

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Mr. José Guevara Bermúdez (Mexico)
Vice-Chair on communications: Ms. Leigh Toomey (Australia)
Vice-Chair on follow-up: Ms. Elina Steinerte (Latvia)
Mr. Seong-Phil Hong (Republic of Korea)
Mr. Sètonджи Adjovi (Benin)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
Omruzak Omarkuliev,
Citizen of Turkmenistan

v.

Government of Turkmenistan

Petition for Relief Pursuant to Human Rights Council Resolutions 1991/42, 1994/32, 1997/50,
2000/36, 2003/31, 2006/102, 6/4, and 24/7

Submitted by:

Maran Turner
Adam Lhedmat
Freedom Now
1750 K Street NW
7th Floor
Washington, DC 20006
United States of America
+1 (202) 223-3733 (tel)
+1 (202) 223-1006 (fax)
alhedmat@freedom-now.org

Patrick Hynds
Hogan Lovells US LLP
555 Thirteenth Street NW
Washington, DC 20004
United States of America
+1 (202) 804-7782 (tel)
+1 (202) 637-5910 (fax)
patrick.hynds@hoganlovells.c
om

Marc Gottridge
Hogan Lovells US LLP
390 Madison Avenue
New York, NY 10017
United States of America
+1 (212) 909-0643 (tel)
+1 (212) 918-3100 (fax)
marc.gottridge@hoganlovells.
com

May 29, 2020

**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY
ARREST OR DETENTION**

I. IDENTITY

1. *Family Name*: Omarkuliev (Umarkuliev) (Omarkuliyev)
2. *First Name*: Omruzak
3. *Sex*: Male
4. *Age at the Time of Detention*: 23 years old
5. *Nationality*: Turkmenistan
6. (a) *Identity document (if any)*: Unknown
(b) *Place of Issue*: N/A
(c) *On (date)*: N/A
(d) *No.*: N/A
7. *Profession and/or activity (if believed to be relevant to the arrest/detention)*: Student and leader of the Association for Solidarity and Support for Students from Turkmenistan.
8. *Address of usual residence*: Lebap velayat, Dänew şäherçesiň, Aşgabat geneşligi, Turkmenistan.

II. ARREST

1. *Date of arrest*: On or shortly after March 15, 2018.
2. *Place of arrest (as detailed as possible)*: Precise location unknown but believed to be in Ashgabat, Turkmenistan.
3. *Forces who carried out the arrest or are believed to have carried it out*: Unknown forces of the government of Turkmenistan.
4. *Did they show a warrant or other decision by a public authority?* Unknown.
5. *Authority who issued the warrant or decision*: N/A.
6. *Reasons for the arrest imputed by the authorities*: Unknown.
7. *Legal basis for the arrest including relevant legislation applied (if known)*: Unknown.

III. DETENTION

1. *Date of detention*: From on or shortly after March 15, 2018.
2. *Duration of detention (if not known, probable duration)*: From on or shortly after March 15, 2018 continuing through the date of submission.
3. *Forces holding the detainee under custody*: Ministry of Internal Affairs.

4. *Places of detention (indicate any transfer and present place of detention):* Ovadan-depe Prison.
5. *Authorities that ordered the detention:* Unknown.
6. *Reasons for the detention imputed by authorities:* Unknown.
7. *Legal basis for the detention including relevant legislation applied (if known):* Unknown.

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

Part 1 of this Statement of Facts highlights the current political climate in Turkmenistan in order to demonstrate the government’s patterns of violating the substantive and procedural rights of its citizens. Part 2 of this Statement of Facts details the circumstances surrounding the arrest and detention of Mr. Omruzak Omarkuliev.

1. Relevant Aspects of the Social, Legal, and Human Rights Context in Turkmenistan

The government of Turkmenistan denies almost all civil liberties to its citizens,¹ and Turkmen authorities have a long-standing and systematic practice of forcibly “disappearing” individuals they perceive as a threat.² According to the *Prove They Are Alive!* Campaign, which was launched by a consortium of human rights monitors to track the large number of disappeared persons in Turkmenistan, there have been, at a minimum, 121 cases of enforced disappearances since at least 2002.³ Turkmenistan generally fails to provide any information—to the domestic public, to the families of those impacted, or to the international community—about individuals who have been forcibly disappeared,⁴ making it exceedingly difficult to know the full scope of enforced disappearances. Those arrested are often lack legal representation.⁵ Further, the judiciary is subject to total control by the President and reported to be corrupt and inefficient.⁶

¹ Freedom House, *Freedom in the World 2019: Turkmenistan*, at Overview, <https://freedomhouse.org/country/turkmenistan/freedom-world/2019> [hereinafter “Freedom House Report”]; Human Rights Watch, *World Report 2020: Turkmenistan* 581-85, https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf [hereinafter “HRW 2020 World Report”].

² Prove They Are Alive!, *List of the Disappeared in Turkmenistan’s Prisons* 1 (Sept. 2019), https://provetheyarealive.org/wp-content/uploads/2019/09/List-of-the-Disappeared-in-Turkmen-Prisons_Sept-2019_ENG.pdf [hereinafter “2019 List of the Disappeared in Turkmen Prisons”].

³ *Id.* at 1.

⁴ *Id.* at 1-3, 6.

⁵ U.S. Department of State, *2019 Human Rights Report: Turkmenistan*, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkmenistan/> [hereinafter “2019 U.S. State Dep’t Report”].

⁶ European Parliament, Directorate General for External Policies, Policy Department, *Workshop on EU Turkmenistan relations* 8 (Mar. 2017), [https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/578041/EXPO_IDA\(2017\)578041_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/578041/EXPO_IDA(2017)578041_EN.pdf); 2019 U.S. State Dep’t Report.

The Turkmen government's oppressive tactics are not limited to forcible disappearance,⁷ nor are they limited by Turkmenistan's geographic boundaries. Within Turkmenistan, onerous laws and regulations effectively prevent organizing within the country.⁸ The government has extended this repression transnationally, targeting Turkmen nationals who participate in civil society organizations abroad. Those individuals are subject to heavy surveillance, especially digital surveillance.⁹ Furthermore, individuals who attempt to organize outside of the country often find that their families living within Turkmenistan face intimidation and harassment.¹⁰

2. The Case of Omruzak Omarkuliev

a. *Mr. Omarkuliev's Background*

Omruzak Omarkuliev is a Turkmen national born in Lebap Velayat, Turkmenistan, on April 30, 1994.¹¹ He formerly lived there with his father and other relatives.¹² Eventually, Mr. Omarkuliev left for Turkey to study engineering at Osmaniye Korkut Ata University in Osmaniye, Turkey.¹³ At the beginning of 2018, he was a second-year student there, living with his wife.¹⁴ While studying in Turkey, he founded the Association for Solidarity and Support for Students from Turkmenistan ("Turkmen Students' Association") for Turkmen students living abroad.¹⁵

b. *The Turkmen Government Lures Mr. Omarkuliev Back to Turkmenistan and— in Violation of its Own Assurances—Prevents Him from Returning to Turkey*

In January 2018, the Turkmen Embassy in Ankara, Turkey approached Mr. Omarkuliev and expressed interest in supporting the Turkmen Students' Association.¹⁶ On February 14, 2018, the Turkmenistan consul in Ankara, Myrat Akmamedov, invited Mr. Omarkuliev to Ashgabat, Turkmenistan to participate in a preparatory event for the parliamentary elections, scheduled to take place in March 2018.¹⁷ Mr. Akmamedov assured Mr. Omarkuliev that

⁷ See e.g., Freedom House Report (discussing Turkmen government surveillance of citizens and limitations on freedom of movement); Committee to Protect Journalists, *10 Most Censored Countries* (Sept. 10, 2019), <https://cpj.org/reports/2019/09/10-most-censored-eritrea-north-korea-turkmenistan-journalist.php#3> (discussing state control of media and the internet and repression of information).

