

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the independence of judges and lawyers

Ref.: AL KGZ 2/2024
(Please use this reference in your reply)

30 July 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 52/9, 51/8, 50/17 and 53/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of **judicial prosecution and conviction to prison of Mr. Olzhobai Shakir and Ms. Zarina Torokulova for sharing posts critical with State authorities or calls for peaceful assemblies in their social media**, exercising their right to freedom of opinion and expression. We also refer to the allegations of **detention and charges brought against Mr. Karabaev presumably in retribution for his criticism of undue intrusion by State security forces in the National Academy of Sciences' methods of work**.

In this context, some communications previously sent by Special Procedures already addressed cases of judicial prosecution against journalists, human rights defenders and critics of the Government, including in communications [AL KGZ 1/2024](#) and [UA KGZ 4/2022](#). We thank your Excellency's Government for the reply provided UA KGZ 4/2022 on [26 December 2022](#), while we encourage a substantive reply to those that remain unanswered as well as to this communication.

Mr. Olzhobai Shakir (Olzhobai Shakirovich Egemberdiev) is a writer, journalist, blogger and civil activist, known for his criticism of the Government. Mr. Shakir has worked as editor-in-chief of the Kyrgyz-language editorial office of the "24.kg" news agency and was a member of the Foundation for Investigative Journalism's supervisory board. Prior to his arrest, Mr. Shakir wrote columns for various publications on women's rights, violence against women, children's rights and LGBT issues, as well as commenting on certain Government decisions.

Ms. Zarina Torokulova is an economist, activist and ex-politician critical of the Government. On two occasions, Ms. Torokulova participated in the elections to Bishkek City Council as a candidate of the parties "Uluu Jurt" and "Kuch Birimdikte."

Mr. Zhoomart Karabaev is an academic and a former staff member of the National Academy of Science (NAS), where he worked as a researcher and scientific staff.

According to the information received:

Mr. Olzhobai Shakir

Mr. Shakir's social media posts

In early August 2023, Olzhobai Shakir expressed his disagreement about the Government's decision to transfer four resorts located in Issyk-Kul Lake to a neighbouring country through several posts on his "Facebook" account and reportedly proposed to hold an online peaceful protest in opposition to this decision on 31 August 2023.

Mr. Shakir's posts reportedly included some videos, that were later deleted from social media, and two written posts. One of these posts reportedly stated: "I call on the people to rally on 31 August 2023 to demonstrate steadfast opposition. If we do not take the reins of [President] Sadyr [Japarov], who has jeopardised by his risky decisions the fate of 4 disputed guesthouses in Issyk-Kul region, he may give away our homeland as well."

In a video posted on 21 August 2021 with the title "Our homeland, our land is in danger", Mr. Shakir addressed the warnings he had received against participating in the rally, as he could be imprisoned. Mr. Shakir criticised those who do not express themselves for fear of being arrested and forbid their children from protesting against the country's leadership, noting that such inaction had led to the establishment of a dictatorship in other countries. Mr. Shakir asked the question: "allowing the authorities to act arbitrarily and remain silent – is it patriotism?", as he called for preserving traditions and heritage and not to allow the President and the chair of the State Committee for National Security to give away the lands and resorts of the homeland to neighbours. Mr. Shakir further said that he intended to stage a peaceful protest against the decision to transfer the resorts on 31 August 2023 at 11 a.m., in front of Ala-Too Square, and added to the post a link to two videos in which he described the purpose of the peaceful rally.

Arrest and pre-trial detention

On 23 August 2023, Mr. Shakir was arrested by the State Committee for National Security (SCNS) and detained for 48 hours. During his detention, he was reportedly interrogated as a suspect of having breached article 278(3) of the Criminal Code, punishing "calls for active disobedience to the lawful demands of representatives of the authorities and mass disorder, as well as calls for violence against citizens". For several hours after his arrest, his relatives were unable to determine his fate or whereabouts, which may amount to a short-term enforced disappearance.

