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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-first session, 6–10 September 2021

Opinion No. 29/2021 concerning Aras Amiri (Islamic Republic of Iran)

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 42/22.

2. In accordance with its methods of work,¹ on 4 May 2021 the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Aras Amiri. The Government replied to the communication on 1 July 2021. 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).

¹ A/HRC/36/38.

Submissions

Communication from the source

Background

4. Aras Amiri is a citizen of the Islamic Republic of Iran, born in 1986. She is an arts curator, a student and an employee of the British Council who, until her arrest and detention, was living and working in the United Kingdom of Great Britain and Northern Ireland. Her role at the British Council was Arts Officer/Arts Manager, which involved managing arts programmes aimed at presenting Iranian arts and literature in the United Kingdom.

Initial arrest and detention

5. In 2018, Ms. Amiri returned to the Islamic Republic of Iran to visit her family, in particular a sick relative. On 14 March 2018, she was arrested by officials from the Ministry of Intelligence of the Islamic Republic of Iran while travelling to the airport for her return flight to the United Kingdom. According to the source, Ms. Amiri was taken initially to Isteqlal Hotel in Tehran for interrogation and subsequently transferred to Ward 209 of Evin Prison. She was held in solitary confinement by the Ministry of Intelligence and interrogated daily.

6. The source reports that upon Ms. Amiri's initial arrest, she was charged with "acting against national security through assembly and collusion", and – it was subsequently discovered – with "membership of an unlawful group" under article 499 of the Islamic Penal Code. However, the latter charge was not made known to Ms. Amiri until pretrial questioning in September 2018.

7. According to the source, Ms. Amiri was held on remand from 14 March to 21 May 2018, a total of 69 days. Of these initial 69 days in custody, Ms. Amiri spent 50 days in solitary confinement. Bail was originally set by the magistrate on duty at the time of Ms. Amiri's arrest in March 2018 in the sum of 700 million rials. The source states that although that sum was in fact paid by Ms. Amiri's family, she was not released pursuant to that arrangement, and her family later learned that the setting of bail had been a mistake.

8. Ms. Amiri was released on bail in May 2018 pursuant to a further bail figure having been set at 5 billion rials, which was met by Ms. Amiri's family, in part through the signing of a legal agreement pledging the amount to the judiciary from their assets. The bail conditions included a travel ban.

Trial proceedings and appeal

9. The source states that Ms. Amiri was rearrested on 9 September 2018 on the new and more serious charge of "establishing and administrating an unlawful group" under article 498 of the Islamic Penal Code. It was only at this point that she learned the full details of the first set of charges.

10. Upon Ms. Amiri's rearrest, she was detained by the interrogator at Branch 1 of the Security Court and transferred directly from that court, where the charges had been set out, to the general ward at Evin Prison. She remained on remand until her trial and conviction. The source notes that Ms. Amiri did not leave the Islamic Republic of Iran while on bail and subject to a travel ban. Those involved in her interrogation and prosecution provided assurances that the matter would be resolved fairly.

11. Ms. Amiri's trial took place in January and February 2019. The source understands that during Ms. Amiri's trial, the following matters were put to her in establishing her purported criminality:

- (a) Ms. Amiri had started as a regular member of staff at the British Council and had later become a senior manager;
- (b) In common with all British Council employees, Ms. Amiri had undertaken data security training;
- (c) Information in the British Council was classified information;

- (d) Iranian British Council employees were not allowed to bring their work laptops or telephones with them when they visited the Islamic Republic of Iran;
- (e) Ms. Amiri had received training from the British Council;
- (f) Ms. Amiri approved of all British Council strategies and programmes;
- (g) In Ms. Amiri's role as a cultural officer, it had been part of her duties to promote art that was not in line with Islamic values;
- (h) Ms. Amiri had been involved, or had purportedly been involved, in several cultural projects, which allegedly promoted Western values of sexual equality and equality of minorities, with the intention of creating division in the Islamic Republic of Iran;
- (i) It had been Ms. Amiri's intention, through her work for the British Council, to have a cultural impact in the Islamic Republic of Iran, and to change Iranian values;
- (j) The British Council's office in the Islamic Republic of Iran had closed in 2009, and the British Council had since then been banned from operating in the country;
- (k) Ms. Amiri came from a Marxist family;
- (l) Ms. Amiri had the objective of social change in South Asia;
- (m) Ms. Amiri's own ambitions matched those of the British Council, and were aimed at social change in South Asia;
- (n) Ms. Amiri's activities as described above amounted to "cultural penetration", as defined by the Supreme Leader.

12. On the basis of the above, Ms. Amiri was convicted and given the maximum sentence of 10 years' imprisonment with a ban on exiting the Islamic Republic of Iran for two years and on working with others.

13. The source further states that Ms. Amiri (or, in one case, her predecessor in the role) was involved in a number of cultural projects during her employment. These projects were among the subjects of Ms. Amiri's interrogation, and were the basis for her conviction. According to the source, they included a planned project through a third-party partner to train arts managers and producers in the Islamic Republic of Iran, which did not in fact ever take place. Moreover, Ms. Amiri had been involved in a collaboration with an established London-based theatre on a writing project for Iranian and Turkish playwrights. This project took place in Istanbul in 2013 and 2014.

