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Human Rights Council
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. 33/2021 concerning Azamat Umbetaliyev, Beket Mynbasov, Samat Adilov, Zhuldyzbek Taurbekov, Zhasulan Iskakov, Nazim Abdrakhmanov, Ernar Samatov and Bolatbek Nurgaliyev (Kazakhstan)

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 18 January 2021, the Working Group transmitted to the Government of Kazakhstan a communication concerning Azamat Umbetaliyev, Beket Mynbasov, Samat Adilov, Zhuldyzbek Taurbekov, Zhasulan Iskakov, Nazim Abdrakhmanov, Ernar Samatov and Bolatbek Nurgaliyev. The Government submitted a late response on 21 April 2021. The State is a party to the International Covenant on Civil and Political Rights.

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

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

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language,

¹ A/HRC/36/38.

religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Azamat Umbetaliyev is a Kazakh national born in 1992, usually residing in Karasay District of Almaty Region. The source reports that on 27 October 2018, Mr. Umbetaliyev was arrested without a warrant by officials of the National Security Committee of Kazakhstan at his place of residence. On the day of his arrest, Mr. Umbetaliyev was held at the Committee's detention centre in Almaty. On 29 October 2018, he was transferred to pretrial detention centre LA-155/18, where he remained until the end of his trial. Following the trial, he was transferred to prison No. ICH-167/3, where he is currently detained.

5. Beket Mynbasov is a Kazakh national born in 1983, usually residing in Almaty. According to the source, on 27 October 2018, Mr. Mynbasov was arrested without a warrant by National Security Committee officials on Zhumabayev Street in Almaty. On the day of his arrest, Mr. Mynbasov was held at the Committee's detention centre in Almaty. On 29 October 2018, he was transferred to pretrial detention centre LA-155/18, where he remained until the end of his trial. Following the trial, he was transferred to prison No. 162/3, where he is currently detained.

6. Samat Adilov is a Kazakh national born in 1986, usually residing in Alatau District, Almaty. Mr. Adilov was reportedly arrested without a warrant on 28 October 2018 at the National Security Committee building in Almaty. On the day of his arrest, Mr. Adilov was held at the Committee's detention centre in Almaty. On 29 October 2018, he was transferred to pretrial detention centre LA-155/18, where he remained until the end of his trial. Following the trial, he was transferred to prison No. UKA-168/2 in Aktobe, where he is currently detained.

7. Zhuldzybek Taurbekov is a Kazakh national born in 1978, usually residing in Almaty. The source reports that Mr. Taurbekov was arrested without a warrant at his place of residence on 28 October 2018. On the day of his arrest, Mr. Taurbekov was held at the Committee's detention centre in Almaty. On 29 October 2018, he was transferred to pretrial detention centre LA-155/18, where he remained until the end of his trial. Following the trial, he was transferred to prison No. 164/3, where he is currently detained.

8. Zhasulan Iskakov is a Kazakh national born in 1984, usually residing in Zhezkazgan City, in Karaganda Region. Mr. Iskakov was reportedly arrested without a warrant by National Security Committee officials on 27 October 2018 at his place of employment: the medical centre in Zhezkazgan. On the day of his arrest, Mr. Iskakov was held at the Committee's detention centre in Almaty. On 29 October 2018, he was transferred to pretrial detention centre LA-155/18, where he remained until the end of his trial. Following the trial, he was transferred to prison No. 159/18 in Karaganda, where he is currently detained.

9. Nazim Abdrakhmanov is a Kazakh national born in 1988, usually residing in Almaty. The source reports that on 28 October 2018, Mr. Abdrakhmanov was arrested outside of his place of residence while taking a walk with his child on the basis of a warrant issued by the National Security Committee. On the day of his arrest, Mr. Abdrakhmanov was held at the Committee's detention centre in Almaty. On 29 October 2018, he was transferred to pretrial detention centre LA-155/18, where he remained until the end of his trial. Following the trial, he was transferred to prison No. 166/2, where he is currently detained.

10. Ernar Samatov is a Kazakh national born in 1980, usually residing in Almaty Region. According to the source, on 27 October 2018, Mr. Samatov was arrested without a warrant in his hometown by National Security Committee officials. On the day of his arrest, Mr. Samatov was held at the Committee's detention centre in Almaty. On 29 October 2018, he was transferred to pretrial detention centre LA-155/18, where he remained until the end of his trial. Following the trial, he was transferred to prison No. UP-156/3, where he is currently detained.

11. Bolatbek Nurgaliyev is a Kazakh national born in 1978, usually residing in Almaty. The source reports that on 27 October 2018, Mr. Nurgaliyev was arrested without a warrant by National Security Committee officials at Kenzhekhan Market. Following his arrest, Mr. Nurgaliyev was held at the Committee's detention centre in Almaty. On 29 October 2018, he was transferred to pretrial detention centre LA-155/18, where he remained until the end of his trial. Following the trial, he was transferred to prison No. 106/25 in Akmola. He was subsequently transferred to prison No. ZK-169/5 on 26 September 2020, where he is currently detained.