On 24 August 2023, the investigative judge at the Pervomayskiy District Court of Bishkek confirmed the legality of his detention and, at the request of the SCNS investigator and the prosecutor, sanctioned pretrial detention as a measure of restraint against Mr. Shakir. The judge reportedly justified this decision based on the impossibility to apply a milder measure of restraint due to

the seriousness of the offence Mr. Shakir was accused of committing, in line with article 114 part 1 of the Criminal Procedure Code of the Kyrgyz Republic and arguing that Mr. Shakir “could take measures to obstruct the objective conduct of the investigation and the trial”.

Mr. Shakir was consequently placed in remand custody at the pre-trial detention centre (“SIZO”) of the SCNS in Bishkek.

On 29 August 2023, Mr. Shakir’s lawyer appealed to the Bishkek City Court the Pervomaiskiy District Court’s ruling that had confirmed the legality of Mr. Shakir’s pretrial detention, challenging the lawfulness of this measure and asking to replace it with a non-custodial measure of restraint. The appeal argued that Mr. Shakir had a permanent place of residence, did not have any previous criminal convictions, and that his social media posts did not call for mass disorder, but only announced his plan to hold a one-person demonstration while inviting others to join his protest action online. Yet, on 18 September 2023, the Bishkek City Court rejected the appeal and upheld the previous ruling of the Pervomaiskiy District Court of Bishkek, maintaining the pretrial detention for Mr. Shakir.

On 11 October 2023, Mr. Shakir’s case was transferred to the Alamedinskiy District Court in Chui region, following territorial jurisdiction rules. The judge assigned to the case extended Mr. Shakir’s detention again.

Each time, the detention was extended for two months and Mr. Shakir’s lawyers’ appeals, who requested other less intrusive measures noting the health problems that Mr. Shakir was reportedly suffering, were rejected.

On 29 January 2024, the Alamedinskiy District Court’s judge presiding over the case ordered to extend his detention for the duration of the trial, pursuing the judicial proceedings in absence of the defendant. This decision to conduct a trial *in absentia* may not have been in line with article 266(3) of the Criminal Procedure Code, according to which a ruling on detention as a measure of restraint may only be issued, in the absence of an accused, after all measures to ensure his attendance are exhausted.

During Mr. Shakir’s trial, several court hearings were reportedly postponed due to the State authorities’ failure to bring Mr. Shakir to the court from the SCNS pretrial detention centre, for unknown reasons.

Judicial prosecution and trial

On 24 August 2023, Mr. Shakir was formally accused of violating article 278(3) of the Criminal Code, which sanctions “calls for active disobedience to the lawful demands of representatives of the authorities and mass disorder, as well as calls for violence against citizens”. Reports indicate that this article has been increasingly used as a legal basis to judicially prosecute critics of the Government in the past two years.

Mr. Shakir's indictment and the subsequent Prosecution's case against him was exclusively based on his posts online in August 2023, in which he challenged the lawfulness of the national authorities' decision to transfer resorts at Issyk Kul Lake to Uzbekistan and called for a demonstration in opposition to that decision, and on the conclusions of two State-solicited experts who conducted a philological-linguistic analysis and a political-scientific analysis of his posts.

During pretrial interrogations conducted by the investigators of the SCNS, Mr. Shakir reportedly explained that, in his social media post, he had only intended to convene an online rally and had not encouraged others to join him in person. His lawyers also emphasized this during the trial.

The experts whose analysis and conclusions served as the basis for the indictment were a philological-linguistic expert, who is a member of the Department of Linguistic, Religious, and Psychological Expertise of the Judicial Expert Service and is often requested in politically sensitive cases, and a political scientist of the Institute of State and Law of the National Academy of Sciences. The SCNS's investigator reportedly ordered these expert opinions on 22 August 2023, by means of a "Resolution on the Appointment of the Expert Opinions". During the trial, the presiding judge questioned three experts: the two State-solicited experts from the prosecution side and an independent expert invited by the defence, who is a member of the National Academy of Sciences.

