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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its ninety-ninth session, 18–27 March 2024****Opinion No. 19/2024 concerning Faromuz Irgashov, Khursandsho Mamadshoev and Manuchehr Kholiknazarov (Tajikistan)***

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 1 December 2023 the Working Group transmitted to the Government of Tajikistan a communication concerning Faromuz Irgashov, Khursandsho Mamadshoev and Manuchehr Kholiknazarov. The Government replied to the communication on 30 January 2024. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination, based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability

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

¹ [A/HRC/36/38](#).

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

1. Submissions

(a) Communication from the source

4. Faromuz Irgashov, born on 2 April 1990, is a citizen of Tajikistan, a human rights lawyer, a member of the Pamiri Lawyers' Association and a former Member of Parliament in Kūhisoni Badakhshon Autonomous Province. He was the Head of Commission 44. Moreover, he represented the Khorugh community's policing partnership team in the 2016–2020 police reform programme, through which he mediated to prevent local conflicts and advocated for the rights of the local population. In early December 2022, the Supreme Court sentenced Mr. Irgashov to 29 years of imprisonment.

5. Khursandsho Mamadshoev, born on 8 April 1963, is a citizen of Tajikistan, a representative of the Pamiri minority, a human rights lawyer and a member of the Pamiri Lawyers' Association. Mr. Mamadshoev is the brother of a well-known human rights defender, journalist and representative of the Pamiri Indigenous population who has been sentenced to 20 years of imprisonment. He is well known for his advocacy for the civil and political rights of the Pamiri Indigenous population, including by improving the interaction between the police and local youth in a joint project with the non-governmental organization Safer World. He was an active member of the Public Council on Police Reform in the region, a joint platform established in 2013 across Tajikistan focused on identifying and addressing local community concerns and human rights issues. He is also a member of Commission 44. In early December 2022, the Supreme Court sentenced Mr. Mamadshoev to 18 years of imprisonment.

6. Manuchehr Kholiknazarov, born on 24 December 1977, is a citizen of Tajikistan, a civil society representative of the Pamiri minority, a lawyer and a human rights defender. He is the Director of the Pamiri Lawyers' Association and a member of various platforms such as the Civil Society Coalition against Torture and Impunity in Tajikistan, the Public Council on Police Reform and the Coalition on Housing Rights. He is also a member of Commission 44. In early December 2022, the Supreme Court sentenced Mr. Kholiknazarov to 16 years of imprisonment.

(i) Context

7. In November 2021, the mass protests that followed the death of a local Indigenous Pamiri resident in Kūhisoni Badakhshon Autonomous Province were violently suppressed by the authorities, resulting in at least 40 people being killed and hundreds detained.

8. By joint decision of the authorities of Kūhisoni Badakhshon Autonomous Province and representatives of the protesters, a group of 44 representatives of civil society and government bodies, named Commission 44, was formed to investigate the alleged excessive use of force by the police. Subsequently, many representatives of Commission 44 were subjected to threats and interrogations and several were arrested, detained and convicted in criminal offences related to terrorism or establishing or participating in a criminal association.

(ii) Arrest and detention

9. On 28 May 2022 at 9 a.m., Mr. Irgashov, Mr. Mamadshoev, Mr. Kholiknazarov and other members of Commission 44 were invited for an informal conversation at the Khorugh Prosecutor's Office. There, they were interrogated without a lawyer about funds that they had allegedly received from abroad. They were subsequently arrested by agents from the Khorugh Prosecutor's Office, the State Committee for National Security and the Ministry of Internal Affairs. The authorities did not inform the above-mentioned individuals prior to the meeting that a warrant had been issued and no information is available as to whether they were subsequently presented with a warrant. Moreover, Mr. Kholiknazarov's office was searched and the authorities seized a computer, identification documents and work documents.

10. On 29 May 2022, the families of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov learned from unofficial sources that the three men had been arrested, along with other Commission 44 members, for allegedly receiving money from the Chair of the outlawed Islamic Renaissance Party of Tajikistan and the National Alliance of Tajikistan. At the same time, the State-controlled media reported that members of Commission 44 had been arrested for receiving instructions and money from abroad to organize mass protests in Kūhistoni Badakhshon Autonomous Province.

11. From 28 May to 6 June 2022, Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov were held in the temporary detention centre of the State Committee for National Security in Khorugh. The source believes that the order for the measure of restraint was issued by the city court of Khorugh. On 6 June 2022, the applicants were transferred to pretrial detention centre No. 1 of the State Committee for National Security in Dushanbe.

12. In August 2022, a prosecutor informed Mr. Irgashov's family that he had been detained on the charges of participation in a criminal association, receiving illegal financial support from abroad, making public calls for a violent change to the constitutional order, on the instructions of hostile organizations or representatives of foreign States, and attempted murder, under articles 187 (2), 307 (3) and 104 of the Criminal Code.

13. Mr. Irgashov's State-appointed lawyer had little contact with the family and refused to share any information on the reasoning of the charges and procedural details. The family was unable to engage a lawyer of their choice as lawyers were unwilling to take the case out of fear of reprisals by the authorities. The authorities have allegedly harassed many other lawyers and human rights defenders working on the cases of those detained following the events in the region. Moreover, the court hearings were closed to the public. Mr. Irgashov's relatives were not allowed to attend the trial or read the verdict.

14. The families of Mr. Mamadshoev and Mr. Kholiknazarov signed an agreement with lawyers of their choice to provide them with legal defence. The law enforcement authorities obliged the lawyers to sign a non-disclosure order because the case was classified as a State secret. According to domestic law, disclosure of information in such cases leads to criminal liability. The source believes that the lawyers were not able to provide an adequate legal defence because of the intimidating environment that the authorities had created.