a. Context

12. The source notes that in the Human Rights Committee's most recent review of Kazakhstan, the Committee expressed concern about the Government's practice of using article 174 of the Criminal Code of Kazakhstan to target individuals for merely exercising their right to freedom of expression.² According to the source, multiple international human rights monitors have found that the Government uses article 174, which penalizes incitement of social, national, generic, racial, class or religious discord, to prosecute those expressing views critical of the Government. The Committee also emphasized the need for Kazakhstan to refrain from using its criminal provisions and other regulations as tools to suppress the expression of dissenting opinions.³

13. According to the source, the Committee's concerns about article 174 have been echoed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Following her visit to Kazakhstan in 2019, the Special Rapporteur stated that article 174 of the Criminal Code broadly criminalizes incitement to social, national, tribal, class, racial or religious discord, all of which are extremely vague grounds, and fails to provide genuine protection to individual minority groups. The Special Rapporteur further noted that convictions under article 174 are largely based on the opinions of government-appointed and security-cleared "experts" who are called upon to determine whether any document, statement or group contains extremist elements, and that once such an opinion is obtained, it is very difficult in practice to refute or counter.⁴

14. Furthermore, the Special Rapporteur identified similar problems with article 256 of the Criminal Code, which criminalizes propaganda of terrorism or public calls for commission of an act of terrorism. The Special Rapporteur found that article 256 is phrased in extremely general terms, rendering it liable to arbitrary application and silencing legitimate expression, and that the article lacks the essential element of intent to incite terrorist acts as well as the element that there be a direct and immediate connection between the expressive act and the actual (i.e. objective) risk of terrorist acts being committed.⁵

b. Background and investigations

15. According to the source, the eight individuals named in the present communication resided in various regions of Kazakhstan, and the majority of the men had not met one another in person before October 2018. Each is a practising Muslim, and prior to their arrests, none of the men had a criminal record. On 2 December 2013, Mr. Nurgaliyev created a text message group, called "Ahli Sunnah Val Jamagat", using the WhatsApp messaging app. According to Mr. Nurgaliyev, the purpose of the group was to share information and engage in discussions concerning Islam. Furthermore, he stated that he had hoped that by sharing information about the theological tenets of Islam, his relatives, friends and others in the group would refrain from engaging in terrorist activities, which Mr. Nurgaliyev strongly opposed.

16. Between 2013 and 2018, the group reportedly grew to 171 members and thousands of messages were exchanged. All eight individuals named in the present communication were members of the WhatsApp group in October 2018, but the involvement of each of the individuals in the group varied. The majority of engagement in the group involved sharing articles published by Islamic scholars. Some members posted articles and comments more

² CCPR/C/KAZ/CO/2, para. 49.

³ Ibid., para. 50.

⁴ A/HRC/43/46/Add.1, para. 15.

⁵ Ibid., para. 14.

frequently than others. However, Mr. Abdrakhmanov only ever sent one message to the group, consisting of a section of a text that he copied and reposted from an earlier message in the group. Furthermore, Mr. Adilov only joined the group 12 days prior to his arrest, and during his time in the group, he only shared quotes of Islamic scholars, never presenting his own opinions or analysis. Similarly, Mr. Umbetaliyev only ever shared articles from scholars with the group, never providing commentary or analysis. Since the arrest of Mr. Nurgaliyev, the WhatsApp group has been deleted.

17. According to the source, the National Security Committee obtained messages from the WhatsApp group as early as August 2018. In September 2018, a secret police investigator of the Committee commissioned an “expert analysis” of texts circulated in the discussion group from a political science expert, who reportedly concluded that messages exchanged in the group showed signs of agitating religious discord. Subsequently, in early October 2018, another analysis was commissioned, which involved a review of the messages by an expert on religion. The expert reportedly concluded that the texts contained ideas of the Salafi trend of Whabbism Islam and that the messages propagated religious-radical views. Subsequent to the commission of the above reports, a criminal case was opened on 18 October 2018, after the Committee received a written statement from an anonymous source, who allegedly notified officials that the participants of the group actively discussed religious topics.

c. Arrest and indictment

18. According to the source, on 27 and 28 October 2018, National Security Committee officers arrested all of the individuals except Mr. Adilov, either at their homes or at public locations near their residences. Notably, in order to arrest Mr. Umbetaliyev, officers allegedly lured him outside of his home on the pretence of discussing some religious matters with him. After he came out of his home, he was “attacked” by a group of plainclothes officers who pushed him into one of the eight cars that the officers had arrived in. Moreover, the source alleges that in order to arrest Mr. Nurgaliyev, officers anonymously lured him to the nearby Kenzhekhan Market on the pretence of engaging in a business deal. Once he arrived at the market, masked men seized him.

19. The source reports that except for Mr. Abdrakhmanov, none of the individuals arrested at that time were presented with a warrant. The source adds that it is not required under Kazakh law. The eight arrested individuals were transported to the National Security Committee detention centre in Almaty. The source adds that at the time of arrest, each of the men’s homes was searched. No illegal items or evidence of wrongdoing were found during those searches, and nothing from the searches was introduced at trial or relied upon in the judgment.

20. On 28 October 2018, upon hearing of the arrest of Mr. Nurgaliyev from an acquaintance, Mr. Adilov reportedly visited the National Security Committee building in Almaty to inform them that the group was not involved in any illegal activities and that it was a forum for religious discussion. However, that resulted in Mr. Adilov being interrogated, arrested and placed under investigation with the other seven individuals.

