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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 23 April–3 May 2019****Opinion No. 1/2019 concerning Premakumar Subramaniam (Australia)\***

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.
2. In accordance with its methods of work (A/HRC/36/38), on 4 January 2019 the Working Group transmitted to the Government of Australia a communication concerning Premakumar Subramaniam. The Government replied to the communication on 4 March 2019. 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,

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\* In accordance with paragraph 5 of the Working Group's methods of work, Leigh Toomey did not participate in the discussion of the present case.



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).

## **Submissions**

### *Communication from the source*

4. Premakumar Subramaniyam was born on 24 April 1983. He is a Sri Lankan national and a Tamil, who was subject to recognized persecution and human rights abuses in Sri Lanka. He was captured and tortured by the Sri Lankan army in 2002 and 2003. He subsequently developed psychotic symptoms; in 2003, he was admitted to hospital and diagnosed with schizophrenia. Mr. Subramaniyam currently resides at the Villawood Immigration Detention Centre, New South Wales, Australia.

### *Arrest and detention*

5. According to the source, on 20 March 2010, Mr. Subramaniyam arrived by boat at Christmas Island, Australia as an unauthorized maritime arrival. He was reportedly seeking asylum from persecuting forces in Sri Lanka, as he feared further torture or the possibility of enforced disappearance.

6. The source reports that Mr. Subramaniyam was detained upon arrival by the Department of Home Affairs of the Australian Commonwealth Government – (as it is now known) as an unlawful non-citizen of Australia and on the basis of a document issued by the Department. Mr. Subramaniyam was subsequently transferred to Villawood Immigration Detention Centre.

7. The source reports that Mr. Subramaniyam is being detained on the basis of the Migration Act 1958. The Act specifically states 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” may not release an unlawful non-citizen from detention (unless the person has been granted a visa).

8. Around 13 June 2010, Mr. Subramaniyam submitted an application for protection. On 17 December 2010, the Department found that he was a refugee for the purposes of the Act and therefore a person to whom Australia owed protection obligations. As such, any return to Sri Lanka would constitute refoulement.

9. According to the source, Mr. Subramaniyam was, however, ineligible for the grant of a protection visa because of an adverse security assessment furnished by the Australian Security Intelligence Organisation on 15 March 2011. On 28 September 2011, the Department addressed a letter to Mr. Subramaniyam to inform him of options to end his immigration detention. Those options included resettlement in another country and the possibility of returning home.

10. At the end of 2011, the International Health and Medical Services, which is the body to which the Department contracts out medical care, recommended that community detention be explored for Mr. Subramaniyam due to his medical issues. In February 2012, he was diagnosed with schizophrenia and was determined by the Mental Health Tribunal to be a “mentally ill person” for the purposes of the Mental Health Act. Accordingly, he was admitted to Banks House, a public mental health facility.

11. Between 2012 and the time of the submission by the source, Mr. Subramaniyam was periodically moved back and forth from administrative detention to mental health facilities. He also spent time in medical facilities as he has congenital nystagmus, an untreatable condition of involuntary eye movement that has left him legally blind. Mr. Subramaniyam been under the national detention regime for more than eight years (i.e., no medical visa or similar has been granted), and he is currently detained in Villawood Immigration Detention Centre.

12. On 19 November 2013, the Department notified Mr. Subramaniyam that New Zealand would not accept him in the context of a third country settlement. The Australian

Security Intelligence Organisation subsequently furnished Mr. Subramaniam a second adverse security assessment on 20 December 2013. On 3 February 2014, an independent reviewer undertook a review of the Australian Security Intelligence Organisation adverse security assessment.

13. According to the source, the adverse security assessment continued until 21 December 2016, when the Australian Security Intelligence Organisation revised Mr. Subramaniam's assessment and furnished him with a qualified security assessment. It also did not "recommend against" the granting of a visa to Mr. Subramaniam on security grounds.

14. Nonetheless, Mr. Subramaniam reportedly remains in detention. In this respect, the source recalls that an application for a temporary protection visa was submitted on 22 October 2015, and that requests were made to the Minister of Home Affairs to intervene in Mr. Subramaniam's case under section 195A of the Migration Act on 25 October 2017 (Ministerial Intervention 2017) and in March/April 2018 (Ministerial Intervention 2018). To the knowledge of the source, no response had been received to the visa application or Ministerial Intervention 2017 or Ministerial Intervention 2018 as at the date of its submission, despite numerous communications from Mr. Subramaniam's legal representatives and advocates to the Department.

15. The source notes that, given that Mr. Subramaniam received an adverse security assessment valid until the end of 2016, he has had very limited options to challenge his detention. It appears that little or no progress has been made on his protection visa application or Ministerial Intervention since he received a qualified security assessment (which, in theory, is not meant to be a barrier to release into the Australian community).

#### *Analysis of violations*

16. The source claims that the detention of Mr. Subramaniam constitutes an arbitrary deprivation of his liberty under categories II, III, IV and V of the categories applicable to the consideration of cases by the Working Group.

#### *Category II*

17. The source submits that Mr. Subramaniam has been deprived of liberty as a result of the exercise of his rights guaranteed by 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".

18. According to the source, Mr. Subramaniam has also been deprived of his liberty, in contravention of article 26 of the International Covenant on Civil and Political Rights. Mr. Subramaniam, as a non-Australian citizen, is subject to administrative detention.

#### *Category III*

19. While acknowledging that category III normally relates to criminal arrest, the source submits that the particular circumstances of Mr. Subramaniam's case warrant investigation under this category.

