



International League Against Arbitrary Detention

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# **STRATEGIC LITIGATION GUIDE**

## **Complaints to the United Nations Working Group on Arbitrary Detention**

July 2024





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## List of abbreviations

<b>ACHR</b>	American Convention on Human Rights
<b>ACHPR</b>	African Court on Human and Peoples' Rights
<b>ECHR</b>	European Convention on Human Rights
<b>HRC</b>	United Nations Human Rights Council
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ILAAD</b>	International League Against Arbitrary Detention
<b>NGOs</b>	Non-Governmental Organizations
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>UN</b>	United Nations
<b>UDHR</b>	Universal Declaration of Human Rights
<b>WGAD</b>	Working Group on Arbitrary Detention



## Note to readers

**This Strategic Litigation Guide** is published by the International League Against Arbitrary Detention (ILAAD) to help legal practitioners, NGOs and activists partnering with ILAAD sending complaints to the United Nations Working Group on Arbitrary Detention. It is a crucial tool for elaborating defense strategies of arbitrary detention victims and advocating for legislative reforms to prevent such detentions.

**The Guide is for information purposes only**, and should be read in conjunction with the official United Nations publications issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR), and especially the Working Group Revised fact sheet n°26/REV. 1 and the Methods of work of the Working Group on Arbitrary Detention A/HRC/36/38, to which this report refers systematically.

**The International League Against Arbitrary Detention** (ILAAD) is an independent NGO under French Law based in Paris, adopting a national and global scope of action against arbitrary detention. ILAAD's vision is of a world where no one is arbitrarily detained and where everyone can freely enjoy their fundamental rights, in accordance with international human rights instruments. Guided by the principles of international solidarity and the universality of human rights, ILAAD's mission is to carry out systematic research into cases of individual or mass arbitrary detention and to provide free legal support to the victims of arbitrary detention and to NGOs and lawyers defending them.

**To contact ILAAD**, please send an email to [contact@ilaad.org](mailto:contact@ilaad.org).

**Find more information** about ILAAD on our website : [www.ilaad.org](http://www.ilaad.org).

# 1. Introduction

**Arbitrary detention** is a pervasive human rights violation affecting political activists, journalists, human rights defenders, protesters, migrants, other vulnerable categories of individuals as well as indicted individuals and criminal offenders. Thousands of persons around the world are victims of arbitrary detention practices each year.

**These deprivations of liberty can take a variety of forms** and occur in diverse circumstances. Among others, for example, detentions can be used as reprisals when individuals have exercised one of their fundamental rights guaranteed under international human rights instruments (e.g., their right to freedom of opinion and expression, to freedom of association or to leave and enter their own country). Arbitrary detention can also occur when individuals are arrested and detained without having been able to benefit from the fundamental guarantees of the right to a fair trial. It is notably the case when individuals have been imprisoned without an arrest warrant or without being charged; when they have no access to a lawyer, especially in *incommunicado* detention cases; or even when they have not been tried by an independent judicial authority.

**In order to effectively address this global phenomenon**, the international community established the Working Group on Arbitrary Detention.<sup>1</sup> Composed of five human rights experts, this universal mechanism is one of the special procedures of the Human Rights Council, which is a central element of the United Nations' human rights system. It is entrusted with the thematic mandate to investigate cases of detention alleged to be imposed arbitrarily or otherwise inconsistently with international human rights standards.<sup>2</sup> As an illustration, in 2022, the Working Group on Arbitrary Detention, under its regular procedure, adopted 88 opinions concerning the detention of 160 persons in 50 countries, transmitted 43 urgent appeals to 22 Governments and, 111 allegation letters and other letters to 61 Governments and, in three cases, to other actors, concerning at least 356 identified individuals.<sup>3</sup>

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<sup>1</sup> The WGAD was created in 1991 by the Commission on Human Rights, but its mandate was adopted by the Human Rights Council that renewed it on a triennial basis since then. See: Commission on Human Rights. (1967). *Resolution 1235 (XLII)*; Human Rights Council. *Decision 2006/102 and Resolutions 6/4, 15/18, 24/7, 33/30, 42/22 and 51/8*.

<sup>2</sup> For a detailed presentation and comprehensive review of the contributions of the United Nations Working Group on Arbitrary Detention: Genser, J. (2020). *The UN Working Group on Arbitrary Detention: Commentary and guide to practice*. New York: Cambridge University Press.

<sup>3</sup> Human Rights Council. (2023). *Report of the Working Group on Arbitrary Detention*. A/HRC/54/51. p. 1.

## 1.1. Purpose of the Strategic Litigation Guide

**ILAAD's approach to strategic litigation of arbitrary detention cases** capitalizes on the specificities of the UN Working Group mandates and procedures to use the legal opinions of the Working Group during national proceedings, such as after an unsuccessful *habeas corpus* at the pretrial stage, after a conviction at the appeal stage, or during supreme courts proceedings. We defend that securing opinions in which the Working Group finds a deprivation of liberty to be arbitrary offers additional persuasive arguments for counsels before national courts to demonstrate that a person is being held in violation of international law.<sup>4</sup> Indeed, strategic parallel submissions at the national and international level offer significant advantages to litigators by enabling efficient time management and proactive anticipation of procedural challenges, while coordinating arguments in their submissions to optimize their overall defense strategy.


**However, only a handful of lawyers and NGOs include** WGAD complaints in their defense strategy for the release of arbitrary detention victims or in advocacy efforts calling for a legislative change when arbitrary detentions result from a national law violating international human rights standards. One possible explanation lies in the fact that the opinions of the WGAD are deemed to be non-binding on States. However, in this Strategic Litigation Guide, we will demonstrate that this argument is irrelevant since it is undisputed that the international obligations referred to in these opinions are themselves binding. Besides, when the opinions issued by the Working Group are used in domestic proceedings, they can have a positive impact in terms of litigation.<sup>5</sup> Last but not least, the Working Group opinions open the door for much stronger political, diplomatic and media advocacy.<sup>6</sup> Indeed, the fact that the United Nations take a position on the arbitrary nature of a detention can spark public interest and find relay within the media to bring pressure on the detaining government to release the victims and call for legislative change in systemic arbitrary detention situations.

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<sup>4</sup> United Nations Human Rights Office of the High Commissioner. (2024). *United Nations Working Group on Arbitrary Detention Revised fact sheet*. n°26/REV.1. p. 24.

<sup>5</sup> Istanbul 37th Criminal Court. (2018). *Minutes of judicial hearing*. citing opinion No. 11/2018; Supreme Court of the Republic of Korea. (2018). *Transcript of closing statements made in a public hearing*. citing opinion No. 40/2018.

<sup>6</sup> Because States actions are driven both by legal, diplomatic and political implications, their decisions to respect or ignore international human rights obligations vary. In practice, some States will release the victims and implement a national legislative change after an opinion from the Working Group on Arbitrary Detention under diplomatic and media pressure, while others will simply ignore it.



**The case of Ayub Masih v. Pakistan** exemplifies how an opinion of the WGAD can be used strategically to create sufficient political and public relations pressure to help secure the release of a detainee. Indeed, in its Opinion 25/2001 (Pakistan), the Working Group found that a Pakistani national had been arbitrarily arrested and detained, and even sentenced to death for blasphemy. Using this opinion, the source secured twelve US Senators to send private letters to the then Pakistani President, asking him to pardon M. Ayub Masih. This pressure led the Supreme Court to re-examine the original death sentence, to acquit M. Masih of the charges, and to order his immediate release through a ruling that echoed the findings of Opinion 25/2001.<sup>7</sup>

**By presenting when and how to send complaints** with ILAAD to the UN Working Group on Arbitrary Detention, this Strategic Litigation Guide aims to help legal practitioners, NGOs, and activists in using the procedures of the Working Group on Arbitrary Detention available to them as part of their international defense and advocacy strategies.

## 1.2. Use of the Strategic Litigation Guide

**This Guide is intended for legal practitioners, NGOs, and activists** partnering with ILAAD sending complaints to the United Nations Working Group on Arbitrary Detention. As such, it is meant to be used as a practical reference whenever a case of arbitrary detention is identified and should be read in conjunction with the official United Nations publications issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR). Notably, the Working Group Revised fact sheet n°26/REV. 1 and the Methods of work of the Working Group on Arbitrary Detention A/HRC/36/38, to which this report refers systematically.

**It is composed of three parts and two annexes.** The first part is dedicated to the UN Working Group on Arbitrary Detention, specifically its mandate, composition, and reasoning, to highlight its specificities. The second part deals with ILAAD's strategic litigation approach of arbitrary detention cases, focusing on coordinated litigation and advocacy. The third part explains the process and steps for sending a complaint with ILAAD, with a specific focus on gathering information about the detention, and submitting a regular or an urgent complaint with ILAAD. Finally, the Annex section includes ILAAD's Arbitrary Detention Form and the WGAD Consent Form.

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<sup>7</sup> Genser, J. (2020). *The UN Working Group on Arbitrary Detention: Commentary and guide to practice*. New York: Cambridge University Press. p. 7-8 citing WGAD. (2001). *Ayub Masih v. Pakistan*, Opinion No. 25/2001.

## 2. The UN Working Group on Arbitrary Detention

**The UN Working Group on Arbitrary Detention** is a special procedure of the United Nations Human Rights Council, which was created in response to the need for the international community to address the global phenomenon of arbitrary detention. The WGAD's mandate and composition will firstly be presented, before turning to the two necessary criteria for a detention to be considered arbitrary by the Working Group, and then to the relevance of taking arbitrary detention cases in front of this specific UN mechanism.

### 2.1. Mandate of the Working Group

**The Working Group is entrusted with a thematic mandate** by the Human Rights Council to investigate at the universal level cases of detention alleged to be imposed arbitrarily or otherwise inconsistently with international human rights standards, set forth in the Universal Declaration of Human Rights, or in the relevant international legal instruments accepted by the States concerned. This mandate is reviewed every three years by the Human Rights Council and was last reviewed in October 2022<sup>8</sup>.


