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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fifth session, 14 – 18 November 2022

#### Opinion No. 77/2022 concerning Mr. Saidnuriddin Shamsiddinov (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 51/8.
2. In accordance with its methods of work<sup>1</sup>, on 14 July 2022 the Working Group transmitted to the Government of Tajikistan a communication concerning Mr. Saidnuriddin Shamsiddinov. The Government has not replied to the communication. 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).

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<sup>1</sup> A/HRC/36/38.

## Submissions

### *Communication from the source*

4. Saidnuriddin Shamsiddinov is a Tajik citizen, born in 1985. He usually resides in the village of Navbunyod in the Vakhsh district of the Khatlon region in Tajikistan.

5. According to the source, Mr. Shamsiddinov was a bailiff in the Jaloliddin Balkhi district of the Khatlon region until 2017, when he became frustrated with being harassed for bribes and other forms of corruption and became a human rights and anti-corruption activist. He most recently worked as an activist for Campaign for Human Rights (“CHR”), an NGO seeking to promote and protect human rights in Tajikistan by, among other things, revealing government corruption. Mr. Shamsiddinov filed many complaints about corruption in the Khatlon region. As the result of his advocacy activities, he reportedly drew increased attention from local officials (see below).<sup>2</sup>

### Context

6. The source alleges that the Government of Tajikistan has severely curtailed the exercise of free speech (especially political speech or criticism of the Government) within the country, particularly following the reported human rights crackdown that started in 2015. The source notes that although article 30 of the Tajik Constitution recognizes citizens’ freedom of expression and prohibits state censorship and prosecution for criticism, the Criminal Code reflects a different reality.<sup>3</sup> For example, it is a crime to insult state officials,<sup>4</sup> and legislation purportedly concerning extremism is reportedly used to silence government critics.<sup>5</sup> The Islamic Renaissance Party (“IRPT”) was reportedly the largest opposition party in Tajikistan until 2015 when it was formally identified in a Supreme Court decision as a terrorist organization engaged in extremist activities. This decision criminalized all future activities by the party, including distribution of materials connected to the IRPT. The Supreme Court had reportedly done the same to several other opposition parties, like Group 24, a year earlier. The source notes that there are no longer any significant opposition parties in Tajikistan. It also alleges that political prisoners in Tajikistan, including ones accused of supporting the IRPT or Group 24, have often been targeted for torture.

### Circumstances precipitating the arrest and detention

7. In June 2019, Mr. Shamsiddinov reportedly filed a complaint with the General Prosecutor’s Office, stating that the Prosecutor of the region of Jaloliddin Balkhi, the Prosecutor’s assistant, and the Prosecutor’s investigator were harassing him and demanding bribes. The source notes that the General Prosecutor’s Office declined to initiate a case against the officials identified in the complaint.

8. Frustrated, Mr. Shamsiddinov reportedly used Facebook to expose the alleged corruption of these officials and to critique others for effectively permitting that corruption. Specifically, he criticized the President, the Director of the Anti-Corruption Agency, the executive office of the President, the Ombudsperson, and even the General Prosecutor (to whom he had filed his June 2019 complaint). He also sent materials including a thirty-two minute video, titled “Fraudsters from Balkhi: Corrupted Prosecutor, Investigator, and Judiciary,” in which he briefly appears to describe the corruption - to journalists at Radio Free Europe (RFE/RL) and other news media organizations, as well as to the leader of the IRPT. Those news organizations reportedly declined to publish the materials, but they were posted on a YouTube channel affiliated with the opposition group National Alliance of Tajikistan: PAYOM.TV.

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<sup>2</sup> The source notes that prior to the events described in the present petition, Mr. Shamsiddinov had been convicted of one offense. On 14 September 2011, the Nosiri Khusrav District Court convicted him of fraud committed by an abuse of official powers, in violation of article 247(2) of the Criminal Code, by seizing property from a litigant but then failing to return that property. The court declined to impose a punishment, citing an amnesty law permitting the court in its discretion to withhold punishment.

<sup>3</sup> Articles 135, 136, 137 and 330 of the Criminal Code.

<sup>4</sup> Ibid, articles 137 and 330.

<sup>5</sup> A/HRC/35/22/Add.2, para. 16.

9. As highlighted above, the IRPT and its leader had already been identified by 2015 and 2016 Supreme Court decisions as extremist, rendering it unlawful for anyone to participate or assist in their activities. On 15 August 2019, that Court also identified the National Alliance of Tajikistan as an extremist organization, making it unlawful for anyone to participate or assist in its activities, including by means of PAYOM.TV. Around that same time, the commissioner of security services reportedly initiated an investigation into whether Mr. Shamsiddinov was acting in support of extremist organizations, in violation of article 307(3) of the Criminal Code. However, the Khatlon Prosecutor eventually terminated that investigation for lack of evidence.

10. In September 2019, Mr. Shamsiddinov along with another bailiff was reportedly charged and tried for embezzlement causing significant harm to a citizen (article 245(2)(c)) and embezzlement using official powers (article 245(2)(d)). Mr. Shamsiddinov denied any wrongdoing. However, under alleged pressure from officials, he admitted guilt in exchange for an offer of immunity from prosecutors. In addition to admitting guilt, prosecutors allegedly extracted a bribe from Mr. Shamsiddinov to secure immunity. That offer of immunity was reportedly not honoured, and Mr. Shamsiddinov was tried and convicted. Although the court initially imposed a fine of 22,500 somoni and declared him ineligible to hold public office for up to two years, the court later exempted him from paying the fine, citing Tajikistan's amnesty law. He appealed but was unable to change the outcome. Mr. Shamsiddinov and the other bailiff reportedly sent complaints to the President, to the Supreme Court, and to the media describing this corruption, and Mr. Shamsiddinov began regularly criticizing governmental authorities in Facebook posts.

