

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chairperson-Rapporteur: Mr. Malich Sow (Senegal)
Vice-Chairperson: Ms. Shaheen Sardar Ali (Pakistan)
Mr. Vladimir Tochilovsky (Ukraine)
Mr. Roberto Garretón (Chile)
Mr. Mads Andenas (Norway)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
Maksat Kakabayev and Murad Ovezov,
Citizens of Turkmenistan

v.

Government of Turkmenistan

URGENT ACTION REQUESTED

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, and 6/4¹

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¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. Resolutions 6/4 and 15/18, also extending the mandate of the Working Group on Arbitrary Detention, were adopted by the Human Rights Council, which, in accordance with UN General Assembly Resolution 60/251, has “assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights . . .” G.A. Res. 60/251, para. 6 (Mar. 15, 2006).

BASIS FOR “URGENT ACTION” REQUEST

As set forth in the attached Petition, the Turkmen government is arbitrarily depriving Maksat Kakabaev (also known as Ma Ro) and Murad Ovezov of their liberty. The Turkmen government refuses to disclose any information about the arrest, conviction and current whereabouts of Messrs. Kakabaev and Ovezov, thus there are serious grounds to believe that their physical health and psychological integrity and even their lives are in grave danger. Furthermore, given the use of torture and cruel, inhuman or degrading treatment is widespread in Turkmenistan and that Messrs. Kakabaev and Ovezov were ill-treated in pre-trial detention, there are grounds to believe that they might be subjected to torture and/or ill-treatment in detention.

We request that Messrs. Kakabaev and Ovezov be considered under the “Urgent Action” procedure.² We ask that a communication be made immediately to the Turkmen government to ensure that Messrs. Kakabaev and Ovezov receive adequate food, clean water, and medical treatment and to protect them from any possible maltreatment. In addition, it is requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights as reconfirmed by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/18.

QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

I. IDENTITIES OF THE VICTIMS

A. Maksat Kakabaev

1. *Family Name:* Kakabaev
2. *First Name:* Maksat
3. *Sex:* Male
4. *Birth Date:* N/A
5. *Nationality:* Turkmenistan
6. (a) *Identity document (if any):* N/A
 - (b) *Issued by:* N/A
 - (c) *On (date):* N/A
 - (d) *No.:* N/A

² *Report of the Working Group on Arbitrary Detention*, E/CN.4/1998/44 (Dec. 19, 1997), Annex IV, paras. 22-24, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G97/145/54/PDF/G9714554.pdf?OpenElement>.

7. *Professional and/or activity (if believed to be relevant to the arrest/detention):*
Maksat Kakabaev is a popular singer. In January 2011, Mr. Kakabaev appeared on TMB, a Turkish based satellite music channel, together with Murad Ovezov. They were interviewed and their music videos played. Following their appearance on TMB, the Turkmen Culture and Broadcasting Ministry summoned Messrs. Kakabaev and Ovezov and told them not to appear on foreign media again. On January 28, 2011, Mr. Kakabaev was summoned to a branch office of the Turkmen Interior Ministry along with six other popular singers who had appeared with him in music videos. All were interrogated and forced to submit explanatory statements. Mr. Kakabaev was reportedly verbally and physically abused and taunted by guards for his “feminine appearance.” After 15 days in administrative detention, Mr. Kakabaev was convicted on unknown charges and sentenced to seven years in prison.

8. *Address of usual resident:* Not known

B. Murad Ovezov

1. *Family Name:* Ovezov
2. *First Name:* Murad
3. *Sex:* Male
4. *Birth Date:* N/A
5. *Nationality:* Turkmenistan
6. (a) *Identity document (if any):* N/A
 - (b) *Issued by:* N/A
 - (c) *On (date):* N/A
 - (d) *No.:* N/A

7. *Professional and/or activity (if believed to be relevant to the arrest/detention):*
Murad Ovezov is a popular singer. In January 2011, Mr. Ovezov appeared on TMB, a Turkish based satellite music channel, together with Mr. Kakabaev. They were interviewed and their music videos played. Following their appearance on TMB, the Turkmen Culture and Broadcasting Ministry summoned Messrs. Ovezov and Kakabaev and instructed them not to appear on foreign media again. On January 28, 2011, Mr. Ovezov was summoned to a branch office of the Turkmen Interior Ministry along with six other popular singers. All were interrogated and forced to submit explanatory statements. After 15 days in administrative detention, Mr. Ovezov was convicted on unknown charges and sentenced to five years in prison.

8. *Address of usual resident:* Not known

II. ARREST

A. Maksat Kakabaev

1. *Date of arrest:* January 28, 2011
2. *Place of arrest (as detailed as possible):* Branch of the Turkmen Interior Ministry
3. *Forces who carried out the arrest or are believed to have carried it out:* Not known.
4. *Did they show a warrant or other decision by a public authority?* Not known.
5. *Authority who issued the warrant or decision:* Not known.
6. *Relevant legislation applied (if known):* Not known.

B. Murad Ovezov

1. *Date of arrest:* January 28, 2011
2. *Place of arrest (as detailed as possible):* Branch of the Turkmen Interior Ministry
3. *Forces who carried out the arrest or are believed to have carried it out:* Not known.
4. *Did they show a warrant or other decision by a public authority?* Not known.
5. *Authority who issued the warrant or decision:* Not known.
6. *Relevant legislation applied (if known):* Not known.

