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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fourth session, 29 August–2 September 2022

Opinion No. 39/2022 concerning Abdulmajid Rizoev (Tajikistan)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,¹ on 11 February 2022 the Working Group transmitted to the Government of Tajikistan a communication concerning Abdulmajid Rizoev. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

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

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

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

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

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

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

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Abdulmajid Rizoiev is a citizen of Tajikistan, born in 1987. Mr. Rizoiev is the holder of passport No. [withheld] issued by Tajikistan. The source notes that Mr. Rizoiev is a human rights defender and lawyer.

5. According to the source, Mr. Rizoiev previously worked as a human rights lawyer protecting the rights of citizens with regard to adequate housing. He is a former member of the young lawyers association, Amparo, which was liquidated in 2012 due to its activism on the protection of conscripts' rights. He worked on the protection of the rights of conscripts and military personnel by providing legal consultation and conducting advocacy campaigns. From 2013 to June 2016, he worked as a lawyer for the Independent Bar Association of the city of Dushanbe.

6. The source reports that since January 2020, Mr. Rizoiev has been the General Director of Durakhshon Gurukh LLC, located in Dushanbe in the Sino District. Prior to his arrest, he worked as a legal representative of Dushanbe residents who were being forcibly evicted from their homes so that they could be demolished to make way for the construction of new buildings. Many residents were in their apartments when the construction company, Pulodi Plaza LLC, which is reportedly affiliated with the Tajikistan authorities, began demolition. The source notes that the day before Mr. Rizoiev was arrested, the construction company filed a complaint with law enforcement against him.

a. Context

7. The source reports that in the past 10 years, the Government has gradually increased its clampdown on political opposition and dissidence in Tajikistan. This has allegedly been achieved by limiting civic space; dismantling freedom of expression; and using threats, intimidation and violence against individuals or groups who criticize the Government's policies and call for the protection of human rights, justice and the rule of law in Tajikistan. The source adds that the Government's policies, threats and harassment have led to complete political pluralism and a pandemic of self-censorship among individuals and the media, with many journalists and civil society actors being forced to leave the country. According to the source, the Government has also introduced a series of vague pieces of legislation designed to exert further control over dissidents' activities, including online activities, under the guise of tackling extremism.

8. The source further alleges that as dissenting groups and individuals are often arbitrarily detained and subjected to torture, inhumane treatment and imprisonment, there is an intensified need for independent human rights lawyers to provide legal representation to these people. However, the Government has reportedly taken steps to reduce the number of independent human rights lawyers in the country and used threats and intimidation to suppress those who are practising law and taking on these types of cases. The source notes that in addition to introducing amendments to the Law on Lawyers in 2015 and the introduction of new criteria that new and practising lawyers had to pass in order to work,² the Government has allegedly used harassment, threats and arbitrary detention to dissuade independent lawyers from taking on sensitive cases.

9. The source reports that in the past two decades, the Government has implemented its urban renewal plan in Dushanbe, demolishing old buildings and paving the way for investors to build new, modern apartment and business structures. The source notes that this has come at the expense of hundreds of people who have been forced out of their homes with little advance warning and little to no compensation.³ Those who are forced out of their homes are reportedly unable to seek legal redress as the appeals and hearings system is insufficient and

² The source notes that due to these reforms, the number of registered lawyers in the country dropped by 60 per cent between 2015 and 2017, raising publicized concerns from the Human Rights Committee in 2019.

³ In this respect, the source refers to article 1 of the Housing Code in Tajikistan, whereby each individual has the right to a dwelling, and this right will be protected by the State.

lacking in any form of transparency. According to the source, the case of Mr. Rizoev is another example of the State and affiliated private corporations coming together to systematically deprive citizens of their housing and civic rights while silencing human rights defenders and lawyers who work on cases to seek justice for those affected.

b. Arrest, detention and trial

10. On 16 November 2020, at around 5 p.m., Mr. Rizoev was reportedly approached by three people who introduced themselves as the developers of Pulodi Plaza LLC and offered Mr. Rizoev \$25,000 to withdraw his complaints and stop complaining about Pulodi Plaza to the State authorities. When Mr. Rizoev refused to accept the money, the representatives of Pulodi Plaza reportedly threatened that he would be “closed”, a term which according to the source is used to insinuate that they had the ability to bribe law enforcement.⁴ The source adds that this threat was related to Mr. Rizoev’s legal representation of residents with regard to their right to adequate compensation and protection of their rights during and after the demolition of their homes by the developers (see para. 6 above).