**It can consider individual and joint complaints from anywhere in the world** through its regular and urgent communication procedure, resulting in the adoption and issuance of an opinion qualifying whether a detention is arbitrary<sup>9</sup>. Indeed, it offers for victims from all over the globe an international venue with the power to investigate cases of deprivation of liberty imposed arbitrarily in any UN member State, irrespective of what treaties the responsible State has or has not ratified.<sup>10</sup> As such, seeking and receiving information from non-governmental organizations or from lawyers of alleged victims of arbitrary detention (or directly from the individuals concerned or their families) is the primary *raison d'être* of the Working Group, allowing it to investigate alleged situations of arbitrary detention, and eventually send urgent appeals and communications to the Governments concerned to clarify or bring their attention to these cases.

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<sup>8</sup> Human Rights Council. (2022). *Resolution adopted by the Human Rights Council on 6 October 2022 - Arbitrary detention*. A/HRC/RES/51/8. para. 15.

<sup>9</sup> United Nations Human Rights Council. (2017). *Methods of work of the Working Group on Arbitrary Detention*. A/HRC/36/38. p. 3-5.

<sup>10</sup> United Nations Human Rights Office of the High Commissioner. (2024). *United Nations Working Group on Arbitrary Detention Revised fact sheet*. n°26/REV.1. p. 8.



**The Working Group can also conduct country visits** – though only upon the invitation of Governments – to get a better understanding of the eventual arbitrary detention practices situations prevailing in the said country and their underlying reasons. It has also the power to formulate deliberations on issues of a general nature, such as systemic situations of arbitrary detention, in order to define the limits beyond which the relevant form of detention, whether administrative or judicial, becomes arbitrary, to assist States in preventing and guarding against the practice of arbitrary deprivation of liberty, and to facilitate consideration of future cases. The Working Group on Arbitrary Detention must report annually to the Human Rights Council on its activities, findings, conclusions, and recommendations.

## 2.2. Composition of the Working Group

**The Working Group is composed of five independent human rights experts** to discharge its mandate. They meet three times a year, usually in April, August and November, for at least five to eight working days, generally in Geneva.<sup>11</sup> The five members of the Working Group are selected based on their expertise, experience, independence, impartiality, personal integrity, and objectivity by the President of the United Nations Human Rights Council and represent each of the five regions of the world.<sup>12</sup> While the Human Rights Council appoints the experts for a tenure limited to a maximum of six years based on the principle of equitable geographical representation, they serve in their personal capacities, and not as representatives of their States of nationality.

**The members of the Working Group** are not United Nations staff members and are fully independent to fulfill their functions with impartiality. However, they do not receive any remuneration or other benefits for their service.

**In cases of conflict of interest**, such as when a case under consideration concerns a country from which one of the members of the Working Group is from, that member does not participate in the investigation and discussion of the case.<sup>13</sup>

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<sup>11</sup> United Nations Human Rights Council. (2017). *Methods of work of the Working Group on Arbitrary Detention*. A/HRC/36/38. para. 4.

<sup>12</sup> The five members of the WGAD are selected based on their expertise, experience, independence, impartiality, personal integrity, and objectivity by the President of the HRC and represent each of the five regions of the world. See: Human Rights Council. (2007). *Resolution 5/1 (Annex)*. A/HRC/RES/5/1.

<sup>13</sup> United Nations Human Rights Council. (2017). *Methods of work of the Working Group on Arbitrary Detention*. A/HRC/36/38. para. 5.



**The experts appointed** to date are:

- **Dr. Matthew Gillett** (New Zealand): appointed in 2022, serving as Chair-Rapporteur for the WGAD, international lawyer and human rights specialist.
- **Dr. Ganna Yudkivska** (Ukraine): appointed in 2022, serving as Vice-Chair on Communications for the WGAD, lawyer and former Judge of the European Court of Human Rights.
- **Ms. Priya Gopalan** (Malaysia): appointed in 2021, serving as Vice-Chair on Follow-Up for the WGAD, lawyer and former prosecutor and appeals counsel at the UN International Criminal Tribunal for the former Yugoslavia.
- **Dr. Miriam Estrada-Castillo** (Ecuador): appointed in 2020, Professor of International Law and former member of the UN Security Council Counter-Terrorism Committee Executive Directorate.
- **Dr. Mumba Malila** (Zambia): appointed in 2020 and current Attorney General of Zambia.<sup>14</sup>

## 2.3. Procedures before the Working Group

**Two different procedures** characterize the Working Group, which is the only non-treaty-based mechanism whose mandate expressly provides for consideration of individual complaints. The Working Group can act on information submitted to its attention regarding alleged cases of arbitrary detention by sending urgent appeals (under the urgent procedure) as well as regular complaints (under its regular procedure) to concerned Governments, in order to clarify and/or bring their attention to these cases.

### 2.3.1. Regular procedure

**The regular communications procedure** involves investigation of individual or joint cases of alleged arbitrary detention and results in the adoption and issuance of an opinion on the arbitrary character of the deprivation of liberty along with recommendations to the government to remedy the situation.

**Lawyers and NGOs representing detainees anywhere in the world** can submit complaints alleging situations of arbitrary detention to the Working Group. Indeed, the actions of the Working Group are based on the right of petition of individuals in any UN

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<sup>14</sup> Office of the United Nations High Commissioner for Human Rights. (2024). *Members of the Working Group on Arbitrary Detention*. Official Website of the OHCHR. Accessed in July 2024.

member State.<sup>15</sup> Moreover, the flexible rules of standing of the Working Group allow for communications to be addressed to it directly from the individuals concerned or their families. Even though the Working Group noted that failure to comply with all the formalities shall not directly or indirectly result in the inadmissibility of the communication, we highly encourage to ask for the help of a legal professional to draft a complete and persuasive complaint.



**Practical tip:**

→ By using the **ARBITRARY DETENTION FORM** (See: Annexe in section 5.1) to gather information about the detention and sending it to [contact@ilaad.org](mailto:contact@ilaad.org), you can benefit from the help of ILAAD's *pro bono* lawyers and researchers to assess the arbitrary nature of the detention and the feasibility to take the case to the Working Group on Arbitrary Detention.

**Submissions concerning an individual case** of alleged arbitrary detention aim at presenting the circumstances of the arrest or detention of the victim, particularly:

- the date and place of the arrest or detention or of any other form of deprivation of liberty;
- the identity of those presumed to have carried it out, together with any other information shedding light on the circumstances in which the person was deprived of liberty;
- the reasons given by the authorities for the arrest, detention or deprivation, as well as the legislation applied in the case;
- the action taken, including investigatory action or the exercise of internal remedies, by the administrative and judicial authorities, as well as the steps taken at the international or regional levels, and the results of such action; and most importantly;
- an account of the reasons why the deprivation of liberty is deemed arbitrary.

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<sup>15</sup> Such communications may also be transmitted by Governments and intergovernmental organizations as well as by national institutions for the promotion and protection of human rights, but it is rarely the case. Similarly, the Working Group may, on its own initiative, take up cases that might constitute arbitrary deprivation of liberty, however in the vast majority of cases, its actions are triggered directly by lawyers and NGOs on behalf of the victims. See: United Nations Human Rights Council. (2017). *Methods of work of the Working Group on Arbitrary Detention*. A/HRC/36/38. paras. 12 - 13.

**This procedure has an adversarial character** which is guaranteed by the fact that a summary of the submission is forwarded to the Government responsible for the alleged arbitrary detention through diplomatic channels. In practice, it will be sent to the Permanent Representative to the United Nations Office of the State concerned in Geneva. The detaining State is then invited to communicate its comments and observations on the allegations made, both as regards the facts and the applicable legislation and concerning the progress and outcome of any investigations that may have been ordered, within 60 days (with a possible extension of the time limit of maximum one month). A reply sent by the Government concerned to the Working Group is transmitted to the source for any additional comments, but if the reply is not submitted within the time limit, the Working Group may render an opinion solely based on the submission on behalf of the alleged victim of arbitrary detention.



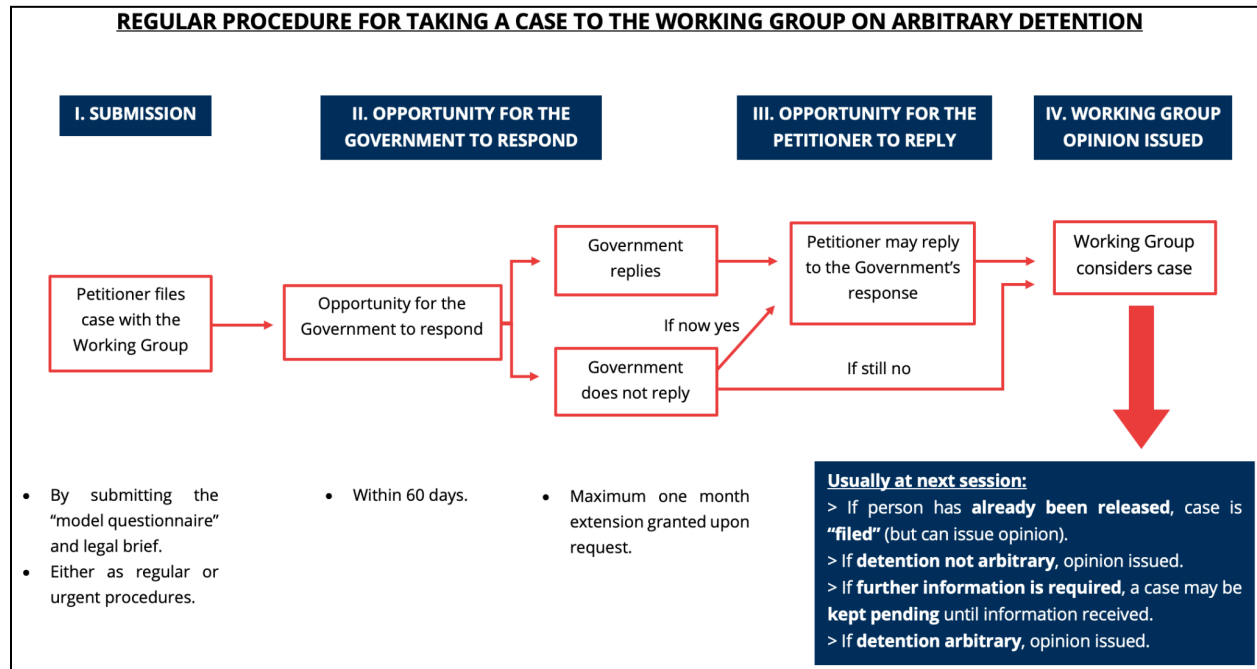
**Practical tip:**

→ **If it aligns with the detainee's defense strategy**, ILAAD's international human rights litigation team can provide free legal assistance for drafting the complaint and responding to the arguments of the Government in order to obtain an opinion from the Working Group, calling for the detainee's immediate release.

