**ARBITRARY DETENTION**



**The Working Group on Arbitrary Detention** was established by resolution 1991/42 of the former Commission on Human Rights. Its mandates are: The Working Group on Arbitrary Detention is the only body in the international human rights system entrusted by the former Commission on Human Rights and the Human Rights Council with a specific mandate to receive and examine cases of arbitrary deprivation of liberty.

**The Working Group regards cases of deprivation of liberty as arbitrary under customary international law in cases where:**

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty;

(b) The deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights;

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

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

(e) **The deprivation of liberty constitutes** a violation of the international law for reasons of **discrimination** based on birth; national, ethnic or **social origin**; language; **religion**; economic condition; **political** or **other opinion**; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights.

(a**) To investigate cases of deprivation of liberty** imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned;

(b) **To seek and receive information from Governments** and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives;

(c) To act on information submitted to its attention regarding alleged cases of arbitrary detention by **sending urgent appeals and communications** to concerned Governments to clarify and to bring to their attention these cases;

(d) To conduct **field missions** upon the invitation of Government, in order to understand better the situations prevailing in countries, as well as the underlying reasons for instances of arbitrary deprivation of liberty;

(e) **To formulate deliberations on issues of a general nature** in order to assist States to prevent and guard against the practice of arbitrary deprivation of liberty and to facilitate consideration of future cases;

(f) **To present an annual report** to the Human Rights Council presenting its activities, findings, conclusions and recommendations.

**Members of the Working Group**

Mr. Sètondji Adjovi (Benin), since 2014 (Chair-Rapporteur)

Ms. Leigh Toomey (Australia), since 2015 (Vice-Chair on follow-up)

Mr. José Guevara (Mexico), since 2014 (Vice-Chair on individual complaints)

Mr. Seong-Phil Hong (Republic of Korea), since 2014

Ms. Elina Steinerte (Latvia), since 2016

Contact :wgad@ohchr.org

**WHAT THE WORKING GROUP DO**

1- To respect and promote the right of anyone arrested or detained on a criminal charge to be brought promptly before a judge or other officer authorized by law to exercise judicial power, and to be entitled to trial within a reasonable time or to release.

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

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

4- To ensure that the conditions of pretrial detention do not undermine the fairness of the trial; To provide guarantees with respect to any form of detention against unlawful or arbitrary deprivations of liberty;

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

**The prohibition of arbitrary deprivation of liberty is recognized in all major international and regional instruments for the promotion and protection of human rights.** These include articles 9 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, article 6 of the African Charter of Human and Peoples’ Rights (African Charter), article 7, paragraph 1, of the American Convention on Human Rights (American Convention), article 14 of the Arab Charter on Human Rights (Arab Charter), and article 5, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Currently, 167 States have ratified the International Covenant on Civil and Political Rights, and the prohibition of arbitrary deprivation of liberty is widely enshrined in national constitutions and legislation and follows closely the international norms and standards on the subject.

The prohibition of arbitrary deprivation of liberty and the right of anyone deprived of his or her liberty to bring proceedings before a court in order to challenge the legality of the detention, known in some jurisdictions as **habeas corpus**.

1. Arbitrary deprivation of liberty can never be a necessary or proportionate measure, given that the considerations that a State may invoke pursuant to derogation are already factored into the arbitrariness standard itself. Thus, a State can never claim that illegal, unjust, or unpredictable deprivation of liberty is necessary for the protection of a vital interest or proportionate to that end. This view is consistent with the conclusion of the Human Rights Committee that the Covenant rights to not be arbitrarily deprived of one’s liberty and the right of anyone deprived of his or her liberty to bring proceedings before a court in order to challenge the legality of the detention are non-derogable.
2. Secret and/or incommunicado detention constitutes the most heinous violation of the norm protecting the right to liberty of human being under customary international law. The arbitrariness is inherent in these forms of deprivation of liberty as the individual is left outside the cloak of any legal protection.
3. The prohibition of “arbitrary” arrest and detention has been recognized both in times of peace and armed conflict. International law recognizes detention or other severe deprivation of physical liberty as a crime against humanity, where it is committed as part of a widespread or systematic attack against any civilian population.
	1. The notion of “arbitrary” and its constituent elements under customary international law.The notion of “arbitrary” stricto sensu includes both the requirement that a particular form of deprivation of liberty is taken in accordance with the applicable law and procedure and that it is proportional to the aim sought, reasonable and necessary. The drafting history of article 9 of the International Covenant on Civil and Political Rights “confirms that ‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of **inappropriateness**, **injustice**, **lack of predictability and due process of law**”.
	2. The legal basis justifying the detention must be **accessible**, **understandable**, **non-retroactive** and **applied in a consistent and predictable** way to **everyone equally**. Moreover, according to the Human Rights Committee, an essential safeguard against arbitrary arrest and detention is the “**reasonableness**” of the suspicion on which an arrest must be based. According to the European Court of Human Rights, “having a ‘reasonable suspicion’ presupposes the existence of facts or information which **would satisfy an objective observer that the person concerned may have committed the offence**. What may be regarded as ‘reasonable’ will however depend upon all the circumstances”
	3. The notion of “arbitrary detention” lato sensu can arise from the law itself or from the particular conduct of Government officials. A detention, even if it is authorized by law, may still be considered arbitrary if it is premised upon an arbitrary piece of legislation or is inherently unjust, relying for instance on discriminatory grounds.29 An overly broad statute authorizing automatic and indefinite detention without any standards or review is by implication arbitrary.
	4. Legal provisions incompatible with fundamental rights and freedoms guaranteed under international human rights law would also give rise to qualification of detention as arbitrary.
4. the notion of promptness as set out in article 9, paragraph 3, of the International Covenant on Civil and Political Rights is one key element that might render detention arbitrary. The Human Rights Committee has consistently found violations of article 9, paragraph 3, of the Covenant in cases of delays of a “few days” before the person is brought before a judge.
5. Any extension of the period of deprivation of liberty detention must be based on adequate reasons setting out a detailed justification, which must not be abstract or general in character.

