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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-sixth session, 18–22 November 2019

Opinion No. 66/2019 concerning Saidumar Husaini, Muhammadali Faiz-Muhammad, Rahmatulloi Rajab, Zubaidulloi Roziq, Vohidkhon Kosidinov, Kiyomiddin Avazov, Abduqahar Davlatov, Hikmatulloh Sayfulloza, Sadidin Rustamov, Sharif Nabiev and Abdusamat Ghayratov (Tajikistan)

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 19 July 2019 the Working Group transmitted to the Government of Tajikistan a communication concerning Saidumar Husaini, Muhammadali Faiz-Muhammad, Rahmatulloi Rajab, Zubaidulloi Roziq, Vohidkhon Kosidinov, Kiyomiddin Avazov, Abduqahar Davlatov, Hikmatulloh Sayfulloza, Sadidin Rustamov, Sharif Nabiev and Abdusamat Ghayratov. The Government submitted a late response on 2 October 2019. The State is a party 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. The source alleges the arbitrary detention and conviction of 11 members of the Islamic Renaissance Party of Tajikistan. On 16 September 2015, officers from the State Committee for National Security arrested all 11 individuals, in addition to other 2 members of the Party, without arrest warrants. After being held in pretrial detention, on 2 June 2016, the Chief Military Judge convicted them in a joint trial and handed down sentences ranging from 14 years to life imprisonment. The 11 detained members of the Islamic Renaissance Party are:

(a) Saidumar Husaini, born in 1961, first Deputy Chair of the Party and member of its Supreme Political Council. He served as a member of the parliament of Tajikistan from March 2010 to March 2015. Mr. Husaini was arrested by uniformed officers of the State Committee for National Security at Dushanbe airport. His family spent the following days attempting to locate him, visiting police stations and other facilities, but the authorities refused to disclose any information. Approximately four to five days after his arrest, the Government informed his family of his whereabouts, however they were not allowed to see him at that time. Mr. Husaini was sentenced to life imprisonment in maximum security;

(b) Muhammadali Faiz-Muhammad, born in 1962, a member of the Supreme Political Council of the Party. He was reportedly arrested by officers of the State Committee for National Security while driving to his home. No information was provided regarding the legal basis for his arrest or about the charges against him. His family did not know where he was or that he had been arrested, until 10 days later. When the family was informed of the arrest, they were not allowed to see him. Mr. Faiz-Muhammad was allegedly beaten, interrogated and tortured. He was sentenced to 23 years' imprisonment;

(c) Rahmatulloi Rajab, born in 1958, a member of the Supreme Political Council of the Party. He was arrested at his home by officers of the State Committee for National Security dressed in civilian clothes. The officers informed his family that they needed to talk with him and that he would return shortly, but he never did. Thirty minutes after the arrest, 10 additional officers arrived to search his home without a warrant. According to the source, Mr. Rajab was badly beaten and tortured for three consecutive days after the arrest. He was sentenced to 28 years' imprisonment;

(d) Zubaidulloi Roziq, born in 1946, a member of the Supreme Political Council of the Party. He was arrested outside his house by officers of the State Committee for National Security in civilian clothes who asked him to take a walk and stated that they would return in an hour or two, but they never did. Mr. Roziq was sentenced to 25 years' imprisonment;

(e) Vohidkhon Kosidinov, born in 1956, a member of the Supreme Political Council of the Party and the Chief of its Election Department. Mr. Kosidinov was arrested in northern Tajikistan and sentenced to 16 years' imprisonment;

(f) Kiyomiddin Avazov, born in 1973, a politician, Chair of the Dushanbe chapter of the Party, a former employee of the party apparatus and a specialist in Arabic. He was an active member of the Supreme Political Council of the Party. Mr. Avazov was sentenced to 28 years' imprisonment in maximum security;

(g) Abduqahar Davlatov, born in 1975, a member of the Supreme Political Council of the Party and Chief of the Foreign Relations Department. He was sentenced to 28 years' imprisonment;

(h) Hikmatulloh Sayfulloza, born in 1950, a member of the Supreme Political Council of the Party and editor-in-chief of the *Najat Newspaper*. He was sentenced to 16 years' imprisonment;

(i) Sadidin Rustamov, born in 1956, a member of the Supreme Political Council of the Party. He was sentenced to 20 years' imprisonment;

(j) Sharif Nabiev, born in 1962, a member of the Supreme Political Council of the Party and head of its Kulab chapter. He was sentenced to 14 years' imprisonment;

(k) Abdusamat Ghayratov, born in 1967, a member of the Supreme Political Council of the Party. He was sentenced to 14 years' imprisonment.

5. The source states that Mr. Avazov, Mr. Davlatov, Mr. Sayfulloza, Mr. Rustamov, Mr. Nabiev and Mr. Ghayratov were deprived of their liberty on 16 September 2015, although precise details surrounding their arrest are unobtainable.

6. The 11 individuals were reportedly indicted with the following charges under the Criminal Code: criminal organization; arousing national, racial, local, or religious hostility; extremism; illegal deprivation of liberty; criminal attempt; sabotage; arms theft; arms trade; murder; terrorism; forcible capture of power; armed rebellion and polygamy. Their trial began on 9 February 2016.

(a) Pretrial detention

7. The source reports that the 11 members of the Islamic Renaissance Party remained in pretrial detention at the SIZO (pretrial) detention centre, from the time of their arrests until their sentencing on 2 June 2016. They were denied bail, regularly abused, tortured and deprived of access to medicine and critical health care.

8. According to the source, the 11 detainees were subjected to various forms of coercion in order to extract confessions from them. When Mr. Husaini refused the offer of a government position in exchange for appearing on television declaring the activity of the Party illegal, officers of the State Committee for National Security put a bag on his head and beat him. The officials reportedly continued to beat Mr. Husaini throughout his time in pretrial detention. He was detained in solitary confinement at the pretrial detention facility and his family was not allowed to visit.

