Advance Edited Version

Distr.: General
8 June 2017

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017

Opinion No. 29/2017 concerning Aramais Avakyan (Uzbekistan)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 17 February 2017 the Working Group transmitted to the Government of Uzbekistan a communication concerning Aramais Avakyan. The Government has not replied to the communication in a timely manner. The State is a party to the International Covenant on Civil and Political Rights.

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

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

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

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

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

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mr. Avakyan is a 34-year-old Uzbek of Christian Armenian descent and owner of a fishery in Dzhizakh, Uzbekistan. His wife is a Muslim of Uzbek origin and they have two young children.

5. The source reports that, on 1 September 2015, Gafur Karshibaev, the mayor of the town where Mr. Avakyan lives, threatened to have him imprisoned for his refusal to relinquish his successful fishery business. This harassment was not unprecedented: Mr. Karshibaev had reportedly called Mr. Avakyan at least two or three times previously, cursing at him and demanding that he turn over his fishery. Mr. Avakyan was not the only successful businessman in his area — there was another woman with a similar business in the district — but he was the only businessman of Christian Armenian descent.

Arrest, detention and interrogation

6. On 3 September 2015, one of Mr. Avakyan's neighbours, Furkat Djuraev, reportedly disappeared. The following day, Mr. Avakyan and three acquaintances (Bektemir Umirzokov, an employee; Akmal Mamatmurodov, a friend; and Dilshod Alimov, Mr. Avakyan's driver) were on their way home from the fishery when their car was stopped by officers from the national security service. The officers reportedly wore masks and placed a hood and handcuffs on Mr. Avakyan and his friends. They did not present an arrest warrant. The officers then drove Mr. Avakyan's car to a nearby cemetery, where they burned it.

7. The source reports that, when the men did not return home, their relatives reported them missing; at first the families assumed that they had been attacked by a local gang. On 5 September 2015, relatives of two of the missing individuals received text messages from unknown mobile telephone numbers, stating that the men had left to carry out a "jihad".

8. On 28 September 2015, about 20 officers reportedly came to search Mr. Avakyan's house. They did not tell his wife, who was present, what they were looking for but seized a religious text and four disks. When the officers returned the items at a later date, they reportedly returned 12 disks, including 1 that contained material relating to Islamic religious fundamentalism.

9. The source reports that, 40 days after the arrest of Mr. Avakyan and his colleagues, the authorities informed their relatives that the men had been detained by authorities since 4 September 2015. They did not, however, tell Mr. Avakyan's family on what charge he had been arrested. His relatives believe that he was targeted because the mayor, Mr. Karshibaev, had wanted to seize the fish farm for his own financial gain and, in part, because his ethnicity as an Armenian made him vulnerable. The source notes that human rights organizations monitoring Uzbekistan have confirmed that such detentions are "quite typical" and that successful business people are commonly subjected to politically motivated prosecutions.

10. Subsequently, local human rights defenders ascertained that the masked national security service officers had taken Mr. Avakyan and his colleagues to a detention centre in Tashkent, where they were being held incommunicado. During that time, the police allegedly tortured Mr. Avakyan in order to force him to sign a confession. After two months of continual beatings, Mr. Avakyan reportedly signed two blank pieces of paper. His injuries from the torture were severe: five ribs on his right side and four ribs on his left side were broken. The prison authorities also administered electric shocks, the burn marks from which were visible on his arms during later court hearings. Although all of the eventual defendants were tortured, Mr. Avakyan reportedly suffered the worst abuse. Later, the defendants were taken to the pretrial detention centre in Dzhizakh. At the time of the submission by the source, all defendants were detained in Prison Colony #64/61 in Karshi, Uzbekistan.

11. The source reports that Mr. Avakyan's lawyer made several attempts to meet with him, but was denied visitation until 6 November 2015, more than two months after he had been arrested. During that meeting, the lawyer noticed visible signs of torture on Mr.

Avakyan's body. After meeting with Mr. Avakyan's family to tell them about the signs of torture, the first lawyer reportedly terminated his representation of Mr. Avakyan, claiming that he was afraid to continue because of the involvement of the national security service. The first lawyer's fears proved to be well-founded, as the second lawyer engaged for Mr. Avakyan was reportedly arrested and charged with bribery and extortion in March 2016, just a few days before the final hearing for Mr. Avakyan. According to the source, Mr. Avakyan's third lawyer, who used to work in law enforcement himself, has not reported any intimidation by the Government.

