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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20–24 November 2017

Opinion No. 70/2017 concerning Mekan Yagmyrov, Dovletgeldi Orazov, Gurbanmuhammet Godekov, Shatlyk Durdygylyjov, Mekan Godekov, Nurmuhammet Orazov, Merdan Gylycdurdyev, Guvanch Gazakbayev, Sapardurdy Yagshybayev, Myrat Gullyyev, Resulberdi Atageldiyev, Dovletgeldi Amangeldiyev, Dovletmyrat Atayev, Annamammet Orazmammedov, Tachmuhamet Orazmuhamedov, Batyr Atayev, Ovezdurdy Melayev and Saparmyrat Ibrayymov (Turkmenistan)

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

2. In accordance with its methods of work (A/HRC/36/38), on 6 September 2017 the Working Group transmitted to the Government of Turkmenistan a communication concerning Mekan Yagmyrov, Dovletgeldi Orazov, Gurbanmuhammet Godekov, Shatlyk Durdygylyjov, Mekan Godekov, Nurmuhammet Orazov, Merdan Gylycdurdyev, Guvanch Gazakbayev, Sapardurdy Yagshybayev, Myrat Gullyyev, Resulberdi Atageldiyev, Dovletgeldi Amangeldiyev, Dovletmyrat Atayev, Annamammet Orazmammedov, Tachmuhamet Orazmuhamedov, Batyr Atayev, Ovezdurdy Melayev and Saparmyrat Ibrayymov. The Government replied to the communication on 14 November 2017. 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).

Submissions

Communication from the source

4. Mr. Yagmyrov was born in 1991 and is a Turkmen national. He worked as a maths and information technology teacher and usually resided in the city of Tejen, Turkmenistan. He was arrested on 6 September 2016.

5. Dovletgeldi Orazov was born in 1987 and is a Turkmen national. He worked as a maths teacher and resided in Tejen. He was arrested on 9 September 2016.

6. Gurbanmuhammet Godekov was born in 1983 and is a Turkmen national. He worked as an English teacher and resided in Tejen. He was arrested on 20 September 2016.

7. Mr. Durdygylyjov was born in 1981 and is a Turkmen national. He was unemployed and usually resided in the village of Kemine in the Turkmengala region of Mary Province, Turkmenistan. He was arrested on 5 October 2016.

8. Mekan Godekov was born in 1987 and is a Turkmen national. He worked as a maths teacher and resided in Tejen. He was arrested on 18 October 2016.

9. Nurmuhammet Orazov was born in 1984 and is a Turkmen national. He worked as a geography teacher in Tejen. He was arrested on 18 October 2016.

10. Mr. Gylycdurdyev was born in 1985 and is a Turkmen national. He was unemployed and usually resided in the town of Anew, in the Ak Bugday region of Ahal Province, Turkmenistan. He was arrested on 21 October 2016.

11. Guvanch Gazakbayev was born in 1983 and is a Turkmen national. He was unemployed and usually resided in the town of Anew in the Ak Bugday region of Ahal Province, Turkmenistan. He was arrested on 1 November 2016.

12. Mr. Yagshybayev was born in 1980 and is a Turkmen national. He was unemployed and resided in Ashgabat. He was arrested on 15 November 2016.

13. Mr. Gullyyev was born in 1983 and is a Turkmen national. He was the director of a private company and resided in Tejen. He was arrested on 5 October 2016.

14. Mr. Atageldiyev was born in 1979 and is a Turkmen national. He was the director of a private company and resided in Ashgabat. He was arrested on 11 October 2016.

15. Mr. Amangeldiyev was born in 1976 and is a Turkmen national. He was a private businessman and usually resided in the village of Yalkym in the Abadan area of Ashgabat. He was arrested on 11 October 2016.

16. Dovletmyrat Atayev was born in 1976 and is a Turkmen national. He was a private businessman and usually resided Tejen. He was arrested on 14 October 2016.

17. Mr. Orazmammedov was born in 1980 and is a Turkmen national. He was the deputy director of a school and usually resided in Tejen. He was arrested on 18 October 2016.

18. Mr. Orazmuhamedov was born in 1978 and is a Turkmen national. He was the deputy director of a school and usually resided in Tejen. He was arrested on 18 October 2016.

19. Batyr Atayev was born in 1975 and is a Turkmen national. He worked as a geography teacher and usually resided in Tejen. He was arrested on 18 October 2016.