9. The source reports that Mr. Faiz-Muhammad was also beaten and tortured during his pretrial detention when he refused to denounce the Party and its leaders. He was subjected to electric shocks and shot at with a pistol. Knowing that he suffered from kidney disease, officers of the State Committee for National Security allegedly beat him in the region of his kidneys.

10. Mr. Rajab was allegedly beaten for the first three days of his pretrial detention in order to extract a confession. His family were not allowed to see him or communicate with him during the first four months of his pretrial detention. Sources report that the eight other detained members of the Party also suffered abuse and torture during their pretrial detention.

(b) Lack of access to a lawyer

11. The source complains that the 11 men were not given access to legal counsel immediately following their arrest. They were denied such counsel until 26 September 2015. Even after they were permitted to meet with lawyers, the authorities allegedly went to great lengths to prevent them from receiving effective legal assistance.

12. A notorious violation of their right to legal counsel was the arrest of one of the lawyers. Shortly after the arrest of the members of the Islamic Renaissance Party, their lawyer publicly announced that he was representing the detainees and organizing a committee to provide all of them with legal representation. State officials arrested the lawyer and demanded the withdrawal of his representation. They also raided his home and office, seizing privileged legal documents. He was sentenced to 28 years in prison.

13. The Government also told other lawyers for the Party that they could not provide their clients or the public with information about the case, other than the information that the Government instructed them to share. The lawyers were allegedly threatened with arrest or disbarment if they failed to obey. One of the lawyers told the detainees that he could not defend them or change the result of the trial. Mr. Roziq's lawyer refused to provide him or his family with information about the trial and eventually abandoned the legal profession.

14. The source reports that none of the 11 individuals was aware of the charges against them until, at most, approximately two weeks before their trial and some did not learn of the charges until the trial itself. The authorities reportedly refused to share any information about the trial with the accused, their families or the public. In addition, the Government

did not allow any of the 11 detainees or their lawyers to view evidence or the list of witnesses in advance, while monitoring the meetings between lawyers and clients.

(c) Prosecution and conviction

15. According to the source, in February 2016, the 11 members of the Islamic Renaissance Party were tried as a group in a secretive, closed-door trial. The defendants and their lawyers were not given adequate means to prepare a defence. Reportedly, some were given approximately two weeks to review the Government's allegations, while others were given less time. Further, they were denied pretrial access to most of the evidence, which was deemed "classified". They were not permitted to see the list of witnesses. Even after the accused were allowed to view the complaint against them, their access to it was time-restricted.

16. According to the information received, immediately prior to appearing in court, the 11 men were forced to run to the courthouse while chained together, which resulted in injuries when anyone stumbled or fell; they were then presented in court, still shackled together, with visible bloody injuries and bruises on their faces.

17. The source reports that the trial was not a standard civilian-led proceeding. Rather, the Chief Military Judge presided, even though the accused were not in military service and were charged under the Criminal Code.

18. The trial reportedly lasted several months, during which time the prosecution set forth a long list of witnesses and allegations. The source claims that at least two witnesses were beaten and coerced into giving testimony. Although the defence was permitted to cross-examine the witnesses, they were given no advance notice of their identities or the object of their testimony. The defence was denied the opportunity to present expert witnesses, despite numerous requests. During the trial, a witness for the Government allegedly retracted his testimony on behalf of the prosecution while on the stand. However, the Court ignored his withdrawal and only recognized his initial testimony (which the witness had stated was entirely false). Another witness testified that he had never heard the accused discussing potential armed rebellion and that he had been coerced to testify otherwise, pursuant to a deal that he had made to avoid further prosecution. In response to his testimony retracting the earlier falsehoods, the witness was reportedly brutally beaten.

19. On 2 June 2016, the Supreme Court found the accused guilty, and sentenced them to terms ranging from 14 years to life imprisonment (see para. 4 above).

(d) Conditions of detention

20. The source provides information about the conditions of the pretrial detention of the 11 men. Each cell has the capacity to hold 14 or 16 prisoners, but typically holds up to 25 prisoners and bed sheets are dirty and infested with bedbugs. Because of the overcrowding, prisoners sleep on the concrete floor. Conditions in the prison cells are unsanitary and the entire prison is infested with cockroaches and rodents. In the summer, the place is extremely hot and humid, and the windows are covered with metal shutters, restricting air circulation. Drinking water is tainted with rust from the pipes and prisoners are only permitted to shower once a week, when dozens are crammed into a single shower.

21. As of May 2019, the 11 detained members of the Islamic Renaissance Party were reported to be held at the maximum security penal colony No. 1 in Dushanbe and Vahdat prison No. 3/2.

22. On the evening of 19 May 2019, a riot broke out at the maximum security prison in Vahdat. The prison holds numerous political prisoners, including members of the Islamic Renaissance Party. The Justice Ministry reported that 3 prison guards and 29 inmates were killed in the riot, including members of the Party. The 11 members of the Party were also beaten and sustained injuries, including broken ribs.

23. The source reports that prisoners are allowed outside for 15 minutes each day and are subjected to strict and unreasonable rules. Between 6 a.m. and 10 p.m. prisoners are not allowed to lie down. If the rules are violated by any prisoner, everyone in the cell may be punished. Punishments vary from beatings to orders to stand still for hours on end (sometimes completely naked), to torture with an electric current through the prisoner's

body. Sick prisoners are not isolated from the rest of the population and there is little access to medical care.

24. Mr. Rajab reportedly suffered a “micro stroke” but was not allowed to see a doctor. When he began to suffer from severe inflammation and pain in his gums, he was taken to a dentist, but the dentist’s instruments were dirty and unsterilized and some were covered in blood. Mr. Rajab was forced to decline the necessary care and his suffering has continued. Many of the 11 detainees have health problems, for which they are not receiving adequate treatment. Mr. Roziq has heart pain and breathing difficulties, and his health has declined precipitously since his imprisonment began. Mr. Faiz-Muhammad suffers from kidney disease, for which he has not received treatment.