15. The lawyers refused to disclose any information about case files or any measures to exhaust domestic remedies. However, it is known that Mr. Mamadshoev's lawyer had very limited access to his client after his arrest. Moreover, the court hearings were held behind closed doors; thus, very limited information on both the reasoning of the charges and the procedural details is available.

16. In early December 2022, the Supreme Court sentenced Mr. Mamadshoev to 18 years in prison. At the same time, Mr. Kholiknazarov was found guilty of the establishment of a criminal association and organizing the activities of an extremist organization, under articles 187 (1) and 307 (3) (1) of the Criminal Code, respectively. The conviction was reportedly challenged by the lawyers for Mr. Mamadshoev and Mr. Kholiknazarov, but the Supreme Court upheld the sentences on 16 March 2023.

17. Mr. Irgashov's relatives received unofficial information that the Khorugh Prosecutor's Office had requested a sentence of 30 years of imprisonment for Mr. Irgashov and, in early December 2022, the Supreme Court sentenced him to 29 years in prison. On 29 January 2023, the Prosecutor General announced that Mr. Irgashov had been sentenced for 29 years for the establishment of a criminal association (art. 187 (1) of the Criminal Code), attempted murder (art. 104 of the Criminal Code), terrorism (art. 179 of the Criminal Code) and organizing the activities of an extremist organization (art. 307 (3) (1) of the Criminal Code).

18. On 16 March 2023, Mr. Irgashov was transferred to penal colony No. 3/2 of the Ministry of Justice in the town of Vahdat, where he is serving his sentence. On 20 April 2023, Mr. Mamadshoev and Mr. Kholiknazarov were transferred to penal colony No. 3/7 of the Ministry of Justice in Dushanbe, where they are serving their sentences.

19. In April 2023, during the 109th session of the Committee on the Elimination of Racial Discrimination, a representative of Tajikistan stated that Mr. Irgashov, as the former leader

of the Commission 44 terrorist group, had been arrested, tried and found guilty of participation in a criminal association and of publicly calling for the overthrow of the State. Mr. Mamadshoev had been found guilty of charges including terrorism; murder; storage and transport of illegal weapons, ammunition and explosive devices; armed subversion; and membership of an extremist organization.² Also during that session, a representative of Tajikistan stated that Mr. Kholiknazarov was a member of Commission 44, a criminal organization that was in close contact with gangs in Kūhistoni Badakhshon Autonomous Province and with terrorist factions, in particular the National Alliance of Tajikistan, which had been labelled a terrorist organization by the Supreme Court. Criminal proceedings had been instituted against Mr. Kholiknazarov on a number of charges, including sedition, justification of extremism and promotion of the activities of extremist terrorist organizations.³

20. The source submits that Mr. Irgashov displayed signs of bodily harm at the State Committee for National Security pretrial detention centre. He was unable to communicate freely in the presence of the detention facility personnel, but requested painkillers. Moreover, the authorities enforced the requirement for him to converse solely in Tajik, rather than his native Pamiri language. Given that he was in good health prior to his arrest, the source notes that Mr. Irgashov might have been subjected to ill-treatment in custody.

(iii) *Legal analysis*

21. The source submits that the deprivation of liberty of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov is arbitrary, falling under categories I, II, III and V.

22. In relation to category I, the source argues that the deprivation of liberty of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov is arbitrary, as their cases and the related judicial proceedings were unjustly classified as State secrets, which prevents an examination as to whether the actions imputed to them by the authorities could have amounted to the corpus delicti of imputed crimes as defined in domestic legislation. The source adds that the authorities refused to provide the family of Mr. Kholiknazarov with any information about the reasoning of the charges, citing the classification of the case.

23. The source highlights that the arrests occurred in the context of a serious human rights crisis in the region, which includes alleged arbitrary detention, prosecution on trumped up charges and other human rights violations against members of Commission 44.

24. In relation to category II, the source argues that Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov were arrested and detained as a result of exercising their rights guaranteed under articles 7, 19 and 20 of the Universal Declaration of Human Rights and articles 19, 22 and 26 of the International Covenant on Civil and Political Rights.

25. Commission 44, to which three above-mentioned individuals belonged, informed the public about the progress of the inquiry into violent suppression of protests, criticizing the local authorities, the Prosecutor General's Office and other security services. The authorities responded by increasing pressure on members of Commission 44 and other protesters, which allegedly included threats, interrogation and telephone surveillance.

26. On 19 January 2022, Commission 44 issued a statement announcing that it had ceased to cooperate with the authorities in the face of their failure to investigate the police violence that had led to the deaths and injuries of local Pamiri residents. Shortly thereafter, the authorities initiated a crackdown on members of Commission 44 and civil society activists affiliated with them.

27. Following the arrests of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov, State-controlled media outlets reported that members of Commission 44 had allegedly received instructions and money from the National Alliance of Tajikistan to organize mass protests in Khorugh and the region. Representatives of Commission 44 denied receiving financial assistance from representatives of the National Alliance of Tajikistan and claimed that they had received charity donations from the Tajik diaspora living abroad to carry out

² CERD/C/SR.2971, para. 46.

³ CERD/C/SR.2972, para. 44.

legal human rights activities and promote an effective investigation into police violence in the region.

28. The arrest and detention of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov are therefore related to their legitimate advocacy for the investigation into police violence against the Pamiri Indigenous population. As part of their work for Commission 44, they have criticized law enforcement authorities for failing to effectively investigate police violence. During the demonstrations in November 2021, Mr. Irgashov called upon people not to leave the central square of Khorugh until the officials responsible were held accountable for police violence against protestors.

29. In relation to category III, the source argues that there has been a violation of the right to a public hearing as cases were classified as State secrets. In accordance with article 253 (2) of the Code of Criminal Procedure, cases were heard by the Supreme Court behind closed doors in the detention centre. The defendants' families and the public were unable to attend the hearing or read the verdict.

