

# No. 11/2013 (Tajikistan)

## Communication addressed to the Government on 3 October 2012

### Concerning Ilhom Ismailovich Ismonov

#### **The Government replied to the communication on 16 January 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 Ilhom Ismailovich Ismonov, born on XX February XXXX in Kanibadam, married and a father of three children, is a Tajik national who usually resides in Khujand City, Sughd Province. On 3 November 2010, he was arrested by armed officers of the organized crime control department (Sixth Department) (UBOP) of the Ministry of Internal Affairs, wearing balaclavas. He was taken from his home to the Sixth Department's compound in Khujand, where he was allegedly tortured in order to obtain a confession.

4. On 4 November 2010, two men went to his family's house and told his wife that Mr. Ismonov was being held at the Sixth Department's premises in the city of Khujand. On 5 November 2010, Mr

Ismonov's wife and brother went to visit him. A policeman asked them to take some ointment for injuries and painkillers. They were able to see Mr. Ismonov on 6 November 2012 and reported that he was unable to walk, he had severe cuts to his neck, his hands were bruised, his whole body was wet and there was water on the floor. Mr. Ismonov's wife saw signs of electric shocks and several cuts on his neck. Before she was able to bend down and take a closer look at his legs, officers stopped the meeting and escorted her out.

5. Mr. Ismonov was subjected to torture for seven days in order to force him to admit his guilt. Officers allegedly beat him with batons and truncheons, dropped hot water on his head and body, and exposed him to electric shocks.

6. On 10 November 2010, after his confession had been obtained, Mr. Ismonov was taken to the temporary detention facility of the Department of Internal Affairs in Chkalovsk, where the police report was officially made. According to the report, Mr. Ismonov was formally arrested on 10 November 2010, at 11.45 a.m. On the same day, he was charged by the Sughd Region Prosecutor's Office with "organization of a criminal group" a crime laid down in article 36, part 5;<sup>1</sup> and 187, part 2,<sup>2</sup> of the Criminal Code of Tajikistan. Mr. Ismonov was accused of being involved in crimes committed by the Islamic Movement of Uzbekistan (IMU). The preliminary investigation was conducted by the Investigation Unit of the State Committee for National Security (SCNS).

7. According to the indictment, Mr. Ismonov joined the IMU while he was in Moscow in August 2010. Ismon Azimov, reportedly the head of the Turkistan Islamic Party, asked him to pass on two mobile phones and a video disk to other IMU members in Tajikistan in order to improve communication within the organization. Mr. Azimov's lawyer reported that his client had confirmed having asked Mr. Ismonov to take telephones and SIM cards, but not disks, to his relatives in Tajikistan. He did this for no other reason than that his relatives would be able to call him without paying, as he would top up the call credit from Russia.

8. On 12 November 2010, Mr. Ismonov was brought before a judge of the Khujand City Court. At the remand hearing, he appeared before the tribunal chained and wearing a hood covering his battered face. He told the judge that he had been tortured and offered to show him evidence of torture on his body. The judge did not address the allegations. He considered that the defence lawyer could ask for forensic examination in the course of the preliminary investigation or during consideration of the case on its merits in the court hearings.

9. Mr. Ismonov's lawyer was able to see him for the first time at the remand hearing on 12 November 2010, i.e. nine days after Mr. Ismonov had been deprived of his liberty. They could not hold confidential meetings since law enforcement officers and guards were always present and within earshot.

10. On 13 November 2010, the judge issued a preventive measure in the form of two months' detention against Mr. Ismonov due to the gravity of the charges against him, considered major crimes. The judge acknowledged that the allegation that Mr. Ismonov had been secretly detained between the day of his capture, i.e. 3 November 2010, and the day of his formal arrest, 10 November 2010, should be investigated.

11. The source notes that, according to the Criminal Procedure Code, detainees have to be brought before a judge to rule on their continued detention no later than 72 hours after their arrest. Mr. Ismonov appealed the Court decision of 13 November 2010 to the Appeals Board of the Regional Court. He denied any participation in illegal organizations, including the IMU.