20. According to the source, article 9 (1) of the Covenant has not been adequately observed. The source adds that the Australian Human Rights Commission has found that the failure of the Department to ask the Australian Security Intelligence Organisation to assess the individual suitability for community-based detention while awaiting their security clearance amounts to a breach of the right to freedom from arbitrary detention.

21. The source also submits that the lack of reasons given for the adverse security assessments by the Australian Security Intelligence Organisation may breach the right to be given reasons for an arrest under article 9 (2) of the Covenant. The source further submits that the Organisation's security assessments are generally unreviewable. This may be inconsistent with the right to have the lawfulness of one's detention reviewable before a court under article 9 (4) of the Covenant.

*Category IV*

22. The source also submits that Mr. Subramaniyam, as an asylum seeker who is subject to prolonged administrative custody, has not been guaranteed the possibility of administrative or judicial review or remedy. While Mr. Subramaniyam's negative security assessment was active, there was no means of substantive review. In addition, the withdrawal by the Australian Security Intelligence Organisation of the assessment on 21 December 2016 has not advanced Mr. Subramaniyam's application for asylum. It has reportedly been recognised by the Australian Human Rights Commission that there is a lack of effective review of the merits or lawfulness of adverse security assessments for asylum seekers, especially those from Sri Lanka.

23. The source recalls that the Migration Act 1958 specifically states, 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 (which, in Mr Subramaniyam's case, would constitute refoulement (including constructive refoulement)); or (b) granted a visa. Section 196 (3) clarifies that not even a court can release an unlawful non-citizen from detention (unless the person has been granted a visa).

24. In this regard, the source notes that the High Court of Australia, in its decision *Al-Kateb v. Godwin* (2004), has upheld mandatory detention of non-citizens as a practice that is not contrary to the Constitution of Australia. The source also notes that the Human Rights Committee has held that there is no effective remedy for people subject to mandatory detention in Australia.<sup>1</sup>

*Category V*

25. According to the source, Australian citizens and non-citizens are not equal before the courts and tribunals of Australia. The decision of the High Court of Australia in *Al-Kateb v. Godwin* (see para. 24 above), stands for the proposition that detention of non-citizens pursuant to, inter alia, section 189 of the Act does not contravene the Australian Constitution. The effective result of this is that while Australian citizens may challenge administrative detention, non-citizens may not.

*Response from the Government*

26. On 4 January 2019, 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 5 March 2019, detailed information about the current situation of Premakumar Subramaniyam and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the State's obligations under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Australia to ensure his physical and mental integrity.

27. In its reply of 4 March 2019, the Government stated that Mr. Subramaniyam remains in immigration detention as he is an unlawful non-citizen. The Government continues to assess Mr. Subramaniyam's application for a Temporary Protection (subclass 785) Visa. All visa applications must meet character and health requirements, as well as the relevant criteria of the visa for which the application has been submitted. Mr. Subramaniyam's application for a Temporary Protection Visa has been referred for a character consideration under section 501 of the Migration Act 1958. The Department of Home Affairs is currently assessing all available information relating to his case to determine whether he meets the character requirements of the visa application.

28. The Government notes that the time taken to process a visa application varies according to the individual circumstances of the case. In the event that Mr. Subramaniyam's application for a Temporary Protection Visa is considered for visa refusal under section 501 of the Act, he will be issued a Notice of Intention to Consider Refusal prior to the decision being made. In the Notice, Mr. Subramaniyam will be invited to

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<sup>1</sup> See *Mr. C. v. Australia* (CCPR/C/76/D/900/1999).

comment or provide information on any factors that he believes are relevant to whether he passes the character test or why his visa application should not be refused.

29. According to the Government, immigration status resolution practices currently followed in Australia ensure that any person who is detained understands the reasons for their detention and the choices and pathways which may be available to them, including returning to their country of origin, pursuing legal remedies, or third country resettlement.

30. On 20 March 2010, Mr. Subramaniyam was detained under section 189 (3) of the Act after arriving on Christmas Island as an illegal maritime arrival. On 16 June 2010, a Refugee Status Assessment interview was conducted with Mr. Subramaniyam. On 9 July 2010, Mr. Subramaniyam was found to engage the State's protection obligations.

31. On 28 March 2011, Mr. Subramaniyam received an Adverse Security Assessment, making him ineligible for a permanent visa in Australia. On 4 August 2015, the Minister lifted the bar under section 46A of the Act, thereby allowing Mr. Subramaniyam to apply for a protection visa. On 24 December 2015, Mr. Subramaniyam lodged an application for a Temporary Protection Visa, which also served as a Bridging E (subclass 050) visa application. On 18 February 2016, the Department notified him that his application for a Bridging E (subclass 050) visa was invalid. The matter remains ongoing. On 21 December 2016, Mr. Subramaniyam received a Qualified Security Assessment, which supersedes the previous Adverse Security Assessment.

32. The Government submits that the ongoing review of individuals in immigration detention includes a risk-based approach to consideration of the appropriate placement and management of an individual while their status is being resolved. Placement in an immigration detention facility is based on the assessment of a person's risk to the community and the level of engagement in the status resolution process. If the individual does not represent an unacceptable risk to the community, community-based options may be used. Individuals may be required to comply with various conditions while remaining in the community, until a substantive immigration status outcome has been reached and/or they leave the country. Immigration detention in an immigration detention centre will continue to be available for those who pose a risk to the safety and security of the Australian community. Mr. Subramaniyam's placements are reviewed periodically through case management processes to ensure that they are appropriate.

