

**Communication
to the United Nations Human Rights Committee**

In the Matter of

Mahmadali Hayit
Citizen of the Republic of Tajikistan
(“**Applicant**”)

v.

Government of the Republic of Tajikistan
(“**State**”)

*submitted for consideration under the First Optional Protocol to the International Covenant on
Civil and Political Rights*

to

The United Nations Human Rights Committee
c/o Petition Team
Office of the High Commission for Human Rights
United Nations Office Geneva
18-14 avenue de la Paix
1211 Geneva 10
Switzerland

May 18, 2021

TABLE OF CONTENTS

	<u>Page</u>
I. THE AUTHOR	1
II. THE VICTIM.....	1
III. LEGAL REPRESENTATIVE OF THE VICTIM	1
IV. THE STATE PARTY	2
V. SUMMARY OF THE CLAIM	2
VI. STATEMENT OF FACTS	3
A. Country Conditions	3
1. Political, Legal, and Social Background of the Republic of Tajikistan.....	3
i. General Background	3
2. Persecution of the Islamic Renaissance Party and Other Minority Opposition Groups	5
3. Interference with Political Participation, Freedom of Expression, and Freedom of Association	9
i. Interference with Political Participation	9
ii. Interference with Freedom of Expression and Association	9
4. Lack of Judicial Independence.....	12
5. Prison Conditions.....	13
6. Coronavirus Disease 2019 (COVID-19).....	15
B. The Arbitrary Detention of Mr. Mahmatali Hayit	16
1. Background Information	16
2. Mr. Hayit’s Arbitrary Arrest and Detention	17
3. Mr. Hayit’s Arbitrary Prosecution and Conviction.....	18
C. Mr. Hayit’s Current Condition.....	22
1. Torture.....	22

2.	Denial of Medical Treatment	24
3.	Solitary Confinement and Conditions of Detention.....	24
4.	Denial of Visits	25
5.	COVID-19.....	26
VII.	ADMISSIBILITY	26
A.	Jurisdiction.....	26
B.	Victim Status.....	26
C.	No Abuse of Submission	27
D.	Compatibility with the Provisions of the ICCPR.....	27
E.	The Matter at Issue in This Petition Is Not Being Examined Under Another Procedure	27
F.	Exhaustion of Domestic Remedies	28
VIII.	VIOLATIONS OF THE ICCPR.....	29
A.	Arrest and Pre-Trial Violations.....	29
1.	Violation of Right to Privacy Against Warrantless Searches of the Home	29
2.	Violation of the Right to Be Informed of the Reason for Arrest or Charges Against the Person	30
3.	Violation of the Right to Habeas Corpus	31
4.	Violation of the Right to Release Pending Trial	31
5.	Violation of the Right to Communicate with Counsel.....	32
6.	Violation of the Right to Have Adequate Time and Opportunity for the Preparation of a Defense.....	33
B.	Trial Violations	34
1.	Violation of the Right to a Public Hearing	34
2.	Violation of the Right to Equality Before the Courts with an Independent and Impartial Tribunal	35

3.	Violation of the Presumption of Innocence	37
4.	Violation of the Right to Examine Witnesses.....	38
C.	Violation of the Right to Be Free from Torture and Cruel, Inhuman, or Degrading Treatment or Punishment.....	38
1.	Torture and Other Abuse or Mistreatment.....	39
2.	Denial of Medical Care.....	40
3.	Solitary Confinement	41
4.	Other Substandard Prison Conditions.....	42
D.	Violation of the Right to Appeal.....	43
E.	Violation of the Rights to Freedom of Expression, Association, and a Public life under Articles 19, 22, and 25 of the ICCPR	44
IX.	CONCLUSION.....	46
X.	REMEDIES.....	46

I. THE AUTHOR

Name: Jurabekova
First Name: Savrinisso
Nationality: Tajikistan
Date of Birth: [redacted]
Place of Birth: Tajikistan
Present Address: [redacted]

II. THE VICTIM

Name: Hayit
First Name(s): Mahmatali (full birth name is Haitov Mahmatali Rahmonovich or Хаитов Махмадали Раҳмонович in Tajik and Хаитов Махмадали Раҳмонович in Russian)
Sex: Male
Nationality: Tajik
Profession: Prior to his imprisonment, Mr. Hayit was Deputy Chairman of the Islamic Renaissance Party (IRPT); Chairman of IRPT Election Department, and a member of the IRPT Political Council.
Date and Place of Birth: [redacted]
Present Whereabouts: Mr. Hayit is currently held in Tajikistan Prison No. 1, located on Mirzo Tursunzoda Street in Dushanbe, Tajikistan.
Relationship to the Author: Husband

III. LEGAL REPRESENTATIVE OF THE VICTIM

1. This petition is jointly prepared and submitted by Freedom Now and Hogan Lovells US LLP (“Hogan Lovells”) on behalf of the Author. Freedom Now and Hogan Lovells have been retained by the Author as Mr. Hayit’s pro bono international legal counsel.

2. Address for exchange of confidential correspondence:

Maran Turner
Adam Lhedmat
Karl Horberg
Freedom Now
1750 K Street, NW, 8th Floor
Washington, DC 20006
United States of America
+1 (202) 223-3733 (tel)
mturner@freedom-now.org
alhedmat@freedom-now.org
khorbeg@freedom.now.org

Marc Gottridge
Peter Bautz
Hogan Lovells US LLP
390 Madison Avenue
New York, NY 10017
United States of America
+1 (212) 918-3000 (tel)
marc.gottridge@hoganlovells.com
peter.bautz@hoganlovells.com

IV. THE STATE PARTY

3. Freedom Now and Hogan Lovells submit this petition to the United Nations Human Rights Committee (the “Committee”) against the Republic of Tajikistan (“Tajikistan”), which acceded to both the International Covenant on Civil and Political Rights (“ICCPR”) and the First Optional Protocol to the ICCPR on January 4, 1999.

V. SUMMARY OF THE CLAIM

4. Mahmatali Hayit is a well-known Tajik politician who has been imprisoned since September 2015 in violation of international and domestic law. Since 1999, Mr. Hayit has been a prominent member of the Islamic Renaissance Party of Tajikistan (“IRPT”), the preeminent opposition party in the country, and has served as the Chairman of its Election Department, a Member of its Political Council, and as Deputy Chairman. Mr. Hayit has been an outspoken critic of the President of Tajikistan, Emomali Rahmon, and his authoritarian regime.

5. The government of Tajikistan (the “Government”) significantly increased pressure on, and harassment of, the IRPT in 2015. In September 2015, the Government accused the IRPT—without evidence—of involvement in a coup attempt originating within President Rahmon’s own regime. The Government used that coup as pretext to ban and forcefully dissolve the IRPT. Mr. Hayit was arrested and detained outside his home in Dushanbe by Tajik police forces on September 16, 2015 as part of that crackdown and later charged with over a dozen crimes, including terrorism (Article 179 of the Tajik Criminal Code), organizing a criminal community or criminal organization (Article 187 of the Tajik Criminal Code), arousing national, racial, local or religious hostility (Article 189 of the Tajik Criminal Code), sabotage (Article 309 of the Tajik Criminal Code), and armed rebellion (Article 313 of the Tajik Criminal Code). Mr. Hayit was convicted after a corrupt and politically motivated trial and sentenced to life imprisonment. Mr. Hayit’s trial and conviction were conducted in violation of Mr. Hayit’s rights under the ICCPR, and the conditions of his captivity constitute ongoing violations of those rights, as summarized briefly below.

A. *The Right to Be Free from Cruel, Inhuman or Degrading Treatment or Punishment and to Be Treated with Humanity and Respect While Detained.* Mr. Hayit has been held in substandard prison conditions, repeatedly denied necessary food and medical care, and has been tortured by his captors in violation of his rights under Articles 7 and 10(1) of the ICCPR.

B. *The Right to Freedom from Arbitrary Detention.* Mr. Hayit has been arbitrarily detained, as a result of his exercise of his freedoms of expression and association and his right to take part in the conduct of public affairs, in violation of his rights under Article 9(1) of the ICCPR. In addition, his criminal conviction resulted from a trial which did not adhere to international standards of due process.

C. *The Right to a Fair Trial.* Several of Mr. Hayit’s due process rights were violated by his trial. First, Tajikistan violated Mr. Hayit’s right to a fair and public hearing before an independent and impartial tribunal under Article 14(1) of the ICCPR. The judiciary in Tajikistan is not independent and the judge acted with acute bias in favor of the prosecution throughout Mr. Hayit’s trial, which was closed to the public. Second, Tajikistan violated

Mr. Hayit's right to a presumption of innocence under Article 14(2) of the ICCPR by conducting the trial as if his conviction was a foregone conclusion and by basing the conviction on insubstantial evidence. Third, Tajikistan violated Mr. Hayit's rights to adequate time and facilities to prepare his defense and to communicate with counsel of his own choosing under Article 14(3)(b) of the ICCPR by limiting his communication with his counsel and by denying his counsel access to critical case materials. Fourth, Tajikistan violated Mr. Hayit's right to examine witnesses against him and to produce his own witnesses under Article 14(3)(e) of the ICCPR by withholding the identities of prosecution witnesses and preventing Mr. Hayit from effectively cross-examining those witnesses, and by preventing him from calling defense witnesses. Fifth, Tajikistan violated Mr. Hayit's right to a review by a higher tribunal under Article 14(5) of the ICCPR as the Tajikistan Supreme Court summarily upheld his conviction without adequate examination of the facts of the case.

D. *The Right to Freedom of Expression, Association, and Participation in the Conduct of Public Affairs.* Mr. Hayit was targeted by the Tajik government in retaliation for his participation in an opposition political party and for his criticism of President Rahmon's regime. Tajikistan thus sought to punish him for his political opinions, associations and actions as well as to prevent any future political expression, movement, or campaigning in violation of Articles 19(2), 22(1) and 25(a) of the ICCPR.

E. *The Right to Privacy as Against Warrantless Searches of the Home.* The Tajik government, by and through its police forces, conducted a warrantless search of Mr. Hayit's home on September 16, 2015, following his arrest, in violation of Article 17 of the ICCPR.

VI. STATEMENT OF FACTS

A. Country Conditions

1. Political, Legal, and Social Background of the Republic of Tajikistan

i. General Background

6. The Republic of Tajikistan ("Tajikistan") became an independent nation in 1991 after the breakup of the Soviet Union. Almost immediately afterwards, the country plunged into a bloody civil war. The war lasted from 1992 to 1997,¹ when the insurgents and the government of Tajikistan (the "Government" or the "State") finally signed a United Nations-brokered peace

¹ *Tajikistan: Rising from the Ashes of Civil War*, UNITED NATIONS DEP'T POLITICAL AFFAIRS, http://unis.unvienna.org/documents/unis/ten_stories/05tajikistan.pdf (last visited Sept. 20, 2020). The war was primarily driven by regional, militia-led conflicts, and pitted the Soviet-era ruling elite against loosely aligned ethnic and regional opposition groups. See *Tajikistan – Political Parties*, GLOB. SEC., <http://www.globalsecurity.org/military/world/centralasia/tajik-political-parties.htm> (last visited Sept. 20, 2020); *The World Factbook – Tajikistan*, U.S. CENTRAL INTELLIGENCE AGENCY (Feb. 25, 2021), <https://www.cia.gov/the-world-factbook/countries/tajikistan/#introduction>.

agreement, which resulted in a political compromise that recognized the insurgent-led United Tajik Opposition (“UTO”) as a legitimate political party.²

7. Since the war’s end, tensions have persisted between the ruling government and opposition groups. Although the Constitution of Tajikistan (the “Constitution”) provides for a multi-party system, one man has ruled the country since before the war began—President Emomali Rahmon, who is currently the leader of the People’s Democratic Party (“PDP”).³ International observers have widely criticized President Rahmon’s initial election and four subsequent re-elections as “neither free nor fair.”⁴

8. Tajikistan’s parliamentary elections in the era of the Rahmon presidency have been equally marred. The Office for Democratic Institutions and Human Rights (“ODIHR”) concluded that the parliamentary elections held in March 2015, the last in which the IRPT could legally participate,⁵ took place in a “restricted political space” and “failed to provide a level playing field for candidates.”⁶ The ODIHR similarly concluded that Tajikistan’s most recent parliamentary elections, held in March 2020, suffered “[s]ystemic infringements on fundamental political rights

² COLIN P. CLARKE & CHRISTOPHER PAUL, FROM STALEMATE TO SETTLEMENT 42 (2014). The war had devastated the country: By the time of the peace agreement, more than 50,000 people had been killed and one-tenth of the population had fled Tajikistan. See *Tajikistan Profile - Overview*, BBC NEWS (Sept. 1, 2015), <http://www.bbc.com/news/world-asia-16201033>.

³ *The World Factbook: Tajikistan*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/the-world-factbook/countries/tajikistan/> (last updated Feb. 05, 2021).

⁴ See, e.g., Joshua Norman, *The World’s Enduring Dictators: Emomali Rahmon, Tajikistan*, CBS NEWS (June 19, 2011, 9:00 PM), <https://www.cbsnews.com/news/the-worlds-enduring-dictators-emomali-rahmon-tajikistan/> (covering the 2006 re-election); see also *Tajikistan Profile – Timeline*, BBC NEWS (July 31, 2018), <http://www.bbc.com/news/world-asia-16201087> (describing concerns of international observers for various elections); *Presidential Elections in Tajikistan a Farce*, HUM. RTS. WATCH (Oct. 27, 1999, 8:00 PM), <https://www.hrw.org/news/1999/10/27/presidential-elections-tajikistan-farce> (describing the first post-civil war reelection in 1999 as a “demonstrat[ion] . . . [of] blatant bad faith in creating conditions for a fair and open vote”); Catherine Putz, *Tajikistan’s Presidential Election Yields Expected Results*, DIPLOMAT (Oct. 13, 2020), <https://thediplomat.com/2020/10/tajikistans-presidential-election-yields-expected-results/> (describing elections in Tajikistan as “ceremonial demonstration . . . without competition or a real role for citizens to make their thoughts and desires heard via the ballot box”).

⁵ See section IV.A.2 below (recounting President Rahmon’s actions banning the IRPT).

⁶ Press Release, Org. for Sec. & Co-operation in Eur., *Although Tajikistan’s Parliamentary Elections Provided Some Political Alternatives, Campaign Space Was Restricted and a Fair Count Could Not be Guaranteed, International Observers Say* (Mar. 2, 2015), <http://www.osce.org/odihr/elections/tajikistan/143311>. The campaigns were plagued by biased reporting by the dominant state-owned media, voting irregularities, and political pressure on—and even arrests of—opposition politicians, candidates, and election officials. See OFFICE FOR DEMOCRATIC INSTS. & HUMAN RIGHTS, ORG. FOR SEC. & CO-OPERATION IN EUR., REPUBLIC OF TAJIKISTAN, *PARLIAMENTARY ELECTIONS, 1 MARCH 2015: OSCE/ODIHR ELECTION OBSERVATION MISSION FINAL REPORT 13, 17–19* (2015), <https://www.osce.org/files/f/documents/a/6/158081.pdf> [hereinafter “2015 OSCE FINAL REPORT”]. The PDP was awarded 51 of the 63 seats in the 2015 elections. See *id.* at 30. All 12 remaining seats were divided among other pro-government parties. The two most significant opposition parties, including the party formerly led by Mr. Hayit, were denied even a minor voice in Parliament. See NORBERT NEUSER, EUROPEAN PARLIAMENT, *ELECTION OBSERVATION DELEGATION TO THE PARLIAMENTARY ELECTIONS IN TAJIKISTAN 4* (2015), https://www.europarl.europa.eu/cmsdata/212618/Election_report_Tajikistan_01_March_2015.pdf.

and freedoms” that “left no space for a pluralistic political debate, and genuine opposition has been removed from the political landscape.”⁷

9. President Rahmon has also manipulated the Constitution to consolidate his grip on power. For example, in December 2015 the PDP-dominated Tajikistan parliament declared President Rahmon “Leader of the Nation,” and granted him and his family lifelong immunity from prosecution.⁸ In 2016, the Constitution was amended to eliminate term limits for President Rahmon specifically, effectively allowing him to rule the country until his death.⁹ Similarly, the Constitution was amended to lower the age requirement to serve as president, which would allow President Rahmon’s eldest son, Rustam Emomali, who is now 32 years old, to succeed his father.¹⁰ Some observers have commented that these acts have laid the groundwork for President Rahmon to establish a “dynasty in Central Asia.”¹¹

2. Persecution of the Islamic Renaissance Party and Other Minority Opposition Groups

10. Since ascending to power, President Rahmon and his party have steadily eliminated any political opposition. President Rahmon exerts absolute control over the political, financial, and judicial processes in Tajikistan, and uses this control to maintain his power.¹² Numerous international observers, including Human Rights Watch and the Norwegian Helsinki Committee, have reported on the extensive efforts of the Government to detain, imprison, and silence peaceful opposition activists and critics—or supposed critics—both in Tajikistan and abroad.¹³

⁷ OFFICE FOR DEMOCRATIC INSTS. & HUMAN RIGHTS, ORG. FOR SEC. & CO-OPERATION IN EUR., REPUBLIC OF TAJIKISTAN, PARLIAMENTARY ELECTIONS, 1 MARCH 2020: ODIHR ELECTION ASSESSMENT MISSION FINAL REPORT 1 (2020), <https://www.osce.org/files/f/documents/9/9/453243.pdf>. The PDP was awarded 47 of the 63 seats in the 2020 elections. Again, the remaining seats were divided among other pro-government parties, none of which “challenged the President’s policies, scrutinised the performance of the government or opposed one another.” *Cf. id.* at 2.

⁸ *Teflon Rahmon: Tajik President Getting ‘Leader’ Title, Lifelong Immunity*, RADIO FREE EUR./RADIO LIBERTY (Dec. 10, 2015, 5:02 PM), <https://www.rferl.org/a/tajikistan-rahmon-lifelong-immunity/27419474.html> (describing how property belonging to Rahmon’s family is likewise immunized from seizure in legal proceedings).

⁹ *Tajikistan Votes to Allow President to Rule Indefinitely*, GUARDIAN (May 23, 2016, 4:03 AM), <https://www.theguardian.com/world/2016/may/23/tajikistan-votes-to-allow-president-emomali-rahmon-to-rule-indefinitely>. Although the amendment was ostensibly approved by a voter referendum, international observers pointed out that the referendum was held only after the Government banned leading political opposition groups and had “systematically eliminated . . . rivals and critics . . . to keep [Rahmon’s] hold on power.” Reid Standish, *How Tajikistan’s President Extended His Term—for Life*, FOREIGN POLICY (May 25, 2016, 11:14 AM), <http://foreignpolicy.com/2016/05/25/how-tajikistans-president-extended-his-term-for-life-rahmon-isis-migrant-imf/>.