14. The source refers to other projects on which Ms. Amiri had worked in the course of her employment, including an electronic music residency in the Islamic Republic of Iran (established by Ms. Amiri's predecessor), which took place in 2014. In addition, Ms. Amiri's project work involved a panel discussion in 2017 on contemporary Iranian art and art criticism, with a guest critic from the Islamic Republic of Iran. Lastly, the source states that Ms. Amiri was involved in a cultural group with funding from the British Council to develop a network of United Kingdom-based arts organizations with an interest in supporting and presenting Iranian contemporary arts in the United Kingdom. This project had not yet been launched, and has been put on hold following Ms. Amiri's arrest and detention.

15. The source notes that the central factual basis of the charges against Ms. Amiri – at least insofar as it concerned her activities, as opposed to her alleged motives for those activities – was not disputed by her, either during her interrogation or during her trial. Some of the activities that she was alleged to have carried out were in fact carried out by others, but those discrepancies were not determinative.

16. The source emphasizes that much of Ms. Amiri's work for the British Council, including the projects that featured in her trial and were relied upon to convict her, could only proceed with the authority of, and had been sanctioned by, the Ministry of Culture and Islamic Guidance of the Islamic Republic of Iran. Officials from the Ministry regularly engaged with Ms. Amiri in the formulation of those projects, and on two occasions (in 2015 and 2016), senior officials from the Ministry attended Ms. Amiri's projects in the United Kingdom as a way of supporting them and, presumably, of ensuring their continuing compliance with the Ministry's expected standards.

17. As a result, Ms. Amiri could never have known that her work might expose her to criminal liability in the Islamic Republic of Iran. Furthermore, she had a strong legitimate expectation, fostered by the Iranian authorities, that the Islamic Republic of Iran approved of her activities. The source strongly disputes the characterization of her activities as in any way offensive to the Islamic Republic of Iran or to Iranian cultural, social or religious values.

18. On 13 May 2019, it was announced on national State television in the Islamic Republic of Iran that Ms. Amiri had been convicted of spying, while Ms. Amiri was simultaneously informed by the Revolutionary Court that she had been convicted of the charges against her set out above.

19. According to the source, the announcement of Ms. Amiri's conviction on Iranian State television was made by a spokesperson of the Iranian judiciary, who, without specifically identifying Ms. Amiri, stated the following: "An Iranian who was in charge of the Iran desk in the British Council and was cooperating with Britain's intelligence agency ... was sentenced to 10 years in prison after clear confessions."

20. Ms. Amiri submitted an appeal against her conviction in June 2019, which was rejected. The announcement that Ms. Amiri's appeal had been rejected was communicated to Ms. Amiri's family on 18 August 2019, and then announced on Iranian State television on 23 August 2019. The source states that Ms. Amiri has not received any formal notice of the outcome of her appeal.

Analysis of violations

21. The source submits that the actions taken by the authorities against Ms. Amiri are very closely linked to her employment and role at the British Council. Ms. Amiri was present in the Islamic Republic of Iran on purely personal business at the time of her arrest, and was not carrying out any work for the British Council while in the country. British Council staff are not allowed to travel to the Islamic Republic of Iran on business or to conduct any business whatsoever if they decide to make a personal trip. Moreover, Ms. Amiri was not "in charge of the Iran desk", as the spokesperson had claimed. In the view of the source, this language deliberately conflates Ms. Amiri's work with that of the intelligence agencies.

22. Ms. Amiri was charged with and convicted of the following crimes: "acting against national security through assembly and collusion", "membership of an unlawful group" under article 499 of the Islamic Penal Code, and "establishing and administrating an unlawful group" under article 498 of the Islamic Penal Code.

23. The source argues that the procedures adopted in Ms. Amiri's case were irregular, contradictory and unfair to her, in particular because of the following factors:

(a) Ms. Amiri was not made aware of all of the charges against her initially, and learned of the most serious charges only in September 2018;

(b) Ms. Amiri was not granted access to her lawyer upon her arrest, and her lawyer was not present during any of her interrogations during the 69 days that she was initially imprisoned on remand;

(c) Ms. Amiri was not made aware of why bail was initially refused (despite a bail amount having been set), or of why bail was not granted upon Ms. Amiri's rearrest, in September 2018;

(d) Neither Ms. Amiri nor her lawyer have ever been provided with a copy of the indictment against her, or any other statements of case or relevant particulars;

(e) The group that Ms. Amiri was convicted of having established, administered and been a member of has never been identified to her;

(f) The participation of Ms. Amiri's lawyer in the trial process was restricted to brief written submissions to the court at the end of the investigation; otherwise, the entire proceedings were conducted by the prosecutor and the judge acting together;

(g) The prescribed sentence for the crime of which Ms. Amiri was convicted is 2 to 10 years' imprisonment, and Ms. Amiri appears to have received the most severe sentence available, with no reasons given as to why she could not have received a lesser sentence;

(h) Ms. Amiri has been deprived of her liberty as a result of the exercise of her rights and freedoms guaranteed by article 13 of the Universal Declaration of Human Rights and article 12 of the Covenant (freedom of movement, including the right to return), as well as article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant (freedom of opinion and expression);