⁸ Crude Accountability, *Turkmenistan*, <https://crudeaccountability.org/campaigns/turkmenistan/>.

⁹ Human Rights Watch, *World Report 2019: Turkmenistan 597*, https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2019.pdf [hereinafter "HRW 2019 World Report"].

¹⁰ Freedom House Report, at E2.

¹¹ Letter Written by Mr. Omarkuliev (Mar. 2018) (attached hereto as Annex I); Conversation with [Source] (Feb. 2020) (on file with counsel).

¹² *Father of Omruzak Omarkuliyev, an activist student, sentenced to 20 years, died*, Хроника Туркменистана (Jun. 22, 2018) (in Russian), <https://www.hronikatm.com/2018/06/skonchalsya-otets-omruzaka-omarkulieva-studenta-aktivista-osuzhdenного-na-20-let/>.

¹³ Letter Written by Mr. Omarkuliev (Mar. 2018) (attached hereto as Annex I).

¹⁴ *Id.*; List of the Disappeared in Turkmenistan's Prisons, at 45.

¹⁵ Letter Written by Mr. Omarkuliev (Mar. 2018) (attached hereto as Annex I).

¹⁶ Letter from [Source] regarding Correspondence with Mr. Omarkuliev (Dec. 11, 2019) (submitted to the Working Group along with this Petition); RFE/RL, *The Turkmen President Is Alive, But What About His Prisoners?* (Aug. 20, 2019 16:18 GMT), <https://www.rferl.org/a/turkmen-president-berdymukhammedov-prisoners/30119687.html>.

¹⁷ Letter Written by Mr. Omarkuliev (Mar. 2018) (attached hereto as Annex I); Turkmen.news, *Student Omruzak Umarmuliev is Flying to Turkmenistan. Lured There On False Pretenses, He's Been Sentenced to a Lengthy Prison Term* (Jun. 19, 2019), <https://en.turkmen.news/human-rights/omruzak-umarmuliev-turkmenistan/>.

Turkmenistan's Central Election Commission (CEC) would pay for Mr. Omarkuliev's return travel expenses.¹⁸ Mr. Omarkuliev accepted the invitation, viewing the trip to Ashgabat as an opportunity to help develop democracy in his home country.¹⁹

After the event had concluded, Mr. Omarkuliev attempted to return to Turkey, but Turkmen authorities repeatedly prevented him from leaving Turkmenistan. On February 22, 2018, Mr. Omarkuliev arrived at Ashgabat International Airport, intending to return to Turkey with the ticket the CEC had purchased for him, but Turkmen border officials prohibited him from boarding his flight.²⁰ At first, these officials said that there was a technical issue reading his passport, but on the same day Mr. Omarkuliev went to the Migration Office at the airport and was informed there was no such issue.²¹

Mr. Omarkuliev remained at the airport the night of February 22, 2018, planning to catch the next flight to Turkey.²² However, on February 23, 2018, Turkmen officials informed Mr. Omarkuliev that he was subjected to a travel ban.²³ They provided no explanation to Mr. Omarkuliev for banning him from traveling.²⁴ Between February 22 and March 1, 2018, he remained at the airport, in the continued hope that he would be able to board a flight to return to his wife in Turkey.²⁵

While he was in the Ashgabat airport, Mr. Omarkuliev appealed to three Turkmen government departments to authorize his return to Turkey: the Ministry of Foreign Affairs, the Ministry of Internal Affairs, and the Prosecutor General's Office.²⁶ None of these offices responded to his appeals with any form of assistance. Instead, they merely referred him back to the same officials who had previously prevented him from leaving Turkmenistan.²⁷

Seeking help to return to Turkey, Mr. Omarkuliev tried publicizing his ordeal. Between February 22 and March 9, 2018, he spoke to international press and independent Turkmen-language websites hosted abroad.²⁸ Although some of these websites had been highly critical of Turkmen President Berdymukhammedov, Mr. Omarkuliev said nothing that could fairly be construed as criticism of the President.²⁹ Following this media coverage, agents from the

¹⁸ *Id.*

¹⁹ Letter Written by Mr. Omarkuliev (Mar. 2018) (attached hereto as Annex I); RFE/RL, *The Turkmen President Is Alive*, *supra* note 16.

²⁰ Letter Written by Mr. Omarkuliev (Mar. 2018) (attached hereto as Annex I).

²¹ *Id.*

²² *Id.*; Prove They Are Alive!, *List of the Disappeared in Turkmenistan's Prisons* (Sep. 2018), 39-40, http://provetheyarealive.org/wp-content/uploads/2018/09/List-of-the-disappeared-in-TM-prisons_Prove_Sept-2018_eng.pdf [hereinafter "2018 List of the Disappeared in Turkmenistan's Prisons"].

²³ *Id.* at 39-40.

²⁴ *Id.*

²⁵ Letter Written by Mr. Omarkuliev (Mar. 2018) (attached hereto as Annex I).

²⁶ 2018 List of the Disappeared in Turkmenistan's Prisons, at 39-40; Radio Azatlyk, *Organizer of Turkmen student community in Turkey imprisoned in Turkmenistan*, REF/RL (Jun. 13, 2018) (in Russian), <https://rus.azathabar.com/a/29287171.html>.

²⁷ Letter Written by Mr. Omarkuliev (Mar. 2018) (attached hereto as Annex I); 2018 List of the Disappeared in Turkmenistan's Prisons, at 39-40; Radio Azatlyk, *supra* note 26.

²⁸ Letter Written by Mr. Omarkuliev (Mar. 2018) (attached hereto as Annex I); RFE/RL, *The Turkmen President Is Alive*, *supra* note 16; 2019 List of the Disappeared in Turkmen Prisons, at 44-45.

