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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its seventy-ninth session, 21-25 August 2017**

### **Opinion No. 42/2017 concerning Mohammad Naim Amiri (Australia)<sup>1</sup>**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 1 March 2017 the Working Group transmitted to the Government of Australia a communication concerning Mohammad Naim Amiri. The Government replied to the communication on 9 May 2017. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When 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 and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When 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 accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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

(e) 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 the equality of human beings (category V).

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<sup>1</sup> In accordance with rule 5 of the Working Group's methods of work, Leigh Toomey did not participate in the discussion of the present case.

## Submissions

### *Communication from the source*

4. Mohammad Naim Amiri, born in 1986, is of Afghan origin. He usually resides at the Villawood Immigration Detention Centre, Australia.

5. According to the source, Mr. Amiri is a Pashtun, Sunni Muslim who was born and lived in Afghanistan before seeking asylum in Australia. On 27 November 2009, Mr. Amiri arrived in Australia by boat to seek recognition of his refugee status on the basis of threats against him and his family from the Taliban.

### Arrest and detention

6. According to the source, Mr. Amiri was arrested upon arrival in Australia by officials from the Department of Immigration and Border Protection. The source reports that all boat arrivals are issued with a type of warrant issued by that Department, which was previously known as the Department of Immigration and Citizenship. Mr. Amiri was subsequently detained at Phosphate Hill Alternative Place of Detention on Christmas Island.

7. The source reports that Mr. Amiri was transferred to Villawood Immigration Detention Centre on 27 March 2010 and then to Silverwater Correctional Complex on 22 April 2011. He was transferred back to Villawood on 8 March 2012 and subsequently, between 1 July 2013 and 8 October 2014, he was transferred to and between Silverwater Correctional Complex and Goulburn Correctional Centre. On 8 October 2014, he was again transferred to Villawood Immigration Detention Centre, where he remains today.

8. The source reports that Mr. Amiri is being detained on the basis of the Australian Migration Act 1958. The Act specifically provides in sections 189 (1), 196 (1) and 196 (3) that unlawful non-citizens must be detained and kept in detention until they are: (a) removed or deported from Australia; or (b) granted a visa. In addition, section 196 (3) specifically provides that even a court cannot release an unlawful non-citizen from detention unless the person has been granted a visa.

9. According to the source, removal or deportation from Australia in Mr. Amiri's case would constitute refoulement. In addition, the Minister for Immigration and Border Protection has consistently refused to grant Mr. Amiri a bridging visa or community detention placement. Furthermore, Mr. Amiri's refugee determination process has reportedly resulted in a negative assessment, meaning that he is not eligible for any other type of visa to remain in Australia.

10. According to the source, Mr. Amiri has exhausted all domestic remedies to secure his release into the Australian community. Following his arrival in Australia on 27 November 2009, he received a negative refugee status assessment decision on 25 February 2010 and a negative independent merits review finding on 25 June 2010. On 14 December 2010, the High Court of Australia found an error of law in the independent merits review/refugee status assessment process and remitted Mr. Amiri's case for reconsideration. On 13 April 2011, Mr. Amiri received the second negative independent merits review finding. The Federal Magistrates Court dismissed Mr. Amiri's appeal on 14 September 2011. On 23 March 2012, Mr. Amiri received a negative international treaties obligation assessment and, on 5 April 2012, the Federal Court dismissed his appeal. The High Court subsequently dismissed an appeal on 7 June 2013 and, on 18 February 2015, Mr. Amiri received a second negative international treaties obligation assessment. The source notes that that second assessment is currently the subject of an appeal to the Federal Court of Australia. Given the lengthy history of Mr. Amiri's refugee status determination process and the consistent refusal to recognize his refugee status, the source considers it highly unlikely that that appeal will be successful.

11. The source notes that Mr. Amiri currently has proceedings before the Federal Circuit Court relating to a breach of procedural fairness in relation to the consideration by the Department of Immigration and Border Protection of the impact of a data breach on Mr. Amiri's protection claims. That proceeding, however, will reportedly have no immediate

impact on Mr. Amiri's detention and may, at best, result in his protection claims in relation to the data breach being reheard. However, given that the Department does not believe Mr. Amiri's version of events that led him to flee Afghanistan, the source considers it highly unlikely that a rehearing will result in a positive refugee determination resolution for Mr. Amiri.