**Arbıtrary detention with the guise of counter terrorism**

1. Although it is acknowledged that counter-terrorism measures might require “the adoption of specific measures limiting certain guarantees, including those relating to detention and the right to a fair trial” in a very limited manner, “in all circumstances deprivation of liberty must remain consistent with the norms of international law.” In this respect, the right of anyone deprived of his or her liberty to bring proceedings before a court in order to challenge the legality of the detention is a personal right, which must “**in all circumstances be guaranteed by the jurisdiction of the ordinary courts**.”

**Articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights relating to Arbitrary Detention**

 Universal Declaration of Human Rights

**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. Allare entitled to equal protection against any **discrimination** in violation of this Declaration and against any incitement to such discrimination.

**Article** **9**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article** **10**

Everyone is entitled in full equality to a fair and public hearing by an **independent** and **impartial** **tribunal**, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**

1. Everyone charged with a penal offence has the right to be **presumed innocent** until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of **any act or omission which did not** constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 13**

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14**

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinionswithout interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 20**

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

**Article 21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of Government; this will shall be expressed inperiodic and genuine elections which shall be by universal and equal suffrage and shall be held by secretvote or by equivalent free voting procedures.

**International Covenant on Civil and Political Rights**

**Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest ordetention. **No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law**.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time orto release. It shall not be the general rule that persons awaiting trial shall be detained in custody, butrelease may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and,should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before acourt, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

**Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty ofmovement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

**Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern

 matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be **presumed innocent until** proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counselof his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his ownchoosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistanceassigned to him, in any case where the interests of justice so require, and without payment by him in anysuch case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and

examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used incourt;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and thedesirability of promoting their re-habilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment asa result of such conviction shall be compensated according to law, unless it is proved that the non-disclosureof the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally

convicted or acquitted in accordance with the law and penal procedure of each country.

**Article 18**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall includefreedom to have or to adopt a religion or belief of his choice, and freedom, either individually or incommunity with others and in public or private, to manifest his religion or belief in worship, observance,practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**Article 19**

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with its special duties and responsibilities. It may therefore by subject to certain restrictions, but these shall only be such as areprovided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

**Article 21**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of thisright other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of publichealth or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the **right to freedom of association** with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, publicorder (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces

and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

**Article 25**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrageand shall be held by secret ballot, guaranteeing the free expression of the will of the elections;(c) To have access, on general terms of equality, to public service in his country.

**Article 26**

All persons are equal before the law and are entitled **without any discrimination** to the equal protection ofthe law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their groups, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

**Body of principles for the protection of all persons under any form of detention or imprisonment**

**(Resolution 43/173 adopted by the General Assembly)**

1. **Principle 1**

All persons under any form of detention of imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person

**Principle 2**

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

**Principle 3**

There shall be no restriction upon or derogation from any of the human rights of persons under any form ofdetention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations orcustom on the pretext that this Body of Principles does not recognize such rights or that it recognizes themto a lesser extent.

**Principle 4**

Any form of detention or imprisonment and all measures affecting the human rights of a person under anyform of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

**Principle** 5

1. These principles shall be applied to all persons within the territory of any given State, without distinctionof any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall alwaysbe subject to review by a judicial or other authority.

**Principle 6**

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhumanor degrading treatment or punishment\*\*/. No circumstance whatever may be invoked as a justification fortorture or other cruel, inhuman or degrading treatment or punishment.

