

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the independence of judges and lawyers

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 43/16, 42/22, 43/4 and 44/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention, conviction and sentencing of human rights defender and lawyer Mr. **Abdumajid Rizoev**.

Mr. **Abdumajid Rizoev** is a human rights defender and lawyer, and previously a member of "Amparo", the Association of Young Lawyers, which was forcibly dissolved in 2012. Mr. Rizoev monitors reported human rights violations within the Tajikistan military and provides legal assistance to conscripts and soldiers who have been subjected to such violations, allegedly including physical and psychological abuse, during conscription or military service. Mr. Rizoev also provides legal representation and consultation to residents in Dushanbe, whose homes are due to be demolished as part of new construction projects in the city.

According to the information received:

On 18 November 2020, Mr. Rizoev was detained without a warrant at his office in Dushanbe by plain-clothes law enforcement officials. He was then taken to a temporary detention facility, however his family was unaware of his whereabouts until the following morning, when residents whom Mr. Rizoev was assisting and had been meeting with at the time of his arrest contacted his family to inform them. The day prior to his arrest, the construction company carrying out the demolitions, Pulodi Plaza LLC, had allegedly filed a complaint against Mr. Rizoev with the Prosecutor General's Office, alleging that he had obstructed the company's work. Two days prior to his arrest, Mr. Rizoev was reportedly visited by representatives from the company who allegedly threatened him that unless he ceased his legal work with the residents, they would "close him down".

Mr. Rizoev had been representing former residents of a building on 49 Bukhoro St. in Dushanbe, which was ultimately demolished in February 2021, following a lengthy legal dispute between the residents and the contractor, Pulodi Plaza LLC. During the dispute, the residents were reportedly subjected to targeted electricity blackouts and other forms of harassment, before being evicted. Some of the residents were reportedly still living in the building when the demolition began. Prior to his arrest, Mr. Rizoev had written an appeal to the mayor of Dushanbe, who is also the Chairperson of the Parliament of

National Assembly of Tajikistan , alleging that the activities of Pulodi Plaza LLC were inconsistent with the rights of the residents according to the Housing Code of the Republic of Tajikistan.

Following his arrest on 18 November 2020, Mr. Rizoev was placed in pre-trial detention in Detention Centre #1 in Dushanbe. Mr. Rizoev was permitted to meet with his lawyers, however his relatives have only been permitted to visit him on two occasions for 20-30 minutes, with most of their requests for visits reportedly refused. He is reportedly not permitted to speak on the phone with his family either. Mr. Rizoev's wife has been able to deliver packages containing books, food, pencils and paper to him, and collects his clothes once a week to wash and drop back to the Detention Centre.

On 8 February 2021, Mr. Rizoev appeared before the Shokhmansur District Court for the first hearing on the charge of “public calls for performance of an extremist activity made using the mass media or the Internet” under Part 2, Article 307.1 of the Criminal Code of Tajikistan. The charges were filed against Mr. Rizoev in relation to some of his posts on Facebook in 2019 and 2020, some of which, the prosecutor alleged, amounted to “extremist activity”.

The prosecutor cited two posts in particular from March 2020. In one, Mr. Rizoev claimed that of the people he interviewed following the elections in October 2020, only 25% of those interviewed had participated in the elections. The second post made reference to a plaque outside of a polling station, which reportedly stated that: “participation in the elections is a sign of political intelligence”. The prosecutor also made reference to another post from April 2019, which stated that the Tajik people are unduly placed in conditions of obligations to the authorities and included a poem. The poem, "Padare guft ba scribe...", reportedly aired regularly on local TV stations and relatively well-known, is about a conversation between a father and son, in which the father tells the son he had become a man, but had not achieved humanity. One other post was also referred to in particular by the prosecutor as indicating extremist views, which read: “The wise government fights the causes of the protest, the stupid one fights the protesters”.

During the preliminary stages of the investigation into Mr. Rizoev's posts on Facebook, the posts were reportedly sent to a political scientist working for the Republican Centre for Forensic Expertise under the Ministry of Internal Affairs who was tasked with analysing the posts and concluding as to whether they included calls for extremism. The analysis took place in November 2020, following which the political scientist reportedly concluded that Mr. Rizoev's posts included an implicit call to extremism that could threaten peace in Tajikistan in the future and lead to conflict.

On 24 February 2021, Mr. Rizoev's lawyers petitioned for a secondary, more comprehensive analysis of the Facebook posts to be conducted, including a linguist and other specialists. The court granted the request and a secondary analysis was conducted by a special commission of experts, including a linguist, a literary scholar, a religious expert, a sociologist and a political scientist. Their findings were included in a report, dated 7 May 2021. During the trial, the experts were questioned about their analyses of the Facebook posts. The political scientist, sociologist and literary scholar reportedly

deemed the posts to include a hostile appeal against the Government, that they could have a negative impact on public opinion, they were insulting and degrading, and that they could be viewed as incitement to violence.

Mr. Rizoev's legal counsel reportedly challenged the analysis of the Facebook posts that had been conducted by the special commission of experts, insisting that the analysis be discounted from the case materials as the analyses was subjective, too broad an interpretation and unsubstantiated.