III. DETENTION

A. Maksat Kakabaev

1. *Date of detention:* January 28, 2011
2. *Duration of detention (if not known, probable duration):* Since January 28, 2011 (one year and seven months)
3. *Forces holding the detainee under custody:* Not known
4. *Places of detention (indicate any transfer and present place of detention):* Shagal strict regime prison

5. *Authorities that ordered the detention:* Not known
6. *Reasons for the detention imputed by the authorities:* Mr. Kakabaev was charged in relation to a year-old dispute over a TV antenna with his neighbor.
7. *Relevant legislation applied (if known):* Not known

B. Murad Ovezov

1. *Date of detention:* January 28, 2011
2. *Duration of detention (if not known, probable duration):* Since January 28, 2011 (one year and seven months)
3. *Forces holding the detainee under custody:* Not known
4. *Places of detention (indicate any transfer and present place of detention):* Trud colony
5. *Authorities that ordered the detention:* Not known
6. *Reasons for the detention imputed by the authorities:* Mr. Ovezov was charged in relation to a car accident in 2010. At that time, he was sentenced to a two-year conditional term. Allegedly Mr. Ovezov was rearrested and sentenced to five years in prison for failing to register at the police station as part of his conditional sentence.
7. *Relevant legislation applied (if known):* Not known

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

A. Statement of Facts

This Statement of Facts details what is known about the circumstances surrounding the arrest and continuing detention of the Petitioner. Background on the current political climate and human rights situation in Turkmenistan is also included as it provides context that is relevant to this case.

1. Background Information on Turkmenistan

Turkmenistan declared independence from the Soviet Union in 1991. It is formally a secular democracy and a republic.³ Since its independence, Turkmenistan has become one of the world's most repressive countries. President Gurbanguly Berdimukhamedov has controlled the

³ U.S. Department of State, 2011 Human Rights Report, *Turkmenistan* (May, 2011), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (hereinafter 2011 U.S. State Dept Report).

country since winning the 2007 presidential elections with 84% of vote. According to the U.S. Department of State's 2011 *Human Rights Report* on Turkmenistan, that election did not meet international standards.⁴ President Berdimuhamedov's first presidential term ended in 2012. He ran for a second term and won the presidential election with 97% of vote in February 2012.⁵ This election also failed to meet the basic requirements of a free and fair contest.⁶

President Berdimukhamedov enjoys unlimited power and total control over all aspects of public life in Turkmenistan.⁷ He leads the Democratic Party of Turkmenistan, the only political party in Turkmenistan until August 2012.⁸ The law provides for an independent judiciary; however, in practice the judiciary is subordinate to the president.⁹ The judiciary is widely reputed to be both corrupt and inefficient.¹⁰ There were credible reports that judgments and sentencing is often predetermined.¹¹

The Turkmen justice system is notorious for lack of transparency and closed trials, especially in politically sensitive cases.¹² The government uses fabricated charges against human rights activists, independent journalists and others to imprison or send them to psychiatric hospitals. For example, Radio Free Europe/Radio Liberty (RFE/RL) correspondent Dovlet Yazkuliev was sentenced to five years in prison in October 2011 for urging a relative to commit suicide.¹³ The Turkmen government used similar charges against Ovezgeldy Atayev, Turkmenistan's former parliamentary speaker who was expected to take over as acting president after President Niyazov's death.¹⁴

In March 2012, the UN Human Rights Committee examined Turkmenistan's first ever report on compliance with the International Covenant for Civil and Political Rights. In its Concluding Observations, the Human Rights Committee stressed that there was a broad gap

⁴ *Id.*

⁵ THE GUARDIAN, *Turkmenistan's President Wins Re-Election With 97% of Vote* (February 13, 2012), available at <http://www.guardian.co.uk/world/2012/feb/13/turkmenistan-president-wins-election>.

⁶ The Organization for the Security and Cooperation in Europe (OSCE) did not consider that deployment of an election observation mission, even of a limited nature, would add value to the election process because of continued restriction of fundamental freedoms and limited choice between competing political alternatives in the country. See, Organization for Security and Co-operation in Europe, *Needs Assessment Mission Report, Republic of Turkmenistan: Presidential Election 12 February 2012* (December 7-9, 2011), p. 9.

⁷ Human Rights Watch, *Turkmenistan: Country Summary* (January 2012).

⁸ In August 2012, President Gurbanguly Berdimukhamedov announced the newly formed Party of Industrialists and Entrepreneurs. See, Jennifer Collins & Naz Nazar, *Turkmenistan's New Party Same As Old Party, Foes Say*, WASHINGTON TIMES, September 2, 2012.

⁹ *Supra* note 3, 2011 U.S. State Dept Report.

¹⁰ *Id.*

¹¹ *Id.*

¹² Human Rights Watch, *World Report 2012: Turkmenistan* (January 2012), p. 513, available at <http://www.hrw.org/world-report-2012/world-report-2012-turkmenistan>.

¹³ *Id.*

¹⁴ Ovezgeldy Atayev, Turkmenistan's former speaker of parliament, was also imprisoned for five years in February 2007 for allegedly driving their daughter-in-law to attempt suicide. See, Radio Free Europe/Radio Liberty, *Former Turkmen Parliament Speaker Reportedly Released from Prison* (March 21, 2012), available at http://www.rferl.org/content/turkmenistan_parliament_speaker_released_from_prison/24522801.html.

between the legislative framework and its practical implementation, especially in the prohibition of torture, independence of judiciary, freedom of assembly and freedom of association.¹⁵

In 2008, Turkmenistan adopted a new constitution, which revised many national laws and, in principle, protected individual rights in an attempt to better conform to international standards.¹⁶ Though the new constitution is an improvement, Turkmenistan continues to lag far behind most of the world in the protection of civil liberties and human rights.

Freedom of Expression

There is no freedom of expression in Turkmenistan. The Turkmen government's ruthless crackdown on free expression can be seen in its repression of political, cultural and religious views in the country. Because the Turkmen government has already imprisoned almost all the country's political opposition and human rights activists, there is no real political opposition or viable human rights community in Turkmenistan.¹⁷ According to Turkmen law, any opposition to the government can be qualified as treason.¹⁸ Furthermore, any doubt about the rightness of the current president's policies can be qualified as "betraying the Motherland."¹⁹ In 2003, the People's Council on Treason in the Fatherland issued a regulation that prohibited "attempts to sow doubts about the domestic and international policies of the president of Turkmenistan," and punished these acts with life imprisonment.²⁰ Those convicted under treason charges faced life imprisonment and were ineligible for amnesty or reduction of sentence.²¹ In 2003 alone, there were approximately 50 to 60 persons arrested or convicted on treason charges.²² The Government might also use treason charges to prevent relatives of those convicted from traveling outside the country.²³

The Turkmen government's suppression of freedom of expression can also be seen in its complete control of the media. With few exceptions, the state owns all print and electronic media in Turkmenistan, and editors and managerial staff are presidential appointees.²⁴ The state also regularly harasses foreign journalists or forbids them from entering the country at all.²⁵ Furthermore, the state, which owns the only Internet service provider in the country, reportedly filters and blocks Internet usage and allegedly tracks Internet usage at Internet cafes.²⁶ The 2011

¹⁵ See generally, U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee: Turkmenistan* (April 19, 2012), CCPR/C/TKM/CO/1, available at http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.TKM.CO.1_en.pdf.