21. According to the source, all eight individuals were interrogated without a lawyer present. Four of the men – Mr. Nurgaliyev, Mr. Mynbasov, Mr. Umbetaliyev and Mr. Adilov – explicitly requested access to private lawyers during their interrogation, but the interrogating Committee officers refused to oblige. During the interrogation, investigators allegedly instructed Mr. Nurgaliyev to convince the other men to refuse the assistance of a private lawyer. In the absence of a lawyer, three of the men – Mr. Mynbasov, Mr. Iskakov and Mr. Abdrakhmanov – alleged at trial that investigators had pressured them into signing false statements and a guilty plea. The source adds that no investigation into the allegations of forced and coerced confessions was conducted by the police, the prosecution or the judge.

22. On 29 October 2018, an investigative judge of the specialized inter-district court on criminal cases ordered the eight men to be held in pretrial detention. The source reports that the investigative judge did not provide any grounds for denying bail and ordering detention other than referencing the allegations presented in the indictment. The judge ordered that all the individuals be held in pretrial detention centre LA-155/18, where they remained until trial. On 18 February 2019, all eight men were indicted along with a ninth individual who

was part of the same WhatsApp group. The indictment alleged that the nine men, acting with a common intention and aware of the illegality of their actions, actively discussed religious themes and deliberately made radical statements that represented propaganda of terrorism and agitation of racial discord. According to the source, the indictment supports the allegation by claiming that, because the WhatsApp group's founder, Mr. Nurgaliyev, is a Salafi Muslim and because terrorist groups following similar ideology have conducted terrorist activities, the group therefore promoted terrorism.

23. According to the indictment, all nine men were charged with violating article 174, paragraph 2, of the Criminal Code of Kazakhstan, which penalizes incitement of "social, national, generic, racial, class or religious discord". Paragraph 2 of article 174 provides for a sentence of 5 to 10 years for those guilty of violating paragraph 1 together with a group of people. The indictment also charged four of the individuals – Mr. Nurgaliyev, Mr. Mynbasov, Mr. Samatov and Mr. Taurbekov – with violating article 256, paragraph 2, of the Criminal Code, which criminalizes "propaganda of terrorism or public calls for commission of an act of terrorism". Paragraph 2 of the article provides for a sentence of 7 to 12 years if the action criminalized under paragraph 1 is "committed by an individual using a State or non-State official position, or with the use of the mass media or other communication networks, or with foreign support, or in a group".

d. Trial proceedings

24. On 27 February 2019, the indictment was reportedly filed with the Almalinsky District Court in Almaty. The trial officially began on 12 March 2019 and lasted five months. At trial, the Government, represented by four successive prosecutors, reportedly presented no evidence that any members of the group – in particular, those who were charged under article 256 – were advocating, encouraging or condoning acts of terrorism. The source adds that the only connection made between the individuals and terrorism was the allegation that their denomination of Islam was Salafism. The prosecution reportedly presented an expert witness on religion who testified that certain messages within the group exhibit ideas associated with Salafist Islam.

25. Additionally, the prosecution reportedly introduced testimony from the National Security Committee investigator, the official responsible for initiating the investigation into the individuals. The investigator noted that (a) the group's creator, Mr. Nurgaliyev, is a Salafi Muslim, (b) Salafism is similar in ideology to that of Da'esh, and (c) Da'esh has conducted terrorist activity. On the basis of those observations, the investigator claimed at trial that the WhatsApp group, by promoting Salafism, was therefore promoting terrorism. The source adds that despite the investigator's reference to Da'esh, there was no evidence presented at trial that any of the defendants has any connection with Da'esh or had made any comments in support of it. One of the defence counsels brought that fact to the attention of the Court, but the trial judge disregarded the defence counsel's observation.

26. On the issue of agitation of religious discord, the prosecution reportedly called for testimony from four of the WhatsApp group members who were not indicted. Although one of the four claimed that some of the messages agitated religious discord against other people, the three other group members testified that the group was for religious education purposes and messages exchanged were scholarly articles or passages directly from religious texts. The prosecution also introduced an expert witness specializing in political science, who reportedly testified that the messages contain agitation to religious discord and signs of religious superiority. The expert also testified that some of the messages would have the effect of offending the religious feelings of other people. However, the expert, in contradiction to the Government's religion experts, also testified that the messages did not contain advocacy of a violent overthrow of the Government, violent change of the Constitution, or propaganda of terrorism or incitement to terrorism.

27. The source adds that the primary evidence presented by defence counsel was the testimony of an independent expert in philology. After reviewing the messages, the defence expert concluded that the messages did not contain incitement to hostility towards others on the basis of their religion and did not contain any incitement to aggression, violence or terrorism towards others.

28. On 3 July 2019, before the end of the trial, Mr. Taurbekov began to suffer significant medical issues related to his heart. Because Mr. Taurbekov required prolonged hospitalization, the trial judge determined that he was temporarily unable to stand trial and severed his case from the other eight individuals. The trial proceeded against the remaining eight individuals, with the trial against Mr. Taurbekov resuming later.