11. In April 2020, Mr. Shamsiddinov and other lawyers and human rights activists at CHR reportedly began to focus on corruption related to the Tajik government's response to the Covid-19 pandemic - specifically embezzlement and improper distribution of medicines, protective equipment, and other resources. The actions of Mr. Shamsiddinov and others at CHR led to the firing of hospital administrators and the opening of corruption investigations, but did not result in the removal of any government officials.

12. Reportedly, Mr. Shamsiddinov increasingly spoke out online about corruption, including about the politically motivated investigations and court decisions against him. In particular, from July to September 2020, he used Facebook to criticize the President, ministries, various state agencies, and the Khatlon Prosecutor's Office for corruption and abuses of power. He also wrote that investigators of the Khatlon Prosecutor's Office took bribes from various persons to drop charges against those persons.

#### Arrest and pre-trial detention

13. The source reports that on 19 September 2020, Mr. Shamsiddinov was summoned to the Vakhsh Prosecutor's Office, where he was arrested. Around the same time, employees of the Prosecutor's Office searched his home. The source notes that the officials did not produce a warrant for the arrest and search issued by the Vakhsh District Court until later in the day.

14. Upon his arrest, Mr. Shamsiddinov was reportedly placed in a detention cell in the local police station - where he was held for two days - and assigned a state-appointed defence attorney whom he did not trust. On 21 September, he was transferred to the Bokhtar pretrial detention center. He was reportedly first permitted to meet with two of his close relatives in the pre-trial detention center on 4 October 2020. According to the source, he did not have access to an independent lawyer until 8 October 2020, when a colleague from CHR took over his defence. The source notes that the Vakhsh Prosecutor's Office permitted Mr. Shamsiddinov to meet with his chosen attorney in the presence of government investigators on 15 October 2020, but denied all of his subsequent requests to meet with his attorney. During their meeting on 15 October, Mr. Shamsiddinov told his lawyer that he had been tortured several times by the head of the pre-trial detention center and his deputy. Specifically, they allegedly beat his legs with a truncheon and put him in a solitary confinement cell for up to three days. Under duress from torture, Mr. Shamsiddinov reportedly confessed to various crimes suggested by his interrogators, discussed in further detail below, including that he had been supporting extremist organizations.

Trial proceedings

15. On 22 December 2020, Mr. Shamsiddinov was reportedly charged with one count of a violation of article 346(3)(a) of the Criminal Code (knowingly false denunciation committed against a judge, prosecutor, or interrogator); two counts of a violation of article 338(1)(2) (illegal provision of a land plot); one count of a violation of article 340(1) (sale of forged documents); one count of a violation of article 245(2)(a), (c), (d) (misappropriation and embezzlement causing significant harm to a citizen and by use of official powers); one count of a violation of article 177(1) (malicious evasion of child support); and one count of a violation of article 247(4)(b) (large-scale fraud).

16. Mr. Shamsiddinov was reportedly tried before Vakhsh District Court. For each of the charges against him, the government relied primarily on witness testimony, as well as videos of Mr. Shamsiddinov's own confessions (which, according to the source, had been edited to omit the torture preceding the confessions). Mr. Shamsiddinov asserts that he confessed and pled guilty to the charges only because he was tortured.

17. The source notes that Mr. Shamsiddinov's charges for knowingly false denunciation under article 346(3) stemmed from his use of Facebook to criticize government officials in September 2019 and again on various dates from July to September 2020. The State reportedly presented testimony from several of the officials allegedly defamed by Mr. Shamsiddinov, as well as from his mother's brother, who testified that one of the corruption conspiracies about which Mr. Shamsiddinov wrote on Facebook was a lie.

18. The prosecution's other charges reportedly related to various events spanning the previous five years. The source notes that Mr. Shamsiddinov's charges concerning malicious evasion of the payment of child support under article 177 related to allegations that he failed to pay 46 months of child support to his ex-wife while their daughter was in the custody of the ex-wife's sister. At trial, the prosecution allegedly withheld crucial contextual information and mischaracterized the testimony of witnesses. Despite Mr. Shamsiddinov's wife and mother refuting the prosecution's allegations, the prosecution failed to drop the charges against him. The source adds that all child support payments have always been paid on time and to the satisfaction of Mr. Shamsiddinov's ex-wife.

19. The source notes that Mr. Shamsiddinov's charges concerning embezzlement causing significant harm to a citizen under article 245(2)(c) and embezzlement through the use of official power under article 245(2)(d) concerned alleged misappropriation of funds while serving as senior bailiff of embezzling a total of 8,550 somoni. Mr. Shamsiddinov was reportedly audited on three occasions from 2017 to 2020 regarding those complaints, but none of those audits revealed any embezzlement by him. Shortly after his arrest, an audit commission conducted a fourth audit regarding his activities as senior bailiff from 2016 to 2017, in response to a direct order from the Office of the Prosecutor of the Jaloliddin Balkhi region. Unlike the prior three audits, which found no embezzlement, the fourth audit commission reported that he had embezzled funds from persons and the state totalling 16,745 somoni. The source notes that the audit commission did not consult with the prior commissions to determine why its report contravened the others.