25. The source claims that Mr. Husaini’s family is only allowed to see him twice a year, for 30 minutes each time. The families of Mr. Roziq and Mr. Rajab were allowed to visit every three to four months but at present are not allowed to visit at all.

Category I

26. The source claims that the detention is arbitrary under category I, since all the arrests were carried out without a warrant. In addition, the 11 individuals were held incommunicado, without information about the charges against them and without being brought promptly before a judicial authority. They were arrested on 16 September 2015 and brought before a judge on 19 September. They were held without communication with the outside world or with a lawyer for 10 days. Some of them were never informed of the charges against them before trial, while others were reportedly informed of the charges against them approximately two weeks prior to trial, more than four months after their arrest.

Category II

27. The source claims that the detention is arbitrary under category II, alleging that it is the result of the exercise of freedom of opinion and expression, association and participation in public affairs.

28. The source claims that the Government arbitrarily detained and prosecuted the 11 men in retribution for exercising their rights to freedom of opinion and expression, as members of a political party that had openly criticized the Government. Their harassment, followed by their mass arrests and highly politicized trial, fits into what is alleged to be a pattern of silencing dissenting voices. The Supreme Court declared the Islamic Renaissance Party to be a terrorist organization and banned all future activities, including the distribution of any newspapers, videos, audio recordings, literature and leaflets connected to the Party. The Government has systematically targeted and arrested opposition party members, journalists and those who post critical content on social media.

29. The Government has also tried to intimidate the 11 men by threatening their families in an attempt to silence critical voices. The wife of one of them was intimidated when trying to file complaints with the Ministry of Internal Affairs and the son of another was interrogated and beaten by police, following a demonstration in support of the Party. The detention is part of a broader pattern of suppressing all voices critical of the Government and the ruling party. The source claims that the actions against the 11 detainees constitute a violation of article 19 of the Covenant.

30. According to the source, the Government has sought to criminalize membership of the Islamic Renaissance Party. It views it as a threat, because it is the largest opposition party. The 11 detainees are long-term senior leaders of the Party and the Government has systematically persecuted them for their involvement with it.

31. The source argues that the decision to try the 11 men jointly and to use much of the same weak and falsified evidence, demonstrates the efforts to criminalize all members of the Party. The prosecution’s allegations were devoid of any meaningful supporting details and were unsubstantiated by evidence. There is reportedly no evidence that the Party was involved in the attacks in Dushanbe on 4 September 2015, in which the 11 men are accused of participating. The source claims that charging all the party leaders with participating in a coup d’état was simply a pretext for the Government to silence opposition voices.

32. The source claims that the arbitrariness of the detention is demonstrated by the accumulation of relevant factors: (a) the history of past intimidation and harassment of members of the Islamic Renaissance Party; (b) the fact that one of the charges levelled in the accusation explicitly criminalized the association of the 11 men with the Party; (c) the joint trial; (d) their conviction without any substantiating evidence; and (e) the wider context of repression against the Party as a whole, including banning the organization and attacking its lawyers. That allegedly demonstrates that the arrest, detention and conviction of the 11 men were motivated by their association with the Party.

33. The source argues that the detention of the 11 men was a response to the participation in public affairs of members of the Islamic Renaissance Party. The charges brought against them were fabricated and designed to justify banning the Party. The detainees were senior party leaders, who thus played a critical role in the organization, including running for office and criticizing the Government. Their detention follows previous attempts to prevent them and the Party as a whole from participating in politics or influencing public affairs.

34. According to the source, the Party and its members have long been under attack, including the arrest and detention of a Party member in October 2013. That person was allegedly tortured by the police in an effort to get him to incriminate himself, before he died in prison in January 2014. The political repression has reportedly accelerated since an attempted coup in September 2015, which was the pretext for the arrest of the 11 men.

35. The circumstances surrounding the arrests, detention and convictions are part of an alleged pattern of suppressing opposition politicians and activists. Members of the Islamic Renaissance Party have been the most aggressively targeted, but other opposition groups have also been persecuted. In 2013, a former Minister of Industry was arrested shortly after he announced the establishment of a new party. Following a closed trial, he was convicted and sentenced to 29 years' imprisonment. Furthermore, after a peaceful political movement called for democratic reform, it was declared "extremist" and persons accused of association with the group were investigated and detained. The leader of that political group was reportedly killed in March 2015, another was sentenced to five years' imprisonment in May 2016.

36. The source argues that the Government is not only punishing the 11 members of the Islamic Renaissance Party for their past political participation, but also preventing them and other supporters of the Party from exercising that right. Such actions allegedly violate article 21 (1) of the Universal Declaration of Human Rights and article 25 (a) of the Covenant.

37. The source further claims that the limitations allowed to the rights to freedom of expression and association in articles 19 (3) and 22 (2) of the Covenant do not apply in this case, as they were not imposed for a legitimate purpose. The Government used national security as a pretext to silence criticism and disband an opposition party. The vague factual allegations failed to specify with any precision the nature of the threat posed by the expression of peaceful political dissent. Criticism of the Government cannot be punished under national security exceptions.

38. The source argues that even if the authorities could invoke national security, the limitation on freedom of expression was not "necessary". The sentence imposed is allegedly disproportionate to any conceivable threat posed by the Islamic Renaissance Party or the expression of political views. Limiting expression and association in this way cannot be considered "necessary" for national security purposes. Because criticism of the Government and membership of the Party are protected rights, and because the Government's limitation on these does not fall within the narrow exceptions contained in articles 19 (3) and 22 (2) of the Covenant, the source claims that the detentions are arbitrary under category II.