30. The lawyers for Mr. Mamadshoev and Mr. Kholiknazarov were present during the trial but refused to disclose information about the proceedings due to the non-disclosure order.

31. Furthermore, the source alleges violation of the right to have adequate time and facilities for the preparation of defence and communication with counsel of the defendant's own choosing. It recalls that, following his arrest and detention, Mr. Irgashov was provided with a State-appointed lawyer who had hardly any contact with the family of his client and refused to share any information. The sources alleges that this lawyer failed to provide Mr. Irgashov with adequate legal defence. In August 2022, Mr. Irgashov's family secured the services of lawyer of their choice, but he refused to attend the trial for fear of reprisals by the authorities. The family was unable to find another lawyer of their choice because lawyers refused to take the case, also due to fear of reprisals.

32. The lawyers for Mr. Mamadshoev and Mr. Kholiknazarov had limited access to their clients. The authorities of the pretrial detention centre often refused to allow the lawyers to meet Mr. Mamadshoev or Mr. Kholiknazarov. The lawyers did not appeal against those actions of the authorities of the pretrial detention centre due to fear of harassment. Legal counsel were present during the trial but refused to provide any information due to the non-disclosure order. They were not given the opportunity to provide a meaningful defence during the pretrial investigation and trial due to fear of harassment. Thus, the detainees did not have access to a lawyer of their choice following their arrest or during the pretrial investigation or trial.

33. The source reaffirms that the detention and convictions of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov occurred amid a crackdown on civil society, human rights defenders and independent journalists and that their trials were neither fair nor impartial. Moreover, it is reported that unjustified closed-door trials were used, inter alia, to conceal violations of the right to a fair trial.

34. In relation to category V, the source asserts that the detention of Mr. Mamadshoev, Mr. Kholiknazarov and Mr. Irgashov is arbitrary as it is related to their legitimate activities as human rights defenders, their membership of Commission 44 and receiving funds from abroad to cover the costs of the Commission's ongoing human rights work.

(b) Response from the Government

35. On 1 December 2023, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 29 January 2024, detailed information about the current situation of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov and to clarify the legal provisions justifying their continued detention, as well as its compatibility with the Government's obligations under international human rights law, and in particular with regard to the treaties ratified by the State.

36. On 29 January 2024, the Government submitted its response, in which it affirmed that the rights of Mr. Mamadshoev, Mr. Kholiknazarov and Mr. Irgashov set forth in articles 7,

9 (1) and (3), 10 (1) and 14 (1) and (3) (b), (d), (e) and (g) of the Covenant had been fully respected throughout the pretrial investigation and judicial proceedings. These rights and safeguards are directly incorporated into the Constitution of Tajikistan, specifically in articles 5, 17, 18 and 19.

37. As these constitutional rights and safeguards are also fundamental principles of criminal proceedings, non-compliance is recognized as a material breach of criminal procedure law entailing the appropriate consequences as provided for by law. Accordingly, the country's pretrial investigative bodies and the courts themselves have an interest in ensuring that the rights and safeguards in question are respected and guaranteed during criminal proceedings.

38. In accordance with articles 7–9 and 17 of the Code of Criminal Procedure, justice in criminal cases is administered by the courts alone. Judges are independent and subordinate only to the Constitution and national law. Furthermore, in accordance with articles 46, 47, and 53 of the Code of Criminal Procedure, the detainees were provided with defence counsel, who freely met with their clients in private, without limits on the number and duration of the meetings. The pretrial investigation and judicial proceedings were conducted in accordance with the provisions of the Code of Criminal Procedure.

39. Article 18 (4) of Act No. 720 of 28 June 2011 on procedures and conditions for the custody of suspects, accused persons and defendants states that, with the written permission of the official or body handling the criminal case, a suspect, accused person or defendant may be granted no more than two meetings per month with relatives or other persons, for up to three hours at a time. However, the Government insists that the detainees were allowed to receive visits from close relatives and lawyers.

40. The detainees underwent medical examinations, and no signs were found of the use of physical force or any bodily injury. In addition, no applications were made on the part of the accused regarding torture or inhumane treatment.

41. The detainees were found guilty not only by virtue of their partial confession of guilt during the preliminary investigation, in the presence of a lawyer, but also by sufficient evidence collected during the investigation, including statements and testimony from victims and witnesses and the opinions of experts working in the fields of forensic psychology, technology, computer analysis and criminalistics, as well as integrated linguistic, religious and political analysis, the record of inspection of the crime scene, the coroner's inquest and other material evidence.

42. From the outset of their detention, the individuals in question were provided with lawyers whom they or their close relatives had chosen, they were given unlimited time to acquaint themselves with the criminal case file and the arguments that they put forward were thoroughly and objectively reviewed during the investigation and trial.

43. In accordance with article 273 of the Code of Criminal Procedure, the pretrial investigation and court hearing in the case were closed to the public in order to ensure the non-disclosure of the information gathered during the investigation that was protected by law as State secrets.

44. As such, the criminal proceedings in that case were conducted in accordance with the adversarial principle and the principle of the equality of rights of the parties, and steps were taken to allow the parties to exercise their procedural rights and duties. All evidence underwent a legal assessment and the results served as the basis for the adoption of a reasoned legal decision. Accordingly, the detainees were not prosecuted for their political, social or human rights views but for committing criminal offences unrelated to their human rights activities.

45. By judgment of the Criminal Division of the Supreme Court on 9 December 2022, Mr. Mamadshoev and Mr. Kholiknazarov were convicted of multiple offences under articles 187 (2) (participation in a criminal organization) and 307 (2) (participation in the activities of an organization whose activities have been banned by enforceable court decision in connection with extremist activities) of the Criminal Code and given a partially cumulative sentence in application of article 67 (3) of the Criminal Code of 16 years' deprivation of liberty, with confiscation of property, to be served in a strengthened-regime colony.

