

# No. 4/2013 (Uzbekistan)

## Communication addressed to the Government on 5 December 2012

### Concerning Gaybullo Jalilov

#### **The Government replied to the communication on 28 March 2013. The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

#### **Submissions**

##### *Communication from the source*

3. Mr. Gaybullo Jalilov (hereinafter Mr. Jalilov), an Uzbek national born on XX August XXXX, is a Karshi-based human rights activist. He is also a member of the Human Rights Society of Uzbekistan.

4. Mr. Jalilov's work focused on violations of the right to religious freedom, particularly on the persecution of independent Muslims in the Kashkadarya region of Uzbekistan. He has been monitoring religious persecution cases since 2004 and at the time of his arrest in September 2008 had collected information on over 200 arrests of independent Muslims in the region.

5. On 5 September 2009 at around 10 p.m., several men, two of whom were reportedly wearing police uniforms, allegedly forced Mr. Jalilov into a vehicle. Mr. Jalilov had been returning home after visiting a fellow human rights defender.
6. According to the source, Mr. Jalilov was initially held incommunicado and his friends and family were unable to find out where he was being held, only learning of his whereabouts two days later.
7. On 10 September 2009, at around 7.00 a.m., as reported by the source, 18 policemen from the Karshi City Department of Internal Affairs came to Mr. Jalilov's house, presented a search warrant to his wife and conducted a search. Allegedly the police took a copy of a book entitled "Towards Honour and Respect" (Izzat va sharaf sari) and two DVDs from Mr. Jalilov's home.
8. According to the source, Mr. Jalilov's father received a written statement from the Karshi City Department of Internal Affairs on 23 September 2009 informing him of the criminal charges brought against his son. The Karshi authorities charged Mr. Jalilov and three other men with a series of allegedly fabricated religious extremism charges, including his alleged membership of the Hizb ut-Tahrir religious group, which reportedly has an extremist and separatist agenda. Mr. Jalilov was charged with terrorism, incitement of ethnic, racial or religious hatred, sabotage, "organization of criminal community", the production and dissemination of materials containing threats to public safety and public order, and the establishment, direction of or participation in a religious extremist, separatist, fundamentalist or other banned organization.
9. The source reports that Mr. Jalilov's family and lawyer were allowed to meet with Mr. Jalilov for the first time since his arrest on 6 November 2009. According to the source, three policemen were present in the meeting room and in consequence Mr. Jalilov was not able to speak freely to his relatives or legal counsel.
10. Mr. Jalilov's first hearing began on 24 November 2009 in the Kashkadarya regional court. Mr. Jalilov's lawyer was allegedly not notified of the hearing and therefore not able to attend. The hearing was closed and allegedly no relatives of Mr. Jalilov were admitted to the courtroom. According to the source, the court repeatedly withheld scheduling information from his lawyer throughout the rest of the trial.
11. The prosecution claimed that Mr. Jalilov had said that the Government was against religion and was imprisoning practising Muslims unlawfully, and that the only solution to all the problems in society was to replace the current government.
12. The source contends that during the trial Mr. Jalilov denied the charges and asserted his innocence on all counts. He reportedly stated that he performed the daily prayers compulsory in Islam, had learned how to pray from the imam at Ko'kgumbaz Mosque, and claimed that he was initially arrested for performing compulsory Islamic prayer. Reportedly Mr. Jalilov also stated in court that he was not a member of Hizb ut-Tahrir and he was not involved in any terrorist group or activities to overthrow the Government.
13. According to the source, the authorities moved Mr. Jalilov's final hearing to Bukhara (about 150 km away), without notifying his lawyer or members of his family, who consequently were unable to attend the final hearing.
14. On 18 January 2010, the Kashkadarya regional criminal court sentenced Mr. Jalilov and his three co-defendants to prison terms ranging from 7 to 10 years. Mr. Jalilov was sentenced to 9 years in prison under articles 159(3)(b), 244(3)(a) and (b), and 244(1) of the Uzbek Criminal Code. The source claims that Mr. Jalilov's conviction was entirely based on vague written witness statements and had no relevance to his alleged crimes.
15. According to the source, Mr. Jalilov also signed a confession during the pretrial investigation under coercion and did not know the content of this confession. Allegedly, national security service agents threatened Mr. Jalilov's wife, attempting to force her to testify against her husband. The source claims that the court failed to order an investigation into Mr. Jalilov's allegations of torture and ill-treatment by stating that these were invented for the purpose of escaping criminal responsibility.
16. On 9 March 2010, the Kashkadarya regional appeals court upheld Mr. Jalilov's nine-year sentence in a hearing that allegedly lasted only 20 minutes. Reportedly, the appeals court judgment does not contain any discussion of the substantive or procedural violations, repeated verbatim from the first instance court's judgment.

