



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

Working Group on Arbitrary Detention

Global Consultation on the Right to Challenge the Lawfulness of Detention before Court

1 – 2 September 2014, Room XIX Palais des Nations
Geneva, Switzerland

Programme Information

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1. Programme of Work

DAY 1: 1 September 2014	
Hours	Session
10:00 – 10:30	<p>OPENING CEREMONY</p> <ul style="list-style-type: none"> • Mr. Bacre Ndiaye, Director, Human Rights Council and Special Procedures division, United Nations Office of the High Commissioner for Human Rights • Her Excellency Ambassador Karen Pierce, Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office and other international organizations in Geneva
10:30 – 11:00	<p>DEVELOPMENT OF PRINCIPLES AND GUIDELINES on remedies and procedures on 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</p> <ul style="list-style-type: none"> • Mr. Mads Andenas, Chair-Rapporteur of the United Nations Working Group on Arbitrary Detention
11:00 – 11:15	BREAK
11:15 – 12:00	<p>Panel 1: FRAMEWORK, SCOPE AND CONTENT of the right to court review of detention</p> <p>Moderator:</p> <ul style="list-style-type: none"> • Mr. Vladimir Tochilovsky, Vice-Chair of the United Nations Working Group on Arbitrary Detention <p>Panelists:</p> <ul style="list-style-type: none"> • Sir Nigel Rodley, Chairperson of the United Nations Human Rights Committee and Professor of Law and Chair of the Human Rights Centre at the University of Essex <i>Focus of presentation: the scope and content of the right to court review of detention, and its non-derogable nature.</i> • Mr. Manfred Nowak, Director of the Ludwig Boltzmann Institute of Human Rights of the University of Vienna and former United Nations Special Rapporteur on Torture <i>Focus of presentation: the framework of the right to court review of detention and the concept of universality therein.</i> • Mr. Matthew Pollard, Senior Legal Advisor and United Nations Representative at the International Commission of Jurists <i>Focus of presentation: the scope of remedies available upon a successful challenge to the lawfulness of detention.</i>
12:00 – 13:00	Open Discussion (Panel 1)

13:00 – 15:00	LUNCH BREAK
15:00 – 15:30	<p>Panel 2: PROCEDURAL GUARANTEES necessary to exercise the right to court review of detention</p> <p>Moderator:</p> <ul style="list-style-type: none"> Mr. Roland Adjovi, Member of the United Nations Working Group on Arbitrary Detention <p>Panelists:</p> <ul style="list-style-type: none"> Mr. Malcolm Evans, Chairperson of the United Nations Subcommittee on Prevention of Torture and Professor of Public International Law and Deputy Director of the Human Rights Implementation Centre at the University of Bristol. <i>Focus of presentation: the procedural safeguards necessary to effectively exercise the right to court review of detention in practice.</i> Mr. Gerald L. Neuman, Member of the United Nations Human Rights Committee and Rapporteur for draft general comment on Article 9 of the International Covenant on Civil and Political Rights; J. Sinclair Armstrong Professor of International, Foreign, and Comparative Law at Harvard Law School <i>Focus of presentation: the reviewing body before which a challenge to the lawfulness of detention is heard and the scope of its review.</i>
15:30 – 16:30	Open Discussion (Panel 2)
16:30 – 16:45	BREAK
16:45 – 17:15	<p>Panel 3: CRIMINAL DETENTION</p> <p>Obstacles faced by individuals detained on criminal charges in exercising the right to court review of detention and any good practices on ensuring its real and meaningful exercise.</p> <p>Moderator:</p> <ul style="list-style-type: none"> Mr. Vladimir Tochilovsky, Vice-Chair of the United Nations Working Group on Arbitrary Detention <p>Panelists:</p> <ul style="list-style-type: none"> Ms. Leila Zerrougui, United Nations Special Representative of the Secretary-General for Children in Armed Conflict and former Chair Rapporteur of the United Nations Working Group on Arbitrary Detention <i>Focus of presentation: obstacles faced by adult detainees.</i> Mr. Vitit Muntarbhorn, Commissioner of the Independent International Commission of Inquiry on the Syrian Arab Republic and Professor of law at the Chulalongkorn University in Bangkok <i>Focus of presentation: obstacles faced by child detainees.</i>
17:15 – 18:00	Open Discussion (Panel 3)