11. The source reports that on 18 November 2020, at 10 a.m., Mr. Rizoev received a phone call from an unknown mobile number. When he answered the call, the caller did not introduce himself but said that he needed a lawyer and asked to meet. Although Mr. Rizoev refused to meet, the caller continued to call him, requesting a meeting. The source notes that Mr. Rizoev suspected that the call might have been related to the threat he received from representatives of Pulodi Plaza two days earlier. When Mr. Rizoev finally decided to answer one of the calls, he told the individual that he would call back as soon as possible to make an appointment and specify a meeting place. Shortly after the call, at around 12 p.m., Mr. Rizoev and his acquaintances were on Chekhov Street in Dushanbe and went to a canteen to have lunch.

12. Upon arriving at the canteen, two investigators of the General Prosecutor’s Office of Tajikistan and six members of the operational department of the General Prosecutor’s Office approached Mr. Rizoev. He was reportedly told by one of the investigators that he was being detained on suspicion of committing a crime under article 307.1 (2) of the Criminal Code of Tajikistan, which provides for criminal liability for public calls to carry out extremist activities using the media or the Internet. The investigator did not explain to Mr. Rizoev his rights as a suspect, and he was not provided with an arrest warrant.

13. The source reports that at around 12.20 p.m., Mr. Rizoev was taken to his office at Durakhshon Gurukh. People were waiting for them there, and together with Mr. Rizoev, they went up to his office. The representatives of the General Prosecutor’s Office searched Mr. Rizoev’s office. As a result of the search, law enforcement officials took documents pertaining to around 50 legal cases that he was working on. They also took mobile phones and a laptop that belonged to him.

14. The source notes that at around 1 p.m. on the same day, Mr. Rizoev was taken to the General Prosecutor’s Office. At 4 p.m., the investigator called Mr. Rizoev’s lawyer and informed him about the arrest of his client and Mr. Rizoev’s request for him to protect his interests and provide legal representation.

15. One of the investigators reportedly drew up an arrest protocol after the lawyer’s arrival, which was between 5 and 6 p.m., roughly five to six hours after the arrest. The source notes, however, that the protocol indicates that it was drawn up at 2.30 p.m. The interrogation of Mr. Rizoev continued from around 5.30 or 6 p.m. to 8 p.m., at which point he was taken to the emergency room at Karabolo Hospital in Dushanbe. At around 9 p.m., after the medical examination, he was placed in the temporary detention centre of the Internal Affairs Directorate of Dushanbe.

16. On 20 November 2020, the General Prosecutor’s Office reportedly submitted a petition to the Sino District Court of Dushanbe to decide on detention as a preventive measure. On the same day, the Sino District Court considered a motion to apply a detention

⁴ In this respect, the source alleges that private companies working on the construction of new houses and commercial buildings have been using bribes to force law enforcement bodies to silence lawyers, human rights organizations and residents who speak out against the forced eviction of residents to make way for these new projects.

measure against Mr. Rizoev. The source notes that Mr. Rizoev, representatives of the General Prosecutor's Office, an investigator and Mr. Rizoev's lawyer took part in the hearing. The investigator informed the court that on 18 November 2020, a criminal case had been initiated against Mr. Rizoev in accordance with article 307.1 (2) of the Criminal Code. The investigator stated that a reason for the accusation was the conclusion No. [withheld] of 17 November 2020, prepared by the expert on the assessment of slogans and comments of the account "Abdulmajid Rizoev" on Facebook. The written expert's conclusion stated that there was a hidden mass call to carry out extremist activities, which leads to a weakening of the constitutional order of Tajikistan.

17. According to the source, the representative from the General Prosecutor's Office and the investigator stated that the crime committed by Mr. Rizoev was a serious crime, and there were reasonable suspicions that he would obstruct the preliminary investigation, hide from the investigating authority and the court, or commit a new crime. Therefore, they argued that other preventive measures were not appropriate. Mr. Rizoev's lawyer, on the other hand, asked the court to refuse to satisfy the motion for the application of detention against his client. The lawyer indicated to the court that Mr. Rizoev had a permanent place of residence, and he would appear when summoned. He also mentioned that Mr. Rizoev had in his care three young children. Mr. Rizoev, in his speech, also asked the court to refuse to satisfy the motion for the application of arrest.

18. The source reports that on the basis of the materials provided, the court decided that the arrest of Mr. Rizoev was justified and lawful. The court indicated that the ruling on the opening of a criminal case clearly showed that he had committed a crime. The materials provided by the General Prosecutor's Office provided reason to believe that the suspect would hide from the investigating authority and the court, obstruct the investigation, fail to appear before the investigating authority and the court without good reason and commit other illegal actions. The source notes that the decision of the Sino District Court of 20 November 2020 on the application of detention against Mr. Rizoev was not appealed by his lawyer, and Mr. Rizoev does not know why. The source adds that while in the temporary detention centre of the Internal Affairs Directorate of Dushanbe, Mr. Rizoev did not have the opportunity to appeal against the ruling of the Sino District Court about his detention. He did not receive a copy of the court's decision, and he did not have a pen and paper in the detention centre to file a complaint. He also did not have the opportunity to write and send complaints.