#### Category II

12. The source considers that Mr. Amiri has been deprived of liberty as a result of the exercise of his rights guaranteed under article 14 of the Universal Declaration of Human Rights, whereby everyone has the right to seek and to enjoy in other countries asylum from persecution. The source thus submits that Mr. Amiri's detention constitutes an arbitrary deprivation of his liberty, falling within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

#### Category III

13. The source also submits that the international norms relating to the right to a fair trial, specifically the rights protected under articles 9 and 10 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, have not been observed in relation to Mr. Amiri's detention. The source notes that the Human Rights Committee, in its general comment No. 35 (2014) on liberty and security of person, requires that detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time.

14. In that respect, the source reports that Mr. Amiri has been held in administrative detention for almost seven years. Throughout that time, Mr. Amiri has continually asserted that he faces a real risk of harm from the Taliban if he is returned to Afghanistan. He thus has no intention of voluntarily returning to Afghanistan. The source underlines that Mr. Amiri's willingness to remain in indefinite administrative detention in Australia for almost seven years during the prime of his life, as opposed to voluntarily returning to Afghanistan, highlights his fear of return. As such, the source considers that any forced return by the Government of Australia would be very likely to constitute constructive refoulement.

15. The source reports that Mr. Amiri completed the final stage of his refugee status assessment process in February 2015, more than five years after he arrived in Australia. The source submits that it is unreasonable, disproportionate and unnecessary for the Department of Immigration and Border Protection to have held Mr. Amiri in closed detention for more than five years while processing his refugee status assessment. It remains unreasonable, disproportionate and unnecessary for the Department to hold Mr. Amiri in closed detention following his negative refugee assessment, given his refusal to be refouled to Afghanistan.

16. The source notes that, on 12 August 2014, the Australian Human Rights Commission gave notice to the Department of Immigration and Border Protection that Mr. Amiri's detention was arbitrary and inconsistent with his right to liberty under article 9 of the Covenant.

17. The source also notes that, on 7 May 2014, while in detention, Mr. Amiri married an Australian citizen. According to the source, she, as a white non-Muslim Australian woman, would allegedly be in considerable danger if she were to go to Afghanistan with Mr. Amiri, if he was refouled. The source further notes that Mr. Amiri is unable to apply for a spousal visa from onshore. To be eligible for a spousal visa, Mr. Amiri must apply from offshore. According to the source, that effectively prevents him from applying for such a visa.

18. The source notes that, on 28 June 2013, Mr. Amiri was convicted of rioting by the New South Wales Supreme Court and sentenced to one year and ten months' imprisonment. Without prejudice, Mr. Amiri was reportedly involved in the riot due to emotional distress over the length of his detention at that time, and the slow progress of his refugee status determination process. Despite having served his prison term, Mr. Amiri's conviction means that he will face substantial difficulties in overcoming the character requirements in Australia and in convincing the Minister for Immigration and Border Protection to use his non-reviewable and non-compellable powers to grant Mr. Amiri any

type of temporary or permanent visa. The source underlines that prior to Mr. Amiri's involvement in the riot, which was a direct result of being detained by the Department of Immigration and Border Protection, he had no criminal record. According to the source, it is unconscionable to use Mr. Amiri's conviction in those circumstances as a reason to prevent his release into the community on a temporary or permanent visa, or alternatively, via a community detention placement.

19. The source submits that, given the time that has elapsed and the failure to reassess Mr. Amiri's case as it has extended in time, it cannot be said that his detention is reasonable, necessary and proportionate. Accordingly, Mr. Amiri's detention constitutes an arbitrary deprivation of his liberty, falling under category III.

#### Category IV

20. Furthermore, the source submits that Mr. Amiri, as an asylum seeker who is subject to prolonged administrative custody, has not been guaranteed the possibility of administrative or judicial review or remedy. In that respect, the source notes that, in its decision in *Al-Kateb v. Godwin*, the High Court of Australia upheld mandatory detention of non-citizens as a practice that is not contrary to the Constitution of Australia. The source also notes that, in *C. v. Australia*, the Human Rights Committee held that there was no effective remedy for people subject to mandatory detention in Australia. As such, Mr. Amiri lacks any chance of his detention being the subject of a real administrative or judicial review or remedy. His detention thus constitutes an arbitrary deprivation of his liberty, falling under category IV.

#### Category V

21. According to the source, Australian citizens and non-citizens are not equal before the courts and tribunals of Australia. The effective result of the decision of the High Court in *Al-Kateb v. Godwin* is that, while Australian citizens can challenge administrative detention, non-citizens cannot. Mr. Amiri's detention thus constitutes an arbitrary deprivation of his liberty, falling under category V.