²⁹ *Id.*

Ministry for National Security (MNB)—the secret police agency in Turkmenistan—began threatening him.³⁰

On March 9, 2018, Mr. Omarkuliev made a final attempt to board a flight to Istanbul, but Turkmen authorities again blocked him.³¹ He reported this most recent unsuccessful attempt to leave Turkmenistan to RFE/RL’s Turkmen-language service.³² On March 14 or 15, 2018, Mr. Omarkuliev went to the U.S. Embassy in Ashgabat to speak with U.S. authorities about his case.³³ The result of his appeal to U.S. authorities is unknown. On that same day, Turkmen immigration authorities contacted Mr. Omarkuliev and told him that they would allow him to return to Turkey in two days’ time.³⁴ Sources then in contact with Mr. Omarkuliev did not hear from him after March 15, 2018.³⁵

c. Mr. Omarkuliev is Arrested

Turkmen authorities arrested and disappeared Mr. Omarkuliev on or soon after March 15, 2018.³⁶ No one notified his family of his arrest.³⁷ Further details—including the location, which forces were involved, or whether the forces provided grounds for the arrest—are unknown, as the Turkmenistan government has never released any such information and has denied all access to Mr. Omarkuliev. Until the government announced his sentence (see section 2(d) immediately below), it made no comment at all about Mr. Omarkuliev. To date, the government has not disclosed his whereabouts or provided his family any information about his status.³⁸

d. Mr. Omarkuliev is Sentenced After a Closed-Door Conviction and is Imprisoned

In mid-May 2018, the government announced that Mr. Omarkuliev had been sentenced to 20 years “deprivation of liberty,” with the first five years to be spent in prison.³⁹ It is unclear what the following 15 years of “deprivation of liberty” will entail.⁴⁰ Mr. Omarkuliev had been tried and convicted behind closed doors, and virtually nothing is known about his trial or even the charges against him.⁴¹

³⁰ 2018 List of the Disappeared in Turkmenistan’s Prisons, at 39-40.

³¹ Letter Written by Mr. Omarkuliev (Mar. 2018) (attached hereto as Annex I).

³² Radio Azatlyk, *supra* note 26.

³³ Letter from [Source] regarding Correspondence with Mr. Omarkuliev (Dec. 11, 2019) (submitted to the Working Group along with this Petition).

³⁴ Conversation with [Source] (Dec. 12, 2019).

³⁵ Letter from [Source] regarding Correspondence with Mr. Omarkuliev (Dec. 11, 2019) (submitted to the Working Group along with this Petition).

³⁶ RFE/RL, *The Turkmen President Is Alive*, *supra* note 16; 2019 List of the Disappeared in Turkmen Prisons, at 44-45.

³⁷ Conversation with [Source] (Dec. 12, 2019).

³⁸ RFE/RL, *The Turkmen President Is Alive*, *supra* note 16; RFE/RL, *Father of Turkmen Student Activist Dies After Son’s Arrest, and His House Is Under Surveillance* (Jun. 25, 2018), <https://rus.azathabar.com/a/29318320.html> (in Russian).

³⁹ Chronicles of Turkmenistan, *Father of Omruzak Omarkuliev, a Student Activist Sentenced to 20 Years in Prison, Dies* (June 22, 2018), <https://en.hronikatm.com/2018/06/father-of-omruzak-omarkuliev-a-student-activist-sentenced-to-20-years-in-prison-dies/>; 2018 List of Disappeared in Turkmenistan’s Prisons, at 39-40.

⁴⁰ 2019 List of the Disappeared in Turkmen Prisons, at 45.

⁴¹ 2018 List of Disappeared in Turkmenistan’s Prisons, at 39-40; Chronicles of Turkmenistan, *supra* note 39.

Reports have emerged that Mr. Omarkuliev is imprisoned in Ovadan-Depe prison.⁴² However, the government has denied family members and others all access to Mr. Omarkuliev, and it is impossible to confirm his whereabouts.

After hearing about Mr. Omarkuliev's conviction and imprisonment, Mr. Omarkuliev's father, who was then living in Dostluk in the Lebap region of Turkmenistan, suffered a heart attack; he died in a hospital three days later.⁴³ The government did not permit Mr. Omarkuliev to visit his father in the hospital or to attend the funeral, and it is unclear whether it ever informed him of his father's heart attack or death.⁴⁴

Following the Turkmen government's disclosure of Mr. Omarkuliev's conviction and sentence, agents of the MNB have repeatedly harassed and pressured members of his family in Turkmenistan.⁴⁵ MNB agents have threatened Mr. Omarkuliev's relatives, and his family home is under surveillance.⁴⁶ Apparently in order to keep the family from publicly speaking about Mr. Omarkuliev's situation, the Turkmen government has reportedly subjected his family to persistent interrogation and photo surveillance.⁴⁷ As a result, members of the community have become fearful of interacting with Mr. Omarkuliev's family. Indeed, many community members did not attend the funeral of Mr. Omarkuliev's father due to pressure from authorities.⁴⁸

e. Current Status

Turkmenistan continues to hold Mr. Omarkuliev in detention. Although the Turkmen government now claims that Mr. Omarkuliev has been serving in Turkmenistan's army all this time since his disappearance; journalists familiar with the situation have concluded that such claims are highly suspect.⁴⁹ The best available information is that Turkmenistan continues to hold Mr. Omarkuliev incommunicado in Ovadan-Depe prison. Turkmenistan has neither permitted anyone to have contact with Mr. Omarkuliev to confirm his health status, nor released any information regarding Mr. Omarkuliev's health. Nevertheless, conditions in Ovadan-Depe prison are reported to be abhorrent.⁵⁰ Mr. Omarkuliev has approximately three years remaining on the custodial detention portion of his sentence.⁵¹

⁴² *Id.*; 2019 List of the Disappeared in Turkmen Prisons, 44-45; RFE/RL, *The Turkmen President Is Alive*, *supra* note 16; Radio Azatlyk, *supra* note 26.

⁴³ RFE/RL, *The Turkmen President Is Alive*, *supra* note 16; RFE/RL, *Father of Turkmen Student Activist Dies*, *supra* note 38.

⁴⁴ *Id.*

⁴⁵ 2018 List of the Disappeared in Turkmenistan's Prisons, at 39-40.

⁴⁶ RFE/RL, *Father of Turkmen Student Activist Dies*, *supra* note 38.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Ron Synovitz and Farruh Yusupov, 'Dubious' Turkmen Video Claims Missing Activist Joined Army, Dead Father Still Alive, RFE/RL (Sept. 21, 2019 08:38 GMT), <https://www.rferl.org/a/turkmenistan-omarkuliev-dubious-turkmen-video-missing-activist-joined-army-dead-father-still-alive/30176383.html>.