19. The source reports that on 25 November 2020, an indictment was filed against Mr. Rizoev stating that his posts on Facebook were found to be extremist based on experts' assessments, and that the case therefore had to be referred to a court. On 26 November 2020, Mr. Rizoev was reportedly transferred from the prison cell of the Internal Affairs Directorate to an investigative isolation ward of the Main Directorate for the Execution of Sentences.

20. On 14 January 2021, the General Prosecutor's Office reportedly transferred the case to the Shohmansur District Court of Dushanbe, where the trial started on 5 February 2021. On 25 February 2021, Mr. Rizoev's lawyer brought a petition to change the detention to a house arrest. On 11 March 2021, the court refused to release Mr. Rizoev stating that there was no reason to do so. On the same day, the court requested to conduct a complex expert review of the Facebook posts. The result of the assessment, which indicated that Mr. Rizoev's Facebook posts were extremist, was referred to the court on 17 May 2021.

21. On 14 June 2021, Mr. Rizoev was reportedly sentenced to five years and six months of imprisonment after having been found guilty of deliberately violating article 3 of the Law of Tajikistan on the fight against extremism, which concerns the publication and distribution of extremist materials on the Internet. In this case, the content in question was a series of posts written by Mr. Rizoev on his Facebook account. Despite Mr. Rizoev pleading not guilty to the offence, maintaining that his posts were purely expressions of opinion containing no extremist motives, the court ruled that this defence was a "baseless fabrication". The court held that his posts were a deliberate attempt to create distrust in the Government and that they were overt calls for backlash against government policies, therefore amounting to extremist activities.

22. According to the source, the Facebook posts that were used as evidence during the trial were varied, including poetry, posts about recent protests in the country and the

importance of voting in elections, and recommendations with regard to developing the country's economy. Of particular concern to the prosecution was a post by Mr. Rizoiev producing the results of a poll he had created, in which only 25 per cent of respondents said that they had voted in the 1 March 2020 election. The prosecution argued that this was designed to encourage people to question the legitimacy of the election and amounted to a "hostile declaration of hatred against the State and Government, provocation and incitement of conflict and resistance in the society, which threatens the security, peace and stability, and the constitutional order" of Tajikistan.

23. The source reports that throughout the trial, the prosecution called upon several witnesses to give their opinion on whether they believed that Mr. Rizoiev's posts contained extremist motives. The source notes that the witnesses called did not know Mr. Rizoiev personally and had only been acquainted with him through Facebook or through previously having received legal advice from him. The testimonies from the witnesses varied, with several asserting the opinion that Mr. Rizoiev's social media posts could have the ability to influence people against the State, and two witnesses testifying that they did not regard the content as being anti-government rhetoric. However, the testimony of one witness was not considered by the court, as they held that that witness was an old friend of Mr. Rizoiev and that he had changed his testimony during the trial in favour of the defendant. The court decision states that each witness was told during the investigation that Mr. Rizoiev's posts were extremist and political.

24. The source notes that following the entry into force of the decision of the court of first instance, which was seven days after the sentence was announced, Mr. Rizoiev was transferred to the Khujand correctional institution 3/5, a colony with reinforced regime, which is located in Sughd Region.

25. According to the source, an appeal was submitted to the appeal court in July 2021. On 11 August 2021, Dushanbe City Court reportedly rejected the cassation appeal to review the case of Mr. Rizoiev, and none of the arguments put forward by the defence were accepted by the court. The sentence imposed on Mr. Rizoiev remained the same; five years and six months of imprisonment.

c. Analysis of violations

26. The source asserts that the detention of Mr. Rizoiev constitutes an arbitrary deprivation of his liberty under categories II and III of the Working Group.

i. Category II

27. The source notes that freedom of expression is guaranteed both by the Constitution of Tajikistan in its article 30, and by the international human rights treaties ratified by the State, in particular the International Covenant on Civil and Political Rights. The source submits that restricting Mr. Rizoiev from disseminating information and promoting and defending rights to adequate housing and from sharing his posts on Facebook on topics including military service, elections and governance, by way of arbitrary arrest, detention and sentence, constituted a violation of article 19 of the Covenant.⁵

28. The source refers to article 9 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, whereby every individual has the right to complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms. The source submits that Mr. Rizoiev's use of these rights has prompted the Tajik authorities to arrest, detain and heavily sentence him.⁶

29. The source acknowledges that the right to freedom of expression and opinion as enshrined under article 19 of the Covenant is not an absolute right as it can be restricted on grounds for respect of rights or reputations of others and for the protection of national security

⁵ The source refers to Human Rights Committee, general comment No. 34 (2011), paras. 2–3 and 9.