Day 2: 2 September 2014

Hours	Session
10:00 – 10:30	<p>Panel 4: MIGRATION-RELATED DETENTION</p> <p>Obstacles faced by individuals detained for migration-related reasons in exercising the right to court review of detention and any good practices on ensuring its real and meaningful exercise.</p> <p>Moderator:</p> <ul style="list-style-type: none"> • Mr. Mads Andenas, Chair-Rapporteur of the Working Group on Arbitrary Detention <p>Panelists:</p> <ul style="list-style-type: none"> • Ms. Gillian Triggs, President of the Australian Human Rights Commission <i>Focus of presentation: the perspective of a National Human Rights Institution.</i> • Ms. Alice Edwards, Head of Legal Section, Division of International Protection at the United Nations High Commissioner for Refugees <i>Focus of presentation: the perspective of the United Nations High Commissioner for Refugees.</i> • Mr. Michael Flynn, Founder and Coordinator of the Global Detention Project based at the Global Migration Center of the Graduate Institute of International and Development Studies in Geneva <i>Focus of presentation: the perspective of a non-governmental organization.</i>
10:30 – 11:30	Open Discussion (Panel 4)
11:30 – 11:45	BREAK
11:45 – 12:15	<p>Panel 5: PREVENTIVE AND PROTECTIVE DETENTION</p> <p>Obstacles faced by individuals detained for preventive and protective reasons in exercising the right to court review of detention and any good practices on ensuring its real and meaningful exercise.</p> <p>Moderator:</p> <ul style="list-style-type: none"> • Mr. Seong-Phil Hong, Member of the United Nations Working Group on Arbitrary Detention <p>Panelists:</p> <ul style="list-style-type: none"> • Mr. Hans Draminsky Petersen, Member of the United Nations Subcommittee on the Prevention of Torture and medical consultant for the Rehabilitation and Research Center for Torture Victims in Copenhagen (RCT) <i>Focus of presentation: the exercise of the right to court review of detention by persons with disabilities who are involuntarily detained on health and safety grounds.</i> • Mr. George Tugushi, Vice-Chairperson of the United Nations Committee against Torture and former Public Defender (Ombudsman) of Georgia

	<p><i>Focus of presentation: the exercise of the right to court review of detention by individuals detained for social welfare purposes, such as the detention of juveniles for educational purposes.</i></p> <ul style="list-style-type: none"> Mr. Facundo Chávez Penillas, Advisor on Human Rights and Disability, United Nations Office of the High Commissioner for Human Rights <i>Focus of presentation: the development of international law to guarantee persons with disabilities who are involuntarily detained on the ground of (perceived) disability the ability to challenge the lawfulness of their detention before court.</i>
12:15 – 13:00	Open Discussion (Panel 5)
13:00 – 15:00	LUNCH
15:00 – 15:45	<p>Panel 6: DETENTION IN ARMED CONFLICT, STATES OF EMERGENCY OR FOR COUNTERTERRORISM PURPOSES</p> <p>Obstacles faced by individuals detained in situations of armed conflict, state of emergency or for counterterrorism purposes in exercising the right to court review of detention and any good practices on ensuring its real and meaningful exercise.</p> <p>Moderator:</p> <ul style="list-style-type: none"> Mr. Jose Guevara, Member of the United Nations Working Group on Arbitrary Detention <p>Panelists:</p> <ul style="list-style-type: none"> Mr. Gerald L. Neuman, Member of the United Nations Human Rights Committee and Rapporteur for Draft General Comment on Article 9 of the International Covenant on Civil and Political Rights; J. Sinclair Armstrong Professor of International, Foreign, and Comparative Law at Harvard Law School <i>Focus of presentation: the exercise of the right to court review of detention by individuals detained for counter-terrorism purposes.</i> Ms. Shaheen Ali, Professor of Law at Warwick University and former Vice-Chair of the United Nations Working Group on Arbitrary Detention <i>Focus of presentation: the exercise of the right to court review of detention by persons detained in states of emergencies and in secret detention.</i> Mr. Alex Conte, Director of International Law and Protection Programmes at the International Commission of Jurists <i>Focus of presentation: the exercise of the right to court review of detention by individuals detained in the context of an armed conflict.</i>
15:45 – 16:45	Open Discussion (Panel 6)
16:45 – 17:00	BREAK
17:00 – 18:00	<p>CLOSING SESSION</p> <p>Summary of outcomes from the panels</p> <ul style="list-style-type: none"> All moderators <p>Closing remarks</p> <ul style="list-style-type: none"> Mr. Mads Andenas, Chair-Rapporteur of the United Nations Working Group on Arbitrary Detention

