



**OFFICE OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS**



Arbitrary detention

Commission on Human Rights Resolution: 2004/39

The Commission on Human Rights,

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

Recalling articles 9, 10, 11 and 14 to 22 of the International Covenant on Civil and Political Rights,

Bearing in mind that, in accordance with its resolution 1991/42 of 5 March 1991, the task of the Working Group on Arbitrary Detention is to investigate cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned,

Recalling that the World Conference on Human Rights reaffirmed the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues,

Recalling the adoption by the Working Group of its deliberation No. 5 (E/CN.4/2000/4, annex II), which relates to the situation of immigrants and asylum-seekers, and guarantees concerning persons held in custody, with a view to ensuring better prevention of arbitrary detention,

Reaffirming its resolution 2003/31 of 23 April 2003,

1. *Takes note of:*

(a) The report of the Working Group (E/CN.4/2004/3 and Add.1, Add.2 and Corr.1 and Add.3), including the recommendations contained therein;

(b) The work of the Working Group and underlines the positive initiatives it has taken to strengthen cooperation and dialogue with all those concerned by the cases submitted to it, and in particular with States who provide information which should be given due consideration;

(c) The importance that the Working Group attaches to coordination with other mechanisms of the Commission, with other competent United Nations bodies and with treaty bodies, as well as to the strengthening of the role of the Office of the United Nations High Commissioner for Human Rights in such coordination and encourages the Working Group to take all necessary measures to avoid duplication with those mechanisms, in particular regarding the treatment of the communications it receives and field visits;

2. *Requests* the Governments concerned to take account of the Working Group's 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;

3. *Encourages* the Governments concerned:

(a) To give due consideration to the recommendations of the Working Group, which has identified several groups of individuals who are particularly vulnerable to arbitrary detention;

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

(c) To respect and promote the right of anyone who is deprived of his/her liberty by arrest or detention to be entitled to bring proceedings before a court, in order that the court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is not lawful, in accordance with their international obligations;

(d) To ensure access to adequate remedies concerning extradition procedures, in accordance with their international obligations;

(e) Not to extend states of emergency beyond what is strictly required by the situation, in accordance with the provisions of article 4 of the International Covenant on Civil and Political Rights, or to limit their effect;

(f) To pay special attention, during states of emergency, to the exercise of those rights that ensure protection against arbitrary detention;

4. *Encourages* all Governments to cooperate with the Working Group, including with regard to country visits, so that it may carry out its mandate even more effectively;

5. *Requests* the Governments 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;

6. *Expresses its profound thanks* to the Governments that have extended their cooperation to the Working Group and responded to its requests for information, and invites all Governments concerned to demonstrate the same spirit of cooperation;

7. *Takes note with satisfaction* of the fact that the Working Group has been informed of the release of some of the individuals whose situation has been brought to its attention, while deploring the many cases which have not yet been resolved;

8. *Requests* the Secretary-General:

(a) To extend his assistance to Governments expressing the wish to receive it, and to the special rapporteurs and working groups, with a view to ensuring the promotion and observance of the guarantees relating to states of emergency that are laid down in the relevant international instruments;

(b) To ensure that the Working Group receives all necessary assistance, particularly with regard to the staffing and resources needed to continue to discharge its mandate, especially in respect of field missions;

9. *Requests* the Working Group to submit to the Commission, at its sixty-first session, a report on its activities and on the implementation of the present resolution and to include any suggestions and recommendations which would enable it to carry out its task in the best possible way, and to continue its consultations to that end in the framework of its terms of reference;

10. *Decides* to continue its consideration of this question at its sixty-first session under the relevant agenda item.

55th meeting

19 April 2004

[Adopted without a vote. See chap. XI.- E/2004/23 – E/CN.4/2004/127]