Working Group on Arbitrary Detention

Working Group on Arbitrary Detention (WGAD) is a special procedure of the Human Rights Council and the only non-treaty-based mechanism whose mandate expressly provides for the consideration of individual complaints aimed at qualifying detention as arbitrary or not. WGAD can engage with any UN Member State irrespective of what treaties that State has or has not ratified

MANDATE

Investigation of Individual Cases

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

Seek and Receive Information

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

Urgent Appeals and Communications

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

Field Missions

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

Formulate Deliberations

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

Present Annual Reports

To present an annual report to the Human Rights Council presenting its activities, findings, conclusions and recommendations

Source:
UN OHCHR Revised Fact Sheet No. 26 and UN GA A/HRC/33/66

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WHAT IS DEPRIVATION OF LIBERTY?

Deprivation of Liberty

Legitimate deprivation of liberty (convicted person, person accused of serious offences, or person deprived during state of emergency in accordance with Art 4 ICCPR)

Other cases of deprivation (confinement in psychiatric institutions or administrative holding of asylum seekers)

Deprivation of liberty that is prohibited (e.g. impriosnment for debt)

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.**

WHEN IS DEPRIVATION OF LIBERTY 'ARBITRARY'?

Category	Description
I (No legal basis)	1. When person is kept in detention **after the completion of his or her sentence**. 2. When person is kept in detention **despite an amnesty law** applicable to them.
II (Against exercise of rights)	When people are deprived of their liberty as a result of the exercise of their rights guaranteed by: 1. Article 7 UDHR (equality before the law). 2. Article 13-14 UDHR (freedom of movement and right to asylum). 3. Article 18-21 UDHR (freedom of religion, freedom of speech, freedom of peaceful assembly, right to take part in government). 4. Article 12 ICCPR (right to movement). 5. Article 18-19 (freedom of religion, freedom of speech) 6. Article 21-22 (right to peaceful assembly, freedom of association). 7. Article 25-27 ICCPR (right to take part in government, equality before the law, right to culture)
III (Non-observance towards fair trial principle)	When there is **total or partial non-observance towards international norms** related to the right to fair trial of such gravity as to give the deprivation of liberty an arbitrary character.
IV (Prolonged administrative custody)	**Asylum seekers, immigrants or refugees who are subjected to prolonged administrative custody** without the possibility of administrative or judicial review or remedy.
V (Discrimination)	When the deprivation of liberty constitutes a **violation of international law on the grounds of discrimination** based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring equality.

NOT IN THE MANDATE OF WG:

1. Other ‘unfair’ deprivation of liberty that does not fall within the above five categories.
2. Cases in which the WG has to take value of the evidence produced during a trial.
3. Complaints about disappearance of individuals, alleged torture, inhuman conditions of detention.

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UN OHCHR Revised Fact Sheet No. 26 and UN GA A/HRC/33/66

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Infographic Series on Working Group on Arbitrary Detention

Procedure for the Investigation of Individual Cases

Submission › **Opportunity for Government to Respond** › **WG Opinion** › **Follow-Up**

Stage 1

Submission

Submission can be made by:

① The individual concerned, their families or legal representatives; or

② Civil society organisations

Explicit consent of alleged victim or his or her family or legal representatives is needed
Consent form link: https://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx

Content of submission (max. 20 pages including annexes):*

- Victim’s identity
- Information on the circumstances of the arrest or detention

Model questionnaire can be accessed from
https://www.ohchr.org/en/special-procedures/wg-arbitrary-detention

Written submissions should be addressed to:

Working Group Secretariat
Email: ohchr-wgad@un.org

Working Group on Arbitrary Detention,
Office of the High Commissioner for Human Rights,
United Nations Office at Geneva,
8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland

**) Absence of information on the circumstances or absence of response from the source may lead to the termination of WG consideration*

Stage 2

Opportunity for Government to Respond

The WGAD transmits the allegation to the Government concerned.

Government **may** reply within 60 days.

If no reply is submitted within the time limit, the Working Group may render an opinion in absence of the reply.

If the concerned Government replies, the WGAD will transmit the Government's reply to the petitioner for any additional comments.

Stage 3

Working Group Opinion

Following measures will be adopted in private session:

Findings	Action
If the arbitrary nature is established	The WGAD will render an **opinion** and make **recommendations** to the Government
If the person has been released	The case is **filed**, but the WGAD reserves the right to render an opinion on a case-by-case basis
If the case is **not** considered as the arbitrary deprivation of liberty	The WGAD will render an **opinion**
If further information is required	The case is **pending** until such information is received
If sufficient information on the case is considered unable to be obtained	The case may be **filed** provisionally or definitively

The opinion (and the recommendations) is sent to the Government 48 hours after this notification. The opinion is also conveyed to the source for information, and is published online.

