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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-ninth session, 18–27 March 2024

Opinion No. 18/2024 concerning Ulfatkhonim Mamadshoeva and Sorbon Yunoev (Tajikistan)*

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 51/8.
2. In accordance with its methods of work,¹ on 6 December 2023 the Working Group transmitted to the Government of Tajikistan a communication concerning Ulfatkhonim Mamadshoeva and Sorbon Yunoev. The Government replied to the communication on 29 January 2024. 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,

* Miriam Estrada Castillo did not participate in the discussion of the case.

¹ [A/HRC/36/38](#).



or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

1. Submissions

(a) Communication from the source

4. Ulfatkhonim Mamadshoeva is a national of Tajikistan born on 26 April 1957. Her usual place of residence is in the city of Dushanbe.

5. Ms. Mamadshoeva is a civil society representative of the Pamiri Indigenous population in Kūhistoni Badakhshon Autonomous Province, a journalist and a human rights defender. She is also the founder and director of the non-governmental organization “Nomus Valnsot”, which is focused on children’s rights, education and women’s rights. Ms. Mamadshoeva is the sister of a human rights defender and representative of the Pamiri Indigenous population who has been detained since 28 May 2022, convicted and sentenced to 18 years of imprisonment.

6. Sorbon Yunoev is a national of Tajikistan, born on 25 March 1960. His usual place of residence is in the town of Khorugh in Kūhistoni Badakhshon Autonomous Province.

7. Mr. Yunoev is an entrepreneur, a representative of the Pamiri ethnic minority living in Kūhistoni Badakhshon Autonomous Province, a civil activist and a local opinion leader. In early 2000s, Mr. Yunoev was the only elected independent member of the local parliament of Kūhistoni Badakhshon Autonomous Province from Roshtal’a District. As a member of the local parliament, he implemented numerous public initiatives aimed at the socioeconomic development of Kūhistoni Badakhshon Autonomous Province, and openly alleged corruption and the lack of democracy in Tajikistan. After the violent suppression of peaceful protests in Kūhistoni Badakhshon Autonomous Province in 2012 and 2018, he openly criticized actions of the authorities. Since 2006, Mr. Yunoev has worked to improve financial awareness and access to financial services for rural Pamiri people in Kūhistoni Badakhshon Autonomous Province, especially women.

(i) Context

8. According to the source, Ms. Mamadshoeva and Mr. Yunoev were arrested, detained and convicted amidst a human rights crisis in Kūhistoni Badakhshon Autonomous Province. The source alleges that, in November 2021, following the killing of a local Indigenous Pamiri resident by the police, mass protests erupted and were violently cracked down on, resulting in at least 40 people being killed and hundreds detained.

9. It is reported that independent journalists who covered the anti-government protests and the violence against the demonstrators were subjected to threats and attacks, and several prominent Pamiri civil society representatives were arbitrarily detained and criminalized on fabricated charges.

(ii) Arrest and detention of Ulfatkhonim Mamadshoeva

10. The source affirms that on 17 May 2022, the Ministry of Internal Affairs issued a statement² accusing Ms. Mamadshoeva of co-organizing an “illegal rally” and inciting violence on 16 May 2022 in the town of Khorugh.

11. On the same day, following the publication of the above-mentioned official statement, Ms. Mamadshoeva publicly refuted the accusations and specified that during the protests she was at her residence in Dushanbe and was not involved in the events in Khorugh.³ Later the same day, a group of plain-clothed unidentified men attacked journalists from Radio Ozodi and the *Current Times* after they had interviewed Ms. Mamadshoeva.

12. The unidentified men pulled journalists out of their car and seized their professional equipment, including cameras, microphones, lights and batteries, as well as professional and

² See <https://www.vkd.tj/index.php/ru/sobytiya/34065-vazorati-kor-oi-dokhil-khabar-medi-ad-2>.

³ See <https://fergana.agency/news/126182/>.

personal mobile phones. The attackers refused to identify themselves and stated that the journalists would eventually retrieve their equipment. Reportedly, one of the journalists was beaten and threatened with being shot dead. Following the attack, the Ministry of Internal Affairs announced that it would launch an investigation into the incident on the basis of an official complaint filed by the journalists. However, law enforcement officials later claimed not to have found the perpetrators.

13. On the morning of 18 May 2022, Ms. Mamadshoeva was arrested at her relative's apartment by approximately 10 individuals in plain clothes without insignia. Reportedly, at approximately 8.20 a.m., the electricity in the apartment was cut off. One of the individuals identified himself as a commander. He persuaded one of Ms. Mamadshoeva's relatives to let him into the apartment, stating that he only wanted to talk to Ms. Mamadshoeva. One of the law enforcement officers involved in the arrest identified himself as an officer of the State Committee for National Security.

14. At around 8.45 a.m., when the man had entered the apartment, he told Ms. Mamadshoeva that he was following instructions from the head of the State Committee for National Security to invite her to an informal conversation with officers of that Committee. The purpose of the conversation was to address a misunderstanding stemming from a publication by the Ministry of Internal Affairs accusing Ms. Mamadshoeva of organizing an illegal rally in Kūhistoni Badakhshon Autonomous Province. She agreed to participate in that discussion but requested that her lawyer be present during the conversation.

15. When Ms. Mamadshoeva's lawyer arrived, Ms. Mamadshoeva, her relative and the lawyer were escorted to the headquarters of the State Committee for National Security. Upon their arrival at the headquarters, officials of the State Committee for National Security took Ms. Mamadshoeva inside the building and instructed her relative and her lawyer to wait outside. After a brief period of time, representatives of the State Committee for National Security informed Ms. Mamadshoeva's relative and her lawyer that she would remain inside, and asked them to return to her relative's apartment with other representatives of the State Committee for National Security for a search. Ms. Mamadshoeva was arrested and detained and has remained in detention since then.

16. It proved impossible to obtain any official information regarding the legal basis for Ms. Mamadshoeva's arrest, both at the time of her arrest and in the immediate aftermath.

17. Representatives of the State Committee for National Security conducted a search in Ms. Mamadshoeva's relatives' properties in the presence of witnesses. During the searches, the authorities seized Ms. Mamadshoeva's computer and mobile phone.

18. In June 2022, Ms. Mamadshoeva's relatives filed a complaint with the Office of the Prosecutor General, as they were not able to visit Ms. Mamadshoeva in the pretrial detention centre. Subsequently, the family was allowed to visit Ms. Mamadshoeva three times, under the supervision of the authorities of the pretrial detention centre.