¹⁰ *See* Standish, *supra* note 9.

¹¹ *Id.*

¹² *See Tajikistan: Severe Crackdown on Political Opposition*, HUM. RTS. WATCH (Feb. 17, 2016, 5:45 AM), <https://www.hrw.org/news/2016/02/17/tajikistan-severe-crackdown-political-opposition>.

¹³ *See, e.g., id.*; *Tajikistan: Abuse of Dissidents’ Families*, HUM. RTS. WATCH (Dec. 20, 2016, 10:00 PM), <https://www.hrw.org/news/2016/12/20/tajikistan-abuse-dissidents-families>; *International Partners Should Publicly and Unanimously Condemn Continued Crackdown*, NORWEGIAN HELSINKI COMMITTEE (Aug. 6, 2016), <https://www.nhc.no/en/international-partners-should-publicly-and-unanimously-condemn-continued-crackdown/>.

11. Prior to its dissolution by the Government in 2015, the Islamic Renaissance Party of Tajikistan (“IRPT”) was the country’s largest, and probably best known, opposition party.¹⁴ Founded in 1990, the IRPT began as one of the combatants in the Tajikistan civil war¹⁵ and formed the backbone of the UTO.¹⁶ After the war ended, the IRPT reoriented itself to become a leading moderate Islamist voice in the region.¹⁷ Although historically the IRPT held only a small number of seats (usually two) in the Tajikistan parliament, this modest representation reflected the lack of free and fair elections in Tajikistan, rather than an absence of popular support for the IRPT.¹⁸ For example, in 2005, the IRPT officially won only 8.9% of votes in parliamentary elections (a proportion approximately equivalent to two seats).¹⁹ But “domestic observers maintained that the IRPT would have received perhaps up to 30 per cent of votes in free and fair elections.”²⁰ In fact, prior to its involuntary dissolution and banning by the Government in September 2015, the IRPT was the most viable opposition party in the country.²¹

12. Perhaps in reaction to the IRPT’s popularity, in 2015, the Government increased pressure on, and harassment of, that party.²² In March 2015, the IRPT lost all of its seats for the first time since 1999, in an election fraught with fraud and government oppression.²³ Before the election, Tajikistan’s state-owned media mounted a smear campaign against the party, attempting to falsely link the IRPT and its members to extremism and moral degeneracy.²⁴ Freedom House reported that IRPT members were beaten, harassed, and imprisoned before, during, and after the election.²⁵

¹⁴ See Parvina Khamidova, *Interview with Muhiddin Kabiri Leader of the Islamic Renaissance Party of Tajikistan In-Exile*, CENT. ASIA POL’Y BRIEF, Jan. 2016, at 2, <https://app.box.com/s/mx8rhxb3iz4lf1igvekx3qvkdjipwkk2>.

¹⁵ See 1 ABC-CLIO, *War and Religion: An Encyclopedia of Faith and Conflict* 779 (Jeffrey M. Shaw & Timothy J. Demy eds., 2017).

¹⁶ See *Tajikistan: Reverse Political Party Closure*, HUM. RTS. WATCH (Sept. 14, 2015, 12:00 AM), <https://www.hrw.org/news/2015/09/14/tajikistan-reverse-political-party-closure>.

¹⁷ See Ihsan Yilmaz, *An Islamist Party, Constraints, Opportunities and Transformation to Post-Islamism: The Tajik Case*, 5 ULUSLARASI HUKUKVE POLITIKA 133, 141–42 (2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1777195 (describing the Islamic Revival Party of Tajikistan as having become a modern political party that almost resembles Turkey’s post-Islamist Justice and Development Party and which regards the creation of an Islam-centric state as to be, at most, a goal for the remote future); see also Steve Swerdlow, *Tajikistan’s Fight Against Political Islam*, FOREIGN AFFAIRS (Mar. 14, 2016), <https://www.foreignaffairs.com/articles/tajikistan/2016-03-14/tajikistans-fight-against-political-islam> (contrasting the IRPT with Islamic extremist groups).

¹⁸ Cf. *Tajik Parliamentary Elections Results: Opposition Parties Fail to Meet 5% Threshold*, EUROPEAN F. FOR DEMOCRACY & SOLIDARITY (Mar. 3, 2015), https://www.europeanforum.net/headlines/tajik_parliamentary_elections_results_opposition_parties_fail_to_meet_5_threshold; MARTHA BRILL OLCOTT, *TAJIKISTAN’S DIFFICULT DEVELOPMENT PATH* 44 (2012), <http://carnegieendowment.org/2012/10/15/tajikistan-s-difficult-development-path-pub-49587>.

¹⁹ OFFICE FOR DEMOCRATIC INSTS. & HUMAN RIGHTS, ORG. FOR SEC. & CO-OPERATION IN EUR., REPUBLIC OF TAJIKISTAN, *PARLIAMENTARY ELECTIONS, 27 FEBRUARY AND 13 MARCH 2005: OSCE/ODIHR ELECTION OBSERVATION MISSION FINAL REPORT 20–21* (2005), <https://www.osce.org/files/f/documents/1/8/15192.pdf>.

²⁰ *Islamic Education in the Soviet Union and Its Successor States* 336 (Michael Kemper et al. eds., 2010).

²¹ See *Tajikistan: Reverse Political Party Closure*, *supra* note 16.

²² See *id.*

²³ Cf. Mark Vinson, *Marginalization of Tajikistan’s Political Opposition Could Threaten Security*, JAMESTOWN FOUND. (Mar. 24, 2015, 7:12 PM), <https://jamestown.org/program/marginalization-of-tajikistans-political-opposition-could-threaten-security/>.

²⁴ *Tajikistan: Reverse Political Party Closure*, *supra* note 16.

²⁵ Edward Lemon, *Nations in Transit 2016, Tajikistan, Executive Summary*, FREEDOM HOUSE, <https://freedomhouse.org/country/tajikistan/nations-transit/2016> (last visited Feb. 12, 2021).

In addition, “[r]eports of election fraud were issued . . . by . . . local and international organizations” in association with the election—suggesting that the IRPT only lost its seats because of fraud by the Government.²⁶

13. This was only the beginning; after the Parliamentary election, the Government increased its repression of the IRPT. In July 2015, pressure from the Government resulted in mass resignations from the IRPT.²⁷ On August 24, 2015, the Prosecutor General’s Office closed IRPT headquarters, explaining only that the building was sealed because it had been illegally purchased. On August 28, 2015, authorities notified the IRPT that it had 10 days to cease all activities because it no longer had sufficient registered field offices to continue as a legitimate party.²⁸ As the Secretary General of the Norwegian Helsinki Committee observed, “[g]iven the steady, unmistakable decline of freedom of expression in Tajikistan over the past few years,” it is “not surpris[ing]” that the government would make the “deplorable decision” to shut down the country’s most prominent opposition party.²⁹

14. Tensions escalated following clashes between Government forces and armed groups at police sites in Dushanbe, the capital city, and Vahdat on September 4, 2015. The Government accused the IRPT of ties to the clash which resulted in 39 deaths, including 14 law enforcement officers and 25 militants. The September 4 incident served as the Government’s predicate for detaining and ultimately arresting at least thirteen members of the IRPT leadership, including Mr. Hayit, and for instigating a series of targeted raids beginning September 16, 2015.³⁰

15. International observers have concluded that the Government failed to produce any credible evidence that the IRPT was actually involved in the September 4 incident.³¹ It was later revealed that the September 4 clash involved government forces and militants loyal to Deputy Defense Minister General Abduhalim Nazarzoda.³² Moreover, the subsequent conflicting narratives that

²⁶ Oleg Salimov, *Tajikistan’s Elections Expel Opposition from Parliament*, CENT. ASIA-CAUCASUS (Mar. 18, 2015), <https://www.cacianalyst.org/publications/field-reports/item/13159-tajikistan%E2%80%99s-elections-expel-opposition-from-parliament.html>.

²⁷ See Lemon, *supra* note 25.

²⁸ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEP’T OF STATE, TAJIKISTAN 2015 HUMAN RIGHTS REPORT 16 (2016), https://www.justice.gov/sites/default/files/pages/attachments/2016/04/15/hrr-dos_2015_tajikistan.pdf; see also Human Rights Council, *Rep. of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on his Mission to Tajikistan*, ¶ 40, U.N. Doc. A/HRC/35/22/Add.2 (Oct. 13, 2017) [hereinafter *2017 Special Rapporteur Report*].

²⁹ *Tajikistan: Reverse Political Party Closure*, *supra* note 16.

³⁰ See *UN Human Rights Office Voices Concern After Tajikistan Bans Islamic Political Party*, UN NEWS (Oct. 2, 2015), <http://www.un.org/apps/news/story.asp?NewsID=52122#.WQx47WnyuUk>; Edward Lemon, *Violence in Tajikistan Emerges from Within the State*, CENT. ASIA-CAUCASUS (Sept. 23, 2015), <https://cacianalyst.org/publications/analytical-articles/item/13279-violence-in-tajikistan-emerges-from-within-the-state.html>; *2017 Special Rapporteur Report*, *supra* note 28, ¶ 41.

³¹ See Swerdlow, *supra* note 17 (noting that no “credible evidence” supported the Government’s ban of the IRPT); see also U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ANNUAL REPORT 2017: TAJIKISTAN 1, 4 (2017), <http://www.uscirf.gov/sites/default/files/Tajikistan.2017.pdf>; Daniel B. Baer, Ambassador to the OSCE Permanent Council, Statement to the PC on Political Opposition in Tajikistan (Oct. 8, 2015), <https://osce.usmission.gov/political-opposition-tajikistan/>; *U.S. Voices Concern at Obliteration of Tajikistan’s Opposition*, EURASIANET (Sept. 30, 2015), <http://www.eurasianet.org/node/75326>; Catherine Putz, *Tajikistan’s Terror Group List Just Got Bigger*, DIPLOMAT (Sept. 30, 2015), <http://thediplomat.com/2015/09/tajikistans-terror-group-list-just-got-bigger/>.

³² See Lemon, *supra* note 30.

emerged indicate the clash may be attributed to internal power struggles within the Government.³³ General Nazarzoda was not an IRPT member, nor was he affiliated with the party in any way at the time of the September 4, 2015 clashes.³⁴ The Government nevertheless used the incident as part of its narrative to justify banning the IRPT. Without presenting any credible evidence to support its assertions,³⁵ the Government alleged that the September 4, 2015 clashes involved not only the IRPT but also the Islamic State of Iraq and the Levant (“Islamic State” or “ISIS”), decrying the incident, and the deaths of law enforcement officers, as acts of Islamic terrorism.³⁶ The state-owned media repeatedly blamed the IRPT for the incident.³⁷ President Rahmon accused the IRPT of being “terrorists with evil consciences” for their alleged role in the September 4 incident.³⁸

16. On September 29, 2015,³⁹ the Tajikistan Supreme Court declared the IRPT a terrorist organization engaged in extremist activities, “as it had done nearly a year earlier to the exiled opposition parties Group 24 and Youth for the Revival of Tajikistan.”⁴⁰ The Supreme Court concluded that the IRPT had violated Article 4 of the Tajikistan Law on Political Parties which forbids “terrorist and extremist activities, violent overthrow of the constitutional regime, establishment of armed groups, or propaganda of hatred on the basis of race, ethnicity, nationality, or religion.”⁴¹ The Supreme Court’s decision authorized the Government to shutter remaining IRPT offices and arrest scores of additional IRPT members.⁴² Sources indicate that “[t]he Supreme Court assessed the criminality of the party as a whole in making its decision. [And] it allegedly relied only on the information provided by the Prosecutor General” and declined to give material consideration to exculpatory evidence.⁴³ Using the Law on Combatting Terrorism, it banned all future activities by the party:⁴⁴ to this day, distribution of newspapers, videos, audio recordings, literature, and leaflets connected to the IRPT is prohibited.

³³ Catherine Putz, *Tajikistan’s Recent Violence: What We Know (and Don’t Know)*, DIPLOMAT (Sept. 8, 2015), <http://thediplomat.com/2015/09/tajikistans-recent-violence-what-we-know-and-dont-know/>.

³⁴ Nazarzoda was a field commander for the IRPT at the start of the civil war in 1992. However, Nazarzoda officially relinquished his membership in the IRPT in connection with joining the armed forces in 1997. See Bruce Pannier, *Are Economics Again at the Root of Tajikistan’s Current Armed Conflict?*, RADIO FREE EUR./RADIO LIBERTY (Sept. 7, 2015), <https://www.rferl.org/a/tajikistan-armed-conflict-nazarzoda/27231431.html>; see also Putz, *supra* note 33.

³⁵ See Swerdlow, *supra* note 17.

³⁶ Putz, *supra* note 33.

³⁷ Catherin Putz, *Tajikistan Pins Recent Violence on Islamic Party*, THE DIPLOMAT (Sept. 18, 2015), <https://thediplomat.com/2015/09/tajikistan-pins-recent-violence-on-islamic-party/>.

³⁸ Casey Michel, *Tajikistan’s Campaign Against the IRPT Continues*, DIPLOMAT (Dec. 15, 2015), <http://thediplomat.com/2015/12/tajikistans-campaign-against-the-irpt-continues/>.

³⁹ *The Case of the Islamic Renaissance Party of Tajikistan*, GLOBAL FREEDOM EXPRESSION COLUM. U., <https://globalfreedomofexpression.columbia.edu/cases/case-islamic-renaissance-party-tajikistan/> (last visited Feb. 16, 2021).

⁴⁰ *Tajikistan: Severe Crackdown on Political Opposition*, *supra* note 12.

⁴¹ *The Case of the Islamic Renaissance Party of Tajikistan*, *supra* note 39.

⁴² See FREEDOM HOUSE, FREEDOM IN THE WORLD 2016 680–81 (Arch Puddington et al. eds., 2017); *Shuttered Tajik Islamic Party Branded As Terrorist Group*, RADIO FREE EUR./RADIO LIBERTY (Sept. 29, 2015, 1:32 PM), <https://www.rferl.org/a/tajikistan-islamic-party-terrorist-organization/27277385.html>.

⁴³ *The Case of the Islamic Renaissance Party of Tajikistan*, *supra* note 39.

⁴⁴ Catherine Putz, *supra* note 31. The Government has a history of using similar tactics to oppress opposition parties. For example, the Government sentenced Zayd Saidov to 26 years in prison after he formed an opposition party in 2013. And it banned a small opposition party, Group 24, in October 2014. Casey Michel, *Trouble in*

3. Interference with Political Participation, Freedom of Expression, and Freedom of Association

i. Interference with Political Participation

17. Tajikistan’s parliament has little independent power, due in substantial part to the lack of free and fair elections. Since at least 1999, the Government has taken comprehensive steps to deny the people of Tajikistan any meaningful opportunity to participate in politics and Government.⁴⁵

18. Freedom House rates Tajikistan as “Not Free,” based in part of the consistent dominance of the ruling PDP in elections and government persecution of opposition parties and opposition candidates.⁴⁶ A 2020 Freedom House evaluation of Tajikistan’s civil liberties’ rated the country’s a 9 out of 100—with a 0 as the worst possible score. That same study placed Tajikistan’s overall freedom rating at 9, and its political rights rating at an absolute 0.⁴⁷

19. The PDP-controlled government dominates the political process in two major ways. First, it uses state-owned media to limit political coverage. Second, it requires an extremely high threshold for signatures required to run for office. The party also implements various other restrictions on voting or political participation—up to and including harassing or imprisoning opposition party members.⁴⁸ The result is a limited number of independent political parties, and almost no opposition. In 2015, there were eight registered political parties, but only three were independent of the Government.⁴⁹ The ban on the IRPT in September 2015 left only two.⁵⁰ Although the previously-referenced peace agreement guaranteed thirty percent of senior government posts to opposition parties, this guarantee has never been honored.

ii. Interference with Freedom of Expression and Association

20. The Government has severely curtailed the exercise of freedoms of expression and of association in Tajikistan—particularly following the parliamentary election of 2015—despite the Tajik Constitution’s express recognition of citizens’ freedom of expression and its prohibition against state censorship.⁵¹ The Government has imposed near-total control over the Tajik media environment, stifling political dissent and criticism of President Rahmon or his regime. Human

Tajikistan, AL JAZEERA (Nov. 5, 2015), <http://www.aljazeera.com/indepth/features/2015/11/trouble-tajikistan-151104085616528.html>.

⁴⁵ See generally Lemon, *supra* note 25

⁴⁶ *Tajikistan: Freedom in the World 2020*, FREEDOM HOUSE, <https://freedomhouse.org/country/tajikistan/freedom-world/2020> (last visited Sept. 20, 2020).

⁴⁷ *Id.*

⁴⁸ Lemon, *supra* note 25.

⁴⁹ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 28, at 15.

⁵⁰ *Id.*

⁵¹ CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN, art. 30, <http://www.president.tj/en/taxonomy/term/5/28#hamadoni> (last visited Feb. 22, 2021). Domestic legislation, including the 1996 Law on Television and Broadcasting, the 2008 Law on Access to Information, and the 2013 Law on Periodical Print and Other Mass Media, also prohibits state interference, censorship, and persecution for criticism.

Rights Watch has observed that the “human rights situation [in Tajikistan has] deteriorated sharply [starting] in 2016, as authorities” clamped down on all “perceived government critics.”⁵²

21. For example, the Criminal Code criminalizes insulting the President and state officials.⁵³ The Licensing Committee, a subgroup within the State Committee on Television and Radio that issues production licenses to state-owned and independent media companies, increasingly uses its power against independent media outlets critical of the Government by withholding or revoking licenses to silence dissent.⁵⁴ In the summer of 2016, the Government issued a five-year decree giving the state broadcast committee the right to “regulate and control the content of all television and radio networks regardless of their type of ownership.”⁵⁵ The Government’s efforts have also reached social media outlets: during 2015, the Government restricted access to websites such as Facebook and YouTube, and restricted text messaging.⁵⁶ In November 2016, President Rahmon signed Presidential Decree 765, which created a “Single Communications Switching Centre” that allows the Government complete control over all domestic communications, without legal safeguards.⁵⁷

22. The Government predicates its censorship efforts on fictitious national security concerns and the unsubstantiated ties it alleges between political opposition groups—including the IRPT—and Islamist terrorism. In 2014, an amendment to the Tajik law on “emergency situations” gave the Government the power to limit the use of recording equipment and mobile and internet networks. That amendment also permitted the Government to censor independent media during emergencies.⁵⁸ Legislation adopted in November 2015 doubled down on these restrictions by allowing the State Committee for National Security (the successor to the Soviet-era KGB)⁵⁹ to block access to internet and cell phone services during anti-terrorism operations, extending throughout the entire country if necessary.⁶⁰ In June 2018 the Majlisi Namoyandagon, the lower house of the Tajikistan parliament, adopted amendments to the Criminal Code to subject users who “use the ‘like’ or ‘share’ function on social media regarding ‘terrorism’ and ‘extremism-related’

⁵² See *Tajikistan: Events of 2016*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2017/country-chapters/tajikistan> (last visited Feb. 16, 2021); see also *Tajikistan: Events of 2020*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2021/country-chapters/tajikistan> (last visited Feb. 16, 2021) (describing how in 2020 “Tajik authorities continued to jail government critics, including opposition activists and journalists, for lengthy prison terms on politically motivated grounds”).