20. Mr. Shamsiddinov's first charge concerning illegal provision of a land plot under article 338(1)(2), as well as the charge of large-scale fraud under article 247(4)(b), concerned a meeting in December 2015 that he attended with his father, during which his father collected money for the sale of land. After the transaction was complete, Mr. Shamsiddinov's father allegedly told the buyer that he could start building while the father would obtain land registration documentation from relevant authorities. Although the father obtained a construction permit, authorities alleged that he never registered the land in the buyer's name. Mr. Shamsiddinov denies being aware of any attempt to swindle the buyer. The source adds that in his taped confession under torture, Mr. Shamsiddinov stated that he and his father conspired to swindle the buyer.

21. Mr. Shamsiddinov's second charge related to illegal provision of a land plot under article 338(1)(2) and the charge of sale of forged documents under article 340(1) concerned a plot of land that Mr. Shamsiddinov bought in July and sold in December 2019. In April 2020 - around the time where Mr. Shamsiddinov and others at CHR began criticizing corruption in the government's Covid-19 response - the Prosecutor of the Khatlon region initiated a criminal investigation against him in connection with the December 2019 land sale, under a theory that the paperwork he presented to the registry authority may have

contained an inaccuracy to the extent that the plot and building would protrude onto someone else's land.

22. During the trial proceedings, three experts reportedly testified, one claiming that the land over which Mr. Shamsiddinov claimed ownership conformed to the proper boundaries, while another expert opined that the land over which he claimed ownership included someone else's land, while yet another expert opined that the land over which he claimed ownership conformed to the proper boundaries but the house he built on that land extended beyond those boundaries so as to cover someone else's land. Noting these discrepancies among the expert opinions, Mr. Shamsiddinov argued that the prosecution could not prove that his paperwork was inaccurate or that the location of the land or building was improper. He noted that because he was not responsible for drafting the land registration documents created by the registry authority, and because he did not use any forged documents to mislead the land registration authority, he could not have committed forgery. Any mistake was in good faith.

23. The source reports that on 24 December 2020, Mr. Shamsiddinov was convicted on all counts and sentenced to eight and a half years of incarceration, as well as deprivation of the right to hold certain positions of public employment for three years and six months. Mr. Shamsiddinov appealed his conviction and sentence several times - first to the Court of Cassation (30 December 2020), then to the Court of Supervisory Instance (9 February 2021), then to the Chairman of the Court of the Khatlon Region (10 March 2021), and finally to the Supreme Court of Tajikistan (May 2021). Each appellate court reportedly affirmed his conviction and sentence. Having exhausted his appeals under Tajik law with respect to these matters, he was transferred from the Bokhtar pre-trial detention center to a prison in Dushanbe.

#### Subsequent extremism prosecution and trial

24. The source reports that in March 2021, the State opened another criminal investigation into Mr. Shamsiddinov's activities, this time reviving the earlier terminated 2019 investigation into his alleged support of organizations like the IRPT or Group 24 which have been banned as extremist. The State alleged that Mr. Shamsiddinov's June through August 2019 efforts to expose corruption among Jaloliddin Balkhi Prosecutor's Office employees and others - which indirectly resulted in the opposition YouTube channel PAYOM.TV publishing materials assembled by him documenting corruption - amounted to extremism that would harm the constitutional order of Tajikistan.

25. In April 2021, employees of the State Committee for National Security of Tajikistan visited Mr. Shamsiddinov in detention and demanded he stop using social media to denounce government officials, explaining that if he refused to do so he would be prosecuted for his alleged extremism. Although he promised in writing to stop denouncing officials, in May 2021 he sent six more complaints to a CHR colleague to file against authorities at various agencies. Later that month, the Bokhtar Prosecutor reportedly appointed an expert (qualified with expertise on religious matters, political science, and computer science) to assess whether Mr. Shamsiddinov's online communications amounted to a call to extremist ideology associated with opposition groups like the IRPT, in violation of article 307(3). The expert reportedly concluded that his communications did amount to a call to extremism. Just a few weeks later, on 12 June 2021, the Khatlon Prosecutor publicly announced that it was investigating Mr. Shamsiddinov for participation in the activities of an extremist organization, in violation of article 307(3). The source adds that Group 24 promptly publicly denied any awareness of or connection with Mr. Shamsiddinov.

26. Mr. Shamsiddinov was subsequently transferred back from the Dushanbe prison to the Bokhtar pre-trial detention center, pending trial on the new extremism charge. His trial began in late October 2021 before the Bokhtar City Court. Mr. Shamsiddinov was represented by two lawyers.

27. According to the source, the evidence adduced at trial included the following: judicial decisions prohibiting interactions with the leader of the IRPT, the IRPT, or PAYOM.TV supporting extremist ideology; snapshots of Mr. Shamsiddinov's posts on Facebook and information sent to RFE/RL and other news outlets detailing corruption; and the "Fraudsters from Balkhi" video and other materials compiled by Mr. Shamsiddinov that ended up posted on PAYOM.TV. The evidence also included testimony from several persons stating that Mr. Shamsiddinov was responsible for the posts on PAYOM.TV and spoke in the "Fraudsters

from Balkhi” video, as well as the expert’s report concluding that the PAYOM.TV posts represent extremist ideology. The Prosecutor also presented testimony from the former bailiff who, along with Mr. Shamsiddinov, had been tried for embezzlement and filed complaints about corruption (see above), stating that Mr. Shamsiddinov had told him that he sent materials describing corruption to RFE/RL and other outlets; that he had told him he was responsible for the “Fraudsters from Ballkhi” video; and that he had told him he had communicated directly with the IRPT leader for help publicizing the video and materials.