29. On 5 August 2019, the Almalinsky District Court of Almaty found the remaining seven individuals named in the present communication guilty of violating article 174 (2) of the Criminal Code. In addition, it found Mr. Nurgaliyev, Mr. Samatov and Mr. Mynbasov also guilty of violating article 256 (2). The court sentenced Mr. Abdrakhmanov, Mr. Adilov, Mr. Iskakov and Mr. Umbetaliyev to five and a half years' imprisonment; Mr. Samatov and Mr. Mynbasov to seven and a half years' imprisonment; and Mr. Nurgaliyev to eight years' imprisonment. In the judgment, the trial judge reportedly explicitly refused to consider the testimony of the expert witness presented by the defence. The judge also considered the fact that several of the defendants had signed guilty pleas, which supported the view of the prosecution experts over that of the defence expert. Furthermore, the judge cited 14 messages in the trial judgment, comprising one or more sent from each individual, with the intention of demonstrating their guilt. The source adds that messages from several of the individuals only involved reposting text from an article by an Islamic scholar.

30. The source reports that after spending significant time in a hospital receiving treatment for his heart condition, Mr. Taurbekov's trial resumed on 3 December 2019. He was subsequently convicted on 6 January 2020 under article 174 (2) and article 256 (2), and he was sentenced to seven years in prison. The source adds that the evidence presented at Mr. Taurbekov's trial mirrored the evidence presented at the prior trial of the other group members.

e. Current status

31. As noted above, the eight individuals were transferred to various prisons across Kazakhstan where they remain in detention under the custody of the Ministry of Internal Affairs. The seven individuals who were convicted on 5 August 2019 appealed their conviction to the Almaty City Court. However, their appeal was denied on 20 November 2019. Similarly, once Mr. Taurbekov was convicted, he appealed his conviction to the same court, but on 9 April 2020, his appeal was also denied.

f. Analysis of violations

32. The source submits that the arrest and continuing detention of the eight individuals constitutes an arbitrary deprivation of their liberty under categories I, II, and III.

i. Category I

33. According to the source, the detention of the eight individuals is arbitrary under category I because the Government lacks any substantive evidence to justify their detention and because the Government charged and convicted them under a vague and overly broad provision of the Criminal Code of Kazakhstan.

34. The source submits that the Government's pretrial detention and sentencing of the eight individuals is not founded on any reasonable evidence against them.⁶ The Government is detaining them entirely on the basis of their messages exchanged in a WhatsApp group dedicated to religious discussions of the theology of Islam. All eight individuals named in the present communication, as well as witnesses, testified that the group was dedicated to theological discussions and the sharing of religious expert opinion on Islam. The source adds that such discussions do not constitute either incitement to or propaganda for terrorism, and the Government presented no evidence that the discussions in the group or the messages sent by the individuals, in any way amounted to undermining the rights and freedoms of others in tangible ways.⁷ Furthermore, despite the invocation of Da'esh by the prosecution and the investigator, there was absolutely no evidence that any of the individuals in the group

⁶ A/73/362, para. 14.

⁷ Ibid., para. 27.

condoned, promoted or issued propaganda for such a group. In fact, in their testimony they openly condemned Da'esh and acts of violence in the name of Islam.

35. Moreover, as noted above, the purpose of the creation of the group, according to its founder, Mr. Nurgaliyev, was partly to dissuade violence through education in the tenets of Islam. The source adds that the context surrounding the statements by the individuals demonstrates that their speech falls within the scope of the law. In the present case, because the State was unable to present evidence of a tangible threat to society exhibited in the private messages of the individuals, it strongly suggests that their punishment relates to their religious expression being undesirable. The source submits that such a motivation lacks a legitimate basis in law. Accordingly, the detention of the eight individuals is arbitrary under category I because there is no basis, in either evidence presented or in fact, for the detention.

36. The source further notes that article 15 (1) of the International Covenant on Civil and Political Rights and article 11 (2) of the Universal Declaration of Human Rights both guarantee the right of individuals to know what the law is and what conduct violates the law. According to the source, article 174 of the Criminal Code of Kazakhstan defines criminal activity in a manner that is overly broad and vague. It heavily relies on indeterminate language, such as “discord” or “insult of national honour and dignity or religious feelings”. The source notes that this language fails to provide a clear indication of which activities are prohibited. Moreover, many actions that are seemingly criminalized under this section are otherwise protected by international human rights law.

37. The source adds that owing to the pervasive inclusion of indeterminate and subjective terms in article 174, there is no way for an individual to determine *ex ante* whether their actions will, for example, have the effect of insulting someone or potentially cause someone to engage in activities that could fall within the broad category of discord. The source submits that the vague and overly broad nature of article 174 permits the authorities of Kazakhstan to abuse the statute and crack down on legitimate forms of political dissent. In the present case, the eight individuals were allegedly convicted under article 174 for an instance of the legitimate exercise of their right to freedoms of expression and religion. The source thus submits that their continuing detention is arbitrary under category I, in violation of the Covenant and the Universal Declaration of Human Rights.

38. According to the source, article 256 of the Criminal Code is also too vague to provide a “legal basis” for the conviction of the individuals, as the Government has applied it to them. The provision utilizes extremely general terms that render the article liable to arbitrary application to silence legitimate expression. The source notes that the very act that it is intended to criminalize – that is, “propaganda of terrorism” – is not defined in the article or elsewhere in the Criminal Code, and that such vagueness leads to arbitrary application and censorship of speech that should otherwise find protection under the law. The source adds that given that none of the four individuals convicted under article 256 supported, condoned or advocated terrorist activities in the messages that the Government used to convict them, the Government’s application of “propaganda of terrorism” to these individuals demonstrates the existence of vagueness in the term and the existence of arbitrariness in its application.