**In the light of the information obtained**, the Working Group can take one of the following measures:

- (a) **If the Working Group decides that the arbitrary nature of the deprivation of liberty is established**, it renders an opinion to that effect and makes recommendations to the Government concerned;
- (b) **If the Working Group considers that the case is not one of arbitrary deprivation of liberty**, it renders an opinion to that effect; the Working Group can also make recommendations in such a case, if it considers it necessary;
- (c) **If the person has been released**, for any reason, following the reference of the case to the Working Group, the case is filed; the Working Group, however, reserves the right to render an opinion, on a case-by-case basis, on whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned;
- (d) **If the Working Group considers that further information is required** from the Government or the source, it may keep the case pending until that information is received.

**The process for regular complaints takes around six to eighteen months** between the submission of the complaint and the issuance of the Working Group's opinion, depending on the Working Group's caseload.




Source: Working Group Revised fact sheet n°26.

**In exceptional circumstances**, the Working Group may reconsider its opinions, if new facts arise that would have changed the outcome had they been known earlier. This reconsideration can occur either *proprio motu* or at the request of the concerned government or the source, provided that the new facts were previously unknown or inaccessible to the requesting party. If the request comes from a government, it must have adhered to the specified time limits for replies.<sup>16</sup>

### 2.3.2. Urgent action procedure

**The urgent action procedure** is a mechanism developed by the Working Group, in collaboration with other special procedures, to address time-sensitive cases involving specific allegations of arbitrary detention. When an urgent action is warranted, the Working Group sends an urgent appeal or letter of allegation to the government of the concerned State through the diplomatic channels. In practice, the urgent action procedure allows the

<sup>16</sup> United Nations Human Rights Council. (2017). *Methods of work of the Working Group on Arbitrary Detention*. A/HRC/36/38. para. 21.



Chairs-Rapporteur of the Working Group to transmit an urgent appeal by the most rapid means to the Minister for Foreign Affairs of the concerned State through the Permanent Representative to the United Nations Office of the State concerned in Geneva. In the communication, the Working Group requests the Government in question to take necessary measures to protect the detained person's rights, including the right not to be arbitrarily deprived of liberty, the right to fair legal proceedings before an independent and impartial tribunal, and the right to life and physical and mental integrity. These communications are often issued jointly with other special procedures.

**What differentiates the urgent action procedure** from the standard procedure of a communication on an individual case (or multiple cases), is the urgency of the situation and the humanitarian nature of the appeal. Indeed, the urgent action procedure is based on humanitarian grounds and does not constitute a prejudgment of whether the detention is arbitrary, except in cases where the Working Group has already made that determination.<sup>17</sup> The urgent action procedure can be utilized only under specific and critical circumstances, that is to say, when there are sufficiently reliable allegations that the detention involves serious threat to that person's health, physical or psychological integrity, or life.<sup>18</sup>


The Working Group's involvement in an urgent action procedure can be triggered through written submission sent to it by:

- **The individual who is being deprived of their liberty:** if the detainee has the means to communicate their situation to the Working Group.
- **Family members or legal representatives of the detained person:** as they can usually provide detailed information about the detention and the risks involved.
- **Non-governmental organizations (NGOs) working in the field of human rights:** as these organizations often have the resources and networks to gather and verify information about cases of arbitrary detention.
- **Governments, intergovernmental organizations and national institutions for the promotion and protection of human rights individuals or entities with reliable information about the arbitrary detention:** as they have resources to gather and present credible evidence of the situation.

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<sup>17</sup> *Ibid.* para. 24.

<sup>18</sup> Exceptionally, the procedure can also be used in cases in which, even when no such threat is alleged to exist, there are particular circumstances that warrant an urgent action.



**The urgent procedure enables the Working Group to send an urgent appeal** to the State with immediate and specific recommendations of a humanitarian nature. The primary impact of the urgent action is to initiate an accelerated diplomatic dialogue focused on the situation of the alleged victim of arbitrary detention, aiming to prevent the realization of the serious threat alleged. This process often results in heightened international scrutiny and pressure on the concerned State to address the situation promptly. In addition to providing immediate relief, the urgent action procedure serves as a mechanism to gather and document information that can be used in further proceedings. After transmitting an urgent appeal to the Government, the Working Group may continue to monitor the case through its regular procedure to render an opinion on whether the deprivation of liberty was arbitrary. This dual approach ensures that immediate humanitarian concerns are addressed while also allowing for a thorough and impartial investigation of the legality of the detention.

**Such urgent appeals are of a purely humanitarian nature** and in no way prejudice any opinion the Working Group may render in its final determination. The Government is required to respond separately to the urgent action procedure and the regular procedure, providing information and updates on the measures taken to address the urgent appeal, as well as participating in the longer-term review process.<sup>19</sup>

## **2.4. Conditions of an arbitrary detention in the Working Group's case law**

**Given that detention in itself is not a violation of human rights**, the Working Group on Arbitrary Detention, along with other international human rights protection mechanisms interpreting norms protecting the right to liberty, have progressively defined the limits beyond which detention, whether administrative or judicial, becomes arbitrary.<sup>20</sup>

**To identify an arbitrary detention**, the Working Group developed a two-step methodology: 1) Whether a person is deprived of liberty, meaning the person in question is unable to leave at will; and 2) Whether the international safeguards against arbitrariness are observed.

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<sup>19</sup> United Nations Human Rights Council. (2017). *Methods of work of the Working Group on Arbitrary Detention*. A/HRC/36/38. para. 23.

<sup>20</sup> United Nations Human Rights Council. (2017). Report of the Working Group on Arbitrary Detention. A/HRC/36/37, para. 50: *"the right to liberty of person is not an absolute right and limitations to that right may be justified. However, any deprivation of liberty, irrespective of the context in which it occurs, must not be arbitrary and must be carried out with respect to the rule of law"*.

### 2.4.1. A deprivation of liberty

The term “detention” was not explicitly defined in the Commission on Human Rights resolution 1991/42, leading to differing interpretations and uncertainty due to varied terminology in international instruments.<sup>21</sup> To address this, the Commission adopted resolution 1997/50, clarifying that the Working Group is responsible for investigating all cases of arbitrary deprivation of liberty. The term “deprivation of liberty” was chosen to encompass all forms of liberty deprivation, including before, during, and after trial, as well as administrative detention.

**Deprivation of personal liberty** occurs whenever a person is being held without his or her free consent.<sup>22</sup> With the increasing number of new regimes of deprivation of liberty that arise in different situations and contexts around the world, it is crucial to stress that whether someone is deprived of his/her personal liberty is a question of fact and of terminology. Indeed, if the person in question is unable to leave at will, the safeguards which are in place to guard against arbitrary detention must be observed. For instance, individuals who voluntarily go to a police station to participate in an investigation and who know that they are free to leave at any time are not in fact deprived of their liberty.<sup>23</sup> It is however paramount that the element of voluntariness is not abused and that any claim that an individual is at a certain place at his/her own free will is indeed the case.

**Places of detention** encompass prisons and police stations, which remain the most common places where an individual may be deprived of his/her liberty, but also any locations where the individual is not free to leave at will. It includes situations of administrative detention, deprivations of liberty in the context of public health emergencies, involuntary hospitalization, confinement in a psychiatric institution, institutional custody of children, and confinement to a restricted area of an airport, as well as being involuntarily transported.<sup>24</sup> But also any circumstances in which an individual is unable to leave at will such as house arrest, rehabilitation through labor or confinement of conscientious objectors to serving compulsory military service for instance.

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<sup>21</sup> Instruments do not always use the same terminology; they may use terms such as: “arrest”, “apprehension”, “holding”, “detention”, “incarceration”, “prison”, “reclusion”, “custody” or “remand”.

<sup>22</sup> United Nations Human Rights Council. (2017). *Report of the Working Group on Arbitrary Detention*. A/HRC/36/37, para. 51.

<sup>23</sup> United Nations Human Rights Committee. (2014). *General comment No. 35, Article 9 on Liberty and security of person*. CCPR/C/GC/35. para. 6.

<sup>24</sup> United Nations Human Rights Committee. (2014). *General comment No. 35, Article 9 on Liberty and security of person*. CCPR/C/GC/35. p. 5.

## 2.4.2. A violation of international safeguards against arbitrariness

**When does a deprivation of liberty become arbitrary** is not clearly answered in international instruments.<sup>25</sup> In the Human Rights Committee's General Comment n°35, the notion of "arbitrariness" is described as not to be equated with "against the law", but as a notion that must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.<sup>26</sup> As such, when determining the mandate of the Working Group, the Commission on Human Rights used a pragmatic criterion: while it did not define the term "arbitrary", it considered as arbitrary those deprivations of liberty which for one reason or another are contrary to relevant international provisions set out in the Universal Declaration of Human Rights or in the relevant international instruments ratified by States.<sup>27</sup>

**The Working Group has established specific criteria** in line with the HRC for evaluating submitted cases. These criteria are based on the relevant standards set forth in the Universal Declaration of Human Rights, as well as to the relevant international instruments accepted by the States concerned, in particular the International Covenant on Civil and Political Rights, the Convention relating to the Status of Refugees of 1951 and the Protocol relating to the Status of Refugees of 1967, the International Convention on the Elimination of All Forms of Racial Discrimination and, when appropriate, any other relevant standards.<sup>28</sup>


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<sup>25</sup> United Nations General Assembly. (1948). *Universal Declaration of Human Rights*. UNGA Res 217 A(III). Article 9; United Nations General Assembly. (1966). *International Covenant on Civil and Political Rights*. Article 9.