20. Mr. Melayev was born in 1975 and is a Turkmen national. He was a private businessman and usually resided in Ashgabat. He was arrested on 18 October 2016.

21. Mr. Ibrayymov was born in 1984 and is a Turkmen national. He was the head of the Turkmen State immigration service in Tejen, Ahal Province, and usually resided in Tejen. He was arrested on 1 November 2016.

Arrests and detention

22. According to the source, the above-mentioned 18 individuals were taken arbitrarily into custody from their workplaces and domiciles by the secret police, which is part of the Ministry of Internal Affairs of Turkmenistan. Several of the individuals reportedly received telephone calls and were summoned to police stations and other government facilities. The source presumes that they were arrested owing to their association with Turkish-Turkmen educational institutions in Turkmenistan. The source notes that, according to the non-governmental organization (NGO) Freedom House,¹ freedom of association in Turkmenistan remains restricted in practice, because the onerous registration requirements and the State's unfettered ability to monitor NGOs inhibit the capacity of civil society. Freedom House reported that the State regime subjected people to fines for being a part of "unregistered" (i.e., illegal) religious groups and for the distribution of religious literature.

23. The source believes, based on information from analysts and other sources in Turkmenistan, that the orders for the arrests came from the top level of the Government. The source also believes that it is clear that the Turkmen secret police and national security agents carried out the arrests and questioning.

24. The source reports that no arrest warrants were presented to the nationals at the time of their arrest and they were not informed of the charges against them.

Background

25. The source reports that Turkmenistan has recently been cracking down on followers of the Gülen movement, with which Turkish-Turkmen schools have historically been affiliated. According to the source, throughout the 1990s, the Gülen movement, through support provided by various Turkish business associations, established many high-quality schools in Central Asia. The priority of the schools was to provide a modern and secular education in accordance with local norms that adhered to the official curricula and specificities of every country. In 1993, Turkmenistan opened its first Gülen-affiliated schools, which promoted a Western-style education, in Turkish and in English. By 2011, the schools were reportedly seized by the Government and subsequently closed. According to the source, no specific reason was given for their closure. However, the source believes that there was a misperception by the Government that the schools had been promoting religion in that the teachers and other staff employed by the schools had read Gülen's books — which the source submits was only natural given that they were his followers and that the schools were inspired by him — as well as other religious texts. Gülen's books are reportedly known to address religion, among other topics.

26. The source reports that the arrest and detention of former teachers, graduates, students and supporters of the educational institutions coincided with the efforts of the President of Turkmenistan to strengthen his ties with the President of Turkey in the context of a deteriorating economy, and in order to join together the Governments of Turkey and the Russian Federation in a Turkish stream project that they were developing. Furthermore, Turkey was an important trade partner and a major source of foreign direct investment for Turkmenistan.

27. In that respect, the source alleges that, since the failed attempted coup in Turkey in July 2016, the President of Turkey has been "purging" individuals linked with the Gülen movement and pressuring countries in Central Asia, including Turkmenistan, that are home to members of the Gülen movement to do the same. This has reportedly led to the arrest and

¹ See <https://freedomhouse.org/report/freedom-world/2016/turkmenistan>.

detention of anyone associated with the Gülen movement and Turkish-Turkmen educational institutions.

Torture and ill-treatment

28. According to the source, upon their detention, the 18 individuals were subjected to relentless and embarrassing torture and ill-treatment during interrogation sessions in order to force them to confess about anyone else who was associated with them. They were reportedly kept naked in dark rooms for long periods of time and subjected to severe beatings and other methods of torture. Such torture allegedly resulted, inter alia, in broken bones, long-term psychological trauma and other effects on the detainees. The men were allegedly held incommunicado in pretrial detention at an interrogation centre in the city of Yashlyk, Ahal Province, from the dates of their initial arrests until 8 February 2017, the date of their closed court trial.

29. During that period, the detainees' families were reportedly unable to communicate with them, and only found out about their detention through informal channels. Furthermore, the men did not have access to their lawyers during their pretrial detention, and their lawyers were afraid to disclose any information they may have learned about their clients.

30. According to the source, and as corroborated by credible reports, the initial court date was postponed in order to allow marks of torture to disappear. Furthermore, the source notes that, in addition to the 18 individuals referred to above, another individual allegedly died after being tortured. However, due to the strict control that the Turkmen regime reportedly has over the flow of information, that cannot be corroborated with the evidence available.