46. Mr. Irgashov was convicted of multiple offences under articles 187 (1) (organization of a criminal association), 32 (3) and 104 (2) (a), (b), (g), (h) and (l) (attempted murder with aggravating circumstances), 179 (3) (a) (terrorism committed by an organized group) and 307 (2) of the Criminal Code and given a partially cumulative sentence in application of article 67 (3) of the Criminal Code of 29 years' deprivation of liberty, with confiscation of property, to be served in a strict-regime colony.

47. Mr. Mamadshoev, Mr. Kholiknazarov and their lawyers, not conceding to the convictions, filed cassation appeals to have them overturned. On 16 March 2023, the Criminal Division of the Supreme Court, having considered the criminal case in cassation, upheld the judgment and dismissed the appeals. Meanwhile, Mr. Irgashov and his lawyer, conceding to the conviction, did not file a cassation appeal against it.

48. The Government submits that Mr. Mamadshoev and Mr. Kholiknazarov acted as intermediaries by receiving money from abroad from terrorist organizations and transferring it to leaders in Kūhistoni Badakhshon Autonomous Province for further distribution. Those allegations were confirmed by the testimony of Mr. Mamadshoev and Mr. Kholiknazarov during the investigation and judicial proceedings, and the testimony of other members of the criminal association and material evidence seized during the preliminary investigation.

49. Mr. Irgashov, using his influence in the region, played an active part in the creation of a criminal association, coordinated the activity of criminal groups, directly led a cell of that association, periodically contacted terrorist organizations and their leaders located outside the country and received coordination instructions from them for further action, with the purpose of carrying out criminal plans.

50. According to the criminal case file, Mr. Mamadshoev and Mr. Kholiknazarov were detained on 28 May 2022 and given a copy of their records of arrest, which they were required to sign. In accordance with article 46 of the Code of Criminal Procedure, they were informed of their rights as detainees and that, under 12 (5) of the Code of Criminal Procedure, they were not obliged to testify against themselves or their close relatives, and they noted in their own handwriting that their procedural rights had been explained and that they had no complaints or statements about their detention.

51. These circumstances refute the claim that the law enforcement authorities did not inform Mr. Mamadshoev or Mr. Kholiknazarov about the warrant for their arrest and that there is no information as to whether they were subsequently shown such a warrant.

52. In addition, the court sentenced Mr. Mamadshoev to 16 years' deprivation of liberty, while the source notes that he was sentenced to 18 years of deprivation of liberty, which misrepresents the facts.

53. Under article 273 of the Code of Criminal Procedure, a court or judge must ensure the public hearing of cases, except in circumstances in which this may lead to the disclosure of State and other secrets protected by law.

54. The Government asserts that closed court hearings may, nonetheless, be permitted on the basis of a reasoned decision by a court or a ruling by a judge in cases where the perpetrator is under 16 years of age; where offences against liberty or sexual or other offences are involved, with the aim of preventing the disclosure of information about intimate aspects of the lives of the parties to the proceeding or of information that is humiliating; and where required to ensure the safety of the parties to the proceedings, the witnesses and their family members or close relatives.

55. Since the criminal case files of Mr. Mamadshoev, Mr. Kholiknazarov and Mr. Irgashov contained information constituting State secrets and their disclosure would affect security interests, the case was considered in closed court, in accordance with article 273 of the Code of Criminal Procedure. Accordingly, the Government argues that the claims made that the judicial proceedings were unjustly classified as State secrets are refuted by the above-mentioned circumstances.

56. In the same way, the Government notes that Mr. Kholiknazarov was informed of the end of the preliminary investigation on 28 July 2022 and he and his lawyers, having familiarized themselves with the case file, noted that fact in writing and confirmed it with

their signatures. Therefore, the claim that there was no access to the criminal case file is refuted.

57. The Government states that, during the court hearing, Mr. Mamadshoev, Mr. Kholiknazarov and Mr. Irgashov were periodically allowed to meet with their relatives, as confirmed by the relevant Supreme Court documents signed by them, which are attached to the criminal case file. These documents refute the claim that relatives were not given the opportunity to contact them.

58. The Government submits that the materials in the criminal case file show that the socioeconomic development of Kūhistoni Badakhshon Autonomous Province was hampered by the organized criminal groups operating in the province, in violation of the principle of the rule of law and public order. These groups repeatedly orchestrated mass unrest, administered mob justice and spread violent extremist ideology, causing enormous socioeconomic damage to development in the province.

59. The Government recalls that, in early 1992, the Islamic Renaissance Party and other extremist organizations, some of whose members came from the Kūhistoni Badakhshon Autonomous Province, led a coup d'état, seizing power by force and triggering a civil war in the country. Armed clashes between the various forces and groups, killings, hostage-takings, robberies, looting, acts of terror and attempts on the lives of State and public figures were regular occurrences.

60. Following the restoration of constitutional order in late 1992 and the orderly exercise of power, some of the organized criminal groups left Kūhistoni Badakhshon Autonomous Province and went into hiding. They blocked the Dushanbe-Khorugh highway, thereby isolating the region and preventing the restoration of constitutional order in that part of the country until 1997.

61. The Government claims that, in order to obtain a stable source of income, leaders of the organized criminal groups began smuggling drugs from Afghanistan. The drugs were later sent abroad, with a portion distributed among group members. Illegally extracted precious metals were sold abroad in the same way. The funds generated from these activities were used to purchase new weapons, recruit new members into the criminal association and enrich the leaders.

62. As such, certain areas of Khorugh and nearby districts were illegally controlled by the leaders of organized criminal groups. The members of the groups are virtually all either close relatives of the leaders or residents of the same areas as them. In this connection, each criminal group made the local people live in fear and brutally cracked down on their attempts to speak out and, moreover, to support the national Government's policies.