Category III

39. According to the source, violations by the Government of international standards of due process in the arrest, detention, trial and conviction of the 11 men were so grave as to render the deprivation of liberty arbitrary. The source claims that the objective of the judiciary was not to render an impartial judgment but to silence and punish critics and suppress peaceful opposition.

40. The source claims that the arrests of the 11 men were carried out without warrants. Government officials did not identify themselves or their authority for making the arrests and many of the arresting officers wore civilian clothes. The source claims that this violates article 9 (1) of the Covenant and article 9 of the Universal Declaration of Human Rights.

41. The source stresses that article 17 of the Covenant ensures the right to privacy. The Constitution of Tajikistan recognizes the right to privacy in the home and prohibits searches and seizures without a warrant. Article 192 of the Code of Criminal Procedure further states that police may not enter and search a private home without the approval of a judge. The source claims that the State officials did not present a search warrant for any of the searches and seizures conducted in the homes of the 11 men, nor did they present warrants for their searches and seizures at the offices of their lawyers.

42. According to the source, none of the 11 men were promptly informed of the charges against them and some were never informed of the charges against them prior to their trial. The earliest account of their being informed of the charges against them is approximately two weeks prior to their trial.

43. The source explains that it is difficult to determine exactly when the 11 men were brought before a judge. However, there is no evidence of them being brought before a judge earlier than three days after their arrest. There is reportedly no explanation of what exceptional circumstances might have delayed the hearing. The source claims that refusing the detainees the right to challenge their detentions within a reasonable time was a violation of article 9 (3) and (4) of the Covenant.

44. The source claims that the 11 men were held in detention pending trial without proper justification. The detention, from the time of arrest and through the trial, which was based on generic, group-wide accusations, suggests that the court defaulted to treating pretrial detention as a general rule. The denial of bail reportedly falls within a pattern whereby critics of the Government are commonly held for lengthy periods in pretrial detention, because the main purpose is to have opponents silenced and behind bars. The source claims that, in contradiction to the requirement that pretrial detention be the exception rather than the rule and that such pretrial detention be based on an individualized determination that it is both reasonable and necessary, the judge defaulted to continuing the pretrial detention in violation of article 9 (3) of the Covenant.

45. The source further claims that the 11 men were not given access to legal counsel immediately after their arrest. Mr. Husaini was not permitted to meet with a lawyer until four or five days after he was arrested. Mr. Faiz-Muhammad was not permitted to meet with a lawyer until 10 days after he was arrested and even then the meeting was limited to a very short time. The 11 men have not been able to communicate with anyone outside the prison due to it being “locked down” after the riots in May 2019. Even when they were eventually allowed to meet with lawyers, the Government allegedly took action to prevent them from receiving effective legal counsel.

46. The source submits that the 11 individuals were not only denied access to lawyers but also not informed of the criminal charges against them. Mr. Husaini was not informed of the charges at the time of his arrest, was detained for five days without access to a lawyer and was not permitted to challenge his detention. Mr. Faiz-Muhammad was detained for 10 days without access to a lawyer or information regarding the criminal charges against him. The source claims that the breach of article 9 (3) of the Covenant enabled other human rights violations, such as torture, while the detainees were held without access to their lawyers or families.

47. The source explains that the Government used intimidation tactics to prevent the men’s lawyers from providing the necessary information to their clients and to their families, and generally prevented the lawyers from providing even the most basic legal assistance. When the lawyers were not deterred by the intimidation tactics, the Government had them arrested. The authorities took action to ensure that lawyers controlled by the Government were the ones providing legal counsel. An additional limitation to the men being able to receive legal counsel included their meetings with their lawyers being supervised and a refusal by the authorities to provide information and documents, such as key evidence, a list of witnesses and details of the charges, so that they could prepare for their trial. The source claims that the Government violated the rights enshrined under article 14 (3) (b) and (d) of the Covenant.

48. According to the source, the Government repeatedly infringed the right to prepare a defence. The accused and their lawyers were drastically restricted in their ability to access the evidence, the witnesses and even the charges. Both the detainees and their lawyers were denied access to information that was critically necessary to preparation for the trial. They did not even have access to the charges until at most two weeks immediately preceding the trial and even then they were limited to short periods of time to review the complaint. The source alleges that the Government violated their rights under article 14 (3) (b) of the Covenant.

49. The source claims that the trial was secret, as the accused were tried behind closed doors, their families were not able to obtain any information about what was happening, and nor was any information released to the public. The source alleges that the Government violated their rights under article 14 (1) of the Covenant and article 10 of the Universal Declaration of Human Rights.

50. The source contends that the court that adjudicated the case was not independent and unbiased, leading to an unfair proceeding, which did not afford the right to equality of arms. The source states that the court system in Tajikistan is not independent, as the Ministry of Justice allegedly controls the judiciary at the national level. The authorities in the executive branch reportedly exert extreme influence over the judiciary, which additionally lacks the resources needed to function independently. For the source, a court system where the rate of acquittal is almost zero cannot be considered to function independently.

51. According to the source, the judge permitted the accused to be presented in shackles, bruised and bleeding. The judge reportedly allowed the intimidation of witnesses and, at one point, allowed a witness to be physically beaten for not lying as instructed. The judge also admitted evidence that had been obtained through illegal searches and seizures and in some cases falsified. The source emphasizes that the judge did not give any weight to the testimony of a witness to the effect that the Government had coerced him into giving false testimony but then accepted the false testimony that had been retracted. Finally, the court found the accused guilty on all counts, despite the lack of evidence proving any legitimate connection with alleged criminal conduct. The source claims that the Government violated the rights of the accused under article 14 (1) and (3) (e) of the Covenant and article 10 of the Universal Declaration of Human Rights.