Court proceedings

31. According to the source, the closed court trial of the 18 individuals was held on 8 February 2017, in the absence of their lawyers. The trial lasted two hours and took place in the same detention facility where they had been held in pretrial detention, rather than in a courthouse. The trial was reportedly a simple read-through of the verdicts. The 18 individuals were reportedly charged and convicted under article 177 ("incitement of social, national, ethnic, racial or religious hostility"), article 275 ("organization of or participation in a criminal organization or other forms of criminal organization"), and article 275 ("financing of criminal structures") of the Criminal Code of Turkmenistan.

32. According to the source, nine of the men were sentenced to 12 years in a "highly strict correctional facility". They were Mr. Yagmyrov, Dovletgeldi Orazov, Gurbanmuhammet Godekov, Mr. Durdygylyjov, Mekan Godekov, Nurmhammet Orazov, Mr. Gylycdurdyev, Mr. Gazakbayev and Mr. Yagshybayev.

33. The source also reports that the other nine men were sentenced to 25 years in prison, with the first 5 years being in a "heavy confinement jail", which the source describes as a form of solitary confinement in which individuals are subjected to torturous conditions, including prison cells that have low ceilings that force them to remain in a hunched position, and the remaining 20 years in a "highly strict correctional facility". They were Mr. Gullyyev, Mr. Atageldiyev, Mr. Amangeldiyev, Dovletmyrat Atayev, Mr. Orazmammedov, Mr. Orazmuhamedov, Batyr Atayev, Mr. Melayev and Mr. Ibrayymov.

34. According to the source, the court order for the case did not provide any clear evidence of criminal activities or wrongdoing to justify the detention of the above individuals. Instead, it reportedly contained their biographies, the verdict, their prison sentences and details of their property to be confiscated and transferred to the State treasury. The source states that no one was aware of who the prosecutor or the judge were, the individuals' lawyers did not have the opportunity to present evidence in the defence of their clients, and family members were not present at the trial. After the trial, the families were able to communicate with them over the telephone. Furthermore, the families were reportedly forced to sign consent forms that stated that they had been informed of the accusations against the men, despite the lack of clarification as to the nature of the activities that the individuals had supposedly engaged in.

35. The source submits that some of the families of the 18 individuals submitted a handwritten appeals letter on 15 March 2017, asking a higher court to re-evaluate the case and to request that any confiscated property be returned. Only some of the families of the men appealed. Others did not appeal out of fear that it might prolong their sentences. The source also submits that the appeals process was conducted in closed session and was unsuccessful. According to the source, the 18 individuals are now serving their sentences in the Ovadandepi prison.

36. The source describes the imprisonment of the individuals as clearly arbitrary and unjustified, and their conviction as wrongful, and is concerned that those actions will result in a further deterioration of their physical and mental health, especially in the light of the alleged death of one of the detainees during pretrial detention.

Analysis of violations

37. The source asserts that the detention of the 18 individuals constitutes an arbitrary deprivation of their liberty under categories II and III of the categories applicable to the consideration of cases by the Working Group.

38. The source submits that the arrest and detention of the 18 individuals were a result of them exercising their right to freedom of association, as guaranteed by article 20 of the Universal Declaration of Human Rights and article 22 of the Covenant, and therefore fall within category II.

39. According to the source, the arrest, continuous detention and conviction of the 18 men were based on their association with the Turkish-Turkmen educational institutions, which have historically been linked to the Gülen movement. With regard to the personal background of the 18 individuals, at the time of their arrest and detention, they all worked as teachers or private businessmen or were unemployed. Furthermore, none of them had a criminal record.

40. The source reiterates that the 18 men were convicted, in a two-hour closed court session, to between 12 and 25 years of imprisonment under the Criminal Code. The court order of the case did not provide any evidence of criminal activities. Despite the fact that the 18 individuals were charged with being a part of a criminal structure, no proof was presented to confirm that they had in fact incited hostility, had been a part of a criminal organization, or had financed criminal structures. In reality, the 18 men were deprived arbitrarily of their liberty for peacefully exercising their right to freedom of association guaranteed by international human rights law.

41. The source submits that the arbitrariness of the deprivation of liberty of the 18 individuals is established by the nature of their arrest, wrongful conviction and continuous detention. They were reportedly not presented with an arrest warrant; they were held incommunicado in pretrial detention; and their closed-court trial was held in the same detention centre, instead of a courthouse, on 8 February 2017.