**Principle 7**

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, makeany such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about tooccur shall report the matter to their superior authorities and, where necessary, to other appropriateauthorities or organs vested with reviewing or remedial powers.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

**Principle 8**

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

**Principle 9**

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

**Principle 10**

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

**Principle 11**

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefore.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

**Principle 12**

1. There shall be duly recorded:

(a) The reasons for the arrest;

(b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of hisfirst appearance before judicial or other authority;

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

**Principle 13**

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

**Principle 14**

A person who does not adequately understand or speak the language used by the authorities responsiblefor his arrest, detention or imprisonment is entitled to receive promptly in a language which he understandsthe information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle

13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legalproceedings subsequent to his arrest.

**Principle 15**

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3,communication of the detained or imprisoned person with the outside world, and in particular his family orcounsel, shall not be denied for more than a matter of days.

**Principle 16**

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, adetained or imprisoned person shall be entitled to notify or to require the competent authority to notifymembers of his family or other appropriate persons of his choice of his arrest, detention or imprisonment orof the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right tocommunicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is capable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle.

Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needsof the investigation so require.

**Principle 17**

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

**Principle 18**

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

**Principle 19**

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular,members of his family and shall be given adequate opportunity to communicate with the outside world,subject to reasonable conditions and restrictions as specified by law or lawful regulations.

**Principle 20**

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention orimprisonment reasonably near his usual place of residence.

**Principle 21**

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for thepurpose of compelling him to confess, to incriminate himself otherwise or to testify against any otherperson.

2. No detained person while being interrogated shall be subject to violence, threats or methods ofinterrogation which impair his capacity of decision or his judgement.

**Principle 22**

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientificexperimentation which may be detrimental to his health.

**Principle 23**

1. The duration of any interrogation of a detained or imprisoned person and of the intervals betweeninterrogations as well as the identity of the officials who conducted the interrogations and other personspresent shall be recorded and certified in such form as may be prescribed by law.

2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the

information described in paragraph 1 of the present principle.

**Principle 24**

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

**Principle 25**

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

**Principle 26**

The face that a detained or imprisoned person underwent a medical examination, the name of the physicianand the results of such an examination shall be duly recorded. Access to such records shall be ensure. Modalities therefore shall be in accordance with relevant rules of domestic law.

**Principle 27**

Non-compliance with these principles in obtaining evidence shall be taken into account in determining theadmissibility of such evidence against a detained or imprisoned person.

**Principle 28**

A detained or imprisoned person shall have the right to obtain within the limits of availability resources, iffrom public sources, reasonable quantities of educational, cultural and informational material, subject toreasonable conditions to ensure security and good order in the place of detention or imprisonment.

**Principle 29**

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be

visited regularly by qualified and experienced persons appointed by, and responsible to, a competentauthority distinct from the authority directly in charge of the administration of the place of detention or

imprisonment.

2. A detained or imprisoned persons shall have the right to communicate freely and in full confidentialitywith the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the

present principle, subject to reasonable conditions to ensure security and good order in such place.

**Principle 30**

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

**Principle 31**

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall

devote a particular measure of care to the appropriate custody of children left without supervision.

**Principle 32**

1. A detained person or his counsel shall be entitled at any time of take proceedings according to domestic

law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain hisrelease without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and atno cost for detained persons without adequate means. The detaining authority shall produce without

unreasonable delay the detained person before the reviewing authority.

**Principle 33**

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaintregarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to

authorities responsible for the administration of the place of detention and to higher authorities and, whennecessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility toexercise his rights under paragraph 1 of the present principle, a member of the family of the detained orimprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the

complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If therequest or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it

before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under

paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

**Principle 34**

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention orimprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or otherauthority, either on its own motion or at the instance of member of the family of such a person or anyperson who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held onthe same procedural basis whenever the death or disappearance occurs shortly after the termination of thedetention or imprisonment. The findings of such inquiry or a report thereon shall be made available uponrequest, unless doing so would jeopardize an ongoing criminal investigation.

**Principle 35**

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in theseprinciples shall be compensated according to the applicable rules on liability provided by domestic law.

2. Information required to be recorded under these principles shall be available in accordance withprocedures provided by domestic law for use in claiming compensation under the present principle.

**Principle 36**

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shallbe treated as such until proved guilty according to law in a public trial at which he has had all theguarantees necessary for his defence.

2. The arrest or detention of such a person pending investigation and trial shall be carried out only for thepurposes of the administration of justice on grounds and under conditions and procedures specified by law.The imposition of restrictions upon such a person which are not strictly required for the purpose of thedetention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

**Principle 37**

A person detained on a criminal charge shall be brought before a judicial or other authority provided by lawpromptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

**Principle 38**

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to releasepending trial.