12. Concerning the allegations of torture, Mr. Ismonov's wife submitted complaints on 6 November 2010 to a wide range of officials and urged them to conduct a forensic medical investigation. His lawyer sent later similar requests. In letters sent to Mr. Ismonov's wife and lawyer in December 2010, the Prosecutor of Sughd Province said that no torture had taken place but did not explain how he had reached that conclusion.

13. As to Mr. Ismonov's deprivation of liberty by the UBOP officers, the Prosecutor asserted that disciplinary measures had been taken with regard to those officers who "did not compile materials for consideration and present them to the Prosecutor in a timely manner". Nevertheless, it denied that Mr. Ismonov was detained for an excessive period of time before being brought to a judge. The Prosecutor stated that "even if the examination of materials determining his links to terrorist groups

and associated crimes took a long time, in reality Ismonov was never actually entered into the temporary detention centre (isolator vermennoga sodержanie - IVS), so he was not illegally arrested while being held at UBOP". The Prosecutor further pointed out that Mr. Ismonov had access to his lawyer from the time "a criminal case was opened and he was arrested and imprisoned" and that they "had had unhindered communication with each other".

14. The source considers that although the allegations of torture were examined within an administrative responsibility procedure, Mr Ismonov's confession, obtained through torture, was not excluded from the criminal proceeding. The source adds that in December 2010 Mr. Ismonov was briefly taken to the State Committee on National Security (SCNS) in Khujand. A man who introduced himself as a prosecutor threatened him in the presence of the investigator and others that, unless he signed a document stating that no torture had been used against him at the Sixth Department, he would face similar treatment again. Mr. Ismonov signed, as he feared for his life.

15. On 26 January 2011, when Mr. Ismonov was taken to the town of Isfara for investigative activities, law enforcement officers beat him up at the local police station.

16. The measure of preventive detention was extended twice for a period of two months, on 8 January 2011 and on 25 March 2011. Mr. Asimov's attorney told the source that his client had confirmed that he had asked Mr. Ismonov to take phones and SIM cards to Tajikistan for his relatives. However, he did not give Mr. Ismanov anything illegal or any unlawful instructions.

17. The preliminary criminal investigation was completed on 30 May 2011 and the case transferred to the Khujand City Court for further consideration. On 11 July 2011, the trial against Mr. Ismonov and 52 others began. They were accused of involvement with the IMU. The trial was conducted in pretrial detention facility (SIZO) No. 2 in the city of Khujand, in camera. The general public and journalists were not allowed to attend the hearings, in order to prevent disclosure of classified information. During the hearing, Mr Ismonov reiterated his allegation that he had suffered torture. The defence lawyer's petition to hear the testimony from Mr. Ismonov's wife was not considered by the Court although there were no grounds for refusing the testimony of a witness for the defence.

18. In December 2011, Mr. Ismonov was sentenced to eight years' imprisonment. He is currently serving his sentence under a maximum security regime. He appealed against the sentence to the Supreme Court. It is not known when the Supreme Court will hold its appeal hearing.

19. The source further reports that unofficial directives exist in the Ministry of Internal Affairs Organized Crime Control Department and the State Committee for National Security regulating detainees' access to legal counsel, family and medical help.

20. The source recalls that, between 2010 and 2011, the United Nations Special Rapporteurs on the right of everyone to the highest attainable standard of physical and mental health, on torture and other cruel, inhuman or degrading treatment or punishment, and on the independence of judges and lawyers, sent three joint appeals to the Government expressing their concerns over the detention and health of Mr. Ismonov, as well as on the lack of adequate investigation into the allegations of torture. However, no response from the Government to those urgent appeals was sent.