28. According to the source, Mr. Shamsiddinov testified that although he did contact RFE/RL about publishing certain materials describing corruption, and although those materials did end up posted on PAYOM.TV, he never sent those materials to PAYOM.TV and that he sent them to RFE/RL before 15 August 2019, when PAYOM.TV was held to be an extremist media platform. He acknowledged that he once communicated with the IRPT leader, whom he sent certain videos, photos, and audio recordings thought to demonstrate corruption in the Khatlon region. Mr. Shamsiddinov also stated that he has never been interested in politics or had any interactions with any extremist organizations, adding that when, during interrogations in connection with the 2020 charges, he admitted to engaging in extremist activities, he did so only because he was being tortured.

29. Considering this evidence, the Khatlon Prosecutor argued that Mr. Shamsiddinov was guilty of disseminating information in support of extremist ideology, whereas Mr. Shamsiddinov argued that the Prosecutor was simply retaliating against him for speaking out about corruption, in order to deter him from doing so in the future.

30. The source reports that the Court issued a verdict on 24 November 2021, finding Mr. Shamsiddinov guilty of a violation of article 307(3) of the Criminal Code. He was sentenced to five years imprisonment for this violation, to be served consecutive to his eight-and-a-half year term of imprisonment for the December 2020 conviction.

#### Current status

31. Mr. Shamsiddinov filed an appeal of his extremism conviction to the Court of Cassation. At the time of filing, he was held in Correctional Institution No. 7/3 in Bokhtar District. On 14 December 2021, there were additional reports that he had been placed in solitary confinement - where conditions are dangerously inhospitable, including extreme cold - and was allegedly being subject to torture as retaliation for his continued denunciation of Tajik authorities.

32. As of February 2022, Mr. Shamsiddinov was transferred to Correctional Institution No. 3 in Dushanbe. His access to his family has recently been limited. During May and June 2022, he was not permitted to call his family and they were not permitted to visit him. On 6 July 2022, a close relative was permitted to visit him in prison for the first time in several months. According to the source, his conditions of detention are extremely poor. During the month of June, he was reportedly only permitted to leave his cell for a walk once. In addition, his bedding is poor and that he does not feel that he is receiving adequate food.

#### Analysis of violations

33. The source asserts that the detention of Mr. Shamsiddinov constitutes an arbitrary deprivation of his liberty under categories I, II, III and V.

- a. Category I – lack of legal basis for detention

#### Incommunicado detention

34. The source notes that incommunicado detention occurs whenever individuals are “deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus.”<sup>6</sup> In the present case, Mr. Shamsiddinov was reportedly arrested on 9 September 2020, but he did not have access to his family until 4 October 2020. Furthermore, he did not have access to his chosen legal representative until 8 October 2020. During this period, his only access was to a state-appointed legal representative, who he did not trust to convey information to

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<sup>6</sup> A/HRC/13/42, p. 2, A/HRC/22/44, fn. 27, CCPR/C/GC/35, para. 38 and opinion No. 4/2018, para. 64.

the outside world. As a result, from the time of his arrest to the time that he was first able to access his family members, Mr. Shamsiddinov was effectively cut-off from the outside world. Accordingly, the source submits that he was held incommunicado during this period, and his detention during this period falls within the scope of category I, in violation of article 9(3) of the Covenant, articles 10 and 11 of the Universal Declaration of Human Rights and principle 19 of the Body of Principles.

First trial lacked a legitimate legal basis

35. The source asserts that because the government's 2020 prosecution of Mr. Shamsiddinov was initiated as an attempt to silence his advocacy and lacked any basis for many of the crimes alleged, his detention is arbitrary under category I. His prosecution and conviction reportedly relied upon confessions extracted under torture, manipulated testimony, and allegations for which he was previously exonerated. He subsequently denied the confessions introduced at trial and extracted under torture. Furthermore, he was reportedly targeted, both in his 2019 prosecution and in his 2020 prosecution, only after he complained formally and online about corruption in the Tajikistan government.

36. The source also asserts that the initial basis for the government's investigation and prosecution of Mr. Shamsiddinov related to his allegations of corruption and criticism of government officials. The source notes that the statements that served as the basis for the government's claim of knowingly false denunciation were factually true statements. The only evidence suggesting his claims were false was testimony from the persons he accused of corruption. By contrast, that Mr. Shamsiddinov's denunciations were factually true is supported not simply by his own testimony, but also by the materials he compiled that were published by PAYOM.TV. Furthermore, even supposing some of his claims had been false, there was no evidence that he knew them to be false. Thus, the source submits that Mr. Shamsiddinov's conviction for knowingly false denunciation was wholly unsupported by the evidence.

37. Furthermore, the source reports that the first charge of illegal provision of a land plot and the charge of large-scale fraud primarily relied upon a confession extracted under torture. The source adds that a confession under the basis of torture cannot be considered legitimate evidence to constitute a legal basis for Mr. Shamsiddinov's detention.

