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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020

Opinion No. 23/2020 concerning Maksud Ibragimov (Tajikistan and Russian Federation)

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 (A/HRC/36/38), on 24 December 2019 the Working Group transmitted to the Government of Tajikistan and the Government of the Russian Federation a communication concerning Maksud Ibragimov. The Government of Tajikistan submitted a late response on 28 April 2020. The Government of the Russian Federation submitted a late response on 22 April 2020. Both States are parties to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



Submissions

Communication from the source

4. Maksud Ibragimov was born as a citizen of Tajikistan in 1977 in Dushanbe. He is a political opposition activist who has been residing in the Russian Federation since 2004. When he moved to the Russian Federation, he renounced his Tajik citizenship to become a citizen of the Russian Federation. According to the source, he is currently stateless, given that he was allegedly stripped of his Russian citizenship.

5. While living in Moscow, Mr. Ibragimov co-founded and then became the leader of an opposition movement known as Tajik Youth for the Revival of Tajikistan, in collaboration with the leader of Group 24, another Tajik opposition movement, founded in 2012 and outlawed in October 2014 as an extremist organization.¹ In October 2014, Mr. Ibragimov's request to register Tajik Youth for the Revival of Tajikistan with the Ministry of Justice of the Russian Federation was rejected, allegedly due to interference by the Tajik authorities. The source reports that, later that month, the Supreme Court of Tajikistan declared the movement illegal and that the Tajik authorities requested Mr. Ibragimov's extradition. He was subsequently arrested by the Russian authorities on 9 October 2014. The extradition request was denied, however, and he was released on 11 October 2014.

a. Arrest and transfer from the Russian Federation to Tajikistan

6. The source reports that, on 26 November 2014, Mr. Ibragimov was shot and stabbed with a knife by two unknown persons in Moscow and left in severely critical condition. The Russian police reportedly launched an investigation into the incident.

7. The source submits that, on 20 January 2015, Mr. Ibragimov went to the Office of the Prosecutor General of the Russian Federation to submit a complaint regarding the attack he had experienced on 26 November 2014. The source adds that, when he left the Office, he was allegedly abducted by unidentified Tajik men and taken to a police station where all his belongings were reportedly confiscated, including his passport. He was then brought to the airport and forced into the luggage hold of a commercial plane headed to Dushanbe. The source indicates that, at some point during that time, Mr. Ibragimov was able to find a paper and write a note that he was being kidnapped. He threw the note to airport staff who were on duty, but none of them paid attention to him. When he landed in Dushanbe, he was allegedly arrested and detained immediately by the Tajik authorities. He was not informed, at that point in time, either orally or by way of an arrest warrant, of the reason for his arrest or subsequent detention.

8. The source then reports that Mr. Ibragimov was held incommunicado for 10 days and that his relatives and lawyer did not know his whereabouts. They searched for him, contacting several different government offices, and it was only after 10 days had passed that they received information that he had been removed to Tajikistan. During that time, Mr. Ibragimov was reportedly physically tortured and coerced into telling the Tajik media that he had voluntarily returned to Tajikistan.

9. The source states that Mr. Ibragimov has also been placed in solitary confinement for several months. Furthermore, he has allegedly been strictly isolated, and his family is permitted to visit him once every three months. The source reports that, without his relatives providing the prison with a monthly or fortnightly supply of food for him, Mr. Ibragimov would reportedly have had no access to food, clothing or medicine.

10. According to the source, on 30 January 2015, the Office of the Prosecutor General of Tajikistan announced to the media that Mr. Ibragimov had been charged with extremism and was being held in pretrial detention in Dushanbe. The source also indicates, however, that that charge was not presented to him until he was placed on trial. At about the same time, Mr. Ibragimov's family discovered that he had been stripped of his Russian citizenship.

11. The source reports that, at a court hearing on 24 June 2015, Mr. Ibragimov was sentenced to 17 years' imprisonment for a number of offences, including extremism under

¹ See A/HRC/35/22/Add.2.

the Law on Combating Terrorism of 1999. No members of the public were permitted to attend the hearing and, although approximately 15 persons from the Office of the Prosecutor General were present, only two of Mr. Ibragimov's family members and two lawyers, who were allegedly unable to even participate in proceedings, were allowed to attend.

12. According to the source, although Mr. Ibragimov denied the charges against him and maintained his innocence during the trial, his lawyers have reportedly not been permitted to lodge an appeal on his behalf.

13. In 2016, the European Parliament called for the release of prisoners of conscience in Tajikistan, including Mr. Ibragimov.² However, as at the time of the submission of the present communication, Mr. Ibragimov remains in detention.

b. Legal analysis

i. Category I

14. The source submits that the arrest and detention of Mr. Ibragimov has no legal basis and that the Working Group on Arbitrary Detention has previously held that deprivation of liberty is arbitrary when there is no legal justification for the arrest and detention and when the charges are vague.

