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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. 32/2021 concerning Ravil Mingazov (United States of America and United Arab Emirates)

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 21 January 2021 the Working Group transmitted to the Government of the United States of America and the Government of the United Arab Emirates a communication concerning Ravil Mingazov. Neither of the Governments replied to the communication. The United States is a party to the International Covenant on Civil and Political Rights, while the United Arab Emirates is not.

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

4. Ravil Mingazov, born in 1967, is a national of the Russian Federation, a former ballet dancer, who left the Russian Federation in 2000, allegedly due to religious persecution.

5. According to the information received, Mr. Mingazov was taken into custody from a guest house for refugees in Faisalabad, Pakistan, on 28 March 2002, by the Pakistani police, who did not show a warrant or provide reasons for the arrest. He was taken to a prison in Islamabad and then transferred to the custody of the military forces of the United States in May 2002. The source believes that he was handed over to the United States military in exchange for a bounty; at that time, bounties were offered to those who would aid in “the capture of Taliban or al-Qaida fighters”. Bounty flyers were widely distributed in the country, and the information received suggests that Pakistan handed over 369 men to the United States, in exchange for millions of dollars.

6. The source reports that, once in United States custody, Mr. Mingazov was detained in Bagram and Kandahar, Afghanistan, where it is believed that he was tortured. He was transferred to the Guantanamo Bay detention facility on 18 October 2002, where he remained for more than 14 years without charge or trial. In May 2010, a United States district court granted Mr. Mingazov the writ of habeas corpus and ordered his immediate release. The Government of the United States appealed against this determination, which was never granted, while the case went back to the district court on remand. On 21 July 2016, the United States Periodic Review Board cleared Mr. Mingazov for transfer. The Periodic Review Board is an administrative process that considers whether Guantanamo Bay detainees can safely be released. For a detainee to be recommended for release, six United States government agencies must give their approval, including the Department of Defense, the Department of Homeland Security, the Department of Justice and the Department of State.

7. It is reported that, on 19 January 2017, Mr. Mingazov was transferred to the United Arab Emirates from Guantanamo Bay. He was resettled in the United Arab Emirates on the basis that he could not be safely repatriated to his home country, the Russian Federation, due to risks that he would be persecuted and mistreated as a Muslim man and a former Guantanamo Bay detainee. Mr. Mingazov accepted to be resettled in the United Arab Emirates on the basis of a range of assurances made by the United Arab Emirates prior to the resettlement. As part of the efforts by the Government of the United States to close the Guantanamo Bay facility, 30 countries resettled 142 men. Nevertheless, the terms of these resettlements were agreed bilaterally with the host country governments, and were not made publicly available or disclosed to the lawyers or the individual transferred.

8. The source claims that the United States Department of State informed Mr. Mingazov’s lawyers that, after an approximately six-month period in a residential rehabilitation programme, Mr. Mingazov would be released into Emirati society, be provided with a modest residence and a job and be allowed to reunite with his family. The Government of the United States also confirmed to his lawyers that the United Arab Emirates had provided assurances that Mr. Mingazov would receive medical treatment and access to social services, as well as funding for family visits and communication. Before the transfer, Mr. Mingazov’s family had been informed of the assurances received from the Department of State. However, in alleged contravention of these assurances, since his transfer to the United Arab Emirates, Mr. Mingazov has been detained in an unknown location, possibly Al-Razeen Prison or Al-Wathba Prison, without charge, trial or access to counsel.

9. According to the source, the United Arab Emirates has provided no reasons for detaining Mr. Mingazov in contravention of the assurances given to the United States. There is no indication that the United Arab Emirates has charged Mr. Mingazov with any crime. His defence lawyers have written to the Minister of Foreign Affairs of the United Arab Emirates on three separate occasions, 2 August 2017, 13 November 2017 and 12 February 2018, requesting for them or the International Committee of the Red Cross to be able to visit Mr. Mingazov. The authorities of the United Arab Emirates have reportedly not responded to any of these attempts at communication.

10. The source indicates that Mr. Mingazov's family has been allowed two visiting periods in the United Arab Emirates. Between 20 November and 18 December 2018, they were given access to him on several occasions while staying in Abu Dhabi, with the source reporting that the visits probably took place in Al-Razeen Prison. The second visiting period took place between 13 and 26 May 2019. Mr. Mingazov's family was permitted to meet him a few times, also probably in Al-Razeen Prison. However, it is unknown whether he is permanently detained in Al-Razeen Prison or was transferred there for the purposes of the visits.