39. While referring to the statement made by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (see para. 14 above), the source contends that article 256 fails to require a connection between the action and the actual (i.e. objective) risk of terrorist acts being committed as a result. Moreover, article 256 reportedly contains no explicit element requiring that the Government demonstrate intent on behalf of perpetrators, such as an intent to promote extremist content or an intent to promote violence. Accordingly, the source submits that article 256 is too vague to provide a legal basis for the four individuals who were convicted under the law. Their conviction thus violates the Covenant and the Universal Declaration of Human Rights, and their detention falls under category I.

ii. Category II

40. The source also argues that the detention of the eight individuals is arbitrary under category II as it resulted from the peaceful and legitimate exercise of their rights to freedom of expression and religion. The source adds that these rights are protected under both

international and national law, in particular articles 18 and 19 (2) of the Covenant, articles 18 and 19 of the Universal Declaration of Human Rights and articles 14 and 20 (1) of the Constitution of Kazakhstan.

41. In the present case, the individuals were reportedly arrested, tried and convicted for their participation in a messaging group engaged in sharing and discussing religion, religious texts and theological writings. The source adds that the activity for which they are currently detained is, in both subject matter and form, an exercise of their freedom of religion and expression. Their activities fall within the scope of freedom of religion as their messages amount to the sharing of religious information on Islam. Their activities fall within the scope of freedom of expression as they used a messaging app to share the ideas of others on religion.

42. The source submits that all of the messages cited in the trial judgment as evidence of criminal culpability fall within the scope of the rights to freedom of religion and expression. The messages cited in the judgment against the defendants were all quotes or paraphrases from religious texts or scholars. In none of the comments referenced in the judgment do any of the men call for specific acts of violence against any identifiable group of people. Accordingly, the source submits that the Government's detention of the eight individuals constitutes a violation of their rights to freedom of expression and religion.

43. The source also submits that although the rights to freedom of religion and expression are not absolute, the arrest and detention of the eight men fall well outside any possible legitimate restriction on these rights. First, there is no indication that their sentences of between five and eight years in prison are necessary to protect any government interest. None of the individuals expressed any intention to encourage violence or hatred, and none of the evidence presented by the Government suggested that the individuals themselves were engaged in, planning or condoning acts of violence or hatred. The source adds that the punishment, in addition to being grossly disproportionate, does not serve any legitimate purpose given the context and content of the messages exchanged by these men. Second, as stated above, the laws under which they were convicted are vague and overly broad, which results in the laws failing to satisfy the "provided for by law" condition of any legitimate limitation on either expression or religion. Accordingly, the detention of the eight individuals does not fall within the scope of the exceptions to the rights to freedom of expression and religion.

44. The source thus submits that the Government has acted in violation of articles 18 and 19 of the Covenant and articles 18 and 19 of the Universal Declaration of Human Rights, making their detention arbitrary as defined under category II.

iii. Category III

45. In the present case, on 29 October 2018, the eight individuals were reportedly brought before a judge who ordered them to remain in pretrial detention, where they remained until trial. According to the source, the judge did not provide any reasons specific to the individuals to justify detaining them. The source adds that even if the court had attempted to provide a justification for keeping them in detention, it would not have found any legitimate reasons for doing so. They have no history of violence, and thus are not a threat to society. All of the individuals currently reside in Kazakhstan, as do their families; thus, they do not pose a flight risk. Moreover, the Government found no evidence that the individuals might have destroyed if they had been released. Accordingly, the source submits that the pretrial detention of the individuals was unfounded, and the denial of their pretrial release was a violation of article 9 (3) of the Covenant and principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

46. The source also recalls that during investigations, several of the individuals notified authorities, in no uncertain terms, that they desired private legal representation. Despite those clear requests, investigators refused. Moreover, the source adds that investigators specifically pressured the men not to ask for lawyers, and also pressured them to sign plea deals. The lack of representation reportedly led to several of the individuals being unduly pressured into signing statements, without assistance of counsel, that were subsequently introduced in trial. Accordingly, the source submits that Kazakhstan violated article 14 (3) (b) and (d) of the Covenant, principles 18 (1) and (3) of the Body of Principles for the Protection of All Persons

under Any Form of Detention or Imprisonment, rule 119 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and article 16 (3) of the Constitution of Kazakhstan.

47. According to the source, the trial of the defendants was unfair. The court reportedly did not consider exculpatory evidence in favour of the defendants. In the judgment, the court did not credit the testimony of three other members of the group who stated that the group was not inciting hatred or violence, but only sharing and discussing religious articles. Instead, the court considered only the testimony of one witness, who stated the opposite. Moreover, evidence introduced by defence counsel demonstrating that the messages did not amount to incitement to hatred or violence was not considered in the court's final judgment. Instead, the court reportedly recognized only the Government's experts as being capable of commenting on the nature of the messages in the group. According to the source, this demonstrates a clear bias on behalf of the judge in favour of the prosecution.

48. The source adds that the trial judge's selective consideration of the evidence thus demonstrates a lack of equality of arms, the absence of a presumption of innocence and unfairness in proceedings. The source submits that the conviction of the eight individuals amounts to a violation of their right to the presumption of innocence. For these reasons, the Government reportedly violated article 14 (2) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights.