⁶ *Ibid.*, para. 23.

or of public order (*ordre public*), or of public health or morals. However, the source submits that none of these grounds for the restriction of the right arose in this particular case to justify the State's actions. The source adds that the State has not demonstrated that the restriction was necessary and proportionate in accordance with the terms of the provision. The source therefore submits that Tajikistan violated Mr. Rizoev's right to freedom of expression, which is guaranteed by articles 19 of the Covenant and by the Universal Declaration of Human Rights. As a result, he was subjected to arbitrary deprivation of his liberty based on an alleged, trumped-up charge. The source adds that the penalization imposed on Mr. Rizoev solely for exercising his rights⁷ has a recognized chilling effect not only on his multifaceted rights, but also on other members of the civil society at large whose criticism is silenced due to fear of similar government retaliation.

30. The source also submits that the arrest, detention and imprisonment of Mr. Rizoev by the court on the basis of article 307.1 (2) of the Criminal Code and article 3 of the Law of Tajikistan on the fight against extremism led to the restriction of his freedom of expression as neither of these pieces of legislation provides a clear definition of what types of actions constitute "extremist activities", therefore providing the State with the ability to apply its own broad interpretation of the intent behind Mr. Rizoev's Facebook posts.

31. The source asserts that, as article 307 of the Criminal Code and article 3 of the Law on the fight against extremism fail to provide sufficient clarity with regard to specific actions that amount to "calls for" or "justification of" extremist activity, the request for the experts' assessment and the decision to find Mr. Rizoev guilty were based solely on the assumptions of the prosecution and the judge. The source notes that the posts that were identified by the prosecution provided no concrete evidence of Mr. Rizoev calling for a backlash against the Government. The source adds that the prosecution's argument that the posts contained a "veiled call" for action against the Government demonstrates the fact that the conviction is based on an interpretation of Mr. Rizoev's language rather than objective fact and on an absence of any definition in the legislation of what "a public call" means. As a result, the source submits that this amounts to a disproportionate and unnecessary violation of Mr. Rizoev's freedom of expression guaranteed by article 19 of the Covenant. The source notes that in 2019, the Human Rights Committee publicly expressed its concern about the counterterrorism legislation in Tajikistan.⁸ The source also asserts that the fact that the decision in this case has been reached on the basis of an interpretation of the law and an assumption of the motives behind Mr. Rizoev's actions violates the Criminal Code of Tajikistan.

32. As a result, and for the reasons stated above, the source submits that the State has clearly breached article 19 of the Covenant in detaining Mr. Rizoev, rendering his detention arbitrary under category II.

33. The source also submits that Mr. Rizoev's deprivation of liberty results from the exercise of his right to political participation and has placed "unreasonable restrictions" on "the right and the opportunity" of Mr. Rizoev to take part in public affairs for two distinct reasons.⁹ First, as demonstrated above, Mr. Rizoev's detention stems from an act of civil participation as a human rights defender; so his arrest, criminal prosecution and detention amount to punitive restrictions on the very act of exercising his civil rights as a citizen, which is undoubtedly an "unreasonable restriction" in violation of article 25 of the Covenant. Second, because Mr. Rizoev has no opportunity to engage in public affairs due to his current detention, the Government has placed an "unreasonable restriction" on "the opportunity" to engage in political discourse in violation of article 25 of the Covenant.

34. Accordingly, the source submits that, on the one hand, Mr. Rizoev's deprivation of liberty results from the exercise of his right to political participation; on the other hand, because of his actual situation as a convicted detainee, he is no longer in a position to exercise

⁷ Ibid., para. 42.

⁸ [CCPR/C/TJK/CO/3](#), para. 22. The source adds that the new Law on the fight against extremism was adopted on 2 January 2020, after the issuance of the concluding observations of the Human Rights Committee. However, according to the source, the new Law has also received criticism as regards the definitions and measures taken by the law enforcement bodies to fight extremism.

⁹ The source also refers to Human Rights Committee, general comment No. 25 (1996).

his right for at least five years and six months – the term of his imprisonment. The source adds that both amount to a thinly veiled effort to suppress and/or limit Mr. Rizojev's political voice, and the source thus asserts that his present detention is arbitrary under category II.