19. Reportedly, on 19 May 2022, Ms. Mamadshoeva's relatives found out from unofficial sources that she had been charged with "publicly calling for violent change of the constitutional order" (art. 307 (2) of the Criminal Code). Moreover, on 19 May 2022, the Ministry of Internal Affairs reported that Ms. Mamadshoeva had been accused of allegedly supervising and financing the provision of weapons and ammunition to members of a terrorist group (art. 179 (1) and (2) of the Criminal Code).

20. The source adds that Ms. Mamadshoeva was held in pretrial detention from 18 May 2022 until early December 2022, when she was convicted and sentenced to 20 years of imprisonment by the Supreme Court. From 25 May 2022 until the date of sentencing in early December 2022, Ms. Mamadshoeva was held in the pretrial detention centre of the State Committee for National Security.

21. Ms. Mamadshoeva's family did not receive official information as to which authority had decided to impose pretrial custody as the measure of restraint, or about which judges were responsible for her sentencing. According to article 104.2 of the Code of Criminal Procedure, pretrial detention can be only imposed on the basis of a decision by a domestic court. Under article 111.2 of the Code of Criminal Procedure, such a decision is issued by a judge or a court in response to an appeal by an investigative authority. The pretrial

investigation in the criminal case was conducted by investigators of the Office of the Prosecutor General and the State Committee for National Security. The source concludes that this would suggest that the Supreme Court made its decision on pretrial detention on the basis of a request either from a prosecutor or from an investigator from the State Committee for National Security.

22. During Ms. Mamadshoeva's time in the pretrial detention centre of the State Committee for National Security, her mental health deteriorated significantly, as she was predominantly kept in solitary confinement from 25 May 2022 until early December 2022, enduring considerable pressure from the authorities. Subsequently, the medical staff of the pretrial detention centre provided her with medical assistance.

23. On 15 July 2022, the Office of the Prosecutor General, in a videotaped press conference, announced that the investigation into the case was ongoing under article 187.1 of the Criminal Code regarding establishing a criminal organization for the commission of grave or especially grave crimes, managing such an organization or its structural units, and creating an association of organizers, leaders or other representatives of organized groups in order to develop plans and create conditions for committing grave or especially grave crimes.

24. On 15 August 2022, the Prosecutor reportedly requested a 25-year sentence in a general regime penal colony. Reportedly, on 18 August 2022, the Chairman of the Criminal Division of the Supreme Court was appointed to preside over Ms. Mamadshoeva's trial, and on 9 December 2022, the Supreme Court, as a court of first instance, sentenced her to a prison term of 20 years.

25. In early December 2022, the Supreme Court issued a verdict against Ms. Mamadshoeva in a closed hearing, and as a result, the specific details of the verdict are unknown. The law enforcement authorities classified Ms. Mamadshoeva's case as a State secret. Hence, her lawyers were obliged to sign a non-disclosure agreement, her relatives did not receive any information regarding her case from the authorities, and all the court hearings, including the sentencing, took place in camera.

26. The source adds that, under domestic law, disclosure of information in such cases leads to criminal liability. Also, allegedly, Ms. Mamadshoeva's lawyer was unable to provide adequate legal defence for Ms. Mamadshoeva because of the intimidating environment created by the authorities. It is reported that the authorities have allegedly harassed lawyers and human rights defenders working on the cases of those detained following the events in Kūhistoni Badakhshon Autonomous Province.

27. On 26 January 2023, the press service of the Office of the Prosecutor General announced that Ms. Mamadshoeva had been found guilty under 10 articles of the Criminal Code and sentenced to 20 years in prison. These charges included establishment of and involvement in a criminal association; murder and attempted murder; terrorism; financing for the illegal possession of ammunition and firearms and their illegal transfer to others; treason against the State; violent capture of State power or a public call for violent change of the constitutional structure of Tajikistan; disruption of political and social order; a public call for extremist activities (extremism); and the establishment of extremist organizations. The statement, did not, however, provide any further details about the specific charges or the evidence supporting them.

28. The conviction was reportedly appealed by Ms. Mamadshoeva's lawyer. However, in March 2023, the Supreme Court upheld the sentence.

29. After the sentencing, Ms. Mamadshoeva was held in detention facilities of the Ministry of Justice from the beginning of December 2022 until 6 May 2023. Since then, she has reportedly been serving her sentence in Women's Penal Colony No. 3/8 of the Ministry of Justice in the town of Nurek.

30. Ms. Mamadshoeva's family was not officially notified of the date and the fact of her transfer from Pretrial Detention Centre No. 1 of the Ministry of Justice in Dushanbe to Women's Penal Colony No. 3/8. The family learned of the transfer on 9 May 2023, when security guards of Pretrial Detention Centre No. 1 did not accept a food parcel for Ms. Mamadshoeva.

(iii) Arrest and detention of Sorbon Yunoev

31. In November 2021, following the alleged killing of a local Indigenous Pamiri resident by the police, mass protests erupted and were violently suppressed by the authorities, resulting in at least 40 people being killed and hundreds detained. The source adds that Mr. Yunoev was a neighbour and a friend of one of the persons who lost their lives. As a prominent opinion leader in the local community, Mr. Yunoev actively criticized the police violence and called on the authorities to conduct an effective investigation.

32. The source reports that Mr. Yunoev was first arrested on 13 June 2022 in the street in the “Ninth Kilometre” neighbourhood, in Dushanbe, and was detained at the premises of the State Committee for National Security until 16 June 2022. On 16 June 2022, he was released with a verbal summons to appear, within 24 hours, at the premises of the State Committee for National Security in Khorugh. The reasons and legal grounds for the summons were not provided and no arrest warrant was shown on this occasion.

33. On 17 June 2022, Mr. Yunoev was arrested in the building of the State Committee for National Security in Khorugh. Allegedly, the arrest was carried out by officials of the State Committee for National Security. It is unknown whether Mr. Yunoev was provided with an arrest warrant during his second arrest, however his family was not provided with the reasons for the arrest.

34. Around 20 June 2022, Mr. Yunoev’s family was informed that he had been arrested for allegedly being part of a criminal association and had been charged with “participation in a criminal association” under article 187 (2) of the Criminal Code. Mr. Yunoev has been detained since 17 June 2022 until present. From 17 June to 23 August 2022, he was held in the temporary detention centre of the State Committee for National Security in Khorugh.