42. According to the source, the 18 individuals were held at the interrogation centre until their appeal on 15 March 2017 (or potentially until April 2017), and it has been confirmed that they were subsequently transferred to the Ovadandepi prison, where they are currently serving their sentences.

43. According to the source, the detention of the 18 individuals constitutes an arbitrary deprivation of liberty falling within category III as the Government of Turkmenistan failed to observe the minimum international standards of due process guaranteed by the Universal Declaration of Human Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment:

- (a) The 18 individuals were not presented with an arrest warrant;
- (b) Upon their arrest, they were not informed of the charges against them and were held incommunicado;
- (c) They did not have access to their lawyers during their pretrial detention, and their lawyers were afraid to disclose any information that they may have learned about their clients;

- (d) The trial on 8 February 2017 was a two-hour closed court session in the same detention centre where they had been held, as opposed to a courthouse;
- (e) The court order of the case did not provide any evidence of wrongdoing;
- (f) During the trial, the individuals' lawyers did not have the opportunity to present evidence in defence of their clients;
- (g) The lawyers who were present at their trial were reportedly there for the sake of formality;
- (h) No one was made aware of who the prosecutor or judge were;
- (i) Their families were not present at the trial;
- (j) The handwritten appeals letters that some of their families submitted on 15 March 2017 were also addressed in a closed session.

44. The source further submits that the treatment that the 18 individuals were subjected to during the pretrial detention period and the nature of their sentences constitute cruel, inhuman or degrading treatment, in violation of article 5 of the Universal Declaration of Human Rights and principle 1 of the Body of Principles.

Response from the Government

45. On 6 September 2017, 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 6 November 2017, detailed information about the current situation of the 18 individuals, and any comments on the source's allegations.

46. The Working Group notes that it received a response from the Government on 14 November 2017, that is, after the deadline given by the Working Group. The response was transmitted to the source on 17 November 2017. However, the Working Group considers that the response of the Government in the present case is late and it is unable to accept the response as if it had been presented in a timely manner.

Discussion

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

48. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the allegations put forward by the source (see A/HRC/19/57, para 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

49. The source has alleged that the detention of the 18 individuals is arbitrary and falls under categories II and III. The Working Group notes that even in its late reply, the Government did not make any submissions regarding those allegations. The Working Group shall consider the two categories in turn.

50. The source argues that the detention of the 18 individuals is arbitrary and falls under category II of the Working Group as their arrest and detention were a result of them exercising their right to freedom to association, as guaranteed by article 22 of the Covenant. The source argues that the arrest and subsequent detention of the 18 individuals was based on their association with the Turkish-Turkmen educational institutions, which have historically been linked with the Gülen movement.

51. The Working Group observes that the present case concerns 18 individuals, who, at the time of their arrest and detention, all worked as teachers or private businessmen, or were unemployed, and none of whom had a criminal record. The Working Group further observes

that all 18 men were convicted under the same legislation, notably article 177 (“incitement of social, national, ethnic, racial or religious hostility”), article 275 (“organization of or participation in a criminal organization or other forms of criminal organization”) and article 275 (“financing of criminal structures”) of the Criminal Code of Turkmenistan. Nine of the men were sentenced to 12 years’ imprisonment and the other nine were sentenced to 25 years’ imprisonment.

52. The punishments levied upon the individuals appear to be very heavy and disproportionate given that they had led law-abiding lives, as evidenced by the absence of any criminal record. The Working Group notes however that all 18 men had links with the Gülen movement and it does seem that the arrests and convictions were linked to this. The Working Group regrets that the Government has failed to provide any explanation for the arrests and sentencing of the men. It therefore concludes that the arrest and subsequent detention of the 18 individuals resulted from their exercise of the freedom of association and was thus arbitrary, falling under category II.

53. The source has further argued that the arrest and detention of the 18 individuals was arbitrary and falls under category III since:

- (a) The 18 men were not presented with an arrest warrant;
- (b) Upon their arrest, they were not informed of the charges against them and were held incommunicado;
- (c) They did not have access to their lawyers during their pretrial detention and their lawyers were afraid to disclose any information that they may have learned about their clients;
- (d) The trial on 8 February 2017 was a two-hour closed court session in the same detention centre where they had been held, as opposed to a courthouse;
- (e) The court order of the case did not provide any evidence of wrongdoing;
- (f) During the trial, the individuals’ lawyers did not have the opportunity to present evidence in defence of their clients;
- (g) The lawyers that were present at their trial were reportedly there for the sake of formality;
- (h) No one was made aware of who the prosecutor or judge were;
- (i) The families were not present at the trial;
- (j) The handwritten appeals letters that some of the families submitted on 15 March 2017 were also addressed in a closed session.