11. Reportedly, Mr. Mingazov's family have extremely limited contact with him by telephone. These calls are infrequent, and most last from 2 to 10 minutes before the line is disconnected. There have been periods of months when Mr. Mingazov's family has not had any communication with him, the longest period being five months. It is believed that these calls are monitored, with guards present in the room, and are disconnected if Mr. Mingazov speaks in detail about the conditions of his detention, or another topic that the prison authorities wish to censor.

12. In October 2020, it was confirmed that Mr. Mingazov was being detained in the same prison as the Yemeni men who had been resettled alongside him. In June 2020, several of these Yemeni men reported to their families that they had been transferred back to the solitary confinement prison in which they had initially been detained before being moved to what is believed to be Al-Razeen Prison. In Al-Razeen, the treatment improved slightly and family communication was allowed more often. Allegedly, in the "dark prison" which preceded Al-Razeen, treatment is substantially worse, family communication is more difficult, and the prison is filled with filth and mosquitos. The source does not know where this "dark prison" is, but it is presumed that it may be Al-Wathba Prison.

13. The source claims that the Government of the United Arab Emirates has provided no purported legal basis for Mr. Mingazov's detention. Rather, it is alleged that Mr. Mingazov's detention without charge or trial, and the suspected torture and ill-treatment he has been subjected to, is prohibited under the domestic law of the United Arab Emirates. Article 26 of the Constitution provides that "personal liberty is guaranteed to all citizens. No person may be apprehended, frisked, detained or imprisoned except in accordance with the law. No person shall be subjected to torture or to degrading treatment." Moreover, the country's Penal Code criminalizes torture, force or threats in order to make an accused person confess to a crime or provide information (art. 242); detaining a person without an order from a competent authority (art. 244); using force on, dishonouring or causing bodily pain to a person (art. 245); and kidnapping, arresting or confining a person or depriving a person of freedom, by any means whatsoever (art. 344).

14. The source also reports that the country's Code of Criminal Procedure provides legal safeguards that allegedly have not been followed in Mr. Mingazov's case, such as the prohibition on causing bodily or psychological harm to an accused person or subjecting any person to torture or degrading treatment (art. 2). A judicial police officer must hear the deposition of an accused person immediately upon his or her arrest, apprehension or arraignment; if the accused does not submit proof of his or her innocence, he or she must be sent within 48 hours to the competent public prosecution authority, which is to interrogate the accused within 24 hours and then order his or her arrest or release (art. 47). The attorney for the accused must be enabled to attend the investigation with the accused and read the investigation papers, unless otherwise decided by a member of the public prosecution authority in the interests of the investigation (art. 100). Moreover, a detention order given by the public prosecution authority is to be issued, subsequent to a defendant's interrogation, which is to be valid for a period of 7 days, renewable for another period not exceeding 14 days. If it is in the interests of the investigation that the provisional detention be continued, the public prosecutor must submit the relevant papers to one of the judges of the competent criminal court, who may, after perusing the papers and hearing statements from the accused, order an extension of the detention period for another period not exceeding 30 days, which is also renewable, or order the release of the detained person with or without bail (art. 110).

15. Further safeguards are implemented through United Arab Emirates law concerning the regulation of punitive facilities, such as the right of prisoners to submit a complaint at

any time and for this complaint to be made available to various authorities (arts. 9 and 11), the right to privately meet with a lawyer (art. 18) and the right to medical assistance (art. 29).

16. In addition, the source claims that Mr. Mingazov's detention is contrary to the bilateral resettlement agreement between the United States and the United Arab Emirates. The United States military never charged Mr. Mingazov with an offence while he was detained at Guantanamo Bay. Mr. Mingazov won his habeas corpus challenge in 2010, which was appealed against by the Government of the United States. However, before the relevant proceedings could be finalized, Mr. Mingazov was cleared for transfer via Periodic Review Board proceedings, which required the approval of six United States government agencies.

17. The source claims that Mr. Mingazov's detention is arbitrary under categories I, III and V.

Legal analysis

i. Category I

18. The source argues that it remains unclear which legal provisions, if any, are being used to justify Mr. Mingazov's detention. He has not been charged with a crime in the three years since he was transferred to the United Arab Emirates. In the absence of a legal justification for his detention, the deprivation of Mr. Mingazov's liberty is allegedly not authorized by domestic or international law and is therefore arbitrary. As set out above, domestic law of the United Arab Emirates prohibits torture, arbitrary deprivation of liberty and detention without appropriate safeguards.