2. Content of the Panels

DAY 1: 1 September 2014	
Hours	Session
10:30 – 11:00	<p>DEVELOPMENT OF PRINCIPLES AND GUIDELINES on remedies and procedures on the right to court review of detention</p> <ul style="list-style-type: none"> The Human Rights Council requested the Working Group on Arbitrary Detention to prepare and present to it before the end of 2015, draft basic principles and guidelines on remedies and procedures on 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 this session, the Chair-Rapporteur will outline the extensive consultation process undertaken by the Working Group since 2012, to seek the views all relevant stakeholders. The focus of the presentation will be on how the Working Group’s preliminary draft principles on the right to court review of detention have been drafted to close the protection gaps identified through the survey of State practice.
11:15 – 12:00	<p>Panel 1: FRAMEWORK, SCOPE AND CONTENT of the right to court review of detention</p> <ul style="list-style-type: none"> The right to challenge the lawfulness of detention before court is a self-standing human right, the absence of which constitutes a human rights violation per se. It is a judicial remedy designed to protect personal freedom and physical integrity against arbitrary detentions by means of a judicial decree ordering the appropriate authorities to bring the detained person before a judge so that the lawfulness of the detention may be determined and, if appropriate, the release of the detainee be ordered. It is also a means of determining the whereabouts or state of health of such a person and identifying the authority ordering or carrying out the deprivation of liberty. Ensuring that the detainee is not exclusively at the mercy of the detaining authority, the exercise of the right to court review of detention acts as a fundamental safeguard against detention, torture or other cruel, inhuman or degrading treatment or punishment and plays an important role in clarifying the situation of involuntary or enforced disappearances. This panel will elaborate on: (i) the scope and content of the right to court review of detention, and its non-derogable nature; (ii) the framework of the right to court review of detention and the concept of universality therein; and (iii) the scope of remedies available upon a successful challenge to the lawfulness of detention.
15:00 – 15:30	<p>Panel 2: PROCEDURAL GUARANTEES necessary to exercise the right to court review of detention</p> <ul style="list-style-type: none"> The international and regional legal frameworks have set out the multiple procedural requirements that States are required to ensure in order to guarantee the right to challenge the lawfulness of detention before court may be effective in practice. The

	<p>first element of a State’s obligation in this regard is to ensure the detainee has been notified of the reasons for the arrest and of the availability to bring a challenge to the lawfulness of the detention. No barriers must exist in bringing forth the challenge before court, including choice of representative and the requirement for interpretation. The proceedings must comply with the fundamental rules of procedural fairness, and include the right of the detainee to appear personally before the court. The scope of the court’s review must necessarily extend to consideration of the lawfulness of the detention. A detained person is entitled to multiple reviews of the lawfulness of his or her detention.</p> <ul style="list-style-type: none"> • This panel will elaborate on: (i) the procedural safeguards necessary to effectively exercise the right to court review of detention in practice; and (ii) the character of the reviewing body before which a challenge is heard, including the scope of its review.
16:45 – 17:15	<p>Panel 3: CRIMINAL DETENTION</p> <ul style="list-style-type: none"> • A key element in the protection of the rights of persons deprived of their liberty is the judicial oversight of the legality of their detention. While the international and regional framework provides the right for anyone deprived of his or her liberty to take proceedings before a court in order for it to decide on the lawfulness of his or her detention, the lack of adequate judicial oversight is frequently raised as a concern by human rights actors. This panel is dedicated to discussing obstacles faced by individuals detained on criminal charges in exercising the right to court review of detention and any good practices on ensuring its real and meaningful exercise. Attention will be paid to both the situation of adult and child detainees.
Day 2: 2 September 2014	
Hours	Session
10:00 – 10:30	<p>Panel 4: MIGRATION-RELATED DETENTION</p> <ul style="list-style-type: none"> • Judicial oversight of the legality of detention is not limited to criminal procedure but extends to all forms of deprivation of liberty. The inability of migrants deprived of their liberty to effectively exercise their right to challenge their detention based on immigration laws, and limited access to procedural safeguards, such as legal aid and adequate interpretation services, have also been identified as a cause for concern. This panel is dedicated to discussing obstacles faced by individuals detained for migration-related reasons in exercising the right to court review of detention and any good practices on ensuring its effective exercise in practice. The panel will be organized to solicit the views of key stakeholders working in this area, the United Nations High Commissioner for Refugees, a national human rights institution, and a non-governmental organization.
11:45 – 12:15	<p>Panel 5: PREVENTIVE AND PROTECTIVE DETENTION</p> <ul style="list-style-type: none"> • There is widespread concern expressed regarding the lack of judicial supervision over detention justified by medical or public health grounds or to carry out social welfare objectives. This panel will focus on examining the exercise of the right to court review of detention by persons with disabilities who are involuntarily detained on