12. The source reports that, although Mr. Avakyan was able to see his various attorneys on several occasions after 6 November 2015, he was never able to speak with them confidentially; a national security service officer always sat in on their meetings.

Prosecution and trial proceedings

13. Mr. Avakyan's family first saw him at a court hearing on 6 January 2016; this was the first time he was brought publicly before a judge. According to the source, there may have been some private initial hearings that occurred prior to 6 January 2016 in the basement of the national security service building, although as any such hearings were not public it is unclear what the nature of the hearings were.

14. The source reports that, at the hearing on 6 January, Mr. Avakyan clearly displayed signs of torture; he was carried into the court on a stretcher because of his broken bones, his hands were bruised and he had visibly suffered significant weight loss. Although a representative from the Embassy of the United States of America and one human rights activist were permitted to attend, the hearing was not fully open to the public.

15. According to the source, Mr. Avakyan was charged with: (a) plotting anti-constitutional activities and sabotage under article 159 of the Uzbek Criminal Code; (b) the production or dissemination of threatening materials under article 161 of the Uzbek Criminal Code; (c) participating in a religious extremist organization under article 244 of the Uzbek Criminal Code; and (d) theft under article 169 of the Uzbek Criminal Code. Despite Mr. Avakyan's Christian faith, Uzbek investigators reportedly accused him of setting up and leading a group that spread radical Islamic ideology in an attempt to overthrow the constitutional order of Uzbekistan, and further accused his detained colleagues of planning to join Islamic State in Iraq and the Levant or some other radical Islamist group operating in the Middle East.

16. Mr. Avakyan's entire trial, including his appeal, lasted until 19 March 2016 and comprised about nine hearings. He was reportedly tried alongside his four acquaintances, notably Mr. Djuraev, Mr. Umirzokov, Mr. Mamatmurodov and Mr. Alimov. The source reports that, prior to the trial, the Government rounded up 16 of the defendants' friends and family members and kept them in police custody for about a month. Those detainees, including Mr. Avakyan's younger brother, were allegedly tortured in an attempt to elicit testimony against the defendants. Mr. Avakyan's brother was eventually released after he threatened to commit suicide. Upon release, he reportedly had difficulty urinating because his kidneys had been so badly damaged from the torture he had sustained in custody.

17. The source reports that, at trial, the prosecutor presented three non-defendant witnesses who had been detained for a month and tortured to provide testimony against Mr. Avakyan. Of those three, only one — Mr. Avakyan's neighbour — actually gave testimony to the court. The testimony of the neighbour reportedly indicated that, when Mr. Avakyan was at his barber shop, he had pointed at the national security service building and indicated that they should blow it up. According to the source, that testimony is contradicted by the fact that the building is not visible from the barber shop. During his cross-examination, the neighbour confirmed that he had been tortured in order to obtain the testimony and that what he had said was untrue. The source reports that, shortly after appearing at trial, the neighbour was released; he now suffers from liver sclerosis, allegedly as a result of the torture he endured in custody. The two other prosecution witnesses refused to testify in court, claiming that they had nothing to say against Mr. Avakyan.

18. In addition, the source reports that the prosecution introduced testimony from certain defendants against each other. One of the co-defendants testified against Mr. Avakyan, but reportedly made it clear that his testimony had been coerced through torture.

19. According to the source, Mr. Avakyan was not permitted to present any evidence or witnesses in his defence. He was allowed to speak for a few minutes, during which he confirmed that his confession was procured through torture and that the charges — that he was in league with Islamic extremists — were ludicrous in the light of the fact that he was a Christian. The court reportedly ignored both of those arguments.

20. On 19 February 2016, Mr. Avakyan was reportedly convicted and sentenced to seven years in prison before the Dzhizakh Criminal Court. Mr. Avakyan's wife was not permitted into the courtroom to hear the verdict. The other defendants, who had all pleaded guilty and asked for forgiveness, were sentenced to prison terms between five and a half years and 12 years.