⁵³ TAJIKISTAN CRIM. CODE, arts. 137 & 330, <http://www.legislationline.org/download/action/download/id/1707/file/207b8150765af2c85ad6f5bb8a44.htm>/preview (unofficial).

⁵⁴ Cf. *Tajikistan: Events of 2020*, *supra* note 52.

⁵⁵ Farangis Najibullah & Khiromon Baqozoda, *Tajik Government Stakes Out Expanded Power Over Media*, RADIO FREE EUR./RADIO LIBERTY (Aug. 17, 2006, 2:14 PM), <http://www.rferl.org/a/tajikistan-expanded-powers-over-media-television-freedom/27929007.html>.

⁵⁶ INT’L P’SHIP FOR HUMAN RIGHTS, SPOTLIGHT: FUNDAMENTAL RIGHTS IN CENTRAL ASIA 3 (Dec. 2015), <http://iphronline.org/wp-content/uploads/2015/12/Tajikistan-fundamental-rights-overview-December-2015.pdf>.

⁵⁷ *Id.*

⁵⁸ Freedom House, *Freedom of the Press 2016 – Tajikistan*, EUR. COUNTRY ORIGIN NETWORK (Apr. 27, 2016), <https://www.ecoi.net/en/document/1396791.html>.

⁵⁹ Suzanne Levi-Sanchez, *The Afghan-Central Asia Borderland: The State and Local Leaders* 107 (2017).

⁶⁰ INT’L P’SHIP FOR HUMAN RIGHTS, *supra* note 56, at 4.

topics” to up to 15 years in prison.⁶¹ The U.S. Department of State reports that Tajik security offices often “monitor[] communications, such as social media and telephone calls, without judicial authorization.”⁶² In December 2018, Tajik authorities established a recommended list of 70 topics that state-run television stations were encouraged to analyze and criticize, including construction, education, water problems, garbage collection, and “extremism and radicalism in Tajik society.”⁶³

23. As a result of the Government’s actions, state-run media outlets control the Tajik media environment. The Government has actively used its control of the media to suppress its political opposition, including the IRPT specifically. For example, during the 2015 parliamentary elections, authorities barred journalists from polling stations.⁶⁴ Opposition politicians had limited or no access to state-run television.⁶⁵ The Government gave opposition parties minimal broadcast time to express their political views,⁶⁶ while the president’s party had numerous opportunities to broadcast its message.⁶⁷ Following the Supreme Court’s proclamation of IRPT as a terrorist organization in September 2015, distribution of any newspapers, videos, audio recordings, literature, and leaflets connected to the IRPT was prohibited. The party’s website has been blocked since that time.⁶⁸ In 2019, the Government withheld accreditation for numerous employees of Radio Ozodi, leaving the outfit with “insufficient staff to continue functioning at its current level.”⁶⁹ In a July 3, 2019 press statement, the Foreign Ministry stated its view that Radio Ozodi engages in the publication of “sensational and inaccurate information” and described the station as a “propaganda wing” for banned opposition groups such as the IRPT.⁷⁰

⁶¹ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEP’T OF STATE, TAJIKISTAN 2019 HUMAN RIGHTS REPORT 13, <https://www.state.gov/wp-content/uploads/2020/03/TAJIKISTAN-2019-HUMAN-RIGHTS-REPORT.pdf>.

⁶² *Id.* at 9.

⁶³ *Id.* at 10.

⁶⁴ Freedom House, *supra* note 58.

⁶⁵ The parliamentary election laws grant each nationwide list 40 minutes and each single-mandate candidate 20 minutes of free airtime on state-owned television or radio. However, single-mandate candidates could not use regional or local state media to air their campaign broadcasts. The CCER decreed that all the free airtime for nationwide lists would be shown on *TV Shabakai 1* in slots well in advance of election day (the slots were allocated between January 28, 2015 and February 6, 2015). See 2015 OSCE FINAL REPORT, *supra* note 6, at 17–18.

⁶⁶ The IRPT used only 18 minutes and requested to use the remainder to broadcast one-minute clips; an approach originally approved by the CCER. The State Committee on Television and Radio prevented the broadcasting of the IRPT’s clips on the grounds that they had not been produced by a licensed audio-visual production company and that their content did not comply with the rules on conducting a campaign. Consequently, the IRPT was unable to campaign using its preferred method and instead had to use its remaining time in a single 20-minute slot on 24 February. Outside the free airtime, the state broadcast media did not cover parties’ political platforms or activities and no media organized debates among contestants. *Id.*

⁶⁷ There was a clear lack of balance in the very limited amount of political coverage in broadcast media. Less than 10 per cent of current affairs programming covered political issues. The three state-owned television stations allocated 48, 19, and 30 per cent of their news and current affairs programming to President Rahmon, the Government, and the CCER, respectively. *Id.* at 18.

⁶⁸ 2017 Special Rapporteur Report, *supra* note 28, at ¶ 41.

⁶⁹ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 61, at 11.

⁷⁰ *Id.*

4. Lack of Judicial Independence

24. The Government denies citizens due process of law and an independent judiciary that protects individuals' rights. In theory, the Constitution establishes a tripartite government, with each branch separate and equal under the law. But in practice, the executive branch, headed by President Rahmon and dominated by the PDP, controls the judicial branch.⁷¹ The president possesses the power to appoint and dismiss judges, with few constitutional checks and fewer political checks to stop him. He also exerts pressure on prosecutors, defense lawyers, and judges; as a result, government officials are rarely prosecuted for human rights abuses.⁷² Moreover, judicial proceedings in Tajikistan are riddled with corruption. Reports of bribery are common—an effect of the low wages afforded to judges and prosecutors.⁷³ Although trials are supposed to be public, the Government has conducted politically motivated court cases behind closed doors on the pretext that national security was implicated.⁷⁴

25. The Tajik judiciary also lacks the resources it needs to function effectively as an independent branch of government. This begins at the bottom, in the country's legal education system: law schools lack funding, textbooks, or any mechanism by which they can offer its students a practical education. Instead, the schools provide mainly a theoretical introduction to the study and practice of law.⁷⁵ The judiciary is not considered a prestigious career path.⁷⁶ Judges are paid very little—and defense counsel even less—leaving them vulnerable to corruption and bribery.⁷⁷ Moreover, the Tajik judiciary lacks the resources to calendar, manage or adjudicate cases effectively.⁷⁸

26. As a result, citizens are denied the due process protections enumerated by the Constitution. Arbitrary arrests are commonplace.⁷⁹ There is no requirement of warrants for arrest, which allows police or security officials license to arrest or detain citizens with little to no judicial oversight.⁸⁰ Although the Government typically provides a rationale for arrests, reports of falsified charges abound.⁸¹ Defendants are frequently denied the right to an attorney during pretrial and

⁷¹ *Freedom in the World 2020: Tajikistan*, FREEDOM HOUSE, <https://freedomhouse.org/country/tajikistan/freedom-world/2020> (last visited Feb. 17, 2022).

⁷² BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 61, at 7.

⁷³ *Id.* at 6, 8.

⁷⁴ *Id.* at 8. The trials of Zaid Saidov and Mahmadali 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 Tajikistan: Verdicts of Opposition Activists Travesty of Justice*, HUM. RTS. WATCH (June 7, 2016, 4:19 AM), <https://www.hrw.org/news/2016/06/07/tajikistan-verdicts-opposition-activists-travesty-justice>.

⁷⁵ *See* AM. BAR ASS'N RULE L. INITIATIVE, JUDICIAL REFORM INDEX FOR TAJIKISTAN 5 (2008), http://www.americanbar.org/content/dam/aba/directories/roli/tajikistan/tajikistan_jri_12_2008_en.authcheckdam.pdf.

⁷⁶ *Cf. id.* at 18–19.

⁷⁷ *Cf. id.* at 40–41.

⁷⁸ *See id.* at 5–6 (noting reports of undue influence from other branches of government also prevent any court from influencing its funding level). There is also a perception that the Government wins most of the cases it brings, contributing to a reluctance to challenge. *Cf. id.* at 5; *see also* BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 28, at 5–6.

⁷⁹ *See* BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 28, at 5.

⁸⁰ *Cf.* AM. BAR ASS'N RULE L. INITIATIVE, *supra* note 75, at 28–31.

⁸¹ *See* BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 28, at 5.

investigatory periods, particularly in politically sensitive cases.⁸² Although defense lawyers have the right to review evidence, confront and question witnesses, and to present their own evidence, in practice courts give prosecutorial testimony far greater consideration.⁸³ Judges frequently defer to the executive branch, finding nearly all defendants guilty; a U.S. Department of State report noted that for the first half of 2015, the rate of acquittal was almost zero.⁸⁴

5. Prison Conditions

27. Tajikistan's prison conditions are harsh and, as one official at the OSCE has observed, "human rights in Tajikistan tend to be 'bought and sold rather than guaranteed.'"⁸⁵ Although, "[i]n general, it has been very difficult for international observers to gain access to prisons and detention facilities" to fully review the state of Tajikistan's prison conditions,⁸⁶ prison conditions in Tajikistan are known to be poor to the point of being "life threatening" for prisoners.⁸⁷

28. As of 2019, the Government operated ten prisons and twelve pretrial detention facilities. "[D]etainees and inmates [have] described [the] harsh and life-threatening prison conditions [in Tajikistan], including extreme overcrowding and unsanitary conditions. . . . Disease and hunger [are] serious problems."⁸⁸ Indeed, "lack of food and adequate medical treatment [have] resulted in a significant number of deaths of prisoners while in custody."⁸⁹ UN agencies have also reported that infection rates of tuberculosis⁹⁰ and HIV⁹¹ in Tajikistan's prisons are significant problems, and that the quality of medical treatment is poor.⁹²

29. For prisoners who are sentenced to life imprisonment, the prison regime and physical conditions are "especially harsh . . . compared with those in the general prison population."⁹³ "Prisoners serving a life sentence are confined in virtual isolation in their cells for up to 23 hours a day in small, cramped, unventilated cells, often in extreme temperatures, and they are subject to inadequate nutrition and sanitation arrangements; denial of contact with lawyers and only rare

⁸² *Id.* at 6.

⁸³ *Id.*

⁸⁴ See FREEDOM HOUSE, *supra* note 42, at 683; BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 28, at 6 (finding that "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").

⁸⁵ *Nations in Transit 2004: Democratization in East Central Europe and Eurasia* 602 (Alexander Motyl & Amanda Schmetzer eds., 2004).

⁸⁶ OLCOTT, *supra* note 18, at 33.

⁸⁷ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 61, at 4.

⁸⁸ *Id.*

⁸⁹ ROBERT WINSLOW, *TAJIKISTAN, CRIME AND SOCIETY: A COMPARATIVE CRIMINOLOGY TOUR OF THE WORLD* (2013).

⁹⁰ See MAIKEN MANSFELD ET AL., WORLD HEALTH ORG., HIV PROGRAMME REVIEW IN TAJIKISTAN 21 (2015), http://www.euro.who.int/__data/assets/pdf_file/0008/270539/HIV-Programme-Review-in-Tajikistan.pdf?ua=1 (noting that tuberculosis incidence rates are 800 cases per 100,000 in Tajikistan prisons—versus 70 per 100,000 among the general Tajikistan population).

⁹¹ See *id.* at 8 (estimating that, in 2013, the HIV prevalence among prisoners was 8.4% and that about 1/3 of all prisoners had a history of injection drug use prior to conviction).

⁹² See BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 28, at 2–3 (describing the findings of UN agencies).

⁹³ Juan E. Méndez (Special Rapporteur), *Report on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment*, at 15, U.N. Doc. A/HRC/22/53/Add.1 (Jan. 28, 2013) [hereinafter *2013 Special Rapporteur Report*], http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1_en.pdf.

contact with family members; excessive use of handcuffing or other types of shackles or restraints; physical or verbal abuse; lack of appropriate health care (physical and mental); and denial of access to books, newspapers, exercise, education, employment and/or any other type of prison activities.”⁹⁴

30. Torture is also widespread in police stations, prisons, and other places of detention throughout the country.⁹⁵ Although torture is officially prohibited, law enforcement officers frequently torture individuals in order to extract self-incriminating evidence, confessions, and money.⁹⁶ As the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (“Special Rapporteur on Torture”), Juan E. Méndez, has stated: “Tajikistan still needs to bridge the gap between [its official] policies and reality.”⁹⁷

31. Political prisoners in Tajikistan are frequently targeted for torture and other significant mistreatment and abuse: “Individuals perceived to be threats to national security, including members of religious movements⁹⁸ and Islamist groups or parties, [a]re at particular risk of arbitrary arrests, incommunicado detention, torture and other ill-treatment.”⁹⁹ For example, in August of 2016, representatives of Tajikistan’s civil society reported that two political prisoners linked to the IRPT, Kurbon Mannonov and Nozimdzhon Tashripov, were killed in prison. Tashripov’s body showed visible signs of torture and his neck had been broken. Other IRPT members have been denied medical treatment, even when seriously ill, and “authorities have consistently prevented relatives and human rights lawyers from visiting them.”¹⁰⁰ Tajik authorities “continued to invoke national security and public order concerns to persecute and silence political opposition activists, independent lawyers, journalists, human rights defenders, LGBTI people and their families” in 2019, and “[i]mpunity for torture and other ill-treatment remained pervasive and those who reported abuses faced reprisals.”¹⁰¹

⁹⁴ *Id.* (noting also that recent changes in law introduced “unnecessary and inexplicably harsh” restrictions for family contacts and on parcel delivery).

⁹⁵ MATILDA BOGNER, HUMAN RIGHTS IN RIGHTS OPPOSING ENVIRONMENTS 41–42 (2014), https://hr.un.org/sites/hr.un.org/files/Human%20Rights%20in%20Rights%20Opposing%20Environments_0.pdf.

⁹⁶ 2013 *Special Rapporteur Report*, *supra* note 93, ¶¶ 71, 92 (noting reports of “consistent, broad patterns of the application of various methods of torture and ill-treatment during arrest and investigation, as well as denial of access to legal counsel”).

⁹⁷ *Torture: “Tajikistan Still Needs to Bridge the Gap Between Policies and Reality” – UN Rights Expert*, UNITED NATIONS OFF. HIGH COMMISSIONER HUM. RTS. (Feb. 12, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14245&LangID=E#sthash.7Nj1VSzL.dpuf>.

⁹⁸ UNITED STATES COMM’N ON INT’L RELIGIOUS FREEDOM, TAJIKISTAN – 2015 ANNUAL REPORT 121 (2015), <https://www.uscirf.gov/sites/default/files/Tajikistan%202015.pdf> (“In 2011 and 2012, administrative and penal code amendments set new penalties, including large fines and prison terms, for religion-related charges, such as organizing or participating in ‘unapproved’ religious meetings.”). *See also id.* at 122–23 (discussing the Government’s ongoing restrictions on and imprisonment of Muslims and religious minorities).

⁹⁹ Amnesty Int’l, *Amnesty International Report 2015/2016 - Tajikistan*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (Feb. 24, 2016), <https://www.refworld.org/docid/56d05b0ec.html>.

¹⁰⁰ Edward Lemon, *Statement by the Representatives of Tajikistan’s Civil Society About the Status of Political Prisoners*, EXETER CENT. ASIAN STUD. NETWORK, <https://blogs.exeter.ac.uk/excas/2016/08/22/statement-by-the-representatives-of-tajikistans-civil-society-about-status-of-political-prisoners/> (last visited Feb. 17, 2021).

¹⁰¹ *Tajikistan 2019*, AMNESTY INT’L, <https://www.amnesty.org/en/countries/europe-and-central-asia/tajikistan/report-tajikistan/> (last visited Sept. 20, 2020).

32. Tajikistan’s prisons suffer significant insecurity and violence. In November 2018, Islamic State claimed responsibility for a deadly prison riot in Khujand that resulted in the deaths of two wardens and 21 prisoners. A second prison riot broke out in Vakhdat in May 2019 when prisoners, whom the Government claimed to also be affiliated with Islamic State, killed three guards and targeted other prisoners, including at least two IRPT members. The prison guards then reportedly opened fire, killing at least 24 additional prisoners, for a total of 29 prisoners (and three guards) killed.¹⁰²

33. Following the November 2018 riot, the Government dismissed Izattullo Sharifzoda, then head of the Ministry of Justice’s Department of Corrections, and appointed in his place the former deputy head of the State Committee for National Security (“GKNB”), Mansurjon Umarov, while also replacing the heads of several prisons throughout the country.¹⁰³ Although Umarov announced plans for extensive prison reforms, civil society organizations report that there have been no significant changes in Tajikistan’s prison system, nor any improvement in prisoner living conditions.¹⁰⁴

6. Coronavirus Disease 2019 (COVID-19)

34. At the time of submission, Tajikistan is also wrestling to bring the COVID-19 pandemic under control. While the Government initially denied that the COVID-19 pandemic had affected Tajikistan, it began officially reporting cases in April 2020—and there has been a surge of reported cases since then.¹⁰⁵ As of February 18, 2021, the country officially has over 13,308 active cases, 90 deaths, and roughly 13,218 recoveries.¹⁰⁶ Investigative journalists have concluded the Government is underreporting cases by a substantial margin; online activists placed the number of COVID-19 deaths in the country at 437 as of June 26, 2020, when the Government was reporting only 52.¹⁰⁷

35. Observers have commented that the medical infrastructure in Tajikistan does not appear to be prepared to handle the influx of cases expected in the country.¹⁰⁸ It is well-known that the virus

¹⁰² See ‘IS Members Kill Dozens’ in Tajikistan Prison Riot, BBC News (May 20, 2019), <https://www.bbc.com/news/world-asia-48332969>; Submission to UN Human Rights Committee’s Review of Tajikistan, HUM. RTS. WATCH (Jun. 11, 2019, 3:31 AM), <https://www.hrw.org/news/2019/06/11/submission-un-human-rights-committees-review-tajikistan#>; *Freedom in the World 2020: Tajikistan*, FREEDOM HOUSE, <https://freedomhouse.org/country/tajikistan/freedom-world/2020> (last visited Feb. 17, 2021); BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 61., at 3–4.

¹⁰³ See *id.*

¹⁰⁴ See *id.*

¹⁰⁵ See *Tajik Health Minister Fired Amid Surge in Coronavirus Cases*, AL JAZEERA (May 5, 2020), <https://www.aljazeera.com/news/2020/05/tajik-health-minister-fired-surge-coronavirus-cases-200505172033233.html>.