*Source's contention regarding the alleged arbitrariness of the detention*

21. The source considers that the arrest and detention of Mr Ismonov is arbitrary. On 3 November 2010, he was abducted and deprived of his liberty by UBOP officers acting without an arrest warrant and without formal charges being brought against him. It was only on 10 November 2010 that he was formally arrested and two days later, on 12 November 2010, that he was brought before a judge. On 13 November 2010, the Court issued a preventive measure of detention in the form of imprisonment.

22. Article 91, part 3 of the Code of Criminal Procedure, stipulates that:

"The detention of a person must be made only in the following cases:

On the basis of suspicions of a crime;

By order of the prosecuting authority".

Based on the resolution of the court, a judge on the detention of the convicted person until solution of the issue of cancellation of the probation, suspended sentence or parole from the sentence"<sup>3</sup>

23. Furthermore, pursuant to article 92, part 3 of the Code of Criminal Procedure, "Detention of persons cannot last more than 72 hours; after this period the detainee should be released from

custody or should apply to him another measure of punishment prescribed by this Code."<sup>4</sup> While according to article 94, part 3 an "Investigator shall report in writing to the prosecutor within 24 for hours about the arrest."<sup>5</sup>

24. Mr. Ismonov was not brought before a court until 12 November 2012 and therefore his arrest exceeded the limit laid down by law. Moreover, the UBOP officers of Khujand City only reported his arrest on 10 November 2010, seven days after the fact, when he was transferred to the temporary detention facility of the Department of Internal Affairs in Chkalovsk. However, the police registered Mr Ismonov's arrest as if it had taken place on 10 November 2010.

25. The source maintains that the Sughd Prosecutor's position, reflected in his letters of December 2010, that Mr. Ismonov was not illegally arrested because he did not enter the temporary detention centre, is erroneous. The fact that Mr. Ismonov was held at the UBOP compound and that he was not registered as a detainee is not relevant for determining the moment of the arrest, which in fact took place from the moment he was deprived of his liberty. The source further points out that Mr. Ismonov's lawyer was only able to see him for the first time at the remand hearing on 12 November 2010; and that they could not hold confidential meetings.

26. According to the source, these are serious violations of the right to due process. Criminal proceedings against Mr. Ismonov did not observe the right to fair trial. He was declared guilty on the basis of evidence extracted under torture.

27. As to the allegations of torture, Mr. Ismonov's defence was hampered by the authorities. Notably, his lawyer's request to call his wife as a witness was rejected. Despite clear signs of torture on his body, the Court dismissed his allegation without a timely and due investigation. The Sughd Province Prosecutor's Office and the Khujand City Court merely advised the authorities to conduct an administrative investigation. Nonetheless, the evidence obtained through torture was admitted in the criminal proceedings.

28. The source expresses its concern that the legal safeguards against arbitrary detention set up in the 2010 Code of Criminal Procedure are not being observed. Although the Code establishes that the detainee has the right to a lawyer from the moment of his or her detention, in practice this right entirely depends on the investigator, who may not allow a lawyer to meet the detainee for many days. Likewise, the Code provides that the court hearing shall be held within 72 hours after the arrest of suspect in order to decide on measures of restraint. However, hearings are often postponed.

29. The source adds that victims rarely lodge complaints when they have been tortured by law enforcement officers for fear of repercussions. Often relatives and lawyers are reluctant to file complaints so as not to worsen the situation for the detainee. Impunity for abusive officers is the norm. Close structural and personal links between prosecutors and police undermine the impartiality of prosecutors when confronted with allegations of torture.

30. In conclusion, the source considers Mr. Ismonov's detention to be arbitrary and contrary to articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

31. The Working Group transmitted these allegations to the Government, requesting it to provide it with detailed information about the current situation of Mr. Ismonov and to clarify the legal provisions justifying his arrest and continued detention.

#### *Response from the Government*

32. According to the Government, on 3 September 2010, at approximately 8.15 a.m., Akmal Kurbonovich Karimov drove a Gaz-24 car filled with explosives into the headquarters of the regional branch of the Ministry of Internal Affairs Office on Organized Crime for Sughd Province, claiming the lives of several officers of the branch and injuring many others. He was among the active members of the terrorist and extremist Islamic Movement of Uzbekistan who had been wanted since 2009 for a serious offence under article 130 (Abduction), paragraph 2 (a), of the Criminal Code of the Republic of Tajikistan.