38. Concerning the malicious evasion of child support charges, the indictment of Mr. Shamsiddinov and the conclusions of the trial court reportedly do not accurately represent the testimony of his mother and ex-wife, which served as the basis of the government's case against him. The source notes that because the ex-wife, who is from Uzbekistan, speaks Tajik only poorly, employees of the prosecutor's office reportedly prepared and had her sign a statement asserting that Mr. Shamsiddinov neglected to pay child support. According to the source, the ex-wife has never claimed that child support payments were not adequately made and has never sought enforcement of the child support order. The source adds that the indictment's summary of Mr. Shamsiddinov's mother's testimony inaccurately states that she said no one paid child support from January 2020 until September 2020, whereas she actually testified only that she did not have receipts showing timely payments during that period.

39. With respect to the embezzlement allegations, the government had reportedly conducted three prior audits of Mr. Shamsiddinov during the course of his career and covering the incidents alleged, all of which found that he did not engage in any wrongdoing in the course of his work as a bailiff. However, a fourth audit - requested by the State when it was allegedly trying to cobble together a case to silence Mr. Shamsiddinov - contradicted the prior three by finding embezzlement. The source adds that the fourth audit committee made no attempt to contact any of the prior three committees or to reconcile its incongruous finding with those of the prior committees.

40. Regarding the second charge of unauthorized occupation of and construction upon a land plot and the charge of sale of forged documents, the government reportedly presented no evidence that Mr. Shamsiddinov acted with criminal intent, and even assuming he overlooked some procedural requirements, any mistake was in good faith. The source notes that three experts testifying about his land filings could not themselves agree on whether a deviation took place or the extent of any such deviation. The source submits that the allegation that Mr. Shamsiddinov is criminally responsible for the sale ignores the fact that there is no evidence he forged any documents, and although the title he purchased contained

some inaccuracy, his good faith reliance on that title and resale of the land does not constitute sale of forged documents in any meaningful sense.

41. The source thus submits that because the prosecution relied upon a flawed evidentiary basis and because Mr. Shamsiddinov was targeted for prosecution in order to silence his dissent, the prosecutions cannot constitute a legitimate legal basis for the purposes of category I.

Second trial lacked a legitimate legal basis

42. Regarding Mr. Shamsiddinov's trial for extremism, the source asserts that the State did not produce evidence sufficient to prove charges. Most significantly, the source asserts that his confession of extremism is inadmissible and unreliable as a result of torture. Furthermore, while there is evidence that he sent materials to RFE/RL, that was no crime because RFE/RL has never been identified as extremist by any Tajik court order. The source notes that although those materials (including the "Fraudsters of Balkhi" video) did end up posted on PAYOM.TV, Mr. Shamsiddinov never intended for those materials to appear on PAYOM.TV or any other platform affiliated with identified extremists, and even PAYOM.TV had not even been identified as extremist at the time he sent materials to RFE/RL. The source adds that although Mr. Shamsiddinov did send materials to the IRPT leader, whom a court order had already identified as extremist, he intended those materials only to reveal corruption by particular officials. The source asserts that sharing of information with news outlets, such as RFE/RL, and other activists fall well within the scope of protected freedom of expression, and thus cannot serve as evidence to establish a basis for Mr. Shamsiddinov's detention. The source adds that the suggestion that by revealing corruption he intended to overthrow the constitutional order of Tajikistan is baseless.

43. The source submits that because Mr. Shamsiddinov never participated or assisted in the activities of groups identified as extremist, and because he was targeted for prosecution in order to silence his dissent, his detention for violating article 307(3) is arbitrary.

b. Category II – exercise of fundamental rights or freedoms

44. The source notes that freedom of expression is guaranteed in article 19 of the Covenant, article 19 of the Universal Declaration of Human Rights and also in article 30 of the Tajik Constitution.<sup>7</sup> The source submits that all the charges brought against Mr. Shamsiddinov to justify his present detention appear to be retaliation for his prior public comments on corruption and misappropriation by government officials, and so are designed to chill his exercise of expression more generally. Furthermore, he was explicitly arrested and detained for (among other charges) denunciation and extremism in the form of publicizing true information about the corruption of particular public authorities. Given that he - who was working with CHR as a human rights activist to reveal government corruption, and therefore functioning as a journalist at the time - was discussing issues at the intersection of human rights, politics, and public affairs, his speech was protected. Notably, that he is allegedly detained in part as retaliation for his speech as a defender of human rights makes this matter all the more significant.

45. With reference to the restrictions to the freedom of expression provided for in article 19(3) of the Covenant, the source asserts that the government's detention of Mr. Shamsiddinov (1) fails to meet the provided-for-by-law condition, (2) lacks a legitimate justification, and (3) is neither necessary nor proportionate. The source notes that regarding the extremism charge, article 307(3) is overbroad and vague, and accordingly does not satisfy the provided-for-by-law condition of article 19(3) of the Covenant. The extremism prohibition in the said provision is reportedly arbitrary to the extent its use of the terms "participation," "assistance," and "activities" is vague in the context of the political activities of opposition groups. The source also notes that individuals have a right to know what conduct violates the law, and unintelligibly vague statutes are unenforceable.<sup>8</sup> Accordingly, Mr. Shamsiddinov's detention for violating this vague statute is allegedly arbitrary.

