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Opinions adopted by the Working Group on Arbitrary Detention at its seventy-seventh session, 21-25 November 2016

Opinion No. 47/2016 concerning Bobomurod Razzakov (Uzbekistan)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/30/69), on 1 April 2016 the Working Group transmitted a communication to the Government of Uzbekistan concerning Bobomurod Razzakov. The Government replied to the communication on 20 May 2016 and provided additional information on 26 May 2016. 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);

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(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. Mr. Razzakov, 60 years old, is a human rights activist and local farmer in Bukhara, Uzbekistan. Prior to his arrest, he had been Chairman of the Bukhara region branch of the human rights non-governmental organization "Ezgulik". Mr. Razzakov had also been a member of a peaceful political opposition party "Erk", which is banned in Uzbekistan. In his human rights work, he had focused on farmers' rights and government corruption and had helped local individuals with human rights issues. Mr. Razzakov had also communicated with international media such as Radio Free Europe/Radio Liberty and the British Broadcasting Corporation.

5. On 12 July 2013, Mr. Razzakov was summoned to the police department in Bukhara and arrested. After his arrest, the Bukhara City Criminal Court issued an order to place him in pretrial detention. He was charged with human trafficking, which is an offence under article 135 of the Penal Code of Uzbekistan.

6. On 24 September 2013, Mr. Razzakov was found guilty of human trafficking and sentenced to four years in prison. On 27 December 2013, following Mr. Razzakov's appeal, the court of cassation upheld the guilty verdict. He is currently being detained in penitentiary colony 64/3 in Tavaksay, Tashkent Region.

7. The source claims that Mr. Razzakov's deprivation of liberty was based on "trumped-up charges" and constitutes an arbitrary deprivation of liberty under categories II and III.

8. According to the information received, prior to his arrest, in early spring 2013, Bukhara security services had begun threatening and harassing Mr. Razzakov. The police in Bukhara had summoned him on several occasions and he had been exhorted by the counter-terrorism criminal investigation unit to cease his human rights work. In March 2013, Uzbek officials had threatened Mr. Razzakov openly that he would spend the rest of his life in prison if he continued his human rights work and his collaboration with international media sources.

9. Mr. Razzakov continued his human rights activities and, on 6 June 2013, he was interrogated for two hours by the head of Bukhara's counter-terrorism criminal investigation unit at the Department of Internal Affairs. During the interrogation, the head of the unit accused him of collaborating with international media and damaging the reputation of Uzbekistan, and requested that he resign from "Ezgulik" and stop talking to the media. He threatened that, if Mr. Razzakov did not cease those activities, he would get into trouble and his children might be harmed.

10. Despite the threats, Mr. Razzakov continued to assist victims of human rights violations through legal advice. He advised them about their rights, how to seek remedies when aggrieved and drafted complaints to government bodies on their behalf.

11. On 5 July 2013, a woman visited Mr. Razzakov's house to seek his advice concerning the possibility of appealing against her recent criminal conviction for slander. Mr. Razzakov advised her to collect additional information and documentation and to come back so that he could look into the case. The woman went back to see him again on 7 and 8 July 2013 and brought copies of the court decision and indictment.

12. On 8 July 2013, while she was consulting with Mr. Razzakov for his advice, the woman complained that it was difficult for her to find a job. Mr. Razzakov called a former client of his and asked if she could help to get the woman a job. The former client agreed to help and invited her to stay overnight in her apartment.

13. On 9 July 2013, officers from the National Security Service knocked at the door of the former client's apartment. When she refused to open, they broke into the apartment. She escaped and sought refuge in Mr. Razzakov's house, where she was found and arrested by the same officers.

14. On 9 July 2013, the woman wrote a complaint to the police in Bukhara accusing Mr. Razzakov and his former client of having forced her into prostitution. She also accused Mr. Razzakov of having attempted to force her to have sex with him at his house when she came to him for advice.

15. On 10 and 11 July 2013, Mr. Razzakov was summoned by the police to the Internal Affairs Department, where he was questioned about the allegations. Mr. Razzakov denied the accusations, gave a written statement about the events of 8 July and was allowed to return home. Later on 11 July, the investigator issued an indictment against Mr. Razzakov for human trafficking.

16. On 12 July 2013, Mr. Razzakov was again summoned by the police and arrested on the charge of human trafficking. On 13 July, the Bukhara City Criminal Court ordered that he be placed in pretrial detention. The same day, police officials searched his house and confiscated materials related to his human rights work and his personal computer. Also on that same day, Mr. Razzakov hired a defence lawyer.