52. The source further argues that the Government did not respect the presumption of innocence. Prior to their trial, government officials reportedly expressed virtual certainty about the guilt of those accused by publicly referring to them as terrorists and enemies of the people. They were brought into the courtroom in a manner suggesting their guilt, shackled, bruised and bloody. The source claims that by publicly asserting the guilt of the accused, forcing them to appear in court shackled, bruised and bloody and displaying extreme bias against them throughout the trial, the Government violated the presumption of innocence, in breach of article 14 (2) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights.

53. The source maintains that the 11 accused and their lawyers were unable to effectively examine witnesses because they were not given advance notice of the list of witnesses and thus could not properly prepare for cross-examination. Furthermore, the court did not permit the defence to present expert witnesses, while the Government was permitted to present such witnesses. The Government therefore violated article 14 (3) (e) of the Covenant.

54. The source claims that all 11 men shared a common experience of prison conditions, physical abuse and, in some cases, denial of even the most basic medical care. Mr. Husaini was reportedly detained for five days after his arrest, prohibited from speaking with his family and physically beaten in custody. Mr. Rajab was allegedly subjected to freezing cell temperatures in winter and oppressively hot conditions in summer, and he was badly beaten on his first day in prison and tortured for three days in a row in an attempt to obtain a confession from him. Mr. Rajab was reportedly denied adequate medical care, as prison officials only allowed access to a dentist with contaminated instruments. His cell was infected with bedbugs that caused painful bites but prison officials reportedly denied proper treatment for the bedbug infection. The source claims that Mr. Faiz-Muhammad was tortured for days while being transported to detention and in pretrial detention. Evidence of this torture was allegedly captured by a lawyer on a tape recorder. The torture included

physical beatings that led to kidney damage and brutal electric shocks. The source also alleges that Mr. Faiz-Muhammad was shot by prison officials during his detention.

Response from the Government

55. On 15 November 2018, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 14 January 2019, detailed information about the current situation of the 11 detainees and to clarify the legal provisions justifying their continued detention, as well as its compatibility with the State party's obligations under international human rights law. The Working Group called upon the Government to ensure the physical and mental integrity of the detainees.

56. On 18 January 2019, the Working Group received a reply from the Government. The reply was late and the Working Group regrets that the Government did not request an extension of the time limit, as provided for in the Working Group's methods of work. The Working Group cannot therefore accept the reply as if it was presented within the time limit. The Working Group notes that in accordance with paragraph 16 of its methods of work, it renders its opinions on the basis of all the information it has obtained.

Discussion

57. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

58. The Working Group has established in its jurisprudence 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, the Government failed to challenge the *prima facie* credible allegations made by the source.

Category I

59. The source has submitted that the 11 members of the Islamic Renaissance Party were arrested without warrants or proper notification of the reasons for their arrest. In addition, the domicile of Mr. Rajab was searched without a warrant and the same occurred in relation to all the other alleged victims.

60. The source has also submitted that none of the 11 individuals were promptly brought before a judge and that none of them were notified of the charges against them. Some were notified of the charges only about two weeks before the trial, while others only found out what they were once the trial had commenced. The Working Group notes that, even in its late response, the Government did not clarify either the dates of the arrests, nor did it produce arrest or search warrants or specify the dates when the men were brought before a judge or notified of the charges against them.

61. The Working Group accepts that the 11 individuals were arrested on or around 16 September 2015, that none of them were presented with an arrest warrant and none of them were provided with an explanation of the reasons for their arrest. As the Working Group has previously stated, for deprivation of liberty to have a legal basis, it is not sufficient that there exists a law which may authorize arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.¹ In the present case, the authorities failed to do so, violating the rights of the 11 individuals under article 9 (1) of the Covenant.

62. In addition, none of the 11 individuals were notified of the charges against them until some two weeks before the commencement of their trial. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only informed of the reasons at the time of arrest but also promptly informed of any charges against them. The obligation in article 9 (2) has two elements: information about the reasons for arrest

¹ See opinions No. 17/2019, No. 79/2018, No. 35/2018, No. 75/2017 and No. 66/2017.

must be provided immediately upon arrest and information about the charges must be promptly provided thereafter.²

63. In the present case, the 11 individuals were arrested on 16 September 2015. The Government has chosen not to present any explanation as to when they were notified of the charges against them and failed to respond to the allegation that such notification did not take place until some two weeks before the commencement of the trial and that some of them were only notified of the charges on the day of the trial. The right to be promptly informed of charges concerns notice of criminal charges and “applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment”.³ The Working Group therefore finds there has been a breach of article 9 (2) of the Covenant.

64. Further, in order to establish that a detention is legal, anyone has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant. It is important to recall that the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.⁴ That right, which is a peremptory norm of international law, applies to all forms of deprivation of liberty,⁵ not only to detention in criminal proceedings but also to administrative detention and other legal regimes, such as military, security and counter-terrorism detention, medical or psychiatric confinement, migration detention, detention for extradition, house arrest, solitary confinement, detention for vagrancy or drugs and detention of children.⁶ It also applies “irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary”.⁷

65. The source has submitted that all 11 individuals were brought before a judge three days following their respective arrests. The Government has not responded to that allegation. Judicial oversight of detention is a fundamental safeguard of personal liberty⁸ and is essential to ensuring that detention has a legal basis. Moreover, 48 hours is ordinarily sufficient to transport an individual and prepare for the hearing; any delay must remain absolutely exceptional and be justified.⁹ That did not take place in the present case and the Government has not presented any exceptional reasons justifying the delay. The Working Group therefore finds a breach of article 9 (3) of the Covenant.

66. The source has also argued that all 11 individuals were initially held incommunicado for a number of days. As the Working Group has consistently argued, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9 (4) of the Covenant.¹⁰ Since the detainees were unable to challenge their detention, their right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

67. The Working Group notes that in order to ensure effective exercise of the right to challenge the legality of detention, the detained persons should have access, from the moment of arrest, to legal assistance of their own choosing.¹¹ That was denied to all 11 individuals, which adversely impacted their ability to exercise their right to challenge the legality of their detention under article 9 (4) of the Covenant.