**Principle 39**

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unlessa judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

**16 kritere göre ihraç TEROR ORGUTU UYESI OLMAK ICIN GEREKEN KRITERLER**

OHAL kararnameleriyle kamu kurumlarından tasfiye edilen FETÖ üyeleri, ihraç ve men edilmeden önce 16 kritere tabi tutuluyor. Bakanlıklarda oluşturulan komisyonlar, **kurunun yanında yaşın da yanmaması** [ayrimcilik] için değerlendirmelerini bu kriterler çerçevesinde yapıyor



**5 Temmuz’de darbe girişiminde bulunan Fetullahçı Terör Örgütü (FETÖ**) üyelerinin kamu kurumlarından söküp atılmasında **suça bulaşmamış olanların** zarar görmemesi için ihraçlar ve memuriyetten men etme işlemleri Başbakan Binali Yıldırım’ın açıkladığı 16 kriter çerçevesinde yapılıyor.

OHAL yürürlüğe girmesinden sonra devlet içindeki FETÖ mensuplarının tasfiyesini hızlandıran hükümet, örgütle ilişkisi olmayan ancak bu süreçte zarar görme ihtimali bulunan kamu personelini ayrı tutabilmek için hassas davranıyor. Kurunun yanında yaşın da yanmaması için bakanlıklarda oluşturulan komisyonlar, Başbakan Binali Yıldırım’ın açıkladığı 16 kriter çerçevesinde hareket ediyor.

İFADELER VE İTİRAFLARDAN

Cumhurbaşkanı Recep Tayyip Erdoğan ve hükümetin sık sık **FETÖ mensuplarının bildirilmesi çağrısı** yapmasından sonra **kurumlara yapılan ihbarlar da değerlendirmeye alınarak** belirlenen kriterlere tabi tutuluyor. **Ayrıca gözaltına alınan kişilerin ifadeleri**, **gizli tanıklar** ve **itirafların** verdiği bilgiler de incelendikten sonra işlem yapılıyor.

**Tasfiyeler sırasında suça bulaşmamış** ve örgütle organik bağı olmayan kişilerin zarar gördüğü anlaşılırsa hata düzeltiliyor. Çok karmaşık ve kriminal bir yapıyla mücadele sırasında bazı yanlışlıkların yapılabileceği, bildirilmesi halinde hataların düzeltileceği ifade ediliyor.

17/25 ARALIK MİLAT

**Kamu kurum ve kuruluşlarında FETÖ tasfiyeleri yapılırken Başbakan Binali Yıldırım’ın açıkladığı 17/25 Aralık tarihi baz alınıyor. O tarihe kadar Paralel Yapı ile ilişkisi veya sempatisi olmuş kişiler sözkonusu tarihten sonraki tavırlarına göre değerlendiriliyor**. **17/25 Aralık’tan sonra örgütle ilişkisini kesmeyen ve organik bağını sürdürenler kamudan ayıklanıyor**. **FETÖ temizliğinde suistimallere yol açmamak için istihbarat kaynaklarından da yararlanılıyor**.

İŞTE O KRİTERLER

1- 17/25 Aralık’tan sonra **Bank Asya v**e Paralel Yapı’nın diğer şirketlerine parasal katkı sağlamak.

2-FETÖ’nün **sendikaları** ve **derneklerinde** yönetici veya üye olmak.

3-**ByLock ve benzeri özel şifreli yazışma programını kullanmak**.

4-**Kimse Yok Mu Derneği’ne bağışta bulunmak**.

5-**Emniyet ve MİT ve MASAK raporlarının olması**.

6-Kapsamlı **sosyal medya taraması**.

7-**Örgütün sivil toplum kuruluşları adı altında sohbet ve toplantılarına** katılmak.

8-Doğal akış dışında **kısa sürede terfi etmiş** veya özel görevlere getirilmiş olmak.

9-Örgüte 'himmet' adı altında **para aktarmak**.

10-Güvenilir **ihbarlar**, ifade ve **itiraflar** bulunması.

11-**Takip ettikleri sitelerin incelemesinden** elde edilen edilen sonuçlar.

12-**FETÖ üyesi şirketlerin normal olmayan işlemlerini yapmak, koruyup kollamak**.

13-Yargıda ve emniyette örgüt lehine hareket ettiği tespit edilen kişiler arasında yer almak.

14-**Paralel Yapı’nın ev ve yurtlarında kalanların sonraki yıllarda gösterdiği davranışlar**.

15-**İşyerinde diğer çalışanlardan, tanıyan kişilerden elde edilen bilgiler**.

16-**Örgütün gazete, dergi aboneliği ve çocuğunu okullarına göndermeyi 17/25 Aralık’tan sonra sürdürmek**.

Kaynak: Karar gazetesi