The expert on linguistic analysis concluded that, in Mr. Shakir's social media posts, there were "elements that did not correspond to the characteristics of a peaceful assembly", namely expressions such as "do not be afraid of apprehending them" and "they need to be reined in", which she assessed to be targeted at top state officials and not of peaceful nature. Additionally, based on the comments under the post of Mr. Shakir, the expert concluded "that a large amount of people intended to attend his 'peaceful rally'."

The second State-solicited expert, a political scientist, concluded that in Mr. Shakir's social media publications and statements "there were calls for active disobedience to the lawful demands of state representatives, calls to mass disorders, as well as appeals for violence against citizens". The expert also stated that there were "calls for the violent seizure of power or violent retention of power, as well as calls for the violent change of the constitutional order". During the trial, it was known that this expert was not part of the Register of certified experts kept by the Ministry of Justice and, thus, did not have the required certificate to confirm his expert's status.

Having also analysed Mr. Shakir's posts, the independent expert requested by the defence reportedly noted that "the overall tone of the text of the author of the post was neutral, with signs of sarcasm" and, in response to the defence lawyers' questions, concluded that there were no statements that demand or incite violent actions or agitating to violence against representatives of the authorities, seizure of state buildings, structures, state bodies, or change of the existing constitutional order through the use of violence.

On 25 September 2023, after Mr. Shakir's official indictment, his lawyers sent his social media statements to an independent linguistic expert for his examination. During an oral testimony in court on 1 April 2024, this linguistic expert stated that "there were no calls for mass disorder in the social media post of Mr. Olzhobai Shakir that had been used as the only incriminating evidence against him".

On 23 April 2024, during the trial, a defence witness reportedly testified that the text of the political scientist expert's opinion was part of the indictment had been prepared by the SCNS investigator and that the political scientist merely rubber-stamped the text, without analysing the social media post Mr. Shakir. Reportedly, this witness was initially asked to sign the expert opinion prepared by the SCNS, but he refused to do so.

On 14 May 2024, in his concluding oral deliberations, the Prosecutor referred to a video message of Mr. Shakir different from the one that was subjected to the experts' review. After hearing the prosecutor's remarks and even after the read out of the concluding part of the verdict by the judge, the defence remained disconcerted and unaware of which exact social media post was the basis for the conviction, which may amount to a breach of the right to defence.

Conviction and current situation

On 14 May 2024, the Alamudinskiy District Court sentenced Mr. Shakir to five years of prison under article 278(3) of the Criminal Code, which punishes calls to active disobedience to the lawful demands of representatives of the authorities, to mass disorder and to violence against citizens. In this ruling, the judge reportedly did not specify which specific expressions or statements contained in Mr. Shakir's public posts were deemed to constitute unlawful actions under article 278(3). Further, in the reasoning of the judgement, the judge reportedly did not provide any analysis or legal assessment of the defence expert's conclusions.

Mr. Shakir's lawyers have appealed the first instance court's decision. Mr. Shakir remains detained, being held at a pretrial detention centre of the SCNS.

On 15 July 2024, the Chui Regional Court upheld the verdict of the Alamudinskiy District Court, maintaining the sentence to five years of imprisonment. Mr. Shakir, who up to this day was held in a SNCS pretrial detention centre in Bishkek, could now be transported to a penitentiary at any moment.

Ms. Zarina Torokulova

On 9 September 2023, activist and ex-politician Zarina Torokulova was arrested by the State Committee of National Security (SCNS). The investigative judge of the Pervomaiskiy District Court in Bishkek ordered pretrial detention for Ms. Torokulova until 30 October 2023, while investigations were underway.

Ms. Torokulova remained in detention in the SCNS pre-trial detention centre beyond the established date.