35. During his trial, Mr. Yunoev was accused of raising his voice against the acting authorities; of expressing his support for the participants in mass protests in Kūhistoni Badakhshon Autonomous Province in November 2021 and May 2022; of expressing his support for the head of Commission 44,⁴ who had been arrested and detained on 28 May 2022 and had subsequently been sentenced to 29 years of imprisonment; of organizing a peaceful sports event held in Khorugh on 30 May 2020; and of publicly criticizing unreasonable use of the State budget for the construction of a flagpole with the national flag of Tajikistan in one of the districts of Kūhistoni Badakhshon Autonomous Province. For these actions, he was found guilty of “participation in a criminal association” under article 187 (2) of the Criminal Code.

36. According to the source, Mr. Yunoev was convicted of participation in a criminal association, which does not match the activities he was charged with during his trial. The source adds that there is not much information about Mr. Yunoev’s conviction, since his relatives tried to secure a lawyer of his choice, but several lawyers refused to work on the case due to fear of prosecution by the authorities. It is alleged that the authorities have harassed lawyers and human rights defenders working on the cases of those detained following the events in Kūhistoni Badakhshon Autonomous Province.

37. Mr. Yunoev has refused the assistance of a State-appointed lawyer because he had strong reasons to doubt his impartiality and independence from law enforcement authorities.

38. On 23 August 2022, Mr. Yunoev was sentenced to 10 years of imprisonment. He was then transferred to Penal Colony No. 3/5 of the Ministry of Justice in the town of Khujand where he has been serving his sentence up to this time.

(iv) Legal analysis

39. The source argues that Ms. Mamadshoeva and Mr. Yunoev have been deprived of liberty arbitrarily and that their detention falls under categories I, II, III and V of the Working Group.

⁴ Commission 44 is an independent group established in 2021 to investigate the death of a resident of the region killed by police in November 2021. The death sparked an initial round of protests in Khorugh, the regional capital.

40. In relation to category I, the source argues that Ms. Mamadshoeva and Mr. Yunoev were arrested, detained and convicted on the basis of a criminal case initiated against them in the context of a human rights crisis in Kūhistoni Badakhshon Autonomous Province, which included numerous human rights violations against Pamiri civil society representatives.⁵ The source states that the above indicates that their criminal cases are related to Ms. Mamadshoeva's human rights work and Mr. Yunoev's activities as a representative of civil society and a local opinion leader.

41. The source alleges that the detention of Ms. Mamadshoeva is arbitrary insofar as her case and judicial proceedings were unjustly classified as a "State secret", which prevents conclusions on whether the factual actions imputed to them by the authorities could have amounted to the corpus delicti of imputed crimes as defined in the domestic legislation.

42. Additionally, the relatives were given an opportunity to contact Ms. Mamadshoeva only three times during the pretrial investigation, under the control of the detention centre administration, and they were not allowed to communicate with her openly. There was no access to case materials and the trial was held in camera in the State Committee for National Security pretrial detention centre in Dushanbe. Her relatives were not allowed to attend the trial or read the verdict.

43. The source concludes, on Ms. Mamadshoeva's case, that the unjustified classification of the case as a State secret, coupled with the absence of comprehensive official information during the pretrial investigation and before, during and following the trial, does not allow conclusions to be drawn on whether the factual actions imputed to her by the authorities could have amounted to corpus delicti for the imputed crimes as defined in the domestic legislation.

44. Concerning Mr. Yunoev, the source argues that, as the activities he was charged with during the trial do not match the nature of the charge, conclusions cannot be drawn on whether the factual actions imputed to him by the authorities could have amounted to corpus delicti for the imputed crimes as defined in the domestic legislation.

45. In relation to category II, the source submits that Ms. Mamadshoeva and Mr. Yunoev were arrested and detained as a result of exercising their rights guaranteed under articles 7, 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 26 of the Covenant.

46. The source recalls that Ms. Mamadshoeva and Mr. Yunoev are prominent human rights defenders and that their arrest and detention occurred amidst a human rights crisis in Kūhistoni Badakhshon Autonomous Province. It is believed that their arrest and detention relate to their legitimate activities advocating for the rights of the Pamiri Indigenous population in the region.

47. Concerning Ms. Mamadshoeva, the source explains that she is a representative of the Pamiri ethnic minority. She is well known in Tajikistan as a human rights defender and journalist who has advocated for the defence of the civil, political, cultural and socioeconomic rights of the Pamiri Indigenous population. Moreover, for the past three years, she has been raising awareness about the situation of Indigenous minority communities in Kūhistoni Badakhshon Autonomous Province due to violations by the authorities of their socioeconomic, political and civil rights.

48. Against this background, the source alleges that Ms. Mamadshoeva was arrested and detained in May 2022 amidst a crackdown on civil society, human rights defenders and independent journalists in Kūhistoni Badakhshon Autonomous Province, in which at least eight more Pamiri human rights defenders were subjected to alleged arbitrary detention, enforced disappearance and criminalization.⁶

49. It is reported that Ms. Mamadshoeva was convicted by the Supreme Court in early December 2022, along with three other prominent Pamiri human rights defenders, although

⁵ See <https://srdefenders.org/end-of-mission-statement-official-country-visit-to-tajikistan/>.

⁶ See <https://srdefenders.org/tajikistan-alleged-arbitrary-detention-enforced-disappearance-and-criminalisation-of-nine-human-rights-defenders-joint-communication/>.

it is unknown whether all four proceedings were grouped together as part of one criminal case.

50. The source also argues that, specifically concerning article 20 of the Universal Declaration of Human Rights and article 22 of the Covenant, the classification of the criminal case materials does not allow comprehensive conclusions to be drawn about the reasoning and details of the charges against Ms. Mamadshoeva. However, the press service of the Office of the Prosecutor General has reported that one of the charges is establishment of and involvement in a criminal association.

51. In this context, the source explains that Ms. Mamadshoeva is the founder and director of the non-governmental organization Nomus Valnsof, which is focused on children's rights, and their upbringing and education, as well as women's rights. The organization has also worked to protect the rights of members of the Pamiri ethnic minority. Furthermore, the source recalls that during the 109th session of the Committee on the Elimination of Racial Discrimination, a representative of Tajikistan stated that "individuals posing as human rights defenders were often members of organized criminal gangs who established so-called non-governmental organizations. One such person was Ms. Ulfatkhonim Mamadshoeva, who had set up the organization Nomus Valnsof in 2016 and had committed a number of offences."⁷

52. For the above-mentioned reasons, the source concludes that Ms. Mamadshoeva, as a well-known representative of the Pamiri ethnic minority, was most likely arrested, detained and convicted for her human rights and journalistic work aimed at combating discrimination against the Pamiri ethnic minority by the authorities. The source submits that the reason for her arrest, detention and conviction is her exercise of the right to freedom of opinion and expression.