¹⁰⁶ *Tajikistan*, WORLDOMETER, <https://www.worldometers.info/coronavirus/country/Tajikistan> (last visited Feb. 18, 2020).

¹⁰⁷ *Tajikistan’s Official Coronavirus Stats Don’t Reflect Reality, RFE/RL Investigation Finds*, RADIO FREE EUR./RADIO LIBERTY (June 26, 2020, 3:25 PM), <https://www.rferl.org/a/tajikistan-official-coronavirus-stats-don-t-reflect-reality-rfe-rl-investigation-finds/30692651.html>.

¹⁰⁸ Farangis Najibullah, *As Coronavirus Infections Go from Zero to Hundreds in Days, Tajikistan’s Hospitals Can’t Keep Up*, RADIO FREE EUR./RADIO LIBERTY (May 6, 2020, 7:15 PM), <https://www.rferl.org/a/overcrowded-hospitals-in-tajikistan-as-coronavirus-infections-go-from-zero-to-hundreds-in-days/30597899.html>. See *Tajikistan:*

is particularly lethal to those—like Mr. Hayit—who are over the age of 60 and suffer from pre-existing medical conditions. Although international organizations have stepped in to address the COVID-19 emergency in Tajikistan,¹⁰⁹ observers have noted that “Tajikistan has not put in place policies seen in other countries to protect public health and slow the virus’ spread, such as imposing a quarantine or encouraging social distancing.”¹¹⁰

36. Prisoners face a particularly high risk of exposure to COVID-19 as prison systems fail to address the impact of the pandemic. “Almost no prisons have real hospitals within their walls, and the ratio of clinical staff to prisoners is extremely low; there is no true equivalence of care.”¹¹¹ In Tajikistan, under ordinary circumstances, the prisons have been described as subject to “extreme overcrowding and unsanitary conditions.”¹¹²

B. The Arbitrary Detention of Mr. Mahmatali Hayit

1. Background Information

37. Mahmatali Hayit was born on October 20, 1957, in the Rudaki District of Tajikistan. Since 1999, he has been a prominent member of IRPT and has served as the Chairman of its Election Department, a Member of its Political Council, and Deputy Chairman. Mr. Hayit established himself early on as an outspoken advocate against the Rahmon administration: Sources within the party confirmed that he wanted to campaign for a seat in Parliament during the 2015 elections, but he was asked not to by the Chairman of the IRPT, Mr. Muhiddin Kabiri.¹¹³ Mr. Kabiri reasoned that the IRPT had a better chance at winning seats if it put forward someone less polarizing and less antagonistic to President Rahmon than Mr. Hayit.¹¹⁴

38. Before embarking on a political career, Mr. Hayit was a journalist in Tajikistan radio and newspaper outlets, including a brief period as the Deputy Head of Tajikistan Radio and Television, a state-run organization.¹¹⁵ He had also previously been a member of the Rastokhez, a now-

Coronavirus Panic Puts Sufferers of Other Illnesses in Grave Danger, EURASIANET (May 29, 2020), <https://eurasianet.org/tajikistan-coronavirus-panic-puts-sufferers-of-other-illnesses-in-grave-danger>.

¹⁰⁹ Press Release, Int’l Monetary Fund, IMF Executive Board Approves a US \$189.5 Million RCF Disbursement to Tajikistan to Address the COVID-19 Pandemic, (May 6, 2020), <https://www.imf.org/en/News/Articles/2020/05/06/pr20207-tajikistan-imf-executive-board-approves-a-us-189-5m-rcf-disbursement-to-address-covid19>; *WHO/Europe COVID-19 Mission Arrives in Tajikistan: International Experts to Support Country’s Response to the Pandemic*, World Health Org. (May 2, 2020), <http://www.euro.who.int/en/media-centre/sections/press-releases/2020/whoeurope-covid-19-mission-arrives-in-tajikistan-international-experts-to-support-countrys-response-to-the-pandemic>.

¹¹⁰ Vladislav Lobanov, *Attack on Tajik Journalist Reporting on Covid-19*, HUM. RTS. WATCH (May 13, 2020, 3:39 PM), <https://www.hrw.org/news/2020/05/13/attack-tajik-journalist-reporting-covid-19>.

¹¹¹ Talha Burki, *World Report: Prisons Are “In No Way Equipped” To Deal with COVID-19*, 395 LANCET 1411, 1412 (2020), [https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(20\)30984-3.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(20)30984-3.pdf).

¹¹² BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 61, at 4.

¹¹³ Interview with confidential source.

¹¹⁴ This strategy ultimately failed. The IRPT failed to achieve 5% of the votes, which is needed to win parliamentary seats, for the first time since the party’s inception. International observers called the election a “farce.” *Tajikistan’s Ruling Party Wins Election Decried As ‘Farce,’* RADIO FREE EUR./RADIO LIBERTY (Mar. 2, 2015, 10:55 AM), <http://www.rferl.org/a/tajik-elections-rahmon-party-victory/26877105.html>.

¹¹⁵ Interview with confidential source; *Tajikistan Profile – Media*, BBC NEWS (Oct. 9, 2018), <http://www.bbc.com/news/world-asia-16201088>.

defunct political party that acted as the democratic opposition to the Communist Party of Tajikistan during the Soviet era.¹¹⁶

39. Mr. Hayit faced systematic surveillance and pressure from the State to discontinue his political activities. During the 2013 presidential campaign period, for example, Mr. Hayit was under intense government surveillance.¹¹⁷ At least once a month authorities would visit his home to check his passport and other identification documents and to inquire about his whereabouts.¹¹⁸ On April 19, 2013, a week before a public event was scheduled to commemorate the IRPT party's founding and months away from a presidential, Mr. Hayit was brutally attacked outside of his home.¹¹⁹ While the assailants were never identified, members of the IRPT attributed the attack to Mr. Hayit's political work, and the government ignored calls to investigate the matter.¹²⁰

2. Mr. Hayit's Arbitrary Arrest and Detention

40. Despite continued surveillance and mounting pressure from the Government, Mr. Hayit maintained his active political presence until the day of his arrest.

41. As discussed above, September 2015 marked a tumultuous period in Tajikistan, with armed clashes in two cities setting the tone for an increased crackdown on political opposition. The Government took the opportunity of the September 4 failed coup—perpetrated by forces loyal to Deputy Defense Minister General Abduhalim Nazarzoda—to crack down on the IRPT despite the IRPT having no involvement in the coup attempt.¹²¹ Mr. Hayit was arrested on September 16, 2015.¹²² Police forces arrived at his home in Dushanbe and took him to an isolated interrogation facility located inside the current Ministry of Internal Affairs.¹²³ Police officers began beating him almost as soon as they entered the building.¹²⁴ Within thirty minutes, other officers went to his house to conduct a search.¹²⁵ The officers did not present a search warrant.¹²⁶

42. Mr. Hayit's arrest was part of a broader series of arrests made by the Government, which arrested or detained dozens of IRPT members, including the 12 other IRPT political leaders with

¹¹⁶ See Isaac Scarborough, *From February to February and From Ru Ba Ru to Rastokhez: Political Mobilisation in Late Soviet Tajikistan (1989-1990)*, 26 CAHIERS D'ASIE CENTRALE 143, 152–56 (2016).

¹¹⁷ *Tajik Authority Pressure Forces Opposition Candidates to Drop Out of the Race*, TIMES CENT. ASIA (Oct. 23, 2013, 7:21 PM), <https://www.timesca.com/index.php/news/5527-tajik-authority-pressure-forces-opposition-candidates-to-drop-out-of-the-race>.

¹¹⁸ *Id.*

¹¹⁹ *Tajikistan: Investigate Attack on Opposition Leader*, HUM. RTS. WATCH (Apr. 20, 2013, 9:45 PM), <https://www.hrw.org/news/2013/04/20/tajikistan-investigate-attack-opposition-leader>.

¹²⁰ See *Tajikistan: Opposition Politician Savagely Beaten Ahead of Elections*, EURASIANET (Apr. 19, 2013), <https://eurasianet.org/tajikistan-opposition-politician-savagely-beaten-ahead-of-elections> (last visited Feb. 21, 2021); Gary Robbins, Chargé d'Affaires, United States Mission to the OSCE, Statement on Attack of Opposition Party Leader in Tajikistan (Apr. 25, 2013), https://osce.usmission.gov/apr_25_13_tajikistan/.

¹²¹ See Statement of Facts, VI.B.2.

¹²² Interview with confidential source.

¹²³ Interview with confidential source.

¹²⁴ Interview with confidential source.

¹²⁵ Interview with confidential source.

¹²⁶ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 28, at 8.

whom Mr. Hayit was ultimately jointly tried for alleged extremist activities purportedly related to their associations with the IRPT.¹²⁷

43. Mr. Hayit was not brought before a judge until three days after his arrest, on September 19.¹²⁸ The authorities deprived Mr. Hayit of access to a lawyer until September 26, 2015, ten days after his initial arrest.¹²⁹ Even after he was allowed to speak with a lawyer, the visits were always supervised by a member of the Government.¹³⁰ He was also denied the right to family visitation.¹³¹

44. Mr. Hayit remained in detention during the entire period before his trial. During that time he was routinely beaten. Mr. Hayit's arms and legs were reportedly broken, and he was subsequently denied medical care. Mr. Hayit was also repeatedly interrogated; his interrogators pursued questions designed to obtain admissions that (1) he and the IRPT organized the attack on September 4, 2015, and (2) the IRPT's main goal was to conduct a coup and create an Islamic state—both of which Mr. Hayit adamantly denies. Mr. Hayit was kept in stress positions during many interrogations. One such interrogation resulted in long-term damage to his knees, such that he was unable to walk properly after the torture.

3. Mr. Hayit's Arbitrary Prosecution and Conviction

45. The charges against Mr. Hayit were extensive, over a dozen in total.¹³² They included charges relating to murder, terrorism, and “forcible” actions against the regime.¹³³ These provisions of the Criminal Code contain broad prohibitions against any action targeting regime change or against the Government, without limiting language or definitions of critical terms.¹³⁴ Mr. Hayit was tried and convicted alongside twelve other members of the IRPT before the Judicial Collegium for Criminal Cases of the Supreme Court of the Republic of Tajikistan.¹³⁵

46. Mr. Hayit's lawyers were not given adequate means to prepare a defense for his trial. Mr. Hayit's lawyers, and the other lawyers representing the IRPT members, had only approximately two weeks to review the Government's allegations and the evidence against the thirteen IRPT members and to prepare for their joint trial.¹³⁶ Mr. Hayit was allowed to meet with his lawyers only five or six times before his trial, and all communications and meetings between Mr. Hayit and his attorneys were monitored.¹³⁷ Mr. Hayit's lawyers were also denied pre-trial access to much of the evidence that the Government deemed classified—including even the prosecutor's witness list.¹³⁸ The Government introduced at trial against Mr. Hayit classified evidence to which the

¹²⁷ Cf. *id.* at 16.

¹²⁸ [redacted]

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*; Decision of a Collegium of Supreme Court Judges of the Republic of Tajikistan on Criminal Cases in the Case of Mahmadeali Rahmonovich Haitov (unofficial version) app. at 12–14 [hereinafter “Collegium Hayit Decision”].

¹³³ Collegium Hayit Decision, *supra* note 132.

¹³⁴ Collegium Hayit Decision, *supra* note 132.

¹³⁵ Collegium Hayit Decision, *supra* note 132.

¹³⁶ [redacted]

¹³⁷ *Id.*

¹³⁸ *Id.*

defense had no access.¹³⁹ The Government also did not provide Mr. Hayit and his lawyers access to the criminal complaint being brought against Mr. Hayit until approximately two weeks before the start of his trial.¹⁴⁰ Prior to this time, Mr. Hayit and his lawyers were unable to confirm all the charges brought against Mr. Hayit, much less all of the factual allegations underlying the Government’s prosecution.¹⁴¹ Even after Mr. Hayit and his lawyers were allowed to view complaint against him, the Government limited access to the complaint to certain times of day.¹⁴²

47. In addition to interfering with Mr. Hayit’s attorneys’ ability to meet with him and prepare for trial, the Government also harassed the lawyers representing the thirteen IRPT members in an effort to cripple their legal representation.¹⁴³ For example, Buzurgmehr Yorov, who led a team of lawyers to represent Mr. Hayit and a number of the other twelve IRPT members,¹⁴⁴ was jailed by the Government after refusing to abandon his clients.¹⁴⁵ Mr. Yorov’s brother, Jamshed Yorov, took up the representation of the IRPT members when his brother was imprisoned; he too was later forced to flee the country under government pressure.¹⁴⁶

48. The trial began on February 9, 2016.¹⁴⁷ Immediately prior to being presented in court, Mr. Hayit and his twelve IRPT co-defendants were forced to run to the courthouse while chained together, resulting in injuries when any one of the thirteen IRPT members stumbled or fell.¹⁴⁸ The thirteen IRPT members were then presented in court—still shackled together—with visible bloody injuries and bruises on their faces.¹⁴⁹

49. Mr. Hayit and his co-defendants were tried in a closed-door proceeding due to the “classified” nature of the proceedings.¹⁵⁰ He was charged with murder, terrorism, and “forcible” actions against the regime under Article 187; Parts 1 and 2; Article 189, Part 3(a); Article 307, Part 3; Article 131, Part 3(a); Article 32, Part 3; Article 309, Part 2(b), Article 199 Part 4(a)(b)(c), Article 195, Part 3, Article 104, Part 2(a)(b)(g)(h)(i)(k)(l)(n), Article 179, Part 3(a), Article 306, Article 313, Article 307, Part 1, and Article 170 of the Criminal Code.¹⁵¹ Unfortunately, the closed-door proceeding has severely limited the amount of information available about the evidence and witnesses presented and the general conduct of the court.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ [redacted]

¹⁴⁵ See generally European Union, *Local EU Statement on the sentencing of Mr. Buzurgmehr Yorov* (Mar. 3, 2017), https://eeas.europa.eu/sites/eeas/files/20170302_eu_homs_statement_yorov_en_1.pdf (calling upon Tajik authorities to abide by fundamental guarantees of freedom and the rule of law, which were violated by Mr. Yorov’s subsequent trial and 23-year long prison term).

¹⁴⁶ [redacted]

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Ass’n for Human Rights in Cent. Asia, *Trial Against 13 Members of the Islamic Renaissance Party Begins in Tajikistan*, ASS’N FOR HUM. RTS. CENT. ASIA (Aug. 2, 2016, 11:14 AM), <http://www.ahrca.eu/tadjikistan/freedom-of-conscience/880-trial-against-13-members-of-the-islamic-renaissance-party-begins-in-tajikistan>.

¹⁵¹ Collegium Hayit Decision.

50. The trial lasted several months, during which time the prosecution set forth a litany of witnesses and allegations.¹⁵² At least two witnesses were beaten and coerced into giving testimony¹⁵³. The Chief of the Expert Committee was also called to testify as an expert witness, concluding that Mr. Hayit had extremist ideas without any scientific articles or scholarly support.¹⁵⁴ The prosecutors' evidence lacked specific factual details.¹⁵⁵ Instead, it consisted of broad and conclusory accusations that the IRPT was somehow linked to terrorism.¹⁵⁶ Although the defense was permitted to cross examine the witnesses, it was given no advance notice of who these witnesses were or what their testimony would be.¹⁵⁷ The defense case was quite limited. Mr. Hayit, his wife, and at least one other member of the IRPT elected to testify.¹⁵⁸ Although the defense asked for the opportunity to present expert witnesses, they were repeatedly denied.¹⁵⁹

51. At trial, one witness recanted his previous pro-prosecution testimony while on the witness stand.¹⁶⁰ Sarabek Myrodov testified that, despite his previous testimony, he never heard Mr. Hayit discussing potential armed rebellion, let alone participation in those attempts.¹⁶¹ Mr. Myrodov further testified that the Government had coerced him to testify otherwise previously, pursuant to a deal that he had made to avoid further prosecution.¹⁶² As a result of providing honest testimony recounting the earlier falsehoods, the authorities brutally beat Mr. Myrodov. After that, he only testified, in response to each question: "I don't know."¹⁶³

52. On June 2, 2016, the court rendered its verdict: Mr. Hayit and another deputy head of the IRPT were convicted and sentenced to life imprisonment.¹⁶⁴ The eleven other IRPT members were sentenced to between fourteen and twenty-eight years in prison.¹⁶⁵ On the day of the verdict, the wives of several defendants held a peaceful protest and marched to the local United Nations office to seek a consultation regarding the sentence.¹⁶⁶ Tajikistan police detained the peacefully marching wives and fined them for "failure to obey police."¹⁶⁷

53. Neither the court nor the Government ever publicly announced the final verdict against Mr. Hayit and all his co-defendants. Rather, it was leaked to the public shortly after it was issued.¹⁶⁸ The focus of the court's verdict was not on evidence of any wrongdoing by Mr. Hayit or his co-defendants. Rather, the court emphasized an unpublished (and unfinished) article Mr. Hayit allegedly wrote, titled "The Position of Islam in Our Life," which was allegedly seized during a

¹⁵² [redacted] The judgment counsel for the Author obtained is technically confidential and was obtained only after it was leaked.

¹⁵³ *Id.*

¹⁵⁴ *Id.*; Collegium Hayit Decision, *supra* note 132.

¹⁵⁵ [redacted]

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Collegium Hayit Decision, *supra* note 132.

¹⁵⁹ [redacted]

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Collegium Hayit Decision, *supra* note 132.