Response from the Government

49. On 18 January 2021 the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested that the Government provide, by 19 March 2021, detailed information about the current situation of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev and that it clarify the legal provisions justifying their continued detention, as well as its compatibility with the obligations of Kazakhstan under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Kazakhstan to ensure their physical and mental integrity.

50. On 26 January 2021, the Government of Kazakhstan requested an extension, in accordance with paragraph 16 of the Working Group's methods of work. It was granted on 27 January 2021 with a new deadline of 19 April 2021. The Government submitted its reply on 21 April 2021, which was after the set deadline. Consequently, the Working Group cannot accept the reply as if it was presented within the time limit.

Discussion

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

52. In determining whether the detention of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev was arbitrary, the Work 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.⁸ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source in a timely fashion.

53. The source has submitted that the detention of the eight individuals is arbitrary under categories I, II and III. The Working Group shall proceed to examine the submissions in turn.

⁸ A/HRC/19/57, para. 68.

Category I

54. The source has submitted, and the Government does not contest in its late reply, that all individuals, except for Mr. Abdrakhmanov, were arrested between 27 and 29 October 2018, without a warrant.

55. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As it has previously stated, 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 through an arrest warrant.⁹

56. Indeed, the 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, respectively, of the Universal Declaration of Human Rights; article 9 of the Covenant; and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹⁰ 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.

57. In the present case, it is clear from the late response of the Government that Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Samatov and Mr. Nurgaliyev were not arrested in “hot pursuit” or in flagrante delicto. Rather, the authorities had been investigating their actions for some time and yet the Government has presented no explanation as to why the arrests of these individuals took place in the absence of a warrant. This stands in stark contrast to the case of Mr. Abdrakhmanov, who was also arrested as part of the same operation by the authorities and tried in the same court case. However, he was presented with a warrant upon his arrest. There is no explanation as to why the same approach was not taken in relation to the other seven individuals. In these circumstances, the Working Group concludes that the arrests of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Samatov and Mr. Nurgaliyev violated their rights under article 9 of the Covenant and lacked legal basis. The Working Group is particularly mindful of the circumstances of the arrests of Mr. Umbetaliyev and Mr. Nurgaliyev (see para. 18 above), which suggest that both individuals were lured and entrapped by the law enforcement agents in order to execute their arrests. Such actions can hardly be said to form part of proper arrest procedures and thus add weight to the findings of the Working Group that the arrest of these two individuals did not comply with the requirements of article 9 of the Covenant.

58. Moreover, the source has argued that all individuals, following their arrests, were remanded in pretrial detention through a decision taken by a court that was not substantiated. The Working Group notes that, in the Government’s late response, it has merely stated that the pretrial detention was duly imposed in the remits of the law without any explanation of the reasons justifying pretrial detention.

59. The Working Group recalls that it is a well-established norm of international law that pretrial detention is to be the exception and not the rule, and that it should be ordered for as short a time as possible.¹¹ Article 9 (3) of the Covenant provides that it is not to be the general rule that persons awaiting trial be detained, but release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice.¹²

⁹ See, e.g., opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 93/2017, No. 35/2018, No. 79/2018 and No. 49/2019.

¹⁰ See opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

¹¹ See opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 57/2014, para. 26; No. 1/2020, para. 53; and No. 8/2020, para. 54. See also Human Rights Committee, general comment No. 35 (2014), para. 38; and A/HRC/19/57, paras. 48–58.

¹² A/HRC/19/57, para. 54.

60. In order to give effect to this principle, pretrial detention must be based on an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.¹³ The courts must examine whether alternatives to detention, such as bail, would render custodial measures unnecessary.¹⁴ According to the source, this did not take place in the case of any of the individuals. Equally, the Government in its late response has not demonstrated whether and how the court decided that remanding the eight individuals in custody was justified by an individual determination of reasonableness and necessity to detain and why a less restrictive measure, such as bail, was not suitable. In the absence of such an explanation, the Working Group cannot accept that the pretrial detention of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Samatov, Mr. Abdrakhmanov and Mr. Nurgaliyev was properly constituted in accordance with article 9 (3) of the Covenant. In making this finding, the Working Group is particularly mindful of its findings under category II, discussed below.

61. Finally, the source has argued that all eight individuals were convicted on the basis of articles 174 and 256 of the Criminal Code of Kazakhstan, which are overly broad and vague. The Government in its late response disputes these submissions, arguing that the said provisions are sufficiently precise and clear.

62. The Working Group recalls that it is not the first time that it is faced with the application of article 174 of the Criminal Code of Kazakhstan.¹⁵ On that previous occasion, having conducted an in-depth analysis of the provision and taking note of the analysis of this provision by other United Nations bodies, the Working Group concluded that article 174 indeed is overly broad and vague. The Working Group was particularly mindful of the conclusions of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, following her visit to Kazakhstan in 2019, in which she addressed article 174 in detail.¹⁶ The Working Group notes the recent changes introduced in respect of article 174 on 26 June 2020, but regrets that the changes do not address the concerns previously expressed by the Working Group.