33. On 29 December 2011, Mr. Subramaniyam was transferred from Villawood Immigration Detention Centre to Sydney Immigration Residential Housing. After being involved in a fire incident at Sydney Immigration Residential Housing on 23 July 2012, he was returned to Villawood Immigration Detention Centre. On 7 September 2012, he was charged with damage to Commonwealth property and endangering life in relation to the incident. On 22 July 2013, the Court of New South Wales found him unfit to plead. On 4 October 2013, the Commonwealth Director of Public Prosecutions discontinued proceedings, partly due to Mr. Subramaniyam's mental health issues.

34. On 29 January 2015, following his failure to attend scheduled Community Treatment Order appointments, Mr. Subramaniyam was provided with notifications of breaches of the Community Treatment Order by the Bankstown Mental Health Community Centre. Owing to the breaches, Mr. Subramaniyam was transferred to the Liverpool Hospital (Mental Health) Alternative Place of Detention on 4 February 2015. On 9 March 2016, he was transferred back to Villawood Immigration Detention Centre, where he currently resides, pending the outcome of his application for a Temporary Protection Visa.

35. The Government notes that, on 23 of January 2018, Mr. Subramaniyam was involved in an incident involving inappropriate comments made to a female staff member. He was counselled and advised on his rights and responsibilities. The matter is now considered closed.

36. According to the Government, Mr. Subramaniyam's health and welfare are continually monitored by International Health and Medical Services general practitioners and psychiatrists. Mr. Subramaniyam has been provided with treatment for his eye condition and further medical assessments will be conducted to confirm his vision status. Furthermore, International Health and Medical Services has made no recent

recommendations to indicate that Mr. Subramaniam's health is being adversely affected by his current detention placement.

37. With regard to the legal and policy framework, the Government submits that persons who arrive in Australia without a visa or whose visa is cancelled at the border and seek the State's protection are not eligible for a permanent protection visa. They are eligible to apply only for a Temporary Protection (subclass 785) Visa or a Safe Haven Enterprise Visa. Subsequent visas may be granted if the person continues to engage the State's protection obligations or if they meet pathways to other visas while holding a Safe Haven Enterprise Visa.

38. The Government states that the State's domestic legislation, namely the Migration Act 1958, and its policy and practices, implement the State's non-refoulement obligations under the Convention relating to the Status of Refugees and the Protocol thereto, the International Covenant on Civil and Political Rights and the Second Optional Protocol thereto, aiming at the abolition of the death penalty, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. However, even where a person engages the State's protection obligations, they may be refused a protection visa if they cannot also meet other visa criteria relating to health, character and security.

39. The Government reports that visa applicants must meet the character requirements outlined under section 501 of the Act, which allows the Minister, or a delegate, to refuse visas to non-citizens where they fail the character test, or to cancel a visa when the Minister reasonably suspects that the person does not pass the character test and the person is not able to satisfy the Minister that they do. A person may fail the character test on a number of grounds, including, but not limited to, when there is a risk that the non-citizen would engage in conduct that would pose a threat to the safety of the Australian community. When a decision is made on whether it is appropriate to refuse or cancel a visa, all relevant information and circumstances relating to the case, including the impact on the individual, are taken into account. Nevertheless, the safety of the Australian public is a primary consideration, and a decision to refuse or cancel a visa may be made, even when there are other countervailing factors.

40. The Government's position is that the immigration detention of an individual on the basis that they are an unlawful non-citizen is not arbitrary per se under international law. Continuing detention may become arbitrary after a certain period of time without proper justification. The determining factor is whether the grounds for the detention are justifiable. Detention in an immigration detention centre is a last resort measure for the management of unlawful non-citizens. Persons who enter Australia without a valid visa do not provide the State with an opportunity to assess any risks they might pose to the Australian community prior to their arrival. Detention while the Government is assessing an unlawful non-citizen under the Act is administrative in nature, not for punitive purposes. The Government is committed to ensuring that all persons in immigration detention are treated in a manner consistent with the State's international legal obligations.

41. The Government notes that, in accordance with the State's legislative framework, the length of immigration detention is not limited by a set time frame but is dependent on a number of factors, such as identity determination, developments in country information and the complexity of processing due to individual circumstances relating to health, character or security matters.

42. With regard to review mechanisms, the Government states that, on 5 October 2018, the Department submitted a report to the Commonwealth Ombudsman in relation to Mr. Subramaniam's ongoing detention. In accordance with section 486N of the Act, the Department provides the Commonwealth Ombudsman with a report relating to the circumstances of a person's detention for every person who has been in administrative immigration detention for more than two years, and every six months thereafter. The Ombudsman will, as required, report to the Minister, providing an assessment of the appropriateness of the arrangements for the detention of the person.

43. The Government reports that it consults with a number of relevant stakeholders on a regular basis to review Mr. Subramaniam's placement. Mr. Subramaniam's detention has been reviewed 87 times under case management processes held in Case Management and

Detention Review Committee meetings. Detention Review Managers ensure the lawfulness and reasonableness of detention by reviewing all detention decisions. Detention Review Committee meetings are held monthly to review all cases in held detention to ensure the ongoing lawfulness and reasonableness of the decision to detain a person by taking into account all the circumstances of the case, including any changes in circumstances, alternative placement options, and adherence to legal obligations. This periodic review takes into account any changes in the client's circumstances that may have an impact on immigration pathways, including returns and removal, to ensure the continued lawfulness of detention, and ensures that alternative placement options are fully considered. The reviews have found that Mr. Subramaniyam's detention continues to be appropriate and his current placement suitable.