¹⁶⁵ *Id.*

¹⁶⁶ [redacted]

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* The verdict has never been released publicly.

search of Mr. Hayit’s home and which “specialists of the Ministry of Education and Science of the Republic of Tajikistan and the Committee for Religious Affairs and Supervision of Traditions and National Celebrations of the Government of the Republic of Tajikistan” concluded constituted a condemnation of civil society in Tajikistan purportedly based on a “combined linguistic, psychological, religious and political expert study.”¹⁶⁹ The court also relied on allegations or evidence pertaining to two “investigation discs” purportedly found in Hayit’s residence “showing the military actions of terrorist groups . . . and containing propaganda inciting jihad,” which the court—without any evidentiary support—concluded Mr. Hayit was distributing.¹⁷⁰ Based on “expert” “studies,” the court also appears to have fully credited the Government’s unsupported assertion that Mr. Hayit and the other IRPT members participated in planning the September 4, 2015, attack by the militants loyal to Deputy Defense Minister Nazarzoda.¹⁷¹

54. The court gave no weight to the defense’s evidence, which at least in part consisted of Mr. Hayit’s testimony.¹⁷² The court simply concluded that Mr. Hayit’s claims of innocence, bias, and falsification of evidence were necessarily false.¹⁷³

55. On or about June 15, 2016, Mr. Hayit’s appealed his conviction to the Tajikistan Supreme Court—with judges who were subordinates of the Chief Judge who presided over Mr. Hayit’s trial.¹⁷⁴ Mr. Hayit’s lawyer, Jamshed Yorov, was not permitted to assist in the appeal process.¹⁷⁵ Because Mr. Hayit’s lawyer did not assist him in the appeal process, the exact date that the appeal was decided is unknown. The Author understands from various leaks that the Supreme Court’s opinion contained limited information about the proceedings in the trial court, but confirmed that the trial court had accepted wholesale the Government’s allegations against Mr. Hayit. The Author’s understanding is that the opinion further concluded that Mr. Hayit’s claims of bias and falsification of evidence were false because they contradicted the Government’s records. The Author’s understanding is that the opinion also did not give any weight to evidence that had allegedly been tainted by torture or later recanting witnesses. There is no indication that the Supreme Court considered any of the trial court’s procedural defects. The exact date that the Supreme Court issued its decision on the appeal is unknown, as the appeal was also classified and the court did not notify Mr. Hayit’s lawyers or the public of the decision.¹⁷⁶

56. Mr. Hayit is unable to pursue any further appeals to the Tajikistan Supreme Court under its cassation review power because he has limited information about the relevant laws under which he was sentenced. While the Author’s legal counsel in the U.S. has obtained copies of the original trial court documents via leaks from [redacted], they have been unable to get information on the charges to Mr. Hayit due to the difficulties in seeing Mr. Hayit and the constant surveillance of

¹⁶⁹ Collegium Hayit Decision, *supra* note 132.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ [redacted]. The Author has been unable to secure a copy of the Supreme Court’s appeal decision because the Tajik government has classified the appeal and the decision has not been leaked.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

Mr. Hayit during visits at his prison by prison authorities. No other appeal avenues are available to him.¹⁷⁷

C. Mr. Hayit's Current Condition

57. As the United Nations Working Group found,¹⁷⁸ Mr. Hayit has been subjected to torture and ill treatment throughout the course of his confinement. He has been beaten, denied medical treatment, and held in solitary confinement. In the current environment, Mr. Hayit's detention is not only inhumane but also places him at risk of exposure to the COVID-19 virus in the midst of a global pandemic that is only worsening in Tajikistan. Given Mr. Hayit's age and medical issues, contracting the virus could be devastating.

1. Torture

58. As stated above, Mr. Hayit was arrested on September 16, 2015. The Tajik authorities have tortured Mr. Hayit and he suffers inhumane prison conditions daily.

59. Mr. Hayit is currently being held in Prison No. 1, located on Mirzo Tursunzoda Street in Dushanbe.¹⁷⁹ He has received numerous injuries from interrogators and from guards in the prison.¹⁸⁰ For example, the prison "Welcome Committee" severely beat him when he arrived there post-conviction.¹⁸¹ In addition, later in 2016, sources inside the prison where Mr. Hayit is being held have reported that the head of prisons had changed and that—since the change of control—Mr. Hayit has been subject to even more frequent torture, harassment, and other inhuman treatment.¹⁸² Mr. Hayit is also being held in long-term solitary confinement, and is being denied regular access to his family, his lawyers, and his supporters.¹⁸³

60. Since his arrest, government officials, police officers, and prison guards have beaten Mr. Hayit on many occasions. There have been reports that Mr. Hayit has had his arms and legs broken while in prison and that he was denied medical care.¹⁸⁴ The attack reportedly occurred on or around August 18, 2016: "[Mr.] Hayit asked to see his lawyers or his family, but the request was rejected. Afterward, he asked for a paper and pencil to write a complaint, after which he was beaten by law enforcement personnel. As a result of the beatings, he [] sustained [the] broken arms and legs."¹⁸⁵

61. Government officials at the prison have forced Mr. Hayit into stress positions and repeatedly harassed him. These torture sessions caused Mr. Hayit to suffer serious medical ailments. In addition to the broken arms and legs noted above, Mr. Hayit now has long-term

¹⁷⁷

Id.

¹⁷⁸ See *infra* note 202 and accompanying text.

¹⁷⁹ Interview with confidential source.

¹⁸⁰ Interview with confidential source.

¹⁸¹ Interview with confidential source.

¹⁸² Interview with confidential source.

¹⁸³ Interview with confidential source.

¹⁸⁴ See Lemon, *supra* note 100.

¹⁸⁵ *Tajikistan: Jailed Politician's Family Vanish Amid Kidnapping Claims*, EURASIANET(Aug. 23, 2016), <http://www.eurasianet.org/node/80261>.

damage to his knees from being kept in stress positions for long periods of time during interrogations. Most notably, he cannot hear from his right ear and experiences a constant ringing noise and painful headaches, which he will likely have to cope with for the remainder of his life.

62. On March 9, 2019, the Author was able to visit her husband, Mr. Hayit, in prison for the first time, along with their two children and Mr. Hayit's mother. Mr. Hayit stated that he continued to be beaten by prison officials, including specifically by Nuriddin Rakhmonov, who was then deputy head of the Ministry of Justice's Department of Corrections. Mr. Hayit showed the Author injuries on his forehead and stomach that he said were caused by such beatings, stating that the Tajik authorities intended to punish him for refusing to film video messages denouncing exiled IRPT party members.¹⁸⁶ The Author observed that Mr. Hayit was unable to walk without assistance, he had a cut on his lip, and his eyes were bloodshot. Mr. Hayit stated that he had additional injuries beneath his clothing—that his body was black and blue—but that did not want to show us those injuries for fear of frightening the children.

63. Mr. Hayit advised the Author during the March 9, 2019 visit that that he had attempted to petition various officials in Tajikistan regarding prison officials torturing him and the injustice of his case—including letters written to the President of Tajikistan, the Prosecutor General of Tajikistan, and the head of Tajikistan's penitentiary system—but that he believed prison officials were not sending these letters out. At that moment Warden Vali, who was observing the visit and recording Mr. Hayit's conversation with the Author, interrupted to state that the letters had been sent but that Mr. Hayit would not get a response because he should be asking for a pardon rather than complaining about injustices done to him.¹⁸⁷ Mr. Hayit responded that he would never ask for a pardon because he is innocent of the crimes for which we was charged and convicted.

64. Following the visit, the Author reported to local media that she feared her husband would die in prison due to his torture and lack of proper medical care.¹⁸⁸ On March 11, 2019, the Author filed a complaint with the Tajikistan Prosecutor General's office—with copy to Mansurjon Umarov at the Ministry of Justice's Department of Corrections—recounting her observations and Mr. Hayit's allegations that he had been repeatedly tortured over his years of confinement. The Author requested the Government establish a commission to fully investigate these torture allegations. The Government never replied.

65. The Author was permitted another visit to Mr. Hayit in September 2019. During that visit, Mr. Hayit confirmed that prison officials had stopped torturing him for a brief period after the Author made the above details and torture allegations public, but that prison officials began beating him again within two months of the March 2019 visit. At the September 2019 visit, the Author observed that Mr. Hayit still could not move without assistance, his lower lip was broken, and there was a strong redness visible in his eyes.

66. In March 2020, Mr. Hayit stated that the beatings had stopped again but that as a result of his torture he could no longer hear out of his right ear and that he suffered constant ringing noises (*i.e.*, tinnitus) within his head and a chronically inflamed kidney.

¹⁸⁶ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 61, at 3.

¹⁸⁷ Statement by Mr. Hayit to Author at March 9, 2019 visit.

¹⁸⁸ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 61, at 3.

2. Denial of Medical Treatment

67. Mr. Hayit has stated that he was not allowed to obtain requested medical help after his multiple attacks. After his arms and legs were broken by Tajikistan prison staff, Mr. Hayit was reportedly denied access to adequate medical treatment, such as properly setting and binding the broken bones.¹⁸⁹ When the Author expressed her desire to report this mistreatment of Mr. Hayit as early as summer 2016, her home was raided by Government agents.¹⁹⁰

68. Mr. Hayit has sought medical treatment for pain in his kidneys, liver, and heart, and suffers from kidney inflammation and high cholesterol. He directed these requests verbally to prison officials and in letters to the head of the prison and the General Prosecutor's Office. All of his requests were denied.

69. During the March 9, 2019 family visit, Mr. Hayit informed the Author of an incident in February 2019 during which he suffered what he believed to be a heart attack. Prison officials ignored Mr. Hayit's complaint, and Mr. Hayit languished in pain on the floor of his cell without medical treatment for ten days before prison officials provided heart medicine. Mr. Hayit complained that he could not bend over due to chest pain in his heart. Mr. Hayit also complained of continued liver problems from beatings he had received despite his family sending liver medicine to the prison; prison officials never provided that medicine to Mr. Hayit.

70. During the same March 9, 2019 visit, Mr. Hayit complained that he had asked to use the 500 somoni (approximately \$48) his family donates every month to purchase the medicine he needed at the prison pharmacy, but prison officials refused and made comments about wanting him to die from lack of medical treatment.

71. During a follow-up family visit in September 2019, Mr. Hayit stated that he was still not receiving any regular health screenings and the guards did not respond to any of his requests for medical attention. Mr. Hayit specifically noted that he had been denied medical care up until just prior to the family visit. In a subsequent March 2020 visit, Mr. Hayit complained of an inflamed kidney, high cholesterol, continued liver problems, and elevated hemoglobin, none of which prison authorities were treating.

72. On May 16, 2020, the Author submitted a formal request to Umarov at the Ministry of Justice raising concerns over the accuracy and reporting of prisoners' health during the COVID-19 pandemic. Umarov responded by letter dated June 9, 2020, summarily stating that Mr. Hayit is examined "daily" by prison health officials who had rated his health status as "good" and asserting that Mr. Hayit "has no complaints."

73. Naturally, Mr. Hayit's untreated injuries, exacerbated by his age (63) and prior medical issues, are only worsening over time without adequate medical treatment.

3. Solitary Confinement and Conditions of Detention

¹⁸⁹ Cf. Lemon, *supra* note 100.

¹⁹⁰ *Id.*

74. Following the announcement of Mr. Hayit’s life sentence on June 2, 2016, Tajikistan placed Mr. Hayit in solitary confinement. UN observers have noted that prison conditions for prisoners sentenced to life imprisonment in Tajikistan are extremely harsh. “Prisoners serving a life sentence are confined in virtual isolation in their cells for up to 23 hours a day in small, cramped, unventilated cells, often in extreme temperatures, and they are subject to inadequate nutrition and sanitation arrangements; denial of contact with lawyers and only rare contact with family members; excessive use of handcuffing or other types of shackles or restraints; physical or verbal abuse; lack of appropriate health care (physical and mental); and denial of access to books, newspapers, exercise, education, employment and/or any other type of prison activities.”¹⁹¹ Mr. Hayit remained in those inhumane conditions for a period of almost three years, until March 2019.

75. In March 2019, prior to the Author’s first-ever visit to Prison No. 1, Mr. Hayit was moved into a cell with five other prisoners. During the March 2019 family visit, Mr. Hayit informed the Author that the conditions of his imprisonment remained inhumane and unsanitary—his cell was damp, dirty, and foul-smelling, which he likened to conditions that were worse than a barn and more like an outhouse. Mr. Hayit complained about the overcrowding of the cell, calling it dirty and narrow with not even enough space to turn around. Once the Author made that complaint public, prison authorities reduced the number of other prisoners in the cell to four, for a total of five prisoners in the cell, which still left Mr. Hayit sharing small quarters with four other prisoners. Mr. Hayit continues to receive no personal care products and the prison officials took away his mattress, leaving only a bed frame for him to sleep on.

76. Even now when prison officials have allowed Mr. Hayit’s family to visit him, they do not permit them to visit with Mr. Hayit in private.¹⁹²

77. In her May 16, 2020 letter to Umarov, the Author raised numerous issues relating to the conditions of Mr. Hayit’s confinement. The Author noted where the Government’s treatment of Mr. Hayit violated the Tajik Criminal Code, specifically in regards to minimum visitation allotments, telephone access (without Government minders present to eavesdrop on the conversation), and the number of life-sentenced prisoners confined to any one cell. In his June 6, 2020 response, Umarov summary denied the Author’s requests, reciting that there exists a “special regime” for life-sentenced prisoners in Tajikistan.

4. Denial of Visits

78. During Mr. Hayit’s initial detention (*i.e.*, before trial), his lawyers were able to see him infrequently and only while being watched by officials.

79. Since his conviction, the Author has been unable to visit Mr. Hayit frequently. Since March 2019, the Author has been allowed to visit her husband only once every six months, and when she does visit, she is unable to visit with Mr. Hayit in private.¹⁹³ During the March 2019 family visit, prison officials only allowed Mr. Hayit to see his family through a glass barrier accompanied by a

¹⁹¹ 2013 *Special Rapporteur Report*, *supra* note 93, at 15.

¹⁹² See FREEDOM NOW, SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE, INFORMATION ON STATE PARTIES TO BE EXAMINED – TAJIKISTAN 4 (2019), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/TJK/INT_CCPR_CSS_TJK_35098_E.pdf.

¹⁹³ *Id.*

warden, and when he began to complain of his torture, the warden guarding Mr. Hayit, a Mr. Vali, pulled out a phone and began recording Mr. Hayit's discussion with his wife and frequently interrupted the conversation.

80. While Mr. Hayit's family is allowed to send food, it is unclear if the food ever arrives.¹⁹⁴

5. COVID-19

81. Mr. Hayit faces a high risk of mortality if exposed to the COVID-19 virus. He is a 62-year old male, who is imprisoned in a facility that has repeatedly denied him treatment for acute injuries and he suffers from several comorbidities, including kidney inflammation and high cholesterol. Mr. Hayit necessarily interacts with his cellmates and with guards and other personnel of Tajikistan Prison No. 1, who come into close contact with his fellow prisoners. The country is now facing a heightened risk of rapid spread of the virus, and time is of the essence.

82. In May 2020, Mr. Hayit's son, together with relatives of other political prisoners, filed a letter with the WHO stating that at least four officials at Prison No. 1 had been hospitalized with suspected COVID-19 infections. They noted that the prison only had one thermometer for all prisoners and forced families to provide medicine which was becoming cost-prohibitive due to pandemic-related rationing and panic-buying (and which prison officials were refusing to give to Mr. Hayit anyway). They also complained that the prison was covering up cases of COVID-19 in the prison to make it appear as if there was no danger.

VII. ADMISSIBILITY

A. Jurisdiction

83. Tajikistan acceded to the ICCPR and the first Optional Protocol to the ICCPR in 1999. The violations of Mr. Hayit's rights under the ICCPR, including those still ongoing, commenced in 2015. This petition concerns alleged violations of a citizen of Tajikistan against Tajikistan for actions perpetrated by the Government or its agents, within its territory and occurring entirely after 1999. Therefore, this petition meets the requirements for the Committee's jurisdiction found in Article 1 of the first Optional Protocol to the ICCPR and Rule 96(a) of the Committee's Rules of Procedure.¹⁹⁵

B. Victim Status

84. The Author brings this claim on behalf of her husband. As this Committee has previously accepted communications from close members of the victims,¹⁹⁶ it is appropriate for the Author to

¹⁹⁴ Interview with confidential source.

¹⁹⁵ Rules of Procedure of the Human Rights Committee, U.N. Doc. No. CCPR/C/3/Rev/10 (Jan. 11, 2012).

¹⁹⁶ See e.g., *Touron v. Uruguay*, U.N. Human Rights Comm., Views of March 31, 1981, Communication No. 32/1978, U.N. Doc. CCPR/C/OP/1 at 61 (1984), ¶ 1; see also *Procedure for Complaints by Individuals Under the Human Rights Treaties*, UNITED NATIONS HUM. RTS. OFF. HIGH COMMISSIONER, <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#whocan> (last visited Feb. 22, 2021) ("One may also bring a claim on behalf of another person on condition that his/her written consent is obtained (without requirement as to its specific form). In certain cases, one may bring a case without such consent,

bring this claim about the violation of Mr. Hayit's rights under the ICCPR. Considering recent examples of Tajikistan retaliating against family members who have spoken out or taken action against the detention of their loved one,¹⁹⁷ including threats to herself personally, the Author is not comfortable obtaining her husband's written consent in connection with this petition, as doing so might entail carrying risky documents in and out of prison. The Author is therefore unable to provide Mr. Hayit's written consent. However, as a communication submitted on behalf of a victim may "be accepted when it appears that the individual in question is unable to submit the communication personally," this communication meets the requirements for victim status under Rule 96(b) of the Committee's Rules of Procedure.¹⁹⁸

C. No Abuse of Submission

85. This petition has been submitted within five years of the exhaustion of domestic remedies, which occurred approximately around July 2016 with the decision on Mr. Hayit's appeal to the Supreme Court¹⁹⁹ and within three years of the conclusion of another procedure of international investigation, which occurred on April 17, 2018 (when the United Nations Working Group on Arbitrary Detention issued the opinion described below in item E), and therefore does not constitute an abuse of submission as required by Rule 96(c) of the Committee's Rules of Procedure.²⁰⁰

D. Compatibility with the Provisions of the ICCPR

86. This petition alleges violations of various provisions of the ICCPR and is therefore compatible with its provisions, as required by Rule 96(d) of the Committee's Rule of Procedure.²⁰¹

E. The Matter at Issue in This Petition Is Not Being Examined Under Another Procedure

87. On September 8, 2017, Mr. Hayit, through his counsel, petitioned the United Nations Working Group on Arbitrary Detention (the "Working Group" or "WGAD"). On April 17, 2018, the Working Group issued an opinion in which it concluded that Mr. Hayit had been arbitrarily deprived of his liberty because of his exercising his freedom of expression, assembly, and right to take part in the conduct of public affairs, and that he never should have been put on trial in the first

for example, where a person is in prison without access to the outside world or is a victim of an enforced disappearance. In these cases, the Author of the complaint should state clearly why such consent cannot be provided.")

¹⁹⁷ See e.g., *Tajikistan: Intensified Pressure on Dissidents' Families*, HUM. RTS. WATCH (July 9, 2020, 7:12 AM), <https://www.hrw.org/news/2020/07/09/tajikistan-intensified-pressure-dissidents-families>; HUMAN RIGHTS WATCH, WORLD REPORT 2020 548 (2020),

https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf (noting Tajikistan authorities "regularly harass the Tajikistan-based relatives of peaceful dissidents"); *Tajikistan: Violent Retaliation against Activists*, HUM. RTS. WATCH (Sept. 28, 2016, 12:00 AM),

<https://www.hrw.org/news/2016/09/28/tajikistan-violent-retaliation-against-activists>.

¹⁹⁸ Rules of Procedure of the Human Rights Committee, *supra* note 195.