¹⁶ U.S. Department of State, *Advancing Freedom & Democracy Reports: Turkmenistan* (May 2009), available at <http://www.state.gov/j/drl/rls/afdr/2009/sca/122968.htm> (hereinafter U.S. State Dept. Report, *Advancing Freedom*).

¹⁷ *Supra* note 7, HRW Turkmenistan Country Summary.

¹⁸ *Supra* note 3, 2011 U.S. State Dept. Report. See also, Article 171 of the Turkmen Criminal Code.

¹⁹ http://www2.ohchr.org/english/bodies/cat/docs/ngos/TIHR_ILA_FIDH_Turkmenistan_CAT46.pdf; see also, http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/briefingkit-d2dc3b75f0241ccd02538e55d4c18f14.pdf.

²⁰ Human Rights Watch, *Human Rights Reform in Turkmenistan: Rhetoric or Reality?* 20 (November 2007), available at http://www.hrw.org/sites/default/files/related_material/turkmenistan1107web.pdf (hereinafter HRW Report).

²¹ *Supra* note 3, 2011 U.S. State Dept. Report.

²² U.S. Department of State, 2003 Human Rights Report, *Turkmenistan* (February 25, 2004), available at <http://www.state.gov/j/drl/rls/hrrpt/2003/27870.htm> (hereinafter 2003 U.S. State Dept. Report).

²³ *Supra* note 3, 2011 U.S. State Dept. Report.

²⁴ *Supra* note 12, HRW Report, p. 511.

²⁵ *Id.*

²⁶ *Id.*

edition of the Reporters Without Borders' *Freedom Index* ranks Turkmenistan at 177 out of 179 countries for press freedom.²⁷ The 2011 Democracy Index prepared by *The Economist* ranked Turkmenistan 165 out of 167, falling below Burma, Saudi Arabia, and Sudan.²⁸ The Committee to Protect Journalists ranked Turkmenistan as a "runner-up" in its list of the 10 Most Censored Countries.²⁹

The Turkmen government tries to assert its ideological control over youth. During President Niyazov's rule, there was a ban on wearing jeans, shorts and miniskirts.³⁰ He also banned opera, ballet, the circus and recorded music.³¹ Since 2007, female state workers were unofficially required to come to work in traditional headscarves and a long Turkmen dress.³² In 2009, it was reported that an unwritten dress code prohibited female government employees from wearing pants to work as a part of "Turkmen dress culture" that the government promotes in government offices and universities.³³

Under the current president, there is growing pressure on western style musicians. According to Taher Shir Mohammadi, singers in Turkmenistan use rap music "to express their opposition to government repression" and that Turkmen rappers "sing songs about political issues and social problems, [...], such as unemployment, drug addiction, and restrictions."³⁴ Another commentator wrote that the Turkmen government perceives hip-hop as "disruptive."³⁵ It was reported that rappers had difficulties with getting exit visas to leave Turkmenistan for shows abroad.³⁶ The Turkmen government also prevents rappers from selling their albums and place restrictions on the circulation of rap songs within the country.³⁷ Rappers in Turkmenistan fear publicity.³⁸ It was reported that Turkmen rappers have been forced to sign a declaration vowing that they would not use swear words in their songs.³⁹

Despite being one of the most watched Turkmen singers on YouTube, Mr. Kakabaev's songs were never shown on *Turkmen Owazy*, Turkmenistan's main music video channel.⁴⁰ Some

²⁷ Reporters Without Borders, *Press Freedom Index 2011-2012: The Ranking* (March 12, 2012), available at <http://en.rsf.org/press-freedom-index-2011-2012,1043.html>.

²⁸ The Economist, *Democracy Index 2011: Democracy Under Stress* 8 (2011), available at http://www.sida.se/Global/About%20Sida/S%C3%A5%20arbetar%20vi/EIU_Democracy_Index_Dec2011.pdf

²⁹ Committee to Protect Journalists, *10 Most Censored Countries* (May 2, 2012), available at <http://www.cpj.org/reports/2012/05/10-most-censored-countries.php>.

³⁰ Women Living Under Muslim Laws, *Turkmenistan: The State Tightens Dress Code Regulations* (October, 2007), available at <http://www.wluml.org/node/4122>.

³¹ Shaun Walker, *Stranger in a Very Strange Land*, *The Independent* (November 4, 2009), available at <http://www.independent.co.uk/news/world/asia/turkmenistan-stranger-in-a-very-strange-land-1814127.html>; see also, see also, BBC News, *Turkmenistan Bans Recorded Music* (August 23, 2005), available at <http://news.bbc.co.uk/2/hi/asia-pacific/4177622.stm>.

³² *Id.*

³³ *Gender Reality in Turkmenistan*, Reference ID: 09ASHGABAT1680 (December 31, 2009), available at <http://wikileaks.org/cable/2009/12/09ASHGABAT1680.html#>.

³⁴ F. Bezhan, *Yo! Turkmen Rappers Flip The Script on Repression*, Radio Free Europe/Radio Liberty (February 13, 2012).