35. The source notes that ultimately, the arrest, detention and imprisonment of Mr. Rizojev are arbitrary as they stem from the use of his rights guaranteed by the Covenant and the Constitution of Tajikistan. The source notes that the aforementioned legal analysis has demonstrated that the vague, sweeping counter-extremist legislation used to convict Mr. Rizojev in this case is noncompliant with international standards as it fails to provide an adequate explanation of what amounts to extremist activities, therefore providing no information for citizens with regard to what actions are against these laws. The source adds that as a result of its vague and broad scope, the counter-terrorism legislation provides unabated power for the prosecution and the State to establish these definitions and subsequently, to base convictions solely on opinion rather than any substantial, corroborating evidence, while also allowing them to dismiss contrary opinions from incredulous witnesses as they see fit.

36. The source thus submits that Mr. Rizojev's deprivation of liberty stems from the exercise of his rights to freedom of opinion and expression and the right to take part in the conduct of public affairs under articles 19 and 25 of the Covenant, the correspondent norms of the Universal Declaration of Human Rights, and domestic legislation.

ii. Category III

37. The source notes that although deprivation of liberty per se is not prohibited under international law, it follows from article 9 of the Covenant that it is permissible only when it has lawful grounds and in accordance with the procedures established by law, as well as justifiable character.¹⁰

38. With reference to article 9 (3) of the Covenant, whereby pretrial detention should be the exception rather than the rule,¹¹ the source asserts that the Sino District Court of Dushanbe (during the pretrial period) and the Shohmansur District Court of Dushanbe (during the trial) decided to detain and extend the detention of Mr. Rizojev without any explanation as to why pretrial detention was necessary. The source adds that none of the factors indicated in article 102 of the Criminal Procedural Code of Tajikistan ("Grounds for the application of preventive measures") were explained by the General Prosecutor's Office or by either of the two courts in their decisions. Neither court justified why other alternative preventive measures were not applicable.

39. The source explains that under the Criminal Procedure Code of Tajikistan, the court cannot apply bail as a preventive measure in cases when the offence in question is recognized as a serious or especially serious crime. Article 307.1 (2) is recognized as a serious crime under the Criminal Code, and therefore, bail was not considered by the court as an alternative measure along with house arrest or release with a travel ban put in place. The courts did not provide any explanation as to why none of the other alternative preventive measures could be applicable in this case. In February 2021, Mr. Rizojev's legal representative appealed to the court to request the release of Mr. Rizojev, noting that detention was not necessary as none of the factors prescribed under article 102 of the Criminal Procedure Code were applicable to this case. The General Prosecutor's Office argued that Mr. Rizojev was charged with a particularly serious crime and that there was a concern that he might obstruct investigations and abscond if released.¹²

40. The source also refers to article 14 (2) of the Covenant, whereby everyone who is charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.¹³ It also refers to article 15 of the Criminal Procedure Code of Tajikistan, whereby no one is considered guilty of a crime until the court's sentence enters into legal force. The source submits that in the present case, Mr. Rizojev's presumption of

¹⁰ The source refers to Human Rights Committee, general comment No. 35 (2014), para. 11.

¹¹ *Ibid.*, para. 12.

¹² The source refers to the case of *Smantser v. Belarus* (CCPR/C/94/D/1178/2003), para. 10.3.

¹³ The source also refers to Human Rights Committee, general comment No. 32 (2007).

innocence was violated as the investigator of the General Prosecutor's Office – after each pretrial examination – informed witnesses that Mr. Rizoev's Facebook posts were extremist and political. The source adds that statements made by the General Prosecutor's Office about Mr. Rizoev's extremist posts during the pretrial investigation are clearly declared in the court sentence. The source thus asserts that from the beginning of this legal process, Mr. Rizoev was stripped of his presumption of innocence, a narrative which endured throughout his detention and subsequent trial. The source notes that it was inappropriate for the investigator from the General Prosecutor's Office to make a statement implying that Mr. Rizoev's posts in Facebook were extremist, thereby imputing his guilt among all examined witnesses.

41. The source asserts that although the Government assigned a legal counsel immediately after the arrest of Mr. Rizoev and announced reasons for his arrest, the reasons and factors of detention were not appropriately argued with regard to why the detention was necessary and why alternative preventive measures were not able to be applied during the pretrial and trial stages of the criminal procedure. In addition, the source notes that the General Prosecutor's Office and the court did not consider or conduct a thorough investigation into the threats coming from Pulodi Plaza, which tried to silence Mr. Rizoev for his activism, his defence of the right to adequate housing and his attempt to stop the forcible eviction of residents of Dushanbe.