¹⁹⁹ [redacted] The Author has been unable to secure a copy of the Supreme Court's appeal decision because the Tajik government has classified the appeal and the decision has not been leaked. Mr. Hayit's counsel has provided July 2016 as the approximate time-frame for the decision.

²⁰⁰ Rules of Procedure of the Human Rights Committee, *supra* note 195.

²⁰¹ *Id.*

place.²⁰² In addition, the Working Group concluded that the trial was “carried out in total disregard for the guarantees encapsulated” in the International Covenant on Civil and Political Rights.²⁰³ Mr. Hayit’s treatment in detention, moreover, represented a “breach of the absolute prohibition of torture and ill-treatment.”²⁰⁴

88. The Working Group called on the Government to “take steps necessary to remedy the situation of Mr. Hayit without delay” and to bring Tajikistan into conformity with international norms, including those set out in the ICCPR, specifically directing the Government to “release Mr. Hayit immediately and accord him an enforceable right to reparations and other reparations” and “to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Hayit, and [] take appropriate measures against those responsible for the violation of his rights.”²⁰⁵ But Tajikistan has done nothing to comply with the Working Group’s April 17, 2018 opinion, and Mr. Hayit remains imprisoned to this day.²⁰⁶

89. To the Author’s knowledge, neither Mr. Hayit nor anyone representing Mr. Hayit has submitted any other pending communication to the United Nations, its constituent bodies, or any other treaty body or regional mechanism regarding the matter at issue in this petition, as required by Rule 96(e) of the Committee’s Rule of Procedure.²⁰⁷

F. Exhaustion of Domestic Remedies

90. On June 2, 2016, Mr. Hayit was convicted of, and sentenced to life imprisonment for, charges relating to murder, terrorism, and “forcible” actions against the regime under Article 187; Parts 1 and 2; Article 189, Part 3(a); Article 307, Part 3; Article 131, Part 3(a); Article 32, Part 3; Article 309, Part 2(b), Article 199 Part 4(a)(b)(c), Article 195, Part 3, Article 104, Part 2(a)(b)(g)(h)(i)(k)(l)(n), Article 179, Part 3(a), Article 306, Article 313, Article 307, Part 1, and Article 170 of the Criminal Code.

91. Mr. Hayit’s subsequent appeal to the Tajikistan Supreme Court failed.²⁰⁸ The Supreme Court’s opinion contained limited information about the proceedings in the trial court, but confirmed that the trial court had accepted wholesale the Government’s allegations against Mr. Hayit.²⁰⁹ The opinion further concluded that Mr. Hayit’s claims of bias and falsification of evidence were false because they contradicted the Government’s records. The opinion also did not give any weight to evidence that had allegedly been tainted by torture or later recanting

²⁰² Human Rights Council Working Grp. on Arbitrary Detention, Opinion No. 2/2018 concerning Haritos Mahmatali Rahmonovich Hayit (Tajikistan), ¶ 65, U.N. Doc. A/HRC/WGAD/2018/2 (May 17, 2018).

²⁰³ *Id.* ¶ 78.

²⁰⁴ *Id.* ¶ 68.

²⁰⁵ *Id.* ¶¶ 80–82.

²⁰⁶ On March 7, 2018, the Government filed a response to the WGAD’s opinion, summarily reciting the Government’s unsubstantiated position that the IRPT initiated violent insurrection in September 2015 and asserting that the allegations of Mr. Hayit’s torture and ill treatment were unfounded. Mr. Hayit’s counsel filed a prompt reply on March 21, 2018, noting the critical deficiencies and lack of evidence provided in the Government’s response.

²⁰⁷ Rules of Procedure of the Human Rights Committee, *supra* note 195. As stated in paragraph 32 *supra*, on April 17, 2018 the WGAD issued an opinion finding that Mr. Hayit’s detention was arbitrary and in violation of his rights under the ICCPR and called for his release, but the government of Tajikistan has done nothing to comply.

²⁰⁸ [redacted]

²⁰⁹ High Court Hayit Decision.

witnesses.²¹⁰ There is no indication that the Supreme Court considered any of the trial court's procedural defects. Because the Supreme Court of Tajikistan is the highest judicial authority in Tajikistan, domestic remedies have been exhausted, as required by the First Optional Protocol and Rule 96(f) of the Committee's Rules of Procedure.²¹¹

92. Statements by Tajik prison officials that Mr. Hayit should be seeking a "pardon" for his crimes, or that they hope he dies of lack of medical treatment, demonstrate that Mr. Hayit has no further avenues of appeal left. His letters notifying officials of his torture and poor treatment fall on deaf ears. It is clear that no one in the Tajik government will listen unless he admits guilt, and seeks a pardon, for crimes he did not commit. Therefore, domestic remedies have been exhausted, as required by the First Optional Protocol and Rule 96(f) of the Committee's Rules of Procedure.²¹²

VIII. VIOLATIONS OF THE ICCPR

93. Tajikistan is a party to the ICCPR and is obligated to abide by its provisions.²¹³

94. Article 10 of the Constitution states, "International legal documents recognized by Tajikistan shall be a component part of the legal system of the republic. In case the republican laws do not stipulate to the recognized international legal documents, the rules of the international documents shall apply."²¹⁴ By continuing to detain Mr. Hayit, Tajikistan is in violation of its obligations under the ICCPR, as detailed below.

A. Arrest and Pre-Trial Violations

1. Violation of Right to Privacy Against Warrantless Searches of the Home

95. Article 17 of the ICCPR guarantees that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."²¹⁵ This right to privacy is understood as an essential prerequisite to the right to freedom of expression, as enshrined and understood under Article 19 of the ICCPR.²¹⁶

²¹⁰ High Court Hayit Decision; Interview with confidential source.

²¹¹ Rules of Procedure of the Human Rights Committee, *supra* note 195.

²¹² Rules of Procedure of the Human Rights Committee, *supra* note 195.

²¹³ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> [hereinafter "ICCPR"].

²¹⁴ CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN art. 10, <http://www.president.tj/en/taxonomy/term/5/28> (last visited Feb. 22, 2021).

²¹⁵ ICCPR, *supra* note 213, at art. 17.

²¹⁶ Article 22 of the Tajikistan Constitution similarly recognizes a right to privacy in the home, specifically stating that "the home is inviolable. With certain exceptions, it is illegal to enter the home by force or deprive a person of a home. [Article 192 of the Tajikistan Code of Criminal Procedure further] states that police may not enter and search a private home without the approval of a judge." BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 61; AM. BAR ASS'N RULE L. INITIATIVE, IMPLEMENTATION OF CRIMINAL PROCEDURE LEGISLATION OF THE REPUBLIC OF TAJIKISTAN AND RECOMMENDATIONS FOR ITS IMPROVEMENT 89 (2012), https://www.americanbar.org/content/dam/aba/directories/roli/tajikistan/tajikistan_implementation_of_criminal_procedure_legislation_2012.pdf.

96. In this case, the Government has violated Tajik law, as well as analogous international law requirements regarding privacy and the inviolability of the home. As the U.S. Department of State documented: “On September 16, 2015 [Tajikistan police] officers arrested Mahmadali Hayit, deputy head of the IRPT. Following that, six [police] and prosecutor general officers visited his home and conducted a search of his house. Hayit’s relatives said [that] the law enforcement officers conducting the search did not have a search warrant. The officers confiscated documents belonging to Hayit, including his passport, phone, military card, a computer, tablet, and party documentation.”²¹⁷ The Government’s warrantless searches of Mr. Hayit’s home violate both international law and the Tajikistan Constitution.

2. Violation of the Right to Be Informed of the Reason for Arrest or Charges Against the Person

97. Article 9(2) of the ICCPR requires that a detainee “be informed, at the time of arrest, of the reasons for his arrest and [] be promptly informed of any charges against him.”²¹⁸ The purpose for this requirement is to enable a detainee to request a prompt decision on the lawfulness of his detention if the reasons given are invalid or unfounded.²¹⁹ Moreover, the Government must provide “not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.”²²⁰

98. Mr. Hayit was deprived of this right as he was not brought before a judge for three days, at which point he was informed of only one of the charges against him. Regarding the requirement that the detainee be “promptly informed” of any charges against him, the Human Rights Committee has not confirmed precisely what time frame would be considered “prompt.” However, the Human Rights Committee has indicated that where a detainee is arrested on pre-existing charges, “the authorities may explain the legal basis of the detention some hours later.”²²¹ Considering this approved time frame of “some hours later,” and that in context of a detainee’s habeas corpus rights the Human Rights Committee has interpreted “prompt” to mean about 48 hours,²²² it seems likely that the Human Rights Committee would consider Tajikistan’s action—in withholding *any* information about the charges against Mr. Hayit for at least three days, and providing only incomplete information at that time—to be a failure of the Government’s obligation to promptly notify Mr. Hayit of those charges.

99. Moreover, for nearly five months after his September 16, 2015 arrest, neither Mr. Hayit nor his lawyers were provided a full list of the legal bases of the charges brought against him. The

²¹⁷ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 28, at 8.

²¹⁸ The U.N. General Assembly reaffirmed this right in adopting Principle 10 of the Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment. *See* G.A. Res. 43/173, annex, Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment (Dec. 9, 1988) [hereinafter Body of Principles].

²¹⁹ Human Rights Committee, General Comment No. 35, ¶ 25, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) [hereinafter General Comment No. 35]; *Campbell v. Jamaica*, U.N. Human Rights Committee, U.N. Doc. CCPR/C/44/D/248/1987, ¶ 6.3 (Mar. 30, 1992), <http://opil.ouplaw.com/view/10.1093/law:ihrl/2371unhrc92.case.1/law-ihrl-2371unhrc92>.

²²⁰ General Comment No. 35, *supra* note 219, ¶ 25.

²²¹ *Id.* ¶ 30.

²²² *Id.* ¶ 33.

Government did not provide Mr. Hayit and his lawyers access to the criminal complaint being brought against Mr. Hayit until the weeks immediately preceding Mr. Hayit’s February 9, 2016 trial. Prior to this time, Mr. Hayit and his lawyers were unable to confirm all the charges brought against Mr. Hayit, much less all of the factual allegations underlying the Government’s prosecution. Further, even after Mr. Hayit and his lawyers were given access to the complaint against him, the Government limited access to the complaint to certain times of day.

3. Violation of the Right to Habeas Corpus

100. Articles 9(3) and (4) of the ICCPR protect an individual’s right to challenge the legality of his continued detention.²²³ Article 9(3) of the ICCPR requires that a detainee “be brought promptly before a judge or other officer authorized by law to exercise judicial power”²²⁴ and “applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”²²⁵ Article 9(4) of the ICCPR extends the principle of habeas corpus to non-criminal detainees as well.²²⁶ The Human Rights Committee has interpreted the term “promptly” to be within about 48 hours, except in exceptional circumstances.²²⁷

101. The Human Rights Committee has also determined that incommunicado detention inherently violates Article 9(3) of the ICCPR.²²⁸ This guarantee not only serves as a check on arbitrary detention, but also provides an important safeguard for other related rights, such as freedom from torture.²²⁹

102. Here, Tajikistan violated Mr. Hayit’s rights under Articles 9(3) and 9(4) by holding him incommunicado and refusing to let him challenge his detention—in any form—from September 16 until September 19, a time frame that exceeds the requirement that a detainee be brought “promptly” (within 48 hours) before a judge. Just as feared by the Human Rights Committee, Tajikistan’s violation of Article 9(3) and (4) enabled other violations, such as torture, to occur while Mr. Hayit was being held without access to his attorney or family.

4. Violation of the Right to Release Pending Trial

103. Article 9(3) of the ICCPR also enshrines the right to an individual’s release pending trial by confirming that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody”²³⁰ The Human Rights Committee has found that “[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the

²²³ The U.N. General Assembly has reaffirmed these rights in Principles 4, 11, 32, and 37 of the Body of Principles. *See* Body of Principles, *supra* note 218.

²²⁴ ICCPR, *supra* note 213, at art. 9(3).

²²⁵ General Comment No. 35, *supra* note 219, ¶ 32.

²²⁶ *Id.* ¶ 39.

²²⁷ *Id.* ¶ 33.

²²⁸ *Id.* ¶ 35.

²²⁹ *Id.* ¶ 34. Other rights that may be at risk are those guaranteed by Articles 6, 7, 10 and 14 of the ICCPR. *See* ICCPR, *supra* note 213.

²³⁰ ICCPR, *supra* note 213, at art. 9(3).

recurrence of crime. . . . Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”²³¹

104. Mr. Hayit was arrested on September 16, 2015 and presented before a judge on September 19, 2015. At this arraignment, which Mr. Hayit attended without a lawyer, the judge refused to release Mr. Hayit on bail without giving any specific and individualized reasons for such refusal; Mr. Hayit has remained in detention ever since. The Government has never presented any evidence that Mr. Hayit was a flight risk, nor is there any credible evidence that he was a danger to the public such that bail should have been appropriately denied.²³² Thus, in contradiction to the requirement that pre-trial detention be the exception rather than the rule and that such pre-trial detention be based on an individualized determination that it is both reasonable and necessary to deny release given a defendant’s circumstances, the judge impermissibly defaulted to continuing the indefinite pre-trial detention of Mr. Hayit.

5. Violation of the Right to Communicate with Counsel

105. Article 14(3)(b) of the ICCPR guarantees a criminal defendant the right “to communicate with counsel of his own choosing.”²³³ The Human Rights Committee has clarified that such guarantee “requires that the accused is granted prompt access to counsel”²³⁴ and that “[s]tate parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”²³⁵ Article 19 of the Constitution also guarantees that “[e]veryone shall be entitled to use the assistance of advocate from the moment of his arrest.”²³⁶

106. The right to communicate with counsel also includes the requirement that “[c]ounsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.”²³⁷ Moreover, Principle 18(4) of the Body of Principles reflects the international consensus that client-attorney interviews may not be held within the hearing of a law enforcement official.²³⁸

²³¹ General Comment No. 35, *supra* note 219, ¶ 38. The General Assembly’s Body of Principles reinforces these rights: Principles 38 and 39 affirm that, except in special cases, a criminal detainee is entitled to release pending trial. *See* Body of Principles, *supra* note 218.

²³² *Cf.* Baer, *supra* note 31; Putz, *supra* note 33.

²³³ ICCPR, *supra* note 213, at art. 14(3)(b).

²³⁴ Human Rights Committee, General Comment No. 32, ¶ 34, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter “General Comment No. 32”].

²³⁵ General Comment No. 35, *supra* note 219, ¶ 35. Consensus in international law, as reflected in Principles 18, 19, and 20 of the Body of Principles, require prisoners’ right to counsel not be suspended or restricted save for exceptional circumstances, and that prisoners’ right to communication includes communication with the outside world. Moreover, Paragraph 1 of the Basic Principles on the Role of Lawyers confirms that the right to assistance of an attorney covers all stages of criminal proceedings and that access to an attorney should be granted in no case later than 48 hours after the individual’s arrest. *See Basic Principles on the Role of Lawyers*, *supra* note 144, ¶¶ 1,7.

²³⁶ CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN art. 10, <http://www.president.tj/en/taxonomy/term/5/28#hamadoni> (last visited Feb. 22, 2021), , art. 19.

²³⁷ General Comment No. 32, *supra* note 234, ¶ 34.

²³⁸ Body of Principles, *supra* note 218, principle 18(4).

107. After his September 16, 2015 arrest, Mr. Hayit was denied access to a lawyer for the first ten days of his pre-trial incarceration. He was beaten and interrogated throughout this ten-day period by Government officials, who unsuccessfully attempted to coerce his confession.

108. Finally, on September 26, 2015, Mr. Hayit was allowed access to counsel for the first time. Yet that access to counsel remained inadequate because the Government imposed restrictions on his exercise of that right. For example, the authorities permitted Mr. Hayit to meet with his lawyers only five or six times before his trial. The Government also monitored all communications and meetings between Mr. Hayit and his lawyers; they were never allowed to communicate confidentially. In addition, the Government pressured the lawyers representing the thirteen IRPT members in an effort to cripple their legal representation. For example, Buzurgmehr Yorov, who initially represented Mr. Hayit and a number of the other twelve IRPT members,²³⁹ was “pressured to abandon his clients[,] [was] later detained after refusing to” do so,²⁴⁰ and was subsequently jailed by the Government.²⁴¹

109. The Government thus impermissibly restricted Mr. Hayit’s access to his lawyers and restricted his ability to communicate freely with his attorneys for purposes of preparing a defense, in violation of Article 14(3)(b) of the ICCPR.

6. Violation of the Right to Have Adequate Time and Opportunity for the Preparation of a Defense

110. Under Article 14(3)(b) of the ICCPR, an individual has the right “to have adequate time and facilities for the preparation of his defence.”²⁴² The Human Rights Committee has confirmed that “[t]his provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms . . . what counts as ‘adequate time’ depends on the circumstances of each case.”²⁴³

111. Mr. Hayit and his lawyers were not given adequate time or opportunity to prepare Mr. Hayit’s defense, and the Government substantially restricted Mr. Hayit and his attorneys’ pre-trial access to the evidence that would be used against him, thereby materially prejudicing his defense.

112. As discussed in paragraph 46 above, Mr. Hayit’s lawyers did not even have access to the Government’s complaint against Mr. Hayit until a few weeks immediately preceding trial; they

²³⁹ [redacted]

²⁴⁰ Christoph Germann, *Tajikistan’s Attempt to Prove IRPT-Nazarzoda Plot Backfires, Taliban Seize Kunduz as U.S. Mulls Drawdown Options & More*, NEWSBUD (Sept. 29, 2015), <https://www.newsbud.com/2015/09/29/the-new-great-game-round-up-september-29-2015/>.

²⁴¹ See generally Delegation to the Republic of Tajikistan, European Union, Local EU Statement on the Sentencing of Mr. Buzurgmehr Yorov (Mar. 3, 2017), https://eeas.europa.eu/sites/eeas/files/20170302_eu_homs_statement_yorov_en_1.pdf (calling upon Tajik authorities to abide by fundamental guarantees of freedom and the rule of law, which were violated by Mr. Yorov’s subsequent trial and 23-year long prison term).

²⁴² ICCPR, *supra* note 213, at art. 14(3)(b). This right is reiterated specifically by Principle 18(2) of the Body of Principles and, more generally, by Principle 11(1) of the Body of Principles which provide for a right to defense. See Body of Principles, *supra* note 218.