(i) The basis for the conviction was said to be Ms. Amiri's "confessions", but they simply related to her description of her work, which she reasonably and justifiably understood to have been approved by the Ministry of Culture and Islamic Guidance of the Islamic Republic of Iran;

(j) Ms. Amiri's conviction was announced on 13 May 2019 in a political statement on national State television, describing her as having been convicted of spying. She was simultaneously informed by the Revolutionary Court that she had been convicted of the charges against her (essentially, of "cultural penetration"). The characterization of the conviction on State television differed from the description given to Ms. Amiri, and it was clear from the timing that the State television channel had had advance knowledge of her conviction. The source submits that the mischaracterization of the reason for her conviction underlines the politicized nature of the process, and seriously calls into question the process by which she was convicted;

(k) Similarly, in August 2019, when Ms. Amiri's appeal was rejected, the announcement was made on State television and has not been formally communicated to Ms. Amiri;

(l) Ms. Amiri's arrest, trial, conviction and continuing detention are not compliant with international legal standards. The formal domestic appeals process has now concluded, and was not an effective remedy for the violations of Ms. Amiri's rights that have occurred.

24. Ms. Amiri is currently being detained in Evin Prison. She was released on furlough for several weeks in 2020 owing to the effects upon the general prison population of the coronavirus disease (COVID-19) pandemic. She was, however, returned to prison and remains there, serving out the remainder of her 10-year sentence.

Response from the Government

25. On 4 May 2021, the Working Group transmitted the source's allegations to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 5 July 2021, detailed information about Ms. Amiri's situation. The Working Group also requested the Government to clarify the legal provisions justifying her continued detention, as well as its compatibility with the obligations of the Islamic Republic of Iran 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 to ensure Ms. Amiri's physical and mental integrity.

26. The Government submitted its response on 1 July 2021, stating that it was providing further clarifications on Ms. Amiri's case. The Government confirms that Ms. Amiri was born in 1986. According to the Government, she had an arrest record from 2007 for participating in an illegal assembly. In the present case, she was convicted of the following charges: (a) "acting against the State by forming and organizing a subversive network for the purpose of overthrowing the Establishment"; and (b) "assembly and collusion against national security".

27. Upon exhaustion of all legal procedures and formalities, and after hearing the defence pleadings, Ms. Amiri was sentenced by Branch 15 of Tehran Islamic Revolutionary Court to a 10-year discretionary prison term. Ms. Amiri was placed under a ban on membership of political groups and parties for two years. She is also banned from leaving the Islamic Republic of Iran, conducting any activities in cyberspace, and engaging with media outlets.

28. Ms. Amiri and her lawyers filed an appeal. Division 36 of the Tehran Provincial Court of Appeal reviewed the case. The appeal failed to satisfy article 434 of the Code of Criminal Procedure. No legally justified evidence was produced by the defence to warrant overturning the verdict, which was issued in full compliance with applicable legal norms. Ms. Amiri's lawyers were given unhindered access to the judicial file and its contents. The appeal was

dismissed and the verdict was upheld pursuant to article 455 of the Code of Criminal Procedure. Ms. Amiri's sentence commenced on 19 September 2018 and is scheduled to conclude on 13 May 2028, with the 65 days of detention pending trial having been deducted from the term of imprisonment.

29. According to the State Prisons and Security and Corrective Measures Organization, Ms. Amiri has unrestricted access to health facilities and medical services offered within the prison. However, Ms. Amiri has experienced oral health problems and, given the insufficiency of specialized treatment facilities, she has on five occasions been referred to her personal dentist outside the prison. As is the case for every other prisoner, Ms. Amiri has had access to personal protective equipment during the COVID-19 pandemic, including sanitizers and masks. She was granted 25 days of furlough from prison, from 9 April to 4 May 2020. Furthermore, Ms. Amiri has met with her family members and lawyers on 133 occasions, either in person or through intercom stations.

30. The Government refers to a directive approved by the head of the judiciary regarding the granting of leniency to prisoners. This directive excludes individuals convicted of security-related charges and sentenced to more than five years in prison from furloughs that are permitted for other prisoners. Ms. Amiri has been sentenced to imprisonment for more than five years. Given the provisions of the directive and regulations referred to in article 520 of the Code of Criminal Procedure, and since Ms. Amiri is yet to complete one third of her prison term, she is not qualified to benefit from the furlough set forth in this directive.

Additional comments from the source

31. The source provided an update on Ms. Amiri's current status. In late June 2021, Ms. Amiri was temporarily released pending further judicial determination in her case. The source understands that the outcome of that judicial review, which may confirm Ms. Amiri's original conviction and sentence, vary it or quash it, is not expected to be known for several months. In the meantime, she remains at risk of being recalled to Evin Prison.

32. The source reiterates the initial submissions, emphasizing that Ms. Amiri's arrest, detention pending trial, trial, conviction and sentence are wholly without any basis under international legal standards, and breach the internationally recognized principles of freedom of movement, freedom of expression and the rule of law.