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<sup>7</sup> CCPR/C/GC/34, para. 11, and A/HRC/4855, paras. 46-50 in relation to arbitrary detention of human rights defenders.

<sup>8</sup> Articles 9(1) and 15(1) of the Covenant, article 11(2) of the Universal Declaration of Human Rights and E/CN.4/2006/98, para. 46.

46. The source adds that more generally regarding both the extremism and denunciation charges, Mr. Shamsiddinov's statements and materials publicizing corruption cannot improperly threaten the rights or reputations of others, because they were accurate; nor can they improperly threaten the protection of national security or public order simply because they expose corruption.

47. Therefore, the source submits that no exceptions apply to the government's restrictions on Mr. Shamsiddinov's right to freedom of expression, and the Government's detention and continued prosecution of him are arbitrary insofar as they follow from his exercise of free speech.

c. Category III – violation of due process and fair trial rights

Right not to be subjected to arbitrary arrest

48. With reference to article 9 of the Covenant and article 9 of the Universal Declaration of Human Rights, the source notes that the Working Group has held that an arrest without prior issuance of an arrest warrant is arbitrary within the meaning of category III.<sup>9</sup> The source notes that in Tajikistan, there is no requirement for a warrant prior to an arrest. It adds that Mr. Shamsiddinov was reportedly not shown an arrest warrant until several hours after he was summoned to the prosecutor's office and arrested. Accordingly, the source submits that his arrest was arbitrary under international law.

Right to release pending trial

49. According to the source, Mr. Shamsiddinov remained in detention for two months while waiting to be tried in 2020, but the government did not provide any justification for that detention. The source notes that he did not pose a flight risk, as his family lived in the area. Moreover, there was no evidence that he was at risk of destroying. Lastly, there was no evidence that he posed a risk to public safety, as he was not accused of a violent crime and there was no reason to believe that he would commit such an offense prior to his trial. Accordingly, that portion of his detention was reportedly in violation of article 9(3) of the Covenant<sup>10</sup> and principles 38 and 39 of the Body of Principles.

Right to meet with one's lawyer

50. According to the source, Mr. Shamsiddinov did not trust the lawyer appointed for him by the State in connection with his 2020 charges, so he retained his former colleague from CHR. Although he was permitted to meet with his chosen attorney on one occasion - 26 days after his arrest, and, even then, only in the presence of government investigators - he was not permitted to meet with him thereafter or to have him assist him at trial or in the preparation of appellate materials. Accordingly, the Government denied Mr. Shamsiddinov's due process right to the help of his lawyer, in violation of article 14(3)(b) of the Covenant.<sup>11</sup>

Prohibition of coerced testimony

51. According to the source, Mr. Shamsiddinov was compelled by means of torture to falsely confess to the charges for which he is detained. Specifically, he was allegedly beat with a truncheon and put in solitary confinement for as many as three days. Videos of his confessions were reportedly admitted into evidence after having been edited so as to omit the torture. The source notes that those videos should not have been admitted because they are the unreliable products of torture and because they were inadmissible as having been edited so as to omit the torture, contrary to article 172 of the Criminal Procedure Code of Tajikistan. With reference to article 14(3)(g) of the Covenant<sup>12</sup> and principle 21(1) and (2) of the Body of Principles, the source thus submits that the admission of this evidence violated Mr. Shamsiddinov's right to a fair trial.

<sup>9</sup> Opinions Nos. 87/2017, paras. 42-45 and 52/2018, para. 69.

<sup>10</sup> CCPR/C/GC/35, para. 38.

<sup>11</sup> Paragraph 1 of the Basic Principles on the Role of Lawyers.

<sup>12</sup> CCPR/C/GC/32, para. 6.

#### Fair trial

52. The source refers to article 14(1) of the Covenant which guarantees a fair trial before an independent and impartial tribunal and further demands that all persons shall be equal before the courts and tribunals.<sup>13</sup> According to the source, the trial courts' extreme bias against Mr. Shamsiddinov, as detailed above, evidences that his guilt was a foregone conclusion. In addition to effectively denying Mr. Shamsiddinov the right to counsel in connection with the 2020 charges and admitting inadmissible evidence into both trials (such as his confessions under torture), the courts in each trial denied him the right to present evidence in his defence, other than by cross examining witnesses and testifying on his own behalf. Furthermore, and more fundamentally, Tajik law should have prevented the Khatlon Prosecutor and investigators from engaging in his prosecution altogether,<sup>14</sup> given that some of the prosecutors and investigators were also the alleged victims of his supposed crime of denunciation. Accordingly, the source submits that Mr. Shamsiddinov was denied the presumption of innocence and a fair trial.

#### Right to meaningful appellate review

53. With reference to article 14(5) of the Covenant,<sup>15</sup> the source asserts that the appellate bodies' analyses of the issues raised by Mr. Shamsiddinov were limited only to conclusory statements that his arguments are necessarily groundless because they contravene the Government's allegations, which the appellate bodies merely accept at face value. The source submits that this is not meaningful appellate review.

#### d. Category V – detention on the basis of discrimination

54. The source submits that as set forth under category II above, Mr. Shamsiddinov was targeted, arrested, and detained as retaliation for his expression of his opinions regarding corruption in Tajikistan. He was explicitly told that if he stopped speaking out about corruption he would not be prosecuted for extremism. His refusal to be silenced then and at earlier stages is the reason he has been persecuted. Furthermore, the source asserts that the charges for denunciation and extremism straightforwardly target Mr. Shamsiddinov on the basis of his political opinion. As a result, the source submits that the Government's detention of Mr. Shamsiddinov constitutes an arbitrary deprivation of liberty under category V.