15. The source reports that, after his arrest, the Tajik authorities reportedly charged Mr. Ibragimov with extremism under the Law on Combating Terrorism, owing to a large extent to his membership and involvement in the Tajik Youth for the Revival of Tajikistan movement. The source argues that the Law on Combating Terrorism and the extremism charges laid out against Mr. Ibragimov are ill-defined and overly broad. To support that claim, the source refers to a previous opinion of the Working Group (No. 18/2011), in which it expressed concern about the increased risk of arbitrary detention based on the use of emergency or special laws and procedures to combat terrorism.

16. The source further argues that, when arrested, Mr. Ibragimov was not informed of the reasons for his arrest or subsequent detention and that the charges were not presented to him until his trial. The source states that the circumstances of Mr. Ibragimov's arrest and detention violate article 9 of the Universal Declaration of Human Rights, articles 9 (2) and 14 (3) of the Covenant and article 19 of the Constitution of Tajikistan. The source submits that his detention is therefore arbitrary under category I.

ii. Category II

17. The source submits that the Government of Tajikistan deprived Mr. Ibragimov of his liberty as a result of his exercise of the rights guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The source further states that those rights are also enshrined in article 28 of the Constitution of Tajikistan.

18. The source argues that Mr. Ibragimov was convicted on charges of extremism, allegedly because of his membership of and involvement in political groups, and that his detention based on those charges and the subsequent imposition of criminal sanctions violated his right to freedom of expression under the above-mentioned international and domestic provisions.

19. The source submits that, although articles 19 and 20 of the Covenant provide for limited exceptions based on national security, public safety and public order, Mr. Ibragimov's case does not fall under those exceptions. Whereas Mr. Ibragimov's detention on charges of "extremism" could prima facie fall within the exception of national security or public order under article 19 (3) of the Covenant, the source argues that, as stated by the Human Rights Committee, article 19 (3) may never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights.³

² European Parliament resolution of 9 June 2016 on "Tajikistan: situation of prisoners of conscience". Available at www.europarl.europa.eu/doceo/document/TA-8-2016-0275_EN.html?redirect.

³ Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 23.

20. The source alleges that the rationale behind the denunciation of groups and individuals involved in movements for multiparty democracy in Tajikistan has been acknowledged by the international community as being politically motivated and not due to national security concerns. Reportedly, the motivation regarding the arrest and detention of Mr. Ibragimov was to silence him in relation to his critique of, and/or opposition to, the Government of Tajikistan due to his membership in political opposition movements.

21. The source submits that, by depriving Mr. Ibragimov of his freedom of expression, the Government of Tajikistan violated both article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant, as well as articles 28 and 30 of the Constitution of Tajikistan, giving Mr. Ibragimov's deprivation of liberty an arbitrary character under category II.

iii. Category III

22. The source argues that Tajikistan failed to observe the minimum international standards of due process and that Mr. Ibragimov was not provided a fair hearing before an impartial and independent tribunal, a right that is absolute and can accommodate no exception.⁴

23. The source indicates that Mr. Ibragimov was not originally arrested by way of the usual law enforcement procedure, but that he was instead subjected to an enforced disappearance, having been forcibly taken from the Russian Federation and returned to Tajikistan. After that forcible return, he was immediately arrested by the Tajik authorities, without being presented with an arrest warrant or being informed of any charges against him at the time of his arrest. He was reportedly provided no reason for his arrest. It is only during his trial, six months after his alleged forcible transfer, that he reportedly was notified that he was facing charges related to "extremism".

24. The source argues that the requirements under articles 9 (2) and 14 (3) of the Covenant for a detainee to be informed at the time of arrest of the reasons for his arrest and to be promptly informed of any charges against him or her were therefore not met in that case. In the light of the foregoing, the source invokes violations of articles 9 (1) and (2) and 14 (3) of the Covenant, as well as principles 10 to 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

25. The source also submits that, during the first 10 days of detention, Mr. Ibragimov was not given access to a lawyer in order to receive prompt and full communication of his detention order or to represent and present evidence in his defence. His relatives and his lawyer searched for him, and it was only after 10 days that they received information that he had been removed to Tajikistan. Even after locating Mr. Ibragimov, his lawyer was not permitted to consult his case file.

26. The source argues that, although article 14 (3) of the Covenant provides for the right to legal defence, including the preparation of a defence and the ability to communicate with counsel of one's own choosing, Mr. Ibragimov was not given sufficient and timely access to his legal counsel. During the trial, the lawyers retained by Mr. Ibragimov's relatives were not given the opportunity to participate in the proceedings or to properly advise Mr. Ibragimov of the nature of the proceedings. The source further alleges that the denial of access to, and the assistance of, legal counsel supports the arbitrary characterization of Mr. Ibragimov's deprivation of liberty.

27. The source also argues that, under article 14 (3) (b) of the Covenant, Mr. Ibragimov had a right to have adequate time and facilities for the preparation of his defence, recalling that the Human Rights Committee has noted that this provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms and that what counts as "adequate time" depends on the circumstances of each case.⁵ The source argues therefore that Mr. Ibragimov's right under article 14 (3) of the Covenant was violated, because he was afforded no opportunity to adequately prepare his defence, in

⁴ Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 19.