<sup>26</sup> United Nations Human Rights Committee. (2014). *General comment No. 35, Article 9 on Liberty and security of person*. CCPR/C/GC/35. p. 3.

<sup>27</sup> Commission on Human Rights. (1991). *Resolution 1991/42*; Commission on Human Rights. (1997). *Resolution 1997/50*.

<sup>28</sup> These include the following : (a) The Convention on the Rights of the Child; (b) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (c) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; (d) The Convention on the Rights of Persons with Disabilities; (e) The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; (f) The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); (g) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty; (h) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); (i) 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.



**The WGAD refers to the following five legal categories** when discharging its mandate to assess if a specific deprivation of liberty is arbitrary:

- **Category I:** When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty, such as when individuals are kept in detention after the completion of their sentence or despite an amnesty law applicable to them;
- **Category II:** When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13–14 and 18–21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18–19, 21–22, and 25–27 of the International Covenant on Civil and Political Rights;
- **Category III:** When the total or partial nonobservance 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 IV:** When asylum seekers, immigrants, or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy;
- **Category V:** 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 toward or can result in ignoring the equality of human beings.<sup>29</sup>

**Those categories are not mutually exclusive** and it is rather usual for the Working Group to find that an individual is being arbitrarily detained under several categories at the same time. This is because the notion of arbitrary detention is a complex international violation which encapsulates multiple generating factors at once. Between 2020 and 2023, the Working Group found arbitrary detentions qualifying under several categories in more than 98% of its opinions.

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<sup>29</sup> United Nations Human Rights Council. (2017). *Methods of work of the Working Group on Arbitrary Detention*. A/HRC/36/38. sect. III.

### 3. ILAAD's strategic litigation approach of arbitrary detention cases

ILAAD's strategic litigation approach of arbitrary detention cases involves both coordinated litigation and coordinated advocacy.

#### 3.1. Coordinated Litigation

**From a litigation perspective** five different steps could be coordinated together when representing a victim of arbitrary detention and incorporating the WGAD mechanism in the defense strategy : 1) taking an habeas Corpus before national courts; 2) submitting the case to the Working Group; 3) using the WGAD opinion in national proceedings; 4) informing the Working Group of Governments' follow-up actions; 5) and finally eventually taking the case to other regional or universal bodies.

##### 3.1.1. *Habeas Corpus* before national courts

***Habeas corpus*** is a legal mechanism that allows individuals to challenge the lawfulness of their detention. It is an international fundamental right serving as a protection against arbitrary detention and ensuring that no one is held without just cause. It protects individuals against secret detention, forced disappearance or risk of torture and other cruel, inhuman or degrading treatment or punishment, because it allows a determination of the whereabouts and state of health of detainees, as well as an identification of the authority ordering or carrying out the deprivation of liberty.

**In front of national courts**, a writ of *habeas corpus* can be filed by or on behalf of a detainee, compelling the authorities to bring the detainee before the court to determine the legality of the detention. The court then assesses whether the detention complies with legal standards and procedural requirements. If the court finds that the detention is unlawful, it can order the detainee's release. Common grounds for challenge of detention include lack of legal basis for detention, procedural irregularities, violation of constitutional rights, or detention beyond the permissible duration.<sup>30</sup>

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<sup>30</sup> Working Group on Arbitrary Detention. (2015). *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*. A/HRC/30/37. p. 6.



#### Practical tip:

- Remember that it is not necessary to establish exhaustion of national remedies to present a case before the Working Group.
- In case of filing an *habeas corpus*, it is important to write it down in the ARBITRARY DETENTION FORM at question 6 of the “Information about the pre-trial” section.<sup>31</sup>

**Filing an *habeas corpus* before taking a case to the WGAD** can be advantageous from a strategic standpoint for three reasons.

- **First, if the right to fill an *habeas corpus* is denied or not recognized** to the detainee, the WGAD will automatically find the detention arbitrary because its constant case law recognizes the right to challenge the lawfulness of detention before a court to be a self-standing human right, the absence of which constitutes *per se* a human rights violation rendering the detention arbitrary.
- **Second, if the writ of *habeas corpus* is successful**, thus leading to a national court's ruling finding the detention unlawful, the WGAD will also automatically find the detention arbitrary if the detainee remains deprived of its liberty without any other legal basis.
- **Third, if the writ of *habeas corpus* is unsuccessful**, thus leading to a national court's ruling finding the detention lawful under domestic law, it will provide the WGAD with documented proof of States' authorities legal arguments and practices, based on which the WGAD can find violations of the international human rights standards rendering the detention arbitrary.<sup>32</sup>

### 3.1.2. Taking the case to the Working Group

**Taking the case to the WGAD** must be aligned with the overall defense strategy of the detainee, bearing in mind its advantages but also its negative implications, both in terms of procedure by precluding access to other international bodies as well as in terms of potential reprisals in detention conditions.

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<sup>31</sup> Question 6 is specifically dedicated to verify that the detainee had the ability to challenge the legality of the pre-trial detention domestically and to provide details on which domestic remedies were available, which have been used, and how effective such remedies have been.

<sup>32</sup> It might not be enough, especially in cases where there is extremely limited information available regarding the arrest and detention of the victim, but it will be considered as primary evidence before the WGAD. See : WGAD. (2017). *Loknath Acharya v. Bhutan and India*, WGAD Opinion No. 2/2017. para. 21.



### Practical tip:

- Upon receipt of the ARBITRARY DETENTION FORM, ILAAD's *pro bono* lawyers and researchers always consult with the partner that reported the detention to assess the opportunity to take the case to the WGAD in regards to the defense strategy and all implications of a submission, both positive and negative.

**Concerning its advantages**, submitting a complaint to the WGAD is often the only “swift” international venue for litigators on behalf of victims arbitrarily detained when national courts are stalling.<sup>33</sup> This is especially true in situations of systemic violations of the right to a fair trial, or when national courts apply national law in clear violation of international human rights standards leading to systematic arbitrary detention of political activists, journalists, human rights defenders, protesters, migrants, and other vulnerable categories of individuals. Indeed, since the Working Group does not require that local remedies be exhausted, unlike other treaty-based bodies or international or regional courts, in order for a submission to be admissible, the process for regular complaints takes in principle “only” around six to eighteen months.

**The WGAD's role is not however to substitute itself for a domestic fact-finder** in any given case – e.g., it will not consider or render an opinion on the weight of the evidence that was presented to a domestic tribunal – but rather its function is to ascertain if the process that resulted in the person's detention has been carried out in full compliance with a State's obligations against arbitrary detention under international law.<sup>34</sup> This is why it is recommended to take a WGAD complaint after an unsuccessful *habeas corpus* at the pretrial stage or directly after conviction prior to the appeal process, to take advantage of the swift venue while presenting these national decisions as evidence of the arbitrary nature of the procedure leading to the detention in itself. Finally, it is worth noting that knowing that their case is being fought on multiple fronts can provide the detainee arbitrarily deprived of its liberty with significant moral and psychological support.

**Concerning its negative implications**, two must be particularly stressed out before deciding to submit a complaint.

<sup>33</sup> United Nations Human Rights Office of the High Commissioner. (2024). *United Nations Working Group on Arbitrary Detention Revised fact sheet*. n°26/REV.1. p. 21.

<sup>34</sup> Genser, J. (2020). *The UN Working Group on Arbitrary Detention: Commentary and guide to practice*. New York: Cambridge University Press p. 57; WGAD. (2005). *Tariq Aziz v. Iraq and the United States*. Opinion No. 45/2005. para. 24; WGAD. (2002). *Manuel Flores, et al. v. The Philippines*, Opinion No. 9/2002. para. 11; WGAD. (1999). *Olga Rodas, et al. v. Colombia*, Opinion No. 25/1999. para. 5.

**First, taking a case to the WGAD can preclude access to other regional or universal jurisdiction.** From a procedural standpoint, when assessing the opportunity to take a case to the WGAD, it is essential to identify all the appropriate international bodies that can provide jurisdiction to arbitrary detention cases, both at the regional level (European Court of Human Rights; Inter-American Court of Human Rights; African Court on Human and Peoples' Rights) and at the universal level (UN Human Rights Committee; Committee Against Torture).

- ⚠ Warnings:** Submitting a case to the WGAD precludes as inadmissible:
- the simultaneous consideration of the case by the **Human Rights Committee**.<sup>35</sup>
  - the same or similar application to the:
    - ◆ **European Court of Human Rights** (unless it contains new information);<sup>36</sup>
    - ◆ **Inter-American Commission and Court of Human Rights** (unless issues beyond the detention are the focus of the petition);<sup>37</sup>
    - ◆ **African Commission or Court on Human and Peoples' Rights**.<sup>38</sup>

**Second, taking a case to the WGAD can lead to unlawful reprisals** from the detaining State against the detainees or the individuals who cooperated with the Group. Indeed, the Working Group noted with grave concern in its most recent annual reports that in some cases it continues to receive information, including in the context of its follow-up procedure, about reprisals suffered by individuals who have been the subject of an urgent appeal or an opinion of the Working Group.<sup>39</sup>


<sup>35</sup> Human Rights Committee. (2005). *Rules of Procedure*. CCPR/C/3/Rev.8., Rule 96(e).

<sup>36</sup> The European Court of Human Rights consistently interprets the European Convention of Human Rights to deem inadmissible cases brought after the adoption of an opinion where the parties, facts, and general legal violations are the same or similar, thus finding that the WGAD is “another procedure of international investigation or settlement” under Article 35(2)(b) of the European Convention of Human Rights. See, European Court of Human Rights. (2009). *Illiu & Others v. Belgium*, Decision on Admissibility. Application No. 14301/08.