17. On 23 August 2013, Mr. Razzakov's trial began before the Bukhara Provincial Criminal Court. The trial consisted of four hearings in total, each lasting approximately 45 minutes. The source claims that the trial was plagued with inconsistencies and procedural violations. The public was largely denied access to the trial and Mr. Razzakov's son faced retaliation from public authorities for organizing support for his father.

18. On 24 September 2013, the Court found Mr. Razzakov guilty of human trafficking under articles 135 (2) (a) and 135 (2) (e) of the Penal Code and sentenced him to four years in prison, starting from 12 July 2013. After an appeal was made, the cassation court ruled on 27 December 2013 that it upheld the finding of the trial court.

19. Based on the aforementioned circumstances, the source claims that the present case meets the requirements of category II because Mr. Razzakov's detention is politically motivated and is a result of his human rights work and his exercise of his fundamental right to the freedoms of expression and of association guaranteed in the Universal Declaration of Human Rights and the Covenant. The source argues that, in paragraph 39 of its opinion No. 65/2012, the Working Group stated that it "subjects cases to heightened scrutiny when article 19 rights and work as human rights defenders are involved".

20. The source claims that the human trafficking charge against Mr. Razzakov is false and was fabricated as a means to detain him and punish him for refusing to cease his legitimate human rights activities. It also claims that his conviction is politically motivated and aimed at silencing him and bringing an end to his human rights work. The source further states that this could have been done with a view to teaching other human rights activists in Uzbekistan a lesson. In support of that argument, the source refers to the human

rights record of Uzbekistan, in particular, that the Government has never allowed free and independent civil society and human rights non-governmental organizations.

21. The source claims that Mr. Razzakov was a member of both "Ezgulik", the human rights organization, and "Erk", a political opposition party. The Government of Uzbekistan has repeatedly targeted members of both "Ezgulik" and "Erk". Before his arrest, officials from the police department in Bukhara had threatened Mr. Razzakov on several occasions in connection with his human rights work.

22. After he was convicted, government officials continued to threaten Mr. Razzakov and his family with consequences if his son did not stop communicating with international human rights organizations and media outlets. Those threats, the source claims, demonstrate that the Government was concerned about Mr. Razzakov's human rights work. Furthermore, when the police searched Mr. Razzakov's house, they took printed materials related to his human rights work.

23. The source asserts that Mr. Razzakov had been very active in his human rights work and had written numerous letters and petitions to government authorities complaining about regional officials and human rights issues. Before his arrest, Mr. Razzakov had told other "Ezgulik" members that he had been facing growing pressure from the police to stop his human rights work since the start of 2013. The source considers that the repeated threats of retaliation which Mr. Razzakov had been subjected to prior to his arrest and since he was detained can constitute cruel and inhuman treatment.

24. Also, the source claims that the present case meets the requirements of category III because, in addition to the violation of the due process requirement established by the Covenant and the Universal Declaration of Human Rights, the source asserts that the arbitrary nature of Mr. Razzakov's detention can be determined based on the violations of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In that regard, the source claims that Uzbekistan failed to observe the minimum international standards of due process by denying Mr. Razzakov his right to prepare a defence, a public hearing by an independent and impartial tribunal, and to be free from torture or other cruel, inhuman or degrading treatment or punishment.

25. When the trial began on 23 August 2013, 80 people went to the courthouse to show solidarity with Mr. Razzakov and express discontent with his unjust detention, but only his relatives and his lawyer were permitted to attend the hearing. Mr. Razzakov's son was threatened by Uzbek law enforcement on multiple occasions for organizing demonstrations at the courthouse on behalf of his father during the trial. In one instance, Mr. Razzakov's son took the threats seriously and asked supporters to cancel a planned demonstration in front of the Regional Governor's Office.

26. The courts failed to ensure that the defence had access to all documents and evidence used against Mr. Razzakov. In convicting and sentencing him to four years in prison, the court relied on a medical report that allegedly showed that Mr. Razzakov had abused the victim. That report, however, was not shared with the defence. The court referred in its judgment to the report as part of the evidence against Mr. Razzakov but did not explain how it established his guilt.

27. Also, the court relied on alleged transcripts of telephone conversations between Mr. Razzakov and his former client. Again, the prosecution failed to provide the defence with a copy of the transcripts and failed to explain how the transcripts established or contributed to establishing Mr. Razzakov's guilt. Like the medical report, the court accepted the transcripts as evidence of Mr. Razzakov's guilt.