53. Regarding Mr. Yunoev, the source asserts that independent journalists who covered the ongoing anti-government protests and the violence against the demonstrators were subjected to threats and attacks, and several prominent Pamiri human rights defenders were arbitrarily detained and criminalized on fabricated charges. Reportedly, dozens of Pamiri civil and political activists who have criticized police violence have been attacked and arrested. In the spring and autumn of 2022, the authorities arrested, detained and convicted at least nine Pamiri human rights defenders.

54. The source recalls in this context that Mr. Yunoev is a well-known Pamiri civic activist and that since the 2000s he has been involved in community initiatives aimed at ensuring the sustainable development of the region and of the Pamiri Indigenous population living there. He has also actively criticized on social media the police violence, arrests and harassment of Pamiri anti-government protesters, and has called for an effective investigation into the murder of an Indigenous man which triggered the November 2021 protests.

55. The source thus concludes that based on the charges announced during the court hearing, it is known that Mr. Yunoev was charged for organizing a peaceful sports event in Kūhistoni Badakhshon Autonomous Province; for criticizing the authorities for mismanagement of budget funds; for criticizing the authorities for failing to effectively investigate police violence against the Indigenous population of Kūhistoni Badakhshon Autonomous Province in 2021 and 2022; and for supporting anti-government protests. These acts were classed by the authorities as participation in a criminal organization under article 182 (2) of the Criminal Code. For these reasons, the source concludes that Mr. Yunoev's detention is arbitrary and falls under category II of the Working Group.

56. In relation to category III, the source submits that the rights of Ms. Mamadshoeva and of Mr. Yunoev to a public hearing, to adequate defence, to choose their counsel, not to be compelled to testify against themselves, and to a fair hearing by an independent and impartial tribunal, were violated.

57. The source recalls that, because Ms. Mamadshoeva's case was classified as a State secret, in accordance with article 253 (2) of the Code of Criminal Procedure, the criminal case was heard by the Supreme Court. Moreover, the trial reportedly occurred behind closed

⁷ See [CERD/C/SR.2972](#).

doors in the detention centre. The source also adds that the relatives and the public were unable to attend the hearings and the reading of the verdict. Although Ms. Mamadshoeva's lawyers were present during the trial, they were barred from disclosing information about the proceedings due to the non-disclosure order.

58. The source also asserts that Ms. Mamadshoeva's lawyers were not given the opportunity to provide a meaningful defence during the pretrial investigation and the trial proceedings due to fear of harassment, considering the alleged documented cases of harassment of human rights defenders and lawyers working on the cases of those detained in relation to the events in Kūhistoni Badakhshon Autonomous Province in November 2021.

59. The source notes that, during the pretrial investigation and the trial, Ms. Mamadshoeva's lawyers had limited access to her. In particular, the administration of the pretrial detention centre reportedly often refused to allow her lawyers to meet with their client. It is reported that the legal counsel did not appeal these actions by the administrations of pretrial detention centres due to fear of harassment.

60. Concerning Mr. Yunoev, the source affirms that several lawyers approached by the family with a request to represent him have refused to work on the case due to fear of prosecution by the authorities. The source recalls the alleged documented cases of harassment of human rights defenders and lawyers working on the cases of those detained in relation to the events in Kūhistoni Badakhshon Autonomous Province in November 2021.

61. The source reports that there is no information on whether Mr. Yunoev had adequate time and facilities for the preparation of his defence.

62. Moreover, the source submits that neither Ms. Mamadshoeva nor Mr. Yunoev benefited from a fair hearing by an independent and impartial tribunal. The hearings for both cases occurred in the context of repression of civil society, human rights defenders and independent journalists in Kūhistoni Badakhshon Autonomous Province, accompanied by numerous alleged human rights violations.

63. The source submits that several other prominent human rights defenders from Kūhistoni Badakhshon Autonomous Province were detained and subjected to politically and ethnically motivated harassment during the same period of time. In this regard, the source concludes that the trial against them was not fair and impartial.

64. Additionally, concerning Ms. Mamadshoeva, it is reported that the trial was conducted in camera in order – among other purposes – to conceal violations of the right to a fair trial.

65. Specifically considering the case of Ms. Mamadshoeva, the source argues that she was allegedly coerced into testifying against herself, and that that testimony could have been used in court proceedings. Reportedly, on 24 May 2022, Tajik State television broadcast a video in which she confessed that she was among the organizers of the protests in the town of Khorugh in May 2022. The circumstances of the production of this video are unknown, but there are grounds to believe that the confession was coerced or given under torture, since Ms. Mamadshoeva had denied any involvement in organizing the protests in several interviews with independent media the day before her arrest on 17 May 2022.

66. In relation to category V, the source argues that the arrest, detention and conviction of Ms. Mamadshoeva and Mr. Yunoev are related to their legitimate activities, namely Ms. Mamadshoeva being a human rights defender and journalist and Mr. Yunoev being a civil activist and local opinion leader. The source concludes that it is most likely that they were arrested, detained and convicted for their activities and ongoing human rights work.

(b) Response from the Government

67. On 6 December 2023, 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 February 2024, detailed information about the current situation of Ms. Mamadshoeva and Mr. Yunoev and to clarify the legal provisions justifying their continued detention, as well as its compatibility with the obligations of Tajikistan under international human rights law, and in particular with regard to the treaties ratified by the State.

68. In its reply, dated 29 January 2024, the Government stated that the rights of Ms. Mamadshoeva and Mr. Yunoev, as set forth in articles 7, 9 (1) and (3), 10 (1) and 14 (1) and (3) (b), (d), (e) and (g) of the Covenant had been fully respected during the pretrial investigation and judicial proceedings in the criminal case against them. It referred in this respect to numerous provisions of the Constitution and the Code of Criminal Procedure, including those related to the right to equality (art. 17 of the Constitution), the right to be heard by an independent and impartial tribunal (art. 19 of the Constitution) and the prohibition of torture (art. 18 of the Constitution).

