



FREEDOM NOW



October 29, 2018

ALLEGATION LETTER

Mr. Diego García-Sayán
Special Rapporteur on the Independence of Judges and Lawyers
Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
1211 Geneva 10, Switzerland

Re: Allegation Letter Regarding the Repression of Lawyers in Tajikistan

Dear Mr. García-Sayán:

We are writing to ask that you inquire into recent attacks on the independence of the legal profession in the Republic of Tajikistan. Freedom Now is a non-governmental organization that works to free prisoners of conscience around the world and currently represents a number of prisoners in Tajikistan, including Buzurgmehr Yorov, a lawyer who has been sentenced to 28 years in prison on account of his politically-sensitive legal representation and Zayd Saidov, a political opposition leader currently serving a 29 year sentence who had two of his defense attorneys and the son of his third defense attorney imprisoned on specious charges. Lawyers for Lawyers is a Dutch lawyers' organization that provides support to lawyers around the world who are threatened or oppressed in the exercise of their profession to ensure that they may independently practice law; Lawyers for Lawyers also serves as co-counsel on Mr. Yorov's case.

Throughout our work in Tajikistan we have noted with grave concern a lack of independence of the judiciary and increasing attacks on the independence of the judiciary and bar.

Lack of Judicial Independence

Tajikistan's justice system is highly politicized and lacks transparency. In theory, the constitution establishes a tripartite government, with each branch separate and equal under the law; in practice, however, the executive branch—headed by President Emomali Rahmon and dominated by the People's Democratic Party—controls the judicial branch.¹ Indeed, the President possesses the power to appoint and dismiss judges and prosecutors with few constitutional checks, and even fewer political checks, to ensure that this power is not abused.²

¹ Freedom House, *Tajikistan: Nations in Transit 2013*, <https://freedomhouse.org/report/nations-transit/2013/tajikistan>.

² *Id.*; U.S. Dep't of State, *Tajikistan 2014 Human Rights Report*, <https://www.state.gov/documents/organization/236864.pdf>.

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As a result, judges give the executive branch almost complete deference, finding nearly all defendants guilty.³ A Freedom House report from 2016 noted that the rate of acquittal is almost zero.⁴ Further, although trials must be held in public, the government has conducted politically-motivated secret proceedings, justified under the pretext of national security.⁵ Defendants are frequently denied the right to an attorney during pre-trial and investigatory periods, particularly in politically sensitive cases.⁶ While “in principle, all testimony receives equal consideration,” in practice the courts “[give] prosecutorial testimony far greater weight than defense testimony.”⁷ Compounding the problem of unfair courts, judicial proceedings in Tajikistan are riddled with corruption. Reports of bribery are common—an unsurprising effect of the low wages afforded to judges and prosecutors.⁸

The lack of a fair trial to rectify wrongdoing also enables pre-trial abuses to occur. Arbitrary arrests are commonplace.⁹ There is no requirement that warrants be issued for arrests, which allows police and security officials to arrest or detain citizens with little to no immediate oversight.¹⁰ Although the government typically provides a rationale for arrests, reports of falsified charges abound.¹¹ Law enforcement authorities frequently use aggressive interrogation tactics, as well as torture, to extract confessions from detained individuals.¹²

Interference with Lawyers’ Independence

Various human rights and legal groups—such as Amnesty International, the Paris Bar, the Association for Human Rights in Central Asia, Human Rights Watch, the International Partnership for Human Rights, and the Norwegian Helsinki Committee—have all called on the government to

³ Freedom House, *Tajikistan: Freedom in the World 2016*, <https://freedomhouse.org/report/freedom-world/2016/tajikistan>.

⁴ U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, 6, <https://www.state.gov/documents/organization/253189.pdf> (describing that during the first six months of the year, there were four acquittals in 5,981 cases, of which two were full acquittals, and the remaining two were partial acquittals with convictions on lesser charges.)

⁵ The trials of political opposition leaders Zayd Saidov and Mahmatali Hayit exemplify this problem. Journalists and international organizations were denied access to both trials—even though the court had granted Saidov’s request for an open trial. Hayit’s trial was closed to the public under the guise of national security concerns, although sources report that the trial and the verdict focused heavily on his involvement in the IRPT—at the time, a legal political party. *See id.*; Human Rights Watch, *Tajikistan: Verdicts of Opposition Activists Travesty of Justice* (7 June 2016), <https://www.hrw.org/news/2016/06/07/tajikistan-verdicts-opposition-activists-travesty-justice>.

⁶ Amnesty Int’l, *Annual Report: Tajikistan 2013*, *infra* note 12.

⁷ U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 4, at 6.

⁸ U.S. Dep’t of State, *Tajikistan 2014 Human Rights Report*, <https://www.state.gov/documents/organization/236864.pdf>.

