

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
AL TJK 1/2020

4 November 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 43/20, 42/22 and 44/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Saidumar Husaini, Muhammadali Faizmuhammad, Rahmatulloi Rajab, Zubaidulloi Roziq, Vohidkhon Kosidinov, Kiyomiddin Kuramdzhonovich Avazov, Abduqahar Davlatov, Hikmatulloh Sayfulloza, Sadidin Rustamov, Sharif Mamadaliyevich Nabiev, Abdusamat Ghayratov, Mahmatali Hayit, and Buzurgmehr Yorov**, incarcerated at the maximum security prison No. 1 of Dushanbe (No 3/1). They have been allegedly subjected to arbitrary detention, torture and ill-treatment. They were also denied access to a lawyer of their own choice.

The above-mentioned individuals except Mr. Buzurgmehr Yorov are members of the Islamic Renaissance Party of Tajikistan (IRPT), holding various positions. Mr. Yorov is a human rights lawyer, who frequently represented politically persecuted individuals including the above mentioned persons and the subject of a previous Special Procedures communication (UA TJK 1/2017) to which we regret have not received a response.

Furthermore, the Working Group on Arbitrary Detention considered of all the above mentioned individuals and adopted opinions No. 2/2018, No. 17/2019 and No. 66/2019 finding that their deprivation of liberty is arbitrary. We continue to be seriously concerned about the reprisals the prisoners face and the recently escalated ill-treatment.

According to the information received:

On 16 September 2015, in a coordinated operation all the above mentioned members of the IRPT were arrested by officers from the State Committee for National Security (GKNB). Officers arrested these individuals without presenting them arrest warrants or giving a reason, at various public locations where they were picked up and some were taken from their private homes, where officers entered without presenting search warrants. After their arrest they were remanded at the pre-trial detention centre commonly referred to as "SIZO".

Authorities did not provide any information to the families of the detained, even after several attempts to obtain information about where they were being held, how they can contact or visit them, ranging from days to weeks following their

arrest. For the first ten days after their arrest, the above-mentioned individuals did not have access to legal counsel. They were also not initially permitted to see their families for periods ranging from weeks and up to several months. After their sentencing, family visits were only allowed one to three times and in the past eight months no visits or communications by phone were permitted.

During their interrogations, police officers allegedly physically assaulted and ill-treated these detainees to force them to confess to crimes that they did not commit. The prisoners were beaten often with aggravating elements such as placing a bag over the person's head or targeting a particularly vulnerable area of the person's body, electric shocks, being forced to stand in harsh conditions for hours on end (sometimes completely naked), injury caused by gun shot, and being deprived of necessary medical treatment and nourishment. Mr. Yorov, who was imprisoned later, was also physically abused by prison authorities and forced into solitary confinement on multiple occasions for three to 15 days at a time in a dark damp room with no toilet or bed, and prison authorities sometimes flood the floor of the cell with water so that the prisoners are always wet (which has led to multiple incidents of pneumonia). The prisoners are often denied necessary medical attention and adequate nutrition. Many of them suffer from serious health conditions—including kidney disease, heart disease, liver disease, partial paralysis, heart attacks, difficulty breathing, and high blood pressure. When family members have been able to bring necessary medication to the prisons (or arrange for medication to be delivered), prison authorities demand payment in order to deliver the medication; and even when the family members do pay the prison authorities, the prison authorities still sometimes refuse to allow the prisoners access the medication.

Even after the abovementioned individuals were permitted to meet with legal counsel, the authorities went to great lengths to prevent them from receiving effective legal assistance. Mr. Yorov was formally asked to renounce to represent the arrested individuals, and was arrested himself after he decided to do so.

The legal counsel of the IRPT members were told they could not provide any information about the case (other than information that the Government instructed them to share) to their clients, their families or the general public, as this was "top secret". To ensure compliance, the Government threatened to arrest or disbar any lawyer that failed to obey. As a result, one of the IRPT members' lawyers told the prisoners that the extent of their representation would be to meet with them and convey their needs to their families, but that, as their counsel, he could not defend the prisoners or attempt to change the result of the trial for fear of reprisals.