#### *Response from the Government*

22. On 1 March 2017, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 1 May 2017, detailed information about the current situation of Mr. Amiri and any comments on the source's allegations. On 13 April 2017, the Government of Australia requested an extension of the deadline to submit its response. The Working Group did not grant an extension as the request did not meet the requirements of paragraph 16 of the Working Group's methods of work.

23. The Working Group notes that it received a response from the Government on 9 May 2017, that is, after the deadline given by the Working Group. As such, the Working Group considers that the Government's response in the present case is late and the Working Group is unable to accept the response as if it had been presented in a timely manner. Nonetheless, as indicated in paragraphs 15 and 16 of its methods of work, and in conformity with its usual practice, the Working Group may render an opinion on the basis of the information submitted by the source and all the information obtained in relation to a given case. In the light of that, the Working Group transmitted the late response of the Government to the source for any further comments.

#### **Discussion**

24. In the absence of a timely response from the Government, the Working Group has decided to render its opinion on the basis of the information submitted by the source, in conformity with paragraph 15 of its methods of work.

25. In its jurisprudence, the Working Group has established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see

A/HRC/19/57, para. 68). In the present case, the Government submitted its response late and the Working Group cannot proceed as if the response had been submitted in a timely manner.

26. The source has alleged that Mr. Amiri's detention falls under categories II, III, IV and V. The Working Group shall consider those allegations in turn.

27. The source has argued that Mr. Amiri has been deprived of his liberty as a result of the exercise of his right guaranteed under article 14 of the Universal Declaration of Human Rights, whereby everyone has the right to seek and to enjoy in other countries asylum from persecution. The source thus submits that Mr. Amiri's detention constitutes an arbitrary deprivation of his liberty, falling under category II.

28. The Working Group reiterates that seeking asylum is not a criminal act; on the contrary, seeking asylum is a universal human right, enshrined in article 14 of the Universal Declaration of Human Rights, and in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The Working Group notes that those instruments constitute international legal obligations that Australia has undertaken.

29. The Working Group notes that Mr. Amiri is an asylum seeker from Afghanistan who arrived in Australia by boat on 27 November 2009 and who has lived in Australia since that date, being transferred to and between a number of different offshore and onshore immigration detention facilities. The Working Group also notes that Mr. Amiri, upon his arrival, was subjected by the Government of Australia to the mandatory immigration detention policy of those arriving in Australia without a valid visa, a fact that the Government did not contest in its late reply.

30. The Working Group notes that detention in the course of proceedings for the control of immigration is not arbitrary per se. However, as the Human Rights Committee argued in its general comment No. 35 (para. 18), such detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time. It must not be punitive in nature and should be based on the individual assessment of each individual.

31. In the present case, the Working Group notes that in its late reply, explaining the mandatory immigration detention policy, the Government of Australia submitted that "detention of those who have arrived unlawfully provides an opportunity to undertake appropriate health, identity and security checks".

32. Yet, in that same response, the Government of Australia failed to indicate what "appropriate health, identity and security checks" were carried out in relation to Mr. Amiri after his initial detention on 27 November 2009 and how the results of those checks justified the need to detain him. Instead, it appears to the Working Group that the authorities proceeded to the assessment of his asylum claim and that no individualized assessment was carried out in relation to the need to detain Mr. Amiri during the consideration of his asylum claim. Equally, no alternatives to the deprivation of liberty were examined to ensure that his detention would be the measure of last resort. Mr. Amiri was subjected to a policy of mandatory immigration detention.

33. The Working Group recalls that deprivation of liberty in the immigration context must be a measure of last resort and alternatives to detention must be sought in order to meet the requirement of proportionality (see A/HRC/10/21, para. 67). As the Human Rights Committee argued in paragraph 18 of its general comment No. 35:

Asylum seekers who unlawfully enter a State party's territory may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary in the absence of a particular reason specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security.

34. In its late response, the Government of Australia has failed to explain the individualized, specific reasons that would justify the need to deprive Mr. Amiri of his liberty. The Working Group notes that such a policy of mandatory immigration detention is

contrary to article 9 of the Covenant and breaches the right to seek asylum as envisaged in international law. The Working Group therefore concludes that Mr. Amiri was detained due to his exercise of the right to seek asylum and his detention falls under category II.

35. The source has argued that Mr. Amiri's detention falls under categories III and IV, as he has been held in administrative detention since 27 November 2009 without having any possibility to challenge his detention before a judicial authority. The source has submitted that Mr. Amiri's detention for such a long period of time cannot justify the requirements of reasonableness, necessity and proportionality in accordance with article 9 of the Covenant.