21. Mr. Avakyan appealed against his conviction on 4 March 2016. On 19 March 2016, the court of appeals upheld his conviction. On 5 May 2016, Mr. Avakyan filed an appeal to the Supreme Court. This appeal, however, was apparently ignored or misplaced by officials of the Dzhizakh Criminal Court. The source reports that Mr. Avakyan plans to resubmit the appeal soon.

22. On 13 April 2016, the State-run television station Tashkent aired a documentary about Mr. Avakyan and his co-defendants, depicting them as terrorists.

Current status

23. According to the source, Mr. Avakyan's health has deteriorated rapidly while in prison. He has lost dangerous amounts of weight and has been hospitalized twice since his conviction. After his conviction, he was reportedly forced to do hard manual labour, carrying bricks despite his broken bones and other injuries caused by torture. By 21 May 2016, he was unable to walk and, after significant pressure from his family, the authorities reportedly transferred him to a hospital for treatment for spinal injuries. The prison authorities shortly thereafter declared him healed and brought him back to prison (and forced labour), but by August, Mr. Avakyan was again unable to walk. He was hospitalized for the second time on 21 August 2016. On 7 September 2016, Mr. Avakyan's mother was reportedly refused visitation when she went to see her son at the prison hospital. However, Mr. Avakyan's doctor told her that he had sufficiently recovered and would be sent back to Prison Colony #64/61 in the city of Karshi the next day. Most recently, Mr. Avakyan has reported that he is suffering from a hernia and has requested his relatives to bring painkillers to him whenever they visit the prison.

24. The source reports that Mr. Avakyan is given salty water to drink in prison and, as a result, has constant diarrhoea. Despite his health problems, he has been forced to work in a factory producing bricks and, despite frigid temperatures, only has access to cold water to wash his feet at the end of the day.

25. The source reports that Mr. Avakyan's case has drawn considerable attention and support. International and local non-governmental organizations, as well as other relevant bodies, have advocated for and commented on his case.

Category III

26. The source submits that the arrest and detention of Mr. Avakyan is arbitrary under category III as established by the Working Group for the reasons below.

Violation of the right not to be subjected to arbitrary arrest

27. The source submits that the arrest of Mr. Avakyan was not performed in compliance with Uzbek law. The authorities failed to obtain an arrest warrant from the prosecutor's office before arresting him. Furthermore, the authorities did not inform Mr. Avakyan's relatives of his arrest until 40 days after he had been detained, and did not inform him or his family on what charges he had been arrested. According to the source, the arrest also did not comply with Uzbek law in that he was not provided with the assistance of counsel from

the moment of apprehension. Mr. Avakyan's lawyer reportedly made several attempts to meet with him but was denied visitation until 6 November 2015, more than two months after his arrest. Finally, the authorities failed to question Mr. Avakyan within 24 hours of his arrest and only presented formal charges 40 days after his detention, well in excess of the 72 hours allowed by law.

28. The source thus submits that such unlawful actions violated Mr. Avakyan's right to freedom from arbitrary arrest under article 9 (1) of the Covenant, article 9 of the Universal Declaration of Human Rights and principles 2 and 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Violation of the right to release pending trial and habeas corpus

29. The source submits that the Government of Uzbekistan violated Mr. Avakyan's rights under articles 9 (3) and 9 (4) of the Covenant by holding him in incommunicado detention for 40 days and refusing to let him challenge his detention promptly before a judicial officer. In addition, such violation of articles 9 (3) and 9 (4) enabled other violations, such as torture, to occur while Mr. Avakyan was being held without access to his attorney or family.

30. Moreover, although Mr. Avakyan's trial did not start until 6 January 2016, four months after his arrest, he was not released pending trial. According to the source, no individualized reasons for such refusal were given. Thus, in contradiction to the requirement that pretrial detention be the exception rather than the rule and that such pretrial detention be based on individualized determination that it is both reasonable and necessary to deny release given a particular defendant's circumstances, the Government impermissibly defaulted to continuing the detention of Mr. Avakyan.

31. According to the source, by holding Mr. Avakyan in incommunicado detention, by refusing to bring him promptly before a judge to challenge his detention and by denying him release pending trial without explanation, the Government of Uzbekistan has thus violated articles 9 (3) and 9 (4) of the Covenant and principles 11, 15, 18, 19, 32, 37, 38 and 39 of the Body of Principles.