Stage 4

Follow-Up

Follow-Up

Governments, petitioner and other parties (including civil society organisations) should inform the WGAD of the follow-up action taken on the recommendations made by the WGAD in its opinion

Review of Opinion

The WGAD may reconsider its opinion, at its own discretion or at the request of the Government concerned or the petitioner, if it becomes aware of **new facts** that would led the WGAD to a different outcome

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DELIBERATION ON MATTERS OF A GENERAL NATURE

The WG may formulate deliberations on matters of a general nature in order to develop a consistent set of precedents and assist States in preventing and guarding against the practice of arbitrary deprivation of liberty.

Deliberations define the criteria on the basis of which deprivation of liberty linked with such situations may become arbitrary.

Some WG deliberations adopted have explored issues of house arrest, deprivation of liberty for the purpose of rehabilitation through labour, detention of migrants.

Source:
UN OHCHR Revised Fact Sheet No. 26 and UN GA A/HRC/33/66

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URGENT ACTION / APPEALS PROCEDURE

WHEN CAN AN URGENT APPEAL BE REQUESTED?

Urgent Action

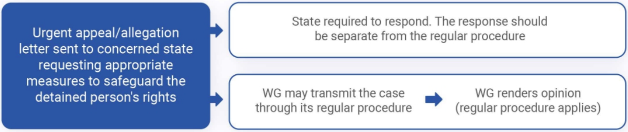
If there are sufficiently reliable allegations that detention may constitute a serious danger to the person's health and life

When the WG deems that situation warrants such an appeal

Request of urgent appeal can be made through ohchr-wgad@un.org and urgent-action@ohchr.org or online submission tool. The information submitted to the WGAD for urgent action needs to be concise but also cover all relevant details pertinent to the alleged situation of arbitrary arrest.

Difference between Urgent Action and Investigation of Individual Cases → the urgency of the situation and the confidentiality of the procedure (which can only be made public after 60 days)

Mechanism of urgent action



Urgent appeal/allegation letter sent to concerned state requesting appropriate measures to safeguard the detained person's rights

State required to respond. The response should be separate from the regular procedure

WG may transmit the case through its regular procedure → WG renders opinion (regular procedure applies)

This letter will be made public after 60 days

1. An **urgent appeal or allegation letter is sent** to the Minister for Foreign Affairs through the Permanent Mission of the country concerned. This letter is sent to request **appropriate measures to ensure the detained person's right to life and to physical and mental integrity are respected**.
2. After an urgent appeal is transmitted to the Govt by the most rapid means, the WG **may transmit the case through its regular procedure in order to render an opinion**.
3. **Govt is required to respond separately for the urgent action procedure**.
4. All urgent appeals and allegation letters are automatically made public after 60 days.
5. **Urgent Appeals in no way prejudge any opinion the WG may render**.

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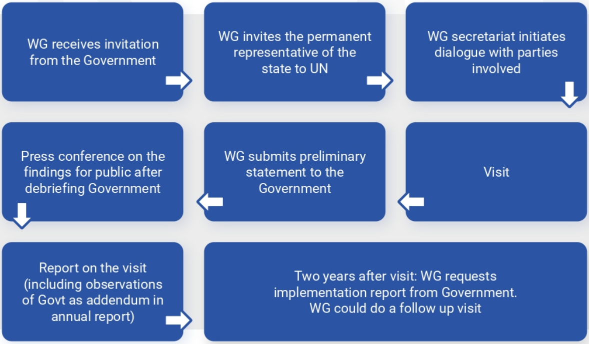
COUNTRY VISIT



WG receives invitation from the Government

WG invites the permanent representative of the state to UN

WG secretariat initiates dialogue with parties involved

Visit

WG submits preliminary statement to the Government

Press conference on the findings for public after debriefing Government

Report on the visit (including observations of Govt as addendum in annual report)

Two years after visit: WG requests implementation report from Government. WG could do a follow up visit

Aim: better understanding of the situation of deprivation of liberty in the country and the underlying reasons for the arbitrary detention. The WG shall undertake two visits per year, with a delegation consisting of at least two of its members. Most importantly, the delegation will visit the country's detention centers (penitentiaries, prisons, police stations, detention centers for migrants and psychiatric hospitals).

Government must ensure that the WG will have the opportunity to:

1. Conduct meetings with the highest authorities of the branches of the State;
2. Visit penitentiaries;
3. Meet with all the authorities and officials who will affect the personal liberty of person subjected to the jurisdiction of the host State;
4. Conduct meetings with international bodies and agencies as well as with non-governmental organisations, lawyers, bar associations and other professional associations of interest, NHRIs, diplomatic and consular reps and religious authorities.

Government shall guarantee no reprisals against persons interviewed by WG. All stakeholders involved in the visit shall be informed during the follow-up procedure and shall submit their observations, if necessary, WG shall request a follow up visit to the country concerned. **WG shall not make visits to countries for which the HR Council has already appointed a country rapporteur or another appropriate mechanism with reference to that country,** unless the Special Rapporteur or the person responsible considers the visit useful.

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