68. Further, according to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. In the present case, the private residences of all 11 individuals were searched

² See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, paras. 27–30.

³ *Ibid.*, para. 29.

⁴ 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, paras. 2 and 3.

⁵ *Ibid.*, para. 11.

⁶ *Ibid.*, guideline 1, para. 47 (a).

⁷ *Ibid.*, guideline 1, para. 47 (b).

⁸ *Ibid.*, para. 3.

⁹ See Human Rights Committee, general comment No. 35.

¹⁰ See opinions No. 44/2018, No. 35/2018, No. 11/2018, No. 79/2017 and No. 28/2016.

¹¹ See United Nations Basic Principles and Guidelines, paras. 12–15.

without a warrant and various items were seized. Such confiscation of property without a search warrant is a further serious violation of article 9 (1) of the Covenant.¹²

69. Finally, in relation to the pretrial detention of all 11 individuals, the Working Group recalls that it is a well-established norm of international law that pretrial detention should be the exception and not the rule, and that it should be ordered for as short a time as possible.¹³ Article 9 (3) of the Covenant sets forth two cumulative obligations, namely to be promptly brought before a judge within the first days of the deprivation of liberty and to have a judicial decision rendered without undue delay, in the absence of which the person is to be released (A/HRC/19/57, para. 53).

70. Article 9 (3) of the Covenant further provides that: “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.” It follows that liberty is recognized as a principle and detention as an exception in the interests of justice (*ibid.*, para. 54). Under article 9 (3), pretrial detention must be exceptional and of short duration and release may be accompanied by measures intended to ensure the presence of the defendant in trial (*ibid.*, para. 56).¹⁴

71. In the present case, the Working Group notes that the late response from the Government does not examine the reasons that led to the remand of the 11 individuals pending trial. According to the information received, no individualized assessment of the need for remand ever took place. The Working Group therefore concludes that the pretrial detention of all 11 individuals breached article 9 (3) of the Covenant.

72. The Working Group concludes that, since the arrest took place without a warrant; they were initially held incommunicado; no formal charges were brought until shortly before their trial; they were prevented from exercising their right to challenge the legality of their detention; and since their pretrial detention was imposed in breach of article 9 (3) of the Covenant, the arrest and detention are arbitrary and fall under category I.

Category II

73. The source has submitted that the 11 individuals were detained owing to the legitimate exercise of their rights under articles 19 (2), 22 (1) and 25 (a) of the Covenant. The Government merely rejected those submissions, stating that they were prosecuted for terrorism offences and violent attempts to overthrow the constitutional order.

74. The Government argued that the alleged offences manifested themselves when an armed attack was carried out on two army bases during the night of 3–4 September 2015. The Government argued that following an investigation, the 11 individuals were charged. However, the Government has made no allegation that the 11 individuals were part of the armed attack and has failed to provide any specific information about the crime each of them is alleged to have committed.

75. The Working Group recalls that in its concluding observations on the third periodic report of Tajikistan, the Human Rights Committee expressed its concern “that the ban on religious and ethnicity-based political parties, introduced by the constitutional amendments of 2016, raises issues of compatibility with the Covenant” (CCPR/C/TJK/CO/3, para. 53). The Committee was also concerned about “the harassment and lengthy prison sentences handed down in respect of the leaders of the Islamic Renaissance Party after unfair and closed trials and the imprisonment of party members following the designation of the party in 2015 as ‘terrorist’ for their alleged involvement in the attempted violent seizure of power” as well as about the “serious harassment, and often imprisonment, of family members of opposition groups or of individuals associated with such groups” (*ibid.* and para. 37).¹⁵

¹² See opinions No. 33/2019, No. 31/2019, No. 83/2018, No. 78/2018, No. 36/2018 and No. 83/2018.

¹³ See opinions No. 57/2014, No. 49/2014 and No. 28/2014. See also A/HRC/19/57, paras. 48–58 and A/HRC/30/19.

¹⁴ See also general comment No. 35, para. 38.

¹⁵ See also CCPR/C/TJK/CO/2, para. 24, and CAT/C/TJK/CO/3, paras. 11–12 and 21–22.

76. The Working Group observes the similarity of the Government's late response in this case to that submitted recently in two other cases.¹⁶ The Working Group further notes the similarity of the pattern of facts between the present case and those other cases.

77. The Working Group notes that the Human Rights Committee stated in its general comment No. 34 (2011) on the freedoms of opinion and expression, that freedom of opinion and expression under 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 (para. 2).

78. The Committee has further stated in the same general comment that the freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and 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 for the rights or reputations of others or to the protection of national security, public order, public health or morals. The Committee has specified that other basis restrictions outside paragraph 3 are not allowed, even if they 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 their specific need. Article 21 of the Covenant permits restrictions to the right of assembly on the same three grounds.

79. In the present case, the Government of Tajikistan has not invoked any of the restrictions permitted. It made vague allegations of criminal acts reportedly committed by the 11 individuals, but failed to specify how any of these took place. It is quite clear to the Working Group that the basis for the arrest and subsequent detention of the 11 members of the Islamic Renaissance Party was in fact their exercise of freedom of expression and freedom of assembly. The Working Group observes that those allegations follow the pattern noted by it in previous cases,¹⁷ as well as that noted by the Human Rights Committee.

80. While freedom of expression and freedom of assembly are not absolute rights, when a State imposes restrictions on their exercise, it may not put in jeopardy the right itself. Moreover, permissible restrictions under article 19 (3) may never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights.¹⁸

81. The Working Group finds that the right of the 11 members of the Islamic Renaissance Party to take part in the conduct of public affairs, under article 25 of the Covenant, has been violated, since their arrest was directly linked to their engagement in the opposition. The Working Group recalls 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.¹⁹ In addition, freedom of association, including the right to form and join political organizations or those concerned with public affairs, is essential to the rights protected by article 25.²⁰ The Working Group finds that the arrest of the 11 individuals was the result of the exercise of their rights under article 25 of the Covenant.