⁵⁰ For information on Ovadan-depe prison see Prove They Are Alive!, *Five Months in the Secret Ovadan Depe Prison* (Jun. 2017), http://provetheyarealive.org/wp-content/uploads/2017/06/Five_Months_in_Ovan_Depe.pdf; Prove They Are Alive!, *The Ovadan Depe Prison: Medieval Torture in Modern Turkmenistan* (Sept. 2014), <https://provetheyarealive.org/wp-content/uploads/2014/09/FInal-O-D-Report-September-2014-compressed.pdf>; American Association for the Advancement of Science (AAAS), *Geospatial Technologies and Human Rights Project: An evaluation of Ovadan-Depe Prison using high-resolution satellite imagery* (Sept. 2014), <https://www.aaas.org/sites/default/files/s3fs-public/reports/AAAS-Turkmenistan-Prison-92014.pdf>.

⁵¹ 2019 List of the Disappeared in Turkmen Prisons, at 45.

B. Legal Analysis

The arrest and detention of Mr. Omarkuliev is arbitrary under Categories I, II and III of the Working Group’s Revised Methods of Work.⁵² The detention is arbitrary under Category I because Mr. Omarkuliev was detained without sufficient legal justification. The detention is arbitrary under Category II because Mr. Omarkuliev’s detention resulted from and amounted to reprisal for the legitimate exercise of his rights to freedom of association, as well as his right to freedom of expression. The detention is arbitrary under Category III because the Turkmen government’s arrest, detention and prosecution of Mr. Omarkuliev failed to meet minimum standards of due process.

1. Arbitrary Deprivation of Liberty under Category I

A detention is arbitrary under Category I when there is no legal basis or justification for it.⁵³ The Working Group has found a lack of legal basis for the purposes of Category I when the Government holds an individual incommunicado,⁵⁴ as well as when an individual is arrested without legal basis justifying the arrest.⁵⁵ Mr. Omarkuliev’s detention is arbitrary under Category I both because he is being held incommunicado and because Turkmenistan lacked a legal basis to justify his arrest.

a. Turkmenistan is holding Mr. Omarkuliev incommunicado

The Working Group has consistently found that “holding a person incommunicado breaches the right to challenge the lawfulness of detention before a judge, in view of articles 8, 10 and 11 of the Universal Declaration of Human Rights.”⁵⁶ Moreover, the UN Human Rights Committee in its General Comment No. 35 has argued that Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR) prohibits incommunicado detention.⁵⁷ And the Working Group has emphasized that “[p]rolonged incommunicado detention creates conditions that may lead to violations of the Convention against Torture and Other Cruel, Inhuman, or

⁵² 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), U ICCPR, 999 U.N.T.S. 172, art. 9(1) (Dec. 16, 1996) [hereinafter “ICCPR”]. An arbitrary deprivation of liberty is expressly prohibited under international law. *Id.*; *See also Universal Declaration of Human Rights*, G.A. Res. 217A (III) U.N. Doc. A/810 [hereinafter “UDHR”], at art. 9, (1948) (“No one shall be subjected to arbitrary arrest, detention or exile.”); *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49, at Principle 2 (“Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law[.]”) [hereinafter “Body of Principles”].

⁵³ *Report of the Working Group on Arbitrary Detention*, 16th Sess., U.N. Doc. A/HRC/16/47, at Annex 8(b) (Jan. 19, 2011), <https://undocs.org/A/HRC/16/47> [hereinafter “Revised Methods of Work”].

⁵⁴ *Wang Quanzhang et al. v. China*, UN Working Group on Arbitrary Detention, Opinion No. 62/2018, ¶¶ 55-56 (Oct. 12, 2018); OHCHR, Fact Sheet No. 26, *The Working Group on Arbitrary Detention 2*, <https://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

⁵⁵ *Gargari v. Mexico*, UN Working Group on Arbitrary Detention, Opinion No. 58/2016, ¶ 21-22 (Nov. 25, 2016), <https://www.unwgadatabase.org/un/Document.aspx?id=3283>.

⁵⁶ *Wang Quanzhang*, WGAD Opinion No. 62/2018, ¶ 59.

⁵⁷ *General Comment No. 35, Article 9 (Liberty and security of person)*, U.N. Human Rights Committee, ¶ 35, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014), <https://undocs.org/CCPR/C/GC/35> [hereinafter “General Comment No. 35”]

Degrading Treatment or Punishment,”⁵⁸ to which Turkmenistan is a party.⁵⁹ In fact, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has said that compliance with international law requires, at “minimum, the prohibition of all secret and incommunicado detention.”⁶⁰ The Working Group has stated that there should be “no waiting period” for an individual to challenge the “alleged torture or other ill-treatment, or risk of such treatment, or incommunicado detention.”⁶¹

Here, Turkmenistan is holding Mr. Omarkuliev incommunicado and has violated his right to be free from arbitrary detention. Mr. Omarkuliev was arrested in secret and months passed between his disappearance and any word from government authorities.⁶² Throughout that time, the government has not officially informed anyone of Mr. Omarkuliev’s whereabouts or permitted anyone to communicate with him.⁶³ The government tried and convicted Mr. Omarkuliev in secret; Turkmen authorities did not permit him to communicate with anyone throughout that closed-door process.⁶⁴ The only information Turkmenistan has ever provided is that Mr. Omarkuliev was sentenced to 20 years “deprivation of liberty.”⁶⁵ To this day, Turkmen authorities have prohibited independent persons and organizations from confirming Mr. Omarkuliev’s detention at Ovadan-depe prison.⁶⁶ Mr. Omarkuliev was not even permitted access to family members after his father suffered a heart attack and died three days after hearing about his son’s sentence.⁶⁷

The secret detention of Mr. Omarkuliev violates his rights protected under Article 9(3) of the ICCPR and articles 8, 10, and 11 of the Universal Declaration on Human Rights (UDHR) because he cannot challenge his detention. Turkmenistan’s prolonged incommunicado detention of Mr. Omarkuliev violates the minimum requirements of international law, as such conditions may amount to torture or increase the risk Mr. Omarkuliev suffers torture. Thus, by holding him incommunicado, Turkmenistan has deprived Mr. Omarkuliev of his liberty under Category I.

b. Turkmenistan Has Failed to Provide Any Legal Justification for Mr. Omarkuliev’s Arrest and Continued Detention

Article 9(1) of the ICCPR provides that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”⁶⁸ The UDHR further requires that there be an offense, clearly defined in national or international criminal law that puts the arrestee on notice that his conduct is unlawful.⁶⁹ States are obliged to ensure that

⁵⁸ *Yu Wensheng v. China*, UN Working Group on Arbitrary Detention, Opinion No. 15/2019, ¶ 41 (May 29, 2019) (citing Report of the Committee against Torture, A/54/44 ¶ 182).

⁵⁹ United Nations Human Rights, Office of the High Commissioner, *Ratification of 18 International Human Rights Treaties*, Turkmenistan, <https://indicators.ohchr.org/>.

⁶⁰ Manfred Nowak, *Report of the special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/13/39/Add.5, ¶ 156 (Feb. 5, 2010), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/10/6/94/PDF/G1010694.pdf?OpenElement>.

⁶¹ Working Group on Arbitrary Detention, *United Nations Basic Principles and Guidelines on the right of anyone deprived of their liberty to bring proceedings before a court*, ¶ 83, WGAD/CRP.1/2015 (May 4, 2015).