	<p>health and safety grounds, and the detention of juveniles for educational purposes. Attention will be paid to uncovering obstacles encountered in bringing forth a challenge by such detainees, as well as on any good practices to remove these barriers.</p>
<p>15:00 – 15:45</p>	<p>Panel 6: DETENTION IN ARMED CONFLICT, STATES OF EMERGENCY OR FOR COUNTERTERRORISM PURPOSES</p> <ul style="list-style-type: none"> • The relevance of the right to court review of detention to situations of deprivation of liberty, including in the context of armed conflict, states of emergency or for counterterrorism purposes, has increasingly attracted attention. It has been observed that, as part of the so-called “war against terrorism”, instances of arbitrariness and unacceptable limitations on the exercise of the right to court review have been committed against political opponents, religious dissenters, and other persons exercising their freedoms of opinion, expression, conscience and religion. This panel will examine the obstacles faced by such individuals in exercising the right to court review of detention. Good practices to remove such barriers will be given due attention.

3. Rules of Procedure

A. Panel format

1. The session moderator will introduce the panel and manage the discussion, including opening the session for interventions from the floor following the initial statements by the panellists. The sessions will be structured so as to provide as much time for discussion as possible. Except for the opening and closing plenary sessions, all thematic focused panels will follow the same format:
2. Opening of panel by moderator

Presentations by 2 or 3 panellists (12 - 15 minutes each)

Interactive discussion with comments and questions from the participants (3 minutes each)

****Due to time constraints, PowerPoint and other visual presentations will not be possible.**

3. Opening

Please note there will be no opportunity for interventions from the floor during the Opening Session on 1 September 2014.

B. Participation

4. To ensure that participants from different stakeholder groups have an opportunity to speak, there will be a designated microphone for each of three categories at the front of the seating rows of room XIX. Participants should use the microphone designated for their stakeholder groups as follows:
 - States;
 - United Nations entities, inter-governmental and regional organizations, and national human rights institutions;
 - Civil society organizations, academia, and affected stakeholders.
5. The moderator will strive for a balanced representation of stakeholder groups on a rotational basis, subject to the time available and the number of participants wishing to take the floor. Requests to speak may not be guaranteed. The session moderator reserves the right to use their discretion in the management of the floor interventions in order to enable as many stakeholders as possible to participate in the dialogue and to ensure a balanced debate.
6. Participants are kindly requested to clearly state their name and organizational affiliation and keep their comments concise (a maximum of 3 minutes, including for State delegations) and pertinent to the topic of the session. All participants should ensure that a sense of respect and tolerance permeates the discussion.
7. In order to stimulate dynamic discussions, it would be ideal if participants avoid reading from prepared written statements, documents or published texts. However, where statements are prepared, participants are kindly requested to send an electronic version of their statements to the WGAD Secretariat (wgadhabeascorpus@ohchr.org) by **29 August 2014** so that sufficient copies may be made for the translators.

8. In order to ensure accurate recording of names and organizational affiliation of participants speaking from the floor, for the purpose of the summary document, speaker lists will be available at the back of the meeting rooms. Those taking the floor are kindly requested to complete details of name and affiliation in one of these lists after they have made their interventions.

C. Seating arrangements

9. Specific arrangements will apply only for the seating of State delegations during the consultation. A limited number of seats at the tables will be reserved in one section of Room XIX at the front of the room. The seats will be reserved but will not have assigned names or countries. State delegations are kindly requested to collect their respective name plate from the table at the entry of Room XIX and take up one of the reserved seats.

D. Submissions

10. All participants are invited to send statements in French, English or Spanish to the Secretariat (wgadhabeascorpus@ohchr.org) for posting on the website of the Working Group on Arbitrary Detention. The Secretariat will make every effort to ensure that statements are posted in a timely manner.
11. Statements may also be submitted after the consultation to be taken into account by the Working Group on Arbitrary Detention in revising the preliminary draft principles and guidelines on the right to challenge the lawfulness of detention. **The deadline for contributions post-consultation is 30 September 2014.**

E. Languages

12. Simultaneous interpretation will be provided for all sessions in English, French and Spanish. Participants will be able to hear the interpretation by using the ear pieces available at each seat and selecting the channel for the desired language.