⁵ Ibid., para. 32.

particular due to the lack of information given to him about the reasons for his arrest and his insufficient access to legal representation.

28. Furthermore, the source states that, although approximately 15 persons from the Office of the Prosecutor General were in attendance at his trial, only two of Mr. Ibragimov's family members and two lawyers, who were unable to participate in proceedings, were allowed to attend the hearing. No members of the public were permitted to attend.

29. Although article 14 (1) of the Covenant permits a closed trial for reasons of national security, the source reiterates that the reasons behind Mr. Ibragimov's charges were his activity in political opposition movements. The source argues that the closed nature of the trial was therefore not justified, given that there were no legitimate national security secrets involved that would be at risk of public exposure. The source argues that Mr. Ibragimov's right to a fair and public hearing before a competent, impartial and independent tribunal established by law, enshrined in article 14 (1) of the Covenant and article 10 of the Universal Declaration of Human Rights, was violated.

30. The source also reports that, during his trial, Mr. Ibragimov was made to answer questions but was not permitted to call his own witnesses. Furthermore, he could not cross-examine or rebut any evidence presented by the prosecution. The source concludes that his right enshrined in article 14 (3) (e) of the Covenant to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him was violated.

31. According to the source, Mr. Ibragimov has been physically tortured during his detention, in particular when he was initially detained. He was allegedly tortured and forced to tell the Tajik media that he had voluntarily returned to Tajikistan, rather than having been forcibly returned.

32. The source reports that Mr. Ibragimov has been held in solitary confinement, subsequent to his initial detention, an act that can amount to torture under the Covenant.⁶ The source states that he has been strictly isolated since his initial detention and that his family is only permitted to visit him once every three months. The source concludes that his prolonged solitary confinement of over four years, involving very minimal communication with the outside world, amounts to cruel and inhuman or degrading treatment, in particular given the length of his sentence – 17 years' imprisonment.

33. Furthermore, the source indicates that Mr. Ibragimov has access to food only because his relatives provide the prison with a monthly or fortnightly supply of food for him. Reportedly, the prison does not itself provide Mr. Ibragimov with food, clothing or medicine. Without his family providing them for him, he would not have access to those basic living necessities. The source concludes that the present situation, which places significant financial strain on his family, amounts to violations of the Covenant, given that it effectively subjects Mr. Ibragimov to torture and other cruel, inhuman or degrading treatment or punishment.

34. The source submits that Mr. Ibragimov has had no opportunity to appeal his conviction. Although he denied the charges brought against him and maintained his innocence during the trial, his lawyers have not been permitted to lodge an appeal on his behalf, in violation of his right enshrined in article 14 (5) of the Covenant.

35. In light of the above, the source submits that the non-observance by Tajikistan of international norms governing the rights to freedom from torture and arbitrary arrest and detention and the rights to due process and a fair trial, pursuant to articles 5, 8, 9 and 11 of the Universal Declaration of Human Rights and articles 7, 9 and 14 of the Covenant, was sufficiently grave so as to give Mr. Ibragimov's deprivation of liberty an arbitrary character under category III.

⁶ See Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment.

v. Category V

36. The source argues that Mr. Ibragimov was only arrested and detained based on his political opinion and membership of political groups that oppose the current Government of Tajikistan. His detention is therefore discriminatory and infringes his rights under article 7 of the Universal Declaration of Human Rights, article 26 of the Covenant and articles 30 (freedom of speech) and 17 (equality before the law and non-discrimination) of the Constitution of Tajikistan.

Additional information received from the source

37. On 21 January 2020, the source submitted additional information clarifying that, on 20 January 2015, Mr. Ibragimov was taken from his home by government security officers and a neighbourhood police inspector to a local police station where he was told that his Russian citizenship had been revoked. At that time, two or three Tajik government security officers arrived. He was then taken to the Office of the Prosecutor General, where officers allegedly attempted to obtain an authorization to extradite him to Tajikistan. The Prosecutor did not give the authorization and decided that Mr. Ibragimov was not to be detained, so that he could appeal the court decision on revocation.

38. According to the source, when Mr. Ibragimov went out into the street, the Russian and Tajik security officers grabbed him, pushed him into a vehicle and brought him to Domodedovo airport. He was handcuffed and taken to customs and passport control.

39. Reportedly, at customs and passport control, Mr. Ibragimov pulled out the document on his non-detained status from the Office of the Prosecutor General of the Russian Federation, threw it on the desk of the customs control officer and said that the extradition was illegal. However, the source states that the Tajik officer managed to grab the document and tossed it quickly to a second Tajik officer.

40. The source reports that Mr. Ibragimov is currently in a high-security correctional facility in the town of Vahdat, Tajikistan. He is not isolated from the outside world or other prisoners. However, the source reports that he has been subjected to adverse treatment and, as an example, states that, approximately two years ago, without reason, Mr. Ibragimov was put on the high escape risk prisoners list and, subsequently, in every 24-hour period, he endures nine checks, whereas other prisoners have only three daily checks.