63. The Government states that, during the mass unrest, the local population, especially women and children, were used by organized criminal groups as human shields to obstruct lawful activities of law enforcement agencies.

64. As a way of demonstrating their superiority over the incumbent authorities and intimidating the population, the organized criminal groups organized attacks and inflicted bodily injuries of varying degrees of severity on the directors of the regional administration and the presidents of Kūhistoni Badakhshon Autonomous Province. In the same way, and with the same aim, attacks were carried out and injuries inflicted, for example, on the region's prosecutors, on Khorugh prosecutors and on the chief of the special duties militia under the regional department of the Ministry of Internal Affairs for Khorugh. In July 2012, the chief of the regional department of the State Committee for National Security was murdered.

65. The Government claims that administrative buildings used by the local authorities, the prosecutor's offices and the courts were completely or partially burned down on more than one occasion. These acts represent a fraction of the offences committed by the above-mentioned organized criminal groups.

66. In September 2015, the Government states that an unprecedented act of terrorism took place in Tajikistan. A dozen people were killed in another attempted coup d'état by the Islamic Renaissance Party. The aim had been to bring about violent change in the

constitutional order of Tajikistan. Following that failed attempt, the leader of that terrorist organization fled abroad.

67. According to the Government, in August 2017, the Islamic Renaissance Party announced that it was unifying with other criminal organizations and incorporating them into its ranks to form the so-called National Alliance of Tajikistan.

68. The leader of the National Alliance of Tajikistan and his deputy, a native of Kūhīstōni Badakhshon Autonomous Province, made another attempt to destabilize the social and political situation in the province and, subsequently, the entire country.

69. In late 2021, in order to implement this criminal plan, the deputy of the National Alliance of Tajikistan conspired with one of the leaders of an organized criminal group to unify all the extant criminal groups in the province. With a view to seizing power in the province, the deputy of the National Alliance of Tajikistan promised additional funding for the organized criminal groups to cover special communications and coordination, and this was indeed provided.

70. Persons calling themselves civil society representatives, in particular members of the so-called Commission 44, including Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov, actively participated in these illegal activities.

71. Subsequently, the Government asserts, using information obtained from Mr. Kholiknazarov, Mr. Mamadshoev and other members of Commission 44, that Mr. Irgashov, among others, produced provocative interviews and disseminated them online.

72. The Government asserts that Mr. Mamadshoev, Mr. Kholiknazarov and other members of organized criminal groups received instructions on weakening the position of the State authorities and resisting law enforcement.

73. In February 2022, the leader of the National Alliance of Tajikistan promised to finance their activities and explained that, following the mass unrest in Kūhīstōni Badakhshon Autonomous Province, residents of other regions of Tajikistan would rise up in support.

74. The Government comments that Mr. Mamadshoev, who supported the criminal organization's aims, was in regular telephone contact with National Alliance of Tajikistan activists and implemented their orders. Between December 2021 and April 2022, he received 7,400 somoni for his work as a member of the criminal organization.

75. Together with other members of the organized criminal group, Mr. Kholiknazarov helped to distribute 93,300 somoni from the extremist organization National Alliance of Tajikistan with a view to galvanizing the victims of previous protests against the State authorities in the region. He reported to the leaders of the criminal organization on the progress made in executing the order.

76. The Government states that, following the unification of all the organized criminal groups into the extremist terrorist organization the National Alliance of Tajikistan, on 9 May 2022, the organization's leader announced online that they had formed a military bloc to fight against the Government.

77. At 6.30 p.m. on 16 May 2022, organized criminal groups organized a gathering of citizens in Khorugh. The participants were called upon to cause mass unrest, take up arms against law enforcement authorities and continue seizing strategic facilities in the region. At 8.40 p.m. on the same day, near the regional court building, a group of young men used a military grenade to attack officers of the regional department of the Ministry of Internal Affairs, who had been performing their official functions.

78. As a result of the explosion, the first deputy chief of the regional department of the Ministry of Internal Affairs, an employee of the department's operations branch and a senior lieutenant of military unit No. 3503 of the Ministry of Internal Affairs troops were injured and hospitalized. The law enforcement bodies cracked down on subsequent active attempts by organized criminal groups to destabilize the situation in Khorugh.

79. The Government contends that, on 17 May 2022, organized criminal group members in Rūshon District blocked the international highway linking Dushanbe, Khorugh and Kulma.

This criminal act resulted in enormous losses to the region's economy and to private companies.

80. On 18 May 2022, organized criminal group members in Rūshon District used firearms, ammunition and Molotov cocktails to attack a convoy of vehicles transporting military personnel of a special unit under the State Committee for National Security. During the armed attack, one officer died and 13 members of the military sustained gunshot wounds. The same persons carried out attacks and inflicted bodily injuries of varying degrees of severity on deputy presidents of Rūshon District and the head of the district employment department.

81. On 22 May 2022, a fight broke out among the members of the organized criminal groups in Khorugh, with some of the members of the groups killed. On 11 and 12 June 2022, other leaders of organized criminal groups were arrested.

82. The Government claims that the organized criminal groups had close links with terrorist organizations operating in Afghanistan, such as Al-Qaida, Da'esh and Jamaat Ansarullah. The leaders of the organized criminal groups in the province regularly held telephone conversations with the leaders of those terrorist organizations. They coordinated and planned further criminal acts. Arrangements were made to supply arms and send terrorist fighters from Afghanistan to Kūhisoni Badakhshon Autonomous Province.

83. The Government cites intercepted telephone conversations between the leaders of the organized criminal groups and members of those terrorist organizations. During the special operation in Kūhisoni Badakhshon Autonomous Province, representatives of the Embassy of the United States of America in Tajikistan travelled to the scene at the Government's invitation. They were presented with the various weapons recovered from the organized criminal groups, including some that had been left behind by North Atlantic Treaty Organization forces after their withdrawal from Afghanistan.