42. The source submits that Mr. Rizoev's deprivation of liberty has been enforced in violation of articles 9 and 14 of the Covenant; the corresponding norms of the Universal Declaration of Human Rights; principles 15, 16, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and domestic procedural law.

Response from the Government

43. On 11 February 2022 the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 12 April 2022, detailed information about the current situation of Mr. Rizoev and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Tajikistan under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Tajikistan to ensure his physical and mental integrity.

44. The Working Group regrets that the Government did not submit a reply, nor did it seek an extension in accordance with paragraph 16 of the Working Group's methods of work.

Discussion

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

46. In determining whether Mr. Rizoev's detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹⁴ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

Category I

47. According to the source and not contested by the Government, Mr. Rizoev was arrested on 18 November 2020 and while the arresting authorities did not show an arrest warrant, the reasons and legal basis for the arrest were explained. He was allowed legal assistance immediately after the arrest and the basis for his arrest was again explained. Mr. Rizoev was subsequently remanded in custody pending trial, following a decision of a court to that effect on 20 November 2020.

¹⁴ [A/HRC/19/57](#), para. 68.

48. However, the Working Group observes that the source has submitted that Mr. Rizoiev was subjected to de facto automatic pretrial detention since article 307.1 (2) of the Criminal Code, under which he was charged, is recognized to be a serious crime in case of which application of bail is not permissible. Although the source has argued that the General Prosecutor's Office, when requesting pretrial detention, also submitted that Mr. Rizoiev, aside from being charged with a particularly serious crime, was also a flight risk, the source notes that the court did not provide any explanation as to why none of the other alternative preventive measures could be applicable in this case. The Working Group notes in particular that the Government has not replied to any of these submissions although it had the opportunity to do so.

49. The Working Group recalls that it is a well-established norm of international law that pretrial detention should be the exception and not the rule, and that it should be ordered for as short a time as possible.¹⁵ Article 9 (3) of the Covenant sets forth two cumulative obligations, namely to be promptly brought before a judge within the first days of the deprivation of liberty and to have a judicial decision rendered without undue delays, in the absence of which the person is to be released.¹⁶

50. This provision is completed by the second part of paragraph 3 of article 9 which provides that it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice and therefore the provisions can be summarized as follows: any detention must be exceptional and of short duration; and release may be accompanied by measures intended only to ensure representation of the defendant in judicial proceedings.¹⁷

51. Consequently, in its jurisprudence, the Working Group has repeatedly confirmed that mandatory pretrial detention – in this case the impossibility of bail for those charged with serious offences – violates a State's obligations under international human rights law.¹⁸ In particular, non-bailable offences violate the requirement under article 9 (3) of the Covenant that pretrial detention is an exceptional measure rather than the rule. Such non-bailable offences also violate the requirement that pretrial detention must be based on an individualized determination that it is reasonable and necessary in the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. As the Human Rights Committee has stated, pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.¹⁹

52. The Working Group therefore concludes that the imposition of pretrial detention upon Mr. Rizoiev in this case violated article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant, was therefore arbitrary and falls under category I of the Working Group.

Category II

53. The source has submitted that Mr. Rizoiev's detention resulted purely from the peaceful exercise of his rights under articles 19 and 25 of the Covenant and also refers to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms whereby every individual has the right to complain about the policies and actions of

¹⁵ See opinions No. 28/2014, No. 49/2014 and No. 57/2014; and [A/HRC/19/57](#), paras. 48–58. See also [A/HRC/30/19](#); *Kovsh v. Belarus* (CCPR/C/107/D/1787/2008); [CAT/C/TGO/CO/2](#), para. 12; [A/HRC/25/60/Add.1](#), para. 84; [E/CN.4/2004/56](#), para. 49; and [CCPR/C/TUR/CO/1](#), para. 17.

¹⁶ [A/HRC/19/57](#), para. 53.

¹⁷ *Ibid.*, paras. 54 and 56.

¹⁸ See opinions No. 57/2014, No. 24/2015, No. 16/2018, No. 53/2018, No. 61/2018, No. 75/2018, No. 14/2019, No. 64/2019 and No. 8/2020. See also [A/HRC/42/39/Add.1](#), paras. 36–38; and [A/HRC/19/57](#), paras. 48–58.

¹⁹ Human Rights Committee, general comment No. 35, para. 38.

individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms. These submissions were put to the Government, which chose not to address them.

54. The Working Group recalls its own jurisprudence²⁰ and the jurisprudence of the Human Rights Committee,²¹ which both recognize that detention due purely to the peaceful exercise of rights protected by the Covenant may be arbitrary.