²⁴³ General Comment No. 32, *supra* note 234, ¶ 32.

were reportedly first given partial access to the complaint between twelve and sixteen days before Mr. Hayit's joint trial began.²⁴⁴

113. In addition, even after Mr. Hayit's lawyers were finally given partial access to the Government's criminal allegations, they were still denied information about much of the evidence the Government planned to use against Mr. Hayit. The Government refused to provide pre-trial access to any evidence that the Government deemed classified. Evidence deemed classified included, but was not limited to, the prosecutor's witness list.²⁴⁵ Informants who witnessed Mr. Hayit's trial have reported that Mr. Hayit's lawyers were not aware who the Government would be calling as witnesses until those witnesses were called on the day of trial.²⁴⁶

114. From the date they were first given access to the complaint, the Government provided Mr. Hayit's lawyers less than three weeks to prepare for a complex joint trial involving 13 defendants. The Government simultaneously denied adequate access to the prosecution's evidence and other information that would be necessary to prepare a meaningful defense, in violation of Mr. Hayit's right to adequate time and opportunity to prepare a defense.

B. Trial Violations

1. Violation of the Right to a Public Hearing

115. Article 14(1) of the ICCPR entitles persons facing criminal charges the right to a fair and public hearing before a competent, independent, and impartial tribunal established by law.²⁴⁷

116. The right to a public hearing is a necessary protection to ensure the fairness and impartiality of a tribunal's decision-making. As the Human Rights Committee has emphasized, public hearings "ensure[] the transparency of proceedings and thus provide an important safeguard for the interest of individuals and of society at large."²⁴⁸ The right to a public hearing must include a hearing open to the general public, including media, without limiting entrance to a select group of people.²⁴⁹

117. Although Article 14(1) of the ICCPR does allow for the public to be excused from a trial for reasons of national security, it still requires that "any judgement rendered in a criminal case or in a suit at law shall be made public."²⁵⁰ This judgment must include "the essential findings, evidence and legal reasoning."²⁵¹ Moreover, the UN Working Group on Protecting Human Rights While Countering Terrorism has confirmed that "[a]ny restrictions on the public nature of a trial, including for the protection of national security, must be both necessary and proportionate."²⁵² Any such exclusion of the public for reasons of national security "should nevertheless be

²⁴⁴ [redacted]

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ ICCPR, *supra* note 213, at art. 14(1).

²⁴⁸ General Comment No. 32, *supra* note 234, ¶ 28.

²⁴⁹ *Id.* ¶ 29.

²⁵⁰ ICCPR, *supra* note 213, at, art. 14(1).

²⁵¹ General Comment No. 32, *supra* note 234, ¶ 29.

²⁵² UNITED NATIONS COUNTER-TERRORISM IMPLEMENTATION TASK FORCE, BASIC HUMAN RIGHTS REFERENCE GUIDE: RIGHT TO A FAIR TRIAL AND DUE PROCESS IN THE CONTEXT OF COUNTERING TERRORISM 1 (2014), <http://www.ohchnorg/EN/newyork/Documents/FairTrial.pdf>.

accompanied by adequate mechanisms for observation or review to guarantee the fairness of the hearing” and the exclusion of the public should be limited only those portions of the hearing in which it is necessary.²⁵³

118. In stark contrast to these principles, the Government has attempted to keep virtually all of Mr. Hayit’s trial, and related pre-trial and post-trial detention, secret. Mr. Hayit was tried in a closed door trial before a specially constituted court (presided over by the Chief Military Judge) that began on February 9, 2016. The Government justified such secrecy based on its own bare assertion that the proceedings needed to be “classified”²⁵⁴; it made no effort to explain how it was “necessary and proportionate” to exclude the public nor to set up other mechanisms for observation which might guarantee the fairness of the proceedings. The public was also excluded from the entirety of the trial, not just from those hearings where information allegedly sensitive to national security was presented.

119. Virtually all the information available about Mr. Hayit’s trial has come from leaked information and documents or secondhand reports from international observers, who have spoken to individuals familiar with the proceedings. The Government did not make public any essential findings, evidence or legal reasoning; the judgment itself was leaked at great risk by [redacted]; the leaked copy of the judgment is annexed as the Appendix of Supporting Documents. Mr. Hayit’s appeal likewise remains confidential; however, a copy of that appeal has not been leaked to the public. The Government kept, and continues to keep, Mr. Hayit’s trial proceedings cloaked in a veil of secrecy that runs counter to the basic requirements of transparency imposed by Article 14(1) of the ICCPR.

2. Violation of the Right to Equality Before the Courts with an Independent and Impartial Tribunal

120. Article 14(1) of the ICCPR also guarantees a fair trial before an independent and impartial tribunal. Article 14(1) establishes an objective standard, which is treated as an “absolute requirement[] not capable of limitation.”²⁵⁵ “The requirement of independence refers, in particular, to . . . the actual independence of the judiciary from political interference by the executive branch and the legislature.”²⁵⁶ Moreover, the fairness standard must be measured by an objective “reasonableness standard;” that is, the court must appear to a reasonable observer to be impartial.²⁵⁷ If, for example, a court fails to prevent or remedy serious procedural mistakes or to

²⁵³ *Id.* at 19.

²⁵⁴ *Trial Against 13 Members of the Islamic Renaissance Party Begins in Tajikistan*, ASS’N FOR HUM. RTS. CENT. ASIA (Aug. 2, 2016, 11:14 AM), <http://www.ahrca.eu/tadjikistan/freedom-of-conscience/880-trial-against-13-members-of-the-islamic-renaissance-party-begins-in-tajikistan>.

²⁵⁵ ALEX CONTE & RICHARD BURCHILL, *DEFINING CIVIL AND POLITICAL RIGHTS* 165 (2d ed. 2009).

²⁵⁶ General Comment No. 32, *supra* note 234, ¶ 19. Article 19 of the Tajikistan Constitution also demands that the nation’s courts be competent, impartial and independent, specifically requiring that “[e]veryone shall be guaranteed judicial protection. Everyone shall be entitled to consider his case by competent, independent, and impartial court established according the law.” CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN art. 19, <http://www.president.tj/en/taxonomy/term/5/28> (last visited Feb. 22, 2021).

²⁵⁶ The requirement for an independent judiciary is echoed by Article 87 of the Constitution, which guarantees that judges be “shall be independent in their activities and subordinate only to the Constitution and law. Interference in their activity shall be not permitted.” *Id.* at art. 87.

²⁵⁷ General Comment No. 32, *supra* note 234, ¶ 21.

provide a duly-reasoned judgment, this would indicate to a reasonable observer that the proceedings are not “fair.”

121. Article 14(1) of the ICCPR also demands that “all persons shall be equal before the courts and tribunals” which means that the prosecution and the defense must enjoy equality of arms.²⁵⁸ Effectively, equality of arms requires that both parties have the same procedural rights and, specifically, that “each side be given the opportunity to contest all the arguments and evidence adduced by the other party.”²⁵⁹

122. In violation of these rights, Mr. Hayit was subjected to a non-independent and biased court, in an unfair proceeding which did not afford him equality of arms. Mr. Hayit’s trial was conducted within a context where, in practice, “[t]he president has nearly complete control over the national-level judiciary through the Ministry of Justice.”²⁶⁰ As discussed in the Statement of Facts above, President Rahmon exerts extreme influence over the judiciary, which lacks the resources needed to function independently. A court system where the rate of acquittal is almost zero cannot be considered to function independently from the executive’s wishes. Moreover, although the Government has attempted to keep Mr. Hayit’s trial proceedings secret, sufficient information has leaked out to make clear the trial proceedings were conducted with an acute bias in favor of the prosecution.

123. Indeed, virtually all of the information available regarding Mr. Hayit’s trial suggests the proceedings were heavily weighted against Mr. Hayit and his co-defendants, who were not afforded equal procedural rights to those of the prosecution. First, the defense team was not given full access to the prosecution’s evidence or witness list; at trial they were thus attempting to defend against classified evidence to which they had minimal access. Second, the defendants were presented to the court in shackles, bruised and bleeding from their forced run around courthouse—an occurrence which viscerally demonstrates how contemptuously they were treated by the authorities. Third, the court allowed into evidence information which had been obtained through an illegal search and witness testimony which was severely tainted by credible torture allegations—none of which allegations appear to have been investigated seriously. The court also did not give any weight to the recanting testimony given by Saraek Myrodov, confirming that he was coerced into giving false testimony against Mr. Hayit. Fourth, the court denied the defense their motion to present expert witnesses, although the prosecution was able to present its expert witnesses. Finally, the court reached a guilty conviction against all defendants despite the fact that the evidence which was presented was totally devoid of concrete links tying Mr. Hayit or the others to the failed coup.

124. In fact, there is no indication that the court ever seriously considered the defense case or did anything other than rubber stamp the Government’s allegations: “A lawyer who represented one of the defendants and was present in court throughout the trial told the Association for Human

²⁵⁸ ICCPR, *supra* note 213, at art. 14(1).

²⁵⁹ General Comment No. 32, *supra* note 234, ¶ 13.

²⁶⁰ OLCOTT, *supra* note 18, at 31; *see also Preliminary Observations by the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression*, UNITED NATIONS HUM. RTS. OFF. HIGH COMMISSIONER (Mar. 9, 2015), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17193&LangID=E> (noting that the law does not even provide a clear definition of “extremism” or “terrorism” or explain what evidence is sufficient to prove such crimes).

Rights in Central Asia (AHRCA) that the government presented no [admissible] evidence of the defendants' guilt, [merely] citing the allegations made in the indictments as established facts."²⁶¹

125. The abject unfairness of the trial proceedings is further supported by information gleaned from the Tajikistan Supreme Court's subsequent opinion affirming the trial court proceedings. This opinion had also been classified by the Government but a handwritten copy of the opinion was leaked on August 4, 2016.²⁶² The opinion contains only limited information about the closed-door trial's proceedings,²⁶³ but it does confirm that the trial court accepted all of the Government's allegations against Mr. Hayit. Based on the Tajikistan Supreme Court opinion, there is also no indication that the trial court ever meaningfully addressed the procedural irregularities that plagued Mr. Hayit's case—including, but not limited to, state evidence obtained without a warrant and the use of witness statements obtained under torture or duress.

126. By subjecting Mr. Hayit to a court that was not effectively independent from the executive and that conducted a highly biased proceeding which did not grant the defense equality of arms to the prosecution, Tajikistan violated Mr. Hayit's rights under Article 14(1) of the ICCPR.

3. Violation of the Presumption of Innocence

127. Article 14(2) of the ICCPR guarantees that "everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law."²⁶⁴ Persons facing criminal charges are "entitled to a fair and public hearing by a competent, independent and impartial tribunal, established by law."²⁶⁵ The Human Rights Committee has specifically confirmed that the presumption of innocence creates a "duty for all public authorities to refrain from prejudging the outcome of the trial, e.g. by abstaining from making public statements affirming the guilt of the accused" and that "[d]efendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals."²⁶⁶

128. Tajikistan violated Mr. Hayit's right to be presumed innocent in several ways. First, the Government publicly expressed certainty about the guilt of the IRPT members at the highest levels; even before Mr. Hayit's trial began, President Rahmon publicly accused the IRPT of being "terrorists with evil consciences" for their alleged role in the September 4 failed coup. State-owned media also repeatedly blamed IRPT for the coup. Second, Mr. Hayit and his co-defendants were brought before the court in a manner suggesting their guilt, shackled, bruised and bloody from their forced run around the courtyard. Finally, the trial court's extreme bias towards Mr. Hayit evidenced that his guilt was a foregone conclusion. As Nadejda Atayeva, president of the

²⁶¹ *Tajikistan: Verdicts of Opposition Activists Travesty of Justice*, HUM. RTS. WATCH (June 7, 2016, 4:19 AM), <https://www.hrw.org/news/2016/06/07/tajikistan-verdicts-opposition-activists-travesty-justice>.

²⁶² [redacted]

²⁶³ High Court Mr. Hayit Decision.

²⁶⁴ ICCPR, *supra* note 213. Article 11(1) of the UDHR reflects the international consensus that the right to a presumption of innocence extends "until proved guilty according to law in a public trial at which [the defendant] has had all the guarantees necessary for his [or her] defense." G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 11 (Dec. 10, 1948). Principle 36 of the Body of Principles similarly reflects the presumption of innocence until proven guilty in a public trial. *See* Body of Principles, *supra* note 218.

²⁶⁵ ICCPR, *supra* note 213, art. 14(1).

²⁶⁶ General Comment No. 32, *supra* note 234, ¶ 30.

Association for Human Rights in Central Asia, observed with regard to the trial of Mr. Hayit and his colleagues in the IRPT: “The only purpose of this trial was to dress up political repression in the trappings of legal proceedings The defendants’ crimes appear to be fabricated, yet their fate was pre-determined. This is a travesty of justice.”²⁶⁷

4. Violation of the Right to Examine Witnesses

129. Article 14(3)(e) of the ICCPR provides that “[i]n the determination of criminal charges against [a defendant] everyone shall be entitled . . . (e) [t]o examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”²⁶⁸ The Human Rights Committee has confirmed that this guarantee is a crucial application of the principle of equality of arms and important for ensuring an effective defense.²⁶⁹

130. At trial, Mr. Hayit’s defense team was unable to effectively examine the witnesses against him as they were not given full access to the prosecution’s witness list and thus could not properly prepare to cross-examine any testimony. Moreover, although the court allowed the prosecution to present expert witnesses, it denied the defense team’s motion to present expert witnesses on behalf of Mr. Hayit and his co-defendants.

131. In light of the court’s allowance of the prosecution to present previously non-disclosed witnesses and its refusal to allow the defense to present all of its witnesses, the Government violated Mr. Hayit’s rights under Article 14(3)(e) of the ICCPR.

C. Violation of the Right to Be Free from Torture and Cruel, Inhuman, or Degrading Treatment or Punishment

132. Article 7 of the ICCPR guarantees that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²⁷⁰ Article 10(1) of the ICCPR further provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”²⁷¹ Article 14(3)(g) of the ICCPR also specifically prohibits the infliction of physical or mental pain or suffering by a public official with the intention to coerce a confession.²⁷²

²⁶⁷ *Tajikistan: Verdicts of Opposition Activists Travesty of Justice*, HUM. RTS. WATCH (June 7, 2016, 4:19 AM), <https://www.hrw.org/news/2016/06/07/tajikistan-verdicts-opposition-activists-travesty-justice> (quoting Nadejda Atayeva).

²⁶⁸ ICCPR, *supra* note 213, at art. 14(3)(e).

²⁶⁹ General Comment No. 32, *supra* note 234, ¶ 39.

²⁷⁰ ICCPR, *supra* note 213, at art. 7.

²⁷¹ *Id.* at art. 10(1). This right is reiterated by Articles 1, 2 and 16(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention Against Torture”), to which Tajikistan is party, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 83 [hereinafter Convention Against Torture], Article 5 of the UDHR, G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 5 (Dec. 10, 1948), Principles 1 and 6 of the Body of Principles, Body of Principles, *supra* note 218, principles 1, 6, and Mandela Rule 1, G.A. Res. 70/175, The Nelson Mandela Rules, Rule 1 (Jan. 8, 2016).

²⁷² See ICCPR, *supra* note 213, at art. 14(3)(g). International law’s particular concern with torture as an interrogatory tool is further reflected in the definition of torture in Convention Against Torture, which defines the

133. In addition, prohibitions against torture have also been adopted into Chapter 2, Article 18 of the Constitution, which states: “Everyone shall have the right to life. No one shall be deprived of life except by order of the court for especially grave crimes. The state shall guarantee the inviolability of a person. No one shall be subjected to torture, punishment, and inhuman treatment. It shall be prohibited to subject a person to forced medical or scientific experiments.”²⁷³

134. Although Tajikistan has ratified these prohibitions against torture, in practice torture and other cruel and inhuman abuse of prisoners remains widespread. “Experts agree[] that in most cases there is impunity for rampant torture in Tajikistan.”²⁷⁴ As discussed below, Mr. Hayit has been denied the right to be free from torture and cruel, inhuman, or degrading treatment or punishment.

1. Torture and Other Abuse or Mistreatment

135. Mr. Hayit has been subjected to torture and inhuman treatment since the beginning of his detention.

136. Prior to his trial, Mr. Hayit was subject to beatings and torture during the course of interrogations by Government officials—who demanded that Mr. Hayit (falsely) confess to involvement in the September 4, 2015 attack by militants. Mr. Hayit was kept in stress positions during many interrogations.²⁷⁵ These interrogations have resulted in long-term damage to his knees, such that he was unable to walk properly after the torture.

137. There have been reports that Mr. Hayit also had his arms and legs broken while in prison on or around August 18, 2016.²⁷⁶ According to these reports, “[Mr.] Hayit asked to see his lawyers or his family, but the request was rejected. Afterward, [Mr. Hayit] asked for a paper and pencil to write a complaint, after which he was beaten by law enforcement personnel. As a result of the beatings, he [] sustained [the] broken arms and legs.”²⁷⁷

term as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession,” Convention Against Torture, *supra* note 271, art. 1(1), as well as in Principle 21(2) the Body of Principles which guarantees that “no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment. Body of Principles, *supra* note 218, at principle 21(2). Principle 21 of the Body of Principles also prohibits Tajikistan from taking “undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person,” and from violence, threats, or methods of interrogation that impair a detained person’s judgment or decision-making capacity while the person is being interrogated. *Id.*

²⁷³ CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN art. 18, <http://www.president.tj/en/taxonomy/term/5/28> (last visited Feb. 22, 2021).

²⁷⁴ *Tajikistan: Events of 2008*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2009/country-chapters/europe/central-asia-tajikistan> (last visited Feb. 22, 2021).

²⁷⁵ See Interview with confidential source.

²⁷⁶ See Lemon, *supra* note 100.

²⁷⁷ *Tajikistan: Jailed Politician’s Family Vanish Amid Kidnapping Claims*, EURASIANET(Aug. 23, 2016), <http://www.eurasianet.org/node/80261>.

138. In addition, later in 2016, sources inside the prison where Mr. Hayit is being held reported that the head of prisons had changed and that—since the change of control—Mr. Hayit was being subject to even more frequent torture, harassment, and other inhuman treatment.

139. For the next three years, Mr. Hayit stayed quiet about the torture he was receiving, hoping his silence would make prison officials torture him less. However, this did not occur.

140. In March 2019, the Author was able to visit Mr. Hayit in prison. Mr. Hayit told the Author that he had been and was continuing to be beaten by prison officials, including specifically by Nuriddin Rakhmonov, who was then deputy head of the Ministry of Justice’s Department of Corrections, and that prison officials refused to treat his injuries. During that visit, Mr. Hayit showed the Author injuries on his forehead and stomach that he said were caused by such beatings to punish him for refusing to record videos denouncing Tajik opposition figures abroad.²⁷⁸

141. In September 2019, Mr. Hayit confirmed that prison officials stopped torturing him briefly after his wife made his accusations public, but that within two months of the March 2019 visit, prison officials began torturing him again. At this visit, Mr. Hayit continued to display signs and symptoms of physical abuse.

142. In March 2020, Mr. Hayit stated that the torture had stopped again but that as a result of his torture he could no longer hear out of his right ear and suffered from constant tinnitus and an inflamed kidney.