28. Under Uzbek law, in order to demonstrate that human trafficking has been committed, the court must be given proof that the victim of human trafficking was

subjected to kidnapping, violence, threats of violence or other coercion. The source claims that such proof was never produced before the court and it relied solely on conflicting evidence and testimony to reach its conviction.

29. The source submits that seven people only were permitted to testify during the trial, including three witnesses on behalf of Mr. Razzakov. The prosecution witnesses made contradictory statements and the court gave insufficient weight to the evidence produced by the defence. Furthermore, the trial court did not give Mr. Razzakov's defence an opportunity to review and question the evidence that it had relied upon in reaching its verdict. For example, the court relied on a medical report provided by the prosecution that supposedly established that Mr. Razzakov had abused the woman who had filed the complaint against him. The prosecutor, however, neither provided the defence with a copy of the medical report nor explained the relevance of the report to the case.

30. The court also failed to consider significant exculpatory evidence adduced by the defence during the cross-examination of the prosecution's main witnesses. It also failed to compel prosecution witnesses to testify when apparent contradictions were raised during cross-examination, including, for example, when the prosecution's witness completely changed testimony between hearings. The source points out that the prosecution's main witness was Mr. Razzakov's former client, who was also the co-defendant of Mr. Razzakov at the trial. She testified against him, despite the fact that her involvement in the alleged human trafficking scheme was more direct than Mr. Razzakov's, but Mr. Razzakov was the only alleged member of the scheme being sentenced to imprisonment.

31. The defence witnesses corroborated Mr. Razzakov's account of the facts and pleaded for his innocence. In particular, Mr. Razzakov's wife testified that, on the day when the purported victim came to their house, she had been at home and saw her husband treat her with respect. Mr. Razzakov's wife did not hear and or see any indications of the alleged conduct and noted that the purported victim had been in a good mood when she departed from their home. Mr. Razzakov's daughter-in-law provided a similar testimony. Mr. Razzakov rejected the allegations made and repeated that he had only attempted to assist the woman who had visited him for assistance.

32. The source claims that the court did not consider any exculpatory testimonies raised in defence of Mr. Razzakov or explain why the exculpatory evidence was not persuasive in the light of the contradictions present in the prosecution's case. In the light of the above, the source submits that Mr. Razzakov's trial was conducted in contravention of his rights guaranteed in articles 10 and 11 of the Universal Declaration of Human Rights and article 14 of the Covenant.

33. Furthermore the source claims that Mr. Razzakov was subjected to torture or cruel, inhuman or degrading treatment and punishment. In that regard, the source reports that, on 10 and 16 October 2013, two police officers visited Mr. Razzakov in prison and threatened to retaliate against him and his family if his son did not stop communicating with international human rights organizations. On 28 November 2013, prison authorities accused Mr. Razzakov of violating the internal prison code and placed him in a punishment cell for one day, without explaining what rules he had violated. On 29 November 2013, the same two police officers visited him again in prison and threatened him again. On 3 December 2013, Mr. Razzakov was placed in a punishment cell for 15 days allegedly for not keeping his hands in place during line-up. The source further alleges that, in October 2014, Mr. Razzakov was beaten for writing a letter from prison. He suffered a broken jaw and injuries to the skull as a result. In connection with the injuries to his skull, Mr. Razzakov had to undergo surgery in the prison hospital in Tashkent in late November 2014.

34. Mr. Razzakov's family and legal counsel were denied visitation rights both at the penitentiary colony in Tavaksay and the prison hospital in Tashkent for three months after

the incident in which he suffered a broken jaw and head injuries. During that time, Mr. Razzakov's lawyer filed several complaints with the Main Directorate of the Penitentiary of Uzbekistan regarding his client's improper medical treatment and denial of visits by family and lawyers. On 7 January 2015, Mr. Razzakov's lawyer waited at the prison hospital in Tashkent for a full day before being denied access to his client. Mr. Razzakov's lawyer then filed a complaint with the Ministry of Internal Affairs.

35. In late January 2015, three months after Mr. Razzakov suffered the severe injury to his head, his family was finally permitted to visit him. During the visit, it was visible that Mr. Razzakov was suffering from memory loss and did not recognize his son and wife for over half an hour. Mr. Razzakov could not recall much of what had happened during that visit. He also displayed signs of severe neglect and his body was covered with flea bites, which were bleeding from scratches.

36. Although Mr. Razzakov is transferred from Tavaksay to a prison hospital in Tashkent when he suffers from a health issue, the source claims that he is not getting adequate medical care or access to medicine for conditions pre-existing his incarceration, because his list of health complications has grown through privation and abuse in prison. Mr. Razzakov had problems with ulcers, which have worsened in prison because he has not received proper medical treatment.