Violation of the right to freedom from torture and cruel, inhuman or degrading treatment or punishment

32. The source submits that the Government's treatment of Mr. Avakyan during his detention violates international and domestic law on the prohibition of torture and cruel, inhuman or degrading treatment. While being held at a detention centre in Tashkent, he was allegedly tortured and forced to sign a confession. He suffered continual beatings over a two-month period, which resulted in five broken ribs on his right side and four broken ribs on his left side, as well as bruises on his hands. He was reportedly also made to undergo electric shocks.

33. In addition to the torture inflicted during interrogations, Mr. Avakyan was reportedly kept in poor prison conditions. He is given salty water to drink in prison and, as a result, he has constant diarrhoea. Despite his broken bones and other injuries caused by torture, he has been forced to do hard manual labour carrying bricks at a factory and, despite frigid temperatures, only has access to cold water to wash his feet with at the end of the day. Eventually, Mr. Avakyan was unable to walk and had to be hospitalized for spinal injuries on two separate occasions; after the first such hospitalization, he was forced to return to performing manual labour. Although Mr. Avakyan is currently not being forced to perform manual labour, he reportedly remains at risk of being returned to work at the brick factory at any time.

34. The source thus submits that, in its attempt to obtain forced confessions and in keeping Mr. Avakyan in poor prison conditions, the Government of Uzbekistan has violated his right to be free from torture and cruel, inhuman and degrading treatment under articles 7, 10 (1) and 14 (3) (g) of the Covenant, article 5 of the Universal Declaration of Human Rights, articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principles 6 and 21 (2) of the Body of Principles and article 26 of the Uzbek Constitution.

Violation of the rights to equality before the court and to a fair trial

35. According to the source, the trial was not open to the general public. Any hearings that occurred prior to 6 January 2016 were completely closed to the public and the hearings that were held on 6 January or later were only open to a select group. Although this select group did include individuals unconnected with the Government of Uzbekistan, such as a diplomat from the United States Embassy and an Uzbek human rights activist, the requirement of a "public" trial demands that, in the absence of a compelling reason to the contrary, the trial be fully open to media and other interested persons.

36. The source reports that all Uzbek judges are appointed by the President for renewable five-year terms. Accordingly, the Uzbek courts do not, in practice, operate free from political interference. Furthermore, the vast majority of cases brought by prosecutors allegedly result in convictions, with verdicts often being given solely on the basis of confessions and witness testimony obtained through abuse or coercion. In fact, in the present case, all of the witness testimonies presented by the prosecutor at Mr. Avakyan's trial were allegedly coerced by torture, including Mr. Avakyan's own confession.

37. As noted above, Mr. Avakyan was tried along with four of his acquaintances. Prior to the trial, the Government allegedly rounded up 16 of the defendants' friends and family members, which included Mr. Avakyan's younger brother, and kept them in police custody for approximately one month, during which time they were tortured in an attempt to elicit testimony against the defendants. At trial, the prosecution introduced testimony from one of the co-defendants, who testified against Mr. Avakyan but later confirmed that his testimony had been coerced through torture.

38. In addition, the prosecutor presented three non-defendant witnesses who had allegedly been detained for a month and tortured to provide testimony against Mr. Avakyan; of the three, only one, Mr. Avakyan's neighbour, actually gave testimony to the court. During his cross-examination, the neighbour confirmed that he had been tortured in order to obtain the testimony and that what he had said was untrue. The two other prosecution witnesses refused to testify in court, claiming that they had nothing to say against Mr. Avakyan.

39. According to the source, Mr. Avakyan was not permitted to present any evidence or witnesses in his defence. He was allowed to speak for only a few minutes, during which he confirmed that his confession had been procured through torture and that the charges — that he was in league with Islamic extremists — were ludicrous in the light of the fact that he was a Christian. The court reportedly disregarded both of the arguments.

40. The source submits that the semi-private nature of the hearings violated Mr. Avakyan's right to a "fair and public hearing" in contravention of article 14 (1) of the Covenant and article 10 of the Universal Declaration of Human Rights. The court's refusal to allow Mr. Avakyan to present any evidence or witnesses in his defence, and its refusal to investigate the claims of torture, while at the same time allowing the use of evidence by the prosecution that had been procured by torture, demonstrates a clear bias in favour of the prosecution in violation of the requirement that the tribunal be independent and impartial, as guaranteed by article 14 (1) of the Covenant and article 10 of the Universal Declaration of Human Rights.