143. The torture inflicted upon Mr. Hayit appears designed to coerce him into admitting the crimes for which he was charged and convicted, although he has consistently denied those charges. It stands to reason that the torture is intended both to punish Mr. Hayit and to deter future IRPT activities by either Mr. Hayit (once he is finally released from prison) or others.

2. Denial of Medical Care

144. The Committee against Torture has concluded that failure to provide medical care to detainees can amount to cruel and degrading treatment under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²⁷⁹ Moreover, the UN Special Rapporteur on Torture and the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, among other rapporteurs, have confirmed that “[t]he denial of medical care, physical abuse, either in overcrowded prisons or in solitary confinement and other forms of torture and ill-treatment exposes prisoners to risk of serious injuries and death.”²⁸⁰ Principle 24 of the Body of Principles states that “medical care and treatment shall be provided whenever necessary” to persons who are detained or imprisoned.²⁸¹ Mandela Rule 27(1) confirms that “All prisons shall ensure prompt access to medical attention in

²⁷⁸ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 61, at 3.

²⁷⁹ General Assembly, Rep. of the Comm. Against Torture, U.N. Doc. A/53/44 (Sept. 16, 1998).

²⁸⁰ *Iran: Denial of Adequate Medical Treatment to Political Prisoners Unacceptable - UN Rights Experts*, UNITED NATIONS HUM. RTS. OFF. HIGH COMMISSIONER (Apr. 27, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19886&LangID=E>.

²⁸¹ Body of Principles, *supra* note 218.

urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.”²⁸²

145. As described in Section VI.C.2 above, Tajikistan has consistently denied Mr. Hayit access to critical medical treatment that is necessary to address the injuries his interrogators and prison officials have inflicted upon him, nor the medical treatment necessary to address other attendant health risks such as his elevated hemoglobin levels. Moreover, Prison No. 1, like Tajik prisons generally, suffers a critical lack of resources necessary to combat the spread of COVID-19 within the facility. Tajikistan’s purposeful neglect of Mr. Hayit constitutes a violation of his rights under international law.

3. Solitary Confinement

146. The Human Rights Committee has said that “prolonged solitary confinement of [] detained or imprisoned person[s] may amount to acts prohibited by article 7” of the ICCPR.²⁸³ The Committee against Torture has concluded that the use of solitary confinement in prisons should be abolished or strictly and specifically regulated.²⁸⁴ The Special Rapporteur on Torture dedicated an entire report to the use of solitary confinement, concluding that “where the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, . . . it can amount to cruel, inhuman or degrading treatment or punishment and even torture.”²⁸⁵ This report specifically confirmed that:

“Solitary confinement, when used for the purpose of punishment, cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behaviour and thus constitutes an act defined in article 1 or article 16 of the Convention against Torture, and a breach of article 7 of the International Covenant on Civil and Political Rights. This applies as well to situations in which solitary confinement is imposed as a result of a breach of prison discipline, as long as the pain and suffering experienced by the victim reaches the necessary severity.”²⁸⁶

147. In contravention of these principles, Mr. Hayit has been held in long-term solitary confinement for much or all of his incarceration. Indeed, this is the norm for prisoners like Mr. Hayit, who are serving life imprisonment sentences in Tajikistan. And solitary confinement in any State results in extreme mental and physical challenges for prisoners: As the Special Rapporteur on Torture has observed, “[p]risoners serving a life sentence are confined in virtual

²⁸² G.A. Res. 70/175, The Nelson Mandela Rules, Rules 27(1) (Jan. 8, 2016).

²⁸³ Human Rights Committee, General Comment No. 20, ¶ 6, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 10, 1992), http://ccprcentre.org/page/view/general_comments/27786.

²⁸⁴ General Assembly, Rep. of the Comm. Against Torture, ¶ 156, U.N. Doc. A/53/44 (Sept. 16, 1998).

²⁸⁵ Juan E. Méndez (Special Rapporteur), *Interim Report on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment*, at 2, U.N. Doc. No. A/66/268 (Aug. 5, 2011),

<http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>. See also *id.* ¶¶ 28-39 for other statements international and regional human rights bodies condemning the use of prolonged solitary confinement.

²⁸⁶ *Id.* ¶ 72. Mandela Rules 43, 44 and 45 reflect the U.N. General Assembly’s consensus against “prolonged solitary confinement” and specify that “solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority.” G.A. Res. 70/175, The Nelson Mandela Rules, Rules 43, 44, 45 (Jan. 8, 2016).

isolation in their cells for up to 23 hours a day in small, cramped . . . cells.”²⁸⁷ In Tajikistan, Mr. Hayit’s conditions are likely far worse. For example, it is rumored that he has been subjected to beatings and his access to family and legal visits has been restricted.²⁸⁸ In addition to being kept in solitary confinement, Mr. Hayit is being denied regular access to his family, his lawyers, and his supporters.²⁸⁹

148. The Government violated Mr. Hayit’s rights under Article 7 of the ICCPR by holding him in indefinite solitary confinement, completely unable to visit or communicate with his family, from September of 2016 until March 2019.²⁹⁰

4. Other Substandard Prison Conditions

149. The Human Rights Committee, the UN Human Rights Council, the UN High Commissioner for Human Rights, and the Special Rapporteur on Torture have determined that poor prison conditions can also amount to cruel and inhumane punishment.²⁹¹

150. The conditions in which Mr. Hayit is being held amount to cruel and inhuman treatment. As the U.S. Department of State has observed, prison conditions in Tajikistan are “life threatening[ly]” poor.²⁹² Moreover, prisoners—like Mr. Hayit—who have been sentenced to life imprisonment are treated harshly even by the standards of Tajikistan prisons. The Special Rapporteur on Torture has specifically acknowledged the “especially harsh” prison regime and physical conditions for Tajik prisoners serving life imprisonment.

151. In addition to being held in virtually constant solitary confinement, Mr. Hayit (like other prisoners serving life sentences) is likely kept in an “unventilated cell[], often in extreme temperatures, and . . . subject[ed] to inadequate nutrition and sanitation arrangements; denial of contact with lawyers and only rare contact with family members; excessive use of handcuffing or other types of shackles or restraints; physical or verbal abuse; lack of appropriate health care (physical and mental); and denial of access to books, newspapers, exercise, education, employment and or any other type of prison activities.”²⁹³

²⁸⁷ 2013 *Special Rapporteur Report*, *supra* note 93, ¶ 78 (also noting that recent changes in law introduced “unnecessary and inexplicably harsh” restrictions for family contacts and on parcel delivery).

²⁸⁸ Interview with confidential source.

²⁸⁹ Interview with confidential source.

²⁹⁰ See Interview with confidential source. Note that Mr. Hayit’s family has been permitted to send him food on occasion.

²⁹¹ *Cf.* Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Argentina, ¶ 11, U.N. Doc. CCPR/CO/70/ARG (Nov. 15, 2000); Human Rights Council, Human Rights in the Administration of Justice, Including Juvenile Justice, ¶ 14, U.N. Doc. A/HRC/24/L.28, (Sept. 23, 2013); Human Rights Council, Human Right Implications of Overincarceration and Overcrowding, ¶ 4, U.N. Doc. A/HRC/30/19 (Aug. 10, 2015); Theo van Boven (Special Rapporteur), Rep. on Civil and Political Rights Including the Questions of Torture and Detentions, ¶ 23, U.N. Doc. E/CN.4/2004/56 (Dec. 23, 2003).

²⁹² BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 61, at 1.

²⁹³ 2013 *Special Rapporteur Report*, *supra* note 93, ¶ 78 (also noting that recent changes in law introduced “unnecessary and inexplicably harsh” restrictions for family contacts and on parcel delivery).

152. Such substandard prison conditions constitute a violation of Articles 7 and 10(1) of the ICCPR, Article 5 of the Universal Declaration of Human Rights (UDHR), Article 16(1) of the Convention Against Torture, Principles 1 and 6 of the Body of Principles and Mandela Rule 1.

D. Violation of the Right to Appeal

153. Article 14(5) of the ICCPR guarantees that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. The right to appeal guaranteed by Article 14(5) of the ICCPR also “imposes on the State party a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case.”²⁹⁴ To pass muster, a review must consider not just the formal or legal aspects of the conviction, but also the facts of the case, including the allegations against the convicted person and the evidence submitted at trial, as referred to in the appeal.²⁹⁵

154. Here, there is no indication that the appellate review by the Tajikistan Supreme Court included any meaningful engagement with the allegations or the facts of Mr. Hayit’s case. Like the trial court below, the Supreme Court simply restated and adopted the allegations of the Government. No appeal to the Supreme Court in its capacity for cassation review is available.²⁹⁶

155. In reviewing the exculpatory evidence that Mr. Hayit presented, the Supreme Court simply concluded Mr. Hayit’s claims of bias and falsification of evidence were necessarily false. The Supreme Court concluded, for example, that Mr. Hayit’s claims that evidence from searches had been falsified by the Government were necessarily “contradicted” because the Government had created (falsified) records of the (falsified) search. Such ipse dixit reasoning, without any effort to weigh credibility, belies any argument that Mr. Hayit and his IRPT co-defendants were given a full and fair trial before an impartial decision-making body.

156. The Supreme Court also gave no weight to the defense’s arguments that the evidence against him was facially non-credible. For example, the Supreme Court recited but gave no weight to the fact that one of the Government’s witnesses recanted at trial and stated that his prior statements tying Mr. Hayit to terrorist activities had been false and made only because the Government had tortured him and promised a conditional sentence in return for testifying against Mr. Hayit.

157. At base, the Supreme Court’s conclusion for every issue raised by Mr. Hayit on appeal is that Mr. Hayit’s arguments are necessarily without foundation because they contradict the Government’s allegations, which the Supreme Court accepts at face value. This is not meaningful appellate review.

158. There is also no indication that the Supreme Court even considered whether the numerous procedural defects warranted reversal of the trial court’s decision. Among other things, the Supreme Court did not consider whether Mr. Hayit was deprived adequate access to counsel or adequate time or opportunity to prepare a defense. The Supreme Court also did not consider

²⁹⁴ General Comment No. 32, *supra* note 234, ¶ 48.

²⁹⁵ *Id.*

²⁹⁶ *See* [redacted]

whether the Government’s warrantless search of Mr. Hayit’s home violated Tajik law, nor did the Supreme Court consider whether reversal was mandated due to prosecutorial misconduct—which reportedly included, among other things, beating Mr. Hayit in an effort to coerce a confession and the use of witnesses whose statements were obtained through torture.

159. The Supreme Court’s cursory affirmance of all of the Government’s allegations does not constitute adequate appellate review and therefore reflects a violation of Mr. Hayit’s right to an appeal.

E. Violation of the Rights to Freedom of Expression, Association, and a Public life under Articles 19, 22, and 25 of the ICCPR

160. Article 19(2) of the ICCPR provides that “[e]veryone shall have the right of 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.” The Committee has confirmed the essential nature of free expression in safeguarding “the full enjoyment of a wide range of other human rights. For instance, freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association and the exercise of the right to vote.”²⁹⁷ The Committee has also specified that freedom of expression includes political discourse.²⁹⁸ Further, Article 30 of the Tajik Constitution expressly guarantees the right to freedom of expression, stating “[e]veryone shall be guaranteed the freedom of speech, publishing and the right to use means of information. . . . State censorship and prosecution for criticism shall be prohibited.”²⁹⁹

161. Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”³⁰⁰ The Human Rights Council has specifically called for States to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views.³⁰¹ Article 28 of the Tajik Constitution also guarantees the right to associate and form political parties.³⁰²

162. The Guidelines on Political Party Regulation, identified as a relevant regional standard on association rights for Tajikistan,³⁰³ has confirmed the fundamental importance of free association in the context of political parties: “Political parties are collective platforms for the expression of

²⁹⁷ Human Rights Committee, General Comment No. 34, ¶ 4, UN Doc. No. CCPR/C/GC/34 (12 Sept. 2011).

²⁹⁸ *Id.* ¶ 11.

²⁹⁹ CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN art. 30, <http://www.president.tj/en/taxonomy/term/5/28> (last visited Feb. 22, 2021).

³⁰⁰ ICCPR, *supra* note 213, at Art. 22(1).

³⁰¹ Human Rights Council Res. 15/21, ¶ 1, U.N. Doc A/HRC/RES/15/21 (Oct. 6, 2010).

³⁰² CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN art. 28, <http://www.president.tj/en/taxonomy/term/5/28> (last visited Feb. 22, 2021) (“Citizens shall have the right to associate. The citizen shall have the right to participate in the creation of political parties, including parties of democratic, religious and atheistic character, trade unions, and other public associations, voluntarily affiliate with them and quite. The political parties shall promote the forming and expressing of will of people on the base of political pluralism and take part in political life. Their structure and activity shall correspond to the democratic norms.”).

³⁰³ See UN Human Rights Office of the High Commissioner, “International Standards”, *Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UNITED NATIONS HUM. RTS. OFF. HIGH COMMISSIONER, <http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/InternationalStandards.aspx>.

individuals' fundamental rights to association and expression and have been recognized by the European Court of Human Rights as integral players in the democratic process. Further, they are the most widely utilized means for political participation and the exercise of related rights.”³⁰⁴ Because of the importance of political parties in a democratic society, “[t]he right of individuals to associate and form political parties should, to the greatest extent possible, be free from interference.”³⁰⁵ Moreover, “groups of individuals choosing to associate themselves as a political party must also be awarded the full protection of related rights.”³⁰⁶

163. Article 25(a) of the ICCPR protects a citizen’s right “to take part in the conduct of public affairs, directly or through freely chosen representatives”³⁰⁷ Article 25(b) further protects the right “to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”³⁰⁸ Similarly, Article 27 of the Tajik Constitution states that “[a] citizen shall have the right to take part in political life and state administration directly or via his representatives,” and further states that each citizen has a right to vote and be elected.³⁰⁹

164. The Committee has confirmed that a State interferes with this right when it prevents individuals from forming or joining political parties. In General Comment No. 25, the Committee stated that: “The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process.”³¹⁰ Moreover, generally “[Article 25] requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.”³¹¹

165. Here, Mr. Hayit is still being targeted by the Tajik government for his association with IRPT and past statements of opposition. As a vocal member of the opposition who served in various leadership capacities within the IRPT, Mr. Hayit is a prime target for a government keen on making an example of critics. The circumstances of Mr. Hayit’s arrest and continued detainment corroborate this conclusion. Mr. Hayit was arrested only a few weeks after the government accused IRPT of causing unrest in the cities of Dushanbe and Vahdat without providing any credible evidence.

166. Following his arrest, the Supreme Court declared the IRPT a terrorist organization and banned all future activities by the IRPT. The Supreme Court refused to consider exculpatory

³⁰⁴ OSCE OFFICE FOR DEMOCRATIC INSTS. & HUMAN RIGHTS, GUIDELINES ON POLITICAL PARTY REGULATION ¶ 10 (2011), <http://www.osce.org/odihr/77812?download=true>.

³⁰⁵ *Id.* ¶ 14.

³⁰⁶ *Id.* ¶ 11.

³⁰⁷ ICCPR, *supra* note 213, at art. 25(a).

³⁰⁸ ICCPR, *supra* note 213, at art. 25(b).

³⁰⁹ CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN art. 27, <http://www.president.tj/en/taxonomy/term/5/28> (last visited Feb. 22, 2021).

³¹⁰ Human Rights Committee, General Comment No. 25, ¶ 26, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 27, 1996).

³¹¹ *Id.*

evidence presented regarding the IRPT. Concurrent to the Supreme Court's actions, Mr. Hayit endured continuous interrogation while in detention. Interrogators attempted to coerce Mr. Hayit into admitting that he and the IRPT organized the attack on September 4, 2015 and that the IRPT's main goal was to conduct a coup and create an Islamic state. Despite repeatedly denying both claims by his interrogators, Mr. Hayit was still charged with, among other things, terrorism and organizing a criminal community or criminal organization. On appeal, the Supreme Court refused to give value to any evidence that contradicted the Government's allegations against Mr. Hayit. And, as recounted at Section VIII.C.1 above, Tajik authorities have beaten Mr. Hayit in apparent punishment for his refusal to film video messages denouncing exiled IRPT party members.

167. The acts of the Supreme Court, and Mr. Hayit's interrogators, suggest that political motives underline his continued detention, depriving Mr. Hayit of his rights to associate with and participate in politics through a political party, as well as his right to express his political views free from government censorship and prosecution.

IX. CONCLUSION

168. The arrest, trial, conviction, and ongoing imprisonment of Mr. Hayit represent significant violations of his fundamental human rights. Moreover, the past and continued actions of the Government in its treatment of Mr. Hayit violate international obligations under the ICCPR.

169. The Author hereby requests that: the Human Rights Committee issue an opinion finding Mr. Hayit's ongoing detention to be in violation of Tajikistan's obligations under the relevant provisions of the ICCPR and call for his immediate release; the Government investigate and hold to account all those responsible for Mr. Hayit's unlawful arrest, detention, trial, and imprisonment; and the Government award Mr. Hayit compensation for the harm caused by the Government's illegal actions.

X. REMEDIES

170. Given the above, in accordance with Articles 1 and 2 of the Optional Protocol to the ICCPR, the Author respectively requests the Committee to:

1. Accept this petition as admissible and consider Mr. Hayit's case;
2. Find that Tajikistan has violated Mr. Hayit's rights enshrined in Articles 7, 9, 10, 14, 19, 17, 22, and 25 of the ICCPR;
3. Recommend that Tajikistan remedy the violations committed and grant enforceable rights to legal protection:
 - (a) Immediately release Mr. Hayit,
 - (b) Adequately treat the current health issues that Mr. Hayit is experiencing,
 - (c) Adequately protect Mr. Hayit from foreseeable health risks while in custody,

- (d) Provide continuous medical and psychological treatment to address the long-term impact of Mr. Hayit's imprisonment and torture,
- (e) Cease any further political repression or harassment against the IRPT, Mr. Hayit, his family, and his attorneys,
- (f) Officially recognize Mr. Hayit's innocence,
- (g) Pay Mr. Hayit monetary compensation of material damages for loss of earnings and related financial harms resulting from Mr. Hayit's wrongful arrest and detention,
- (h) Pay the material damages for the cost that Mr. Hayit's family spent trying to purchase medicine for Mr. Hayit while in detention,
- (i) Pay moral damages for pain and suffering as the result of torture and ill treatment;

4. Urge Tajikistan:

- (a) To establish an independent commission of inquiry, including the participation of international experts, to investigate the circumstances of the arbitrary arrest and detention of Mr. Hayit, with the power to initiate criminal prosecution of those found to be responsible for the acts against Mr. Hayit; and
- (b) To introduce safeguards to prevent similar violations from occurring in the future, including opening Tajikistan to domestic and international human rights monitoring without restrictions or undue influence.