44. The Government recalls that it engages an Independent Reviewer to review adverse security assessments of persons who remain in immigration detention and have been found to engage the State's protection obligations under international law, are not eligible for a permanent protection visa, or who have had their permanent protection visa cancelled. The Independent Reviewer examines all material used in making the security assessment, as well as other relevant material, and forms an opinion on whether the assessment outcome is appropriate. On 30 April 2013, Mr. Subramaniyam met with the Independent Reviewer to provide an oral submission on the review of his Adverse Security Assessment. On 10 February 2014, the Independent Reviewer affirmed the assessment.

45. The Government notes that, under section 195A of the Migration Act 1958, a Minister may grant a person in immigration detention a visa should the Minister consider it in the public interest to do so. The Minister's intervention power is non-compellable, meaning the Minister is under no legal obligation to exercise or consider exercising that power. Only the Minister can exercise this power. The Minister issues guidelines to the Department explaining the circumstances under which the Minister may wish to consider exercising the power and identifying the types of cases that should or should not be referred for consideration under section 195A of the Act. The Department initiated an assessment of Mr. Subramaniyam's case in December 2016. In October 2017, consideration of Mr. Subramaniyam's case was finalized without referral to the then Minister for Home Affairs, as Mr. Subramaniyam had an ongoing application for a temporary protection visa. As the process had been initiated by the Department, there was no legal requirement formally to notify Mr. Subramaniyam of the outcome.

46. The Government states that a person in immigration detention is able to seek judicial review of the lawfulness of his or her detention before the Federal Court (under section 39B (1) of the Judiciary Act) or the High Court of Australia (under section 75 (v) of the Constitution). On 12 December 2011, Mr. Subramaniyam's solicitors filed an injunction against the Government that Mr. Subramaniyam not be detained in any form of immigration detention that could exacerbate his mental health condition. On 23 April 2012, Mr. Subramaniyam's solicitors discontinued the proceedings on the basis of a confidential agreement between the parties.

47. In response to the source's claim that, as a result of the decision of the High Court in *Al-Kateb v. Godwin (2004)*, non-citizens are not equal before the courts, the Government submits that this is not correct. The High Court held in that matter that provisions of the Act requiring the detention of non-citizens until they are removed, deported or granted a visa, even if removal were not reasonably practicable in the foreseeable future, are valid. The right to seek a remedy against an officer of the Commonwealth under the Constitution or in the Federal Court is available to Australian citizens and non-citizens alike. The decision in *Al-Kateb v. Godwin (2004)* does not alter a non-citizen's ability to have access to and to use these provisions to challenge the lawfulness of his or her detention.

48. In response to the source's claim that Mr. Subramaniyam had been deprived of his liberty in contravention of article 26 of the Covenant due to the means in which he entered Australia, the Government notes the object of the Act is to "regulate, in the national interest, the coming into, and presence in, Australia of non-citizens". The purpose of the Act is therefore to differentiate on the basis of nationality between non-citizens and citizens. In its general comment No. 15 (1986) on the position of aliens under the Covenant, the Human Rights Committee acknowledged that the Covenant did not recognize the right

of aliens to enter or reside in the territory of a State party; it was in principle a matter for the State to decide who it would admit to its territory. In certain circumstances, however, an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arose. Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment.

49. The response notes that it is a matter for the Government to determine who may enter its territory and under what conditions, including by requiring that a non-citizen hold a visa in order to lawfully enter and remain in Australia, and that in the circumstance that a visa is not held, a non-citizen is subject to immigration detention.

50. In conclusion, the Government submits that Mr. Subramaniam is lawfully detained under the section 189 (3) of the Act. The Government recalls that the State remains committed to an effective and robust international programme and that it takes its protection obligations seriously, and that its protection arrangements are premised on the fundamental obligation of non-refoulement. The Government reiterates that it has a long-standing commitment to cooperating with the United Nations, and has a strong human rights record.

*Further information from the source*

51. The reply of the Government was transmitted to the source for any further comments on 5 March 2019.

52. In its response of 19 March 2019, the source reports that the Government had previously acknowledged, in July 2017, that Mr. Subramaniam could not be further interviewed and would not be asked to provide any further information owing to his mental health condition. The Government response itself records that, as far back as 2013, Mr. Subramaniam was found unfit to plead in a criminal matter.

53. The source submits that, given Mr. Subramaniam's mental health issues, he is unable to understand the reasons for his detention or the "pathways" available to him. Furthermore, Mr. Subramaniam has been found to be owed protection obligations so should not be returned to Sri Lanka (despite section 197C of the Act, which permits such refoulement). In addition, on 19 November 2013, the Department notified Mr. Subramaniam that New Zealand would not accept him for resettlement. There is no evidence that any other country will accept him.

54. The source notes that detention review mechanisms operate within the State's legal framework that permits arbitrary detention. They also operate within a set of referral guidelines that, owing to Mr. Subramaniam's mental health needs and current Qualified Security Assessment (and previous Adverse Security Assessment), he is extremely unlikely to meet. Lastly, it is noted that the Department has consistently failed to act on recommendations of the Ombudsman to release individual asylum seekers and refugees from detention.

55. The source submits that, despite the Government's assertions, detention is the first resort for unlawful non-citizens. Under section 189 of the Migration Act 1958, unlawful non-citizens must be detained. This issue has been noted by the Working Group in, inter alia, previous opinions.

56. According to the source, while the Government in its response notes various situations in which a person may challenge their detention, these situations do not currently apply to Mr. Subramaniam. Discussion of these situations gives an impression that options may be available to Mr. Subramaniam, which is not correct. As noted, Mr. Subramaniam's detention is currently lawful under Australian law.

57. The source submits that the case *Al-Kateb v. Godwin (2004)* reinforces the position of Mr. Subramaniam – his arbitrary open-ended detention is authorized by Australian law, both legislation and case law.