82. The Working Group therefore concludes that the 11 members of the Islamic Renaissance Party were detained because of their exercise of their rights to freedom of expression and freedom of assembly and the right to take part in the conduct of public affairs, and therefore falls under category II.

Category III

83. Given its finding that the deprivation of liberty of the 11 individuals is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken

¹⁶ See opinions No. 17/2019 and No. 2/2018.

¹⁷ Ibid.

¹⁸ See Human Rights Committee, general comment No. 34, paras. 21–23.

¹⁹ See Human Rights Committee, general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 8.

²⁰ Ibid., para. 26.

place. However, the trial did take place and the source has submitted that the detention of the 11 individuals was arbitrary under category III.

84. The Working Group observes that the Government did not respond to any of the specific allegations regarding fair trial, except for a general statement that the detainees were allowed access to their lawyers and that the public was excluded from the trial since it concerned national security. The Working Group cannot accept a vague response to the very specific and serious allegations before it. It must consider that all 11 individuals were denied access to legal assistance and were unable to communicate freely with their lawyers. They were all charged with very serious offences and sentenced to lengthy prison terms. The denial of legal assistance and interference with the independence of lawyers in this case was in blatant disregard of the procedural guarantees under article 14 (3) (b) and (d) of the Covenant.

85. Further, none of the 11 individuals were promptly notified of the charges against them until shortly before the trial. Such a situation cannot be reconciled with the obligations under article 14 (3) (a) of the Covenant and the Working Group finds that this provision has been violated. The failure to promptly notify the accused of the charges also prevented them and their lawyers from preparing their defence. Article 14 (3) (b) of the Covenant requires that everyone charged with a criminal offence is to be given adequate time and facilities to prepare a defence. The Working Group cannot accept that the notification of the charges two weeks before the trial, especially in a case involving accusations of terrorism, was compatible with the requirements of article 14 (3) (b). The Working Group therefore finds a further breach of this provision.²¹

86. The Working Group also notes with concern the allegations of serious intimidation of the lawyers. That is a serious interference with the right to legal assistance in violation of article 14 (3) (b) of the Covenant.²² It is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any violation of human rights and to provide remedies whenever such a violation occurs. In particular, the Working Group recalls that “legal counsel shall be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment”.²³

87. The Working Group further notes that the 11 individuals and their lawyers were not given full access to all the evidence and case materials. The Working Group has stated that every individual deprived of liberty has the right to access material related to the detention or presented to the court by the State in order to preserve the equality of arms.²⁴ However, the disclosure of information may be restricted if it 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.²⁵ In the present case, the Government has failed to demonstrate the necessity and proportionality of this measure. The Working Group finds that all 11 individuals were denied the right to equality of arms under article 14 (3) (b) of the Covenant.

88. Furthermore, the 11 individuals and their lawyers were unable to examine witnesses, they were not given prompt notification of and access to the list of witnesses and they did not even know when each witness would appear. In its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee has stressed that article 14 (3) (e) of the Covenant guarantees the right to have witnesses admitted that are relevant to the defence and to be given a proper opportunity to question and challenge the witnesses against them at some stage of the proceedings (para. 39). In the present case, that right was denied. The absence of equality of arms in the proceedings is a violation of article 14 (3) (e) of the Covenant.

²¹ See, for example, *Peter Grant v. Jamaica* (CCPR/C/56/D/597/1994) and *Michael Sawyers and Desmond McLean v. Jamaica* (CCPR/C/41/D/226/1987).

²² See opinions No. 70/2017 and No. 29/2017.

²³ United Nations Basic Principles and Guidelines, para. 15.

²⁴ United Nations Basic Principles and Guidelines, principle 12 and guideline 13. See also opinions No. 78/2018, No. 18/2018, No. 89/2017, No. 50/2014 and No. 19/2005.

²⁵ See United Nations Basic Principles and Guidelines, guideline 13, paras. 80–81, and opinions No. 17/2019 and No. 18/2018.

89. The Working Group notes that the source alleges that the right of all 11 individuals to be presumed innocent was denied, as they were presented to the court shackled and bruised and government officials openly referred to them as “terrorists” prior to the trial. The Working Group notes the failure of the Government to respond to these allegations.

90. In its general comment No. 32, the Human Rights Committee states that it is a duty for all public authorities to refrain from prejudging the outcome of a trial and that defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. In addition, the media should avoid news coverage undermining the presumption of innocence (para. 30).

91. The Working Group notes that government officials made public statements about the 11 individuals, calling them “terrorists”. The Government has further failed to provide any explanation as to what warranted the need to present the detainees to the court in the manner that they were presented. The Working Group concludes that there has been a breach of article 14 (2) of the Covenant.

92. Furthermore, the Working Group observes that the Government has stated that the investigation was carried out under a degree of secrecy due to national security, but has failed to present any explanation as to why the trial took place behind closed doors so that even family members were not allowed to be present. The Working Group notes that the case of the 11 individuals did not fall into any of the exceptions to the general obligation of public trials under article 14 (1) of the Covenant, and that the Government did not invoke any of those exceptions to justify the closed trial. The Working Group thus finds a violation of article 14 (1) of the Covenant.

93. The source submitted that the 11 individuals did not receive a trial by an impartial and independent tribunal as is required under article 14 of the Covenant, another allegation summarily dismissed by the Government. Nevertheless, the Working Group is unable to accept the blanket submission by the source that “the court system in the country is not independent, as the Ministry of Justice allegedly controls the judiciary at the national level” without a specific explanation as to how this was manifested in the trial.