84. In addition, the Government presented recordings of telephone conversations between leaders of the organized criminal groups in Kūhisoni Badakhshon Autonomous Province and leaders of terrorist organizations operating in Afghanistan. This information was also conveyed orally and in writing to the management of the Organization for Security and Cooperation in Europe Programme Office in Dushanbe.

85. The Government states that it should be noted that, during these events, five active members of organized criminal groups in Kūhisoni Badakhshon Autonomous Province, having evaded arrest, illegally crossed the border and joined terrorist organizations operating in Afghanistan. While in Afghanistan, they conducted negotiations with members of terrorist groups with a view to aiding the organized criminal groups in Kūhisoni Badakhshon Autonomous Province in the form of weapons, ammunition and the direct involvement of terrorist fighters in action against the Tajik authorities.

86. In order to fully, objectively and comprehensively investigate the events that had taken place in Khorugh and Rūshon District, the Office of the Prosecutor General established an investigation team to carry out an investigation. The criminal case was investigated entirely within the law on criminal procedure and in accordance with international human rights standards. From the moment that they were taken into custody, all those accused of crimes were provided with lawyers, who were chosen by the defendants themselves or their family members.

87. The Government states that there have been no unlawful acts against the civilian population on the part of the Government.

88. With regard to the criminal cases against Mr. Mamadshoev, Mr. Kholiknazarov and Mr. Irgashov, their rights as set forth in articles of the Covenant were fully respected during the pretrial investigation and judicial proceedings.

(c) Further comments from the source

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

90. The source asserts that the information provided by the Government about criminal groups has no relation to the cases of Mr. Mamadshoev, Mr. Kholiknazarov and Mr. Irgashov. The description of events from 1992 are related to the civil conflict of 1992. Mr. Mamadshoev, Mr. Kholiknazarov and Mr. Irgashov have never been part of any criminal group. Their arrest falls within the broader pattern of judicial harassment of journalists and human rights defenders that has been recognized by special procedure mandate holders and human rights organizations.

91. Mr. Irgashov is a well-known Pamiri lawyer; he was 2 years old when the civil war broke out in Tajikistan and had no affiliation with Tajik opposition groups in the civil war or post-war period. In 2013, he joined the local civil society organization Lawyers' Association of Pamir, where he worked as a lawyer and a barrister. In this role, he became one of the top lawyers in Kūhistani Badakhshon Autonomous Province and defended Pamiri community leaders in difficult and politically motivated cases.

92. In 2015, Mr. Irgashov won local elections for the local parliament in Kūhistani Badakhshon Autonomous Province.

93. Between 2016 and 2020, Mr. Irgashov supported the police reform programme in Tajikistan as a local human rights defender representing the Khorugh's community policing partnership team. Within that programme, along with promoting the human rights of locals in the police, he was especially effective in decreasing tensions between the local enforcement agencies and local population.

94. Mr. Kholiknazarov is a Pamiri lawyer and he led the Lawyers' Association of Pamir, a member organization of the Civil Society Coalition against Torture and Impunity in Tajikistan. He was also a member of Commission 44 and the head of the local public council; he has participated in the police reform programme since 2016.

95. Mr. Mamadshoev has been engaged in human rights work in Kūhistani Badakhshon Autonomous Province since 2014. He is a retired police investigator. In 2013, with the start of the police reform process in Tajikistan, Mr. Mamadshoev became an active member of the local public council. He represented the Khorugh community policing partnership team as a member of civil society. Mr. Mamadshoev was one of the members of the local community who became part of Commission 44. Mr. Mamadshoev was assigned to the investigation group within Commission 44, which worked jointly with the representatives of local law enforcement authorities and the prosecutor's office to examine the legality of the use of force against demonstrators.

96. The classification of the case file and the refusal of the lawyers to communicate with families of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov due to fear of persecution prevent the source from assessing the validity of the evidence. Given the politically motivated nature of the cases, it is likely that evidence against them could have been given under coercion or have been fabricated.

97. Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov had a strong human rights and civic position prior to their detention, which is evident from their social media posts. The fact that they testified against themselves when they were in custody without adequate legal assistance and guarantees not to be subjected to torture and ill-treatment is a matter of concern. No impartial and independent health assessment was made of whether they had been subjected to torture or inhuman or degrading treatment.

98. The charges against them related to their membership in Commission 44, which, since its inception, worked with the people and officials of the executive branch and law enforcement agencies. Commission 44 held its last press briefing jointly with representatives of law enforcement and local government on 19 April 2022, almost a month before the arrest of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov. Therefore, it could not be part of a criminal organization and have held a joint press briefing with representatives of local government and law enforcement authorities.

99. The money received by Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov from abroad (from the Pamiri diaspora from Europe and North America) was distributed among the families of the victims of police violence and used to cover the expenses of

Commission 44 in its conduct of a comprehensive investigation into the events of November 2021.

100. Regarding procedural rights and guarantees, the source points out that Mr. Irgashov, Mr. Kholiknazarov and Mr. Mamadshoev were not shown a warrant or informed of the legal grounds of their arrest at the time of arrest.

101. Statements about the respect for the procedural rights of Mr. Irgashov, Mr. Kholiknazarov and Mr. Mamadshoev after their arrest cannot be confirmed as the files of the criminal case are classified and the lawyers refuse to communicate any details. Thus, the Government has deliberately created conditions that prevent Mr. Irgashov, Mr. Kholiknazarov and Mr. Mamadshoev from fully exercising their right to defence and to seek remedy through international bodies.