<sup>37</sup> Inter-American Commission on Human Rights. (2013). *Rules of Procedure of the Inter-American Commission on Human Rights* (modified). Article 33(1); InterAmerican Commission on Human Rights. (2015). *Jorge Marcial Tzompaxle Tecpile, et. al v. Mexico*. Admissibility. Report No. 67/15 Petition 211-07.

<sup>38</sup> African Commission on Human and Peoples' Rights. (1981). *African Charter on Human and Peoples' Rights*. Article 56(7); African Commission on Human and Peoples' Rights. (2013). *Haregewoin Gabre-Selassie and IHRDA (on Behalf of Former Dergue Officials) v. Ethiopia*, Communication 301/05. paras 114 - 117.

<sup>39</sup> United Nations Human Rights Council. (2022). *Report of the Working Group on Arbitrary Detention*. A/HRC/51/29, paras. 28-29, citing the cases of WGAD. (2021). *Kameel Juma Mansoor Salman Hasan v. Bahrain*. Opinion No. 2/202; WGAD. (2020). *Brenda Quevedo v. Mexico*. Opinion No. 45/2020; WGAD. (2018). *Sayed Nazar Naama Baqquer Ali Yusuf Alwadaei v. Bahrain*. Opinion No. 51/2018.



**While these reprisals are far from being systematic**, they do exist and constitute when they occur a blatant violation of international law that usually take the form of “placement in solitary confinement, harsh prison conditions, threats and harassment against the individual and/or his or her family members, and accusatory articles in the pro-government media.”<sup>40</sup> In this context, in its 2023 Annual Report, the WGAD recalled that the Human Rights Council, in its resolutions 12/2 and 24/24, urged all States to prevent and refrain from all acts of intimidation or reprisal against those who sought to cooperate or had cooperated with the United Nations, its representatives and its mechanisms in the field of human rights, or who had provided testimony or information to them.<sup>41</sup> It also appointed since 2017 one of its members as the “Focal Point on Reprisals”, and now sends reported cases of reprisals to the Assistant Secretary-General for Human Rights, a position assumed currently by Ilze Brands Kehris, who leads efforts at the United Nations to end intimidation and reprisals against those cooperating on human rights.

### 3.1.3. Using the WGAD opinion in national proceedings


**The primary strategic objective of sending a complaint** to the WGAD for a litigator is to use the legal opinion rendered by the UN experts in national proceedings (at the appeal stage or during supreme courts proceedings), especially when they:

- 1) **conclude to the arbitrary character** of deprivation of liberty because it is inconsistent 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;
- 2) **recommend specific actions** to the concerned Government, such as to release immediately and unconditionally the victims, accord them an enforceable right to compensation and other reparations in accordance with international law, ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation situations, or to bring the laws into conformity with international human rights law.

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<sup>40</sup> United Nations Human Rights Council. (2017). *Report of the Working Group on Arbitrary Detention*. A/HRC/39/45. paras. 28-29.

<sup>41</sup> United Nations Human Rights Council. (2023). *Report of the Working Group on Arbitrary Detention*. A/HRC/54/51. para. 24.



**However, because the opinions are deemed non-binding on States** (despite the binding nature of the international obligations referred to in these opinions), litigators can use WGAD opinions only as persuasive evidence of the violation of international obligations by the State. Therefore, rather than asking the national courts to abide by the opinion, they shall ask the national courts to follow and adopt the reasoning of the Working Group concerning the international guarantees against arbitrary detention set forth in the Universal Declaration of Human Rights, as well as to the relevant international instruments accepted by the States concerned, especially the International Covenant on Civil and Political Rights.<sup>42</sup>

**Using the WGAD opinion in national proceedings** plays a crucial role in the strategy to implement them, because the national courts are the natural destinaries of those opinions since they can adopt its reasoning and turn its recommendations into decisions, particularly regarding the release and compensation of detained individuals. While the practice is still moderate, national courts have considered the Group's opinions in significant cases, leading to impactful decisions. This was illustrated by the Istanbul 37th Criminal Court which cited opinion No. 11/2018 during a judicial hearing on July 3, 2018, which contributed to the conditional release of two detainees in Turkey. Similarly, the Supreme Court of the Republic of Korea referenced opinion No. 40/2018 in a public hearing on August 30, 2018, concerning conscientious objection to military service under international human rights law.<sup>43</sup>

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<sup>42</sup> When appropriate it refers to other relevant international standards such as the Convention relating to the Status of Refugees of 1951 and the Protocol relating to the Status of Refugees of 1967, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), 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.

<sup>43</sup> United Nations Human Rights Office of the High Commissioner. (2024). *United Nations Working Group on Arbitrary Detention Revised fact sheet*. n°26/REV.1. p. 24

### 3.1.4. Informing the Working Group of Governments' follow-up actions

**The Working Group should always be informed of the follow-up actions** taken by the State on the recommendations made by the Working Group in its opinion. It enables the WGAD to keep the HRC informed of the progress made and of any difficulties encountered in implementing the recommendations, as well as of any failure to take action.<sup>44</sup> In addition it allows the litigator to leave the door open to additional complaints on behalf of the detainee based on new information related to the continuing detention.

**Under the follow-up procedure**, the WGAD requests the Government concerned and the source to respond, within six months of the date of transmittal of the opinion to each party, with information about the steps taken by the Government to implement the opinion. That includes whether the victim has been released, the reparations and compensation given to the victim and the steps taken to ensure non repetition of the violation. The Working Group also welcomes information on the implementation of the suggested measures from other parties, such as civil society organizations.<sup>45</sup>

### 3.1.5. Taking the case to other regional or universal bodies

**Pursuing additional venues in regional or universal bodies** when addressing a case of arbitrary detention of a detainee remaining arbitrarily detained despite a WGAD opinion urging for a release and after the exhaustion of all remedies at the national level, is the ultimate way for litigators to provide a final layer of scrutiny and to amplify pressure on the detaining State to secure justice and accountability for the detainee. However, such subsequent complaints will need to respect the specific procedural requirements of the competent regional or universal human rights mechanism at stake, especially the exhaustion of domestic legal remedies (or the demonstration of their ineffectiveness or unavailability), and the principle prohibiting the re-examination of a similar arbitrary detention case which may also render the case inadmissible before the regional courts.<sup>46</sup>

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<sup>44</sup> United Nations Human Rights Council. (2017). Methods of work of the Working Group on Arbitrary Detention. A/HRC/36/38. para. 20.

<sup>45</sup> United Nations Human Rights Office of the High Commissioner. (2024). United Nations Working Group on Arbitrary Detention Revised fact sheet. n°26/REV.1. p. 23

<sup>46</sup> Genser, J. (2020). The UN Working Group on Arbitrary Detention: Commentary and guide to practice. New York: Cambridge University Press. p. 52-53.

**Indeed, the prohibition of same successive international complaints** – identity of parties, identity of object and identity of rights violated – is enshrined in article 35§2(b) of the ECHR, article 47(d) CADH, and article 56§7 of the African Charter, but is not mentioned in the ICCPR Protocol, which allows the Human Rights Committee to offer a last resort to arbitrary detention cases already examined by other international organs, such as the WGAD. However, about twenty States (especially European States parties to the ECHR), have expressed reservations to add the principle of the prohibition of successive international complaints, which were found legal by the HRC.<sup>47</sup>

**⚠ Warnings:** After having secured a WGAD opinion, litigators must respect the following procedural requirements to pursue additional international venues :

- **Human Rights Committee:** the additional complaint must be sent **once the WGAD process has been completed** and after the exhaustion of local remedies (after verification that the State has not made any reservation to add the principle prohibiting same successive international complaints).<sup>48</sup>
- **Regional courts:** In order to try to circumvent the principle prohibiting same successive international complaints before the ECHR, IACHR and the ACHPR, must **contain new information** and especially issues beyond the arbitrary detention (and respect the admissibility conditions related to the exhaustion of local remedies and time limits for bringing the action).<sup>49</sup>

**In some cases arbitrary detention may amount to international crimes** that can be addressed before the International Criminal Court (ICC) or before foreign national jurisdictions based on the universal jurisdiction. Indeed, depending on the facts and specific procedural requirements, arbitrary detention may be a constituting element of acts of torture, genocide, war crime or crime against humanity, in accordance with international treaties or national legislations. Due to the protracted nature of those proceedings, using these legal venues is very rare and predominantly employed as a final recourse for addressing cases of arbitrary detention.

<sup>47</sup> Human Rights Committee. (1994). *CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant*, CCPR/C/21/Rev/1/Add/6. para. 14.

<sup>48</sup> Human Rights Committee. (2005). Rules of Procedure. CCPR/C/3/Rev.8., Rule 96(e).

<sup>49</sup> European Court of Human Rights. (2009). *Illiu & Others v. Belgium*, Decision on Admissibility. Application No. 14301/08; Article 35(2)(b) of the European Convention of Human Rights; InterAmerican Commission on Human Rights. (2015). *Jorge Marcial Tzompaxle Tecpile, et. al v. Mexico*. Admissibility. Report No. 67/15 Petition 211-07; African Commission on Human and Peoples' Rights. (2013). *Haregewoin Gabre-Selassie and IHRDA (on Behalf of Former Dergue Officials) v. Ethiopia*, Communication 301/05. paras 114 - 117.

## 3.2. Coordinated advocacy

**WGAD opinions also open up opportunities for strengthening advocacy** both at the national and international levels.

**Communication and awareness raising strategies** can benefit from a WGAD opinion that can be used as a basis for press releases and media coverage. The fact that the United Nations take a position on the arbitrary nature of the detention can spark public interest and find relay within the media. For that reason, legal practitioners, NGOs and activists should consider building on the opportunity offered by a WGAD opinion to communicate and raise awareness through traditional media channels, as well as by leveraging social media platforms, to disseminate information about the WGAD opinion and the case.