17. On 20 May 2010, Mr. Jalilov's family attempted to visit him in prison. Upon their arrival at the UYa 64/49 Prison Colony in Shaikhali they learned that he had been transferred to Tashkent. According to the family they had received no explanation as to why or at what point he had been transferred.

18. On 7 June 2010, Mr. Jalilov's wife made a written request to the head of prison administration (GUIN) for information about her husband's whereabouts, but allegedly received no response. The source reports that about six weeks later Mr. Jalilov's wife travelled to Tashkent to look for Mr. Jalilov and on 23 July she was told by the prison administration agency that her husband was being held in a pretrial detention cell in Bukhara.

19. According to the source, Mr. Jalilov called his wife on 27 July 2010 to tell her that the Government had brought new charges against him and that he was in an investigation cell in Kasbi District in Kashkadarya. Allegedly, at no point did prison authorities or the investigator officially notify Mr. Jalilov's family that Mr. Jalilov was under investigation on new criminal charges. It is reported that Mr. Jalilov was not able to hire a lawyer of his own choice and that he had no choice but to accept being represented by a State-appointed lawyer.

20. On 4 August 2010, the Kashkadarya regional court began considering the new charges against Mr. Jalilov. According to the source, the prosecution based its new charges on witness testimony alleging that Mr. Jalilov had actively participated in religious gatherings and watched DVDs with religious extremist content. In a closed hearing, the Kashkadarya regional criminal court resentedenced Mr. Jalilov to 11 years, 1 month and 5 days in prison for violating articles 159(3)(b) and 244(1) of the Uzbek Criminal Code. Reportedly, members of Mr. Jalilov's family who attended the hearing stated that Mr. Jalilov had asserted his innocence on all charges and asked the prosecution to present their witnesses. Allegedly, these witnesses did not appear.

21. According to the source, Mr. Jalilov suffered ill-treatment and possible torture. The allegation is based on Mr. Jalilov's appearance before the appeals hearing, during which he had a swollen eye. He reported that he had been punched and kicked by an official in his cell. Previously, Mr. Jalilov had appeared to bear marks of ill-treatment. Allegedly, he attempted suicide in 2009.

22. The source contends that Mr. Jalilov's detention on charges of religious extremism constitutes arbitrary detention, falling within category II as defined by the Working Group.

23. The source claims that the Government of Uzbekistan denied Mr. Jalilov the right to freedom of religion as guaranteed under article 18, paragraph 1, of the International Covenant on Civil and Political Rights. The source confirms that Mr. Jalilov is a practising Muslim and alleges that the Government of Uzbekistan used Mr. Jalilov's statement with regard to his religious practice to bring religious extremism charges against him and accuse him of being a member of the Hizb ut-Tahrir religious group. According to the source Mr. Jalilov asserted his innocence on all counts, and testified that he had confessed to membership of Hizb ut-Tahrir under coercion and torture. In the view of the source the prosecution had failed to prove Mr. Jalilov's membership of the Hizb ut-Tahrir group and other charges of anti-constitutional activities. Also, according to the source, there was no reference in the judgment to the law which prohibits membership of the Hizb ut-Tahrir group.

24. In the absence of any proof that Mr. Jalilov was involved in the alleged criminal activities, the source claims that the Government arrested and convicted Mr. Jalilov solely for his independent practice and study of religion and thereby violated his legitimate right to freedom of religion under article 18, paragraph 1, of the Covenant.

25. In the view of the source, Mr. Jalilov's detention is further in violation of article 19, paragraph 2, of the Covenant. The source claims that Mr. Jalilov's history of human rights activism made him a target for the Government because, as a member of the Human Rights Society of Uzbekistan, his work focused on investigation and reporting of persecution against independent Muslims in the Kashkadarya region of Uzbekistan.

26. According to the source, at the time of his arrest in September 2008, Mr. Jalilov had collected information on over 200 arrests of independent Muslims in the region. Allegedly, this practice of his rights under article 19, paragraph 2, of the Covenant was what led to the religious extremism charges, and in effect his arbitrary detention resulted in a violation of his legitimate right to freedom of expression.

27. The source contends that the detention of Mr. Jalilov on charges of religious extremism amounts to arbitrary deprivation of liberty falling within category III as defined by the Working Group.