## Discussion

58. The Working Group thanks the source and the Government for their submissions, and appreciates the cooperation and engagement of both parties in this matter.

59. At the outset, the Working Group wishes to acknowledge the current proceedings concerning Mr. Subramaniam at the Federal Court of Australia. The Working Group expresses its appreciation to the Court for the weight it has attached to the examination of the present application by the Working Group. It calls upon the Federal Court to give its full consideration to the present opinion in any matter before it concerning Mr. Subramaniam or anyone else in a similar situation.

60. The source has submitted that the detention of Mr. Subramaniam is arbitrary and falls under categories II, III, IV and V of the Working Group. While not addressing the categories as employed by the Working Group specifically, the Government of Australia rejects these submissions. The Working Group will examine the submissions in turn.

61. The source has submitted and the Government has not disputed that Mr. Subramaniam arrived at Christmas Island, Australia on 20 March 2010 by boat, and was immediately detained. The authority responsible for the detention was the Department of Home Affairs of the Australian Commonwealth Government (as it is now known), and Mr. Subramaniam was detained as an unlawful non-citizen of Australia on the basis of a document issued by the Department. The source argues that such detention was arbitrary and falls under category II of the Working Group since Mr. Subramaniam was detained for the exercise of his rights under article 14 of the Universal Declaration of Human Rights. The source also argues that the rights of Mr. Subramaniam under article 26 of the Covenant were violated, as only unlawful non-citizens may be detained.

62. In its response, the Government submits that mandatory immigration detention of unlawful non-citizens is an essential component of its strong border control. The Government emphasizes that the need to protect Australia from people who may pose a risk to the Australian community and national security is a factor in determining how Australia meets its international obligations in particular cases.

63. With regard to the situation of Mr. Subramaniam, the Government submits that, on 20 March 2010, he was detained as an illegal maritime arrival. On 9 July 2010, Mr. Subramaniam was found to engage the State's protection obligations. However, on 28 March 2011, he received an Adverse Security Assessment, which made him ineligible for a permanent visa in Australia. On 4 August 2015, the Minister lifted the bar under section 46A of the Migration Act 1958 for Mr. Subramaniam, allowing him to apply for a protection visa, which he did on 24 December 2015. The Government further explains that it is currently assessing the application of Mr. Subramaniam under section 501 of the Act, given that his application for a Temporary Protection (subclass 785) Visa requires character and health assessments to be carried out. Mr. Subramaniam remains in detention. Arguing that the detention of Mr. Subramaniam has been prescribed by the Act, the Government rejects the source's claim concerning article 14 of the Universal Declaration of Human Rights.

64. The Government also submits that the national legal framework does not set a time frame for the permissible length of immigration detention; however, this also depends on a number of factors, such as identity determination, developments in country and the complexity of processing owing to individual circumstances relating to health, character or security matters. The Working Group understands that the latter three elements – health, character and security matters – are particularly relevant in the case of Mr. Subramaniam.

65. The Government also rejects the claim of breach of article 26 of the Covenant, since the object of the Migration Act 1958 is to regulate the arrival of non-citizens to Australia; therefore, by definition, it does not apply to citizens. The Government points to general comment No. 15 of the Human Rights Committee, in which it clarified that the Covenant did not recognize the right of aliens to enter or reside in the territory of a State party, and that the State was, in principle, free to decide whom it would admit to its territory.

66. The Working Group observes that it is not disputed that Mr. Subramaniam has been in immigration detention since 20 March 2010, which is a very lengthy period of time

(now more than nine years). The Working Group also observes that Mr. Subramaniyam was detained on his arrival, and that the Australian authorities did not carry out any initial assessment in relation to the need to detain Mr. Subramaniyam when he was first detained. In fact, only a few months later, on 9 July 2010, it was established that the case of Mr. Subramaniyam engaged the State's protection obligations; he nonetheless remained in detention. It was not until a year later, on 28 March 2011, that Mr. Subramaniyam received an Adverse Security Assessment. Mr. Subramaniyam was therefore detained from 20 March 2010 to 28 March 2011 awaiting the outcome of the security assessment; no assessment was made of whether he should remain in detention or whether alternatives to detention could be used during that time.

67. As the Working Group has explained in its revised deliberation No. 5, any form of administrative detention or custody in the context of migration must be applied as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose, such as documenting entry and recording claims or initial verification of identity if in doubt (A/HRC/39/45, annex, para. 12).

68. Revised deliberation No. 5 echoes the views of the Human Rights Committee, which argued in its general comment No. 35 (2014) on liberty and security of person that 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. According to the Committee, to detain them further while their claims were 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.

69. In the present case, Mr. Subramaniyam was detained immediately upon arrival for a year, despite being recognized as engaging the State's protection obligations. The Working Group cannot accept that detention for one year be described as a "brief initial period" (see para. 68 above). The Working Group is mindful that it only took four months for the authorities to establish that the case of Mr. Subramaniyam engaged the State's protection obligations.

70. Furthermore, the Government has not presented any particular reason specific to Mr. Subramaniyam, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security, which would have justified his initial detention.

71. These two failures on the part of the Government lead the Working Group to conclude that there was no other reason for detaining Mr. Subramaniyam than the fact that he was an asylum seeker and therefore subjected to the automatic immigration detention policy of Australia, in accordance with the Migration Act 1958. The Working Group therefore concludes that Mr. Subramaniyam was detained due to the exercise of his legitimate rights under article 14 of the Universal Declaration of Human Rights, which renders his initial detention until March 2011 arbitrary, falling under category II as employed by the Working Group.