⁶² RFE/RL, *Father of Turkmen Student Activist Dies*, *supra* note 38; RFE/RL, *The Turkmen President Is Alive*, *supra* note 16.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ ICCPR art. 9(1).

⁶⁹ UDHR art. 9.

“[a]ny substantive grounds for arrest or detention [are] prescribed by law and [] defined with sufficient precisions to avoid overly broad or arbitrary interpretation or application.”⁷⁰

Here, Turkmenistan has failed to articulate *any* legal basis for Mr. Omarkuliev’s arrest and continued detention. Turkmenistan has provided no information beyond announcing that Mr. Omarkuliev had been convicted of some unknown offenses and sentenced to 20 years “deprivation of liberty,” with the first 5 years to be served in prison. Turkmenistan has not even attempted to discharge its legal obligation to articulate substantive grounds for Mr. Omarkuliev’s arrest. Because it has failed to justify Mr. Omarkuliev’s arrest and continued detention, as well as by holding him incommunicado, Turkmenistan’s detention of Mr. Omarkuliev is arbitrary under Category I.

2. Arbitrary Deprivation of Liberty under Category II

A detention is arbitrary under Category II of the Working Group’s Revised Methods of Work when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and freedom of association.⁷¹ The Government arbitrarily arrested and detained Mr. Omarkuliev because he exercised both of these fundamental rights.

a. Turkmenistan violated Mr. Omarkuliev’s Right to Freedom of Expression and Association

Mr. Omarkuliev’s detention is arbitrary under Category II because the government of Turkmenistan imprisoned him for exercising his right to freedom of expression provided for in article 19 of the ICCPR and his right to freedom of association provided in article 21 of the ICCPR.

Article 19(2) of the ICCPR guarantees that “[e]veryone shall have the right to freedom of expression.”⁷² Article 19 of the UDHR confirms this.⁷³ Freedom of expression is “indispensable” to the person and “essential for any society.”⁷⁴ And “[t]he obligation to respect freedoms of opinion and expression is binding on every State party as a whole.”⁷⁵ This right protects the expression of all types of subjective opinion, even those which are politically critical of governments.⁷⁶ But its scope is not limited to political expression. Indeed, the Working Group has recognized that article 19(2) “protects all forms of expression and the means of their dissemination.”⁷⁷ The right to freedom of expression is also protected under Article 28 of the Constitution of Turkmenistan.⁷⁸

⁷⁰ General Comment No. 35, ¶ 12.

⁷¹ Revised Methods of Work, Category III, at ¶ 8b.

⁷² ICCPR art. 19(2).

⁷³ UDHR art. 19 (“Everyone has the right to freedom of opinion and expression.”).

⁷⁴ *General Comment No. 34, Article 19: Freedom of opinion and expression*, U.N. Human Rights Committee (Sep. 12, 2011), ¶ 2, CCPR/C/GC/34 [hereinafter “General Comment No. 34”].

⁷⁵ *Id.* ¶ 7.

⁷⁶ MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS; CCPR COMMENTARY 443-444 (2nd ed., Kehl am Rhein: Engel, 2005).

⁷⁷ *See, e.g., Mestan Yayman v. Turkey*, UN Working Group on Arbitrary Detention, Opinion No. 42/2018, ¶ 89 (Oct. 18, 2018); *Ahmet Caliskan v. Turkey*, UN Working Group on Arbitrary Detention, Opinion No. 43/2018, ¶ 84 (Oct. 11, 2018); *Maksat Kakabaev et al. v. Turkmenistan*, UN Working Group on Arbitrary Detention, Opinion No. 5/2013 ¶ 45 (Jul. 25, 2013).

⁷⁸ CONSTITUTION OF TURKMENISTAN, art. 28.

Freedom of association is also protected under international law. Article 22(1) of the ICCPR states that “[e]veryone shall have the right to freedom of association with others.”⁷⁹ Article 20 of the UDHR further provides: “Everyone has the right to freedom of peaceful assembly and association.”⁸⁰ The Human Rights Committee has recognized that the freedom of association is essential to the recognition of other human rights.⁸¹ The Working Group has noted that the freedom of association covers a broad array of organizations, including trade unions, non-governmental organizations, private businesses, and media organizations.⁸² “[T]he right to form and join an association is an inherent part of the right to freedom of association.”⁸³ Furthermore, the right to freedom of expression is also protected under Article 30 of the Constitution of Turkmenistan.⁸⁴

Here, Turkmenistan targeted Mr. Omarkuliev on the basis of his founding and participating in a student association, as well as communicating with media outlets. These actions are protected by the right to freedom of expression. The government of Turkmenistan used his involvement in the Turkmen Students’ Association first as a pretext to lure him into the country and then as grounds for his arbitrary detention. Accordingly, the government prevented Mr. Omarkuliev from leaving Turkmenistan, and eventually arrested and imprisoned him. As discussed in Part I of this petition, this conduct on the part of the Turkmen government is consistent with its broader treatment of political individuals and independent organizations, including the participation of Turkmen nationals abroad in such organizations. As such, Turkmenistan is holding Mr. Omarkuliev and arbitrarily detaining him in contravention of the State’s obligations under article 19(2) of the ICCPR which guarantees his right to freedom of expression.

Turkmenistan, moreover, arrested and is arbitrarily detaining Mr. Omarkuliev because he exercised his right to freedom of expression by communicating with the media. Turkmenistan arrested, convicted, and detained Mr. Omarkuliev after he told international and independent media organizations that the Turkmen government was not permitting him to leave the country and return to his studies in Turkey. Turkmenistan’s detention of Mr. Omarkuliev on this ground is of a piece with its history of suppressing free press outlets.⁸⁵ It was on this basis as well—Mr. Omarkuliev’s protected right to express his story and his views—that Turkmenistan is holding Mr. Omarkuliev in arbitrary detention, in contravention of the State’s obligations under article 19 of the ICCPR.

The Turkmen government also violated Mr. Omarkuliev’s right to freedom of association. Mr. Omarkuliev’s founding of, and participation in, the Turkmen Students’ Association was protected by Mr. Omarkuliev’s right of association, as guaranteed by article 22 of the ICCPR.

⁷⁹ ICCPR art. 22(1).

⁸⁰ UDHR art. 20(1).

⁸¹ *General Comment No. 25: Article 25*, U.N. Human Rights Committee (Jul. 12, 1996), ¶ 26, CCPR/C/21/Rev.1/Add.7.

⁸² *Mahmoud Hussein Gomaa Ali v. Egypt*, UN Working Group on Arbitrary Detention, Opinion No. 83/2017, ¶ 74 (Jan. 15, 2018).

⁸³ Maina Kiai, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, ¶ 53, A/HRC/20/27 (May 21, 2012), https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf.

⁸⁴ CONSTITUTION OF TURKMENISTAN, art. 30.