28. The source claims that Mr. Jalilov was allegedly not allowed to contact a lawyer after his initial arrest on 5 September 2009. According to the source, the first time Mr. Jalilov was allowed to meet his lawyer was on 6 November 2009, two months after his arrest.

29. He was held incommunicado and his family and friends were not notified of his whereabouts. Mr. Jalilov's first hearing started on 24 November 2009 in the Kashkadarya regional court and the source claims that his lawyer was not notified and his family not allowed to attend. Thus nobody could attend the hearing in Mr. Jalilov's interest. Allegedly, the court continued to withhold scheduling information from Mr. Jalilov's lawyer throughout the trial.

30. The source further claims a breach of article 14, paragraph 1, of the Covenant, article 10 of the Universal Declaration of Human Rights and article 19 of the Uzbek Criminal Procedure Code, all of which guarantee a fair and public hearing by a competent, independent and impartial tribunal. Allegedly, Mr. Jalilov's first hearing on 24 November 2009 was either closed or no one was notified that it was to take place, and neither relatives nor the lawyer were able to attend. Further, the final hearing was moved from Karshi to Bukhara without any notice being given to his family or lawyer. The source contends that by not disclosing information about Mr. Jalilov's hearings to his family or lawyer and/or holding closed hearings, the Government of Uzbekistan breached Mr. Jalilov's legitimate right to a fair and public trial.

31. The source also contends that, by denying Mr. Jalilov the right to examine witnesses against him during trial, the court further violated article 14, paragraph 3, of the Covenant. According to the source, the prosecution relied exclusively on written witness statements obtained during the pretrial investigation, which were allegedly vague and irrelevant. The first instance court allegedly ignored Mr. Jalilov's repeated request that the prosecution present its witnesses during the trial.

32. The source further claims a violation of article 14, paragraph 5, of the Covenant and article 510 of the Criminal Procedure Code. The Uzbek appeals court considered Mr. Jalilov's case in a hearing that allegedly lasted no more than half an hour and upheld Mr. Jalilov's nine-year sentence. According to the source, the appeals court judgment contains no discussion of substantive or procedural aspects of the case and is a verbatim recomunication of the first instance court's judgment. The source therefore expresses concerns that the higher court failed to act as an independent and impartial arbiter.

33. The source further claims a violation of article 14, paragraph 2, of the Covenant, article 11 of the Universal Declaration of Human Rights and article 23 of the Uzbek Criminal Procedure Code. In the opinion of the source, the court failed to prove Mr. Jalilov's guilt beyond reasonable doubt. The source claims that the court should have used the alleged irregularities during Mr. Jalilov's pretrial investigation and trial as a basis for giving him the benefit of the doubt.

34. With regard to the alleged ill-treatment and torture of Mr. Jalilov, the source claims violations of article 7 of the Covenant, article 5 of the Universal Declaration of Human Rights and principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source further points towards the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, to which Uzbekistan acceded on 28 October 1995. In addition, the Uzbek Constitution and Criminal Code prohibit torture and oblige courts to investigate allegations of torture.

#### *Response from the Government*

35. In its response of 28 March 2013 the Government contends that the allegations in the communication are not true and provided the Working Group with the following information:

36. Mr. Jalilov was arrested on 9 September 2009 in accordance with the procedures established under Uzbek legislation, which is fully in accordance with article 9 of the Covenant.

37. U. Djumaev, the lawyer representing Mr. Jalilov's interests, was allowed to participate in the case from the moment of his arrest, in accordance with article 46 of the Criminal Procedure Code (CPC).

38. Mr. Jalilov's relatives were informed of Mr. Jalilov's arrest in accordance with the requirements of the CPC. Under article 230 of the CPC, an arrested person can meet with relatives only with the written permission of the investigator.

39. On 10 September 2009, officials from the Department of Internal Affairs of the Kashkadarya region, after presenting a search warrant, conducted a search of the house and found the books "Izzat va Sharaf" and "Ta'siri Hilol", inter alia (25 copies in total) and 39 DVDs.

40. Pretrial investigation, which was conducted with the participation of U. Djumaev, who had unrestricted communication with Mr. Jalilov, established that he was a member of the religious extremist group "Islamic Jihad" and propagated its ideas about overthrowing constitutional order, change of government, etc.