72. The Working Group agrees with the argument presented by the Government in relation to article 26 of the Covenant. However, the Working Group points out that the Human Rights Committee, in its general comment No. 15 quoted by the Government also makes it clear that "aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof. (...) Aliens have the full right to liberty and security of the person."

73. Mr. Subramaniyam is therefore entitled to the right to liberty and security of person as guaranteed in article 9 of the Covenant; when guaranteeing these rights to him, Australia should ensure that this is done without distinction of any kind, as required by article 2 of the Covenant. In the present case, Mr. Subramaniyam is subjected to de facto indefinite detention due to his immigration status, in clear breach of article 2, in conjunction with article 9 of the Covenant. The Working Group therefore considers that the detention of Mr. Subramaniyam since March 2011 also is arbitrary and falls under category II. The Working Group refers the present case to the Special Rapporteur on the human rights of migrants for appropriate action.

74. The source has further argued that the international norms relating to the right to a fair trial have not been observed in relation to the detention of Mr. Subramaniyam, specifically those rights protected under articles 9 (1), (2) and (4) of the Covenant. Therefore, according to the source, Mr. Subramaniyam's detention falls under category III of the Working Group. The source also argues that Mr. Subramaniyam, as a recognized refugee, who is subject to prolonged administrative custody, has not been guaranteed the possibility of administrative or judicial review or remedy. This, according to the source, means that his detention is arbitrary and falls under category IV.

75. The Government of Australia denies these allegations, arguing that a person in immigration detention is able to seek judicial review of the lawfulness of his or her detention before the Federal Court or the High Court of Australia.

76. The Working Group observes that, since his Adverse Security Assessment in 2011, Mr. Subramaniyam has remained in detention. Following a fire incident in 2012 for which he was charged, in July 2013, the Court of New South Wales found Mr. Subramaniyam unfit to plead, while in October 2013, the Commonwealth Director for Public Prosecution discontinued proceedings, partially because of Mr. Subramaniyam's mental health. On 4 February 2015, Mr. Subramaniyam was transferred to the Liverpool Hospital (Mental Health) Alternative Place of Detention, where he remained until 9 March 2016. He was then returned to Villawood Immigration Detention Centre, where he remains today. Both the source and the Government report on Mr. Subramaniyam's ongoing health issues, although they disagree whether they have been appropriately addressed by the authorities. Mr. Subramaniyam's detention has now lasted for more than nine years, and the Working Group notes that the Government has not been able to indicate when it would end.

77. The source has submitted, and the Government has not denied, that various options of Mr. Subramaniyam being resettled in a third country have been pursued. Both the source and the Government have submitted that an Independent Reviewer undertook a review of the Adverse Security Assessment that was issued in relation to Mr. Subramaniyam. Noting that the source and the Government have disagreed on the duration as well as the outcome of the review, the Working Group is mindful that, by the Government's own admission, Mr. Subramaniyam is currently undergoing yet another assessment in relation to his Temporary Protection Visa application. The application was, however, submitted on 24 December 2015, as the Government itself stipulates, which is fully three and a half years ago.

78. The Working Group also notes the submission made by the Government that the Case Management and Detention Review Committee has reviewed the continued lawfulness and reasonableness of Mr. Subramaniyam's detention 87 times and found it to be appropriate.

79. The Working Group recalls 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 (A/HRC/30/37, paras. 2–3). That right, which in fact constitutes a peremptory norm of international law, applies to all forms of deprivation of liberty (*ibid.*, para. 11), and applies to all situations of deprivation of liberty; 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 (*ibid.*, para. 47 (a)). Moreover, it applies irrespective of the place of detention or the legal terminology used in the legislation, and any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary (*ibid.*, para. 47 (b)).

80. The facts of Mr. Subramaniyam's case since his detention on 20 March 2010 as presented to the Working Group by both the source and the Government are characterized by various security assessments and different visa applications; none of them however, have concerned his need to remain in detention. There have also been numerous reviews by the Case Management and Detention Review Committee, which, according to the

Government, has repeatedly examined the legality and reasonableness of Mr. Subramaniyam's detention. As the Working Group has already clearly stated in its previous opinions, however,<sup>2</sup> the Case Management and Detention Review Committee is not a judicial body as required by article 9 (4) of the Covenant. The Working Group observes the repeated failure on the part of the Government to explain how the reviews carried out by the Committee satisfy the guarantees encapsulated in the right to challenge the legality of detention enshrined in article 9 of the Covenant.<sup>3</sup>

81. Furthermore, the Working Group is mindful that, in 2013, Mr. Subramaniyam was found to be unfit to plea by the Court of New South Wales, and that, since then, Mr. Subramaniyam has spent considerable periods of time in hospital owing to his poor health. The Government has provided no explanation of the measures that were taken to ensure that the rights of Mr. Subramaniyam, including his rights under article 9 of the Covenant, would be fully respected during that time. The Working Group cannot accept the argument presented by the Government that Mr. Subramaniyam should be able to submit his views for consideration during the present security assessment, given that the state of Mr. Subramaniyam's health does not appear to be such as to allow for this. The Working Group notes that the Government has not explained how a person who was deemed to be unfit to plea in 2013 has now become fully able to take part in such proceedings. The Working Group also notes that the Government has not provided an explanation of any reasonable accommodations that have been made to account for Mr. Subramaniyam's special needs, in accordance with articles 4 and 14 of the Convention on the Rights of Persons with Disabilities.<sup>4</sup>

82. The Working Group therefore concludes that, during his nine years of detention, no judicial body has ever been involved in the assessment of the legality of Mr. Subramaniyam's detention, noting that such consideration by a judicial body would necessarily involve the assessment of the legitimacy, need and proportionality to detain.<sup>5</sup>