⁸⁵ See, e.g., HRW 2020 World Report, at 581; Committee to Protect Journalists, *10 Most Censored Countries* (Sept. 10, 2019), <https://cpj.org/reports/2019/09/10-most-censored-eritrea-north-korea-turkmenistan-journalist.php#3>; Reporters Without Borders, *Turkmenistan* (2020), <https://rsf.org/en/turkmenistan>.

Turkmenistan violated international law by targeting Mr. Omarkuliev for this protected conduct.⁸⁶ The Turkmen government's secret arrest, conviction, and continued detention of Mr. Omarkuliev violates his freedom of association protected by article 22 of the ICCPR.

b. None of the Exceptions Apply

Although the rights to freedom of expression and of association under international law are not absolute, the permissible restrictions are few and narrow. Article 19(3) permits a State to impose restrictions on the freedom of expression only when they “are provided by law and are necessary [f]or the respect of rights or reputations of others [or] [f]or the protection of national security or of public order, or of public health or morals.”⁸⁷ Similarly, as to freedom of association, article 22 of the ICCPR provides: “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”⁸⁸ Any restriction must not put the right itself in jeopardy.⁸⁹

The bases upon which a State may restrict these freedoms is narrow. Any restriction must be based on grounds expressly set out in ICCPR articles 19(3) and 22,⁹⁰ and the burden is on the State party to establish that any restriction is permitted by those provisions.⁹¹ The restriction must be necessary for a legitimate purpose⁹² and proportional.⁹³ When asserting a restriction is necessary a state must both precisely identify the threat on which it acted and why that action was necessary.⁹⁴

Turkmenistan cannot meet this burden. It has no legal justification for restricting Mr. Omarkuliev's freedoms of expression and association. The Turkmen government has never provided any justification for arresting Mr. Omarkuliev and detaining him incommunicado. Turkmenistan's restriction of Mr. Omarkuliev's freedom of expression and association is unnecessary and disproportionate, and lacks any legitimate purpose.

Even if Turkmenistan could show a legitimate purpose, which it has not done, the restrictions on Mr. Omarkuliev would be neither necessary nor proportional. Such restrictions are not necessary because Turkmenistan would have less restrictive means of protecting itself against any perceived threat emanating from Mr. Omarkuliev and the Turkmen Students' Association. Nor is Turkmenistan's conduct in this case proportionate to this hypothetical legitimate purpose. To show proportionality, the State must “establish[] a direct and immediate connection between the expression and the threat.”⁹⁵ Turkmenistan is unable to show such a “direct and immediate”

⁸⁶ *Jean-Marie Michel Mokoko v. Congo*, UN Working Group on Arbitrary Detention, Opinion No. 56/2018, ¶ 48 (Nov. 8, 2018).

⁸⁷ ICCPR, art. 19(3).

⁸⁸ ICCPR art. 21.

⁸⁹ *General Comment No. 34, Article 19: Freedom of opinion and expression*, U.N. Human Rights Committee, ¶ 21, U.N. Doc. CCPR/C/GC/34 (Sep. 12, 2011) [hereinafter “General Comment No. 34”].

⁹⁰ General Comment No. 34, ¶ 22.

⁹¹ *Id.* ¶ 27.

⁹² *Id.* ¶ 33.

⁹³ *Id.* ¶ 34.

⁹⁴ *Shin v. Rep. of Korea*, Comm'n No. 926/2000, ¶ 7.3, 80th Sess., Human Rights Comm., U.N. Doc. CCPR/C/80/D/926/2000 (Mar. 16, 2004.).

⁹⁵ General Comment No. 34, ¶ 35.

connection between anything Mr. Omarkuliev said, or his involvement with the Turkmen Students' Association, and any threat to the Turkmen State. Secretly arresting, trying and detaining a person for founding and participating in a student organization and communicating with media is certainly not proportionate conduct on the part of a State.

Accordingly, the Turkmenistan's detention of Mr. Omarkuliev on the basis of his exercise of his rights to freedom of expression and association violates articles 19(2) and 22(1) of the ICCPR and articles 19 and 20 of the UDHR. As a result, his detention is arbitrary under Category II.

3. Arbitrary Deprivation of Liberty under Category III

According to Category III of the Working Group's Revised Methods of Work, a deprivation of liberty is arbitrary "[w]hen the total or partial non-observance of international norms relating to the right to a fair trial, spelled out in the UDHR and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character."⁹⁶ Due Process is at the core of the right to a fair trial. The minimum international standards of due process are established in the ICCPR, UDHR, the Body of Principles for the Protection of All persons under any Form of Detention or Imprisonment (the "Body of Principles"), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules").⁹⁷

a. Turkmenistan Violated Mr. Omarkuliev's Right Not to Be Subjected to Arbitrary Arrest

Article 9 of the ICCPR guarantees "the right to liberty and security of persons," which means "[n]o one shall be subject to arbitrary arrest or detention" and that any deprivation of this liberty must be "on such grounds and in accordance with such procedures as are established by law."⁹⁸ Article 9 safeguards the rights of an individual to: (1) prompt notification of reasons for arrest and any charges; (2) a prompt hearing before a judge; and (3) an avenue to challenge the lawfulness of detention before a court.⁹⁹ This right to be free from arbitrary arrest is also enshrined in the UDHR at article 9.¹⁰⁰ The arbitrariness of an arrest is not determined by reference to local law, but must instead be based on a broader examination of relevant internationally recognized elements including "inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality."¹⁰¹ Turkmenistan has violated each of these rights in Mr. Omarkuliev's case.

i. Turkmenistan Violated Mr. Omarkuliev's Right to Notice of Reasons for Arrest and Charges Brought Against Him

Article 9(2) of the ICCPR provides that an individual who has been arrested "be informed, at the time of arrest, of the reasons for his arrest and [] be promptly informed of any charges

⁹⁶ Revised Methods of Work, at Category III, ¶ c.

⁹⁷ *Id.* at Category III, ¶¶ 7(a)-(b); ICCPR, arts. 9, 14.

⁹⁸ ICCPR art. 9(1).

⁹⁹ ICCPR art. 9(2)-(4).

¹⁰⁰ UDHR art. 9.

¹⁰¹ General Comment No. 35, ¶ 12.

against him.”¹⁰² That information must be communicated to the arrestee “immediately upon arrest.”¹⁰³ The government must also promptly inform the arrestee of criminal charges, so an initial determination as to the lawfulness of the arrest can be made.¹⁰⁴ Each of these requirements serves the overarching purpose of article 9, which is to ensure that no individual is subject to arbitrary detention and thus deprived of their right to liberty and security of the person.