33. On the same day, the Prosecutor's Office of Sughd Province opened a criminal case and set up an investigative team for offences under article 179 (Terrorism committed by an organized group, combined with the threat of the use of radioactive materials and other acts capable of causing mass

destruction of human life), paragraph 4 (a) and (b), and article 104 (Premeditated murder committed by an organized group or criminal conspiracy (criminal organization) by means that threaten the lives of many people or groups), paragraph 2 (h) and (i), of the Code. The criminal case was referred to the State National Security Committee authority in Sughd Province for further investigation. It was found in the course of the investigation that the persons involved in the crime were members of the terrorist and extremist Islamic Movement of Uzbekistan. The preliminary investigation authorities charged Mr. Ismonov with a serious offence, i.e. criminal conspiracy (participation in a criminal organization).

34. It was established that Mr. Ismonov had been convicted by the city court of Konibodom on 22 August 2006 under article 237, paragraph 2 (b) and (c), of the Criminal Code and sentenced to five years' deprivation of liberty. He was granted amnesty and released after serving four months of the sentence. Around May 2010 Mr. Ismonov left the country for the Russian Federation as a migrant worker, and met there with the regional leader of the Islamic Movement of Uzbekistan organized group, Ismon Sharofovich Azimov, alias "Saifullo", who has been wanted by the law enforcement authorities of Tajikistan since 23 April 2009 on suspicion of offences under article 187 (Organization of a criminal conspiracy (criminal organization)), paragraph 2, of the Criminal Code.

35. In Moscow, Mr. Azimov supported and provided funding to members of the Islamic Movement of Uzbekistan organized group to carry out serious and especially serious offences in Tajikistan. On 23 September 2010, Mr. Ismonov conspired with Mr. Azimov in Moscow and, at his request, took from him a DVD and two Nokia mobile telephones, one with a SIM card, and left for the city of Konibodom in Tajikistan. On 18 October 2010, by prior conspiracy with Sukhrob Khaitboevich Vakhobov, he met with an as yet unidentified person by the name of Abdullo in the Zumrad leisure area in the town of Isfara and handed over a mobile telephone and a DVD. Mr. Ismonov also contacted Mr. Vakhobov and Mr. Azimov by mobile telephone and, in accordance with their instructions for carrying out the crime in Konibodom, began to look for accommodation.

36. On 28 October 2010, Mr. Vakhobov put up armed resistance to law enforcement officers carrying out investigative measures in the Chorkukh subdistrict of the village of Kuruki Bolo and was consequently neutralized. On 10 November 2010, the Prosecutor's Office of Sughd Province instituted criminal proceedings against Mr. Ismonov under article 187 (Organization of a criminal conspiracy (criminal organization)), paragraph 2, of the Criminal Code; the case was referred to the State National Security Committee authority in Sughd Province for further investigation and linked with the criminal case related to the terrorist act under investigation by the regional branch of the Ministry of Internal Affairs Office on Organized Crime for Sughd Province. A preventive measure depriving Mr. Ismonov of his liberty was authorized by a Khujand City Court judgement on 13 November 2010 and the suspect was charged during the pretrial investigation with offences under article 187, paragraph 2, of the Criminal Code. Mr. Ismonov himself admitted partial guilt. On 3 November 2010, Mr. Ismonov was sent to the regional branch of the Ministry of Internal Affairs Office on Organized Crime for Sughd Province, for fact-finding and investigative purposes, on suspicion of complicity with the Islamic Movement of Uzbekistan in the criminal case related to the terrorist act.