63. The Working Group recalls that vaguely and broadly worded provisions, which cannot qualify as *lex certa*, could be used to deprive individuals of their liberty without a specific legal basis, in violation of the due process of law upheld by the principle of legality in article 15 (1) of the Covenant and article 11 (2) of the Universal Declaration of Human Rights. As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law and regulate his or her conduct accordingly.¹⁷ In the present case, the Government has been made aware of the concerns of the Working Group regarding the formulation of article 174. However, in the Government's late response, it provides no explanation of the actions taken to reflect the views previously expressed by the Working Group. The Working Group therefore concludes that the detention of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Samatov, Mr. Abdrakhmanov and Mr. Nurgaliyev is arbitrary as it was based on overly broad and vague provisions of article 174 of the Criminal Code of Kazakhstan, in breach of article 9 of the Covenant.

64. Noting all of the above, the Working Group considers that the detention of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Samatov, Mr. Abdrakhmanov and Mr. Nurgaliyev is arbitrary under category I as it lacks a legal basis.

Category II

65. The source argues that Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Samatov, Mr. Abdrakhmanov and Mr. Nurgaliyev were arrested, tried and

¹³ Human Rights Committee, general comment No. 35, para. 38.

¹⁴ Ibid. See also opinion No. 83/2019, para. 68; and guideline 15 of 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.

¹⁵ See opinion No. 43/2020.

¹⁶ Ibid., para. 68.

¹⁷ See, e.g., opinions No. 41/2017, paras. 98–101; and No. 62/2018, para. 57.

ultimately sentenced for the peaceful exercise of their rights under articles 18 and 19 of the Covenant. In its late response, the Government denies these claims, arguing that all individuals were arrested and tried for actions that amounted to crimes, including acts of terrorism.

66. The Working Group observes that the essence of the allegations against all eight individuals rests with the establishment of a WhatsApp group and the sharing of messages of religious content within the group. None of the individuals have a previous criminal record, they have never met in person, and in fact, aside from the fact that they all live in Kazakhstan, the only unifying factor among them is their Muslim faith. While the Government has argued in its late response that the activities of the organization Da'esh have been outlawed by a court in Kazakhstan, it has also noted that none of the eight individuals were part of that organization. Despite this, the exchange of messages of religious content by these eight individuals on a mobile phone app was determined to amount to terrorist propaganda. The Working Group notes, however, that the Government, in its late response, presented no evidence of any such messages. It merely stated that the messages amounted to terrorist propaganda.

67. The Working Group recalls that the right to freedom of thought, conscience and religion in article 18 (1) of the Covenant encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.¹⁸

68. Equally, the freedom of expression as encapsulated in article 19 of the Covenant protects expression even when it may shock, offend or disturb,¹⁹ or which may insult an individual or group²⁰ or criticize an institution.²¹ As noted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, this right can be exercised through any sort of medium,²² which clearly includes the exchange of messages via a mobile phone platform.

69. The Working Group considers that the Government did not explain the threat posed by the conduct of any of the eight individuals to the legitimate interests that States might invoke under articles 18 (3) and 19 (3) of the Covenant, namely respect for the rights, freedoms or reputations of others, national security, public safety, public order, public health or morals, and how the arrest and detention of the eight individuals was necessary to protect any of those interests. In addition, no evidence has been presented that these messages had the effect of incitement, nor have any of the eight individuals ever been accused of any form of violence or incitement to violence that would justify restriction of their activities as religious hate speech under article 20 of the Covenant.

70. The Working Group therefore concludes that the arrest, trial and subsequent detention of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Samatov, Mr. Abdrakhmanov and Mr. Nurgaliyev resulted from the peaceful exercise of their rights under articles 18 and 19 of the Covenant. Their detention is consequently arbitrary, falling under category II. The Working Group refers the case to (a) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; (b) the Special Rapporteur on freedom of religion or belief; and (c) the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

Category III

71. Noting its findings under category II above, the Working Group wishes to emphasize that no trial of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov,

¹⁸ Human Rights Committee, general comment No. 22 (1993), paras. 1–2.

¹⁹ See, e.g., opinion No. 33/2019.

²⁰ See, e.g., opinions No. 46/2013; and No. 4/2019.

²¹ See, e.g., opinions No. 7/2008 (a government); and No. 35/2012 (royal family).

²² A/HRC/23/40/Add.1, para 71.

Mr. Samatov, Mr. Abdrakhmanov and Mr. Nurgaliyev should have taken place. However, the trial did take place and the source argues that it lacked several fair trial guarantees.

72. The source has argued that the trial court did not take into account exculpatory evidence and disregarded the conclusions of the expert witness presented by the defence. However, the source has not provided any details as to what this exculpatory evidence would be aside from noting the disregarding of the expert witness presented by the defence. In its late response, the Government has denied the claims and presented a lengthy explanation as to the professional expertise of the expert witness in question, arguing that the testimony of the expert was excluded by the court as it went beyond the professional qualifications of the said expert. In its further comments, the source has presented detailed arguments as to why the professional qualifications of the expert witness were relevant to the testimony that the witness presented.

73. The Working Group recalls that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of domestic law by the judiciary.²³ It is outside of the mandate of the Working Group to reassess the sufficiency of the evidence or to deal with errors of law allegedly committed by the domestic court.²⁴ The Working Group therefore shall not make any pronouncement on this claim.