19. The source claims that the United Arab Emirates has breached a number of its international legal obligations by detaining Mr. Mingazov without charge or trial and using torture against him. Reportedly, there is also a credible and urgent threat of Mr. Mingazov being subjected to a breach of the principle of non-refoulement, if he is repatriated to the Russian Federation.

20. The source recalls that the United Arab Emirates acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2012 and ratified the Arab Charter on Human Rights in 2008, both of which prohibit torture and cruel, inhuman or degrading treatment. The source recalls that prolonged incommunicado detention or detention in secret places conflicts with the prohibitions against torture and other cruel, inhuman or degrading treatment or punishment.

21. Mr. Mingazov is allegedly being held in solitary confinement in the United Arab Emirates, and credible evidence exists that he has been subjected to physical abuse at the hands of the prison guards. He is also on and off hunger strike, further exacerbating his vulnerability and jeopardizing his safety. These conditions of detention reportedly amount to torture, or to inhuman and degrading treatment or punishment.

22. In addition, the source states that article 3 of the Convention against Torture expressly prohibits refoulement, as it stipulates that no State party is to return a person to another State "where there are substantial grounds for believing that he would be in danger of being subjected to torture". In determining whether such grounds exist, the competent authorities are to take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee against Torture has confirmed that the non-refoulement obligation is, in common with the prohibition of torture, "absolute". The Committee has also interpreted this obligation as extending to situations where there are substantial grounds for believing that a person would be subjected to ill-treatment.

23. The source claims that if the United Arab Emirates were to forcibly repatriate Mr. Mingazov to the Russian Federation, as it has already done with other former Guantanamo Bay detainees whom it has sent to other countries, this would be a clear breach of the principle of non-refoulement. The source claims that there is a consistent pattern of gross violations of human rights in relation to former Guantanamo Bay detainees repatriated to the Russian Federation.

24. Although the source submits that Mr. Mingazov faces a heightened risk of torture and ill-treatment, in light of the previous actions by authorities of the Russian Federation towards former Guantanamo Bay detainees, it also claims that torture and the denial of the right to a fair trial are “endemic” in police investigations and trials in the Russian Federation, particularly in relation to Russian Muslims accused of terrorism-related offences. In 2018, the Committee against Torture expressed concern in response to “numerous reliable reports of the practice of torture and ill-treatment in the State party” as well as “consistent reports ... that members of the Federal Security Service routinely use torture to extract confessions from those accused of terrorist activities”.² It is reported that, in February 2020, military courts in the Russian Federation handed down guilty verdicts in three terrorism cases to more than 18 defendants, a number of whom allegedly suffered incommunicado detention, torture and ill-treatment to extract confessions from them.

25. Additionally, Mr. Mingazov’s family have expressed serious concerns about his safety were he to be repatriated to the Russian Federation. The family’s position has consistently been that Mr. Mingazov cannot return to the Russian Federation as he fears persecution, detention and torture on the basis of his religious beliefs and his status as a former Guantanamo Bay detainee.

ii. Category III

26. The source claims that, since 2017, Mr. Mingazov has not been charged with any offence or afforded any opportunity to receive a fair trial. His detention in these circumstances is alleged to be in violation of articles 9 and 10 of the Universal Declaration of Human Rights. The source further argues that the United Arab Emirates, as the current authority, has violated articles 9 and 14 of the International Covenant on Civil and Political Rights, since Mr. Mingazov’s detention began in January 2017, more than four and a half years ago.

iii. Category V

27. Finally, the source alleges that Mr. Mingazov has been subjected to arbitrary detention in unknown locations, in a similar manner to the 23 other Guantanamo Bay detainees who were transferred to the United Arab Emirates alongside Mr. Mingazov. It is submitted that, in light of their similar treatment, despite the assurances by the United Arab Emirates to the Government of the United States, the United Arab Emirates has chosen to deprive these men of their liberty on the basis of their prior detention in Guantanamo Bay.

Response from the Government

28. On 21 January 2021, the Working Group transmitted the allegations from the source to the two Governments under its regular communications procedure. The Working Group requested the two Governments to provide, by 22 March 2021, detailed information about the current situation of Mr. Mingazov and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of the United States and the United Arab Emirates under international human rights law, and in particular with regard to the treaties ratified by the two States. Moreover, the Working Group called upon the Government of the United Arab Emirates to ensure his physical and mental integrity.