69. The Government further stated that Ms. Mamadshoeva had been convicted by a verdict of the Judicial Collegium on Criminal Cases of the Supreme Court of Tajikistan dated 9 December 2022, under articles 187 (1), 104 (2), 32 (3), 104 (2), 179 (3), 195 (3), 305 (1), 306 (1) and 307 of the Criminal Code of Tajikistan, to a final punishment of 20 years of imprisonment with confiscation of property and deprivation of the right to organize and participate in mass events for a period of five years, with the sentence to be served in a general regime penal colony. According to the Government, Ms. Mamadshoeva was found guilty of, inter alia, establishing and leading a criminal association for the commission of serious or especially serious offences such as murder and terrorism; calling for, assisting in or performing actions aimed at seizing power and overthrowing the constitutional order by force; using the mass media or the Internet on the instructions of hostile organizations or representatives of foreign States; and making public calls for extremist activities using the media or the Internet.

70. According to the Government, Ms. Mamadshoeva was proven guilty of the above-mentioned crimes, not only by virtue of her testimony during preliminary inquiries, and the judicial hearing in the presence of a lawyer, but also by the testimony of victims and witnesses, the findings of forensic examinations, records of inspection of the crime scene, the coroner's inquest, a review of the social media site YouTube, and physical and other evidence included in the case file and examined in the court hearing. Ms. Mamadshoeva and her lawyer did not concede the judgment of conviction and filed cassation appeals; on 16 March 2023, the Supreme Court's Judicial Board for Criminal Cases upheld the judgment and dismissed the appeals.

71. The Government submits that the evidence in the case established that Ms. Mamadshoeva was found guilty and convicted not for human rights activities, as alleged in the Working Group's communication, but for specific acts recognized in the Criminal Code as crimes. Thus, by prior conspiracy with other criminal groups operating in Kūhistoni Badakhshon Autonomous Province and terrorist organizations recognized in Tajikistan and located outside the country, she created a criminal association. Ms. Mamadshoeva systematically contacted leaders of the above-mentioned terrorist organizations by phone, in the presence of the leaders of criminal groups in Kūhistoni Badakhshon Autonomous Province, and agreed to commit crimes in the region and to finance criminal groups. Under the agreed plan, terrorist organizations guaranteed and financed criminal groups located in the region, which used the money to purchase firearms, ammunition and narcotic substances for sale, while the proceeds were spent on the needs of members of the association and on armed operations. Ms. Mamadshoeva, for her part, oversaw the feasibility of distributing the incoming money for criminal purposes.

72. During the detention of members of the association, a large number of firearms, Kalashnikov assault rifles and machine guns, pistols, grenade launchers, hand grenades, fuses, cartridges of various calibres and other ammunition, explosives, intercoms and radios, night vision optics, bayonet knives, 187,876 grams of narcotic substances and satellite communication and other equipment were found and seized from them.

73. These circumstances are confirmed by the testimony of Ms. Mamadshoeva herself during the preliminary and judicial inquiries, as well as the testimony of other members of the criminal association, victims and witnesses, physical evidence seized during the preliminary investigation and other evidence in the criminal case. Therefore, the criminal case against Ms. Mamadshoeva is not related to her human rights activities, as the source suggests.

74. The Government submits that as Ms. Mamadshoeva's criminal case file contains information constituting a State secret and its disclosure affects security interests, the case was considered in a closed court. It is evident from the criminal case file that Ms. Mamadshoeva had been informed of the end of the preliminary investigation by the record of 22 July 2022 and that she and her lawyers had familiarized themselves with the case file, which they confirmed with their signatures.

75. According to the criminal case file, after the verdict had been handed down and announced in court, with the participation of the defendants and their lawyers, Ms. Mamadshoeva was familiarized with the verdict and a copy of it was handed to her, against her signature. These documents refute the claim that Ms. Mamadshoeva's verdict was passed behind closed doors and that, as a result, the specific details of the verdict are unknown.

76. Furthermore, the criminal case file indicates that Ms. Mamadshoeva and her lawyer, having familiarized themselves with the case file, actively participated in the court hearing, and, having received additional time, prepared for the judicial pleadings, where they presented specific oral arguments and written submissions in defence of their interests. Thereafter, the court, having listened to the pleadings and closing statement of the defence, reached a decision, giving a legal assessment of the arguments presented. These circumstances refute the claims that Ms. Mamadshoeva and her lawyers were not given the opportunity to provide a meaningful defence.

77. In addition, according to the court records, during the trial the defendants and their lawyers, including Ms. Mamadshoeva and her lawyer, were given the opportunity to fully express their views on the charges without time limits, to listen to the victims and the witnesses, to ask them questions and clarify the circumstances of interest to them, to participate in the examination of evidence, to invite additional witnesses to the trial and request additional evidence, and to state their opinion on the documents in the case file, which had been disclosed and examined in full. In other words, the conditions established by law for the defence of one's rights and interests and the exercise of procedural rights were created. This refutes the claim that the trial was not fair or impartial.

78. Regarding Mr. Yunoev, the Government notes that he was sentenced by Murghab District Court in Kūhistoni Badakhshon Autonomous Province on 23 August 2022 under articles 36 (5) and 187 (2) of the Criminal Code to 10 years' imprisonment for aiding and abetting the leaders or other members of organized groups. The criminal case file shows that Mr. Yunoev was found guilty not for his human rights activities as a representative of civil society in Kūhistoni Badakhshon Autonomous Province and a local opinion leader, but for specific acts recognized under the Criminal Code as crimes.

79. The evidence collected in the case establishes that, in April 2021, Mr. Yunoev made an agreement over the telephone with the head of an organized group in Roshtqal'a District and, in May 2021, received from him 650,000 Russian roubles for the purchase of three VAZ-2107 (Lada) vehicles. He is also registered under the name and surname "Sorbon Yunoev" on Facebook and systematically communicated with the deputy head of the National Alliance of Tajikistan (Paimoni Millii Tojikiston), an extremist terrorist organization. These circumstances are confirmed by the testimony of Mr. Yunoev during the preliminary and judicial investigation, as well as the testimony of witnesses and other evidence in the criminal case examined during the trial.

80. Mr. Yunoev was detained on 18 June 2022 and a record of arrest was presented to him against his signature. In accordance with article 46 of the Code of Criminal Procedure, he was informed of his rights as a detainee, and that, under article 12 (5) of the Code of Criminal Procedure, he was not obliged to testify against himself or his close relatives; he noted in his own handwriting that his procedural rights had been explained to him and that he had no complaints or statements about his detention. These circumstances refute the claim that Mr. Yunoev was not presented with an arrest warrant.