37. Concerning the length of the examination, Mr. Ismonov had been held at the regional branch of the Office on Organized Crime for Sughd Province for several days and, only after seven days, i.e. on 10 November 2010, was he arrested and a police report drawn up. Concerning any breach of law on the part of officials at the regional branch during Mr. Ismonov's detention, the Khujand City Court issued a separate judgement. On that basis, the Prosecutor's Office of Sughd Province looked into the facts and concluded that there was no evidence that Mr. Ismonov had been tortured or physically harmed. Criminal proceedings against the officials of the regional branch were dropped on 9 December 2010 owing to the lack of physical evidence of a crime. The head of the branch, militia Lieutenant-Colonel K.N. Nasimov, and senior detective of the branch, militia Major Z.N. Kodirov, were given disciplinary orders, which were sent to the internal affairs authority in Sughd Province for review, resulting in disciplinary action against them.

38. In accordance with articles 47 and 53 of the Code of Criminal Procedure, Mr. Ismonov was provided with a lawyer from the moment that he was detained, who was able to consult with his

client without obstruction or restrictions on the number and length of interviews. During Mr. Ismonov's detention in remand centre No. 2 in Khujand, he was allowed short visits by relatives and lawyers by order of the head of the investigative team of the State National Security Committee for Sughd Province, Major of Justice K.S. Dosov (on 1 and 21 December 2010 and 12, 14, 16 and 17 February 2011).

39. Furthermore, during medical examinations and check-ups in the temporary holding facility in Khujand on 12 November 2010 and in the remand centre on 19 and 27 November 2010, the court medical experts found no signs on Mr. Ismonov's body that physical force had been used against him. Mr. Ismonov himself said that he had not been tortured and that he had not complained about his state of health during the medical examination and interrogation during the periods in which he was detained and held in custody in the remand centre. During the pretrial investigation, Mr. Ismonov presented himself as a citizen of the Russian Federation. The Russian Federation Consul General in Khujand, Aleksandr Anatolievich Kopnin, therefore met with Mr. Ismonov on 20 November 2010 in the remand centre. He did not corroborate the fact of the use of torture against Mr. Ismonov. However, he noted that Mr. Ismonov's Russian citizenship was fraudulent, which was confirmed in an official letter, No. 2765, dated 29 November 2010.

40. During Mr. Ismonov's detention in remand Centre No. 2 in Khujand, he told the administration that he was not well and was thus examined by medical experts and prescribed a course of treatment. The criminal case was referred to the Sughd Province Court once the pretrial investigation was completed and the bill of indictment confirmed. By a judgement of the judicial chamber of the Sughd Province Court on 23 December 2011, Mr. Ismonov was found guilty of offences under article 187, paragraph 2, of the Criminal Code and sentenced to eight years' deprivation of liberty. Under article 8, paragraph 1, of the Amnesty Act of Tajikistan of 20 August 2011, No. 764, the term of punishment not served by Mr. Ismonov was reduced by one third.

41. Mr. Ismonov and other detainees appealed against the sentence in cassational proceedings. Mr. Ismonov and other convicted persons asserted that they had been tortured by law enforcement authorities during the review of the criminal case in the first instance and cassational courts. They explained that they had not reported the instances of torture to the relevant authorities as they planned to take up the issue in court during the review of the case. The criminal chamber of the Supreme Court issued a ruling on 17 August 2012 on the scrutiny of evidence of the use of torture against Mr. Ismonov and other convicted persons during the initial inquiry and pretrial investigation, for submission to the Office of the Prosecutor General of Tajikistan.

42. No evidence was found during the scrutiny of the facts of the case to corroborate the allegation that torture and other unlawful methods of investigation were used against Mr. Ismonov and other convicted persons during the initial inquiry and pretrial investigation. In the light of the lack of evidence of an offence, criminal proceedings against law enforcement officers were dropped and the findings were transmitted to the cassational chamber of the Supreme Court of Tajikistan for criminal cases for the purpose of notification of the convicted persons and entry into evidence in the criminal case.