Discussion

33. The Working Group thanks the source and the Government for their submissions.

34. The Working Group welcomes the temporary release of Ms. Amiri in late June 2021 pending further judicial determination in her case. In accordance with paragraph 17 (a) of its methods of work, the Working Group reserves the right to render an opinion on whether or not a deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. According to the source, Ms. Amiri remains at risk of being detained again following her temporary release. In addition, Ms. Amiri has spent three years in detention, reportedly for exercising her rights. Prior to her release, she was serving a sentence of 10 years' imprisonment following trial and appellate proceedings that allegedly involved serious violations of the right to a fair trial. In these circumstances, the Working Group considers it important to render an opinion.

35. In determining whether Ms. Amiri's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case of 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. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.²

36. In the present case, Ms. Amiri has been detained on two occasions. According to the source, Ms. Amiri was detained for the first time following her initial arrest, on 14 March 2018, until she was released on bail, on 21 May 2018, a period of 69 days. The Government

² A/HRC/19/57, para. 68.

does not provide the dates of this initial period of custody, but states that 65 days of detention pending trial were deducted from Ms. Amiri's sentence. The source also alleges, and the Government does not dispute, that Ms. Amiri was subsequently rearrested on 9 September 2018 and was detained for almost three years until her temporary release, in late June 2021. The Working Group will consider whether the detention of Ms. Amiri during these periods was arbitrary under the relevant categories provided for in its methods of work.³

Category I

37. The source alleges that upon Ms. Amiri's initial arrest, on 14 March 2018, she was charged with "acting against national security through assembly and collusion". According to the source, Ms. Amiri was also charged with "membership of an unlawful group" under article 499 of the Islamic Penal Code, but this second charge was not made known to her until pretrial questioning in September 2018. The source further alleges that Ms. Amiri was rearrested on 9 September 2018 on the new and more serious charge of "establishing and administrating an unlawful group" under article 498 of the Islamic Penal Code. It was only at this point that she learned the full details of the first set of charges. As a result, Ms. Amiri was not initially made aware of all the charges against her, and only learned of the most serious charges in September 2018.

38. The Government does not address these allegations regarding the failure to inform Ms. Amiri following her arrest of all the charges against her. Rather, the Government refers to the two charges under which Ms. Amiri was convicted, namely "acting against the State by forming and organizing a subversive network for the purpose of overthrowing the Establishment",⁴ and "assembly and collusion against national security".

39. Article 9 (2) of the Covenant provides that anyone who is arrested must be informed, at the time of arrest, of the reasons for the arrest and must be promptly informed of the charges. The requirement to give prompt notice of charges is intended to facilitate the determination of whether provisional detention is appropriate.⁵ In this case, Ms. Amiri was initially informed of one charge against her, but received information about all the charges against her only in September 2018, six months after her arrest. As a result, Ms. Amiri did not have sufficient information to challenge the legal basis of her detention during her initial period of custody, from 14 March to 21 May 2018. As the Working Group has previously found, this amounts to a failure by the authorities to promptly inform Ms. Amiri of the charges against her, in violation of article 9 (2) of the Covenant.⁶

40. In addition, the source alleges that bail was originally set by the magistrate on duty at the time of Ms. Amiri's arrest in March 2018 in the sum of 700 million rials. While that sum was paid by Ms. Amiri's family, Ms. Amiri was not released and her family later learned that the setting of bail had been a mistake. Ms. Amiri was subsequently released on bail when a new amount was set in May 2018. According to the source, Ms. Amiri was not made aware of why bail was initially refused, despite a bail amount having been set, or why bail was not granted upon Ms. Amiri's rearrest, in September 2018. The Government did not address these allegations in its response.

41. The Working Group notes that the initial bail was set by a magistrate but not enforced, even though Ms. Amiri's family paid the bail amount. In the view of the Working Group, Ms. Amiri was entitled to release on bail when the bail amount was met, regardless of any subsequent explanation that the setting of bail had been an error. As the Working Group has previously determined, any time that an order for release, even for release on bail, is made and the detainee is not released, the subsequent detention is without legal basis.⁷ Maintaining

³ A/HRC/36/38, para. 8.

⁴ This appears to be a different charge to the three charges mentioned by the source.

⁵ Human Rights Committee, general comment No. 35 (2014), para. 30.

⁶ For example, opinion No. 83/2018, para. 46 (the Committee found that the notification of a defendant of two further charges after a six-month period of pretrial detention had violated article 9 (2) of the Covenant).

⁷ Opinions No. 3/2010, paras. 6 and 14; No. 8/2020, para. 53; and No. 27/2020, para. 54. See also Human Rights Committee, general comment No. 35 (2014), para. 22; and opinions No. 5/2005, para. 19; No. 21/2007, para. 19; No. 3/2011, para. 20; No. 7/2011, paras. 15–17; and No. 9/2011, para. 38.

a person in detention once release has been ordered by the court competent to exercise control over the legality of detention is a manifest violation of article 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant, and renders the detention arbitrary because it lacks legal basis. The failure to release Ms. Amiri, despite the bail amount having been set and paid, appears also to be inconsistent with the requirement under article 9 (3) of the Covenant that detention pending trial is to be the exception rather than the rule.⁸ Other international standards also require that non-custodial measures be prioritized for women.⁹

42. The Working Group notes the source's allegation that Ms. Amiri was not made aware of why bail was not granted following her rearrest, on 9 September 2018. The Working Group does not consider that it has sufficient information, including as to whether an assessment of alternatives to pretrial detention, such as bail, was actually conducted in this case, to make a finding on this issue.