37. Doctors at the prison hospital in Tashkent have refused to provide any medical documentation to his family. To date, according to the source, Mr. Razzakov's family estimates that it has spent the equivalent of $7,200 to provide medical care to Mr. Razzakov. The family is not sure whether Mr. Razzakov has been receiving the medicines that they have provided. The limited information provided by the doctors indicates that Mr. Razzakov's health problems and injuries sustained in prison require frequent hospitalization.

Response from the Government

38. In its response of 20 May 2016, the Government informed the Working Group that, on 24 September 2013, the Bukhara Provincial Criminal Court sentenced Mr. Razzakov to four years' deprivation of liberty under articles 135 (2) (a) (c) and (e) (Trafficking in persons) and 57 (Imposition of a lighter sentence) of the Criminal Code.

39. Currently, Mr. Razzakov is serving his sentence in a confinement institution.

40. According to the Government, the competent authorities of Uzbekistan do not possess any information about any unlawful actions of the law enforcement authorities regarding this person.

Further information from the Government

41. On 26 May 2016, the Government provided further information with regard to the case of Mr. Razzakov, particularly with regard to the alleged abuse and access to medical care and family visits during his custody.

42. According to the Government, it should be noted that some convicted persons, primarily those who do not want to embark on rehabilitation, refuse to meet the lawful demands of the administration of institutions and systematically violate the prison code, which leads to the imposition of disciplinary sanctions on them. In order to express their disagreement with such disciplinary sanctions, they deliberately distort information about the institution and its administration. Ensuring compliance with the prison regime under national law is not an infringement of the rights and lawful interests of convicted persons.

43. The Government notes that Mr. Razzakov, born in 1955, an Uzbek, citizen of Uzbekistan and native of Bukhara Province, was sentenced on 24 September 2013 by the

Bukhara Provincial Court to four years of deprivation of liberty under a normal prison regime, under article 135 (2) (a) and (e) (Trafficking in persons) and article 57 (Imposition of a lighter sentence).

44. The Government submits that his sentence began on 12 July 2013 and will end on 12 July 2017. He is serving his sentence in correctional institution UY 64/3 (Tashkent Province).

45. The Government submits that, on arrival at the pretrial detention centre and when he was transferred to the correctional institution, Mr. Razzakov underwent a complete medical examination, including all the necessary clinical laboratory and biochemical tests and X-rays. His medical history shows the following chronic diseases: (a) chronic gastroduodenitis at the stage of incomplete remission; (b) atherosclerosis of cardiac and cerebral vessels; (c) chronic hepatitis; and (d) chronic pyelonephritis.

46. The Government submits that, as appropriate for his diseases, Mr. Razzakov is registered for outpatient treatment and is under general observation by medical staff of the institution. As recommended by medical specialists, he has received professional medical care both as an outpatient and as an inpatient at institution UY 64/3, and as necessary as an inpatient in the National Prison Hospital at correctional institution UY 64/18 (Tashkent).

47. The Government refers to the substance of the issues raised in the communication transmitted by the Working Group, and specifically concerning the Directorate for Penal Correction.

48. The Government submits that, according to the Working Group, on 28 November 2013, prison authorities accused Mr. Razzakov of violating the internal prison code and placed him in a punishment cell for one day, without explaining what rules he had violated. Then, on 3 December 2013, Mr. Razzakov was placed in a punishment cell for 15 days allegedly for not keeping his hands in place during line-up. The source of the communication claims that, in October 2014, Mr. Razzakov was beaten for writing a letter from prison, as a result of which he suffered a broken jaw and injuries to the skull. In connection with the injuries to his skull, Mr. Razzakov had to undergo surgery in the prison hospital in Tashkent in late November 2014.

49. The Government underlines that the allegations in the communication regarding the placement of Mr. Razzakov in a punishment cell are not true because, during the whole term of his imprisonment, the administration of the institution has never imposed a disciplinary sanction in the form of incarceration on Mr. Razzakov.

50. In its response, the Government submits that, in serving his sentence, Mr. Razzakov has repeatedly violated prison rules, is a malicious violator of the rules of custody and has received five disciplinary sanctions, including two reprimands, one placement in the disciplinary unit for five days and two warnings.

51. The Government submits that, with regard to the allegations in the communication that Mr. Razzakov was beaten for writing a letter from prison, the Government notes that, on 25 October 2014, Mr. Razzakov did not write any letters or submit any applications to the administration of institution UY 64/3.