According to reports, the cause of the arrest and judicial prosecution of Ms. Torokulova was that she had re-posted on her social media profile two posts titled “the President Japarov’s mafia” and “Organizing an online rally” published by the “Umai Aruu” Facebook account, whose ownership is unclear. The second post is the video in which Mr. Olzhobai Shakir reportedly invited people to hold a peaceful rally.

The SCNS ordered the examination of these posts by an expert, which was carried out on 19 October 2023. This expert, who was the same linguistic expert who took part in Mr. Shakir’s proceedings, concluded that “Ms. Torokulova tried to call for active disobedience to the lawful demands of representatives of the authorities and for mass disorder” through her sharing of the posts.

Ms. Torokulova was charged under article 41 of the Criminal Code of being an accomplice to the crime of “calls for active disobedience to the lawful demands of representatives of the authorities and mass disorder, as well as calls for violence against citizens” set out in article 278(3) of the Criminal Code. The trial hearings took place before the Pervomaiskiy District Court of Bishkek, starting in November 2023.

During the hearings, the prosecutor emphasized as the reason for Ms. Torokulova’s prosecution her sharing of the two posts previously mentioned and pointed out that the “Umai Aruu” Facebook account was allegedly owned by a person currently serving a life imprisonment sentence. Ms. Torokulova and her lawyers emphasized that she had only re-shared two previous publications of the “Umai Aruu” account and a video of Mr. Olzhobai Shakir.

On 7 December 2023, the court questioned the State-solicited linguistic expert and a second State-solicited expert, a political scientist, who was also the same expert that had intervened in Mr. Shakir’s case and trial.

According to the conclusions submitted to the court, the linguistic expert reportedly asserted that “the analyzed materials contained criticism towards the official leadership of the country and signs of direct and indirect calls for organizing and conducting mass protest actions on 31 August 2023”. The political science expert's report stated that “the analyzed materials contain signs of discrediting the authorities and calls for mass disorder”.

The political scientist expert stated that his conclusions were based on scientific literature, publications on the Internet and in television as well as public reactions under the social media post analysed. When asked by Ms. Torokulova’s lawyers to explain and show how he had reached his conclusions, the expert replied that he did not have the materials with him.

The judge rejected Ms. Torokulova’s lawyers’ motion to exclude the political scientist from the expert panel on the grounds that he was not part of the Register

of certified experts of the Ministry of Justice and thus did not have the required certificate to confirm his expert's status.

In addition to these two experts from the National Academy of Sciences, an independent linguistic expert also testified at the trial. As Ms. Torokulova was charged for reposting Mr. Olzhobai Shakir's video, the defense lawyers attached to the evidence presented in this case the conclusions of the independent expert that had analysed Mr. Shakir's video and concluded that the content of his video appeal "was neutral with signs of sarcasm".

On 14 December 2023, Ms. Torokulova's lawyers presented a motion to replace her pretrial detention with a different non-custodial measure of restraint, which was rejected by the court.

On 16 January 2024, the Pervomaiskiy District Court found Ms. Torokulova guilty under article 278(3) of the Criminal Code and sentenced her to five years of imprisonment with three years of probation supervision.

Yet, on 5 April 2024, after the prosecutor's appeal, the Bishkek City Court revoked Ms. Torokulova's probation supervision and sentenced her to serve the five years of imprisonment. Ms. Torokulova has remained in prison since then.

On 3 July 2024, the Supreme Court upheld the Bishkek City Court's verdict that sentenced Ms. Torokulova to five years in prison, cancelling probation supervision.

Mr. Zhoomart Karabaev

Mr. Karabaev's dismissal from the National Academy of Science

Mr. Karabaev joined the Institute of State and Law of the NAS in March 2023. On 21 September 2023, he was dismissed for having allegedly violated the Code of Labor and for disclosure of "State secrets".

In a series of posts, including two published on 14 January 2024 and 19 May 2024, Mr. Karabaev stated that his dismissal was carried out under pressure from the Main Investigation Department of the SCNS, arguing that his refusal to give a favourable opinion on a series of materials in a commissioned expert examination was the actual cause for his dismissal.