In violation of article 9(2) of the ICCPR, Turkmenistan secretly arrested Mr. Omarkuliev and held him for approximately two months before providing any information on his case. Based on available information, Turkmenistan failed to immediately avail Mr. Omarkuliev of the reasons for his arrest. Turkmenistan also failed to promptly bring Mr. Omarkuliev before a judge so that he could be informed of the charges against him. This violated his rights embodied in article 9(2).

ii. Turkmenistan Violated Mr. Omarkuliev’s Rights to Be Promptly brought before a Judge and to Challenge the Arbitrariness of His Detention

Article 9(3) of the ICCPR provides, in part, that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”¹⁰⁵ The Human Rights Committee has stated that any detention lasting longer than 48 hours “must remain absolutely exceptional and be justified under the circumstances.”¹⁰⁶ The Human Rights Committee has also explained that “[i]ncommunicado detention that prevents prompt presentation before a judge inherently violates paragraph 3” of article 9.¹⁰⁷

A detained individual has the right to challenge the arbitrariness of his detention. Article 9(4) of the ICCPR provides that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”¹⁰⁸ The right to challenge the lawfulness of detention is also enshrined in Principle 1 of the Body of Principles.¹⁰⁹ Indeed, the Working Group has held that this right “is not derogable under international law.”¹¹⁰ Incommunicado detention inherently violates the right to challenge the lawfulness of detention,¹¹¹ as well as Rules 58 and 61 of the Mandela Rules which require a State to permit a prisoner to have contact with family members and legal counsel, respectively.¹¹²

¹⁰² ICCPR art. 9(2).

¹⁰³ General Comment No. 35, ¶ 27.

¹⁰⁴ *Id.* ¶ 30.

¹⁰⁵ ICCPR art. 9(3).

¹⁰⁶ General Comment No. 35, ¶ 33.

¹⁰⁷ *Id.* ¶ 35.

¹⁰⁸ ICCPR art. 9(4).

¹⁰⁹ Body of Principles, Principle 1, ¶ 19.

¹¹⁰ Body of Principles, Principle 4, ¶ 22.

¹¹¹ General Comment No. 35, ¶ 35.

¹¹² *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, Rules 58 & 61, G.A. Res. 70/175, 70th Sess., U.N. Doc. A/RES/70/175 (Jan. 8, 2016), <https://undocs.org/A/RES/70/175>.

Here, Turkmenistan appears to have held Mr. Omarkuliev for approximately two months before he ever appeared before a judicial tribunal.¹¹³ Furthermore, his trial was closed, which itself violated Mr. Omarkuliev's rights as stated in section 3(b) below. Furthermore, since the time of arrest, Mr. Omarkuliev has been held incommunicado, which is inherently a violation of his right to be promptly brought before a judicial to determine the lawfulness of his detention.¹¹⁴ As a result, Turkmenistan violated Mr. Omarkuliev's right enshrined in article 9(3) of the ICCPR to be promptly brought before an independent judicial tribunal within a reasonable time to determine the lawfulness of his detention.

iii. Turkmenistan Violated Mr. Omarkuliev's Right to Counsel

An individual charged with a criminal offense also has the right to counsel. Article 14(3)(b) provides for the right of an individual charged with a criminal offense "to communicate with counsel of his own choosing."¹¹⁵ The Human Rights Committee has said that states "should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention."¹¹⁶ This right attaches at the time of arrest and carries through detention.¹¹⁷

Mr. Omarkuliev's incommunicado detention violates article 14(3)(b) of the ICCPR, which protects the right of an individual to communicate with legal counsel of choice. Mr. Omarkuliev has been held incommunicado since his arrest; no individuals, whether counsel or family, have been permitted to have contact with him. Because there is no indication that Turkmenistan permitted Mr. Omarkuliev to obtain counsel, of his choice or otherwise, and his family has not been able to contact him, which would likely be necessary to obtain outside counsel of his choosing, Turkmenistan has violated Mr. Omarkuliev's right to counsel.

iv. Turkmenistan Violated Mr. Omarkuliev's Right to Be Visited by Family

Principle 19 of the Body of Principles provides that "detained or imprisoned persons shall have the right to be visited by and to correspond with, in particular, members of his family . . . subject to reasonable conditions and restrictions as specified by law or lawful regulations."¹¹⁸ The UN Human Rights Committee has observed that "certain conditions of detention (such as denial of access to counsel and family) may result in procedural violations of paragraph 3 and 4 of article 9 [of the ICCPR]."¹¹⁹ Similarly, this right is protected by the Mandela Rules 43, 58, and 106.¹²⁰ As noted above, Mr. Omarkuliev has been held without access to his family for the duration of his detention. Accordingly, Turkmenistan has violated Principle 19 of the Body of Principles, as well as Rules 43, 48, and 106 of the Mandela Rules and Article 9(3) and 9(4) of the ICCPR.

¹¹³ 2019 List of the Disappeared in Turkmen Prisons, at 44-45; Conversation with [Source] (Dec. 12, 2019).

¹¹⁴ General Comment No. 35, ¶ 35.

¹¹⁵ ICCPR art. 14(3)(b).

¹¹⁶ General Comment No. 35, ¶ 35.

¹¹⁷ *Id.*

¹¹⁸ Body of Principles, Principle 19.

¹¹⁹ General Comment No. 35, ¶ 59.

¹²⁰ Mandela Rules, Rules 43, 58, 106.

b. *Turkmenistan Violated Mr. Omarkuliev’s Right to a Fair, Impartial and Public Trial*

i. *Turkmenistan Violated Mr. Omarkuliev’s Right to a Fair and Impartial Trial*

Article 14(1) of the ICCPR provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”¹²¹ This right is also codified in the article 10 of the UDHR.¹²² At a minimum, an individual charged with a criminal offense is entitled to, among other things, be promptly informed of the charges; “[t]o have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”; “to be tried without undue delay”; to be present at trial with legal assistance; and to call and examine witnesses.¹²³ These procedural guarantees, as well as the right to a public hearing, help ensure protection against arbitrary detention and further violations of human rights. The UN Human Rights Committee has emphasized that “[t]he requirement of competence, independence and impartiality of a tribunal . . . is an absolute right that is not subject to any exception.”¹²⁴ Whether a tribunal meets these standards is determined by reference to, among other things, the procedures for appointing judges and judges’ actual independence from political branches of government.¹²⁵ Indeed, “[a] situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or whether the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.”¹²⁶

Here, Mr. Omarkuliev was secretly tried and convicted on unknown charges, before an unidentified tribunal, apparently for his involvement in the Turkmen Students’ Association which he founded and for publicly speaking out (including to the media) about government authorities preventing him from leaving Turkmenistan. The government of Turkmenistan viewed Mr. Omarkuliev as a political threat. In an apparent effort to eliminate that perceived threat, the government arrested Mr. Omarkuliev and tried him in secret. If that trial occurred before a judicial tribunal at all (which is unknown because the government has never disclosed it), the tribunal by definition was, like all Turkmen courts, controlled by the executive. The lack of transparency and political motivation exhibited in Mr. Omarkuliev’s case conforms to patterns of judicial impartiality within Turkmenistan’s judiciary observed by international monitors, which report that the president of Turkmenistan’s tight control over the judiciary is used against dissidents and perceived threats.¹²⁷ Given the absence of an independent judiciary in Turkmenistan and the apparent absence of any due process afforded to Mr. Omarkuliev during proceedings, the government, in violation of article 14 of the ICCPR, failed to guarantee Mr. Omarkuliev’s right to a fair and impartial tribunal.