54. The Working Group notes that all 18 individuals were arrested in the time period — between September and November 2016 — and that none of them was presented with an arrest warrant. The Working Group notes in particular that, in its late reply, the Government did not address that allegation.

55. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested be informed promptly not only of the reasons for the arrest but also of any charges against him or her. The right to be informed promptly of charges concerns notice of criminal charges and, as the Human Rights Committee has noted in paragraph 29 of its general comment No. 35 (2014) on liberty and security of person, that right applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment.² In the present case, the 18 individuals spent between four and six months in detention before the closed trial took place on 8 February 2017 and, during that time, no formal charges against them were presented to legitimize their detention. This means that the Turkmen authorities effectively did not formally invoke any legal basis justifying the detention of the 18 individuals.

² See also opinions No. 1/2017, No. 6/2017 and No. 30/2017.

56. Moreover, the Working Group notes that all 18 men were held *incommunicado* during that period. The Working Group in its practice has always consistently argued that holding persons *incommunicado* breaches the right to challenge the lawfulness of detention before a judge.³ Articles 10 and 11 of the Universal Declaration of Human Rights also confirm the impermissibility of *incommunicado* detention. Furthermore, the Committee against Torture has made it clear that *incommunicado* detention creates conditions that lead to the violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;⁴ the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has consistently argued that use of *incommunicado* detention is unlawful;⁵ while the Human Rights Committee, in paragraph 35 of its general comment No. 35, has argued that *incommunicado* detention that prevents prompt presentation before a judge inherently violates paragraph 3 of article 9 of the Covenant.

57. The Working Group wishes to recall that according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.⁶ That right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,⁷ as well as applies to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes.⁸ Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.⁹

58. The Working Group notes that holding a detainee *incommunicado* effectively deprives that detainee from a possibility to challenge the legality of his or her detention. However, without the affirmation by the judiciary that the detention is indeed legal, the detention cannot be said to have a legal basis. Moreover, *incommunicado* detention is also a violation of the right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights.¹⁰

59. The Working Group therefore concludes that the arrests of the 18 individuals without an arrest warrant and their subsequent *incommunicado* detention was arbitrary and falls under category I.

60. The Working Group further observes the submissions by the source that the 18 individuals were denied access to lawyers; that there were confessions extracted under torture and ill-treatment; that the hearings and sentencing of all 18 individuals took place behind closed doors; that the judgments did not provide any reasons for the sentences imposed; that both the prosecutor and judge were not known; and that appeals were dismissed during a closed hearing. The Working Group notes the lack of response to any of those allegations in the late reply by the Government.

61. The Working Group is of the view that the allegations reveal serious breaches of the right to a fair trial. Denial of legal assistance is a violation of article 14 (3) (b) of the Covenant, principle 17 (1) of the Body of Principles, and principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. The Working Group also observes that

³ See, for example, opinions No. 53/2016, No. 56/2016, No. 6/2017 and No. 10/2017.

⁴ See, for example, A/54/44, para. 182 (a).

⁵ See, for example, A/54/426 para. 42; and A/HRC/13/39/Add.5, para. 156.

⁶ See A/HRC/30/37, paras. 2–3.

⁷ *Ibid.*, para. 11.

⁸ *Ibid.*, para. 47 (a).

⁹ *Ibid.*, para. 47 (b).

¹⁰ See, for example, opinions No. 46/2017, No. 47/2017 and No. 69/2017.

the rights of the 18 individuals to adequate time and facilities for the preparation of the defence (article 14 (3) (b) of the Covenant) and to have the sentence reviewed by a higher tribunal (article 14 (5) of the Covenant) were violated.

62. The Working Group is concerned at the various forms of retaliatory measures undertaken vis-à-vis the lawyers of the 18 men, as the source reports their lawyers were afraid to disclose any information about their clients. The Working Group underlines that it is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide remedies whenever a violation still occurs. The Working Group recalls in particular that, according to principle 9 of the Basic Principles and Guidelines, legal counsel shall be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment. The Working Group shall refer the present case for further consideration to the Special Rapporteur on the independence of judges and lawyers.