³⁵ Neweurasia.net, *Turkmen on the Turntables: "Inshallah, The Future Will Bring Change"* (December 16, 2009).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ M. Tahir, *Turkmen Rockers Under Arrest – Back to the Bad Old Days* (March 17, 2011), Radio Free Europe/Radio Liberty, available at http://www.rferl.org/content/chaikhana_turkmen_music_crackdown/2341193.html.

observers believe the content of one of Mr. Kakabaev's songs might have been interpreted as a call to stand up against the regime. The lyrics of Mr. Kakabaev's song reads: "Open your eyes, look in the mirror/Look at your surroundings/Do not stop, wake up/Enough is enough." It further reads: "Do not lose the opportunity/Never lose yourself/Believe in yourself/Otherwise, it might be too late/Wake up, wake up!"

Torture and Arbitrary Detention

Torture, arbitrary arrests, *incommunicado* detentions and enforced disappearances are widespread and among the most pressing human rights problems in Turkmenistan.⁴¹ Human Rights Watch reports that an "[u]known number of individuals continues to languish in Turkmen prisons on [...] politically motivated charges."⁴² Annakurban Amanklychev and Sapardurdy Khadzhiyev, independent journalists and human rights activists, were convicted on fabricated charges of possessing illegal munitions and sentenced to seven-year prison terms.⁴³ Both were subjected to torture and *incommunicado* detention.⁴⁴

Approximately 60 prisoners convicted in relation to the alleged November 2002 assassination attempt against President Niyazov are widely reported to be "disappeared" by the government. Their whereabouts still remain unknown and at least eight of them have died in detention.⁴⁵ Another case of enforced disappearance was reported in 2011. Azargeldy and Aydjema Berdyev, a couple who had been seeking compensation for torture and confiscation of their property since 1990s, were arrested on April 19, 2012.⁴⁶ No information about their fate was available since then.⁴⁷

2. The Arbitrary Detention of Maksat Kakabaev and Murad Ovezov

Because of the Turkmen government's tight control over information relating to the human rights situation in the country, few specific details are known about the arrest and *incommunicado* detention of Messrs. Kakabaev and Ovezov. Family members and friends are simply too fearful of government reprisal to provide any information to outside organizations.

Maksat Kakabaev⁴⁸ and Murad Ovezov⁴⁹ are popular singers. In January 2011, Mr. Kakabaev appeared on TMB, a Turkish based satellite music channel, where he gave an interview and played his western-style music video. Following his appearance on TMB, an official from the

⁴¹ *Supra* note 12, HRW Report, pp. 513-514.

⁴² *Id.*

⁴³ The U.N. Working Group on Arbitrary Detention, Opinion No. 15/2010, available at <http://www.freedom-now.org/wp-content/uploads/2010/11/Amanklychev-and-Khadzhiyev-Opinion-of-the-WGAD-11.2.10.pdf>.

⁴⁴ For more details about Messrs. Amanklychev and Khadzhiyev's case, including the UN Working Group on Arbitrary Detention's opinion, visit Freedom Now's webpage: <http://www.freedom-now.org/campaign/maksat-kakabaev-and-murad-ovezov/>.

⁴⁵ Amnesty International, *Individuals Continue To Be At Risk of Violations In Turkmenistan*, available at <http://www.amnesty.org/en/library/asset/EUR61/001/2009/en/d006ee43-f8ef-11dd-92e7-c59f81373cf2/eur610012009en.html#0.2.Enforced%20disappearances%20outline>.

⁴⁶ Human Rights Watch, Submission to the United Nations Committee against Torture on Turkmenistan (April 2011), pp. 7-8, available at http://www2.ohchr.org/english/bodies/cat/docs/ngos/HRW_TurkmenistanCAT46.pdf.

⁴⁷ *Supra* note 3, 2011 U.S. State Dept. Report.

⁴⁸ Maksat Kakabaev also referred to as Maksat Kakabayew.

⁴⁹ Murad Ovezov also referred to as Myrat Owezow.

Turkmen Culture and Broadcasting Ministry summoned Messrs. Kakabaev and Ovezov and told them not to appear on foreign media again.⁵⁰

On January 28, 2011, Messrs Kakabaev and Ovezov were summoned to a branch office of the Turkmen Interior Ministry along with five young singers who appeared with them in their music videos. All the individuals were interrogated, forced to submit explanatory statements, and later released by the Interior Ministry after a 15-day detention. Those who resisted were reportedly met with severe beatings.⁵¹ During their 15-day detention, Messrs. Kakabaev and Ovezov were verbally and physically abused. They were taunted by guards for their “feminine appearance” and forcefully had their heads shaved.⁵² One source reported that before forcibly cutting their hair, the police shouted “You are not females to wear your hair like this” and forced them to sing.⁵³ It was also reported that police arrested another group of young singers in February 2011 and forcibly cut their hair and insulted them.⁵⁴

Immediately after holding them for 15 days in administrative detention, the government charged Messrs. Kakabaev and Ovezov on what were immediately dismissed as fabricated charges. Unconfirmed sources report that Mr. Kakabaev was charged in relation to a year-old dispute over a TV antenna with his neighbor, which had already been peacefully resolved.⁵⁵ Mr. Kakabaev’s father was also included in the charges⁵⁶ but there is no information about whether he was imprisoned or released.⁵⁷ Mr. Kakabaev was sentenced to seven years in prison in late February 2011.⁵⁸ The trial was closed and relatives were denied access to the courtroom.⁵⁹ There is no reliable information about what prison Mr. Kakabaev was sent to.⁶⁰ One source reported that he is currently serving his sentence at “Shagal” strict regime prison near Seydi city in eastern Lebap province.⁶¹ Another source reported that his whereabouts are unknown.⁶²

Mr. Ovezov was sentenced to five years in prison in late February 2011 on charges related to a car accident that happened sometime in 2010. Mr. Ovezov was involved in a car accident and sentenced to a two-year conditional term. He was rearrested for failing to register at the police station as he was required under his conditional sentence. One source reported that he is serving his prison sentence in an internal exile at “Trud” colony in Khanhowuz district of eastern Mary province.⁶³ Another source reported that he is in a labor camp in the Tejen district.⁶⁴

⁵⁰ Catherine A. Fitzpatrick, *Popular Singers Arrested in Turkmenistan*, EurasiaNet (March 5, 2011), available at <http://www.eurasianet.org/node/63014>.