36. The Working Group has already established that a policy of mandatory immigration detention breaches article 9 of the Covenant as it fails to respect the requirements of reasonableness, necessity and proportionality of detention as no individualized assessment of the need to detain is carried out. In the present case, the need to detain Mr. Amiri was never considered, despite the fact that he was issued with a non-prejudicial security assessment on 28 January 2010, meaning that there were no security-related concerns about him. That was a fact pointed out by the Australian Human Rights Commission in 2014 when it characterized Mr. Amiri's detention as arbitrary and inconsistent with his rights to liberty under article 9 of the Covenant.<sup>2</sup> The Working Group also notes that when considering his case, the Commission concluded that the authorities had failed to consider less restrictive alternatives to closed immigration detention in relation to Mr. Amiri and provided no explanation for that failure.<sup>3</sup> The Working Group also notes the same failure on the part of the Government of Australia in its late reply in the present case.

37. Moreover, the Working Group cannot agree with the argument put forward by the Government of Australia in its late reply that the determining factor in deciding whether a detention becomes arbitrary after a certain period of time is not the length of time spent in detention but rather whether the authorities are able to justify the grounds for continued detention. As the Working Group has repeatedly pointed out, detention of asylum seekers must never be unlimited or of excessive length, and a maximum period must be established by law.<sup>4</sup> Furthermore, in the present case, given the non-prejudicial security assessment that was issued to Mr. Amiri on 28 January 2010, the argument presented by the Government of Australia in its late reply does not appear to be correct as it was its own assessment that concluded that there were no security-related concerns in relation to Mr. Amiri. To continue to hold Mr. Amiri in a closed immigration detention setting since that time thus had no justification in international law.

38. The Working Group wishes to recall that according to 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 right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.<sup>5</sup> That right, which in fact constitutes a peremptory norm of international law, applies to all forms of deprivation of liberty,<sup>6</sup> and it applies to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities and migration detention.<sup>7</sup> Moreover, it applies irrespective of the place of detention or the legal

<sup>2</sup> See

[www.humanrights.gov.au/sites/default/files/document/publication/HA%20HB%20HC%20HD%20HE%20v%20Commonwealth%202014%20AusHRC%2087\\_WEB.pdf](http://www.humanrights.gov.au/sites/default/files/document/publication/HA%20HB%20HC%20HD%20HE%20v%20Commonwealth%202014%20AusHRC%2087_WEB.pdf), para. 71.

<sup>3</sup> *Ibid.*, paras. 67 and 69.

<sup>4</sup> See E/CN.4/2000/4, annex II, p. 30 (principle 7) and A/HRC/13/30, para. 61.

<sup>5</sup> See A/HRC/30/37, paras. 2-3.

<sup>6</sup> *Ibid.*, para. 11.

<sup>7</sup> *Ibid.*, annex, para. 47 (a).

terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.<sup>8</sup>

39. The Working Group notes that according to the same Principles and Guidelines, all non-nationals, including migrants regardless of their status, asylum seekers, refugees and stateless persons, in any situation of deprivation of liberty must be informed of the reasons for their detention and their rights in connection with the detention order, including the right to bring proceedings before a court to challenge the arbitrariness and lawfulness and the necessity and proportionality of their detention, and to receive without delay appropriate and accessible remedies.<sup>9</sup>

40. In the present case, Mr. Amiri has been in detention since 27 November 2009 while his asylum application has been considered by the respective authorities in Australia. That is a case of administrative detention of an asylum seeker and is not a case related to criminal proceedings. As such, detention in the immigration context should have been periodically reviewed in order to ascertain its continued necessity and proportionality. Moreover, Mr. Amiri should have had a legally enforceable right to challenge the legality of his continued detention before a judicial authority. As the Working Group has stated earlier, detention in the immigration context must be ordered or approved by a judicial authority and there should be automatic, regular and judicial, not only administrative, review of such detention in each individual case which would extend to the lawfulness of detention and not merely to its reasonableness or other lower standards of review (see A/HRC/13/30, para. 61). That, however, has not taken place in relation to Mr. Amiri. Since the date of his initial detention, he has not been able to challenge the legality of his continued detention, which is a clear breach of article 9 (4) of the Covenant.

41. The Working Group recalls the numerous findings by the Human Rights Committee where the application of mandatory immigration detention in Australia and the impossibility of challenging such detention has been found to be in breach of article 9 (1) of the Covenant.<sup>10</sup>

42. Consequently, the Working Group concludes that the detention of Mr. Amiri is arbitrary and falls under category IV and not category III as submitted by the source.