On one post, Mr. Karabaev stated that an Investigator from the Main Investigation Department of the SNCS and two leading employees of the Institute of State and Law of the NAS had tried to force him to change a political science expert opinion where Mr. Karabaev had concluded that the investigated acts did not violate the law. Then, the said SNCS Investigator and the two employees of the Institute reportedly tried to coerce him into delivering a different conclusion, which Mr. Karabaev reportedly refused to do. After his refusal, another expert of the Institute was entrusted to prepare the expert opinion. Following this incident, Mr. Karabaev reportedly was subjected to threats of imprisonment and death.

According to Mr. Karabaev, two days before his dismissal, the vice president and acting director of the Institute of State and Law of the NAS reported having received an order from the SCNS to dismiss Mr. Karabaev under a certain legal provision.

After Mr. Karabaev's detention, the head of Department of the Institute of State and Law of the NAS denied the accusations and said that Mr. Karabaev left his job for other reasons, including having violated regulations and internal rules.

On 26 December 2023, Mr. Karabaev filed a lawsuit in the Lenin District Court against the NAS asking for his reinstatement at his position, which was dismissed. On 17 April 2024, the Bishkek City Court considered the appeal Mr. Karabaev against the decision of the Lenin District Court. The Judicial Collegium for Civil and Economic Cases of the Bishkek City Court reportedly considered the case in the presence of the representative of the Academy of Sciences despite having been notified that Mr. Karabaev was arriving to the court. The court thus listened only to the arguments of the representative of the Academy of Sciences and the process lasted approximately 15 minutes. When Mr. Karabayev arrived at the court, the judges retired to the deliberation room to deliver their judgement.

Mr. Karabaev's statements

On 23 April 2024, Mr. Karabaev participated in Mr. Olzhobay Shakir's trial as an expert proposed by the defence. During the trial, Mr. Karabaev reportedly stated that some members of the NAS provide expertise in criminal cases under the dictation of State security forces.

On 13, 14 and 15 May 2024, Mr. Karabaev published a series of posts in his Facebook profile where he denounced that SCNS staff members had managed to get an uncertified "standby" expert to prepare an expert opinion for Mr. Olzhobay Shakir's case, that was supposed to be produced in two weeks, in just half an hour. One of the publications reportedly includes photographs of two SCNS staff members who, according to Mr. Karabaev, regularly visited the Institute of State and Law.

On 27 February 2024, 2 May 2024 and 7 June 2024, among others, Mr. Karabaev published some statements criticizing the work of the NAS, including some actions of its vice president and some alleged irregularities that had taken place in the entity, including backdating employment contracts. Some of these publications were supported with recordings that were made covertly.

On 7 February 2024, Mr. Karabaev published a video reportedly showing the Acting Director of the Institute of State and Law of the NAS forcing an employee to sign a political science expert opinion prepared by a different person.

On 24 April 2024, Mr. Karabaev published a long post arguing that the Institute of State and Law of the National Academy of Science's political science

expertise conclusions are not compliant with the law. Mr. Karabaev alleged that political science expert opinions are carried out by staff who do not fully possess the necessary scientific knowledge, have not undergone special training in a specific expert specialty, have not been certified, and are not registered in the special registry, which does not comply with the national legislation. Further, he claimed that staff members of the Institute of State and Law of the NAS, when conducting political science expert opinions, are subjected to the indications and control of the investigators, who sometimes even allegedly conduct the expert opinions together with the experts, in the same office. Mr. Karabaev also stated that the staff members who conduct political science expert opinions within the framework of judicial cases do not meet the above professional and qualification requirements. In conclusion, Mr. Karabaev reportedly denounced that the Institute of State and Law of the National Academy of Sciences had turned into a body that merely assists investigative, prosecutorial, and judicial bodies.