⁵¹ *Id.*

⁵² FreeMuse, *Popular Singers Sentenced To Two Years in Prison* (March 2, 2011), available at <http://www.freemuse.org/sw40692.asp>

⁵³ *Id.*

⁵⁴ *Supra* note 50, *Popular Singers Arrested in Turkmenistan*.

⁵⁵ *Id.*

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⁵⁸ *Supra* note 50, *Popular Singers Arrested in Turkmenistan*.

⁵⁹ *Supra* note 51, *Popular Singers Sentenced To Two Years in Prison*.

⁶⁰ *Id.*

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⁶² *Supra* note 40, *Turkmen Rockers Under Arrest – Back to the Bad Old Days?*

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⁶⁴ *Supra* note 40, *Turkmen Rockers Under Arrest – Back to the Bad Old Days?*

Legal Analysis

The detention of Messrs. Kakabaev and Ovezov constitutes an arbitrary deprivation of their liberty⁶⁵ falling within Category II and Category III as established by the UN Working Group on Arbitrary Detention (Working Group).⁶⁶ A detention is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of UDHR and Articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR.⁶⁷ A detention is arbitrary under Category III, “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial [...] is of such gravity as to give the deprivation of liberty an arbitrary character.”⁶⁸ International norms of fair trial guarantees are provided in Articles 5, 7, 8, 9, 10, and 11 of the UDHR and Articles 7, 9 and 14 of the ICCPR. In addition to the due process requirements established by the ICCPR and UDHR, the Working Group may also look to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereinafter the Body of Principles) in making a determination as to the arbitrary nature of a detention.⁶⁹ The Body of Principles provides for the basic guarantees of a fair trial in Principles 2, 4, 7, 11, 17, 18 and 36.

A. Deprivation of Liberty under Category II: Violation of Article 19 of the ICCPR

The detention of Messrs. Kakabaev and Ovezov constitutes an arbitrary detention falling within Category II because the government of Turkmenistan imprisoned Messrs. Kakabaev and Ovezov because they exercised their right to freedom of opinion and expression in violation of Articles 19 of the UDHR and ICCPR, respectively.

Article 19(1) of the ICCPR guarantees everyone “the right to hold opinions without interference.”⁷⁰ Freedom of opinion protects all forms of opinion.⁷¹ Any harassment, intimidation, arrest, detention and imprisonment for reasons of the opinions violate Article 19(1). Article 19(2) of the ICCPR provides that “[e]veryone shall have the right of freedom of expression.” Freedom of expression includes freedom to seek, receive and impart information of all kinds, either orally

⁶⁵ An arbitrary deprivation of liberty is defined as any “depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law.” International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, at art. 9(1) [hereinafter ICCPR]. Such a deprivation of liberty is specifically prohibited by international law. *Id.* “No one shall be subjected to arbitrary arrest, detention or exile.” Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at art 9 (1948) [hereinafter Universal Declaration]. “Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law...” Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, at Principle 2, G.A. Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [hereinafter Body of Principles].

⁶⁶ Office of the High Commissioner for Human Rights, *Revised Methods of Work of the Working Group*, paras. 8(b) & (c) (hereinafter Revised Methods).

⁶⁷ *Id.*, para. 8(b).

⁶⁸ 8(c).

⁶⁹ 7(a).

⁷⁰ Article 19 of the UDHR reads: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

⁷¹ Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of Opinion and Expression* (September 12, 2011), CCPR/C/GC/34, para. 9.

or in writing.⁷² It protects all forms of expression, including acoustic, visual, musical, artistic and graphic expression.⁷³ Freedom of expression is essential for the full development of the person.⁷⁴ It is “the vehicle for the exchange and development of opinions” and thus constitutes an indispensable element of democratic society.⁷⁵ Analogous provisions on the guarantee of freedom of opinion and expression are provided in Article 19 of the UDHR,⁷⁶ as well as in Article 28 of the Turkmen Constitution.⁷⁷

Freedom of expression is not absolute. Article 19(3) of the ICCPR provides that freedom of expression may be restricted when provided by law and necessary for the respect of the rights of others, protection of national security, public order, public health or morals.

The Government of Turkmenistan denied Messrs. Kakabaev and Ovezov’s right to freedom of opinion and expression. Because freedom of opinion and expression protects all forms of opinion and expression, a singer has a right to choose without interference the music, style and content of his or her songs. Messrs. Kakabaev and Ovezov were well-known popular singers. Mr. Kakabaev was particularly renowned for his rap songs. There are numerous grounds to believe that the Turkmen government persecuted both singers because their songs and clothing had been considered out of compliance with the Turkmen mentality and general government policies to promote patriotism among the Turkmen youth.

The Turkmen Law “On Culture” provides that the status of singers, as part of a larger group of “creative workers,”⁷⁸ is defined by their mission, which consists of creating cultural values that reflect national particularities of the Turkmen mentality.⁷⁹ It further provides that their mission also includes encouraging formation of moral and spiritual qualities.⁸⁰ The Turkmen government could interpret Mr. Kakabaev’s rap songs and clothing not to “reflect national particularities of Turkmen mentality” and consequently fail to “encourage formation of moral and spiritual qualities” among the Turkmen people. International observers support this view. According to a report by the Turkmen Initiative for Human Rights, Messrs. Kakabaev and Ovezov were described as “young music artists, who perform pop love songs rather than patriotic

⁷² Article 19(2) of the ICCPR reads: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

⁷³ M. NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 445 (2nd ed., Kehl am Rhein: Engel, 2005); *Shin v. Republic of Korea*, March 16, 2004, No. 926/2000; *supra* note 71, General Comment No. 34. para. 12.

⁷⁴ *Benhadj v. Algeria*, Human Rights Committee (July 20, 2007), No. 628/1995, para. 5.4.

⁷⁵ *Supra* note 71, General Comment No. 34. para. 2.