43. For the reasons outlined above, the Working Group concludes that there was no legal basis for Ms. Amiri's detention from 14 March to 21 May 2018, and that her detention during this period was arbitrary under category I.

Category II

44. The source alleges that Ms. Amiri was deprived of her liberty as a result of the exercise of her rights and freedoms guaranteed by article 13 of the Universal Declaration of Human Rights and article 12 of the Covenant (freedom of movement, including the right to return), as well as article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant (freedom of opinion and expression). The Government did not address these allegations in its response, but stated that Ms. Amiri was convicted following a verdict that had been issued in full compliance with applicable legal requirements.

45. The Working Group considers that there is insufficient basis to conclude that Ms. Amiri's detention was related to the exercise of her right to freedom of movement. Although Ms. Amiri was arrested following her return to the Islamic Republic of Iran to visit a sick relative and while she was attempting to depart again for the United Kingdom, she does not appear to have been detained as a result of exercising her right to freedom of movement.¹⁰ That is, Ms. Amiri was not prosecuted for any offences relating to entering or attempting to leave the Islamic Republic of Iran. Rather, her detention was related to the cultural projects that she supported during the course of her employment with the British Council.

46. The source further alleges that Ms. Amiri was detained as a result of the exercise of her right to freedom of opinion and expression. Article 19 (2) of the Covenant provides that everyone has the right to freedom of expression, and that this right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice. This right also includes cultural and artistic expression.¹¹

47. In the view of the Working Group, Ms. Amiri was detained as a result of the peaceful exercise of her right to freedom of opinion and expression. According to the source, Ms. Amiri's role at the British Council involved managing arts programmes aimed at presenting Iranian arts and literature in the United Kingdom. In that role, she worked on several cultural projects, including the training of arts managers and producers, a writing project for playwrights, an electronic music residency, a panel discussion on contemporary Iranian art,

⁸ The second bail amount of 5 billion rials, which was met by Ms. Amiri's family and resulted in her release in May 2018, appears excessive. Ms. Amiri's family had to sign a legal agreement pledging the amount to the judiciary from their assets. Opinion No. 9/2017, para. 28 (the Committee found that an excessive bail amount violated the requirement under article 9 (3) that pretrial detention be exceptional); see also General Assembly resolution 73/181, para. 12.

⁹ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), sect. III. See also deliberation No. 12 (A/HRC/48/55, annex), paras. 7–9.

¹⁰ See, for example, opinions No. 36/2007 (individual detained for illegally crossing a border) and No. 33/2016 (individual detained for illegally returning to his country).

¹¹ Human Rights Committee, general comment No. 34 (2011), para. 11.

and the development of a network of arts organizations to support Iranian arts in the United Kingdom.

48. While not all of these envisaged events ultimately took place, Ms. Amiri's work on these projects involved bringing together individuals and groups with an interest in Iranian arts and literature and facilitating the exchange of information and ideas among them.¹² The Working Group considers that Ms. Amiri's activities fell within the protection of the right to freedom of opinion and expression under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.

49. There is nothing to suggest – and the Government has not argued – that the permissible restrictions on the right to freedom of expression under article 19 (3) of the Covenant apply in the present case. The Government did not explain how prosecuting Ms. Amiri was necessary to protect a legitimate interest under article 19 (3). Importantly, there is no evidence to suggest that Ms. Amiri's activities could reasonably be considered to pose a threat to national security, public order, public health or morals, or the rights or reputations of others. In reaching this conclusion, the Working Group has taken into account the source's submission, which was not rebutted by the Government, that the projects that featured in Ms. Amiri's trial and were relied upon to convict her could only proceed with the authority of, and had been sanctioned by, the Ministry of Culture and Islamic Guidance of the Islamic Republic of Iran. In addition, officials from that Ministry had reportedly attended Ms. Amiri's projects on two occasions.

50. Further, the Government did not demonstrate that Ms. Amiri's conviction and sentence to 10 years' imprisonment – the maximum penalty available – as well as the imposition of various bans on membership of political groups, travel, activities in cyberspace and engagement with media outlets, was a proportionate response to her activities. According to the Government, Ms. Amiri had an arrest record from 2007 for participating in an illegal assembly, some 11 years prior to her arrest in the present case. However, it is not clear how this alleged prior record has now escalated to the imposition of the maximum penalty for Ms. Amiri's current peaceful activities in promoting artistic and cultural exchange.

51. The Working Group finds that Ms. Amiri was detained as a result of the peaceful exercise of her right to freedom of opinion and expression, in violation of article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.¹³ The exercise of this right led to her detention during the initial period of custody, from 14 March to 21 May 2018, as well as her detention following her rearrest, on 9 September 2018. As a result, the entire period of Ms. Amiri's detention was arbitrary under category II. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur in the field of cultural rights.

52. The principle of legality requires that laws be formulated with sufficient precision so that the individual can acquire access to and understand the law and regulate his or her conduct accordingly.¹⁴ According to the Government, Ms. Amiri was convicted of the following charges: (a) "acting against the State by forming and organizing a subversive network for the purpose of overthrowing the Establishment";¹⁵ and (b) "assembly and collusion against national security".¹⁶ The Working Group considers that these offences are

¹² Opinion No. 32/2019, para. 34 (the Committee found that a software developer who published programming code allowing others to share images online was exercising his freedom of opinion and expression).