Mr. Karabaev's arrest and pre-trial detention

On 2 July 2024, Mr. Karabaev was arrested, questioned and detained for 48 hours by officers of the State Committee for National Security in Bishkek. Mr. Karabaev was accused by the SCNS of having violated article 278(3) of the Criminal Code which punishes “calls for mass disorder”. On 4 July 2024, the Pervomaiskii District Court of Bishkek ruled to place him in pre-trial detention in Pre-Trial Detention Center No. 1.

According to reports, the scientific-political expertise on Mr. Karabaev's criminal case has been provided by the same NAS expert that participated in Mr. Olzhobay Shakir's trial and who was publicly criticized by Mr. Karabaev for providing conclusions under “the dictation of special services” [SCNS]. Up to date, the State prosecution has not provided a legal assessment of the alleged crime committed by Mr. Karabaev.

Reports suggest that Mr. Karabaev's detention and prosecution are directly connected to his statements as a whistleblower, where he voiced concerns about the alleged unlawful intrusion of the State security forces in the NAS's work and methods.

Without wishing to prejudge the accuracy of the abovementioned allegations, we express concern about the arrest, detention, judicial prosecution and conviction to imprisonment of Mr. Olzhobai Shakir and Ms. Zarina Torokulova for sharing posts expressing criticism about State authorities or calls for peaceful assemblies in their social media. We are also troubled by the detention and accusations brought against Mr. Zhoomart Karabaev, in apparent connection to his statements criticizing the working methods of the NAS and the State's security forces' undue intervention in the institution's work.

We express strong concern that the arrest, detention and prosecution of these individuals *prima facie* appear to constitute unjustified restrictions of the right to freedom of opinion and expression. In this regard, we would like to point out that the allegations which form the basis of the arrest and prosecution of Mr. Shakir,

Ms. Torokulova and Mr. Karabaev, namely their expression on social media critical of the Government or public institutions as the NAS, do not appear to meet the required standards for speech to be restricted, in line with article 19(3) and article 20 of the ICCPR. Furthermore, should the threshold for legitimate restrictions be met, the heavy prison sentences seem to be largely disproportionate, which sends a chilling message to all those wishing to express themselves on political matters, demonstrate peacefully, and participate in public and political life in Kyrgyzstan. Further, we also note with concern the numerous alleged irregularities and possible breaches of fair trial standards that are reported to have taken place throughout the judicial proceedings of Mr. Shakir and Ms. Torokulova.

Should they be confirmed, the allegations could amount to violations of several violations of human rights rules and standards contained in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), acceded by Kyrgyzstan on 7 October 1994. In particular, we refer to the right to liberty and security of person, which includes the right not to be subject to arbitrary arrest or detention, the right to fair trial before an independent and impartial tribunal, the right to freedom of opinion and expression and the right to freedom of assembly and association, guaranteed under articles 9, 14, 19, 21 and 22 of the ICCPR, acceded by Kyrgyzstan on 7 October 1994.

We wish to emphasize that any limitation on the right to freedom of opinion and expression must meet the criteria established by international human rights standards, such as article 4 and 19(3) of the ICCPR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. Further, we underscore that States have a duty to guarantee the right to freedom of expression, including political discourse, criticism of political decisions and calls to exercise other human rights, as well as an obligation to refrain from imposing any restriction that is not in conformity with article 19(3).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the factual and judicial basis for Mr. Shakir and Ms. Torokulova's arrest, detention, prosecution and conviction, as well as for Mr. Karabaev's arrest, detention and the accusations brought against him. Further, please indicate how these are in line with international human rights standards regarding freedom of opinion and expression and freedom of peaceful assembly and do not occur in retribution to the exercise of their freedom of expression.