**Domestic lobbying for reforms** can also be strengthened by using the authoritative legal nature of WGAD opinions recommending that a law be repealed. Indeed, WGAD opinions are grounded in international law and show that the situation of detention has brought attention to the practices of the national authorities all the way to the international level. An opinion can therefore be used to reinforce efforts in engaging with national authorities and increasing pressure to compel them to take action, through lobbying efforts using the WGAD opinion to advocate for the release of detainees and for reforms preventing future arbitrary detentions.

**WGAD opinions can be a first step toward a country visit** of the WGAD, which in itself also offers additional opportunities for advocacy. Lawyers and NGOs shall engage in advocating for the Government to allow the Working Group to conduct a country visit.<sup>50</sup> Visits are prepared in collaboration with the Government and the United Nations agencies in the field and civil society representatives. The visits are an opportunity for the Working Group to engage in direct dialogue with the Government concerned and with representatives of civil society, with the aim of better understanding the situation of deprivation of liberty in the country and the underlying reasons for arbitrary detention. An important part of these missions are visits to detention centers, including penitentiaries, prisons, police stations, detention centers for migrants and psychiatric hospitals.<sup>51</sup>

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<sup>50</sup> The only exception is when the Human Rights Council has already appointed a country rapporteur or another appropriate mechanism with reference to that country. In that case the Working Group will decline the invitation unless the special rapporteur or the person responsible considers the visit by the Working Group to be useful.

<sup>51</sup> United Nations Human Rights Council. (2017). *Methods of work of the Working Group on Arbitrary Detention*. A/HRC/36/38. para. 25.

**Coalition building efforts** can also benefit from all of the above mentioned initiatives. Lawyers and organizations defending people arbitrarily detained can use the opportunity to submit a case to the WGAD, to bring awareness on an opinion, and to call for a country visit as a way to find common ground to form coalitions with other civil society organizations, and human rights defenders to amplify the call for action. A unified front can exert greater pressure on authorities to comply with international human rights standards.

**Advocacy efforts at the international level** are directly reinforced by WGAD opinions. Indeed, as part of the Human Rights Council Special Procedures, WGAD opinions feed into the United Nations General Assembly (UNGA). Securing an opinion from the WGAD supports broader efforts to promote human rights and combat arbitrary detention within international forums. In addition, a WGAD opinion can open up the door to engage more broadly with UN bodies, such as the Human Rights Committee or the Committee Against Torture, using WGAD opinions to substantiate claims and reinforce legal arguments and to advocate for resolutions or statements addressing arbitrary detention.

## 4. Process for sending a complaint with ILAAD

**Sending a complaint with ILAAD** involves seven steps:

- 1 **Gathering** information with ILAAD's Arbitrary Detention Form;
- 2 **Assessing** the opportunity of sending a complaint
- 3 **Securing** the consent of the detainee(s) for the complaint
- 4 **Drafting** the complaint with WGAD caselaw
- 5 **Submitting** the complaint while protecting the sources of information
- 6 **Responding** to the Government's arguments
- 7 **Coordinating** litigation and advocacy after the WGAD opinion's adoption

## 4.1. Step 1: Gathering information with ILAAD's Arbitrary Detention Form

**Gathering information about a detention** can be a complex task, especially in cases of arbitrary detention. For this reason, ILAAD developed an Arbitrary Detention Form based on the Model Questionnaire of the United Nations Working Group on Arbitrary Detention, to guide lawyers and NGOs partnering with ILAAD to process information regarding alleged arbitrary detentions.

### Practical tip:

- **ILAAD's ARBITRARY DETENTION FORM** can be found in Annexe in section 5.1 of the Guide.
- **To benefit from the help of ILAAD's *pro bono* lawyers** and researchers, this ARBITRARY DETENTION FORM should be sent by email to: [contact@ilaad.org](mailto:contact@ilaad.org)

**We recommend to use and follow the Arbitrary Detention Form** closely in order to provide as many details as possible on the reported detention with the information available with the help of the national lawyer involved, the family and if possible the detainee.

**All information collected by this form will remain confidential** and are intended to allow ILAAD's team of *pro bono* lawyers and researchers to efficiently consider if the documented situation may qualify as one of the five categories of arbitrary detention recognized by the United Nations Working Group on Arbitrary Detention.

**The form is divided into six parts** covering every aspect of the WGAD case law, in order to make sure that complaints based on the information provided will have the highest chances possible to be deemed admissible and lead to a positive opinion :

- **Information to identify the detainee** : family name, first name, sex, birth date, nationality, identity document information, profession, and address of usual residence.
- **Information to assess the arbitrariness of the arrest**: circumstances, and especially the date, the location and the forces involved, whether an arrest warrant was presented to explain the reasons for the arrest, what was its legal basis, and whether it was related to the exercise of international rights or freedoms.

- **Information to assess the arbitrary nature of the detention:** its length, location, the authority responsible for it, and whether the detainee was informed of the charges filed against him/her and promptly presented before a judge within a period of 48 hours after the arrest.
- **Information about the eventual pre-trial detention:** its legal basis, whether it was based on an individualized determination, and whether the detainee could challenge its legality.
- **Information about the respect of the guarantees** against arbitrary detention: especially related to the prohibition of torture, and the rights to access a lawyer and materials related to the detention, the rights to contact family.
- **Information about the respect of the right to a fair trial:** especially if the detainee has been denied the right to be judged during a public hearing by a competent, independent, and impartial tribunal, the circumstances of the trial, such as whether the detainee was presumed innocent and both present and represented at trial by a legal counsel free from fear, intimidation, harassment, and reprisals, and had eventually the right to appeal.

## 4.2. Step 2: Assessing the opportunity of sending a complaint

**Based on the information gathered in the Arbitrary Detention Form**, ILAAD's team of *pro bono* lawyers and researchers verify if the documented situation may qualify as an arbitrary detention and assess with partnering lawyers and organizations representing the victim, the opportunity of using the procedures of the WGAD as part of the detainee's defense and advocacy strategy.

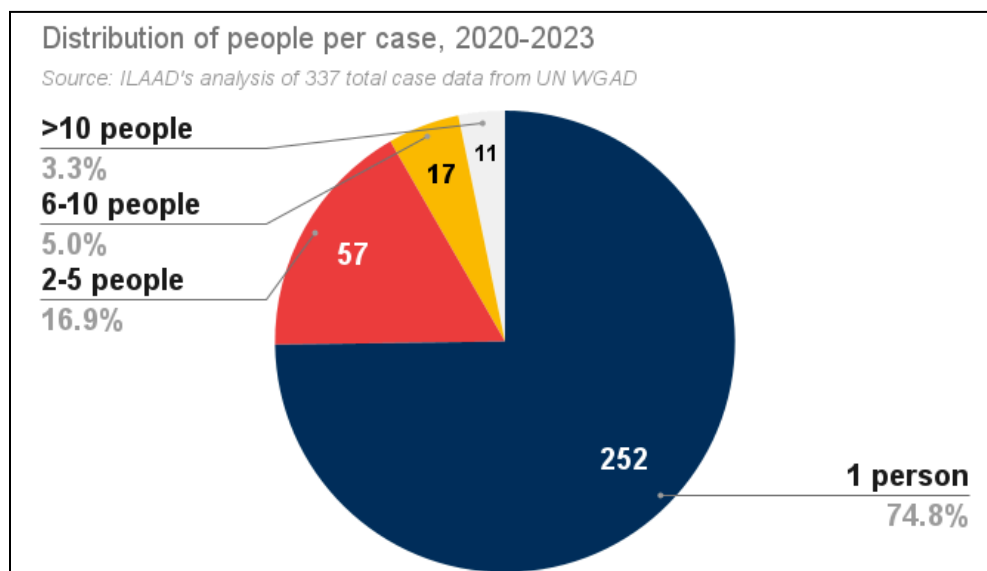
**If taking the case to the WGAD aligns with the detainee's defense strategy**, ILAAD's international human rights litigation team can provide free legal assistance for all the procedures before the United Nations Working Group on Arbitrary Detention on behalf of the detainee and in collaboration with its partners in order to obtain a report from the Working Group, calling for an immediate release. However, it is necessary to determine first which procedure of the WGAD to trigger (regular/urgent) and in what modality (individual/joint complaint).

**The decision of sending a regular or an urgent complaint** to the WGAD must be taken in regards to the specificities of each case, taking into consideration the existence of a serious threat to the detainee's health, physical or psychological integrity, and subsidiarily the stage of the procedure at the national level and other international venues available.

**The decision of sending an individual or a joint complaint** to the WGAD must for its part be determined in regards to the access to information concerning several detainees in the same situation<sup>52</sup>. Indeed, the WGAD accepts joint submissions made on behalf of multiple people at the same time, if the facts and circumstances of their arrests, detentions, or deprivations of liberty coincide. Moreover, sending joint complaints on behalf of several detainees can increase the pressure on the detaining State to release the victims, especially in cases of mass detentions.

 **Practical tip:**

- One-third of the WGAD complaints are joint complaints made on behalf of multiple detainees.
- Examples of mass joint complaints :
  - ◆ Balyoz or Sledgehammer Cases v. Turkey, concerning 250 detainees;<sup>53</sup>
  - ◆ Maikel Giovanni Rondón Romero, et al. v. Venezuela, concerning 315 detained demonstrators.<sup>54</sup>



<sup>52</sup> Genser, J. (2020). *The UN Working Group on Arbitrary Detention: Commentary and guide to practice*. New York: Cambridge University Press. p. 52.

<sup>53</sup> WGAD. (2013). *Balyoz or Sledgehammer Cases v. Turkey*. Opinion No. 6/2013. p. 1.

<sup>54</sup> WGAD. (2014). *Maikel Giovanni Rondón Romero, et al. v. Venezuela*. Opinion No. 51/2014. para. 39.