⁷⁶ Article 19 of the UDHR reads: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

⁷⁷ Article 28 of the Constitution of Turkmenistan reads: “Citizens of Turkmenistan shall have the right to freedom of thought and expression, as well as , and also to obtain information, if it is not a government, service or commercial secret.”

⁷⁸ The Turkmen Law “On Culture” used the term “творческий работник.” See Article 23 of the Law on Culture.

⁷⁹ Article 24, the Turkmen Law “On Culture” (“Статус творческих работников в туркменском обществе определяется их предназначением, которое состоит: а) в создании культурных ценностей, которые: - отличаются высоким художественным мастерством, богатством идей и содержания, высокохудожественным отображением национальных особенностей менталитета туркменского народа.””).

⁸⁰ *Id.*

music of the kind favored by the government.”⁸¹ Similarly, Catherine A. Fitzpatrick, a journalist and a human rights activist, wrote that the Turkmen government retaliated against performers whose appearance was “anything less than modest modern or traditional dress.”⁸² Taher Shir Muhammad, a Turkmen journalist living in Germany, believes Turkmen officials arrested and imprisoned the singers because of the ideological overtones in their songs, outlooks or behavior.⁸³ A few other observers agree with this position.⁸⁴ Indeed, neither of the singers follows state-approved dress codes for artists or used ideological messages in their songs as is common among state-approved musicians. Moreover, the content of one of Mr. Kakabaev’s songs very well may have been interpreted as a call to stand up against the regime. The lyrics of Mr. Kakabaev’s song reads: “*Open your eyes, look in the mirror/Look at your surroundings/Do not stop, wake up/Enough is enough.*” It further reads: “*Do not lose the opportunity/Never lose yourself/Believe in yourself/Otherwise, it might be too late/Wake up, wake up!*”

The crackdown on youth is allegedly part of the Turkmen government’s plan to strengthen ideological control over youth and effort to prevent the spread of Arab-Spring like movements to Turkmenistan.⁸⁵ One observer concluded that the singers’ detentions show the “[Turkmen] president’s desire to reinforce the ideological purity of Turkmenistan’s youth – as insurance against the rising tide of revolts in the Middle East.”⁸⁶ Indeed, the arrest of Messrs. Kakabaev and Ovezov coincided with the start of the popular uprisings in Tunisia and Egypt.⁸⁷

The timing of Messrs. Kakabaev and Ovezov’s charges, as well as the speediness and secrecy around their trials demonstrate the political motive behind their arrests and subsequent convictions. According to unconfirmed sources, Mr. Kakabaev was charged in relation to a dispute with a neighbor. Despite the fact that the dispute was peacefully resolved, Mr. Kakabaev was sentenced to seven years in prison.⁸⁸ If Mr. Kakabaev was indeed charged in relation to this dispute, a seven-year prison term is unjust and reveals the Turkmen government’s political motivations.

Similarly, the charges and the prison term given to Mr. Ovezov raise many suspicions about the legitimacy of the case. Mr. Ovezov was sentenced on charges related to a past car accident and was sentenced to five years in prison. Mr. Ovezov was involved in a car accident and had previously been given a two year conditional release term. However, right after his interview with TMV, Mr. Ovezov was rearrested. The police alleged that he failed to register at the police station as part of his conditional release.⁸⁹

⁸¹ Turkmen Initiative for Human Rights, *Submission to the 102nd Session of the UN Human Rights Committee* (11-29 July 2011) in view of the adoption of a list of issues for the review of Turkmenistan, April 2011, available at <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/TIHRTurkmenistan102.pdf>.

⁸² *Supra* note 50, Popular Singers Arrested in Turkmenistan.

⁸³ *Id.*

⁸⁴ *Id.*; See also, *supra* note 34, Yo! Turkmen Rappers Flip the Script on Repression.

⁸⁵ *Supra* note 50, Popular Singers Arrested in Turkmenistan.

⁸⁶ *Supra* note 40, Turkmen Rockers Arrested Under Arrest; see also, *supra* note 34, Yo! Turkmen Rappers Flip the Script on Repression.

⁸⁷ The Guardian, *Arab Spring: An Interactive Timeline of Middle East Protests*, January 5, 2012, available at <http://www.guardian.co.uk/world/interactive/2011/mar/22/middle-east-protest-interactive-timeline>.

⁸⁸ *Supra* note 40, Turkmen Rockers Arrested Under Arrest.

⁸⁹ *Supra* note 50, Popular Singers Arrested in Turkmenistan.

The political character of the case can also be seen in the fact that despite being one of the most watched Turkmen singers on YouTube, Mr. Kakabaev's videos were never shown on *Turkmen Owazy*, Turkmenistan's main music video channel.⁹⁰ This demonstrates general policies in Turkmenistan directed at suppressing anything that is not deemed to be patriotic or reflect national Turkmen values. Indeed, the Turkmen government perceives hip-hop as "disruptive,"⁹¹ creates hurdles for rappers seeking exit visas to leave Turkmenistan for performances abroad⁹² and obstructs the sale of their albums in Turkmenistan.⁹³

Exceptions to freedom of expression stipulated in Article 19(3) of the ICCPR do not apply in this case. The Turkmen government has never claimed that Messrs. Kakabaev and/or Ovezov violated the rights of others. Neither has the government argued that they posed threat to national security, public order, health or moral.

B. Deprivation of Liberty under Category III: The Non-Observance of the International Norms Relating to the Right to a Fair Trial in Maksat Kakabaev and Murad Ovezov's Cases is of Such Gravity that Their Detention is Rendered Arbitrary

The detention of Messrs. Kakabaev and Ovezov constitutes an arbitrary deprivation of liberty falling within Category III because Turkmenistan failed to observe the minimum international standards of due process. The Turkmen government denied Messrs. Kakabaev and Ovezov the right to an effective legal representation, a public hearing by an independent and impartial court, and humane treatment in violation of Articles 5, 8, 9, 10 of the UDHR and Articles 7 and 14 of the ICCPR.