Response from the Governments

41. On 24 December 2019, the Working Group transmitted the allegations from the source to the Government of Tajikistan under its regular communications procedure. The Working Group requested the Government to provide, by 24 February 2020, detailed information about the circumstances of Mr. Ibragimov's detention and to clarify the legal provisions justifying his continued detention, as well as their compatibility with the Government's obligations 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 the physical and mental integrity of Mr. Ibragimov.

42. On 3 February 2020, the Working Group transmitted as an addendum the additional information submitted by the source to the Government of Tajikistan requesting that it submit a reply by 24 February 2020.

43. On 28 April 2020, the Government of Tajikistan submitted a late reply. The Working Group regrets that the Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work. The Working Group cannot accept the reply as if it were submitted within the time limit.

44. On 24 December 2019, the Working Group transmitted the allegations from the source to the Government of the Russian Federation under its regular communications procedure. The Working Group requested the Government to provide, by 24 February 2020, detailed information about the circumstances of Mr. Ibragimov's detention and to clarify the legal provisions justifying his detention on 9 October 2014 and on 20 January 2015, as well as their compatibility with the Government's obligations under international human rights law, and in particular with regard to the treaties ratified by the State.

45. On 3 February 2020, the Working Group transmitted as an addendum the additional information submitted by the source to the Government of the Russian Federation requesting that it submit a reply by 24 February 2020.

46. On 31 January 2020, the Government of the Russian Federation wrote to the Working Group requesting a one-month extension, pursuant to paragraph 16 of the Working Group's methods of work, which the Working Group granted on 3 February with a new deadline of 24 March 2020. On 22 April 2020 the Working Group received a reply, which was transmitted later than the extended deadline. Therefore, the Working Group cannot accept the reply as if it were submitted within the time limit.

Discussion

47. In the absence of a timely response from either the Government of the Russian Federation or the Government of Tajikistan, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

48. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). In the present case, neither the Government of the Russian Federation nor the Government of Tajikistan have chosen to challenge the *prima facie* credible allegations made by the source.

49. The source has made allegations in relation to both the Government of the Russian Federation and the Government of Tajikistan, arguing that the arrest and subsequent detention of Mr. Ibragimov falls under categories I, II, III and V. The Working Group shall proceed to the examination of the allegations in relation to each Government separately.

Allegations in relation to the Russian Federation

50. The source argued that Mr. Ibragimov was first arrested on 9 October 2014 but released on 11 October 2014, because Tajikistan's extradition request of Mr. Ibragimov had been denied. The source provided no further details of that arrest, and the Working Group notes the absence of a timely response from Government in that regard.

51. The Working Group is therefore unable to comment on the legality of that arrest, because there is no information provided as to whether it was executed with an arrest warrant or whether Mr. Ibragimov was promptly presented before a judge, although noting that he was released following an extradition hearing on 11 October 2014, it would appear that no undue delay took place. However, the Working Group is unable to make any conclusive statement on the matter.

52. According to the additional information received from the source, on 20 January 2015, Mr. Ibragimov was escorted to the police station, where he was notified that his Russian citizenship had been revoked. The Working Group takes note that Tajik officers were present during that incident and that it was possible for them then to take Mr. Ibragimov to the Office of the Prosecutor General of the Russian Federation in an attempt to obtain extradition permission. Moreover, although that request was denied by the Prosecutor, Mr. Ibragimov was nevertheless taken forcibly to the airport as he attempted to leave the Office, forced into the cargo section of an aeroplane and taken to Dushanbe. The Working Group is highly concerned by the treatment Mr. Ibragimov received.

53. The source has not made no claim that the Russian authorities were involved in any of the actions of forcible removal of Mr. Ibragimov to Dushanbe. However, the Working Group notes that Tajik officers were allowed to be present at the police station where Mr. Ibragimov was notified of the revocation of his citizenship. Moreover, the officers were also allowed to take Mr. Ibragimov to the Office of the Prosecutor General of the Russian Federation in an attempt to obtain an extradition authorization. When that was denied, the Russian authorities released Mr. Ibragimov, who was then abducted on the street outside and taken to the airport by force. The Working Group observes that, at the very minimum, the Russian authorities failed in their duty of care to protect Mr. Ibragimov from the actions of officers who were allowed by the Russian authorities to follow him throughout that day.

54. Moreover, the source has submitted that Mr. Ibragimov, at the airport, was presented to the Russian passport and customs officers handcuffed. It stems from the facts described that none of those officers raised the alarm at someone being escorted out of the country in a forced manner. Mr. Ibragimov attempted to provide a document showing the illegality of the actions to the Russian officers but was prevented from doing so by the Tajik authorities. In that regard, the Working Group considers it implausible that an individual in handcuffs could have been taken through one of the main airports of the country without any question by the Russian authorities as to the legality of such an action.