83. The Working Group also 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>6</sup> Moreover, as the Working Group notes in its revised deliberation No. 5, detention in migration settings must be exceptional, and that to ensure this, alternatives to detention must be sought.<sup>7</sup> In the case of Mr. Subramaniyam, it appears to the Working Group that, since the Adverse Security Assessment and given the health problems experienced by Mr. Subramaniyam, no alternatives to detention have been considered. In this regard, the Working Group is especially mindful of the observation made by the Special Rapporteur on the human rights of migrants, who also met with detainees who had been given indefinite detention because they were refugees who had failed either their adverse security assessment or their character assessment, or stateless persons whose asylum claims had been refused. In his view, a judicial review process was important for these groups of detainees, and wherever possible, options for non-custodial measures and alternatives to detention should be offered to them (A/HRC/35/25/Add.3, para. 58).

84. Furthermore, Mr. Subramaniyam made his latest visa application on 24 December 2015. Without providing any explanation about the length of time required, the Government has submitted that this matter is still pending. The Working Group is puzzled

<sup>2</sup> See opinions No. 20/2018, para. 61, No. 50/2018, para. 77 and No. 74/2018, para 103.

<sup>3</sup> Ibid.

<sup>4</sup> The Working Group observes that Australia has been a party to the Convention since 17 July 2008.

<sup>5</sup> See A/HRC/39/45, annex, revised deliberation No. 5, paras. 12–13.

<sup>6</sup> See *C. v. Australia, Baban et al. v. Australia* (CCPR/C/78/D/1014/2001), *Shafiq v. Australia* (CCPR/C/88/D/1324/2004), *Shams et al. v. Australia* (CCPR/C/90/D/1255, 1256, 1259, 1260, 1266, 1268, 1270 and 1288/2004), *Bakhtiyari v. Australia* (CCPR/C/79/D/1069/2002), *D and E and their two children v. Australia* (CCPR/C/87/D/1050/2002), *Nasir v. Australia* (CCPR/C/116/D/2229/2012) and *F.J. et al. v. Australia* (CCPR/C/116/D/2233/2013).

<sup>7</sup> See also A/HRC/13/30, para. 59, E/CN.4/1999/63/Add.3, para. 33, A/HRC/19/57/Add.3, para. 68 (e), A/HRC/27/48/Add.2, para. 124 and A/HRC/30/36/Add.1, para. 81. See also opinions No. 21/2018 and No. 72/2017.

that a visa application of someone whom is held in custody by the State can take more than three and a half years, with no clear prospect of resolution in sight. Mr. Subramaniyam appears to be caught up in an endless cycle of visa applications and security assessments while in detention, where his health, both physical and mental, is deteriorating.

85. As clearly stated in the revised deliberation No. 5, indefinite detention of individuals in the course of migration proceedings cannot be justified and is arbitrary.<sup>8</sup> This is why the Working Group has required that a maximum detention period in the course of migration proceedings be set by legislation, and that such detention be permissible only for the shortest period of time.<sup>9</sup> Mr. Subramaniyam has now been in detention for more than nine years without any clear prospect of when he could be released, a situation that the Working Group considers unacceptable. The Working Group is mindful that the Government itself has not been able to make such an indication in its reply to the Working Group.

86. The Working Group therefore concludes that Mr. Subramaniyam has been denied the right to challenge the continued legality of his detention in breach of article 9 of the Covenant, and that his detention is therefore arbitrary, falling under category IV, and not under category III as argued by the source.

87. Furthermore, the source submits that the detention of Mr. Subramaniyam falls under category V, as Australian citizens and non-citizens are not equal before the courts and tribunals of Australia owing to the effective result of the decision of the High Court in *Al-Kateb v. Godwin*. According to that decision, while Australian citizens may challenge administrative detention, while non-citizens may not. The Government denies those allegations, arguing that, in the cited case, the High Court held that provisions of the Migration Act 1958 requiring detention of non-citizens until they are removed, deported or granted a visa, even if removal were not reasonably practicable in the foreseeable future, were valid.

88. The Working Group remains puzzled by the explanation provided again by the Government in relation to the High Court's decision in that case,<sup>10</sup> as it only confirms that the High Court affirmed the legality of the detention of non-citizens until they are removed, deported or granted a visa, even if removal were not reasonably practicable in the foreseeable future. In other words, the Government has actually failed to explain how such non-citizens can challenge their continued detention after that decision.

89. The Working Group notes the numerous findings by the Human Rights Committee, as referred to in paragraph 83 and footnote 13 above, and also notes that the effect of the decision of the High Court of Australia in the above-mentioned case is such that non-citizens have no effective remedy against their continued administrative detention.

90. In that respect, the Working Group specifically notes the jurisprudence of the Human Rights Committee in which it 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 continued administrative detention.<sup>11</sup>

91. In the past, the Working Group has concurred with the views of the Human Rights Committee on this matter,<sup>12</sup> and this remains the position of the Working Group in the present case. The Working Group emphasizes that this situation is discriminatory and contrary to articles 16 and 26 of the Covenant. It therefore concludes that the detention of Mr. Subramaniyam is arbitrary, falling under category V.

<sup>8</sup> A/HRC/39/45, annex, para. 26. See also A/HRC/13/30, para. 63 and opinions No. 42/2017 and No. 28/2017.

<sup>9</sup> A/HRC/39/45, annex, para. 26; see also opinions No. 5/2009 and No. 42/2017, E/CN.4/1999/63/Add.3, para. 35 and A/HRC/33/50/Add.1, paras. 49–50.

