

Mandates of 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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL TJK 3/2022
(Please use this reference in your reply)

4 October 2022

Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 42/22, 43/4, 50/17, 43/16, 43/8 and 49/10.

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 two additional human rights defenders and representatives of the Pamiri minority in the Gorno-Badakhshan Autonomous (GBAO) Region, **Mr. Khursand Mamadshoev** and **Mr. Faromuz Irgashov**, as well as updated information regarding the alleged arbitrary detention of human rights defenders, **Mr. Manuchehr Kholiknazarov**, and **Ms. Ulfathonim Mamadshoeva**.

Mr. Mamadshoev is a human rights lawyer and a member of the Pamir Lawyer's Association, through which he participated in activities aimed at improving interaction between police and internal affairs authorities and local youth in a joint project with the British non-governmental organisation, Safer World.¹ He was also an active member of the Public Council in GBAO, a joint platform established in 2013 across Tajikistan composed of police officers, local government representatives, religious and civil society leaders focused on identifying and addressing local community concerns and human rights issues.

Mr. Mamadshoev is also the brother of Ms. Ulfathonim Mamadshoeva, a human rights defender in the GBAO region, currently in detention.

Mr. Irgashov is a human rights lawyer, a member of the Pamir Lawyer's Association, and an elected member of the GBAO local parliament. As a lawyer, he was engaged in the defence of Pamiri minority leaders in various cases. He represented the Khorog community's policing partnership team in the 2016-2020 Police Reform Programme, through which he mediated to prevent local conflicts and advocated for human rights of the local population. Following protests in 2021 over the killing of a Pamiri man by security forces, Mr. Irgashov became a leading member of the

¹ <https://www.saferworld.org.uk/resources/news-and-analysis/post/966-overcoming-a-fraught-legacy-building-police-public-cooperation-in-central-asia>

Commission 44, a group of human rights defenders and activists investigating on human rights violations in the GBAO.

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.

Ms. Ulfathonim Mamadshoeva is a civil society representative of the Pamiri minority in the GBAO region and a journalist.

We have previously raised our human rights concerns with your Excellency's Government in communication AL TJK 2/2022 about the alleged arbitrary detention of human rights defender **Ms. Ulfathonim Mamadshoeva** and threats against her, and the arbitrary detention of **Mr. Manuchehr Kholiknazarov**, a human rights lawyer. Both are representatives of the Pamiri minority in the GBAO Region. Additionally, seven Special Procedures mandate holders raised their human rights concerns with your Excellency's Government in communication AL TJK 1/2022 about the alleged use of lethal and excessive force against protesters in the GBAO followed by the shutdown of mobile internet services and subsequent threats and harassment of the members of the Pamiri minority. Unfortunately, no response was received on those two communications up until today. A press release was also issued on 20 May 2022, calling on your Excellency's Government to end a deadly crackdown against the Pamiri minority in the Gorno-Badakhshan autonomous region (GBAO).

According to the information received:

On 28 May 2022, Mr. Irgashov and Mr. Mamadshoev, along with up to 13 members of Commission 44, were summoned by the local GBAO prosecutor's office and questioned about allegedly "receiving money from the banned National Alliance of Tajikistan." They were then taken into custody in an Interior Ministry pre-detention centre in Khorog.

On 6 June 2022, Mr. Irgashov and Mr. Mamadshoev were charged with "participation in a criminal association," punishable by up to 12 years in prison, according to article 187, part 2 of the Criminal Code of Tajikistan. They were then moved to the Dushanbe pre-trial detention centre of the State Security Service of Tajikistan, where they remain held.

Mr. Mamadshoev has had access to a lawyer and his case is pending appointment of a judge. No trial date has been given.

Mr. Irgashov has been charged with the following three counts: "public calls for violent change of the constitutional order of the Republic of Tajikistan," under article 307, part 2 of the Criminal Code; homicide, under article 104; and terrorism, under article 179. No details were provided regarding the terrorism charge, which has three sub-sections, including recruitment, financing and receiving funds from organisations deemed terrorist by Tajikistan. Mr. Irgashov had access to a lawyer when he was held in Khorog but has been unable to find legal support in Dushanbe, although he has been allowed to. Lawyers were reportedly afraid to take on GBAO cases. No trial date has been given yet.

On 28 May 2022 Mr. Kholiknazarov was among up to 13 members of Commission 44, who were 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 taken into custody in an Interior Ministry pre-trial detention centre.

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, part 2 of the Criminal Code of Tajikistan. He was moved to the Dushanbe pre-trial detention centre of the State Security Service of Tajikistan.

On 11 July 2022, Mr. Kholiknazarov's wife visited him. Since then, she has been informed by his lawyer that the General Prosecutor's Office has not granted her or his family new visitor permits, and she has been unable to obtain any information on a trial date.

On 18 May 2022, Ms. Mamadshoeva was arrested by agents from the State Security of Tajikistan and the general prosecutor's office; no arrest warrant was produced. Her apartment in Dushanbe was searched and her laptop and mobile telephone were reportedly seized.

On 19 May 2022, Ms. Mamadshoeva was charged with "publicly calling for violent change of the constitutional order," an accusation that carries up to 15 years in prison, under article 307, part 2 of the Criminal Code of Tajikistan. Her case is reportedly classified, and her lawyer is under a non-disclosure order, indicating 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 held in the Dushanbe pre-trial detention centre of the State Security Service of Tajikistan, where she remains with sporadic access to her lawyer at the time of writing this communication. She was reportedly held in isolation for an unspecified period of time, has suffered extreme mental stress and has been prescribed anti-depressants.