### 4.3. Step 3: Securing the consent of the detainee(s) for the complaint

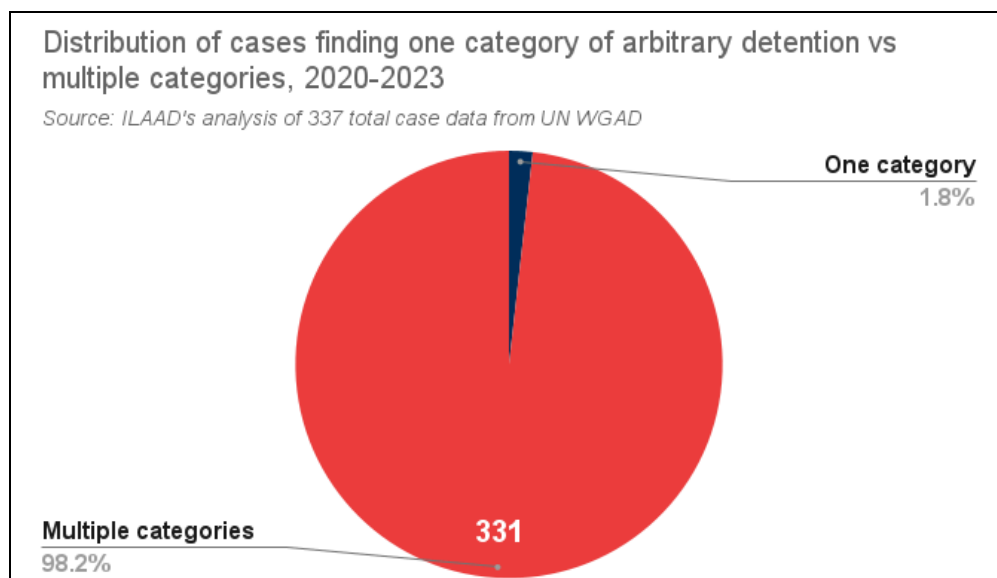
It is crucial to secure “evidence of the explicit consent” of the individuals or their family to the complaint before sending any information to the UN Working Group. Indeed, in order to take into consideration the case, the WGAD requests that petitioners provide the WGAD Consent Form in which the petitioner confirm that it has obtained the consent from the detainee of having his/her full name mentioned in a letter to the Government(s) concerned and published in an official public opinion of the Working Group and named in a public report to the Human Rights Council, along with the authorization given by the victims or their families to act on their behalf.

#### Practical tip:

- **The WGAD seeks such confirmation of the consent** of the detainee or its family in light of the direct engagement a complaint will set in motion between the Working Group and the detaining State.
- **A pre-filed WGAD Consent Form** can be found in Annexe 2 in section 5.2 of the Guide for complaints with ILAAD.

### 4.4. Step 4: Drafting the complaint with WGAD case law

**Drafting the complaint with reference to the WGAD case law** is highly recommended (but not a requirement). Similarly, having it drafted by a competent lawyer with a strong international law background is also highly recommended to strengthen the quality and efficacy of the complaint, even if the flexibility of the procedure before the WGAD allows that complaints do not need to be made by lawyers. Indeed, even if the WGAD is not bound by the legal analysis of the complaint, the chances of success are higher when a source identifies properly the different and often multiple categories of arbitrary detention at stake in the situation it reports.



**Complaints should not exceed 20 pages** according to the Methods of Work of the WGAD<sup>55</sup>, and in order to facilitate the Working Group's work, it is hoped that communications are submitted using the model questionnaire available from the Working Group's secretariat (but it is not mandatory). Moreover, they must be drafted in one of the three working languages of the Working Group : English, French, or Spanish.

 **Practical tip:**

- **ILAAD's litigation team** is composed of *pro bono* lawyers and researchers specialized in international human rights dedicated to provide free legal assistance for all the procedures before the WGAD, and especially through the drafting of the complaint in collaboration with ILAAD's partners.
- **ILAAD's complaints** are drafted to follow the Methods of Work with the following division to respect the 20 pages limit :
  - ◆ Executive Summary;
  - ◆ Situation of the detainee(s) based on ILAAD's Arbitrary Detention Form which follows the WGAD Model Questionnaire;
  - ◆ Country background;
  - ◆ Legal Analysis with WGAD case law, identification of the international violations, and characterization of the relevant categories of arbitrary detention;
  - ◆ Conclusions and requests.

<sup>55</sup> Any additional material, including annexes, exceeding that limit may not be taken into account by the Working Group during its review.

## 4.5. Step 5: Submitting the complaint while protecting the sources of information

**It is recommended to send the complaint via email** to the Secretariat of the WGAD, with the eventual relevant annexes, a power of attorney, and the WGAD Consent form.

**The submission procedure is confidential**, meaning that all details concerning the persons submitting the complaint, and any authorization provided by the victims or their families, is not sent to the detaining State. To protect those making complaints, the authors of those complaints are identified by the WGAD as “the source” both when communications are conveyed to the detaining government, and when opinions are adopted. While the WGAD and its staff scrupulously try to protect the confidentiality of the person or organization making a submission, it must be assumed that the detaining State might, fairly or not, identify the petitioner and presume a connection between him and the detainee.



### **Practical tip:**

→ **Complaints sent with ILAAD** on behalf of a detainee can be jointly signed by ILAAD and the partnering national lawyer or NGO, or wholly endorsed by ILAAD to add an additional layer of protection to the source against potential reprisals.

**The optimal timing for submitting a complaint** is at least three months before an upcoming session (three sessions per year lasting five to eight working days in Geneva, usually in April, August and November). However, the process between the submission and the adoption of an opinion can vary in duration depending on several factors, including the complexity of the case, the completeness of the submitted information, and the caseload of the WGAD.

**In practice, the Working Group rarely acknowledges receipt of a complaint**, and it is even rarer that it offers updates on its review process. It is hence necessary to keep a written record of all communications with WGAD Secretariat concerning procedural developments in individual cases. In some cases, the Working Group may request additional information from the complainant or seek clarification on specific points, especially regarding updates on the case's status, such as trial proceedings, releases, or changes in incarceration conditions.<sup>56</sup>

<sup>56</sup> United Nations Human Rights Council. (2017). *Methods of work of the Working Group on Arbitrary Detention*. A/HRC/36/38. para. 9-10.

## 4.6. Step 6: Responding to the Government

**Upon receiving a submission**, the Working Group forwards a summary to the relevant government, seeking its comments within 60 days. This response from the government should address the facts, applicable legislation, and details of any investigation, and like the initial submission, is also limited to 20 pages including annexes. Should the government need more time, it may request an extension of up to one month before the original deadline.

**Two scenarios are then possible :**

- **If the government fails to respond within the set timeframe**, the Working Group may proceed with an opinion based on the information at hand as long as the source has established a *prima facie* case of arbitrary detention.
- **If the government responds on time**, its comments are sent to the petitioner, thus providing an opportunity for additional comments.

**This stage ensures the adversarial nature of the procedure** by giving both parties the chance to present their perspectives, arguments, and reasoning on the arbitrary detention alleged.<sup>57</sup>

**When replying to a government response**, it is essential to stress the material facts from the original petition that the government did not refer to or dispute in its response, rather than drafting a direct response to the government's claims. In practice, the WGAD will treat as admissions all violations established *prima facie* by a petitioner that were not disputed by the government. In this sense, a litigator can take advantage of the flexible WGAD's approach to evidence, everytime a detaining State has not provided counter-response to each claim of violation of international standards rendering the detention arbitrary.<sup>58</sup>



### **Practical tip:**

→ **ILAAD's litigation team** is also dedicated to provide free legal assistance at this stage of the procedure, and especially through the drafting of the reply to the government response in collaboration with ILAAD's partners.

<sup>57</sup> United Nations Human Rights Office of the High Commissioner. (2024). *United Nations Working Group on Arbitrary Detention Revised fact sheet*. n°26/REV.1. p. 22

<sup>58</sup> WGAD. (2003). *Yang Jianli v. China*. Opinion No. 2/2003. para. 4.

## 4.7. Step 7: Coordinating litigation and advocacy after the WGAD opinion's adoption

**After the adoption of the WGAD**, the opinion is sent to the Government and two weeks later to the petitioner, before being published online on the Working Group's website and included in the Working Group's annual report to the Human Rights Council, usually issued in September.<sup>59</sup>

**Coordinating litigation and advocacy using the Opinion received** then becomes the next battle of the litigators to achieve the implementation of the WGAD recommendations. Indeed, in accordance with ILAAD's strategic, litigation and advocacy approach specified above, the mere issuance of an opinion by the WGAD typically does not significantly affect a detainee's situation unless it is followed by persistent litigation actions at both national and international levels, along with strategic advocacy efforts. The next recommended steps would be to:

- Use the WGAD opinion in national proceedings;
- Inform the Working Group of the Governments' eventual inactions through the follow-up procedure;
- Take the case to other regional or universal jurisdictions;
- Coordinate advocacy efforts through campaigns for the detainee's release, communication and awareness raising on systemic issues of arbitrary detention, domestic lobbying for reforms and coalition building efforts.

**This holistic strategy** thus allows to fully take advantage of the specificities of the WGAD's mandate and the authoritative nature of its Opinions with the aim to achieve justice for individuals in situations characterized by their arbitrary nature.

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<sup>59</sup> United Nations Human Rights Council. (2017). *Methods of work of the Working Group on Arbitrary Detention*. A/HRC/36/38. para. 19.

## 5. Annexes

### 5.1. ILAAD Arbitrary Detention Form

Based on the Model Questionnaire of the United Nations Working Group on Arbitrary Detention, this ARBITRARY DETENTION FORM prepared by the International League Against Arbitrary Detention (ILAAD), is intended for lawyers and NGOs partnering with ILAAD to process information regarding alleged arbitrary detentions.

Following a first assessment by ILAAD's team on the feasibility to take the case to the Working Group on Arbitrary Detention, and if it aligns with the detainee's defense strategy, ILAAD's international human rights litigation team can provide free legal assistance for all procedures before the United Nations Working Group on Arbitrary Detention on behalf of the detainee in collaboration with partnering lawyers and NGOs in order to obtain an opinion from the Working Group, calling for the detainee's immediate release.