41. Initially, Mr. Jalilov was sentenced to nine years' imprisonment by Kashkadarya regional court on 18 January 2010 under article 159(3)(b), article 2442(a)(v) and article 2441(1) of the Criminal Code. The Appellate Instance left the judgment unchanged on 9 March 2010. Mr. Jalilov and others were found guilty of being members of a religious extremist group, forming an organized criminal group with the goal of spreading religious extremism, and operating this group, whose main aim was to take over government control by overthrowing a lawfully elected government, as well as recruiting new members.

42. Witnesses Sh. Ismailov, T. Majitov, J. Nuritdinov and others stated that Mr. Jalilov had expressed his discontent with the actions of the Government and propagated ideas about changing it.

43. The case against Mr. Jalilov and others was adjudicated in a public trial with the participation of lawyers E. Turaboeva, Z. Eshonkulova, K. Abraev, R. Annaev, U. Djumaev, I. Saodatova and M. Parpieva and the attendance of the relatives of the accused.

44. During the appellate proceedings, neither Mr. Jalilov nor his lawyers filed a motion requesting additional examination of the witnesses.

45. With regard to the allegations that the authorities moved Mr. Jalilov's final hearing to Bukhara (about 150 km away), without notifying his lawyer or members of his family, who consequently were unable to attend the final hearing, the Government explained that, owing to renovation work in the investigation cell in Karshi City, Mr. Jalilov was detained during the investigation in Bukhara, where the second hearing took place. The hearing was held with the participation of lawyers U. Djumaev and M. Parpieva, who were defending his rights. Mr. Jalilov's relatives attended the hearing.

46. The Government contends that the allegations that Mr. Jalilov signed his statement under coercion because officers from the National Security Service threatened his wife, forcing her to give statements against her husband, do not correspond to the facts. According to the Government, the investigation was conducted in accordance with criminal procedure law. During the hearings, Mr. Jalilov repeatedly stated that during pretrial investigation he was not coerced. His wife did not report any threats from anyone to force her to give testimony against her husband.

47. As to the allegation that the family received no explanation as to why or at what point Mr. Jalilov had been transferred from УЯ 64/49 Prison Colony in Shaikhali to Tashkent, the Government informs the Working Group that Mr. Jalilov was not being detained in УЯ 64/69 (Shayhali), but was in УЯ 64/48 in Zarafshan city, Navoi region. Mr. Jalilov's relatives did not contact the administration of УЯ 64/49 with regard to his whereabouts. According to the Government, none of Mr. Jalilov's relatives complained to the Main Department of Corrections of the Ministry of Internal Affairs of Uzbekistan.

48. With regard to other charges against Mr. Jalilov, the Government informs the Working Group that additional charges were brought against him in January 2010. On 4 August 2010, Kashkadarya region criminal court sentenced Mr. Jalilov to 12 years' imprisonment under articles 159(3)(b) and 244(1) of the Uzbek Criminal Code. The judgment was left unchanged by the Appellate Instance on 28 September 2010.

49. According to the judgment, Mr. Jalilov was found guilty of being a member of a religious extremist group, joining an organized criminal group, some of whose members were representatives of international terrorist organizations, such as T. Yuldashev, A. Mirzaev, O. Nazarov, et al, with the aim of spreading extremist views, engaged in calling for overthrow of the Government, recruiting new members and distributing materials with the above-mentioned content (literature, audiovisual materials).

50. The trial was open and Mr. Jalilov was represented by V. Hudoyarov. Mr. Jalilov's guilt was established by the witness statements of K. Turaev, I. Rahimov, G. Lutfiev, D. Karimov, A. Kurbanov, B. Kurbonov, B. Sharipov and by case materials.

51. Upon his arrival in prison, Mr. Jalilov was shown the internal regulations and provided with a job. Regular medical investigation showed that he had chronic bronchitis in remission. From 23 October 2012 to 22 November 2012 he was treated for bronchitis-pneumonia and hepatitis. At the present time he does not need any medical treatment.

52. The Government informs the Working Group that, with regard to the statements of the Special Rapporteur of the Working Group concerning his arbitrary detention, Mr. Jalilov said the following: during the meeting with his wife on 27 June 2010, he informed her that a new criminal case was being brought against him. During the investigation of this case, he was provided with a lawyer by the Government because he did not have the funds to hire his own lawyer. During the pretrial investigation he was not tortured or ill-treated.

53. With regard to the allegations of ill-treatment and possible torture, the Government contends that the allegations are not true, since its examination shows that no illegal acts, such as torture or ill-treatment, were carried out against Mr. Jalilov by any law-enforcement officials. Furthermore, during the trials, neither Mr. Jalilov, his lawyers, nor his relatives reported torture or other forms of ill-treatment against him. In prison, Mr. Jalilov did not attempt to commit suicide.