102. Finally, regarding the right to a fair trial, the source notes that court hearings were held in the pretrial detention centre of the State Committee for National Security, thereby de facto excluding the public or the press from attending. By law, any closed trial needs to be justified through a formal decision of a court to order a closed-door hearing. Given the mass character of detentions in connection with the events of May 2022 in Kūhistoni Badakhshon Autonomous Province, it is unclear how such court orders were transmitted or if they even exist.

103. The lawyers for Mr. Mamadshoev and Mr. Kholiknazarov filed a cassation appeal against the verdict but, as of 20 February 2024, there is no information on the results of the cassation hearing.

2. Discussion

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

105. In determining whether the detention of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.⁴

106. The source has argued that the detention of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov is arbitrary and falls under categories I, II, III and V, while the Government refutes the source's arguments. The Working Group shall proceed to examine the submissions under each of the categories in turn.

(a) Category I

107. The source submits that none of the detainees were informed of the reasons of their arrests by means of an arrest warrant prior to their meeting at the Khorugh Prosecutor's Office and that no information is known about whether a warrant was presented during the meeting. In its response, the Government states that Mr. Mamadshoev and Mr. Kholiknazarov were given a copy of their records of arrest, which they signed.

108. The Working Group recalls that article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for the arrest and is to be promptly informed of any charges. The Working Group has previously stated that, for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law which may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.⁵ This is typically done through an arrest warrant or arrest order (or equivalent document).⁶ The right to be presented with an arrest warrant is inherent to the right to liberty and security of person and to the prohibition of arbitrary detention under articles 3

⁴ A/HRC/19/57, para. 68.

⁵ Opinions No. 9/2019, para. 29; No. 46/2019, para. 51; and No. 59/2019, para. 46.

⁶ Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. In cases of arrests made in flagrante delicto, the opportunity to obtain a warrant will typically not be available.

and 9 of the Universal Declaration of Human Rights and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁷

109. The Working Group would like to note the distinction between a warrant – a document signed by a competent judicial authority that authorizes the arrest and detention of an individual – and a record of arrest, which is a document that merely lists the offences for which the individual is arrested. The latter is not a judicial declaration authorizing a police officer to arrest a person, and thus does not alone constitute a valid form of justification for an arrest and subsequent detention as prescribed by article 9 of the Covenant, despite the Government's claim.

110. As the Government does not contest the source's allegation that no arrest warrant was presented to Mr. Irgashov, Mr. Mamadshoev or Mr. Kholiknazarov, the Working Group concludes that the detention of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov failed to satisfy the requirements of article 9 (2) of the Covenant and is therefore arbitrary under category I.

(b) Category II

111. The source argues that the detention of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov is arbitrary under category II as their arrest and detention are related to their legitimate activity as a part of their work for Commission 44, which has publicly criticized various public authorities on a variety of occasions. The Government asserts that this is not the case, and that their arrest and subsequent detention have no relation to their work for Commission 44.

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

113. The broader context, as reported by the European Parliament,⁸ United Nations experts⁹ and special procedures of the Human Rights Council,¹⁰ indicates a pattern of repression in Tajikistan, where the crackdown on independent media, peaceful protests and human rights defenders has intensified. This pattern is particularly pronounced in the treatment of journalists and activists covering or engaging with social issues and human rights abuses in Kūhīstōnī Badakhshon Autonomous Province. The usage of counter-extremism and counter-terrorism legislation to suppress dissent raises serious concerns about the misuse of such laws to legitimize the silencing of political opposition and peaceful activism. The international community's calls for the release of detained human rights defenders, alongside criticisms of the declining media freedom in Tajikistan, underscore the perceived political motivations behind these arrests and convictions.

114. In the light of the above, the Working Group considers that it was up to the Government to provide clear evidence that the accusations against Mr. Irgashov,

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

⁸ See https://www.europarl.europa.eu/doceo/document/RC-9-2024-0064_EN.html.

⁹ See <https://www.ohchr.org/en/press-releases/2023/07/tajikistan-un-experts-deplore-criminal-proceedings-against-human-rights>; and communication TJK 3/2022, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27560>.

¹⁰ <https://srdefenders.org/end-of-mission-statement-official-country-visit-to-tajikistan/>.

Mr. Mamadshoev and Mr. Kholiknazarov had a factual basis, which the Government failed to do. A very vague and general reference to serious crimes is not enough, considering their membership in Commission 44, a group crucial for the region, and the documented pattern of governmental repression under which, as widely reported, charges of extremism and terrorism are potentially used as tools against those advocating for human rights and transparency.

115. Given the general context of the case and a failure by the Government to provide a detailed account of the charges and evidence against Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov, the Working Group is convinced that, in fact, the basis for their arrest and subsequent conviction was the exercise of their rights to freedom of expression and freedom of assembly, guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant.

116. The Working Group concludes that the arrest and detention of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov are arbitrary, falling under category II. It refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association for appropriate action.

(c) Category III

117. Given its finding that the deprivation of liberty of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov is arbitrary under category II, the Working Group wishes to emphasize that no trials should have taken place. However, as trials have taken place, the Working Group will now consider the alleged violations of the right to a fair trial and due process.

118. The source submits that Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov were not tried by an independent and impartial tribunal.