52. The Government submits that, in the evening of 25 October 2014, Mr. Razzakov, in an unstable mental state, of his own volition jumped out of a window on the second floor of the unit premises. As a result of the fall, Mr. Razzakov sustained injuries to his head and extremities. He was urgently taken to the medical unit of the institution, where he received first aid and, on the same day, he was sent to the National Prison Hospital at correctional institution UY 64/18 (Tashkent).

53. On admission to the National Prison Hospital at correctional institution UY 64/18, the Government submits that Mr. Razzakov underwent all the necessary clinical, laboratory and biochemical tests and an X-ray examination, was examined by the duty physician, the traumatologist and surgeon of the National Prison Hospital, and by the neurosurgeon of the Ministry of Health's National Neurosurgery Centre. In accordance with the specialists' recommendations, he received professional medical care and underwent the relevant inpatient treatment in the National Prison Hospital between 25 October and 26 November 2014.

54. In the light of what had occurred, an investigation was carried out in order to discover the cause of the event, including a forensic medical examination in accordance with articles 172, 173, 174 and 180 of the Criminal Procedure Code. The conclusion of forensic medical examination No. 582, carried out in Bustonlyk District, Tashkent Province on 2 November 2014, was that the injuries received were caused by the impact of falling from a height. No evidence was found of the use of physical force or infliction of bodily harm on Mr. Razzakov.

55. Based on the foregoing, the Directorate for Penal Correction firmly denies the unsubstantiated and unproven statements in the communication transmitted by the Working Group about alleged violations in the treatment of Mr. Razzakov. The Government submits that, during the period of his sentence, there has been no unlawful treatment and no unlawful actions have been or are being taken against Mr. Razzakov by the administration of the institution.

56. The Government continues that, according to the communication, Mr. Razzakov's relatives and legal counsel were denied visitation rights at the penitentiary colony in Tavaksay and the prison hospital in Tashkent for three months after he suffered his broken jaw and head injuries. During that time, Mr. Razzakov's lawyer filed several claims with the Main Directorate of Penal Corrections regarding his client's improper medical treatment and denial of family and lawyers visits. On 7 January 2015, Mr. Razzakov's lawyer waited at the prison hospital in Tashkent for a full day before being denied access to his client. Mr. Razzakov's lawyer then filed a complaint with Uzbekistan's Ministry of Internal Affairs.

57. According to the response from the Government, Mr. Razzakov is serving his sentence in a penitentiary colony with a normal prison regime. Pursuant to article 117 of the Correctional Code, convicts serving sentences in penitentiary colonies with a normal prison regime are entitled to four short and four long visits per year (i.e. one long and one short visit every three months).

58. In the course of his sentence, Mr. Razzakov — upon the arrival of his relatives and his lawyer at the institution following their application, in due order, to the administration of the institution — has been granted a number of visits by his family members and lawyer. The Government submits a list to that effect.

59. The Government submits that the Directorate for Penal Correction has received no complaints from the prisoner, his relatives or his lawyer regarding unlawful actions by officers of correction institutions. In total, since 2013, the Directorate for Penal Correction has received the following applications:

(a) On 25 October 2013, an application from a lawyer, Z. Shapsanov from the law firm Himoya Nur Media, with a request for the removal of Mr. Razzakov to serve his sentence in an institution in Tashkent Province;

(b) On 11 November 2013, an application from Mr. Shapsanov with an inquiry regarding Mr. Razzakov's location and his health condition;

(c) On 19 November 2014, an application from Mr. Razzakov's son, S.B. Razzakov, regarding his father's health condition;

(d) On 24 November 2014, an application from Mr. Shapsanov regarding Mr. Razzakov's health condition;

(e) On 10 February 2015, an application from Mr. Razzakov's wife, G. Razzakova, with a request for her husband's pardon.

60. As to the alleged instance when Mr. Razzakov was denied a meeting with his lawyer, the Government submits that, according to the archives of the register of visits to prisoners, on 7 January 2015 no relatives or lawyer of Mr. Razzakov applied to the National Prison Hospital at institution UY 64/18.

61. The Government refers to the information contained in the communication that, late in January 2015, three months after he had suffered the severe injury to his head, his family was finally permitted to visit Mr. Rassakov. During the visit, Mr. Razzakov was visibly suffering from memory loss and did not recognize his son and wife for over a half hour. Mr. Razzakov could not recall much of what happened during that visit. He displayed signs of serious neglect and his body was covered with flea bites, which were bleeding from scratches.