Violation of the right to a presumption of innocence

41. According to the source, the Government violated Mr. Avakyan's right to the presumption of innocence by planting evidence in order to support its allegation that he was involved in setting up and leading a group that spread radical Islamic ideology, despite the fact that, inter alia, he is a Christian of Armenian descent. On 28 September 2015, about 20 officers reportedly came to search Mr. Avakyan's house and seized a religious text and four disks. When the officers returned the items at a later date, they reportedly returned 12 disks, including one that contained material relating to Islamic religious fundamentalism.

42. According to the source, it is unclear to what extent the court may have relied on the incriminating disks as the basis for Mr. Avakyan's conviction. However, in attempting to frame Mr. Avakyan in this way, the Government was obviously assuming his guilt far

before his conviction, in violation of his right to the presumption of innocence under article 14 (2) of the Covenant, article 11 (1) of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles.

Violation of the right to communicate with counsel

43. In the present case, Mr. Avakyan was reportedly denied access to his lawyer for more than two months after his arrest, during which time he was tortured to confess to a crime that he did not commit. In addition, he was never able to speak with his attorney confidentially as a national security service officer was always present during the meetings. Furthermore, Mr. Avakyan reportedly found it difficult to find an attorney who could represent him. The first attorney hired reportedly resigned owing to fear of the consequences that might ensue from taking on such a political case. In the case of the second attorney hired, such consequences in fact occurred and he was arrested and detained just prior to Mr. Avakyan's final hearing.

44. In the light of this refusal to allow communication between attorney and detained client during the initial pre-hearing detention, in barring Mr. Avakyan from communicating with his attorney in private and considering the climate of fear surrounding his representation, the Government violated Mr. Avakyan's right to communicate with counsel, as guaranteed by article 14 (3) (b) of the Covenant and principles 18 (1) and (3) of the Body of Principles.

Category V

45. The source notes that article 2 (1) of the Covenant requires States parties to protect the rights guaranteed in the Covenant without distinction of any kind. Article 26 of the Covenant specifically guarantees that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law".

46. According to the source, there is some evidence that Mr. Avakyan was targeted for detention and particularly severe torture, in part because of his Armenian ethnicity and Christian religion. As noted above, the mayor of the town in which Mr. Avakyan lived had threatened to have him imprisoned for his refusal to relinquish his successful fishery business. However, although Mr. Avakyan was not the only successful businessperson in his area, he was the only one of Christian Armenian descent. According to the source, Christians in Uzbekistan have been increasingly punished for their faith. Considering that there were other businesspeople whom the mayor could have harassed and imprisoned, it seems likely that Mr. Avakyan was selected for detention by the mayor because of his more vulnerable position in society as an Armenian Christian.

47. Moreover, Mr. Avakyan was allegedly more grievously tortured than the other five men who were arrested at the same time, a fact that the source attributes to his Armenian Christian ethnicity and religion. In this context, the source notes that Mr. Avakyan's brother, also an Armenian Christian, was reportedly also aggressively tortured and released only after he threatened to commit suicide.

48. The source submits that, although no public official ever made a statement about targeting Mr. Avakyan because he was an Armenian Christian, it is clear that he was singled out for detention and particularly severe treatment while in detention. Considering that Mr. Avakyan is a member of a minority religion and ethnicity within Uzbekistan, and looking at the totality of these circumstances, it is likely that Mr. Avakyan was targeted in part because of his Armenian ethnicity and Christian religion, in violation of his right to non-discrimination before the law.

49. The source thus submits that the arrest and detention of Mr. Avakyan is arbitrary under category V as established by the Working Group.

Response from the Government

50. On 17 February 2017, the Working Group transmitted the allegations from the source to the Government under its communications procedure. The Working Group requested the Government to provide, by 19 April 2017, detailed information about the

current situation of Mr. Avakyan and any comments on the source's allegations. The Working Group regrets that it did not receive a response from the Government, and the Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

51. The Working Group notes that it received a response from the Government on 4 May 2017. However, the Working Group cannot accept the reply as if it was presented within the time limit.