3. Please provide information on the steps taken to ensure that Mr. Shakir's, Ms. Torokulova's and Mr. Karabaev's cases, charges and convictions, in consideration of their appeals, are in line with the relevant international standards in terms of fair trial and due process, guarantees for the right to a defense and the defendants' human rights. Please indicate the measures taken to ensure their immediate release, should it be found justified after an exhaustive review of these cases.
4. Please indicate how article 278(3) of the Criminal Code is in line with international human rights standards regarding freedom of opinion and expression and how this provision falls within the restrictions to this right allowed by article 19(3) ICCPR and article 20 ICCPR. Please inform as well about the measures adopted to ensure that criticism of the Government is not criminalised under article 278(3) and that this article does not generate a chilling effect for the exercise of freedom of expression, including criticism of public authorities.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

While awaiting a reply, we urge your Excellency's Government to take the necessary steps to carefully look into the allegations set forth in this communication in light of international human rights standards and to review the cases of Mr. Shakir, Ms. Torokulova and Mr. Karabaev, guaranteeing a fair and impartial re-examination of their convictions or charges brought against them respectively, with a view to ensuring their immediate release. Furthermore, we respectfully ask your Excellency's Government to review the policies, legislation and governmental practices that may be having a grave and unjustified impact on the rights to freedom of opinion and extension beyond the limits allowed under international human rights law.

Please accept, Excellency, the assurances of our highest consideration.

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Ganna Yudkivska
Vice-Chair on communications of the Working Group on Arbitrary Detention

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the norms contained in the International Covenant on Civil and Political Rights (ICCPR), acceded by Kyrgyzstan on 7 October 1994. In particular, we would like to refer your Excellency's Government to articles 9, 14, 19, and 21 of the ICCPR, which provide for the rights to liberty and security of the person, not to be subjected to arbitrary arrest or detention, to be promptly informed of the reasons for the arrest and of any charges against him or her, to be brought promptly before a judge, to a fair trial within a reasonable time, as well as the rights to freedom of expression and assembly. These articles shall be read individually and together with article 2.3. of the ICCPR, which provides for the right to an effective remedy for every person whose rights contained in the Covenant have been violated.

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right “to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media”. This right applies online as well as offline. Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. Under no circumstances can an attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, be compatible with article 19 (Human Rights Committee general comment No. 34, paragraph 23).

In its [general comment No. 34](#), the Human Rights Committee, interpreting article 19, stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (paragraph 11). The Committee further asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (paragraph 23). Further, the Committee underlines that “defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression” (paragraph 47).

Article 20(2) of the ICCPR prescribes that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Yet, the prohibition has a high threshold as it requires the fulfilment of three components: a) advocacy of hatred; b) advocacy which constitutes incitement and c) incitement likely to result in discrimination, hostility or violence (A/67/357, paragraph 43).

Article 21 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of peaceful assembly. It states that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise

of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”. Article 22 of the ICCPR protects the right to freedom of association with others.

Regarding the allegations of arbitrary detention, article 9 of the ICCPR states that no one shall be subjected to arbitrary arrest or detention or deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. As interpreted by the Human Rights Committee in its [general comment No. 35](#), the notion of “arbitrariness” should not be equated with “against the law” but should be interpreted more broadly to include considerations of inappropriateness, injustice, unpredictability and due process, as well as considerations of reasonableness, necessity and proportionality (paragraph 12). According to the same General Comment (paragraph 17) and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary. In addition, the Working Group on Arbitrary Detention has established in its jurisprudence that preventive deprivation of liberty, as a precautionary and non-punitive measure, must also comply with the principles of legality, necessity and proportionality to the extent strictly necessary in a democratic society. It may only proceed in accordance with the limits strictly necessary to ensure that the efficient development of investigations is not impeded and justice is not evaded, and provided that the competent authority substantiates and accredits the existence of the aforementioned requirements.

Finally, we would like to remind Your Excellency's Government of the duty of States to investigate and punish serious human rights violations, as established by the Human Rights Committee in its [general comment No. 31](#), which asserts that failure to take the necessary measures to ensure the investigation and prosecution of such violations may in itself constitute a breach of human rights treaties (CCPR/C/21/Rev.1/Add.13, paras. 15-18). Impunity for such human rights violations can be an essential element contributing to their repetition.