¹³ General Assembly resolution 73/181, para. 13; and A/HRC/43/12, paras. 26.155–26.161, 26.163 and 26.165–26.170.

¹⁴ Opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59.

¹⁵ While this charge appears to be different to the source's description of the charges that led to Ms. Amiri's conviction, it is reasonable to assume that the Government has more accurate knowledge of the charges and convictions in this case (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Merits, Judgment, I.C.J. Reports 2010*, p. 639, at pp. 660–661, para. 55). This is particularly so given the source's allegation that Ms. Amiri's lawyers never received a copy of the indictment.

¹⁶ Opinions No. 9/2017, para. 23; No. 19/2018, para. 33; and No. 83/2018, para. 58. In each of these opinions, the Committee found similarly worded offences to be vague and overly broad.

vague and overly broad, lack sufficient detail of the conduct that may be penalized, and maybe applied arbitrarily to proscribe the peaceful exercise of rights. In the present case, the vagueness of these laws was demonstrated through their use in the prosecution of Ms. Amiri for her work on projects that had previously been approved by the Iranian authorities.

53. The application of vague and overly broad provisions in the present case adds weight to the Working Group's conclusion that Ms. Amiri's detention falls within category II. In some circumstances, laws may be so vague and overly broad that it is impossible to invoke a legal basis justifying the deprivation of liberty.

Category III

54. Given its finding that Ms. Amiri's detention was arbitrary under category II, the Working Group emphasizes that no trial should have taken place. However, Ms. Amiri's trial proceedings took place in January and February 2019. The information submitted by the source discloses violations of the right to a fair trial prior to and during these proceedings.

55. The source alleges that Ms. Amiri was not granted access to her lawyer upon her initial arrest, on 14 March 2018, and that her lawyer was not present during any of her interrogations during the 69 days that she was initially imprisoned on remand. Moreover, according to the source, the participation of Ms. Amiri's lawyer in the trial process was restricted to brief written submissions to the court at the end of the investigation. Apart from this intervention, the entire proceedings were conducted by the prosecutor and the judge acting together. The Government does not address any of these allegations.

56. All persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and such access must be provided without delay.¹⁷ The Working Group considers that the failure to provide Ms. Amiri with access to her lawyer from the outset, and the fact that her lawyer was not present during any of her interrogations, seriously affected her ability to prepare a defence. Moreover, the restriction of her lawyer's participation in the trial process to brief written submissions to the court at the end of the investigation deprived Ms. Amiri of the ability to defend herself through the effective assistance of counsel. At a minimum, a lawyer would usually be involved in a far wider range of duties, such as oral argument, the questioning of witnesses and the testing of evidence, throughout a trial.

57. The Working Group considers that Ms. Amiri's right to have adequate time and facilities for the preparation of a defence and to communicate with a lawyer of her choice and her right to defend herself through legal assistance of her choosing, under article 14 (3) (b) and (d) of the Covenant, were violated. The fact that Ms. Amiri was facing serious national security charges made these violations of due process all the more serious.

58. Furthermore, the allegations that the participation of Ms. Amiri's lawyer in the trial process was restricted and that the proceedings were conducted by the prosecutor and judge acting together suggest that Ms. Amiri did not receive a fair hearing by an independent and impartial tribunal that respected the equality of arms.¹⁸ This amounts to a violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant, as well as principle 16 of the Basic Principles on the Role of Lawyers¹⁹ and guideline 12 of the

¹⁷ 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 (A/HRC/30/37, annex), principle 9 and guideline 8; and Human Rights Committee, general comment No. 35 (2014), para. 35. See also General Assembly resolution 73/181, para. 12; CCPR/C/IRN/CO/3, para. 21; and deliberation No. 10 (A/HRC/45/16, annex I), para. 51.

¹⁸ E/CN.4/2004/3/Add.2 and Corr.1, para. 65, and opinion No. 52/2018, para. 79 (f).

¹⁹ Principle 16 requires Governments to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. See also 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 (A/HRC/30/37, annex), principle 9.

Guidelines on the Role of Prosecutors.²⁰ The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

59. The source further alleges that neither Ms. Amiri nor her lawyer have ever been provided with a copy of the indictment against her, or any other statements of case or relevant particulars. For example, according to the source, the group that Ms. Amiri was convicted of having established, administered and been a member of has never been identified to her. In its response, the Government states that Ms. Amiri's lawyers were given unhindered access to the judicial file and its contents. It is unclear whether the Government is referring to such access during the trial or during appellate proceedings. The Government gave no specific examples of the case particulars that were provided to Ms. Amiri's lawyers, nor did it address the allegation that the group that Ms. Amiri was convicted of having established was never identified. As a result, the Working Group considers that the Government has not rebutted the source's credible allegations.