Similarly, another lawyer allegedly refused to provide information about the trial to the prisoners or their families, and subsequently left the legal profession out of fear for his and his family's safety. None of the IRPT members were made aware of the charges against them until, at the earliest approximately two weeks before their trial, and some did not learn of the charges against them until after the trial began. The Government also did not allow any of the detainees or their

lawyers to view evidence or the witness list in advance of their closed-door group trial, present evidence in their defense, or submit an expert witness report.

Their families have also been subjected to intimidation and harassment. For example, earlier this year Mr. Roziq's son was arrested in relation to his public statements against the torture of his father. Their wives and children have also been interrogated, these sessions often lasted hours and the family members were often threaten with harm if the IRPT members would not provide recorder confessions, on some occasions their property was seized.

In May 2020, the ill-treatment of these prisoners intensified as the authorities sought to coerce the above mentioned prisoners to make false confessions on the record and publicly condemn the IRPT as terrorists (including condemnation of certain IRPT leaders living in exile). In addition to physical beatings and other methods of torture previously employed by prison authorities, recently they have allegedly resorted to even more abominable methods of torture, such as [REDACTED] and forcing them to spend extended periods of time in very hot or very cold cells that are not large enough for the prisoner to sit or lie down.

These prisoners are largely precluded from communicating with individuals outside of their detention facilities, and when they are permitted to occasionally communicate with outsiders (such as family members) they are usually closely monitored by prison authorities.

It is alleged that the arrests, detention and ill-treatment against the above mentioned individuals by state authorities- security forces and prison authorities, is part of a targeted campaign to suppress political opposition and in the case of Mr. YOLOV for his association to the IRPT.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our grave concern at the arbitrary arrests, detention and ill-treatment including through physical and sexual assault, coerced false confessions, use of prolonged solitary confinement and poor conditions of detention, all of which the detainees reportedly have been subjected to and which would amount to torture or other cruel, inhuman or degrading treatment or punishment, as well as to violations of their rights to liberty and security, to due process guarantees, and to freedom of expression and association. Should the facts alleged above be confirmed, they would breach the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as reflected in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Tajikistan acceded to on 11 January 1995. These acts would also constitute a violation of articles 7, 9, 10, 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR) to which Tajikistan became a party on 4 January 1999.

With regard to the right of access to a lawyer of one's own choice, we consider that if confirmed, the above-mentioned facts would constitute a serious breach of article 14 of the Covenant, as well as a violation of several provisions of the Basic Principles on the Role of Lawyers.

We are seriously concerned at the intimidation and harassment of dissidents and their families and lawyers, which appears to be in relation to their association to the IRPT. It is a worrying pattern of interference by the government into the independence of lawyers and which also can amount to cruel, inhuman or degrading treatment or to torture as described in article 1 of the CAT and in line with the Human Rights Council resolution (see Res 16/23, para 8).

We wish to remind your Excellency's Government that legal systems that place a premium on confessions to establish criminal responsibility risk creating conducive environments to ill-treatment of detainees during investigations. We reiterate that law enforcement officials are obliged to respect and protect the inherent dignity and physical and mental integrity of all persons under questioning, including suspects, witnesses and victims (Human Rights Council resolution 31/31). We wish to also reiterate that interrogation rules, instructions, methods and practices should be kept under systematic review with a view to preventing cases of torture and other ill-treatment (CAT, art. 11) and recall that counsel must be present during all interview interrogations, in their entirety (A/68/295, para 44).