62. The Government notes that, while serving his sentence, on 25 October 2014, Mr. Razzakov of his own volition jumped out of a second floor window of the unit premises and sustained injuries to his head and extremities. He was registered for outpatient treatment by a psychiatrist, who diagnosed that he suffered from "consequences of a craniocerebral injury". From 27 December 2014 to 9 January 2015, Mr. Razzakov underwent an examination and inpatient treatment at the National Prison Hospital at institution UY 64/18 (Tashkent), which led to his diagnosis of "astheno-subdepressive syndrome with suicidal ideas".

63. The Government submits that there were not and could not be any cases as described in the communication of Mr. Razzakov's body being covered with flea bites, which were bleeding from scratches.

64. The correctional institutions comply strictly with regulations governing public health and epidemic control, and the medical staff of the institutions carry out the relevant preventive measures, including inspection of the sanitary condition of all the institution's facilities, disinfection and vector and rodent control. Persons arriving at the institution undergo a comprehensive health check. At least once a week, baths are organized for inmates, who are also required to change their underwear and bedclothes, which are then subject to mandatory sterilization. Epidemic control units attached to the Ministry of Health's Sanitary and Epidemic Surveillance Centres carry out anti-parasitic treatment of institutions' buildings and accommodation facilities on a regular basis.

65. The Government refers to the information contained in the communication that, although Mr. Razzakov is transferred from Tavaksay to a prison hospital in Tashkent when he suffers from a health issue, the source claims that he is not getting adequate medical aid or access to medicine for conditions pre-existing his incarceration, because his list of health complications has grown through privation and abuse in prison. Mr. Razzakov had problems with ulcers and those problems have worsened in prison because he has not received proper medical treatment.

66. In its response, the Government notes that, on arrival at the pretrial detention centre and when he was transferred to the correctional institution, Mr. Razzakov underwent a complete medical examination. His medical history showed the following chronic diseases: (a) chronic gastroduodenitis at the stage of incomplete remission; (b) atherosclerosis of cardiac and cerebral vessels; (c) chronic hepatitis; and (d) chronic pyelonephritis. In the evening of 25 October 2014, Mr. Razzakov, in an unstable mental state, and of his own volition, jumped out of a window on the second floor of the unit premises and sustained

injuries to his head and extremities. As appropriate for someone suffering from those diseases, Mr. Razzakov was registered for outpatient treatment and put under general observation by the medical staff of the institution.

67. Whenever necessary, and pursuant to the recommendations of medical specialists, Mr. Razzakov has received professional medical treatment for his chronic diseases. In total, the Government submits that he has been treated 11 times at the medical unit of institution UY 64/3. The Government submits a list to that effect.

68. The Government submits that the medical professionals of the institution currently consider Mr. Razzakov's health condition to be satisfactory; that he is registered for outpatient treatment for the above-mentioned diseases and for the consequences of a craniocerebral injury; and that no additional medical treatment is needed.

69. The Government refers to the information contained in the communication that doctors at the prison hospital in Tashkent refused to provide any medical documentation to his family. To date, according to the source, Mr. Razzakov's family has spent the equivalent of $7,200 to provide medical care to Mr. Razzakov. The family is not sure whether Mr. Razzakov took the medicines they provided. What little information is provided by the doctors indicates that Mr. Razzakov's health problems and injuries sustained in prison require frequent hospitalization.

70. In its response, the Government submits that medical and health services for inmates in correctional institutions are organized by medical units with inpatient facilities, while highly qualified medical treatment is delivered at specialized prison hospitals. Medical and health services for persons sentenced to deprivation of liberty are rendered at the expense of the State budget, and there has not been any shortage of funding.

71. The Government reiterates its submission that Mr. Razzakov suffered from a number of chronic diseases, that in the evening of 25 October 2014 he jumped out of a window on the second floor of the unit premises and sustained injuries, and that he received professional medical care.

72. In response to the information contained in the communication that doctors at the prison hospital in Tashkent refused to provide any medical documentation to his family, the Government submits that, according to the archives of the register of visits to convicts and the register of requests and applications regarding convicts, during his treatment at the National Prison Hospital at institution UY 64/18 (from 16 to 23 November 2013; from 6 to 16 September 2014; from 25 October to 26 November 2014; from 27 December 2014 to 9 January 2015; and from 27 June to 8 July 2015), neither Mr. Rassakov's family nor his lawyer or legal representatives submitted any requests or applications to the institution's administration, including requests for the provision of any medical documentation.

73. In response to the information contained in the communication that, to date, according to the source, Mr. Razzakov's family estimates that it has spent the equivalent of $7,200 to provide medical care to Mr. Razzakov, the Government submits that the administration of the institution has received no applications or requests from relatives or other persons to provide Mr. Razzakov with any additional medical care or to involve medical specialists in his treatment.