54. With regard to the alleged violations under categories II and III, the Government contends that article 18, paragraph 3, provides for lawful limitations. Mr. Jalilov was an active member of a religious extremist group, whose main aim was to overthrow the current government.

55. In addition to being a party to the Covenant, Uzbekistan is also a party to the Shanghai Convention on Combating Terrorism, Separatism and Extremism. According to article 3 of the Convention, the members of the Convention should take the measures necessary to ensure that the acts listed in article 1, paragraph 1, of the Convention are not subject to acquittal on the basis of political, philosophical, ideological, racial, ethnic, religious or other considerations and should be punished according to their seriousness.

*Further comments from the source*

56. In the source's view, the response from the Government fails to adequately address the violations highlighted in the communication submitted on behalf of Mr. Jalilov.

57. The source contends that the arrest, prosecution, and sentencing of Mr. Jalilov resulted from his exercise of the internationally protected rights to freedom of religion and association. He is a practising Muslim who, prior to his arrest, was working to expose violations of religious liberty in Uzbekistan-in particular the arbitrary detention of independent Muslims.

58. The source recalls that the Government must "specify the precise nature of the threat" posed to national security by an individual's free exercise of his/her fundamental rights.<sup>1</sup> In the source's view, in this case, the Government in its response merely makes the unsupported allegation that Mr. Jalilov was involved in an extremist organization. Such a claim in the absence of any specific information simply fails to meet the high threshold requirement that the Government "specify the precise nature of the threat" to national security. As such, the national security rationale does not apply in this case.

59. At trial, the written statements submitted by the prosecution in support of its charges indicated only that Mr. Jalilov is a devout and practising Muslim and that he had criticized the Government's treatment of Muslims. Such activities fall well within the protections established under customary international law and codified by the Covenant under article 18, paragraph 1 (freedom of religion), and article 19, paragraph 2 (freedom of expression).

60. The Government fails to describe with any specificity the alleged link between Mr. Jalilov and any extremist organization or call for violence. As such, his prosecution does not fall within the limited provisions of articles 18, paragraph 3, or 19, paragraph 3, of the Covenant, which render his continued detention arbitrary under category II.

61. Although the response claims that Mr. Jalilov's lawyer "was allowed to participate in the case from the moment of his arrest," and that the lawyers had an "unrestricted chance to communicate"

with Mr. Jalilov during the pretrial investigation, it does not deny that Mr. Jalilov was only allowed to meet with his lawyer for the first time two months after his arrest.

62. The source recalls that the Human Rights Committee has affirmed that "[t]he right to communicate with counsel requires that the accused is granted prompt access to counsel."<sup>2</sup> The Working Group, in the *Musaev v. Republic of Uzbekistan* case,<sup>3</sup> found a category III violation where the detainee "had no possibility to communicate with a lawyer for more than 10 days following his arrest."

63. In this case, the Government denied Mr. Jalilov access to legal counsel for two months, far exceeding the period required for "prompt" access.

64. In the source's view, while the Government asserts that the case against Mr. Jalilov was adjudicated with the participation of his lawyers, it does not deny that the court failed on a number of occasions to notify Mr. Jalilov's legal team of scheduled hearings. Nor does the response deny that at least one hearing, on November 24, 2009, took place in the absence of Mr. Jalilov's attorney.

65. By denying Mr. Jalilov access to a lawyer for two months following his arrest and thereafter unduly interfering with his effective representation at some of the trial proceedings, the Government has violated his right to the assistance of legal counsel under article 14, paragraph 3 (b) and (d).

66. The source contends that the Government does not specifically deny that the three hearings (on 24 November 2009, 18 January 2010 and 8 August 2010) were closed to the public in violation of article 14, paragraph 1, of the Covenant.

67. The Government's response does not deny that it violated Mr. Jalilov's right to cross-examine witnesses during the proceedings against him. At trial, the prosecution relied heavily upon the written statements of witnesses who were not made available for examination despite Mr. Jalilov's repeated requests to the court.

68. The source also reiterates the allegations that the authorities subjected Mr. Jalilov to severe mistreatment in violation of article 7 of the Covenant. According to the source, by subjecting Mr. Jalilov to mistreatment in an attempt to obtain a confession and then failing to investigate the mistreatment, the Government has violated the protections afforded under article 7 of the Covenant.

