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**Human Rights Council**

**Working Group on Arbitrary Detention**

 Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020

 Opinion No. 23/2020 concerning Maksud Ibragimov (Tajikistan) [[1]](#footnote-2)\*

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 24 December 2019 the Working Group transmitted to the Government of Tajikistan a communication concerning Maksud Ibragimov.

3. The Government replied to the communication on 8 October 2019.

The Government submitted a late response on 28 April 2020.

The Government has not replied to the communication.

The State is a party to the International Covenant on Civil and Political Rights.

The State is not a party to the International Covenant on Civil and Political Rights.

4. 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

1. Arrest and detention

Arrest and disappearance

 b. Legal analysis

Analysis of alleged violations

Analysis of violations

 i. Category I

 ii. Category II

 iii. Category III

 iv. Category IV

 v. Category V

 Response from the Government

5. On 24 December 2019, the Working Group transmitted the allegations from the source to the Government of Tajikistan under its regular communications procedure. The Working Group requested the Government to provide, by 24 February 2020, detailed information about the circumstances of Mr. Ibragimov’s detention and to clarify the legal provisions justifying his continued detention, as well as their compatibility with the Government’s obligations under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Tajikistan to ensure the physical and mental integrity of Mr. Ibragimov.

The Working Group requested the Government to provide detailed information by 19 August 2022 about the current situation of Mr. A and to clarify legal provisions justifying his continued detention, as well as its compatibility with Australia's obligations under international human rights law, in particular with regard to the treaties ratified by the State.

6. On 3 February 2020, the Working Group transmitted as an addendum the additional information submitted by the source to the Government of Tajikistan requesting that it submit a reply by 24 February 2020.

7. On 28 April 2020, the Government of the Russian Federation submitted a late reply. The Working Group regrets that the Government did not request an extension of the time limit for its reply, as provided for in the Working Group’s methods of work. The Working Group cannot accept the reply as if it were submitted within the time limit.

8. On 31 January 2020, the Government of Tajikistan wrote to the Working Group requesting a one-month extension, pursuant to paragraph 16 of the Working Group’s methods of work, which the Working Group granted on 3 February with a new deadline of 24 March 2020.

9. Under paragraph 16 of its methods of work, the Working Group may render an opinion on the basis of all the information it has obtained.

10. The Working Group regrets that it did not receive a response from the Government to that communication, nor did the Government request an extension of the time limit for its reply as provided for in paragraph 16 of the Working Group’s methods of work.

*Additional information from the source*

 Discussion

 11. The Working Group thanks the source and the Government for their submissions and appreciates the cooperation and engagement of both parties in this matter.

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

13. The Working Group has in its jurisprudence established 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 of Tajikistan has chosen not to challenge the prima facie credible allegations made by the source.

14. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, for appropriate action.

 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, for appropriate action.

 In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

15. 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, as well as encapsulated in 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 reminds the Government that the use of a confession extracted through ill-treatment that is tantamount, if not equivalent, to torture may also constitute a violation by Tajikistan of its international obligation under article 15 of the Convention against Torture. Furthermore, under principle 21 of the Body of Principles, taking undue advantage of the situation of detention to compel confession or incriminating statements is specifically prohibited. It is also a breach of article 14 (2) and (3) (g) of the Covenant.

16. The Working Group is concerned that this indicates a systemic problem with arbitrary detention in Egypt, which amounts to a serious violation of international law. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.

17. The Working Group would welcome the opportunity to conduct a country visit to Egypt. Given that a significant period of time has passed since its last visit to Egypt, in September 2004, the Working Group considers that it is an appropriate time to conduct another visit. The Working Group looks forward to a positive response to its country visit request of 15 April 2015.

18. The Working Group would welcome the opportunity to work constructively with the Government to address arbitrary detention. A significant period has passed since its last visit to Viet Nam in October 1994, and the Working Group considers that it is now an appropriate time to conduct another visit. On 11 June 2018, the Working Group reiterated earlier requests to the Government to undertake a country visit and will continue to seek a positive response.

 Disposition

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

 The deprivation of liberty of Maksud Ibragimov, being in contravention of articles 3, 8, 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9, 14, 19, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

20. The Working Group requests the Government of Tajikistan to take the steps necessary to remedy the situation of Mr. Ibragimov 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.

21. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ibragimov immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Ibragimov.

22. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Ibragimov and to take appropriate measures against those responsible for the violation of his rights.

23. 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, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, for appropriate action.

24. The Working Group recommends that the Government accede to the International Covenant on Civil and Political Rights.

25. The Working Group encourages the Government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court.

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

 Follow-up procedure

27. 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 Mr. Ibragimov has been released and, if so, on what date;

 (b) Whether compensation or other reparations have been made to Mr. Ibragimov;

 (c) Whether an investigation has been conducted into the violation of Mr. Ibragimov’s 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.

28. 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.

29. 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.

30. 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.

[*Adopted on 1 May 2020*]

1. \* In accordance with paragraph 5 of the Working Group’s methods of work, Leigh Toomey did not participate in the discussion of the present case. [↑](#footnote-ref-2)