#### *Response from the Government*

55. On 14 July 2022, 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 12 September 2022, detailed information about the current situation of Mr. Saidnuriddin Shamsiddinov and to clarify the legal provisions justifying his continued detention, as well as its compatibility with Tajikistan'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 his physical and mental integrity.

56. The Working Group regrets that the Government did not submit a reply, nor did it seek an extension in accordance with paragraph 16 of Working Group's methods of work.

#### **Discussion**

57. In the absence of a 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 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 law 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.

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<sup>13</sup> CCPR/C/GC/32, para. 13; article 14(2) of the Covenant, article 11(1) of the Universal Declaration of Human Rights, principle 36 of the Body of Principles and rule 111(2) of the Nelson Mandela Rules.

<sup>14</sup> Articles 61, 65 and 66 of the Tajik Criminal Procedure Code.

<sup>15</sup> CCPR/C/GC/32, para. 34.

68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

59. The source has argued that the detention of Mr. Shamsiddinov is arbitrary and falls under categories I, II, III and V. The Working Group shall proceed to examine the submissions in turn.

a. Category I

60. According to the information provided by the source, Mr. Shamsiddinov was taken into custody on 9 September 2020, and did not have any contacts with his family until 4 October 2020 and to the lawyer of his choice till 8 October 2020. Nevertheless, according to the source, during this time Mr. Shamsiddinov had an access to the State-appointed lawyer. Notwithstanding the source's allegation that Mr. Shamsiddinov did not trust this lawyer, the Working Group is unable to conclude that Mr. Shamsiddinov was held incommunicado for the first two weeks of his detention. The alleged breach of Mr. Shamsiddinov's right to be assisted by a freely chosen lawyer is examined below under category III.

61. The source further alleged that for each of the charges against Mr. Shamsiddinov, the Government relied on his own confessions which had been obtained under torture. Equally, the Working Group considers that these and other allegations of violations of fair trial rights should be examined under category III.

b. Category II

62. The Working Group notes that Mr Shamsiddinov was charged with:

- knowingly false denunciation committed against a judge, prosecutor, or interrogator (Art. 346(3)(a) of the Criminal Code);
- illegal provision of a land plot (Art. 338 (1), (2) of the Criminal Code);
- sale of forged documents (Art. 340 (1) of the Criminal Code);
- misappropriation and embezzlement causing significant harm to a citizen and by use of official powers (Art. 245(2)(a), (c), (d) of the Criminal Code);
- malicious evasion of child support (Art. 177(1) of the Criminal Code);
- large-scale fraud (Art. 247(4)(b) of the Criminal Code);
- participation in the activities of an extremist organization (Art. 307(3) of the Criminal Code).

63. The source alleges that all these charges aimed to punish Mr. Shamsiddinov for his public comments on corruption and misappropriation by government officials. In particular, he was explicitly charged with denunciation and extremism in the form of publicizing information about the corruption of public authorities. Given that Mr. Shamsiddinov was a human rights activist who revealed corruption among the state officials, he was ultimately detained for his legitimate exercise of his rights to freedom of expression, protected by article 19 of the Covenant.

64. The Working Group notes that the Human Rights Committee, in its general comment No. 34 (2011) on the freedoms of opinion and expression, stated that such rights, as enshrined in article 19 of the Covenant, are indispensable conditions for the full development of the person and essential for any society and, in fact, constitute a foundational stone for every free and democratic society.<sup>16</sup>

65. Also in its general comment No. 34, the Committee further stated that the freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers; this 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 of the rights or reputations of others, or to the protection of national security or of public order or of public health or morals. The Committee went on to stipulate that restrictions are not allowed on

<sup>16</sup> General comment No. 34 (2011), para. 2.

grounds not specified in paragraph 3 of the general comment, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed, and must directly relate to the specific need on which they are predicated. In the present case, the Working Group fails to see any permitted restrictions to justify the interference with Mr. Shamsiddinov's freedom of speech.

66. Given the factual basis and nature of the charges of "knowingly false denunciation", it is quite clear to the Working Group that the basis for the arrest and subsequent detention of Mr. Shamsiddinov was in fact his exercise of freedom of expression. Furthermore, the Government did not use the opportunity to refute the source's allegations that all the charges against Mr. Shamsiddinov were contrived to punish him for posting critical posts in social media.

67. Absent the Government's explanations, the Working Group cannot but conclude that Mr. Shamsiddinov was detained because of the exercise of his freedom of expression, in violation of article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights. His deprivation of liberty thus falls under category II.

c. Category III

68. The Working Group has already established that the deprivation of liberty of Mr. Shamsiddinov, as far as it relates to the charges under Article 346(3)(a) of the Criminal Code, is arbitrary under category II. It will now consider whether the alleged violations of the right to a fair trial and due process were of such gravity as to give his deprivation of liberty an arbitrary character, falling under category III.