55. Mr. Ibragimov was effectively loaded onto the cargo section of an aeroplane, and the Working Group considers that the Russian authorities knew – or at least should have known – about that. The Working Group specifically notes the absence of any explanation on behalf of the Government of the Russian Federation for those events in its late response.

56. As the Working Group and other experts stated in the joint study on global practices in relation to secret detention in the context of countering terrorism:

Secret detention, involving the denial or concealment of a person's detention, whereabouts or fate has the inherent consequence of placing the person outside the protection of the law. The practice of "proxy detention", where persons are transferred from one State to another outside the realm of any international or national legal procedure ("rendition" or "extraordinary rendition") for the specific purpose of secretly detaining them, or to exclude the possibility of review by the domestic courts of the State having custody of the detainee, or otherwise in violation of the well-entrenched principle of non-refoulement, entails exactly the same consequence. The practice of "proxy detention" involves the responsibility of both the State that is detaining the victim and the State on whose behalf or at whose behest the detention takes place (A/HRC/13/42, para. 36).

57. The Working Group also recalls that, in its resolution 37/3, the Human Rights Council stressed that no one should be held in secret detention, urged States concerned to ensure that all persons held in detention under their authority were provided with access to the courts, and called upon States to investigate all alleged cases of secret detention, including under the pretext of counter-terrorism.

58. Moreover, as the Working Group has previously observed,⁷ international law regarding extradition provides procedures that must be observed by countries in arresting, detaining and returning individuals to face criminal proceedings in another country and in ensuring that their right to a fair trial is protected. The Working Group considers that those procedures were blatantly ignored.

59. The Working Group therefore finds that the Government of the Russian Federation is jointly responsible with the Government of Tajikistan for the arrest, detention and deportation of Mr. Ibragimov to Tajikistan. Noting that the detention took place in complete disregard of the legal procedures, the Working Group finds that Mr. Ibragimov's detention on 20 January 2015 was arbitrary, falling under category I.

60. Furthermore, the Government of the Russian Federation violated its obligation, under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 7 of the Covenant, not to return Mr. Ibragimov to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture or other ill-treatment. In 2012, the Committee against Torture expressed its concern about reports of extraditions and expulsions of foreign nationals by the Russian Federation to States members of the Commonwealth of Independent States in Central Asia, when those extraditions or expulsions exposed the individuals concerned to a substantial risk that they would be subjected to torture in their countries of origin.⁸ That concern was reiterated by the Committee in 2018.⁹ The Government of the Russian Federation also violated its obligations under article 13 of the Covenant to ensure that aliens lawfully in its territory are expelled only in pursuance of a decision reached in

⁷ See, for example, opinions No. 11/2018, No. 2/2015 and No. 57/2013.

⁸ CAT/C/RUS/CO/5, para. 17.

⁹ CAT/C/RUS/CO/6, paras. 42–43.

accordance with law and to allow them to submit reasons against the expulsion and have the case reviewed by, and be represented before, a competent authority.

61. Consequently, the Working Group considers that the Government of the Russian Federation is responsible for its own actions in the arrest, detention and deportation of Mr. Ibragimov, as well as the subsequent violations of his rights in Tajikistan (see paras. 64–93 below).

62. Moreover, given that the detention of Mr. Ibragimov took place in plain disregard for the established extradition procedures, thereby denying Mr. Ibragimov his fair trial rights, the Working Group also finds the detention of Mr. Ibragimov arbitrary and falling under category III.

Allegations in relation to Tajikistan

63. The source has argued that the detention of Mr. Ibragimov is arbitrary and falls under categories I, II, III and V. The Government of Tajikistan has chosen not to respond to those allegations. The Working Group shall proceed with the examination of each of the allegations in turn.

i. Category I

64. The Working Group initially observes that the source has made no allegations of the Tajik authorities being involved in the first arrest of Mr. Ibragimov, on 9 October 2014. However, the summary of events shows an involvement of the Tajik authorities in the detention of Mr. Ibragimov on 20 January 2015. Those are extremely serious allegations, to which the Government has chosen not to respond, although it had an opportunity to do so.

65. The Working Group has already established that the Government of the Russian Federation and the Government of Tajikistan were jointly responsible for the grave violations of Mr. Ibragimov's rights on 20 January 2015. In relation to those events, the Working Group states that it finds the Government of Tajikistan also responsible for the arbitrary detention of Mr. Ibragimov on 20 January 2015, falling under categories I and III.

66. Furthermore, the Working Group considers that the treatment Mr. Ibragimov was subjected to on 20 January 2015, at the hands of the Tajik authorities while in the Russian Federation constitutes a particularly aggravated form of arbitrary detention amounting to an enforced disappearance, prohibited by international law.¹⁰ The Working Group finds that Mr. Ibragimov was detained with no regard to due process, without being informed of the reasons for his arrest and without the legally established procedure being followed. He was not presented to a judicial authority, had no opportunity to challenge the legality of his detention and was in fact held incommunicado for some 10 days after his arrival in Dushanbe.