43. By a ruling of the cassation chamber of the Supreme Court for criminal cases on 2 November 2012, the cassation appeals of the lawyers and convicted persons were dismissed and the penalty pronounced by the court of first instance against Mr. Ismonov under article 187, paragraph 2, was amended pursuant to article 63 (Imposition of lighter penalties than specified for a given offence) of the Criminal Code, with the punishment reduced from eight years' deprivation of liberty to a term of six years, six months. Thus, considering that Mr. Ismonov was found guilty of a serious offence in a manner prescribed by law, his detention is not arbitrary and does not contradict articles 9 or 10 of the Universal Declaration of Human Rights or articles 9 or 14 of the International Covenant on Civil and Political Rights.

*Further comments from the source*

44. In accordance with its methods of work, the response of the Government was transmitted to the source, which sent their further comments as follows: Ilhom Ismonov was convicted for "organization of a criminal group" (article 187 of the Criminal Code) and sentenced by the Sughd Regional Court on 23 December 2011 to eight years in prison (reduced by one third under an amnesty at the same

time). In November 2012, the Supreme Court upheld his conviction but reduced the sentence to six and a half years.

45. Ilhom Ismonov was tried in a case which grouped together 53 other men on similar charges of extremism in a trial that fell short of international standards of fairness. He was apprehended on 3 November 2010 in Khujand city, Tajikistan, but his detention was only registered seven days later. Ilhom Ismonov has allegedly been tortured and forced to sign a confession while being held in incommunicado detention and thereafter.

46. According to the source, the reply from the Government follows a standard pattern of previous responses from the Tajik authorities to the petitions of Mr. Ismonov's wife and his lawyers in late 2010. It claims that the allegations of torture were investigated by the prosecutor's office and that no traces of torture were found; and states that the officers involved in detaining Ilhom Ismonov for 7 days without registering his detention or allowing him to see a lawyer for 10 days were given disciplinary punishments. However, it fails to provide convincing grounds for the conclusion that Ilhom Ismonov had not been tortured.

47. The source is concerned that the credible allegations of torture - including the use of a confession extracted under torture during the trial - have not been adequately investigated and that Mr. Ismonov's ongoing deprivation of liberty is arbitrary due to the non-observance of international norms relating to the right to a fair trial as set out in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, to which Tajikistan is a State party. The source reiterates its ongoing concerns, including Mr. Ismonov's incommunicado and pretrial detention during which alleged torture took place and the judges at the remand hearing being dismissive of the complaint of torture and its implications for the outcome of the case, i.e., a guilty verdict and prison sentence.

48. The Tajik Criminal Procedure Code (CPC) requires detainees to be brought before a judge to rule on the legality of their detention no later than 72 hours after they are first deprived of their liberty. However, Mr. Ismonov's first court hearing began on 11 November, eight days after he was detained. The disciplinary sanctions taken in relation to two of the officers of the MIA Sixth Department for the late registration of Ilhom Ismonov's detention indicate that the State found evidence of wrongdoing but did not investigate the allegations of torture and other ill-treatment of Ilhom Ismonov with due diligence. The source holds that the delayed registration of Ilhom Ismonov's arrest deprived him of crucial safeguards against torture to which he was entitled and that he was arbitrarily detained. The fact that the Khujand regional court ruled, following the remand hearing, that an investigation should take place into the behaviour of the officers responsible for undue delay in registering the detention and late submission of case materials to the Sughd prosecutor further undermines the State's argument.

49. From 6 November 2010, Ilhom Ismonov's wife submitted complaints to officials requesting a forensic medical examination. Ilhom Ismonov's lawyer sent similar requests from 9 or 10 November onwards. A medical examination of Ilhom Ismonov was conducted with significant delay and the forensic expert concluded on 27 November that "no physical injury was found on Ismonov's body". In letters sent to Ilhom Ismonov's wife and lawyer in December 2010, the Prosecutor of Sughd Region said that no torture had taken place but did not explain how his office had reached that conclusion.