63. The Working Group is also concerned at the allegations by the source of the use of torture and ill-treatment to extract confessions in relation to the 18 individuals. Those allegations have not been challenged by the Government of Turkmenistan, and the Working Group notes that such treatment was specifically examined by the Committee against Torture, which, in its concluding observations on the second periodic report of Turkmenistan, requested that an independent and impartial investigation be carried out in relation to the torture suffered by the men.¹¹ Moreover, the Working Group is seriously alarmed by the report that, initially, 19 men had been arrested, and that 1 of them in fact died as a result of the torture suffered.

64. The treatment described reveals a prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law as well as of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principle 6 of the Body of Principles and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group also finds this to be a breach of the right to be treated with humanity and respect during detention (art. 10 (1) of the Covenant). The Working Group shall refer the present case for further consideration to the Special Rapporteur on torture.

65. The Working Group finds that the failure to allow the 18 individuals to notify their respective families of their whereabouts and the failure by the authorities to inform their families about their whereabouts constitutes a violation of principle 19 of the Body of Principles.

66. In addition, the Working Group notes that the trial and the appeal hearings took place behind closed doors. As the Human Rights Committee has stated in paragraph 29 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, article 14 (1) of the Covenant, acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons.

67. The Working Group notes that the present case does not fall into any of the prescribed exceptions to the general obligation of public trials under article 14 (1) of the Covenant, and the Government of Turkmenistan did not invoke any of those exceptions to justify the closed trial. The Working Group thus finds a violation of article 14 (1) of the Covenant.

68. The Working Group reiterates the concerns expressed in 2017 by the Committee against Torture¹² and the Human Rights Committee¹³ about the independence of the Turkmen judiciary overall, which remains severely undermined by the President's exclusive authority

¹¹ See CAT/C/TKM/CO/2, para. 8.

¹² See CAT/C/TKM/CO/2, paras. 29–30.

¹³ See CCPR/C/TKM/CO/2, paras. 30–31.

to appoint and dismiss judges and the lack of security of tenure of judges, who are appointed for renewable five-year terms.

69. In the present case, the Working Group further observes that the judge and prosecutor were unknown, which reveals a prima facie breach of the right to a fair trial and article 14 of the Covenant since, as the Human Rights Committee has found, in a fair trial within the meaning of article 14, tribunals must be, and must be seen to be, independent and impartial. In a system of trial by “faceless judges”, neither the independence nor the impartiality of judges is guaranteed.¹⁴

70. The Working Group notes that a failure to provide a reasoned judgment in the present cases constitutes a further breach of article 14 (5) of the Covenant, as it effectively prevents the prospective appellants from enjoying the effective exercise of the right to appeal.¹⁵

71. The Working Group therefore concludes that the 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 Turkmenistan, is of such gravity as to give the deprivation of liberty of the 18 individuals an arbitrary character, falling under category III.

Disposition

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

The deprivation of liberty of Mekan Yagmyrov, Dovletgeldi Orazov, Gurbanmuhammet Godekov, Shatlyk Durdygylyjov, Mekan Godekov, Nurmuhammet Orazov, Merdan Gylycdurdyev, Guvanch Gazakbayev, Sapardurdy Yagshybayev, Myrat Gullyyev, Resulberdi Atageldiyev, Dovletgeldi Amangeldiyev, Dovletmyrat Atayev, Annamammet Orazmammedov, Tachmuhamet Orazmuhamedov, Batyr Atayev, Ovezdurdy Melayev and Saparmyrat Ibrayymov, being in contravention of articles 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

73. Consequent upon the opinion rendered, the Working Group requests the Government of Turkmenistan to take the steps necessary to remedy the situation of the 18 individuals without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

74. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the 18 individuals immediately and accord each one of them an enforceable right to compensation and other reparations, in accordance with international law.

75. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture.

Follow-up procedure

76. 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 the 18 individuals have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to the 18 individuals;

¹⁴ See *Rosa Espinoza de Polay v. Peru* (CCPR/C/61/D/577/1994), para. 8.8.

¹⁵ See *Henry v. Jamaica* (CCPR/C/64/D/610/1995).

(c) Whether an investigation has been conducted into the violation of the rights of the 18 individuals 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 Turkmenistan with its international obligations in line with the present opinion;

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

77. 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.

78. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

79. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.¹⁶

[Adopted on 20 November 2017]

¹⁶ See Human Rights Council resolution 33/30, paras. 3 and 7.