#### IMPORTANT :

- To benefit from the help of ILAAD's *pro bono* lawyers and researchers, this ARBITRARY DETENTION FORM should be sent by email to: [contact@ilaad.org](mailto:contact@ilaad.org)
- All information collected by this form shall remain confidential.
- Please provide as many details as possible with the information available to you.



## Information about the detainee and the source

**Please provide the following information about the person(s) submitting the information**

Full name:

Email address:

**Please provide the following information about the identity of the detainee**

Family name:

First name:

Sex: ☐ Male ☐ Female

Birth date:

Nationality/Nationalities:

Identity document:

☐ Passport

☐ National ID

Issued by:

On:

No.:

Profession and/or activity:

Address of usual residence:



## Information about the arrest

1. When was the victim arrested?
  
  
  
  
  
  
  
  
  
  
2. Where did the arrest occur (please specify the country and the city)?
  
  
  
  
  
  
  
  
  
  
3. In which circumstances was the victim arrested (please provide as many details as available)?
  
  
  
  
  
  
  
  
  
  
4. Which forces carried out the arrest or are believed to have carried it out (please specify, for example, the number of officers making the arrest and whether they were wearing uniforms and/or had identified themselves)?

## Reasons for arrest

1. Did the forces making the arrest produce an arrest warrant or refer to any other decision by a public authority to explain the reasons for the arrest?

- ☐ Yes
- ☐ No


If yes, which authority issued the warrant or decision (please specify if it was a judicial authority) and what reasons were given?

If not, when was the individual first informed of the reason for the arrest or detention?

2. What was the legal basis for the arrest (if known, please provide the relevant legislation applied)?

3. If you believe that the arrest results from the exercise of international rights or freedoms guaranteed by the Universal Declaration of Human Rights and, insofar as States parties are concerned, by the International Covenant on Civil and Political Rights, please select one or more of the following scenarios applicable to the arrest and/or detention situation:

- ☐ Arrested because of the exercise of the right of freedom of movement.
- ☐ Arrested because of the exercise of the right to seek asylum from persecution.
- ☐ Arrested because of the exercise of freedom of thought, conscience, and religion.
- ☐ Arrested because of the exercise of the right to freedom of opinion and expression.
- ☐ Arrested because of the exercise of the right to freedom of peaceful assembly.
- ☐ Arrested because of the exercise of the right to freedom of association.
- ☐ Arrested because of the exercise of the right to take part in public affairs.



☐ Arrested in violation of the right to be equal protection before the law without discriminations based on one of the following protected grounds:

- ☐ Race or color.
- ☐ Sex, gender, sexual orientation.
- ☐ Language, national, ethnic, or social origin.
- ☐ Religion.
- ☐ Political or other opinion.
- ☐ Property or economic condition.
- ☐ Birth and family relations.
- ☐ Disability.
- ☐ Human Rights Defenders.

☐ Arrested because of the exercise of the right of minorities to enjoy their culture.

**Please provide as much detail as possible concerning the reasons why you believe one or more of the situations above apply:**

## Information about the detention

1. Is the victim currently in detention (any deprivation of liberty before, during and after trial)?

- ☐ Yes
- ☐ No

If not, when was the victim released and based on which decision?

If yes, for how long has the victim been detained (and how long can the detention last)?

2. Which authority is responsible for detaining the person?

3. Please provide information concerning the places of detention (if known, indicate any transfers, date of transfer and current place of detention):

4. Was the detainee informed of the charges filed and promptly presented before a judge within a period of 48 hours after the arrest?

- ☐ Yes
- ☐ No

If not, on which date did the detainee have its first appearance before a judge or other officer authorized by law to exercise judicial power?


## Information about the pre-trial detention

1. Regarding the circumstances of the detention, please select one or more of the following scenarios if you believe that they are applicable to the pre-trial detention:

- ☐ **Extraordinary rendition** (government-sponsored abduction and extrajudicial transfer of a person from one country to another, aimed at avoiding all procedural safeguards and disregarding the rules of extraditions).
- ☐ **Enforced disappearance** (refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, placing such a person outside the protection of the law).
- ☐ **Incommunicado detention** (detainee's communication with the outside world, his family or legal counsel, is highly restricted or nonexistent).

**If you believe that one or more of the above scenarios applies, please provide as much detail as available:**

2. What is the legal basis for the pre-trial detention (if known, please include relevant legislation applied)?



3. Concerning the legal basis of the pre-trial detention, please select one or more of the following violations if you believe that they are applicable to the detention situation:


- ☐ violation of the prohibition against ex post facto laws (guarantees that no one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed).
- ☐ violation of the prohibition against analogy (guarantees that a judge cannot fill a gap in criminal law by applying it beyond its strict wording).
- ☐ violation of the prohibition against vague laws (guarantees the precision of criminal provisions by prohibiting excessively broad provisions resulting in unjustified and arbitrary criminalization, such as threat to national security, terrorism, fake news, etc.)
- ☐ violation of the prohibition against uncoded, i.e. unwritten, or judge-made criminal provisions

**If one or more of the above scenarios applies, please provide as much detail as available:**

4. Was the pretrial detention based on an individualized determination of whether less restrictive measures than pretrial detention are available to ensure the defendant's appearance at trial?

- ☐ Yes
- ☐ No, it was automatic.

If yes, please provide the date of the decision, the authority that ordered it and the reasons supporting the decision:



5. Was the pretrial detention renewed?

- ☐ Yes  
☐ No

If yes, please provide the date of the renewal, the authority that ordered it and the reasons supporting the decision:

6. Has the detainee, or anyone else on the detainee's behalf, been able to challenge the legality of the pre-trial detention domestically (e.g.: *habeas corpus*)?

- ☐ Yes  
☐ No

If yes, please provide details on which domestic remedies are available, which have been used, and how effective have such remedies been:

7. Did the pretrial detention period reach or exceed the longest sentence applicable for the charges?

- ☐ Yes  
☐ No

If yes, please specify:



## Information about the guarantees against arbitrary detention

1. Does the continuation of the detention constitute a serious threat to the detainee's health, physical or psychological integrity or even to his or her life?

- ☐ Yes  
☐ No

If yes, please provide as much detail as possible concerning history of any health problems, access to healthcare in detention:

2. Has the detainee been subjected to torture, ill-treatment or been otherwise forced or compelled to testify against himself or to confess guilt?

- ☐ Yes  
☐ No

If yes, please provide as much detail as available concerning past experiences of being tortured by the government, and record of the government in mistreating detainees:

3. Has the detainee been able to access a lawyer of his own choosing from the outset of the deprivation of liberty and prior to questioning or rendering a declaration?

- ☐ Yes  
☐ No

If no, please provide the date of first access to lawyer:

4. Has the detainee been able to have adequate time and facilities for the preparation of his defense and to communicate with counsel in a confidential manner?

- ☐ Yes
- ☐ No

If no, please specify related obstacles:

5. Has the detainee and his lawyer been able to access materials related to the detention and to the charges and evidence gathered by the prosecution?

- ☐ Yes
- ☐ No

If no, please specify related restrictions:

6. Has the detainee been given access to family and contact with the outside world?

- ☐ Yes
- ☐ No

If yes, please provide details about the ability to communicate with relatives:

- Date of first family visit:
- Possible frequency of family visits:

7. Does the detainee hold dual nationality?

- ☐ Yes
- ☐ No

If yes, has the detainee been given access to consular assistance?

- ☐ Yes
- ☐ No

If yes, please provide any related available information:

## Information about the right to a fair trial

1. Has the detainee been judged during a court hearing?

- ☐ Yes
- ☐ No

2. On which date?

3. By which judicial body?

4. Do you believe that this judicial body qualifies as a competent, independent, and impartial tribunal?

- ☐ Yes
- ☐ No

If no, please specify why:

5. Has the detainee been judged during a public hearing?


- ☐ Yes
- ☐ No

If no, please provide details concerning the closed trial:

6. Has the detainee been able to be present at trial?

- ☐ Yes
- ☐ No

If no, please specify why:



7. Has the detainee been represented at trial by a legal counsel free from fear, intimidation, harassment, and reprisal while carrying out its duties?

- ☐ Yes
- ☐ No

If no, please specify:

8. Has the detainee and its counsel been able to present and cross-examine witnesses under the same conditions as the witnesses presented against him?

- ☐ Yes
- ☐ No

If no, please specify:

9. Do you believe that the detainee has been presumed innocent until proven guilty during the trial?


- ☐ Yes
- ☐ No

If not, did one of these scenarios occur?

- ☐ Prosecution reversed the burden of proof and did not respect the principle that the accused in trial has the benefit of the doubt.
- ☐ Judges and public authorities prejudged the outcome of trial or made statements presenting the individual as guilty before conviction.

Please provide any related available information:

10. What sentence was imposed (please provide as much detail as available)?



11. Has the detainee been able to appeal before a higher tribunal to review his conviction and sentence?

☐ Yes

☐ No

If yes, please provide details of the appeals process and describe the circumstances of any hearings and the outcome.

12. Is the detainee detained despite release order, acquittal, amnesty or beyond expiration of sentence?

☐ Yes

☐ No

If yes, please specify:

## 5.2. WGAD Consent Form

By signing below,

We, [*name of the organization*] and the International League Against Arbitrary Detention hereby confirm that we have obtained the consent for:

- (a) Having the full name of [*insert name of alleged victim*] mentioned in a letter to the Government(s) concerned;
- (b) Having the full name of [*insert name of alleged victim*] published in an official public opinion of the Working Group and named in a public report to the Human Rights Council.

Date [insert date]

Signature [insert signature]

- If a case is submitted to the Working Group by anyone other than the victims or their families, such persons or organizations should provide the authorization given by the victims or their families to act on their behalf.
- All details concerning the persons submitting information to the Working Group, and any authorization provided by the victims or their families, will be considered confidential.

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