¹²¹ ICCPR art. 14(1).

¹²² UDHR art. 10.

¹²³ ICCPR art. 14(3).

¹²⁴ General Comment No. 32, ¶ 19.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See, e.g., 2019 U.S. State Dep’t Report; European Parliament, Directorate-General for External Policies, Policy Department, *Workshop on EU Turkmenistan relations* 8 (Mar. 2017), [https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/578041/EXPO_IDA\(2017\)578041_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/578041/EXPO_IDA(2017)578041_EN.pdf).

ii. Turkmenistan Violated Mr. Omarkuliev’s Right to Public Hearings

In addition, the criminal proceedings against Mr. Omarkuliev were not public, as required by article 14 of the ICCPR and article 10 of the UDHR. Public hearings help ensure the fairness and impartiality of proceedings—it is “an important safeguard for the interest of the individual and of society at large.”¹²⁸ To ensure that hearings are public, “[c]ourts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public.”¹²⁹

Mr. Omarkuliev was tried in secret and approximately two months passed between his arrest and any word from the government. Turkmenistan provided no information to the public about Mr. Omarkuliev’s trial and failed to allow for any public participation in it. In fact, Turkmenistan held and continues to hold him incommunicado. Thus, Turkmenistan has violated Mr. Omarkuliev’s right to a public trial in contravention of the State’s obligations in article 14 of the ICCPR.

C. Conclusion

Turkmenistan’s arrest, trial, conviction, and continued imprisonment of Mr. Omarkuliev is an extreme violation of his fundamental human rights. The Turkmen government’s conduct violates its international obligations under the ICCPR, UDHR, the Body of Principles, and the Mandela Rules.

We hereby: request that the Working Group issue an opinion finding that Mr. Omarkuliev’s ongoing detention is in violation of Turkmenistan’s obligations under the relevant provisions of the ICCPR and the UDHR; call for Mr. Omarkuliev’s immediate release; request that the Government of Turkmenistan investigate and hold accountable those responsible for the violation of Mr. Omarkuliev’s human rights, as discussed herein; and request that the Government of Turkmenistan award Mr. Omarkuliev compensation for harms suffered as a result of Turkmenistan’s unlawful actions.

V. 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 THEIR REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THERE WERE NOT TAKEN.

There is no information available about what type of domestic remedies, if any, Mr. Omarkuliev may have pursued. The Government of Turkmenistan has not permitted any outside organizations to obtain information. As a result of the secretive nature of the proceedings against Mr. Omarkuliev, there is no internal legal recourse.

¹²⁸ General Comment No. 32, ¶ 28.

¹²⁹ *Id.*


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

Maran Turner
Adam Lhedmat
Freedom Now
1750 K Street NW
7th Floor
Washington, DC 20006
United States of America
+1 (202) 223-3733 (tel)
+1 (202) 223-1006 (fax)
alhedmat@freedom-now.org

Patrick Hynds
Hogan Lovells US LLP
555 Thirteenth Street NW
Washington, DC 20004
United States of America
+1 (202) 804-7782 (tel)
+1 (202) 637-5910 (fax)
patrick.hynds@hoganlovells.c
om

Marc Gottridge
Hogan Lovells US LLP
390 Madison Avenue
New York, NY 10017
United States of America
+1 (212) 909-0643 (tel)
+1 (212) 918-3100 (fax)
marc.gottridge@hoganlovells.
com

Date: May 29, 2020

Signature: 

ANNEX I

The following is an English translation of a letter Mr. Omarkuliev wrote to [Source] on, or around, March 14, 2018. Mr. Omarkuliev had been communicating with [Source] in the days leading up to his arrest.

My name is **Omruzak Umarkuliyev**. I live in Danev District, Lebap province of Turkmenistan. I am currently studying my second year at Osmaniye Korkut Ata University, Turkey. I am the head of the Association for Solidarity and Support for Students from Turkmenistan. On February 14, 2019, I was called to Turkmenistan by Myrat Akmammedov, head of Consulate Office of Turkmenistan for Ankara upon invitation from the Special Committee under the Central Commission for holding elections and referendums in Turkmenistan. Our purpose of visit was to obtain a general information and idea about the candidates for Members of Parliament, members of the Turkmenistan's Central People's Council, provincial councils and committees to be held on March 25, and call the Turkmen students in Turkey to actively take part at the electoral districts. We attended the respective meeting on February 21.

On February 22, I planned to fly to Turkey with 7:30 – Istanbul-Ashgabat flight. But the officials of the Migration Office didn't allow me to pass. They replied to my inquiry saying "The system cannot read your passport". The same day, I visited the Migration Office to check my passport, they said there is no technical issue with my passport. But I wanted to learn about the real reasons of returning me back; but no one wanted to explain it. I arranged a meeting with the Chairman of the State Migration Office; he also didn't provide any explanation for my case. In addition, he said I won't be allowed to go abroad. Then I contacted the Ministry of Internal Affairs of Turkmenistan, the Ministry of Foreign Affairs of Turkmenistan, and the General Prosecutor's Office of Turkmenistan. All of these agencies replied to me saying none of them could help me because my case falls under the authority of the State Migration Office. In general, I had to spend my nights at the Ashgabat International Airport from February 22, the date I planned to resume my education in Turkey, until March 1. Because I didn't have the courage to return home after this embarrassing happenstance. People at all agencies and ministries I contacted for help and explanation didn't want to listen to me.

I am very patriotic, public spirited man, and I love my Motherland. Some people said that my problematic case was the consequence of my appearance at the World Turkmens program of *Azatlyk* Radio [Radio Free Europe/Radio Liberty]. But I didn't say anything contrary to the policy of Turkmenistan, and I didn't interfere in the affairs of Turkmenistan. I just wanted to raise awareness about our newly-founded Association for Solidarity and Support for Students from Turkmenistan, and sought sponsors for our activities. My speech may still be aired in *Azatlyk* Radio. But I didn't want this, and I am in desperate condition now. Because no one listens to me, and wants to help here.

Then I attempted to fly to Turkey on March 9 through Ashgabat International Airport, but they didn't allow me again. The officials said I cannot return to Turkey to continue my studies. At the present, I don't know how to deal with the problem. My wife is in Turkey now; she is also having hardships there. These writings state the events I personally experienced. Perhaps, *they* won't leave me in peace after telling about my situations at the news of the international radio program. I am

not sure what will officers of the Ministry of National Security of Turkmenistan or KGB men do to me.

I would like to present my words to the Esteemed President of ours. Please let me continue my studies in Turkey. My family is helpless with this case. My wife is waiting for me there. Thanks very much for everything.