## **Discussion**

### *Categories II and V*

69. In its 2004 annual report, the Working Group expressed concern that in some instances detention on charges of terrorism is used to detain religious dissenters, and other persons exercising their freedoms of opinion, expression, conscience and religion.<sup>4</sup>

70. In both cases in which Mr. Jalilov was convicted, he was found guilty of being a member of a religious extremist group with the aim of spreading extremist views, engaged in calling for the overthrow of the Government and recruiting new members.

71. In support of the convictions, the Government contends that Mr. Jalilov was found guilty on the basis of written statements presented by the prosecution in court (the witnesses were not made available for examination at trial).

72. However, as acknowledged by the Government, according to those statements, Mr. Jalilov merely "expressed his discontent with the actions of the Government and propagated ideas of changing it."

73. The Government has not provided the Working Group with any specific information in support of its claim of an alleged link between Mr. Jalilov and any extremist organization, or of a call for violence, which would trigger the application of the limitation of the rights protected under articles 18, paragraph 3, or 19, paragraph 3, of the International Covenant on Civil and Political Rights.

74. The Working Group considers that in this case Mr. Jalilov has been deprived of his liberty for being a practising Muslim and for criticizing the Government's treatment of independent Muslims.

75. Mr. Jalilov was deprived of his liberty for having peacefully exercised his right to freedom of religion and expression, as guaranteed under article 19 of the Universal Declaration of Human Rights, and articles 18, paragraph 1, and 19, paragraph 2, of the International Covenant on Civil and Political Rights. The deprivation of liberty of Mr. Jalilov thus falls within category II of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

76. The Working Group also considers that in this case Mr. Jalilov has been deprived of his liberty for being a practising Muslim for reasons of discrimination based on religion, in violation of articles 2 and 7 of the Universal Declaration of Human Rights, as well as articles 18 and 26 of the Covenant. The deprivation of liberty of Mr. Jalilov thus falls within category V of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

#### *Category III*

77. The Government does not deny the violation of Mr. Jalilov's right to examine the witnesses against him as guaranteed under article 14, paragraph 3 (e), of the Covenant. At the trial, the prosecution relied on the written statements of witnesses who were not made available for examination despite Mr. Jalilov's repeated requests to the court.

78. Although the Government contends that Mr. Jalilov's lawyer "was allowed to participate in the case from the moment of his arrest," and that the lawyers had an "unrestricted chance to communicate" with Mr. Jalilov during the pretrial investigation, it does not deny that, in violation of article 14, paragraph 3 (b), of the Covenant, Mr. Jalilov was only allowed to meet with his lawyer for the first time two months after his arrest.

79. According to the Human Rights Committee, the right to communicate with counsel requires that the accused is granted prompt access to counsel.<sup>5</sup> The Working Group recalls that in the *Musaev* case (see para. 62 above), the Working Group found that depriving the person of the right to communicate with a lawyer for more than 10 days following his arrest constituted a violation of his right as provided for under article 14 of the Covenant.

80. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial in the case under consideration, namely article 10 of the the Universal Declaration of Human Rights and article 14, paragraph 3 (b) and (e), of the Covenant, is of such gravity as to give the deprivation of liberty of Mr. Jalilov an arbitrary character. The deprivation of liberty of Mr. Jalilov thus falls within category III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

#### **Disposition**

81. In the light of the above, the Working Group on Arbitrary Detention renders the following opinion: The deprivation of liberty of Mr. Jalilov has been arbitrary, being in contravention of articles 2, 7, 10 and 19 of the Universal Declaration of Human Rights, and articles 14, paragraph 3; 18, paragraph 1; 19, paragraph 2; and 26 of the International Covenant on Civil and Political Rights; it therefore falls within categories II, III and V of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

82. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Jalilov and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

83. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release Mr. Jalilov and grant him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

84. In accordance with article 33, paragraph (a), of the Revised Methods of Work of the Working Group, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 30 April 2013]

<sup>1</sup>*Sohn v. Republic of Korea*, communication No. 518/1992, adopted 19 July 1995, para. 10.4.

<sup>2</sup>General comment No. 32, (2007) on the right to equality before courts and tribunals and to a fair trial, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI, para. 34.

<sup>3</sup>See opinion No. 14/2008 (Uzbekistan), para. 40.



<sup>4</sup>See "Developments concerning deprivation of liberty as a measure in countering terrorism" in the Report of the Working Group on Arbitrary Detention (E/CN.4/2005/6), para. 63.

<sup>5</sup>General comment No. 32 (see Note 2 above), para. 34.