74. However, the source has also submitted that none of the eight individuals were afforded legal assistance from the moment of their arrests and that they were in fact interrogated in the absence of their lawyers (see para. 21 above). The source has further submitted that during the interrogations, several of the individuals were pressured into confessing and entering plea bargains.

75. The Government in its late response denies these allegations, stating that the interrogations took place in the presence of lawyers and that confessions and plea bargains were entirely voluntary. However, the Working Group notes that the Government has failed to provide any details as to when the lawyers of the eight individuals were first allowed to see their clients or indeed to substantiate its claims of confessions having been given freely. In this regard, the Working Group recalls in particular that the burden is on the Government to prove that the statements were given freely,²⁵ but in this case it has not done so.

76. The Working Group therefore concludes that Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev were denied their right to legal assistance as provided for by article 14 (3) (b) of the Covenant. They were also denied their right not to be compelled to testify against themselves or to confess guilt in violation of article 14 (3) (g) of the Covenant.

77. Moreover, the source has argued that several of the individuals told the court that they had been pressured into making statements, but the court did not take any action to investigate those claims. In its late response, the Government argues that the eight men simply “changed their stories” during the court hearing but did not address the allegation that the court had taken no action to investigate the claims of forced statements.

78. The Working Group recalls that the Human Rights Committee, in its general comment No. 32 (2007), has noted that the requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception.²⁶ The Committee has further observed that:

The requirement of impartiality has two aspects. First, judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the

²³ See, e.g., opinion No. 40/2005.

²⁴ See, e.g., opinions No. 15/2017, No. 16/2017, No. 49/2019, No. 58/2019, No. 60/2019 and No. 5/2021.

²⁵ Human Rights Committee, general comment No. 32, para. 41. See also, e.g., opinions No. 45/2018 and No. 86/2020.

²⁶ Human Rights Committee, general comment No. 32, para. 19.

interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial.²⁷

79. In the present case, the trial judge was clearly informed of the allegations of forced statements during the interrogations of several of the individuals, yet took no action to investigate these claims. In these circumstances, the Working Group considers that the court failed to act impartially and thus violated the rights of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev under article 14 (1) of the Covenant. The Working Group refers the case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action. The Working Group also calls upon the Government to adhere to the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles).

80. Noting all of the above, the Working Group determines that the violation of the fair trial rights of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev is of such gravity as to give their detention an arbitrary character, falling under category III.

Category V

81. The Working Group will now examine whether the deprivation of liberty constitutes illegal discrimination under international law, falling within category V.

82. While the Government claims that all eight individuals were arrested, tried and convicted for actions that amounted to crimes and not for their religious or other views, the Working Group has already established that their arrest, detention and imprisonment resulted from their exercise of the rights to freedom of religion or belief and to opinion and expression under articles 18 and 19 of the Covenant. When it is established that the deprivation of liberty resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty constitutes a violation of international law on the grounds of discrimination.

83. In this respect, the Working Group recalls that the deprivation of liberty is arbitrary when it 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. In the present case, the Working Group notes that Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev all belong to the Muslim faith and that they were all part of the same WhatsApp group, which was used to express their faith. It is thus their religion that was at the heart of what the Working Group has determined above to be arbitrary detention under category II.

84. For these reasons, the Working Group considers that the arrest and detention of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev constitute a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, on the ground of discrimination based on their religion, aimed at and resulting in ignoring the equality of human beings, and that it therefore also falls within category V.

Concluding remarks

85. The Working Group is mindful that at least one more individual has been arrested as part of the same case as Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev (see para. 22 above). While the present opinion addresses the specific circumstances of the arrest and detention of the eight individuals named, the Working Group is mindful that there is at least one other individual in a situation similar to that of these eight individuals. The Working Group urges the Government to immediately address the situation of this other individual, noting the findings made in the present opinion.

²⁷ Ibid., para. 21.

Disposition

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

The deprivation of liberty of Azamat Umbetaliyev, Beket Mynbasov, Samat Adilov, Zhuldyzbek Taurbekov, Zhasulan Iskakov, Nazim Abdrakhmanov, Ernar Samatov and Bolatbek Nurgaliyev, being in contravention of articles 2, 3, 7, 9, 10, 11, 18 and 19 of the Universal Declaration of Human Rights and articles 2 (1), 9, 14, 18, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

87. The Working Group requests the Government of Kazakhstan to take the steps necessary to remedy the situation of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev 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.

88. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev immediately and accord them 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 release of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev.

89. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev and to take appropriate measures against those responsible for the violation of their rights.

90. The Working Group urges the Government to bring its laws, in particular article 174 of the Criminal Code, into conformity with the recommendations made in the present opinion and with the commitments made by Kazakhstan under international human rights law.

91. 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 the right to freedom of opinion and expression; (b) the Special Rapporteur on freedom of religion or belief; (c) the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and (d) the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

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

Follow-up procedure

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

(a) Whether Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev;

(c) Whether an investigation has been conducted into the violation of the rights of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr.

Abdrakhmanov, Mr. Samatov and Mr. Nurgaliyev 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 Kazakhstan with its international obligations in line with the present opinion;

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

94. 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.

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

96. 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.²⁸

[Adopted on 8 September 2021]

²⁸ See Human Rights Council resolution 42/22, paras. 3 and 7.