69. The source has alleged that the fair trial rights of Mr. Shamsiddinov were violated because:

- The arrest took place without an arrest warrant that was presented only several hours after Mr. Shamsiddinov was summoned to the prosecutor's office and arrested;
- Pre-trial detention of Mr Shamsiddinov was not justified as he did not present any risk of absconding or destroying evidence;
- Mr. Shamsiddinov 's right to be assisted by a lawyer of his choosing were ignored – he was allowed to meet his lawyer only once and in presence of the investigator;
- the courts in each trial denied Mr. Shamsiddinov the right to present evidence in his defense, other than by cross examining witnesses and testifying on his own behalf;
- his appeal was not examined properly;
- his confessions obtained under duress became the basis for his convictions.

70. The Working Group observes that the Government has failed to respond to these allegations. The Working Group therefore accepts, *inter alia*, that Mr. Shamsiddinov was not accorded individualized determination of his pre-trial detention; was denied access to a lawyer of his own choosing, with the exception one meeting in the presence of investigator; that his confessions obtained under duress formed the basis of his convictions; and that he could not obtain the attendance an examination of witnesses on his behalf.

71. The Working Group recalls that article 9(3) of the Covenant provides that it shall not be the general rule that persons awaiting trial shall be detained. The Human Rights Committee has confirmed that pre-trial detention should be an exception and as short as possible and must be based on an individualised determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The courts must examine whether alternatives to detention, such as bail, would render custodial measures unnecessary.<sup>17</sup> According to the source, Mr. Shamsiddinov remained in detention for two months while waiting to be tried in 2020 without the Government providing any justification. This was despite Mr. Shamsiddinov not posing a flight risk, there being no evidence that he was at risk of destroying and no evidence that he posed a risk to public safety. Absent any information from the Government, the Working

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<sup>17</sup> Human Rights Committee, General comment No. 35, para. 38.

Group cannot conclude that such an individualized determination of Mr. Shamsiddinov's circumstances took place, contrary to article 9(3) of the Covenant.

72. The Working Group is particularly concerned about the alleged acts of ill-treatment in violation of article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant, resulting in coerced confessions. The Working Group recalls the Human Rights Committee general comment No. 32 on the right to equality before courts and tribunals and to a fair trial, stating that, under article 14 (3) (g) of the Covenant, it is unacceptable to torture or subject a person to other ill-treatment in order to extract a confession, and that the burden is on the State to prove that statements made by the accused have been given of their own free will<sup>18</sup>. The Working Group had already confirmed that the admission of statements obtained as a result of torture or of other ill-treatment as evidence in criminal proceedings renders the proceedings as a whole unfair<sup>19</sup>. This finding applies irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant's conviction.

73. Furthermore, Mr. Shamsiddinov was denied his right under article 14 (3) (g) of the Covenant to have the defense witnesses examined by the trial court. The Working Group stresses that a defense witness' testimony might be capable of proving the accused's innocence or lead to his or her acquittal or otherwise influence the outcome of a trial; and the refusal to examine such a witness compromises the fairness of the criminal proceedings

74. Furthermore, the Working Group regrets that Mr. Shamsiddinov was allowed to meet the lawyer of his own choosing only once, and not in private. The Working Group is mindful that Mr. Shamsiddinov was charged with serious offences, and ultimately sentenced to a lengthy prison term. The sentencing of Mr. Shamsiddinov thus was in disregard of the guarantees enshrined in article 14 (3) (b), (d), (e) and (g) of the Covenant. These violations are sufficiently serious to render the detention is arbitrary under category III.

d. Category V

75. Finally, the source alleges that Mr. Shamsiddinov's arrest and detention also fall under category V, given that the authorities' discriminatory intent to punish him as a human rights lawyer revealing corruption.

76. The Working Group has already established that Mr. Shamsiddinov's arrest and detention resulted from his exercise of the right to freedom of expression. When it is established that deprivation of liberty resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>20</sup>

77. The Working Group further finds that the present case is similar to other cases of human rights defenders in Tajikistan, examined by it. The Working Group also refers to the concluding observations on Tajikistan by the Committee against Torture, which expressed deep concern at allegations that human rights defenders frequently faced reprisals by the officials (CAT/C/TJK/CO/3, para. 21).

78. Noting that Mr. Shamsiddinov expressed his views on issues of a serious public concern as corruption among State officials, the Working Group believes that there is a distinct pattern in the attitude of the authorities towards human rights defenders that constitute a discrimination on the basis of political or other opinion, in a manner that 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 under category V.

79. Lastly, the Working Group notes with concern the fact that the Government has not responded to the serious allegations in this case. The Working Group recalls that the Human Rights Council called for all States to cooperate with the Working Group, to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons

<sup>18</sup> CCPR/C/GC/32, para. 41.

<sup>19</sup> A/HRC/WGAD/2021/78.

<sup>20</sup> A/HRC/WGAD/2017/88, para. 43.

arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.

### **Disposition**

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

The deprivation of liberty of Mr. Saidnuriddin Shamsiddinov, being in contravention of articles 2, 3, 5, 7, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2 (1), 7, 9 (3), 14 (3) (b), (d), (e) and (g), 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II, III and V.

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

82. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Shamsiddinov 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 unconditional release of Mr. Shamsiddinov.

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

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

### **Follow-up procedure**

85. 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. Shamsiddinov has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Shamsiddinov;
- (c) Whether an investigation has been conducted into the violation of Mr. Shamsiddinov'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.

86. 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.

87. 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.

88. 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.<sup>21</sup>

*[Adopted on 16 November 2022]*

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<sup>21</sup> See Human Rights Council resolution 51/8, paras. 6 and 9.