Denial of Public Hearing

Article 14(1) of the ICCPR provides that in the determination of any criminal charge, "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal." Article 10 of the UDHR provides that "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal." Article 27 of the Turkmen Criminal Procedure Code provides that "criminal hearings shall be open in all courts." The right to a public hearing is a necessary component of a fair trial.⁹⁴ The Committee has commented, "the publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large."⁹⁵ The requirement of public hearings requires that courts must "provide for adequate facilities for the attendance of interested members of the public."⁹⁶ The right to have public hearings is not absolute. Article 14(1) of the ICCPR provides that the courts can exclude all or part of the public for reasons of morals, public order or national security in a democratic society.⁹⁷

⁹⁰ *Supra* note 40, Turkmen Rockers Arrested Under Arrest.

⁹¹ Neweurasia.net, *Turkmen on the Turntables: "Inshallah, The Future Will Bring Change"* (December 16, 2009).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Human Rights Committee, *General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32 (Aug. 23, 2007), paras. 28.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See also, *Jaramani Najib Youcef v. Syrian Arab Republic*, Working Group on Arbitrary Detentions, Opinion No. 11/2003, para. 11.

The Government of Turkmenistan denied Messrs. Kakabaev and Ovezov their right to a public hearing. The trial was closed and relatives were denied access to the courtroom.⁹⁸ There is no reliable information on what charges the Turkmen government convicted Messrs. Kakabaev and Ovezov to seven and five years respectively. Initially, the family members did not even know what prison Mr. Kakabaev was sent to.⁹⁹ There is contradicting information about their current places of detention. One source reported that Mr. Ovezov is currently in “Trud” colony in Khanhowuz district of eastern Mary province and Mr. Kakabaev is in “Shagal” prison near Seydi city in eastern Lebap province.¹⁰⁰ Another source reported that Mr. Ovezov is in a labor camp in the Tejen district¹⁰¹ and Mr. Kakabaev’s whereabouts was not known.¹⁰²

There is no information that this case involved issues of morality, public order and/or national security in Turkmenistan. Consequently, the Turkmen government had no justification to conduct closed trials.

Denial of Independent and Impartial Trial

Article 14(1) of the ICCPR provides that “everyone shall be entitled to a [...] hearing by a competent, independent and impartial tribunal.” Article 10 of the UDHR provides that “[e]veryone is entitled in full equality to a [...] hearing by an independent and impartial tribunal.” There can be no fair trial without a competent, independent and impartial court. This absolute right is not subject to any exceptions.¹⁰³ One of the requirements of impartiality contained in Article 14(1) of the ICCPR is that of reasonableness. The court must appear to a reasonable observer to be impartial.¹⁰⁴ The requirement of independence refers, *inter alia*, to the “independence of the judiciary from political interference by the executive branch and legislature.”¹⁰⁵

In this case, a reasonable observer should qualify the grounds on which the court convicted both singers as an obvious indication of bias. Mr. Kakabaev was reportedly convicted because of an alleged dispute over a TV antenna with his neighbor. The lawfulness of the charge is suspicious because the alleged dispute took place one year prior to Mr. Kakabaev’s last arrest and it was peacefully resolved at that time.¹⁰⁶ Nevertheless, Mr. Kakabaev was sentenced to seven years in prison.¹⁰⁷ Similarly, Mr. Ovezov was reportedly sentenced to five years in prison on charges related to a car accident. He received a two-year conditional term. However, he was rearrested when he allegedly did not register at the police station as part of his conditional sentencing.

⁹⁸ *Supra* note 51, Popular Singers Sentenced To Two Years in Prison.

⁹⁹ *Id.*

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¹⁰¹ *Supra* note 40, Turkmen Rockers Arrested Under Arrest.

¹⁰² *Id.*

¹⁰³ *Supra* note 94, General Comment No. 32, para. 19; See also, Gonzalez del Rio v. Peru, Communication No. 263/1987, U.N. Doc. CCPR/C/46/D/263/1987 (1992), para. 5.2. (“The Committee recalls that the right to be tried by an independent and impartial tribunal is absolute right that may suffer no exception.”).

¹⁰⁴ *Id.*, para. 21.

¹⁰⁵ *Supra* note 94, General Comment No. 32, para. 19.

¹⁰⁶ *Supra* note 50, Popular Singers Arrested in Turkmenistan.

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These charges were used as a pretext by the government to detain and convict Messrs. Kakabaev and Ovezov. In light of the fact that there is total lack of independence of judiciary in Turkmenistan and thus accused persons are often denied fair trial guarantees¹⁰⁸ and a presumption of innocence,¹⁰⁹ there are serious grounds to believe that Messrs. Kakabaev and Ovezov were detained and convicted on fabricated charges by a court that lacked independence and impartiality.

Denial of Effective Legal Representation

Article 14(3)(d) of the ICCPR provides that everyone shall be entitled to “defend himself in person or through legal assistance of his own choosing.” The right of an accused to defend himself through a lawyer is a fundamental component of a right to a fair trial.¹¹⁰ The right to legal representation must be effective. This implies that lawyers must be able to advise and represent their clients without restrictions and undue influence or interference from any party.¹¹¹ The denial of legal assistance at various stages of criminal proceedings can jeopardize the entire process and infringe the defendant’s fair trial rights leaving him no meaningful way to participate in the proceedings.¹¹²

Messrs. Kakabaev and Ovezov did not have effective legal representation. There is no information about whether the Turkmen government allowed Messrs. Kakabaev and Ovezov to have a lawyer. But the expediency of their trial demonstrates that they did not have effective legal representation. Both singers were initially summoned to a branch office of the Turkmen Interior Ministry on January 28, 2011. Then they were detained for 15 days in administrative detention and in less than a month were convicted to seven and five years in prison, respectively.

