembly and association. When it is established that deprivation of liberty resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on political or other views.

44. The Working Group notes that the police initially denied Mr. Gandhi's May 17 Movement permission to gather and arrested the peaceful participants of the candlelight vigil. The incidents demonstrate the Government's indiscriminate prejudice and bias against the whole group of demonstrators who took to the street on 17 May 2017 because of their political or other views and their desire to exercise their civil and political rights, regardless of their individual responsibility for causing violence or committing other illegal acts. Mr. Gandhi's role as the founder and leader of the May 17 Movement also deserves consideration.

45. The Working Group cannot help but notice that Mr. Gandhi's political views are clearly at the centre of the present case and that the authorities have displayed an attitude towards Mr. Gandhi that can only be characterized as discriminatory. The police denied bail and continued to place him under prolonged preventive detention. The Working Group also considers that Mr. Gandhi's detention constitutes a violation of his right to equality before the law as he has been discriminated against on the basis of his status as a human rights defender.[11] All this does not point to the equal protection of the law.

46. For these reasons, the Working Group considers that Mr. Gandhi's deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant on the grounds of discrimination based on political or other opinion, as well as on his status as a human rights defender, aimed at and resulting in ignoring the equality of human beings. His deprivation of liberty therefore falls under category V.

Preventive detention under the Tamil Nadu Goondas Act

47. The Working Group will elaborate further on the propriety of preventive detention under the Tamil Nadu Goondas Act in view of the principle of legality and its effect on the right to a fair trial. One of the fundamental guarantees of due process is the principle of legality, including the principle of *nullum crimen sine lege certa*, which is particularly relevant in the case of Mr. Gandhi. The principle of legality, in general, ensures that no defendant may be punished arbitrarily or retroactively by the State.[12] This means that a person cannot be convicted of a crime that had never been publicly announced or made publicly accessible; nor can they be charged under a law that is excessively unclear or convicted under a penal law that is passed retroactively to criminalize a previous act or omission.[13]

48. The Tamil Nadu Goondas Act (Tamil Nadu Act No. 14 of 1982 as amended by Acts Nos. 52 of 1986, 1 of 1988, 32 of 2004, 16 of 2006, 16 of 2008, 19 of 2014 and 20 of 2014) grants the State authorities, including police commissioners, extensive power to order the detention of goondas and other criminals to "prevent [them] from acting in any manner prejudicial to the maintenance of public order" (section 3).

49. Section 2 (f) of the Tamil Nadu Goondas Act defines a "goonda" as

[11] See opinion No. 45/2016, para. 28.

[12] See opinions No. 57/2017, para. 64; No. 56/2017, para. 70; No. 51/2017, para. 55; and No. 20/2017, para. 49.

[13] Ibid.

> a person, who either by himself or as a member of or leader of a gang, commits, or attempts to commit or abets the commission of offences, punishable under section 153 [wantonly giving provocation with intent to cause riot — whether rioting does or does not take place] or section 153A [on promoting enmity between different groups on the grounds of religion, race, place of birth, residence, language, etc., and engaging in acts prejudicial to the maintenance of harmony] under chapter VIII or under chapter XVI [on offences affecting the human body] or chapter XVII or Chapter XXII [on criminal intimidation, insult and annoyance] of the Indian Penal Code, 1860 (Central Act XLV of 1860) or punishable under section 3 [punishment for committing mischief in respect of property] or section 4 [mischief causing damage to property by fire or explosive substance] or section 5 [punishment for throwing stones, bricks, etc., at persons travelling in motor vehicles] of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 (Tamil Nadu Act 59 of 1992).

50. The Working Group notes that laws that are vaguely and broadly worded may have a chilling effect on the exercise of the right to freedom of expression, as they have the potential for abuse. They may also violate the principle of legality under article 11 (2) of the Universal Declaration of Human Rights and article 15 of the Covenant, as it makes it unlikely or impossible for the accused to have a fair trial. Furthermore, the Working Group notes that the Human Rights Committee found, in its case law, that detention pursuant to proceedings that were incompatible with article 15 were necessarily arbitrary within the meaning of article 9 (1) of the Covenant.[14]

51. The concerns expressed with regard to the vague definition of terrorist conduct (see, e.g., CCPR/CO/81/BEL, para. 24) and other criminal offences, such as organized crime (see, e.g., CCPR/C/79/Add.115, para. 12), are equally pertinent for the terms used in the Tamil Nadu Goondas Act. The Working Group underlines that Mr. Gandhi's ordeal clearly demonstrates the potential for abuse by authorities acting ultra vires.

Country visit to India

52. The Working Group would welcome the opportunity to conduct a country visit to India, in accordance with the request it made on 6 April 2017, so that it can engage with the Government constructively and offer assistance in addressing its serious concerns relating to the arbitrary deprivation of liberty. The Working Group notes that India has issued a standing invitation to all special procedure mandate holders since 14 September 2011 and looks forward to an invitation to visit the country.

Disposition

53. Although Mr. Gandhi has been released, the Working Group, in accordance with paragraph 17 (a) of its methods of work, reserves the right to render an opinion as to whether or not the deprivation of liberty was arbitrary, notwithstanding the release. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Thirumurugan Gandhi, being in contravention of articles 2, 3, 5, 7, 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and of articles 2, 7, 9, 10, 14, 15, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

54. The Working Group requests the Government of India to take the steps necessary to remedy the situation of Mr. Gandhi without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

55. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Gandhi an enforceable right to compensation and other reparations, in accordance with international law.

56. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on the situation of human rights defenders, the Special

[14] *Fardon v. Australia* (CCPR/C/98/D/1629/2007), para. 7.4 (2).

Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

57. The Working Group encourages the Government to withdraw its declaration on common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Follow-up procedure

58. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether compensation or other reparations have been made to Mr. Gandhi;

(b) Whether an investigation has been conducted into the violation of Mr. Gandhi's rights and, if so, the outcome of the investigation;

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of India with its international obligations in line with the present opinion;

(d) Whether any other action has been taken to implement the present opinion.

59. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

60. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

61. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[15]

[*Adopted on 23 November 2017*]

[15] See Human Rights Council resolution 33/30, paras. 3 and 7.