81. The criminal case file shows that Mr. Yunoev submitted a written statement to the court that he had a higher education, and that he himself would defend his procedural rights and carry out his obligations, and that he thus refused the services of a lawyer, and his refusal was voluntary and not related to his financial situation. Mr. Yunoev's statement is not

contrary to the law and does not violate his procedural rights, which refutes the claims that he refused the assistance of a State-appointed lawyer because he had strong reasons to doubt the lawyer's impartiality and independence from the law enforcement agencies.

82. The Government notes that Mr. Yunoev conceded the court's verdict and did not file a cassation appeal against it. Thus, the preliminary and judicial investigations in the criminal case against Ms. Mamadshoeva and Mr. Yunoev were conducted in compliance with the requirements of the Code of Criminal Procedure and their procedural rights were upheld.

(c) Further comments from the source

83. On 29 January 2024, the reply of the Government was sent to the source for further comments, which the source provided on 20 February 2024.

84. Concerning the case of Ms. Mamadshoeva, the source reiterates that there are strong grounds to believe that she may have been forced to testify against herself through physical or psychological violence in custody without any opportunity to receive legal assistance. No impartial health assessment was made of whether there was torture or inhuman or degrading treatment. The first family visit occurred several weeks after the arrest on 18 May 2022 and the release of the confession video on 24 May 2022, when the coercion to admit guilt may have taken place. All Ms. Mamadshoeva's meetings with her family while in pretrial detention were supervised by investigators of the State Committee for National Security.

85. Moreover, the wide dissemination of video alleging Ms. Mamadshoeva's guilt on State television channels and in State institutions before the verdict and eight days after the events violates the presumption of innocence and the right to privacy, guaranteed by article 14 (2) of the Covenant and article 15 of the Code of Criminal Procedure. In addition, on 17 and 19 May 2022, the Ministry of Internal Affairs published two statements alleging that Ms. Mamadshoeva had provided weapons, ammunition and funding to criminal groups.

86. In addition, the dissemination of the film accusing Ms. Mamadshoeva and revealing details of her alleged criminal acts contradicts the Government's argument that it was justified in classifying this case file as a State secret.

87. The pretrial investigation in the case lasted only two months, while Ms. Mamadshoeva was charged under 10 articles of the Criminal Code, including charges of several serious crimes, such as organizing a criminal association, terrorism, espionage and so on. Such a short duration for a pretrial investigation may indicate that it was not thoroughly complete and was fabricated.

88. The source reiterates that Ms. Mamadshoeva was not presented with an arrest warrant, as she was initially invited for a conversation at the State Committee for National Security. The Government's statements about the respect of Ms. Mamadshoeva's procedural rights after her arrest cannot be confirmed, as the files of the criminal case are classified. It is furthermore impossible for Ms. Mamadshoeva's family to have a confidential conversation with her.

89. As the pretrial investigation in the case was concluded on 22 July 2022 and the judge was assigned to the case on 18 August 2022, Ms. Mamadshoeva was given less than one month to familiarize herself with the materials of a large multi-volume criminal case containing charges under 10 articles of the Criminal Code.

90. As the court hearings have taken place in camera, it is impossible to verify the Government's statements regarding the fair nature of the trial. No witnesses from the defence side were invited to the court hearing. The Supreme Court rejected Ms. Mamadshoeva's cassation appeal and upheld her sentence in January 2024.

91. Turning to the case of Mr. Yunoev, the source notes that it is unclear how the acquisition of three vehicles or communicating with the deputy of "Paimoni Millii Tojikiston", which is designated as extremist terrorist organization in Tajikistan, falls under article 36 (5) and article 187 (2) of the Criminal Code (complicity in a criminal association).

92. The Law on Combating Terrorism defines basic counterterrorism principles and establishes the country's legal and organizational framework for counterterrorism efforts. Both this law and the Criminal Code offer an overbroad and ambiguous definition of

“terrorist actions”, “terrorist crimes” and “terrorist organizations”. Article 187 of the Criminal Code does not provide a clear definition of criminal activity, thereby providing the Government with the ability to apply its own broad interpretation of the intent behind Mr. Yunoev’s phone calls.

93. The arrest warrant was not shown during the first arrest on 13 June 2022. There is no information about the second arrest on 17 June 2022. Mr. Yunoev refused a State-appointed lawyer because several lawyers of his family’s choice refused to take the case due to fear of harassment. He was aware that in such circumstances a State-appointed lawyer would be particularly unable to provide him with adequate legal assistance.

2. Discussion

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

95. In determining whether the deprivation of liberty of Ms. Mamadshoeva and Mr. Yunoev is 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 for breach of international law 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.⁸

96. The source has argued that the detention of Ms. Mamadshoeva and Mr. Yunoev is arbitrary and falls under categories I, II, III and V. The Working Group will examine these in turn.

(a) Category I

97. The source submitted that Ms. Mamadshoeva was invited to an informal conversation with officers of the State Committee for National Security, that she was escorted to the State Committee for National Security headquarters and that her relatives were unable to obtain any information on her arrest. Mr. Yunoev was not informed of the reasons of his arrest by means of an arrest warrant. In its reply, the Government stresses that their arrests were in conformity with human rights norms, and that Mr. Yunoev furthermore signed the record of arrest.

98. The Working Group recalls that article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for the arrest and is to be promptly informed of any charges. The Working Group has previously stated that in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.⁹ This is typically done through an arrest warrant or arrest order (or equivalent document).¹⁰ The right to be presented with an arrest warrant is inherent to the right to liberty and security of person and to the prohibition of arbitrary detention, under articles 3 and 9 of the Universal Declaration of Human Rights as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹¹

99. The Working Group would like to note the distinction between a warrant – a document signed by a competent judicial authority that authorizes the arrest and detention of an individual, and a record of arrest – which is a document that merely lists the offences for

⁸ A/HRC/19/57, para. 68.

⁹ Opinions No. 9/2019, para. 29; No. 46/2019, para. 51; and No. 59/2019, para. 46.