94. However, the Working Group accepts the source’s allegation that the judge allowed the intimidation of witnesses, admitted evidence that was obtained through illegal searches and ignored the claim that one witness was coerced into giving his testimony. In that regard, the Working Group recalls that the requirements of competence, independence and impartiality of a tribunal under article 14 (1), is an absolute right that is not subject to any exception.²⁶ The Human Rights Committee has further observed that the requirement of impartiality has two aspects: judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other and the tribunal must also appear to a reasonable observer to be impartial.²⁷

95. It is clear that the behaviour of the trial judge showed a clear bias towards the prosecution and the Working Group therefore finds a breach of article 14 (1) of the Covenant. In arriving at this conclusion the Working Group is mindful of the concluding observations of the Human Rights Committee on the third periodic report of Tajikistan, in which it expressed concerns about allegations of unfair trials, violations of equality of arms and of the presumption of innocence and closed trials (CCPR/C/TJK/CO/3, para. 37). The Working Group decides to refer the present case to the Special Rapporteur on the independence of judges and lawyers.

96. The Working Group also wishes to observe that the trial was presided over by a military judge, although all 11 individuals were civilians. The Working Group has consistently argued that the trial of civilians by military courts is a violation of the Covenant and customary international law and that under international law military

²⁶ General comment No. 32, para. 19.

²⁷ *Ibid.*, para. 21.

tribunals can only be competent to try military personnel for military offences (A/HRC/27/48, paras. 67–70).²⁸

97. The Working Group wishes to express its serious concern at the allegations made by the source that a number of individuals were seriously ill-treated during their time in detention. 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 and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as of principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group is mindful of the concluding observations of the Committee against Torture on the third periodic report of Tajikistan, in which the alleged ill-treatment of Mr. Rajab is specifically mentioned (CAT/C/TJK/CO/3, paras. 11–12). The Working Group also refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

98. Consequently, the Working Group finds that the trial of the 11 members of the Islamic Renaissance Party was carried out in total disregard for the guarantees encapsulated in article 14 (1), (2) and (3) (b), (d) and (e) of the Covenant and that these were of such gravity as to give their deprivation of liberty an arbitrary character under category III.

Category V

99. The source has not made any submissions under Category V. However, the Working Group has noted that the present case is strikingly similar to two other cases that it has previously considered in opinions No. 2/2018 and No. 17/2019, with facts, allegations and even the Government's response following the same pattern. The Working Group also notes that in its concluding observations on the third periodic report of Tajikistan, the Committee against Torture expressed deep concern "at allegations that individuals who complain of torture, members of their families, human rights defenders including lawyers representing victims of torture, and journalists reporting on allegations of torture frequently face reprisals by officials of the State party" (CAT/C/TJK/CO/3, paras. 21–22).

100. Similarly, in its concluding observations on the third periodic report of Tajikistan, the Human Rights Committee expressed its concern at "politically motivated harassment of opposition members that undermines genuine political pluralism" noting the harassment, imprisonment and sentencing after unfair trials of party leaders and opposition members (CCPR/C/TJK/CO/3, para. 53).

101. The Working Group therefore considers that there is a pattern of a distinctive attitude of the authorities towards those who are part of the opposition, as in the present case. The Working Group considers that this distinction discriminates on the basis of political or other opinion, in a manner which ignores the equality of human rights, a prohibited ground of discrimination under articles 2 (1) and 26 of the Covenant. The Working Group considers that the facts in the present case disclose a violation that falls under category V.

102. 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.

103. The Working Group would like to express its gravest concern over the reports of persistent harassment and intimidation of and threats to the family members of the 11 individuals. The Working Group reminds the Government that States have a duty to protect individuals and groups and to exercise due diligence in doing so. Intimidation or reprisals may be the result of acts or omissions by both State and non-State actors. However acts or omissions are attributable to the State when they are carried out with the consent or acquiescence of an official or other person acting in an official capacity against any individuals or groups who are seeking to cooperate, who are cooperating or who have cooperated with the United Nations (see A/HRC/33/19). The Working Group requests the Government to ensure that all acts of intimidation against all family members of the 11

²⁸ See also opinions No. 32/2018, No. 28/2018, No. 30/2017 and No. 44/2016.

individuals cease, that an impartial and effective investigation into those actions is carried out and those responsible brought to justice.

Disposition

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

The deprivation of liberty of Saidumar Husaini, Muhammadali Faiz-Muhammad, Rahmatulloi Rajab, Zubaidulloi Roziq, Vohidkhon Kosidinov, Kiyomiddin Avazov, Abduqahar Davlatov, Hikmatulloh Sayfulloza, Sadidin Rustamov, Sharif Nabiev and Abdusamat Ghayratov, being in contravention of articles 2, 3, 7, 9, 10, 11, 12, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9 (1), (2), (3) and (4), 14 (1), (2), (3) (b), (d), and (e), 15, 19, 21, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

105. The Working Group requests the Government of Tajikistan to take the steps necessary to remedy the situation of the 11 individuals 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.

106. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the 11 individuals immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

107. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the 11 individuals and to take appropriate measures against those responsible for the violation of their rights.

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

109. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

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

(a) Whether Saidumar Husaini, Muhammadali Faiz-Muhammad, Rahmatulloi Rajab, Zubaidulloi Roziq, Vohidkhon Kosidinov, Kiyomiddin Avazov, Abduqahar Davlatov, Hikmatulloh Sayfulloza, Sadidin Rustamov, Sharif Nabiev and Abdusamat Ghayratov have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to these 11 individuals;

(c) Whether an investigation has been conducted into the violation of their 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 Tajikistan with its international obligations in line with the present opinion;

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

111. The Government is invited to inform the Working Group of any difficulties it 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.

112. The Working Group requests the source and the Government 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.

113. 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.²⁹

[Adopted on 19 November 2019]

²⁹ See Human Rights Council resolution 42/22, paras. 3 and 7.