43. The source has argued that the detention of Mr. Amiri is arbitrary and falls under category V since, according to the source, Australian citizens and non-citizens are not equal before the courts and tribunals of Australia. The Working Group is aware of the decision of the High Court of Australia in the case of *Al-Kateb v. Godwin*, which effectively means that while Australian citizens can challenge administrative detention, non-citizens cannot.

44. The Working Group notes, in paragraph 41 above, the numerous findings by the Human Rights Committee where the application of mandatory immigration detention in Australia and the impossibility of challenging such detention has been found to be in breach of article 9 (1) of the Covenant. The Working Group also notes that the effect of the decision of the High Court of Australia in the case of *Al-Kateb v. Godwin* is such that non-citizens have no effective remedy against their continued administrative detention. The Working Group further notes the specific decision of the Human Rights Committee in *F.J. et al. v. Australia*. In that case, the Human Rights Committee examined the implications of the High Court's judgment in the case of *Al-Kateb v. Godwin* and concluded that the effect of that judgment was such that there was no effective remedy to challenge the legality of the continued administrative detention:

<sup>8</sup> Ibid., annex, para. 47 (b).

<sup>9</sup> Ibid., principle 21, para. 42.

<sup>10</sup> See communications No. 900/1999, *C. v. Australia*, Views adopted on 28 October 2002; No. 1014/2001, *Baban et al. v. Australia*, Views adopted on 6 August 2003; No. 1324/2004, *Shafiq v. Australia*, Views adopted on 31 October 2006; Nos. 1255, 1256, 1259, 1260, 1266, 1268, 1270 and 1288/2004, *Shams et al. v. Australia*, Views adopted on 20 July 2007; No. 1069/2002, *Bakhtiyari v. Australia*, Views adopted on 29 October 2003; No. 1050/2002, *D and E and their two children v. Australia*, Views adopted on 11 July 2006; No. 2229/2012, *Nasir v. Australia*, Views adopted on 29 March 2016; and No. 2233/2013, *F.J. et al. v. Australia*, Views adopted on 22 March 2016.

The possibility that the State party's highest court may someday overrule its precedent upholding indefinite detention does not suffice to indicate the present availability of an effective remedy. The State party has not shown that its courts have the authority to make individualized rulings on the justification for each author's detention. Moreover, the Committee notes that in the High Court's decision of 5 October 2012 in the *Plaintiff M47* case, the Court upheld the continuing mandatory detention of the refugee, demonstrating that a successful legal challenge need not lead to release from arbitrary detention. Accordingly, the Committee concludes that the State party has not demonstrated the existence of effective remedies to be exhausted and that the communication is admissible with reference to article 5 (2) (b) of the Optional Protocol.<sup>11</sup>

45. In the past, the Working Group has concurred with the views of the Human Rights Committee that the decision in *Al-Kateb v. Godwin* effectively means that non-citizens are unable to challenge the continued legality of their administrative detention in Australia.<sup>12</sup> That remains the position of the Working Group in the present case. The Working Group underlines that that situation is discriminatory and contrary to articles 16 and 26 of the Covenant, and therefore concludes that the detention of Mr. Amiri is arbitrary, falling under category V.

46. The Working Group would welcome the opportunity to work constructively with the Government of Australia in addressing the serious concerns in relation to arbitrary deprivation of liberty in Australia. On 24 April 2017, the Working Group sent a request to the Government to undertake a follow-up visit; it awaits a positive response. In that context, the Working Group notes that Australia maintains a standing invitation to all special procedure mandate holders, and it specifically notes that Australia is presenting its candidacy for membership of the Human Rights Council in the forthcoming elections. An opportunity thus exists for the Government to enhance its cooperation with the special procedures and bring its laws and practice into conformity with international law, especially in relation to the elimination of arbitrary detention.

### Disposition

47. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mohammad Naim Amiri, being in contravention of articles 2, 3, 7, 8, 9 and 14 of the Universal Declaration of Human Rights and of articles 2, 9, 16 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II, IV and V.

48. The Working Group requests the Government of Australia to take the steps necessary to remedy the situation of Mr. Amiri without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

49. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Amiri immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

### Follow-up procedure

50. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Amiri has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Amiri;

<sup>11</sup> See *F.J. et al. v. Australia*, para. 9.3.

<sup>12</sup> See opinion No. 28/2017, para. 40.



(c) Whether an investigation has been conducted into the violation of Mr. Amiri's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Australia with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

51. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

52. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

53. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>13</sup>

*[Adopted on 21 August 2017]*

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<sup>13</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.