¹⁰ Human Rights Committee, general comment No. 35 (2014), para. 23; and opinions No. 30/2017, paras. 58 and 59; No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

¹¹ The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See decisions No. 1/1993, paras. 6 and 7; No. 3/1993, paras. 6 and 7; No. 4/1993, para. 6; No. 5/1993, paras. 6, 8 and 9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; and No. 44/1993, paras. 6 and 7. For more recent jurisprudence, see opinions No. 66/2019, para. 61; No. 6/2020, para. 40; No. 11/2020, para. 38; No. 13/2020, para. 47; No. 14/2020, para. 50; and No. 89/2020, para. 54.

which the individual is arrested.¹² The latter, which apparently was signed by Mr. Yunoev, does not alone constitute a valid form of justification for an arrest and subsequent detention as prescribed by article 9 of the Covenant, despite the Government's claim.

100. The Working Group thus concludes that the detention of Mr. Yunoev and Ms. Mamadshoeva failed to satisfy the requirements of article 9 (2) of the Covenant and is therefore arbitrary under category I.

(b) Category II

101. The Working Group firstly notes that Ms. Mamadshoeva is a renowned journalist and human rights defender known far beyond Tajikistan, and Mr. Yunoev is a civic activist. The source alleges that the persecution of Ms. Mamadshoeva and Mr. Yunoev was motivated by their opinions and participation in peaceful assemblies. In particular, Ms. Mamadshoeva was arrested amid a crackdown on activists in Kūhistoni Badakhshon Autonomous Province, following her efforts to highlight violations against Pamiris by the authorities. Mr. Yunoev was similarly targeted after criticizing government mismanagement and police violence in Kūhistoni Badakhshon Autonomous Province. Their arrests and charges, which lack transparent justifications, appear to be attempts by the Government to suppress dissent and limit freedom of expression.

102. In its reply, the Government outlines that their convictions were based on specific criminal activities, not their human rights work. It asserts that Ms. Mamadshoeva was involved in establishing and leading a criminal organization with links to terrorist groups, committing serious offences including murder, terrorism and other crimes. Her guilt was affirmed by evidence including her own testimony, witness statements, and physical evidence, leading to a conviction upheld by the Supreme Court. Similarly, Mr. Yunoev was convicted for specific criminal acts, proven by evidence and his own admissions, unrelated to his human rights advocacy.

103. The Working Group considers that these conflicting accounts surrounding the prosecutions of Ms. Mamadshoeva and Mr. Yunoev should be assessed against the backdrop of the current situation of human rights and media freedom in Tajikistan. On the one hand, the Government of Tajikistan asserts that these individuals were lawfully convicted on the basis of solid evidence of criminal activities, including terrorism and conspiracy. On the other hand, international observers, human rights organizations and media reports portray a starkly different picture, suggesting that these charges are trumped up and retaliatory in nature and are aimed at silencing dissent and quashing human rights advocacy, especially in the context of Kūhistoni Badakhshon Autonomous Province.

104. The broader context, as reported by the European Parliament,¹³ United Nations experts¹⁴ and, in particular, the Special Rapporteur on the situation of human rights defenders,¹⁵ indicates a pattern of repression in Tajikistan, where the crackdown on independent media, peaceful protests and human rights defenders has intensified. This pattern is particularly pronounced in the treatment of journalists and activists covering or engaging with social issues and human rights abuses in Kūhistoni Badakhshon Autonomous Province. The usage of counter-extremism and counter-terrorism legislation to suppress dissent raises serious concerns about the misuse of such laws to legitimize the silencing of political opposition and peaceful activism. The international community's calls for the release of detained human rights defenders, alongside criticisms of the declining media freedom in Tajikistan, underscore the perceived political motivations behind these arrests and convictions.

105. In the light of this, the Working Group considers that it was up to the Government to provide clear evidence that the accusations against Ms. Mamadshoeva and Mr. Yunoev had

¹² *Kurbanov v. Tajikistan* (CCPR/C/79/D/1096/2002), para. 7.2.

¹³ See https://www.europarl.europa.eu/doceo/document/RC-9-2024-0064_EN.html.

¹⁴ See <https://www.ohchr.org/en/press-releases/2023/07/tajikistan-un-experts-deplore-criminal-proceedings-against-human-rights> and <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27560>.

¹⁵ See <https://srdefenders.org/end-of-mission-statement-official-country-visit-to-tajikistan/>.

a factual basis, and the Government has failed to do so. A vague and general reference to serious crimes is not sufficient, considering the documented pattern of repression where charges of extremism and terrorism, as widely reported, are potentially used as tools against those advocating for human rights and transparency. For instance, the Government has failed to explain how Ms. Mamadshoeva was in a position to reveal any State secrets to foreign intelligence, being a civil person without any access to State secrets.

106. In view of the general context mentioned above and a failure by the Government to provide a detailed account of charges and evidence against Ms. Mamadshoeva and Mr. Yunoev, the Working Group is convinced that in fact the basis for their arrest and subsequent conviction was their exercise of freedom of expression and freedom of assembly, guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant.

107. The Working Group concludes that the arrest and detention of Ms. Mamadshoeva and Mr. Yunoev is arbitrary and falls 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 on the rights to freedom of peaceful assembly and of association, for appropriate action.

(c) Category III

108. Given its finding that the deprivation of liberty of Ms. Mamadshoeva and Mr. Yunoev is arbitrary under category II, the Working Group wishes to emphasize that no trials should have taken place. Nevertheless, as the trials took place and Ms. Mamadshoeva and Mr. Yunoev were convicted and given long prison sentences, the Working Group will proceed with examination of the source's submissions concerning the denial of fair trial rights to them.

109. The source submits that Ms. Mamadshoeva and Mr. Yunoev were not tried by an independent and impartial tribunal and that Ms. Mamadshoeva did not have a public hearing.

110. As regards independence of the judiciary, the Working Group recalls that this is a *sine qua non* for the right to a fair hearing enshrined in article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant. The notion of the separation of powers between the political organs of government and the judiciary, as well as the notion of safeguarding the independence of the judiciary, have assumed growing importance. The Working Group refers to numerous reports by international organizations underlining structural problems relating to independence of the judiciary and concluding that the judiciary operates under the control of the executive branch, and that *de facto* separation of powers is not maintained in Tajikistan.¹⁶

111. In view of the findings of various reputed international institutions, including in the proceedings in question, and given the submissions of the source and the lack of sufficient information by the Government to refute those allegations, the Working Group cannot but find that Ms. Mamadshoeva and Mr. Yunoev were not tried by an independent and impartial tribunal, contrary to article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

112. Furthermore, the Working Group recalls that article 14 (1) of the Covenant provides that, in the determination of any criminal charge, everyone is entitled to a public hearing. Article 10 of the Universal Declaration of Human Rights similarly guarantees the right to a public hearing. As the Human Rights Committee has explained, the publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.¹⁷ Although the right to a public hearing is not absolute, it may only be restricted "for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties

¹⁶ See, for example, A/HRC/WG.6/25/TJK/2, para. 31; and International Commission of Jurists, *Neither Check Nor Balance: The Judiciary in Tajikistan*, ICJ mission report (December 2020), available at https://www.icj.org/wp-content/uploads/2020/12/Neither-Check-nor-Balance_Tajikistan_MR_ENG.pdf.