Denial of Human Treatment

Article 7 of the ICCPR provides that “[n]o one shall be subjected to torture or to cruel, inhumane or degrading treatment. Article 5 of the UDHR and Principle 6 of the Body of Principles include analogous provisions. The prohibition of torture and cruel, inhumane or degrading is absolute.¹¹³ Any imposition of suffering that is not severe enough to be qualified as torture constitutes cruel, inhumane or degrading treatment.¹¹⁴

The Turkmen government’s treatment of Messrs. Kakabaev and Ovezov during pre-trial detention violates the ICCPR’s prohibition of torture and cruel, inhumane or degrading treatment. During their 15-day administrative detention, Messrs. Kakabaev and Ovezov were verbally and physically abused. The police reportedly insulted them for their alleged “feminine appearance” and shaved their heads.¹¹⁵ Authorities severely beat those who resisted such inhuman and

¹⁰⁸ U.S. Department of State, *2010 Human Rights Report: Turkmenistan* (April 8, 2011), available at <http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154488.htm>

¹⁰⁹ *Id.*

¹¹⁰ *Supra* note 94, General Comment No. 32, paras. 34-38.

¹¹¹ *Id.*, para. 34.

¹¹² *Id.*, para. 10.

¹¹³ See, Article 4 of the ICCPR and Article 2 of the Convention against Torture.

¹¹⁴ *Supra* note 73, M. Nowak, Commentary, p. 163.

¹¹⁵ *Supra* note 51, Popular Singers Sentenced To Two Years in Prison.

degrading treatment.¹¹⁶ One source reported that before forcibly cutting their hair, the police shouted “You are not females to wear your hair like this.”¹¹⁷ The police also forced the singers to sing.¹¹⁸

In addition, the Turkmen government subjected Messrs. Kakabaev and Ovezov to *incommunicado* detention, enforced disappearance and unannounced detention, which also constitute inhumane and degrading treatment. *Incommunicado* detention happens when a “detainee cannot communicate with anyone other than his or her captors [...]”¹¹⁹ It constitutes inhumane treatment because it takes away the detainee’s ability to have contact with the outside world, especially with family and friends.¹²⁰ The Human Rights Committee held that *incommunicado* detention for extended periods amounts to the violation of Article 7 of the ICCPR.¹²¹ It also stated previously that *incommunicado* detention renders a *habeas corpus* action impossible and thus violates Article 9(4).¹²²

Continued *incommunicado* detention constitutes enforced disappearance.¹²³ Enforced disappearance means “the arrest, detention or abduction of persons by [a State], followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”¹²⁴ The State is under obligation to provide family members and other interested persons with three main pieces of information about the detainee: (a) whether the person is in custody; (b) whether s/he is alive or dead; (c) location of imprisonment or detention.¹²⁵ According to the Association for the Prevention of Torture, “[e]ven if the initial detention is acknowledged, subsequent concealment of the fate or current whereabouts of the individual can of itself give rise to an enforced disappearance.”¹²⁶ The UN Human Rights Committee held that enforced disappearance, similar to *incommunicado* detention, violates many provisions of the ICCPR, including the right to liberty and security of person (Article 9), the right not to be subjected to torture or to cruel, inhumane or degrading treatment or punishment (Article 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (Article 10).¹²⁷

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Association for the Prevention of Torture, *Incommunicado, Unacknowledged, and Secret Detention Under International Law*, March 2, 2006.

¹²⁰ S. JOSEPH ET AL., *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY* 285 (2nd ed., Oxford University Press); *Sarma v. Sri Lanka*, Communication No. 950/2000, para. 9.5.

¹²¹ *El Megreisi v. Libyan Arab Jamahiriya*, Communication No. 440/1990, December 27, 1990, para. 5.4; *Penarrieta et al. v. Bolivia*, Communication No. 176/1984 (1988), 2 November 1987, para. 16; *Mirta Cubas Simones v. Uruguay*, Communication No. R.17/70, 3 May 1980, para. 12; see also, General Comment No. 20, para. 11.

¹²² *Hammel v. Madagaskar*, Human Rights Committee, Communication No. 155/83, para. 20.

¹²³ *Supra* note 121, *The International Covenant on Civil and Political Rights*, p. 255.

¹²⁴ Article 7(2)(i) of the Rome Statute of the International Criminal Court; see also, Article 2, International Convention for the Protection of All Persons from Enforced Disappearance. The UN Human Rights Committee used the definition of “enforced disappearances” found in the Rome Statute of the ICC. See, *Sarma v. Sri Lanka*, Communication No. 950/2000, para. 9.3.

¹²⁵ *Supra* note 120, *Incommunicado, Unacknowledged, and Secret Detention under International Law*.

¹²⁶ *Id.*

¹²⁷ *Sarma v. Sri Lanka*, U.N. Human Rights Committee, Communication No. 950/2000, paras. 9.3-9.5; U.N. Human Rights Committee, *Celis Laureano v. Peru*, (540/1993), para. 8.5; *Laureano v. Peru*, U.N. Human Rights Committee, Communication No. 540/1993, paras. 29-34.

When a State fails to respond to inquiries from family, lawyers and others regarding the whereabouts of an imprisoned person, the detention is unannounced and falls within the scope of enforced disappearance.¹²⁸ According to the Association for the Prevention of Torture, “unannounced detention” means “that in addition to holding the individual *incommunicado* (thereby preventing him from notifying family, friends, or his ordinary legal counsel that he has been detained), the government does not itself proactively inform family, friends or the individual’s ordinary legal counsel of the detention.”¹²⁹ Unannounced detention violates the right to liberty and security of the person.¹³⁰

Despite the publicity around the arrest and detention of Messrs. Kakabaev and Ovezov, the Turkmen government has never given an official explanation about why it convicted the two singers. Freedom Now’s numerous requests for information about their detention have been ignored by the Turkmen Embassy in Washington D.C. since June 2012.

VI. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN

There is no information available about what type of domestic remedies Messrs. Kakabaev and Ovezov may have pursued. Freedom Now has been trying to obtain more information about their detention. Attempts to reach out to the Turkmen government for information about their whereabouts and well-being went unanswered.

VII. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE)

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¹²⁸ *Supra* note 120, *Incommunicado, Unacknowledged, and Secret Detention under International Law*.

¹²⁹ *Id.*

¹³⁰ UN Working Group on Arbitrary Detention, *Report to the Commission on Human Rights*, UN Doc. E/CN.4/2006/7, paras. 53-59.