67. As the Working Group has consistently found, holding persons incommunicado violates their right to be brought before a court under article 9 (3) of the Covenant and to challenge the lawfulness of their detention before a court under article 9 (4) of the Covenant.¹¹ That view is consistent with that of the Human Rights Committee, which, in its general comment No. 35, has argued that incommunicado detention that prevents prompt presentation before a judge inherently violates article 9 (3) of the Covenant.¹²

68. The Working Group recalls that judicial oversight of detention is a fundamental safeguard of personal liberty¹³ and is essential in ensuring that detention has a legal basis. Given that Mr. Ibragimov was unable to contact anyone, especially his lawyer, which is an essential safeguard to ensuring the ability of any detainee to personally challenge their detention, his right to an effective remedy under article 8 of the Universal Declaration of

¹⁰ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 17.

¹¹ See, for example, opinions No. 28/2016, No. 79/2017, No. 6/2017, No. 10/2017, No. 45/2017, No. 46/2017, No. 11/2018, No. 35/2018 and No. 44/2018.

¹² Human Rights Committee, general comment No. 35, para 35.

¹³ Report of the Working Group on Arbitrary Detention on 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 (A/HRC/30/37), para. 3.

Human Rights and article 2 (3) of the Covenant was also violated. The Working Group also considers that Mr. Ibragimov was placed outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant. The Working Group therefore finds that the detention of Mr. Ibragimov while in Tajikistan was arbitrary and falls under category I.

ii. Category II

69. The source has further submitted that the detention of Mr. Ibragimov falls under category II, given that he was detained solely for his political activism and freedom of expression as protected by article 19 of the Covenant. The Working Group notes the absence of a reply from the Government of the Russian Federation or the Government of Tajikistan to those allegations.

70. The Working Group observes that the present case is the fourth involving political opposition members of Tajikistan that has come before it¹⁴ and that all the cases follow a similar pattern of the repression of political views by the opposition parties. In that regard, the Working Group recalls the concluding observations of the Human Rights Committee on the third periodic report of Tajikistan,¹⁵ in which the Committee expressed its serious concern over the serious harassment, and often imprisonment, of family members of opposition groups or of individuals associated with such groups.

71. The Working Group recalls that freedom of expression and of opinion as expressed in article 19 of the Covenant are indispensable conditions for the full development of the person; they are essential for any society and in fact constitute the foundation stone for every free and democratic society. The Human Rights Committee noted that the freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and that that right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions. Moreover, the permitted restrictions to that right may relate either to respect of the rights or reputations of others or to the protection of national security, public order or public health or morals. The Committee went on to stipulate that restrictions are not allowed on grounds not specified in article 9 (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.¹⁶ It should be noted that article 21 of the Covenant permits restrictions to the right of association on the same three grounds.

72. In the present case, the Government of Tajikistan has chosen to provide no explanation of the arrest, detention or sentencing of Mr. Ibragimov, nor is there any evidence before the Working Group that he may have committed any criminal acts. It therefore appears that the basis for the arrest and subsequent detention of Mr. Ibragimov was his freedom of expression and political activism. Although the freedom of expression and the freedom of association are not absolute rights, the Human Rights Committee has stated that, when a State party imposes restrictions on the exercise of freedom of expression, they may not put in jeopardy the right itself. Moreover, it stipulated that paragraph 3 of its general comment No. 34 could never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets or human rights.

73. The Working Group also notes that Mr. Ibragimov exercised the rights conferred upon him by resolution 12/16 of the Human Rights Council and that, in paragraph 5 (p) of that resolution, the Council called upon States, which would include the Government of Tajikistan, to refrain from imposing restrictions that were not consistent with article 19 (3) of the Covenant, including on the discussion of government policies and political debate.

74. Moreover, the Working Group also finds that the right of Mr. Ibragimov to take part in the conduct of public affairs as specified in article 25 of the Covenant has been violated, because his arrest was directly linked to his engagement in the opposition party to the Government. The Working Group recalls that the Human Rights Committee, in its general

¹⁴ See opinions No. 2/2018, No. 17/2019 and No. 66/2019.

¹⁵ CCPR/C/TJK/CO/3, para. 53.

¹⁶ See Human Rights Committee, general comment No. 34.

comment No. 25 (1996) on participation in public affairs and the right to vote, 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. Noting the essential link between the rights to freedom of expression, assembly and association, the Committee also emphasized that the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25 of the Covenant.

75. The Working Group therefore finds that the detention of Mr. Ibragimov resulted from his legitimate exercise of freedom of expression, as protected by article 19 of the Covenant, and from his exercise of his right to take part in the conduct of public affairs, under article 25 of the Covenant. The Working Group concludes that his detention is therefore arbitrary, falling under category II.