During the trial, Mr. Rizoev reportedly told the Court that he had received numerous threats from individuals who he believed to be associated with the company Pulodi Plaza LLC. On one of the occasions he recounted, the company's director and lawyer allegedly attempted to hand Mr. Rizoev an envelope containing \$25,000 USD, reportedly so that he would cease "interfering" with the company's business.

On 14 June 2021, Mr. Rizoev was convicted by the Shokhmansur District Court of Dushanbe and sentenced to five and a half years' imprisonment. Earlier the same day, individuals who had liked Mr. Rizoev's posts on Facebook were allegedly interrogated by the prosecution.

On 16 July, Mr. Rizoev's lawyer applied for a review the Shokhmansur District Court of Dushanbe's conviction, and asked for the charges against the human rights defender to be dropped. On 11 August 2021, the Dushanbe City Court rejected the cassation appeal to review Mr. Rizoev's case. The human rights defender's lawyer is planning to write a supervisory complaint after receiving the official decision from the cassation collegium.

Without prejudging the accuracy of the above allegations, we wish to express our concern in response to the arrest and conviction of Mr. Rizoev. The present allegations, as outlined in this letter, would indicate that Mr. Rizoev exercising right to freedom of expression online has been misrepresented as an expression of extremist views and ideologies, and in turn, charges of extremism have been levied against him in response to the legitimate exercise of his legal profession. If confirmed, the apparent criminalisation of the exercise of human rights would be incompatible with international human rights law. We are concerned that such allegations of extremism will not only denigrate Mr. Rizoev's efforts to defend the rights of others, but also the efforts of other human rights defenders in Tajikistan, creating a chilling effect. We also wish to express our utmost concern regarding the information, which would indicate that the targeting of Mr. Rizoev is in reprisal for his work defending the evicted residents of the building in Dushanbe and criticism of the company Pulodi Plaza LLC. According to the information received, it would appear that Mr. Rizoev's Facebooks posts were unduly subjected to scrutiny and unwarranted mischaracterization in attempts to deter him from carrying out his legitimate human rights activities.

We are also concerned by the fact that Mr. Rizoev spent 3 months in pre-trial detention, and that his right to family visitation and phone calls was restricted during this time.

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.

We are issuing this joint communication in order to safeguard the rights of Mr. Rizoev from irreparable harm and without prejudicing any eventual legal determination.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to the factual and legal basis for the charge of “public calls for performance of an extremist activity made using the mass media or the Internet” against Mr. Rizoev, and his conviction under said charge.
3. Please provide information as to the results of the analysis reportedly carried out by the special commission into the contents of Mr. Rizoev’s social media posts.
4. Please provide information as to the investigation into the reported threats issued against Mr. Rizoev by individuals allegedly associated with the company Pulodi Plaza. If no such investigation has been conducted, please explain why.
5. Please provide information as to the actions taken, if any, in response to Mr. Rizoev’s appeal to the Mayor of Dushanbe in relation to allegations of illegal demolitions carried out by the company Pulodi Plaza.
6. Please provide information as to the allegations that residents of the building 49 Bukhoro St. in Dushanbe were subjected to harassment, prior to the ultimate demolition of the building.

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.

We would like to inform your Excellency’s Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no

way prejudge any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

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 to articles 9 and 19 of the International Covenant for Civil and Political Rights (ICCPR), ratified by your Excellency's Government on 4 January 1999, which guarantees the right to not be subjected to arbitrary arrest or detention and the right to freedom of opinion and expression. These rights are also provided for by articles 9 and 19 of the Universal Declaration of Human Rights (UDHR).

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 9 (2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

The right to freedom of opinion, enshrined in article 19 (1), is absolute, permitting no restriction. The right to freedom of expression, enshrined in article 19 (2), includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice.

We would like to draw the attention of your Excellency's Government to the Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. This right applies online as well as offline. We emphasise that the right to freedom of expression protects, inter alia, political discourse, commentary on one's own and on public affairs, discussion on human rights and journalism (Human Rights Committee, General Comment No. 34, CCPR/C/GC/34 para 11), as well as expression of criticism or dissent. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 29 of the UDHR and article 19 (3) of the ICCPR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, 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.

Although article 19 (3) recognizes "national security" as a legitimate aim, national security considerations should be "limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime, or power group". States should "demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight" (A/71/373). In this context, we underscore that "It is not compatible with article 19 (3), for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information." (CCPR/C/GC/34 para. 30). As interpreted by the Human Rights Committee, article 19 (3) may never be invoked to justify the muzzling of any advocacy of human rights (*idem*, paragraph 23).

Moreover, we would like to remind your Excellency's Government of its obligation to protect lawyers and enable them to exercise their functions freely in accordance with 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. Principle 16 of the Basic Principles 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.

We would like to refer your Excellency's Government to 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, we would like to refer to articles 1 and 2 of the Declaration which 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, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 9, paragraph 1, which provides for the right to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- article 9, paragraph 3, point c), which provides for the right to provide legal assistance in defending human rights and fundamental freedoms;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.