74. In response to the information contained in the communication that the family is not sure whether Mr. Razzakov has been receiving the medicines they provided, the Government submits that, during his sentence, Mr. Razzakov has received from his relatives additional medicines, and provides a list to that effect. All the additional medicines provided by relatives were handed over in due order and were fully used for Mr. Razzakov's treatment, as evidenced by his personal signature on the prescription chart.

75. In response to the information contained in the communication that Mr. Razzakov's health problems and injuries sustained in prison require frequent hospitalization, the Government submits that, during his sentence, as required, Mr. Razzakov received inpatient treatment five times in the National Prison Hospital at institution UY 64/18 (Tashkent).

76. The Government reiterates its submission that the medical professionals of the institution currently consider Mr. Razzakov's health condition to be satisfactory; that he is registered for outpatient treatment for the above-mentioned diseases and for the consequences of a craniocerebral injury; and that no additional medical treatment is needed.

Further comments from the source

77. On 6 July 2016, the source provided its comments on the response from the Government. According to the source, the response only disputes the allegations relating to the abuse and the denial of medical care and family visits to Mr. Razzakov since he has been incarcerated, but fails to address the central allegations in the petition to the Working Group regarding the politically motivated arrest, defective trial and subsequent arbitrary detention of Mr. Razzakov.[1] The failure of the Government to address those issues in its response amounts to a tacit admission of the arbitrary nature of Mr. Razzakov's detention under article 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.

78. The source submits that Mr. Razzakov's conviction was based on politically motivated, trumped-up charges. The Government targeted Mr. Razzakov because of his human rights advocacy, which included advocating for local farmers and labourers and exposing human rights violations in Uzbekistan through Radio Free Europe and BBC Uzbek. The Government violated the rights guaranteed to Mr. Razzakov under international law, including, but not limited to, his right to freedoms of expression[2] and association,[3] to prepare a defence,[4] to a public hearing by an independent and impartial tribunal[5] and to be free from torture or cruel, inhuman or degrading treatment.[6] The Government has failed to respond to those allegations and has therefore tacitly admitted that Mr. Razzakov's detention is arbitrary under both category II and category III. According to the source, even if the response from the Government regarding Mr. Razzakov's condition and treatment in prison are assumed to be true, the Government concedes that Mr. Razzakov should not have been detained in the first place.

79. On 31 October 2016, the source informed the Working Group that Mr. Razzakov had been released on 25 October 2016.

Discussion

80. 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

[1] According to article 9 (1) of the Covenant, arbitrary deprivation of liberty is defined as any deprivation of liberty except on such grounds and in accordance with such procedures as are established by law. Such deprivation of liberty is specifically prohibited under international law. See also the petition to Working Group on Arbitrary Detention in the matter of Bobomurod Razzakov, available from www.freedom-now.org/wp-content/uploads/2015/03/10-March-2015-Bobomurod-Razzakov-UNWGAD-Petition-and-Urgent-Action-Request1.pdf.

[2] See art. 19 (2) of the Covenant and art. 19 of the Universal Declaration of Human Rights.

[3] See art. 11 of the Covenant and art. 10 of the Universal Declaration of Human Rights.

[4] See art. 14 (3) (b) of the Covenant.

[5] See art. 14 (1) and art. 10 of the Universal Declaration of Human Rights.

[6] See art. 7 and art. 2 (1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source with regard to the motivation behind the detention, judgment and sentencing of Mr. Razzakov. In its response, the Government merely claimed that the competent authorities of Uzbekistan did not possess any information about the unlawful actions of the law enforcement authorities regarding this person.

81. Although Mr. Razzakov has been released, the Working Group, in accordance with paragraph 17 (a) of its methods of work, reserves the right to render an opinion as to whether or not the deprivation of liberty was arbitrary.

82. The Working Group understands that Mr. Razzakov had been Chairman of the Bukhara region branch of the human rights non-governmental organization "Ezgulik" and a member of the peaceful political opposition party "Erk". Mr. Razzakov had also communicated with international media such as Radio Free Europe/Radio Liberty and the British Broadcasting Corporation.

83. The Working Group received credible information from the source, that was not refuted by the Government, that, early in the second quarter of 2013, Bukhara security services had threatened and harassed Mr. Razzakov. The police in Bukhara had summoned him on several occasions and he had been exhorted by the counter-terrorism criminal investigation unit to cease his human rights work. In March 2013, Uzbek officials had threatened Mr. Razzakov openly that he would spend the rest of his life in prison if he continued his human rights work and his collaboration with international media sources.

