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; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on minority issues

Ref.: AL TJK 2/2022
(Please use this reference in your reply)

13 July 2022

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; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 43/16, 42/22, 43/4, 41/12 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention of human rights defender, Ms. Ulfathonim Mamadshoeva, and threats against her and the arbitrary detention of Mr. Manuchechr Kholiknazarov, a human rights lawyer.

Ms. Ulfathonim Mamadshoeva is a civil society representative of the Pamiri minority in the Gorno-Badakhshan Autonomous (GBAO) Region and a journalist.

Mr. Kholiknazarov is a human rights lawyer and leader of the Pamir Lawyer's Association and a member of the Civil Society Coalition against Torture and Impunity in Tajikistan, and Commission 44, a group of human rights defenders and activists investigating human rights violations in the GBAO.

According to the information received:

On 17 May 2022, the interior ministry of Tajikistan issued a statement on its website in which it accused Ms. Mamadshoeva of organising an illegal rally a day earlier in Khorog, the capital of the GBAO. Ms. Mamadshoeva refuted the accusation in media statements, and said she was at home in Dushanbe during the protest. On the same day, four journalists who had interviewed Ms. Mamadshoeva about the accusations were reportedly attacked by individuals in plainclothes who seized their cameras and other equipment and beat one of them. After the journalists lodged a complaint, the interior ministry announced the launch of an investigation into the attack and opened a criminal case that recognized the journalists as victims.

On 18 May 2022, Ms. Mamadshoeva was arrested by agents from the State Security of Tajikistan and the general prosecutor's office; reportedly no arrest warrant was presented nor issued. Her apartment in Dushanbe was searched and her laptop and mobile telephone were seized.

On 19 May 2022, Ms. Mamadshoeva was charged with "publicly calling for violent change of the constitutional order" under article 307, part 2 of the Criminal Code of Tajikistan, which carries up to 15 years in prison. Her case is reportedly classified, and her lawyer is under a non-disclosure order,

indicating that that there will be no access to case material and her trial will be closed to the public, in contradiction with international fair trial standards. Ms. Mamadshoeva was placed in the pre-trial detention centre of the State Security Service of Dushanbe.

On 24 May 2022, Tajikistan's state-run TV broadcast a video in which Ms. Mamadshoeva "confessed" to organising the Khorog protest, with the support of a Tajik activist in exile, and a local Pamiri leader, who was killed on 22 May 2022.

On 28 May 2022, Mr. Kholiknazarov was among up to 13 members of Commission 44, who were reported arrested and interrogated. He was questioned by the local GBAO prosecutor's office for allegedly "receiving money from the banned National Alliance of Tajikistan." He was then taken into custody in an interior ministry pre-detention centre.

The demonstrations in Khorog started on 14 May 2022 when protestors demanded an investigation into the killing of a local leader while in police custody late last year, and the resignation of the regional mayor. Military and special forces allegedly violently dispersed the protests that went on for at least four days, using tear gas and live ammunition. On 18 May 2022, the Ministry of Interior announced the start of an "anti-terrorist operation" in the region. By 30 May 2022, the Ministry of Interior announced that it had "neutralised" five armed terrorists from the GBAO and detained one on suspicion of being a leader of a terrorist group. Reportedly, the official number of residents who died in clashes with police reached 26.

On 6 June 2022, Mr. Kholiknazarov was charged with participation in a criminal association" punishable by up to 12 years in prison, according to Article 187 of the Criminal Code of Tajikistan. He was moved to the pre-trial detention centre of the State Security Service of Dushanbe. It is not known if Mr. Kholiknazarov has access to a lawyer.

Without prejudging the accuracy of the above allegations, we wish to express our concern over the alleged arbitrary arrest and detention of Ms. Mamadshoeva and Mr. Kholiknazarov, and the charges against them. Additionally, we express further concerns about the videotape released publicly in which she appears to confess under duress to her role in the protests in question. We would also like to express concern over the order that her trial is to be classified and that access to her case material will not be possible, in contradiction with international fair trial standards. We also express concern by the excessive use of force by law enforcement agents in the GBAO region.

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 appeal in order to safeguard the rights of Ms. Mamadshoeva and Mr. Kholiknazarov 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 concerning the legal grounds for the arrest and detention of Ms. Mamadshoeva and of Mr. Khliknazarov, and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR. Please provide information on whether Ms. Mamadshoeva and Mr. Kholiknazarov has access to family members, legal counsel, and medical personnel.

3. Please provide the full details of how Law 307, part 2 and Article 187 of the Penal Code of Tajikistan is in compliance with the obligations of your Excellency's government under the international human rights law.

4. Please explain what measures have been taken to ensure that all human rights defenders and civil society representatives in Tajikistan, including those working on minority rights can carry out their peaceful and legitimate activities without fear of restrictions, judicial prosecution or reprisals.

We would appreciate receiving a response within 60 days. Past 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

Mumba Malila
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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Fernand de Varennes
Special Rapporteur on minority issues

Annex

Reference to international human rights law

The information received would appear to indicate contraventions of several of the principles of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 on 9 December 1988. In this regard, we would like to specifically cite articles 1, 15, 16(1), 18, 19, 37 and 38 concerning the dignity of detained persons, their communication with the outside world, notification of persons connected with detainees of their arrest and/or transfer, access to legal counsel, the right to visits and the right to trial within a reasonable time.

In connection with above alleged facts and concerns, we would like to refer to articles 9, 14, 19, 21 and 22 of the International Covenant for Civil and Political Rights (ICCPR), ratified by your Excellency's Government on 4 January 1999, which guarantees the rights not to be subjected to arbitrary arrest or detention, to a fair trial, to freedom of opinion and expression and to freedom of peaceful assembly and of association.

We would like to recall that Article 21 of the ICCPR guarantees the right of peaceful assembly, while Article 22 protects the right to freedom of association with others. As stated in a report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards [A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1]. This means ensuring that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2 (1) of the International Covenant on Civil and Political Rights) [see also ICCPR, art. 26].

We would like to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the legitimate aim. As the Human Rights Committee observed in General Comment No. 27 (CCPR/C/GC/27), restrictive measures must "be appropriate to achieve their protective function" and "be the least intrusive instrument amongst those which might achieve the desired result" (paragraph 14), while "the principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law" (paragraph 15).

We would also like to refer your Excellency's Government to the principles of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 on 9 December 1988. In this regard, we would like to specifically cite articles 1, 15, 16(1), 18, 19, 37 and 38 concerning the dignity of detained persons, their communication with the outside world, notification of persons connected with detainees of their arrest and/or transfer, access to legal counsel, the right to visits and the right to trial within a reasonable time.

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.