On 15 July 2022, the office of the General Prosecutor said in a video-taped press conference that the investigation was ongoing in the case of Ms. Mamadshoeva under article 187, part 1 of the Criminal Code of Tajikistan regarding "Establishing a criminal organization for the commission of grave or especially grave crimes, as well as the management of such organization or its structural units, as well as the creation of an association of organizers, leaders or other representatives of organized groups in order to develop plans and create conditions for committing grave or especially grave crimes." The punishment under this article is 15 to 20 years in prison.

On 18 August 2022, the chairman of the Criminal Division of the Supreme Court, Judge Azizzoda Zafar, was appointed to preside over Ms. Mamadshoeva's trial.

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, killing a local Pamiri man. On 18 May 2022, the Interior Ministry announced the start of an “anti-terrorist operation” in the region. Roads, schools, shops and the internet have been closed. Reliable sources report as many as 40 people have allegedly been killed in the security crackdown in the Rushon district. By 30 May 2022, the Ministry of Internal Affairs had announced that it had “neutralised” five armed terrorists from the GBAO, and detained one on suspicion of being a leader of a terrorist group. The official number of residents to die in clashes with police reached 26.

Without prejudging the accuracy of the above allegations, we wish to express our concern over the arrests and detention of Mr. Irgashov and Mr. Mamadshoev, and the charges brought against them. We also wish to express concern that Mr. Kholiknazarov has reportedly not been granted visiting rights since 11 July 2022.

We wish to express our concern over the apparent expansion in the investigation of Ms. Mamadshoeva to include provisions of the Criminal Code that would carry a sentence of up to 20 years if charged and convicted. In line with the previous communication, we continue 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 standards for fair trial.

We are further concerned that these ongoing judicial proceedings seem to form a pattern of harassment against human rights defenders, civil society representatives and human rights lawyers, for the exercise of their legitimate activities for the defence and protection of human rights. In this regard, we recall that any restriction on freedom of expression that a government seeks to justify on grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). Furthermore, any such limitations must be legally based, necessary, proportionate, and non-discriminatory. Noting that at least one of these individuals was prosecuted on terrorism-related charges, we remind Your Excellency's Government that counter-terrorism legislation and related criminal sanctions should not be misused against persons peacefully exercising their rights to freedom of expression and peaceful association, nor to repress minority rights in general.

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 Mr. Mamadshoev, Mr. Irgashov, Mr. Kholiknazarov and Ms. Mamadshoeva from irreparable harm and without prejudging 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 factual and legal grounds for the arrest and detention of Mr. Irgashov and Mr. Mamadshoev, and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Please provide information on whether they have access to family members, legal counsel, and medical personnel. Please also indicate what measures have been implemented to safeguard their right to a fair trial and due process, and how those are compatible with the obligations of Tajikistan under international human rights law.
3. Please provide details on how Law 307, part 2; article 187, parts 1 and 2; article 104; and article 179 of the Criminal Code of Tajikistan comply with the obligations of your Excellency's Government under the international legal framework of human rights law and standards.
4. Please provide information on how the above-mentioned criminal charges respect the criteria of necessity, legality, proportionality, and non-discrimination.
5. Please explain what measures have been taken to ensure that all human rights defenders, civil society representatives and human rights lawyers in Tajikistan, including those working on minority rights can carry out their peaceful and legitimate activities without fear of restrictions or judicial prosecution.
6. Please provide information on measures taken to prevent further escalation of violence in the region including by responding to the grievances of the Pamiri minority.

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.

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

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fernand de Varennnes
Special Rapporteur on minority issues

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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

In particular, article 9 of the ICCPR provides that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. As per the jurisprudence of the Working Group on Arbitrary Detention and General Comment No. 35,² any detention due to the peaceful exercise of rights, including the rights to freedom of expression and freedom of association, is arbitrary.

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 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 also wish to bring to the attention of your Excellency's Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14 (1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 (3) of the ICCPR guarantees the right of any individual charged with a criminal offence to have adequate time and facilities for the preparation of their defence, to communicate with counsel of their own choosing, and to be tried without undue delay.

We further would like to recall that articles 21 and 22 of the ICCPR guarantee the rights of peaceful assembly and of association, and note that "no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

² CCPR/C/GC/35, para. 17.

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.

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 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.

We want to bring the attention of your Excellency's Government to Security Council's resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180 which require that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with States' obligations under international law, in particular international human rights law, refugee law and international humanitarian law. Counter-terrorism measures must conform to fundamental assumptions of legality, proportionality, necessity and non-discrimination. Wholesale adoption of security and counter-terrorism regulations without due regard for these principles can have exceptionally deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities and civil society.

We would like to further bring your Excellency's Government's attention to the "principle of legal certainty" under international law (ICCPR article 15(1); ECHR article 7(1)), which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined or overly broad laws are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations (A/73/361, para.34).

Finally, we would like to bring the attention of the Government to paragraphs 75(a) to (i) of the 2018 report of the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering terrorism's (A/HRC/40/52) on the impact of terrorism measures on civic spaces and human rights defenders. We want to stress that counter-terrorism legislation should not be misused against individuals peacefully exercising their rights to freedom of

expression, peaceful association, and assembly. These rights are protected under the Universal Declaration. The non-violent exercise of these rights cannot be a criminal offence. Any restriction on expression or information that a government seeks to justify on the grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34).