29. The Working Group regrets that it received no reply from the Governments, and neither did they request an extension in accordance with paragraph 16 of the Working Group’s methods of work. The Working Group regrets that the Government of the United States has not engaged with it since 2017, as it has not responded to any of communications sent by the Working Group since then.³ The Working Group encourages the Government of the United States to avail itself of the opportunities to engage with the Working Group constructively.

² See CAT/C/RUS/CO/6.

³ Opinions Nos. 24/2021, 49/2020, 85/2019 and 70/2019.

Discussion

30. In the absence of a response from either of the Governments, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

31. In determining whether Mr. Mingazov'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 established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.⁴ In the present case, the two Governments have chosen not to challenge the prima facie credible allegations made by the source.

32. Noting that allegations of the detention of Mr. Mingazov concern the United States as well as the United Arab Emirates, the Working Group will proceed by examining allegations in relation to each of the States.

Allegations concerning the United States of America

33. Pursuant to the established jurisprudence of the Working Group concerning the detainees in the Guantanamo Bay detention facility, the Working Group considers that Mr. Mingazov was subjected to arbitrary detention in the custody of the United States for nearly 15 years, from the time of his transfer into the custody of United States forces in May 2002 until the time of his transfer to the United Arab Emirates on 19 January 2017. In the present case, the Working Group follows the reasoning that it has developed in its previous opinions relating to detainees in the Guantanamo Bay detention facility.⁵

34. The Working Group notes that Mr. Mingazov was granted habeas corpus release in 2010, which was appealed against by the Government of the United States, and while that appeal was pending, he was, on 21 July 2016, cleared by that country's Periodic Review Board for transfer to the United Arab Emirates, and was subsequently transferred there on 19 January 2017. However, throughout his time in the custody of the United States in Pakistan and then in the Guantanamo Bay facility, he was never charged with any criminal offence, never presented before a judicial authority and never tried for any criminal offence. As such, his detention in United States custody since May 2002, for nearly 15 years, lacked legal basis and was therefore arbitrary, in violation of the obligations undertaken by the United States under article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant. Therefore, the Working Group concludes that the detention of Mr. Mingazov in the custody of the United States falls under category I. 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 human rights and fundamental freedoms while countering terrorism, for appropriate action.

35. The initial violations of the rights of Mr. Mingazov led to his transfer to the United Arab Emirates, as negotiated by the United States. The assurances that the United States sought from the Government of the United Arab Emirates regarding the transfer and subsequent settlement of Mr. Mingazov in the United Arab Emirates do not absolve the Government of the United States of responsibility for what happened to Mr. Mingazov once he had been transferred from United States custody. Particularly, in the present case, this transfer then led to a further arbitrary detention of Mr. Mingazov in the United Arab Emirates, as alleged by the source and established by the Working Group (see the discussion below).

36. The Working Group wishes to place on record that the principle of joint responsibility also applies to States when more than one State was involved in the perpetration of a violation,⁶ and that seeking assurances from the other State does not negate this joint responsibility. It remains the duty of the United States to ensure that the United Arab Emirates

⁴ A/HRC/19/57, para. 68.

⁵ Opinions No. 85/2019; No. 70/2019; No. 89/2017, para. 66; No. 56/2016; No. 53/2016; No. 50/2014; No. 57/2013; No. 10/2013; No. 3/2009; No. 2/2009; and No. 29/2006.

⁶ Opinion No. 85/2019; for a detailed analysis, see also A/56/10 (commentary of the International Law Commission on articles 16 and 17 of the draft articles on responsibility of States for internationally wrongful acts).

adheres to the assurances given to the United States, and the United States is therefore jointly responsible for the violations of Mr. Mingazov's rights in the United Arab Emirates.

Allegations concerning the United Arab Emirates

37. The source has alleged and the Government has chosen not to contest that Mr. Mingazov was transferred to the United Arab Emirates on 19 January 2017, on the basis of a range of assurances agreed to by the United Arab Emirates prior to resettlement. Although the exact terms of the agreement are unclear, as the terms of this resettlement were agreed bilaterally with the host country government, and were not made publicly available or disclosed to the lawyers or the individual transferred, the source has submitted that the United States Department of State informed Mr. Mingazov's lawyers that, after an approximately six-month period in a residential rehabilitation programme, Mr. Mingazov would be released into Emirati society, be provided with a modest residence and a job and be allowed to reunite with his family. The Working Group notes that neither of the two Governments chose to respond to these allegations.