60. Every individual deprived of liberty has the right to have access to all material related to their detention, including information that may assist the detainee in arguing that the detention is not lawful or that the reasons for the detention no longer apply.²¹ However, that right is not absolute and the disclosure of information may be restricted if such a restriction is necessary and proportionate to pursue a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.²² In the present case, the Government has not provided sufficient information to indicate that full access to the case materials was provided to Ms. Amiri and her lawyer, or any justification as to why some information, such as the indictment and case particulars, was withheld. The failure to disclose particulars as to the group that Ms. Amiri had allegedly established meant that she could not mount an effective defence, including by making submissions or providing evidence that she was not associated with this group or that the group was not unlawful.

61. The Working Group considers that the failure to provide full access to the indictment and case particulars violated Ms. Amiri's right to a fair trial, the equality of arms and an adversarial process under articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.²³

62. Further, the source claims that Ms. Amiri's conviction was announced on Iranian State television by a spokesperson of the Iranian judiciary who referred to the "clear confessions" of "an Iranian who was in charge of the Iran desk in the British Council", presumably referring to Ms. Amiri. The source submits that these so-called "confessions" reflected Ms. Amiri's description of her work with the British Council, rather than admissions of guilt.

63. The Working Group does not have sufficient information to determine whether Ms. Amiri actually made any confessions to the charges, rather than giving mere descriptions of her work activities, and, if so, whether the confessions were voluntarily made. As discussed above, Ms. Amiri's work activities facilitated the exchange of information and ideas, and any description of those peaceful and lawful activities protected under international law should not, in itself, have amounted to a confession of guilt.

64. The Working Group takes this opportunity to reiterate that article 14 (3) (g) of the Covenant guarantees the right not to be compelled to testify against oneself or to confess

²⁰ Guideline 12 requires prosecutors to perform their duties fairly, consistently and expeditiously, and to respect and protect human dignity and uphold human rights, thus contributing to ensuring due process.

²¹ 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 (A/HRC/30/37, annex), principle 12 and guidelines 11 and 13.

²² *Ibid.*, guideline 13. See also A/HRC/43/12, para. 26.173.

²³ Opinions No. 19/2005, para. 28 (b); No. 50/2014, para. 77; No. 89/2017, para. 56; No. 18/2018, para. 53; and No. 78/2018, paras. 78–79. See also principle 21 of the Basic Principles on the Role of Lawyers, according to which it is the duty of the authorities to ensure access to information, files and documents to enable lawyers to provide effective legal assistance to their clients, and such access should be provided at the earliest appropriate time.

guilt. The burden is on the State to prove that any statements by the accused were given of their own free will.²⁴ Moreover, noting its finding above that Ms. Amiri's lawyer was not present during any of her interrogations during her initial 69 days of remand, the Working Group emphasizes that confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.²⁵

65. Lastly, the source alleges that the appeals process was not an effective remedy for the violations of Ms. Amiri's rights. In addition, the announcement in August 2019 that Ms. Amiri's appeal had been rejected was made on State television and was not formally communicated to Ms. Amiri. In its response, the Government states that the appeal failed to satisfy the requirements of domestic law and was therefore dismissed. Based on the information placed before it, the Working Group is not in a position to find that the appeal process to date has involved any violations of Ms. Amiri's rights. In this context, the Working Group notes that Ms. Amiri's case is pending further judicial determination, the outcome of which may confirm her conviction and sentence, vary it or quash it.

66. The Working Group concludes that the violations of the right to a fair trial, namely the denial of effective legal assistance, the absence of a fair hearing by an independent and impartial tribunal, and the failure to provide the indictment and case particulars, were of such gravity as to give Ms. Amiri's entire detention an arbitrary character under category III. In reaching the conclusion that Ms. Amiri's right to a fair trial was violated, the Working Group emphasizes that Ms. Amiri could not have known that she would be prosecuted for her work. In the view of the Working Group, Ms. Amiri had a legitimate expectation that her actions would not incur criminal liability given that the Iranian authorities had previously approved of her projects and activities.

Category V

67. The source submits that the action taken by the authorities against Ms. Amiri are closely linked to her employment and role at the British Council. The source refers to a number of matters that were relied upon in establishing Ms. Amiri's purported criminality (see para. 11 above), most of which relate to her role as Arts Officer/Arts Manager.

68. In support of its argument, the source points to the announcement of Ms. Amiri's conviction on Iranian State television by a spokesperson of the Iranian judiciary, who, without specifically identifying Ms. Amiri, stated the following: "An Iranian who was in charge of the Iran desk in the British Council and was cooperating with Britain's intelligence agency ... was sentenced to 10 years in prison after clear confessions."

69. Moreover, the source refers to aspects of Ms. Amiri's case that suggest the politicized nature of the proceedings, including the announcement on State television in May 2019 that Ms. Amiri had been convicted of spying, while Ms. Amiri was informed by the Revolutionary Court that she had been convicted of the charges outlined by the source above. The rejection of Ms. Amiri's appeal was also announced on Iranian State television, in August 2019, but was never formally communicated to her. In addition, the Working Group notes the significant bail amounts set during Ms. Amiri's initial period of custody.

70. Notably, the Government has not addressed any of these submissions. In the absence of an alternative explanation from the Government, the Working Group considers that the source has established a credible prima facie case that Ms. Amiri's detention was motivated by a discriminatory factor, namely her employment with the British Council.²⁶ While the Government refers to Ms. Amiri's prior arrest record, there is no evidence that she was involved in any activities that would raise concerns about national security. There is also nothing to indicate that she had been in the Islamic Republic of Iran for any purpose other than visiting her family, in particular her sick relative.