84. Mr. Razzakov was interrogated for two hours by the head of Bukhara's counter-terrorism criminal investigation unit at the Department of Internal Affairs on 6 June 2013. During the interrogation, the head of the unit accused him of collaborating with international media and damaging Uzbekistan's reputation.

85. On 9 July 2013, a complaint was made to the police in Bukhara by a woman, accusing Mr. Razzakov and another person of having forced her into prostitution. She also accused Mr. Razzakov of having attempted to force her to have sex with him at his house when she came to him for advice. On 12 July 2013, he was charged with human trafficking and the court found him guilty of that charge on 24 September of the same year. Such judgment was confirmed by the cassation court on appeal on 27 December 2013.

86. The Working Group considers that the human trafficking charge against Mr. Razzakov is questionable and brought as an attempt to silence him and bring an end to his legitimate human rights work and activities. To that end, the Working Group finds that the deprivation of liberty of Mr. Razzakov was a result of the exercise of the rights and guarantees enshrined in articles 18, 19 and 20 of the Universal Declaration on Human Rights and articles 18, 19 and 22 of the Covenant, and that it was thus arbitrary, falling within category II.

87. The Working Group has received credible information confirming that Mr. Razzakov was subjected to a trial consisting of four hearings in total, each lasting approximately 45 minutes. The conduct of the trial violated the right to a fair trial, as established in international instruments accepted by the State, in particular article 10 of the Universal Declaration on Human Rights and article 14 of the Covenant. The Working Group finds that the violations of the due process guarantees were of such gravity as to make the deprivation of liberty arbitrary. Examples of such violations include the fact that the public was largely denied access to the trial; the accused was subjected to torture and other cruel, inhuman or degrading treatment or punishment; and the accused was not given the right to have adequate time and facilities for the preparation of his defence. In that

regard, for instance, the court established the guilt of the accused without sharing with the defence either a medical report that allegedly showed that Mr. Razzakov had abused the victim or other relevant pieces of evidence like the transcript of conversations between the accused and the co-accused.

88. In view of the above, the Working Group on Arbitrary Detention considers that the deprivation of liberty of Mr. Razzakov was arbitrary, falling within category III.

89. The Working Group is also aware that the Committee against Torture, in its concluding observations on the fourth periodic report of Uzbekistan in 2013, expressed its deep concern about the "numerous and consistent reports of the arbitrary imprisonment of human rights defenders and journalists in retaliation for their work" and the "allegations that numerous human rights defenders that have been deprived of their liberty have been subjected to torture and other ill-treatment". The Committee also expressed its concern about the failure of the authorities to investigate effectively such allegation of arbitrary detention and harassment of Mr. Bobomurod Razzakov, amongst others, as a form of retaliation for his work as a human rights defender.[7]

90. The source reported allegations of torture and harassment of a human rights defender that seem credible to the Working Group on the basis of specific circumstances of the present case. It therefore considers it appropriate to refer those allegations to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and to the Special Rapporteur on human rights defenders, for appropriate action.

Disposition

91. Although Mr. Razzakov has been released, the Working Group, in accordance with paragraph 17 (a) of its methods of work, reserves the right to render an opinion as to whether or not the deprivation of liberty was arbitrary. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mr. Bobomurod Razzakov, being in contravention of articles 9, 10, 18, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 18, 19 and 22 of the International Covenant on Civil and Political Rights, was arbitrary and falls within categories II and III.

92. Consequent upon the opinion rendered, the Working Group requests the Government of Uzbekistan to take the steps necessary to remedy the situation of Mr. Razzakov and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the Covenant.

93. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to accord Mr. Razzakov an enforceable right to full reparation, in accordance with international law.

94. The Working Group considers it appropriate to refer the specific allegations of torture and harassment of Mr. Razzakov, as a human rights defender, to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and to the Special Rapporteur on human rights defenders, for appropriate action, in accordance to paragraph 33 (a) of its methods of work.

[7] See CAT/C/UZB/CO/4, para. 8.

Follow-up procedure

95. 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 compensation or other reparations have been made to Mr. Razzakov;

(b) Whether an investigation has been conducted into the violation of Mr. Razzakov's rights and, if so, the outcome of the investigation;

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Government with its international obligations in line with the present opinion;

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

96. 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.

97. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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.

98. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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. [8]

[*Adopted on 22 November 2016*]

[8] See Human Rights Council resolution 33/30, paras. 3 and 7.