50. In August 2012 the General Prosecutor's office, at the request of the Supreme Court, reportedly ordered examinations into the physical injuries of Ilhom Ismonov and his co-defendants to be carried out. However, these were reportedly cursory in nature (the examination and interview of each of the 34 alleged victims of torture took an average of 10 minutes), and carried out in the presence of law enforcement officials. Regarding the scarring on Ilhom Ismonov's body, the examination stated that due to the lapse of time it was difficult to establish the origins of the scarring. A forensic expert admitted that they had not been trained on the standards of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (Istanbul Protocol).

51. Corruption in law enforcement and the judiciary is believed to contribute significantly to a pervasive climate of impunity, which undermines public confidence in the criminal justice system. The lack, or paucity, of prompt, thorough and impartial investigations and prosecutions of law

enforcement officers in connection with allegations of torture and other ill-treatment also contributes to this impunity. The source states that alleged victims of torture and other ill-treatment frequently lodge complaints with the Prosecutor's Office, but receive no answer to these complaints, or, when they do receive a reply, are simply informed that the allegations were not confirmed, without being given any information on the grounds for the decision.

52. The source concludes by reiterating that there is a wider and generic issue of torture and ill-treatment in Tajikistan, describing it as "widespread in all types of detention facilities in Tajikistan and safeguards are inadequate."

### **Discussion**

53. The Working Group notes the allegations of the source, the response by the Government and further comments from the source. Taking into consideration all the information provided, it is obvious that the case of Mr. Ismonov raises a number of issues relating to various aspects of due process, including protections offered at the time of arrest and detention in most national and international human rights instruments as well as the right to a fair trial. In the instant case, rights affected include, inter alia, arrest warrant and registration of detention; prompt appearance before a court; unhindered access to counsel from the time of arrest and detention and throughout the period of detention and trial; calling of witnesses by the defence, pretrial access to counsel being of the utmost importance; the right not to be held in incommunicado detention; and not being made to confess to an act of omission or commission under duress.

54. The Government in its response recalls the terrorist attack on an office of the Ministry of Internal Affairs on 3 September 2010 by Akmal Kurbonovich Karimov of the Islamic Movement of Uzbekistan. It states that investigation into this attack led to the arrest of some members of this organization. The preliminary investigating authorities arrested Mr. Ismonov (among others) on charges of criminal conspiracy and participation in a criminal organization. The Government however does not develop this further by offering specific evidence regarding the basis of the charge other than that Mr. Ismonov admitted "partial guilt" to the offence. There is no clarification on the part of the Government as to which offences the detainee confessed to and which he denied.

55. Prior conviction of Mr. Ismonov is the next point of the response of the Government of Tajikistan. The Working Group notes that article 237 of the Criminal Code (see para. 34 above), under which Mr. Ismonov was convicted, concerns hooliganism, and the Government states that he was released under an amnesty. If the intention of the Government by raising this issue was to establish linkages to the present arrest and detention of Mr. Ismonov, then it has not made that connection. Hooliganism and terrorism are not synonymous and the distinction needs to be made between these two offences.

56. Mr. Ismonov acknowledges carrying a mobile phone with a SIM card for the relatives of Mr. Azamov in Tajikistan. Unless the Government has clear and substantiated evidence that the cell phone and SIM carried particular instructions for terrorist activities, carrying a cell phone is not per se a criminal offence. The Government does not offer any clear evidence to this effect.

57. In its response to the Working Group, the Government admits that due process was not followed in the case of Mr. Ismonov and disciplinary action had to be taken against the officers in charge of investigation. From information provided by the Government, undue delay in presenting Mr. Ismonov before a judicial officer was the subject of the ruling of the judge in the Khujand Regional Court and the basis of disciplinary action against the investigating officers.

58. The Working Group believes that delayed registration of Mr. Ismonov's arrest deprived him of important safeguards against torture and ill-treatment and of consultation with legal counsel. Confessions taken under duress as part of the lapse in due process, without legal counsel, would not stand up as credible and acceptable evidence in a court of law. It stands to reason therefore that in view of the disciplinary action against officers holding Mr. Ismonov "informally", any act or omission occurring during that period would also be disregarded as void ab initio, including any confessions made by Mr. Ismonov.