²⁴ Human Rights Committee, general comment No. 32 (2007), para. 41.

²⁵ Opinions No. 1/2014, para. 22; No. 14/2019, para. 71; No. 59/2019, para. 70; No. 73/2019, para. 91; No. 5/2020, para. 83; No. 15/2020, para. 76; and No. 41/2020, para. 70. See also E/CN.4/2003/68, para. 26 (e), and deliberation No. 10 (A/HRC/45/16, annex I), para. 53.

²⁶ A/HRC/43/20, para. 33, and A/HRC/43/61, para. 25. See also opinion No. 51/2019, para. 79.

71. In addition, the Working Group notes that Ms. Amiri's case is similar to its previous jurisprudence in which a pattern of conduct by the Iranian authorities was identified in arbitrarily depriving persons of dual or foreign nationality or residence of their liberty on the grounds of State security.²⁷ In this case, Ms. Amiri's association with the United Kingdom, where she had been living and working prior to her arrest and detention, appears to have been a further motivating factor in her detention.

72. The Working Group considers that Ms. Amiri was deprived of her liberty on discriminatory grounds – that is, on the basis of her employment and foreign residence – in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. Her entire period of detention constitutes a violation on the ground of discrimination based on “any other status” and was arbitrary according to category V.

73. The Working Group refers the present case to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran.

Concluding remarks

74. The source alleges that, following her arrest on 14 March 2018, Ms. Amiri was taken initially to Isteqlal Hotel in Tehran for interrogation and subsequently transferred to Ward 209 of Evin Prison, where she was held in solitary confinement by the Ministry of Intelligence. According to the source, Ms. Amiri was held on remand for 69 days, 50 of which were spent in solitary confinement.

75. The Working Group takes this opportunity to remind the Government that prolonged solitary confinement exceeding 15 consecutive days violates international standards, such as rules 43 to 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). According to rule 45 of the Mandela Rules, solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review and authorized by a competent authority.²⁸ Solitary confinement may amount to torture or other cruel, inhuman or degrading treatment or punishment.²⁹ The Working Group recalls the obligation of the Government to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person, in accordance with article 10 (1) of the Covenant.

76. This case is one of several cases brought before the Working Group in recent years concerning arbitrary deprivation of liberty in the Islamic Republic of Iran.³⁰ The Working Group notes that many of the cases involving the Islamic Republic of Iran follow a familiar pattern of arrest and detention outside legal procedures, prolonged solitary confinement, denial of access to legal counsel, prosecution under vaguely worded criminal offences, trial proceedings overseen by a court lacking in independence, and disproportionately harsh sentencing. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.³¹

77. The Working Group would welcome the opportunity to work constructively with the Government to address arbitrary deprivation of liberty in the Islamic Republic of Iran. Given that a significant period of time has passed since its most recent country visit to the Islamic Republic of Iran, in February 2003, the Working Group considers that it is now an appropriate time to conduct another visit. The Working Group made a request to the Government on 19 July 2019 to conduct a country visit. The Working Group recalls that the Government issued

²⁷ See opinion No. 28/2016. See also opinions No. 7/2017, No. 49/2017, No. 52/2018, No. 32/2019 and No. 51/2019.

²⁸ Opinions No. 52/2018, para. 79 (d), and No. 61/2020, para. 85.

²⁹ General Assembly resolution 68/156, para. 28. See also A/66/268, para. 71, and E/CN.4/2004/3/Add.2 and Corr.1, paras. 54–55.

³⁰ Opinions No. 1/2016, No. 2/2016, No. 25/2016, No. 28/2016, No. 50/2016, No. 7/2017, No. 9/2017, No. 48/2017, No. 49/2017, No. 92/2017, No. 19/2018, No. 52/2018, No. 83/2018, No. 32/2019, No. 33/2019, No. 51/2019, No. 83/2020 and No. 15/2021.

³¹ Opinion No. 47/2012, para. 22.

a standing invitation on 24 July 2002 to all thematic special procedure mandate holders, and awaits a positive response to its request to visit.

Disposition

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

The deprivation of liberty of Aras Amiri, being in contravention of articles 2, 7, 9, 10, 11 (1) and 19 of the Universal Declaration of Human Rights and articles 2 (1), 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights, was arbitrary and falls within categories I, II, III and V.

79. The Working Group requests the Government of the Islamic Republic of Iran to take the steps necessary to remedy the situation of Ms. 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.

80. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Amiri unconditionally and accord her an enforceable right to compensation and other reparations, in accordance with international law.³²

81. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Amiri and to take appropriate measures against those responsible for the violation of her rights.

82. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur in the field of cultural rights, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, for appropriate action.

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

Follow-up procedure

84. 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 Ms. Amiri has been unconditionally released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Amiri;
- (c) Whether an investigation has been conducted into the violation of Ms. 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 the Islamic Republic of Iran with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

85. 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.

³² See deliberation No. 10 (A/HRC/45/16, annex I).

86. 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.

87. 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.³³

[Adopted on 7 September 2021]

³³ Human Rights Council resolution 42/22, paras. 3 and 7.