55. In this regard, the Working Group also recalls Human Rights Council resolution 24/5, in which the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others. This is further to the principle enunciated in Council resolution 12/16, in which the Council called upon States to refrain from imposing restrictions that were not consistent with article 19 (3), including on discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief.

56. The source has submitted, and the Government has not contested, that the arrest of Mr. Rizoiev was purely due to his activism and his advocacy regarding the issue of the Government's urban renewal plan in Dushanbe, which has led to the demolishing of old buildings and has paved the way for investors to build new, modern apartment and business structures, often at the expense of hundreds of people who were forced out of their homes with little advance warning and little to no compensation.

57. Recalling that freedom of opinion and freedom of expression as expressed in article 19 of the Covenant are indispensable conditions for the full development of the person and are essential for any society and in fact constitute the foundation stone for every free and democratic society, the Working Group notes that no derogations can be made to article 19 simply because it can never become necessary to derogate from it during a state of emergency. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers and this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions. Moreover, article 19 (2) of the Covenant protects all forms of expression and the means of their dissemination, including all forms of audiovisual as well as electronic and Internet-based modes of expression.²²

58. In the present case, Mr. Rizoiev engaged in discourse that clearly falls within public interest, and there is no evidence that any of his actions might have been violent or incited violence. In fact, as submitted by the source and not contested by the Government, the Facebook posts that were used as evidence during the trial varied, including poetry, posts about recent protests in the country and the importance of voting in elections, and recommendations relating to developing the country's economy.

59. While freedom of expression is not an absolute right, the Working Group recalls that the permitted restrictions to article 19 of the Covenant may only relate either to respect of the rights or reputations of others or to the protection of national security or of public order (*ordre public*) or of public health or morals. As the Human Rights Committee has stipulated, restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.²³ There is no evidence whatsoever that the conditions of article 19 (3) of the Covenant have been satisfied in the present case nor has the Government presented any such arguments. The Working Group therefore finds that the arrest of Mr. Rizoiev resulted from his peaceful exercise of rights under article 19 of the Covenant.

²⁰ See, for example, opinions No. 2/2018, No. 17/2019, No. 66/2019 and No. 37/2020.

²¹ Human Rights Committee, general comment No. 35, paras. 17 and 53.

²² Human Rights Committee, general comment No. 34, paras. 2, 5 and 11–12.

²³ *Ibid.*, para. 22.

60. Further, the source has also argued that Mr. Rizoev's right to take part in the conduct of public affairs as specified in article 25 of the Covenant has been violated since his arrest was directly linked to his engagement with the issue of housing policy of the Government. The Working Group recalls that the Human Rights Committee, in its general comment No. 25, has emphasized that citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. That participation is supported by ensuring freedom of expression, assembly and association, which are thus also protected by article 25 of the Covenant. The Working Group therefore also finds the arrest Mr. Rizoev to be the result of his exercise of rights under article 25 of the Covenant.

61. Given the above, the Working Group concludes that the arrest of Mr. Rizoev as well as his subsequent detention and imprisonment resulted from his peaceful exercise of rights protected by article 19 and 21 of the Universal Declaration of Human Rights and articles 19 and 25 of the Covenant and was therefore arbitrary, falling under category II of the Covenant. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action.

Category III

62. Given its finding that the deprivation of liberty of Mr. Rizoev is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Rizoev should have taken place. However, the trial did take place, following which Mr. Rizoev was sentenced to five and a half years of imprisonment. The source has submitted that there were serious violations of the fair trial rights of Mr. Rizoev and that his subsequent detention therefore falls under category III of the Working Group.

63. The Working Group has already examined the issue of non-bailable offences under its discussion under category I. However, the Working Group also considers that non-bailable offences deprive a detainee of the right to seek alternatives to detention, such as bail, in violation of the right to be presumed innocent under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant. The imposition of mandatory pretrial detention for certain offences reverses the presumption of innocence, so that those subject to ongoing criminal proceedings are automatically detained without a balanced consideration of non-custodial alternatives to detention. Moreover, mandatory pretrial detention deprives judicial authorities of one of their essential functions as members of an independent and impartial tribunal, namely assessing the necessity and proportionality of the detention in each case.²⁴

64. The Working Group also recalls the uncontested submission that when deciding upon Mr. Rizoev's pretrial detention, the court indicated that the ruling on the opening of a criminal case clearly showed that he had committed a crime. Further to this, it is not contested that the investigator of the General Prosecutor's Office – after each pretrial examination – informed witnesses that Mr. Rizoev's Facebook posts were extremist and political.