¹⁷ See the Committee's general comment No. 32 (2007), para. 28.

so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice”, and, in the absence of such exceptional circumstances, “a hearing must be open to the general public, including members of the media”, without entrance being limited to a select group of people.¹⁸

113. It is submitted by the source and confirmed by the Government that Ms. Mamadshoeva’s trial was closed to the public and the media, in violation of the above-mentioned provisions. The Government’s reference to State secrets, as mentioned earlier, remains unexplained. The Working Group thus finds that the hearing of Ms. Mamadshoeva’s case behind closed doors violated her rights under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

114. The source also considers that Ms. Mamadshoeva and Mr. Yunoev did not have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing, as lawyers in the country are afraid to defend human rights activists effectively, being intimidated and persecuted for this. In particular, according to the source, the lawyers refused to appeal against certain procedural decisions and to participate in certain hearings. The Government has contested this, stating that Ms. Mamadshoeva was legally represented, and that her lawyers fully participated in the trial. Furthermore, the Government has stated that Mr. Yunoev preferred to defend himself without legal assistance.

115. The Working Group notes that the submissions of the source are corroborated by the above-mentioned reports, in which serious concern is raised over intimidation of lawyers in Tajikistan. In its earlier jurisprudence,¹⁹ the Working Group has already stressed that it is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide remedies whenever a violation is perpetrated. It especially recalled 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, legal counsel should be able to carry out its functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment. In the view of the Working Group, article 14 (3) (b) of the Covenant was thus breached in the cases of Ms. Mamadshoeva and Mr. Yunoev, and the Government failed to provide sufficient information that would lead to an opposite conclusion.

116. Finally, concerning the allegations by the source that Ms. Mamadshoeva’s self-incriminating statements could have been made under duress, not sufficiently disproved by the Government, the Working Group notes that the use of confessions extracted through ill-treatment that is tantamount if not equivalent to torture is a breach of article 14 (3) (g) of the Covenant and may also constitute a violation of the State’s obligations under article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Furthermore, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment specifically prohibits taking undue advantage of the situation of detention to compel confession or incriminating statements.

117. In view of the above, the Working Group considers that the violations of the right of Ms. Mamadshoeva and Mr. Yunoev to a fair trial are of such gravity as to give their deprivation of liberty an arbitrary character, falling under category III of the Working Group.

(d) Category V

118. The source submits that the detention of Ms. Mamadshoeva and Mr. Yunoev is arbitrary under category V as they have been deprived of their liberty for reasons of discriminatory intent against them, as human rights activists. The Government has stated that their actions amounted to serious crimes, and that this was the only reason for their prosecution and conviction.

119. In this regard, the Working Group recalls that when a detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also

¹⁸ Ibid., para. 29.

¹⁹ Opinion No. 17/2019.

constitutes a violation of international law on the grounds of discrimination based on political or other views. The Working Group further observes that it has already examined in its previous jurisprudence concerning Tajikistan the same pattern in the attitude of the authorities towards those who belong to opposition parties, or human rights activists. This pattern is also confirmed by numerous international bodies in their reports on Tajikistan.

120. Noting all of the above, the Working Group finds that Ms. Mamadshoeva and Mr. Yunoev were detained on discriminatory grounds, on the basis of political or other opinion, in a manner that ignores the equality of human rights – a prohibited ground of discrimination under article 26 of the Covenant. The Working Group considers that the facts in the present case disclose a violation under category V. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders, for appropriate action.

(e) Concluding remarks

121. The situation of human rights defenders in Tajikistan remains deeply concerning, as evidenced by the comprehensive report presented by the Special Rapporteur on the situation of human rights defenders to the Human Rights Council following her visit to the country in 2022.²⁰ The findings reveal challenges faced by human rights defenders, lawyers, journalists and civil society actors who often endure criminal persecution under the guise of legal processes. The report highlights the case of Ms. Mamadshoeva as an example of the misuse of criminal law against those advocating for fundamental human rights in Kūhistoni Badakhshon Autonomous Province. The Special Rapporteur's recommendations to end the abuse of the criminal law and drop unwarranted charges against human rights defenders are echoed by the Working Group. It is imperative to ensure that human rights defenders can operate without fear of reprisal or interference. Continuing to penalize these individuals for receiving foreign funding or for their peaceful activities stands in direct opposition to the principles of freedom and democracy.

122. The Working Group further expresses its concern that Ms. Mamadshoeva was reportedly held in isolation for an unspecified period, suffered extreme mental stress and had to undergo mental health treatment. The Working Group reminds the Government of its obligation under article 10 (1) of the Covenant to ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person.²¹

3. Disposition

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

The deprivation of liberty of Ulfatkhonim Mamadshoeva and Sorbon Yunoev, being in contravention of articles 3, 9, 10, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19, 21 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

124. The Working Group requests the Government of Tajikistan to take the steps necessary to remedy the situations of Ms. Mamadshoeva and Mr. Yunoev without delay and bring them 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.

125. The Working Group considers that, taking into account all the circumstances of the cases, the appropriate remedy would be to release Ms. Mamadshoeva and Mr. Yunoev immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

126. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of

²⁰ See <https://srdefenders.org/country-visit-report-tajikistan/>.

²¹ See, for example, opinions No. 46/2020, para. 64; and No. 66/2020, para. 66.

Ms. Mamadshoeva and Mr. Yunoev and to take appropriate measures against those responsible for the violation of their rights.

127. 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 on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders, for appropriate action.

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

4. Follow-up procedure

129. 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. Mamadshoeva and Mr. Yunoev have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Mamadshoeva and Mr. Yunoev;
- (c) Whether an investigation has been conducted into the violation of Ms. Mamadshoeva's and Mr. Yunoev'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 Tajikistan with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

130. 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.

131. 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 of any failure to take action.

132. 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.²²

[Adopted on 22 March 2024]

²² Human Rights Council resolution 51/8, paras. 6 and 9.