38. The Working Group recalls that this is not the first time that it has been asked to examine a case involving such a transfer of a former Guantanamo Bay detainee to a third country⁷ and notes that there indeed appears to be a practice of not fully disclosing the resettlement terms. The Working Group must point out that it considers such agreements unacceptable under international law.

39. In the present case, irrespective of the resettlement terms, it is clear to the Working Group that Mr. Mingazov has been detained in the United Arab Emirates since 19 January 2017, which is a lengthy period of more than four years. He was told he would take part in a rehabilitation programme, but instead has been held in prison in conditions that cannot under any circumstances be said to even vaguely resemble a rehabilitation programme. He has not been charged with any offence; he has not been presented before a judicial authority, nor tried. The Working Group notes in particular the failure of the Government to respond to these allegations.

40. The Working Group recalls that a detention is considered arbitrary under category I if it lacks a legal basis. As it has previously stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant (see, for example, opinions No. 79/2018, 35/2018, 93/2017, 75/2017, 66/2017 and 46/2017). Indeed, international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation, under articles 3 and 9 of the Universal Declaration of Human Rights as well as under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁸ Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This has been denied to Mr. Mingazov.

41. Moreover, the Working Group recalls that legal safeguards against arbitrary deprivation of liberty, as encapsulated in article 9 of the Universal Declaration of Human Rights, require anyone arrested or detained on a criminal charge to be brought promptly before a judge for the exercise of judicial power. As the Working Group has reiterated in its jurisprudence, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee "promptly" before a judge or other officer authorized by law, following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.⁹ The Working Group finds that Mr. Mingazov was not brought promptly

⁷ Opinion No. 85/2019.

⁸ Opinions No. 30/2018, para. 39; No. 3/2018, para. 43; and No. 88/2017, para. 27.

⁹ See, for example, opinions No. 66/2020, No. 60/2020, No. 49/2019, No. 30/2017 and No. 6/2017.

before a judicial authority; in fact, throughout his detention in the United Arab Emirates, since 19 January 2017, over four years ago, he has never been brought before a judicial authority. This is a blatant violation of his rights under article 9 of the Universal Declaration of Human Rights. As a result, the authorities have failed to establish the legal basis of Mr. Mingazov's detention in accordance with the provisions of the Universal Declaration of Human Rights.

42. Furthermore, the Working Group wishes to recall that according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.¹⁰ This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,¹¹ and applies to "all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures ...".¹² Moreover, it also applies "irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary."¹³ This was denied to Mr. Mingazov.

43. The Working Group notes that in order to ensure effective exercise of this right, detained persons should have access, from the moment of arrest, to legal assistance of their own choosing, as stipulated in 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.¹⁴ This was also denied to Mr. Mingazov, seriously and adversely impacting his ability to effectively exercise his right to challenge the legality of his detention, denying him his rights under article 9 of the Universal Declaration of Human Rights.

44. Noting all the above, the Working Group concludes that since the detention of Mr. Mingazov took place without an arrest warrant, since no formal charges have ever been brought against him for the duration of his more than four years of detention, and since he was prevented from exercising his right to challenge the legality of detention, his arrest and detention in the United Arab Emirates is arbitrary and falls under category I.

45. The Working Group also notes that Mr. Mingazov has been detained for a lengthy period of four years, and the source has submitted that this violates his right to a fair trial. The Working Group recalls that the right to be tried within a reasonable time frame and without undue delay is one of the essential fair trial guarantees embodied in articles 10 and 11 (1) of the Universal Declaration of Human Rights and that it has been violated in the present case.

46. Noting this, as well as the absence of any response from the Government, and especially the exceptional length of Mr. Mingazov's detention, which now exceeds four years, the Working Group considers that his detention is arbitrary and falls under category III.

47. Finally, the source has also argued that the detention of Mr. Mingazov in the United Arab Emirates is based on discriminatory grounds, as he is a former Guantanamo Bay detainee. The source argues, and the Government has chosen not to contest, that his treatment follows a pattern of cases of other Guantanamo Bay detainees transferred to the United Arab Emirates under similar arrangements.

¹⁰ A/HRC/30/37, paras. 2–3.

¹¹ *Ibid.*, para. 11.

¹² *Ibid.*, annex, para. 47 (a).

¹³ *Ibid.*, annex, para. 47 (b).

¹⁴ *Ibid.*, annex, principle 9, paras. 12–15.