⁹ Human Rights Watch, *Human Rights Watch World Report 2015 - Events of 2014* (29 January 2015); Amnesty International, *Annual Report: Tajikistan 2013* (23 May 2013); <http://www.refworld.org/docid/519f516718.html>; Amnesty International, *Tajikistan: Torture is 'routine', show 'Routine', Shows New Amnesty Report* (12 July 2012); <https://www.amnesty.org.uk/press-releases/tajikistan-torture-routine-shows-new-amnesty-report>; Amnesty Int’l, *Annual Report: Tajikistan 2016/2017* (2017) <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>.

¹⁰ Human Rights Watch, *Human Rights Watch World Report 2015 - Events of 2014* (29 January 2015).

¹¹ U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 4, at 5; Amnesty Int’l, *Annual Report: Tajikistan 2016/2017*, *infra* note 12, at 355 – 356.

¹² *Human Rights Watch World Report 2015 - Events of 2014*, *supra* note 9; Amnesty Int’l, *Annual Report: Tajikistan 2013* (23 May 2013), <http://www.refworld.org/docid/519f516718.html>; Amnesty Int’l, *Tajikistan: Torture is 'routine', show 'Routine', Shows New Amnesty Report* (Jul. 12, 2012); <https://www.amnesty.org.uk/press-releases/tajikistan-torture-routine-shows-new-amnesty-report>; Amnesty Int’l, *Annual Report: Tajikistan 2016/2017* (2017), <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>.

cease its interference with the independence of lawyers to practice their profession.¹³ The government has “taken steps to extend its control over the legal profession, significantly curtailing its independence.”¹⁴ Specifically, in November 2015, “authorities approved a new law requiring all lawyers to renew their legal licenses with the Justice Ministry, instead of the independent bar association or licensing body, and to retake the bar examination every five years.”¹⁵ In an attempt by the government to identify lawyers who are willing to take on politically sensitive cases, “the exam includes questions on a broad range of subjects unrelated to law, such as history, culture, and politics.”¹⁶ Tajik lawyers are concerned that the test administered by the government is being used to exclude those who take on politically sensitive cases.¹⁷

In the wake of such new requirements, the number of licensed lawyers in the country has fallen precipitously in a mere two years, from more than 1,200 in 2015 to just 600 in 2017.¹⁸ As such, Tajikistan now has just one lawyer per 14,500 people.¹⁹ This is an incredibly low ratio in comparison to other countries (such as the United States, where there is approximately one lawyer per 300 citizens, or the United Kingdom, where there is one lawyer per 400 citizens), and underscores the Government’s targeted efforts to restrain this profession.²⁰

Even where defendants are permitted to obtain attorneys, the government ensures that their representation is ineffective. For example, Tajik lawyers are repeatedly denied access to clients in detention and denied access to evidential materials collected by the government authorities against their clients.²¹

Most problematically, lawyers and human rights defenders have faced significant persecution for their involvement in politically-sensitive cases. In particular, they have been subjected to punitive and arbitrary arrests, imprisonment (often long-term), intimidation, and death threats of numerous attorneys (and their families),²² typically “in retaliation for representing political opponents or their willingness to take on politically sensitive cases.”²³ Many lawyers who have defended members of the political opposition have either been charged with offenses related to national security or have been forced to flee the country due to fears of reprisal.²⁴ Those who have been arrested and

¹³ Human Rights Watch, *Tajikistan: Human Rights Lawyer Detained* (7 October 2015), <https://www.hrw.org/news/2015/10/07/tajikistan-human-rights-lawyer-detained>.

¹⁴ Human Rights Watch, *Tajikistan: Country Summary* (January 2017), https://www.hrw.org/sites/default/files/tajikistan_1.pdf, at 4-5.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan*, *supra* note 24, at 4, 5, 11; Amnesty Int’l, *Tajikistani Lawyers Harassed, Intimidated, and Imprisoned* (24 May 2017), <https://www.amnesty.org/en/latest/news/2017/05/tajikistani-lawyers-harassed-intimidated-and-imprisoned/>.

¹⁹ *In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan*, *supra* note 24, at 11.

²⁰ Clements Worldwide, *The Most Litigious Countries in the World* (2016), <https://www.clements.com/sites/default/files/resources/The-Most-Litigious-Countries-in-the-World.pdf>.

²¹ Amnesty Int’l, *Amnesty International Report 2015/2016 – Tajikistan* (24 February 2016), <http://www.refworld.org/docid/56d05b0ec.html>; U.S. Dep’t of State, *Tajikistan 2016 Human Rights Report 5–7*, <https://www.state.gov/documents/organization/265762.pdf>.

²² *See id.*; EurasiaNet.org, *Time to Get Tough on Tajikistan’s Human Rights Crisis* (16 May 2016), <http://www.eurasianet.org/node/78786>; Frontline Defenders, *#Tajikistan*, <https://www.frontlinedefenders.org/en/location/tajikistan>.

²³ Human Rights Watch, *Tajikistan: Long Prison Terms for Rights Lawyers*, (6 October 2016), <https://www.hrw.org/news/2016/10/06/tajikistan-long-prison-terms-rights-lawyers>.