65. The Working Group recalls that the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge; guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt; ensures that the accused has the benefit of doubt; and requires that persons accused of a criminal act must be treated in accordance with this principle.²⁵ In the present case, the court, when deciding upon pretrial detention, expressed clear views regarding the guilt of Mr. Rizoev. Subsequently, during the proceedings, the prosecution appears to have coached witnesses as to the guilt of Mr. Rizoev. In these circumstances, the Working Group concludes that Mr. Rizoev's presumption of innocence was further violated, in breach of article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant. The Working Group refers the case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

²⁴ This applies to the initial judicial review of detention, and also limits the ability of judges to undertake ongoing periodic reviews of the necessity and proportionality of detention.

²⁵ Human Rights Committee, general comment No. 32, para. 30.

66. Furthermore, the source has argued that following the decision of the court to remand Mr. Rizoev in custody pending trial, he was not provided with the copy of the court's decision, which prevented him from appealing it. Noting the failure of the Government to provide an explanation for this, the Working Group therefore finds a breach of article 14 (5) of the Covenant.

67. Consequently, given all of the above, the Working Group finds that the pretrial detention and subsequent imprisonment of Mr. Rizoev is arbitrary and falls under category III.

Category V

68. The Working Group notes that the source has submitted, and the Government does not contest, that the present case is not the first time that Mr. Rizoev has come into contact with authorities due to his activism. Indeed, the source refers to him as a human rights defender and a lawyer, who has been active on various issues of public interest in Tajikistan. The Working Group also recalls that Mr. Rizoev is a former member of the young lawyers association, Amparo, which was liquidated in 2012 due to its activism on the protection of conscripts' rights. In this context, the source refers to the 2015 amendments to the Law on Lawyers, which had a severe negative effect on the ability of the profession to operate freely in the country.

69. Furthermore, according to the source, Mr. Rizoev's present case is another example of the State and affiliated private corporations coming together to systematically deprive citizens of their housing and civic rights while silencing human rights defenders and lawyers who work on cases to seek justice for those affected (see para. 9 above). Indeed, the source notes various complaints made against Mr. Rizoev by the construction company and Mr. Rizoev being pressured into withdrawing his complaints. None of this has been contested by the Government.

70. The Working Group considers that Mr. Rizoev is a human rights defender and it has in the past concluded that being a human rights defender is a status protected by article 26 of the Covenant.²⁶ Accordingly, the Working Group finds that Mr. Rizoev was deprived of his liberty on discriminatory grounds, that is, due to his status as a human rights defender, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. His deprivation of liberty is arbitrary according to category V. The Working Group refers this case to the Special Rapporteur on the situation of human rights defenders. In making this finding, the Working Group is particularly mindful of its findings above under category II and it recalls the concluding observations of the Human Rights Committee on Tajikistan, issued in 2019 and concerning the 2015 legislative amendments to the Law on Lawyers and their negative effect,²⁷ which echo the 2018 concluding observations of the Committee against Torture.²⁸

Concluding remarks

71. The Working Group notes with concern that following the entry into force of the decision of the court of first instance, Mr. Rizoev was transferred to the Khujand correctional institution 3/5, a colony with reinforced regime, which is located in the Sughd Region. The Working Group notes the absence of a reply from the Government on this point.

72. The Working Group considers that the transfer, given that it is some 300 km away from where Mr. Rizoev normally resides and given the reinforced regime of the institution, is a further retaliation by the authorities against Mr. Rizoev due to his activism and is also a breach of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, in particular rules 43, 58 and 59).²⁹ The Working Group is obliged to remind the Government that in accordance with article 10 of the Covenant, all persons

²⁶ See e.g. opinion No. 48/2017, No. 50/2017, No. 19/2018, No. 83/2018, No. 36/2020 and No. 77/2020. See also [A/HRC/36/37](#), para. 49.

²⁷ [CCPR/C/TJK/CO/3](#), paras. 39–40.

²⁸ [CAT/C/TJK/CO/3](#), paras. 19–22.

²⁹ See opinion No. 5/2021.

deprived of their liberty must be treated with humanity and with respect to the inherent dignity of the human person.

Disposition

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

The deprivation of liberty of Abdulmajid Rizojev, being in contravention of articles 2, 7, 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

74. The Working Group requests the Government of Tajikistan to take the steps necessary to remedy the situation of Mr. Rizojev 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.

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

76. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Rizojev and to take appropriate measures against those responsible for the violation of his rights.

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

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

Follow-up procedure

79. 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. Rizojev has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Rizojev;
- (c) Whether an investigation has been conducted into the violation of Mr. Rizojev's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Tajikistan with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

80. 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.

81. 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.

82. 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.³⁰

[Adopted on 29 August 2022]

³⁰ Human Rights Council resolution 42/22, paras. 3 and 7.