76. 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 and to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, for appropriate action.

iii. Category III

77. Given its finding that the deprivation of liberty of Mr. Ibragimov is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, the trial did take place, and the source has submitted that the detention of Mr. Ibragimov is arbitrary and falls under category III, given that: (a) Mr. Ibragimov was arrested without a warrant and not presented with the charges; (b) he was denied prompt access to and assistance of legal counsel; (c) he was denied the right to properly prepare for his defence; (d) he was denied public hearing; (e) he was unable to examine witnesses during the trial; (f) he was subjected to ill-treatment for the purposes of extracting a confession; and (g) he was denied the right to appeal his sentence. The Working Group observes that the Government has failed to respond to any of those specific allegations although it had the opportunity to do so.

78. The Working Group has already established that the failure of the Tajik authorities to arrest Mr. Ibragimov in accordance with the stipulations of article 9 of the Covenant rendered his detention arbitrary, falling under category I. The Working Group also notes that Mr. Ibragimov was held incommunicado initially with no information relating to the charges against him. In fact, the source has stated that he was not made aware of the charges until the day of his trial, some six months after his forcible transfer to Tajikistan. Moreover, according to the source, he was then only told that he was facing charges related to “extremism”, with no further details provided.

79. The Working Group is of the view that such a situation cannot be reconciled with the obligations undertaken by Tajikistan under article 14 (3) (a) of the Covenant, which requires the prompt and detailed notification of charges, and the Working Group therefore finds that that provision has been violated. That failure also prevented Mr. Ibragimov and his lawyer from preparing a defence. Article 14 (3) (b) of the Covenant requires that everyone charged with a criminal offence be given adequate time and facilities to prepare a defence. The Working Group considers that notifying persons on the day of their trial of the charges against them, especially in such a complex case as one involving terrorism charges, is not compatible with the requirements of article 14 (3) (b), and the Working Group therefore finds a breach of that provision.¹⁷

80. The Working Group finds that, because Mr. Ibragimov was being held incommunicado for the first 10 days, he was denied the right to legal assistance as stipulated in article 14 (3) (b) of the Covenant and thereafter did not have sufficient time to communicate with his lawyer to prepare for his defence, in violation of article 14 (3) (d) of the Covenant.

¹⁷ See Human Rights Committee, *Grant v. Jamaica* (CCPR/C/56/D/597/1994) and communications No. 226/1987 and No. 256/1987.

81. The Working Group further notes the failure of the Government to explain the reasons for which Mr. Ibragimov and his lawyer were not given full access to all the evidence and case materials. As the Working Group has stated, every individual deprived of liberty has the right to access to material related to the detention or presented to the court by the State, in order to preserve the equality of arms.¹⁸ However, that right is not absolute, and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.¹⁹ In the present case, the Government has failed to demonstrate such a necessity, and the Working Group therefore finds that Mr. Ibragimov was denied the right to equality of arms, in further breach of article 14 (3) (b) of the Covenant.

82. Moreover, the source has reported that Mr. Ibragimov and his lawyer were unable to examine witnesses and were prevented from effectively participating in the trial. As the Human Rights Committee has stated, in paragraph 39 of its general comment No. 32, there is a strict obligation to respect the right to have witnesses admitted that are relevant for the defence and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. In the present case, the Working Group finds that that right was denied to Mr. Ibragimov in a further breach of the right to equality of arms in the proceedings pursuant to article 14 (3) (e) of the Covenant.

83. The Government has failed to present a response to the allegation made by the source that Mr. Ibragimov did not receive a public trial and that his right to appeal was denied.

84. The Working Group notes the allegations made by the source that only family members of Mr. Ibragimov were allowed to be present, whereas the prosecution side was presented by dozens of prosecutors. In that regard, the Working Group recalls that, in paragraph 29 of its general comment No. 32, the Human Rights Committee noted that:

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

85. The Working Group notes that the case of Mr. Ibragimov did not fall into any of the prescribed exceptions to the general obligation of public trials under article 14 (1) of the Covenant and that the Government of Tajikistan did not invoke any of those exceptions to justify the closed trial. The Working Group therefore finds a violation of article 14 (1) of the Covenant.

86. In relation to the denial of the right to appeal, the Working Group finds that a clear breach of article 14 (5) of the Covenant has taken place, given that Mr. Ibragimov's lawyers have been prevented from lodging an appeal and the Government has presented no explanation in that regard.

87. The source has also alleged, and the Government has not contested, that Mr. Ibragimov was ill-treated, especially during his initial detention, in order to force him to make a public statement that he had returned to Tajikistan voluntarily. In the view of the Working Group, the treatment described by the source reveals a *prima facie* breach of the absolute prohibition of ill-treatment and torture, which is a peremptory norm of international law and of the Convention against Torture, as well as encapsulated in

¹⁸ United Nations Basic Principles and Guidelines, principle 12 and guideline 13. See also opinions No. 66/2019; No. 78/2018, paras. 78–79; No. 18/2018, para. 53; No. 89/2017, para. 56; No. 50/2014, para. 77; and No. 19/2005, para. 28 (b), in which the Working Group reached a similar conclusion on the violation of the principle of equality of arms when information had been withheld from the defendant.