<sup>10</sup> See opinions No. 21/2018, para. 79, No. 50/2018, para. 81 and No. 74/2018, para. 117.

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

<sup>12</sup> See opinions No. 28/2017, No. 42/2017, No. 71/2017, No. 20/2018, No. 21/2018, No. 50/2018, No. 74/2018 and No. 2/2019.

*Migration Act 1958*

92. The Working Group observes that the present case is the latest in the number of cases from Australia that have come before the Working Group since 2017 and all concerning the same issue, namely the mandatory immigration detention in Australia pursuant to the Migration Act 1958 (Act).<sup>13</sup> The Act stipulates that unlawful non-citizens must be detained and kept in immigration detention until they are removed from Australia or granted a visa. In addition, section 196 (3) of the Act states that, “to avoid doubt, subsection (1) prevents the release, even by a court, of an unlawful non-citizen from detention (otherwise than as referred to in paragraph (1) (a), (aa) or (b)) unless the non-citizen has been granted a visa”. Consequently, provided that there is some sort of process relating to the grant of a visa or to removal (even if removal is not reasonably practicable in the foreseeable future), the detention of an unlawful non-citizen is permitted under Australian law.

93. The Working Group emphasizes 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 Convention relating to the Status of Refugees and the Protocol thereto.<sup>14</sup> The Working Group notes that these instruments constitute international legal obligations undertaken by Australia, and also notes in particular the undoubtedly legally binding nature of the Convention relating to the Status of Refugees and the Protocol thereto in relation to Australia.

94. The Working Group must once again emphasize 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.<sup>15</sup> Moreover, as the Human Rights Committee has argued in its general comment No. 35 (2014) on liberty and security of person, 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.

95. The provisions of the Migration Act 1958 stand at odds with these requirements of international law, as its sections 189 (1) and 189 (3) provide for de facto mandatory detention of all unlawful non-citizens unless they are being removed from the country or granted a visa. Furthermore, the Act does not reflect the principle of exceptionality of detention in the context of migration as recognized in international law, nor does it provide for alternatives to detention to meet the requirement of proportionality.<sup>16</sup>

96. The Working Group is alarmed at the rising number of cases emanating from Australia concerning the implementation of the Migration Act 1958 that are being brought to its attention. It is equally alarmed that, in all these cases, the Government has argued that the detention is lawful because it follows the stipulations of the Act. The Working Group wishes to clarify that such an argument can never be accepted as legitimate in international law. The fact that a State follows its own laws does not in itself bring those laws into conformity with the obligations that the State has undertaken under international law. No State can legitimately avoid its obligations arising from international law by hiding behind its domestic laws and regulations.

97. The Working Group emphasizes that it is the duty of the Government of Australia to bring its national legislation, including the Migration Act 1958, into line with its obligations under international law. Since 2017, the Government has been consistently reminded of these obligations by numerous international human rights bodies, including the

<sup>13</sup> See opinions No. 28/2017, No. 42/2017, No. 71/2017, No. 20/2018, No. 21/2018, No. 50/2018, No. 74/2018 and No. 2/2019.

<sup>14</sup> See opinions Nos. 28/2017, 42/2017 and 50/2018; see also A/HRC/39/45, annex, para. 9.

<sup>15</sup> See A/HRC/10/21, para. 67. See also A/HRC/39/45, annex, paras. 12 and 16.

<sup>16</sup> A/HRC/10/21, para. 67. See also A/HRC/39/45, annex, paras. 12 and 16.

Human Rights Committee (CCPR/C/AUS/CO/6, paras. 33–38), the Committee on Economic, Social and Cultural Rights (E/C.12/AUS/CO/5, paras. 17–18), the Committee on Elimination of All Forms of Discrimination against Women (CEDAW/C/AUS/CO/8, paras. 53–54), the Committee on the Elimination of All Forms of Racial Discrimination (CERD/C/AUS/CO/18-20, paras. 29–33), the Special Rapporteur on the human rights of migrants (see A/HRC/35/25/Add.3) and the Working Group.<sup>17</sup> The Working Group finds it inconceivable that the unison voice of numerous independent, international human rights mechanisms would be disregarded and calls upon the Government to urgently review this legislation in the light of its obligations under international law without delay.

98. The Working Group welcomes the invitation dated 27 March 2019 from the Government for the Working Group to conduct a visit to Australia in the first quarter of 2020. The Working Group looks forward to this opportunity to engage with the Government constructively and to offer its assistance in addressing its serious concerns relating to instances of arbitrary deprivation of liberty.

### **Disposition**

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

The deprivation of liberty of Premakumar Subramaniam, being in contravention of articles 2, 3, 7, 8 and 9 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.

100. The Working Group requests the Government of Australia to take the steps necessary to remedy the situation of Premakumar Subramaniam without delay, and to 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.

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

102. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Premakumar Subramaniam, and to take appropriate measures against those responsible for the violation of his rights.

103. The Working Group requests the Government to bring its laws, particularly the Migration Act 1958 into conformity with the recommendations made in the present opinion and with the international law commitments made by Australia.

104. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the human rights of migrants for appropriate action.

105. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

### **Follow-up procedure**

106. 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 Premakumar Subramaniam has been released and, if so, on what date;

<sup>17</sup> See opinions No. 50/2018, paras. 86–89, No. 74/2018, paras. 99–103 and No. 2/2019, paras. 115–117.

(b) Whether compensation or other reparations have been made to Premakumar Subramaniyam;

(c) Whether an investigation has been conducted into the violation of Premakumar Subramaniyam'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.

107. 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.

108. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of 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.

109. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has 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>18</sup>

*[Adopted on 24 April 2019]*

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<sup>18</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.