Discussion

52. 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.

53. The Working Group has in its jurisprudence established the ways in which it deals 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 (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

54. The source has made a number of allegations about the arrest and subsequent detention of Mr. Avakyan, arguing that it falls under categories III and V of the categories applicable to the consideration of cases by the Working Group. The Government of Uzbekistan has not challenged these submissions. The Working Group shall consider these in turn.

55. The source has submitted and the Government of Uzbekistan has not challenged that Mr. Avakyan was apprehended on 4 September 2015 by officers from the national security service — who neither presented him with an arrest warrant nor informed him or anyone else orally of the reasons for his arrest — and was subsequently held in incommunicado detention and only saw his lawyer for the first time on 6 November 2015.

56. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only informed promptly of the reasons for arrest but also informed promptly of any charges against them. The right to be informed promptly of charges concerns notice of criminal charges and, as the Human Rights Committee has noted in paragraph 29 of its general comment No. 35 (2014) on liberty and security of person, this right "applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment". In the present case, Mr. Avakyan was held in detention from 4 September 2015 for a period of over two months without any formal charges being made against him. This means that the authorities failed to invoke formally any legal basis justifying his detention. Consequently, the Working Group finds the detention of Mr. Avakyan to be arbitrary, falling within category I.

57. The Working Group also wishes to express its concern at the fact that Mr. Avakyan was held in incommunicado detention for a month. The Working Group in its practice has consistently argued that holding persons incommunicado breaches the right to challenge the lawfulness of detention before a judge.[1] Articles 10 and 11 of the Universal Declaration of Human Rights confirm the impermissibility of incommunicado detention, as does article 9 of the Covenant. Furthermore, the Committee against Torture has made it clear that incommunicado detention creates conditions that may lead to violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see, for example, A/54/44, para. 182 (a)). The Working Group notes that such violations have in fact occurred in the present case. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has consistently argued that use of incommunicado detention is unlawful (see, for example, A/54/426, para 42; and A/HRC/13/39/Add.5, para. 156); while the Human Rights Committee, in paragraph 35 of

[1] See, for example, opinions No. 56/2016 and No. 53/2016.

its general comment No. 35, has argued that "incommunicado detention that prevents prompt presentation before a judge inherently violates paragraph 3" of article 9.

58. Furthermore, the Working Group wishes to recall that according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights 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 that is essential to preserve legality in a democratic society. This right, which constitutes a peremptory norm of international law, applies to all forms of deprivation of liberty, 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 [and] detention under counter-terrorism measures". 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" (See A/HRC/30/37, paras. 2-3, 11 and 47 (a)-(b)).

59. In the present case, the facts presented by the source and not challenged by the Government of Uzbekistan reveal prima facie violations of the following rights of Mr. Avakyan under the Covenant: the right to be informed at the time of the arrest of the charges being brought (art. 9 (2)); the right to have one's case brought promptly before a judge (arts. 9 (3) and 9 (4)); the right to be treated with humanity and respect during detention (art. 10 (1)); and the right of persons not convicted to be treated in accordance with their status as such (art. 10 (2) (a)).

60. Moreover, Mr. Avakyan was denied legal assistance until 6 November 2015 and, even then, he had to change his legal representation three times as his lawyers were reportedly subject to threats and intimidation; one of the three lawyers was in fact arrested and charged with bribery and extortion in March 2016. Denial of legal assistance is a violation of article 14 (3) (b) of the Covenant and principle 17 (1) of the Body of Principles, and principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

61. The Working Group is also concerned at the various forms of retaliatory measures undertaken vis-à-vis the lawyers of Mr. Avakyan. It underlines that it is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide remedies whenever a violation still occurs. The Working Group especially recalls that the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of their Liberty to Bring Proceedings Before a Court state that "legal counsel shall be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment" (see A/HRC/30/37, annex, para. 15).

62. The Working Group further finds that the failure to allow Mr. Avakyan to notify his family of his whereabouts and the failure by the authorities to inform his family about his whereabouts for 40 days is a violation of principle 19 of the Body of Principles.