¹⁹ United Nations Basic Principles and Guidelines, guideline 13, paras. 80–81. See also opinions No. 70/2019, para. 79; No. 17/2019; and No. 18/2018.

principle 6 of the Body of Principles and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group reminds the Government that the use of a confession extracted through ill-treatment that is tantamount, if not equivalent, to torture may also constitute a violation by Tajikistan of its international obligation under article 15 of the Convention against Torture. Furthermore, under principle 21 of the Body of Principles, taking undue advantage of the situation of detention to compel confession or incriminating statements is specifically prohibited.²⁰ It is also a breach of article 14 (2) and (3) (g) of the Covenant.

88. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

89. In the light of the foregoing, the Working Group finds that the trial of Mr. Ibragimov was carried out in complete disregard for the guarantees encapsulated in article 14 (1), (2), (3) (a) (b), (d), (e) and (g) and (5) of the Covenant and that those violations were of such gravity as to give his deprivation of liberty an arbitrary character under category III.

v. Category V

90. The source has also alleged that the detention of Mr. Ibragimov falls under category V, because he was arrested and detained based on his political opinion and membership in political groups that oppose the current Government of Tajikistan. The Government has chosen not to respond to those allegations.

91. As noted above (see para. 70), the present case is the fourth recent case that has come before the Working Group concerning the political opposition in Tajikistan.²¹ The Working Group is also mindful of the concluding observations of the Committee against Torture on the third periodic report of Tajikistan, in which the Committee expressed deep concern about allegations that individuals who raised complaints of torture, members of their families, human rights defenders, including lawyers representing victims of torture, and journalists reporting on allegations of torture frequently faced reprisals by officials of Tajikistan.²²

92. Similarly, the Human Rights Committee, in its concluding observations on the third periodic report of Tajikistan, expressed its concern about politically motivated harassment of opposition members that undermined genuine political pluralism.²³

93. The Working Group therefore considers that there is a pattern of a distinctive attitude of the Tajik authorities in relation to those who are part of the Government's opposition, as in the present case of Mr. Ibragimov. The Working Group considers that such a distinction is discriminatory on the basis of political or other opinion in a manner that ignores the equality of human rights, which are prohibited grounds of discrimination under articles 2 (1) and 26 of the Covenant. The Working Group concludes that the facts in the present case disclose a violation that falls under category V.

94. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

95. The Working Group observes that the source initially argued that Mr. Ibragimov has been held in solitary confinement (see para. 32 above), but, in the additional comments submitted, argues that Mr. Ibragimov has not been isolated (see para. 40 above). Given the inconsistencies in those claims, the Working Group is unable to arrive at a conclusion on the matter. However, the Working Group recalls the duty of the Government of Tajikistan to treat all detained persons with humanity and with respect for the inherent dignity of the human person, as encapsulated in article 10 (1) of the Covenant.

96. The Working Group recalls that it issued a request to visit Tajikistan on 29 April 2020. The Working Group wishes to reiterate the request and that it would welcome the

²⁰ See also opinions No. 48/2016, No. 3/2017, No. 6/2017 and No. 29/2017.

²¹ See opinions No. 2/2018, No. 17/2019 and No. 66/2019.

²² CAT/C/TJK/CO/3, paras 21–22.

²³ CCPR/C/TJK/CO/3, para. 37.

opportunity, at the earliest convenience to the Government, to conduct a visit to Tajikistan in order to engage with the Government in a constructive manner and to offer its assistance in addressing its serious concerns relating to instances of arbitrary deprivation of liberty.

Disposition

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

(a) The deprivation of liberty of Maksud Ibragimov in the Russian Federation, being in contravention of articles 3, 8, 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights and articles 2 (1) and (3), 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.

(b) The deprivation of liberty of Maksud Ibragimov in Tajikistan, being in contravention of articles 3, 8, 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights and articles 2 (1) and (3), 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.

98. The Working Group requests the Government of the Russian Federation and the Government of Tajikistan to take the steps necessary to remedy the situation of Mr. Ibragimov 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.

99. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be: (a) for the Government of Tajikistan to release Mr. Ibragimov immediately; and (b) for the Government of Tajikistan and the Government of the Russian Federation to accord Mr. Ibragimov an enforceable right to compensation and other reparations, including for the impact on his psychological integrity from having been arrested, secretly detained and deported, 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 of Tajikistan to take urgent action to ensure the immediate release of Mr. Ibragimov.

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

101. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 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.

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

Follow-up procedure

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

- (a) Whether Mr. Ibragimov has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Ibragimov by the Government of Tajikistan and the Government of the Russian Federation;
- (c) Whether an investigation has been conducted by the Government of Tajikistan and the Government of the Russian Federation into the violation of Mr. Ibragimov's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Russian Federation and Tajikistan with their international obligations in line with the present opinion;

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

104. The Government of Tajikistan and the Government of the Russian Federation are invited to inform the Working Group of any difficulties they may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

105. The Working Group requests the source and the Government of Tajikistan and the Government of the Russian Federation 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.

106. 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.²⁴

[Adopted on 1 May 2020]

²⁴ Human Rights Council resolution 42/22, paras. 3 and 7.