We urge your Excellency's Government to undertake a prompt and impartial investigation regarding the allegations of torture of the above mentioned individuals in accordance with article 12 of the CAT and prosecute suspected perpetrators of torture in line with article 7 of the CAT. Furthermore, we bring to attention of your Excellency's Government that the Working Group on Arbitrary Detention has determined the detention of all these individuals to be arbitrary and invite the Government to comply with its opinions 2/2018, 17/2019 and 66/2019.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual and legal grounds for the arrest and continued detention of the 13 persons referred to in this letter, and explain how these measures are consistent with the international human rights obligations of Tajikistan.
3. Please provide information about on action taken in follow-up to the recommendations made in the opinions of the Working Group on Arbitrary Detention No. 2/2018, 17/2019 and 66/2019 .
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to consistent allegations of torture or other cruel, inhuman or degrading

treatment or punishment of persons in custody. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of Tajikistan.

5. Please provide information on measures adopted by your Excellency's Government to ensure the right of persons to effective remedy for human rights violations, including arbitrary arrest and detention, torture and ill-treatment. If no such measures have been taken, please explain how this is compatible with the international human rights obligations of Tajikistan.
6. Please provide information on measures adopted by your Excellency's Government to ensure that all persons arrested or detained, with or without criminal charge, have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
7. Please provide information on the measures that your Excellency's Government has taken, or intends to take, to ensure the independence of the legal profession and to enable lawyers to perform their professional functions freely and without any intimidation, threat, harassment or improper interference.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations

Please accept, Excellency, the assurances of our highest consideration.

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 7, 9, 10, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which codifies the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment; the right to not be subjected to arbitrary arrest or detention; the right of all persons deprived of their liberty to be treated with humanity; the right to a fair trial before an independent and impartial tribunal previously established by law; the right to freedom of opinion and expression; the right of peaceful assembly; and the right to freedom of association.

Moreover, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as an international norm of jus cogens, is reflected inter alia, in article 5 of the Universal Declaration of Human Rights (UDHR), as well as articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

According to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law.

Article 14 of the ICCPR provides a set of procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing. The right of access to a lawyer is a right in itself and an essential precondition for the exercise and enjoyment of a number of other rights enshrined in the Covenant, including the right to liberty and security of person, the right to a fair trial and the right to an effective remedy.

The right to be assisted by a lawyer of one's own choice is also enshrined in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1990.

The Basic Principles provide that "all persons are entitled to call upon the assistance of a lawyer of their choice" (principle 1) and that Governments must adopt all appropriate measures to ensure that "all persons arrested or detained, with or without criminal charge, (...) have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention" (principle 7). The Basic Principles also provide that arrested, detained or imprisoned persons shall be provided "with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality" (principle 8).

The Basic Principles also recognise that the primary obligation to protect lawyers and enable them to exercise their functions freely lies with the State authorities. Principle 16 requires Governments to take all appropriate measures to ensure that

lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. Principle 18 expressly provides that lawyers must not be identified with their clients or their clients' causes as a result of discharging their functions.

The right to freedom of opinion, enshrined in article 19 (1) is absolute, permitting no restriction. The right to freedom of expression in article 19 (2) is broad, and protects even expression that may be regarded as deeply offensive. Any restriction to the rights to freedom of expression and of peaceful assembly must be made in accordance with the requirements of articles 19 (3) and 21.

We would like to draw the attention of your Excellency's Government to the reviewed Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 and renamed the "Mandela Rules") and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. We recall that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. We also refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.

The Mandela rules provide inter alia appropriate accommodation, including minimum cubic content of air and floor space, lighting and ventilation (rules 12 to 17), requirements to be met regarding personal hygiene (rule 18), clothing and bedding (rules 19 to 21), food (rule 22) and exercise and sport (rule 23), solitary confinement (rule 45), family visits (Rule 58) and prohibition of the use of force (Rule 82). We reiterate Principle 19 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that, "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world [...]".

We would also like to draw the attention of your Excellency's Government to Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "(l)aw enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened." Furthermore, Principle 16 provides that, "Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention [...]" (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

We would also like to reiterate the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, articles 1 and 2 the Declaration state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, article 9 provides for the right to provide legal assistance in defending human rights and fundamental freedoms.