119. The Working Group recalls that the independence of the judiciary is a sine qua non for the right to a fair hearing, as enshrined in article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant. The notion of the separation of powers between the political organs of Government and the judiciary and the importance of safeguarding the independence of the judiciary have assumed growing importance. The Working Group refers to numerous reports by international organizations that underline the structural problems of the independence of the judiciary in Tajikistan and concluding that the judiciary operates under the control of the executive branch, and that de facto separation of powers is not maintained in the country.¹¹

120. In view of the findings of various reputed international institutions, given the submissions of the source and in the absence of sufficient information from the Government to refute the allegations, the Working Group cannot but find that Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov were not tried by an independent and impartial tribunal, contrary to article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

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

¹¹ For example, A/HRC/WG.6/25/TJK/2, para. 31; and International Commission of Jurists, *Neither Check nor Balance: The Judiciary in Tajikistan* (Geneva, 2020).

of such exceptional circumstances, a hearing must be open to the general public, including members of the media, without entrance being limited to a select group of people.¹²

122. It is submitted by the source and confirmed by the Government that the trials of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov were closed to the public and the media, in violation of the above provisions. The Government's reference to State secrets remains unexplained. The Working Group thus finds that the hearing of the cases of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov behind closed doors violated their rights under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

123. The source argues that Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov did not have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing, as lawyers in Tajikistan are afraid to effectively defend human rights activists because they are intimidated and persecuted for this. In particular, according to the source, the lawyers refused to appeal against certain procedural decisions and participate in certain hearings. The Government contested that, stating that the three individuals were legally represented and that their lawyers fully participated in the trial.

124. The Working Group notes that the submissions of the source are corroborated by the above-mentioned reports, in which serious concern is raised over intimidation of lawyers in Tajikistan. In its earlier jurisprudence, the Working Group has already stressed that it is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide remedies whenever a violation is perpetrated.¹³ It reiterates that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, legal counsel should be able to carry out its functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment. In the view of the Working Group, article 14 (3) (b) of the Covenant was thus breached in the cases of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov and the Government failed to provide sufficient information that would lead to an opposite conclusion.

125. The Working Group considers that this violation substantially undermined and compromised the detainees' capacity to defend themselves in any subsequent judicial proceedings. As the Working Group has stated, in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and must be promptly informed of this right upon apprehension. Access to legal counsel should not be unlawfully or unreasonably restricted.¹⁴

126. The Working Group notes the denial of the due process right of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov, within the ambit of articles 3, 9 and 10 of the Universal Declaration of Human Rights and articles 9 (1) and 14 (1) of the Covenant, to be visited by and to correspond with their families and to be given adequate opportunity for communication with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations, in accordance with principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Giving prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential and necessary

¹² General comment No. 32 (2007), paras. 28 and 29.

¹³ Opinion No. 17/2019, para. 88.

¹⁴ See also Human Rights Committee, general comment No. 32 (2007), para. 34.

safeguard for the prevention of torture as well as for protection against arbitrary detention and infringement of personal security.¹⁵

127. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give the deprivation of liberty of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov an arbitrary character under category III.

(d) Category V

128. Lastly, the source alleges that the detention of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov is arbitrary under category V as they have been deprived of their liberty for reasons of discriminatory intent against them as human rights defenders. The Government stated that their actions amounted to serious crimes, and that that was the only reason for their prosecution and conviction.

129. The Working Group observes that it has already examined in its previous cases against Tajikistan the same pattern in the attitude of the authorities towards those who belong to opposition parties or human rights activities. This pattern has been confirmed by numerous international bodies in their reports on Tajikistan.

130. Noting all the above and especially its findings under category II, the Working Group finds that Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov were detained discriminatorily on the basis of political or other opinion, in a manner that ignores the equality of human rights, a prohibited ground of discrimination under articles 2 (1) and 26 of the Covenant. The Working Group considers that the facts in the present case disclose a violation under category V. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders.

(e) Concluding remarks

131. The situation of human rights defenders in Tajikistan remains deeply concerning, as evidenced by the comprehensive report presented to the Human Rights Council by the Special Rapporteur on the situation of human rights defenders following her visit to the country in 2022.¹⁶ The findings reveal the challenges faced by human rights defenders, lawyers, journalists and civil society actors, who often endure criminal persecution under the guise of legal processes. In her report, the Special Rapporteur highlighted the cases of Mr. Kholiknazarov and Mr. Irgashov as examples of the misuse of criminal law against those advocating for fundamental human rights in Kūhīstoni Badakhshon Autonomous Province. The Special Rapporteur's recommendations to end the misuse of criminal law and drop unwarranted charges against human rights defenders are echoed by the Working Group. It is imperative to ensure that human rights defenders can operate without fear of reprisal or interference. Continuing to penalize these individuals for receiving foreign funding or for their peaceful activities is unacceptable and stands in direct opposition to the principles of freedom and democracy.

3. Disposition

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

The deprivation of liberty of Faromuz Irgashov, Khursandsho Mamadshoev and Manucheher Kholiknazarov, being in contravention of articles 2, 3, 7, 9, 10, 11 (1) and 29 (2) of the Universal Declaration of Human Rights and articles 2 (1), 3 (b) and (d), 9 (1), (2) and (4), 14 (1), 19 (2) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and fall within categories I, II, III and V.

¹⁵ Opinions No. 10/2018, para. 74; No. 30/2018, para. 47; No. 35/2018, para. 39; No. 39/2018, para. 41; No. 47/2018, para. 71; No. 22/2019; para. 71; No. 36/2019, para. 56; No. 44/2019, paras. 74 and 75; No. 45/2019, para. 76; No. 56/2019, para. 83; No. 65/2019, para. 68; No. 6/2020, para. 54; No. 11/2020, para. 54; No. 31/2020, para. 51; No. 32/2020, para. 59; No. 33/2020, para. 87; No. 34/2020, para. 57; and No. 89/2020, para. 80.

¹⁶ [A/HRC/55/50/Add.1](#).

133. The Working Group requests the Government of Tajikistan to take the steps necessary to remedy the situation of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov 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.

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

135. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov and to take appropriate measures against those responsible for the violation of their rights.

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

4. Follow-up procedure

137. 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. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov;

(c) Whether an investigation has been conducted into the violation of the rights of Mr. Irgashov, Mr. Mamadshoev and Mr. Kholiknazarov 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.

138. 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.

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

140. 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.¹⁷

[Adopted on 22 March 2024]

¹⁷ Human Rights Council resolution 51/8, paras. 6 and 9.