48. In this regard, the Working Group recalls the joint urgent appeal to the Government of the United Arab Emirates,¹⁵ which was followed by a press statement¹⁶ by a number of special procedures of the Human Rights Council, concerning the alleged prolonged detention, without charge or trial, of 18 former Guantanamo Bay detainees who had been transferred there under conditions similar to those of Mr. Mingazov.

49. Accordingly, the Working Group finds that Mr. Mingazov was deprived of his liberty on discriminatory grounds, that is, due to his status as a former Guantanamo Bay detainee, in violation of articles 2 and 7 of the Universal Declaration of Human Rights. His deprivation of liberty is therefore arbitrary under category V.

Concluding remarks

50. The Working Group is seriously disturbed by the uncontested allegations in the present case. Mr. Mingazov has been detained in the United Arab Emirates for more than four years and the authorities have never formally acknowledged his detention or indeed his place of detention. There are only sketchy testimonies from other former inmates who have seen Mr. Mingazov detained. While it appears that his family has been allowed to see him on occasion as well as to maintain some contact with him by phone, Mr. Mingazov's detention nevertheless appears to the Working Group as akin to incommunicado detention and even enforced disappearance, which is absolutely incompatible with international human rights law. The Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances, for appropriate action.

51. The Working Group notes the uncontested allegations of serious ill-treatment and even torture both in the custody of the United States and in the custody of the United Arab Emirates, as well as prolonged solitary confinement and denial of meaningful contact with his family in the United Arab Emirates. The treatment described reveals a prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law, as well as of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of principles 6 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and of rules 1, 43 (1) (b), 44 and 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

52. The Working Group also notes the allegations by the source that Mr. Mingazov is under threat of being transferred to the Russian Federation, where there is a credible risk that he would face ill-treatment due to his Muslim faith, as well as his status as a former Guantanamo Bay detainee. The Working Group recalls the recent urgent communication on this matter by a number of special procedures¹⁷ and considers that, should Mr. Mingazov be transferred to the Russian Federation, this could represent a violation of the principle of non-refoulement, as well as of article 3 of the Convention against Torture. The Working Group urges the Government of the United Arab Emirates to refrain from transferring Mr. Mingazov to the Russian Federation.

53. Furthermore, while the present opinion addresses the specific circumstances of Mr. Mingazov's arrest and detention, the Working Group is mindful that there are other individuals in situations similar to that of Mr. Mingazov.¹⁸ The Working Group urges both

¹⁵ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25402>.

¹⁶ Office of the United Nations High Commissioner for Human Rights press statement, "UN experts say forced return of ex-Guantanamo detainees to Yemen is illegal, risks lives", 15 October 2020, available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26380&LangID=E.

¹⁷ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26519>.

¹⁸ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25402>.

the Government of the United States and the Government of the United Arab Emirates to immediately address their situations, noting the findings made in the present opinion.

54. Finally, the Working Group wishes to make it clear that the findings in the present opinion are without prejudice to the allegations that Mr. Mingazov was first arrested by Pakistani police and was in their custody from 28 March 2002 until May 2002.

Disposition

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

(a) In relation to the United States of America:

The deprivation of liberty of Ravil Mingazov, being in contravention of articles 2, 3, 7, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9, 10, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

(b) In relation to the United Arab Emirates:

The deprivation of liberty of Ravil Mingazov, being in contravention of articles 2, 3, 7, 9, 10 and 11 of the Universal Declaration of Human Rights is arbitrary and falls within categories I, III and V.

56. The Working Group requests the Government of the United States and the Government of the United Arab Emirates to take the steps necessary to remedy the situation of Mr. Mingazov 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.

57. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Mingazov immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Mr. Mingazov.

58. The Working Group urges the Government of the United States and the Government of the United Arab Emirates to each ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Mingazov and to take appropriate measures against those responsible for the violation of his rights.

59. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to: (a) the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; (b) Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and (c) the Working Group on Enforced or Involuntary Disappearances, for appropriate action.

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

Follow-up procedure

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

(a) Whether Mr. Mingazov has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Mingazov;

(c) Whether an investigation has been conducted into the violation of Mr. Mingazov'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 United States and the United Arab Emirates with their international obligations in line with the present opinion;

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

62. The Governments are invited to inform the Working Group of any difficulties they 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.

63. The Working Group requests the source and the Governments 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.

64. 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.¹⁹

[Adopted on 8 September 2021]

¹⁹ Human Rights Council resolution 42/22, paras. 3 and 7.