63. Although the Working Group's mandate does not cover conditions of detention or the treatment of prisoners, it must consider to what extent detention conditions can negatively affect the ability of detainees to prepare their defence and their chances of a fair trial (see E/CN.4/2004/3/Add.3, para. 33). In the present case, the Working Group expresses its grave concern at the allegations of torture and ill-treatment of Mr. Avakyan. The source has alleged and the Government of Uzbekistan has not challenged that Mr. Avakyan was beaten severely, resulting in nine broken ribs. His state of health was so poor that, in January 2016, he had to be brought out on a stretcher for a court hearing, which reportedly went ahead without any questions about the obviously extremely serious injuries that Mr. Avakyan displayed.

64. The Working Group is equally concerned about the extraction of confessions in the present case from Mr. Avakyan and all the witnesses. 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, to which Uzbekistan is party, and principle 6 of the Body of Principles and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The subsequent use of such forced confessions in the court proceedings also violated article 14 of the Covenant.

65. The Working Group is particularly concerned at the apparent failure of the judge to intervene in this instance and considers this to be a breach of article 14 (1) of the Covenant, on the right to be tried by a fair and impartial tribunal. The Working Group shall refer the present case to the Special Rapporteur on torture and the Special Rapporteur on the independence of judges and lawyers for their further consideration.

66. Moreover, Mr. Avakyan was denied the possibility to bring any witnesses or evidence in his defence during the trial. As the Human Rights Committee states in paragraph 39 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, there is a strict obligation to respect the right to have witnesses admitted that are relevant for the defence and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. In the present case, that right was denied to Mr. Avakyan and such a blanket refusal to allow any witnesses on behalf of the defence bears the hallmarks of serious denial of equality of arms in the proceedings and is in fact a violation of article 14 (3) (e) of the Covenant.

67. Furthermore, although two impartial observers were allowed at the trial of Mr. Avakyan, he was nevertheless effectively tried behind closed doors. As the Human Rights Committee states in paragraph 29 of its general comment No. 32:

> Article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons.

68. The Working Group notes that the case of Mr. Avakyan clearly did not fall into any of the prescribed exceptions to the general obligation of public trials under article 14 (1) of the Covenant, and the Government of Uzbekistan had not invoked any of those exceptions to justify the closed trial. The Working Group thus finds a violation of article 14 (1) of the Covenant.

69. The Working Group consequently finds that the 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 Uzbekistan, is of such gravity as to give the deprivation of liberty of Mr. Avakyan an arbitrary character under category III.

70. The source has also submitted, and the Government of Uzbekistan has not challenged, that the detention of Mr. Avakyan was arbitrary under category V. The source has argued that Mr. Avakyan was targeted for detention and particularly severe torture in part because of his Armenian ethnicity and Christian religion; that the mayor of the town in which Mr. Avakyan lived had threatened to have him imprisoned for his refusal to relinquish his successful fishery business a number of times; and that, although Mr. Avakyan was not the only successful businessperson in his area, he was the only one of Christian Armenian descent. According to the source, Christians in Uzbekistan have been increasingly punished for their faith.

71. The Working Group notes the concerns expressed over the treatment of Christians in Uzbekistan, in particular in relation to arbitrary arrests, that were raised by the Human Rights Committee when it last considered Uzbekistan under its regular reporting procedure in 2015 (see CCPR/C/UZB/CO/4, para. 22). Indeed, there appears to be a pattern of which the present case constitutes one example. On that basis, the Working Group concludes that the detention of Mr. Avakyan is arbitrary and falls under category V.

Disposition

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

> The deprivation of liberty of Mr. Avakyan, being in contravention of articles 2, 3, 5, 7, 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 7, 9 (2), 9 (3), 9 (4), 10 (1), 10 (2) (a), 14 (1), 14 (3) (b), 14 (3) (e) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

73. The Working Group requests the Government of Uzbekistan to take the steps necessary to remedy the situation of Mr. Avakyan 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.

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

75. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on torture and the Special Rapporteur on the independence of judges and lawyers.

Follow-up procedure

76. 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. Avakyan has been released and, if so, on what date;

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

(c) Whether an investigation has been conducted into the violation of Mr. Avakyan'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 Uzbekistan with its international obligations in line with the present opinion;

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

77. 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.

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

79. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.[2]

[*Adopted on 26 April 2017*]

[2] See Human Rights Council resolution 33/30, paras. 3 and 7.