²⁴ Amnesty Int’l, *In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan* 4, 12 – 13 (2017), available at <https://www.amnesty.org/en/documents/eur60/6266/2017/en/>.

prosecuted have faced closed, unfair trials resulting in harsh prison sentences.²⁵ These “unprecedented risks” imposed by the government have made lawyers increasingly wary of taking on political cases or cases that involve complaints against agents of the state.²⁶

In fact, since 2014, authorities have arrested and detained at least six human rights lawyers – Shukhrat Kudratov, Fakhridin Zokirov, Buzurgmehr Yorov, Jamshed Yorov, Nuriddin Makhkamov, and Dilbar Dodojonova – as well as Firuz and Daler Tabarov, sons of Iskhok Tabarov, another prominent lawyer. Mr. Zokirov was released after two periods of imprisonment. Jamshed Yorov, Buzurgmehr Yorov’s brother, was released on September 30, 2016 and fled Tajikistan due to continuing harassment and fear of re-arrest. Mr. Kudratov was released early in August 2018, but faced repeated visits by police in the weeks following his release. Nuriddin Makhkamov, Buzurgmehr Yorov’s law partner, was tried alongside Mr. Yorov on extremism charges and sentenced to 21 years’ imprisonment. In May 2017, shortly after she had posted on Facebook an appeal to President Rahmon to halt his persecution of her imprisoned colleague Mr. Yorov, Fayzinisso Vohidova, a leading human rights lawyer, was interrogated and prevented from leaving the country.

Request for Action

The crackdown on Tajikistan’s lawyers and the dependence of the judiciary on the executive have resulted in a legal system which is increasingly used as a tool of government repression instead of a safeguard for individual rights. In the past few years, the government has accelerated the arrest, detention, and conviction (often to lengthy sentences) of its critics: political opposition members, human rights defenders (including lawyers) and others who have dared to sound the alarm about the government’s abuses. For instance, in addition to the detained lawyers already mentioned above, at least 13 members of the largest political opposition party, the Islamic Renaissance Party of Tajikistan, are currently facing sentences extending to life in prison on fabricated extremism charges; in 2018 the UN Working Group on Arbitrary Detention confirmed that their trial was unfair and their detention in violation of international law.²⁷ As mentioned above, Freedom Now client Zayd Saidov, another opposition leader, has also been in prison since 2013, currently serving 29 years for a slate of spurious crimes; in 2018 the UN Human Rights Committee confirmed that his detention was also arbitrary.²⁸ Having compromised the judiciary and decimated the bar, the government of Tajikistan has begun to systematically eliminate any perceived threat to its authoritarian rule.

In the light of these troublesome events and in accordance with your mandate to “act[] on information submitted to his/her attention concerning alleged violations relating to the independence and impartiality of the judiciary and the independence of the legal profession by sending allegation letters and urgent appeals to concerned Governments to clarify and/or bring these cases to their attention,”²⁹ we ask that your office inquire with the government of Tajikistan about

²⁵ *Id.* at 4, 12.

²⁶ *Id.*; Radio Free Europe, *Rights Watchdog Condemns Tajikistan’s Crackdown on Lawyers* (24 May 2017), <https://www.rferl.org/a/tajikistan-amnesty-lawyers-crackdown-yorov-mahkamov-kudratov/28505124.html>.

²⁷ *Hayit v. Tajikistan*, Working Grp. on Arbitrary Detention, Commc’n No. 2/2018, ¶ 57, 81st Sess., Human Rights Council, U.N. Doc. A/HRC/WGAD/2018/2 (10 May 2018), https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A_HRC_WGAD_2018_2.pdf.

²⁸ *Saidov v. Tajikistan*, UN Human Rights Committee, U.N. Doc. CCPR/C/122/2680/2015 (16 July 2018), <http://www.freedom-now.org/wp-content/uploads/2018/07/HRC-Communication-2680-2015.pdf>

²⁹ Mandate of the Special Rapporteur on the Independence of Judges and Lawyers (2014), A/HRC/RES/26/7.

its attacks on the legal profession and arbitrary detention of defense attorneys and, if your office is not satisfied with the government's explanations, issue a statement condemning such crackdown. We also ask that your office make a request to make a formal visit to Tajikistan to investigate such matters fully.

Specifically, we request that your office seek the following three actions from the government of Tajikistan:

- That it amends its constitution and laws to eliminate the executive branch's ability to appoint and dismiss judges with few controls, thus ensuring that the judiciary enjoys true independence from the executive branch;
- That it revokes the new licensing requirements requiring that Tajik lawyers renew their legal licenses with the Justice Ministry, thus insulating the independence of the bar from executive branch control; and
- That it releases all prisoners of conscience, particularly those lawyers whose were detained as reprisal for taking on politically-sensitive cases, and affords them with an enforceable right to compensation and other reparations.

We would welcome the opportunity to provide your offices with further information or to clarify any issues in relation to this matter.

Sincerely,



Kate Barth
Legal Director
Freedom Now



Judith Lichtenberg
Executive Director
Lawyers for Lawyers Foundation