59. However, it appears that Mr. Ismonov's conviction has been made possible on the basis of that confession of "partial guilt" obtained while Mr. Ismonov was held in incommunicado detention. Finally, the response of the Government does not clarify which particular charge has been



confessed to and which denied as part of the "partial guilt" and whether there is further evidence of guilt in addition to the confession.

60. Reasons for the delay in conducting a forensic examination of Mr. Ismonov to ascertain the allegation of torture and ill-treatment (requested by Mr. Ismonov's wife on 6 and 10 November) were not given until much later (27 November 2010). This has not been explained satisfactorily by the Government in its response.

### **Disposition**

61. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Ilhom Ismailovich Ismonov is arbitrary, and constitutes a breach of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, falling within category III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

62. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, which include the immediate release of Mr. Ilhom Ismailovich Ismonov and the provision of adequate reparation to him.

63. The Working Group brings to the attention of the Government the recommendations of the Human Rights Council that national laws and measures aimed at combating terrorism shall comply with all obligations under international law, in particular international human rights law.<sup>6</sup>

[Adopted on 3 May 2013]

<sup>1</sup>Article 36(5) of the Criminal Code: "A person who promoted commission of a crime by advises, instructions, information, providing with instruments and weapons or eliminating obstacles, as well as a person who promised beforehand to conceal an offender, weapons or instruments, or a person who promised to purchase or sell such articles, shall be deemed to be an accessory."

<sup>2</sup>Article 187, Organizing a Criminal Community (Criminal Organization):

(1) Organizing of a criminal community (criminal organization) for committing felonies or especially grievous crimes, as well as leadership over such a community (organization) or structural elements which compose it, as well as creation of an association of organizers, leaders, or other representatives of organized groups with the goal of preparing plans and conditions for committing felonies or especially grievous crimes is punishable by imprisonment for a period of 15 to 20 years simultaneously with confiscation of property or without it.

(2) Participation in a criminal community (criminal organization) or in an association of organizers, leaders, or other representatives of organized groups is punishable by imprisonment for a period of 8 to 12 years simultaneously with confiscation of property or without it.

<sup>3</sup>A person may be arrested on the following grounds only:

- if suspected of committing a crime punishable by imprisonment or commitment to a disciplinary military unit;
- if a decree has been rendered by a prosecutor, an investigator or an inquiry officer;
- if a ruling has been issued by a court to arrest a convict pending a decision to cancel a decision to suspend or defer a sentence or to release a convict on parole."

<sup>4</sup>"A person arrested on the grounds listed in item 1 of this Article may not be kept under arrest for more than 72 hours from the moment of arrest. Upon expiration of the above period, the arrestee shall be released, or a different pre-trial restraint measure provided hereby must be imposed, except for the measures specified in Article 111, item 5 hereof."

<sup>5</sup>Article 94, Arrest Actions by the Criminal Prosecution Agency

1. A criminal prosecution agency official, in performing the actual arrest, shall immediately inform the arrestee about his/her procedural rights at the time of restricting his/her freedom of action and/or travel and provide conditions for exercising those rights and take timely measures to satisfy the arrestee's lawful requirements.

2. A decision to institute criminal proceedings must be made by the criminal prosecution agency within 12 hours from the time of the actual arrest.

3. In order to make a decision to institute or not to institute criminal proceedings, the inquiry officer and/or the investigator may perform an initial questioning of the victim and a witness and the arrestee/suspect about the reasons and grounds for and circumstances of the arrest. Such persons shall be questioned according to the rules set forth in Articles 197 through 201 hereof. An initial questioning of an arrestee shall only be permitted after a consultation with his/her defense attorney.

4. If the decision is made not to institute criminal proceedings or no decision is made regarding institution of criminal proceedings within the period set forth in item 2 of this Article, the arrestee shall be released."

<sup>6</sup>Human Rights Council resolution 7/7.