

PETITION TO:
UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Ms. Elina Steinerte (Latvia)
Vice-Chair: Dr. Miriam Estrada-Castillo (Ecuador)
Ms. Leigh Toomey (Australia)
Ms. Priya Gopalan (Malaysia)
Mr. Mumba Malila (Zambia)

In the Matter of
Pygamberdy Allaberdyev,
Citizen of Turkmenistan
v.
Government of Turkmenistan

Petition for Relief Pursuant to Human Rights Council Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 2006/102, 6/4, 15/18, 24/7, 33/30, and 44/22.¹

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¹ Resolutions 1991/41, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, March 15, 2006, at 6, later extended the mandate through Resolutions 6/4, 15/18, and 24/7.

QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

I. IDENTITY

1. *Family name:* Allaberdyev
2. *First name:* Pygamberdy
3. *Sex:* Male
4. *Birth date or age (at the time of detention):* 48
5. *Nationality/Nationalities:* Turkmen
6. (a) *Identity document (if any):* Unknown
(b) *Issued by:* N/A
(c) *On (date):* N/A
(d) *No.:* N/A
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Lawyer for the Nebitdagneft department of the Ministry of Oil and Gas of Turkmenistan
8. *Address of usual residence:* Apt. 1, Building 21, 211st residential complex in Balkanabat

II. ARREST

1. *Date of arrest:* September 5, 2020
2. *Place of arrest:* Allaberdyev was arrested outside of a local Balkanabat grocery store.
3. *Forces who carried out the arrest or are believed to have carried it out:* The Balkanabat Police
4. *Did they show a warrant or other decision by a public authority?* No.
5. *Authority who issued the warrant or decision:* N/A
6. *Reasons for the arrest imputed by the authorities:* Authorities arrested Allaberdyev on allegations of instigating a violent confrontation outside of a Balkanabat grocery store.
7. *Legal basis for the arrest including relevant legislation applied (if known):* After being detained for three days, Allaberdyev was charged with crimes under Article 108 (intentional harm to health of moderate severity) and 279 (hooliganism) of the Criminal Code of Turkmenistan.

III. DETENTION

1. *Date of detention:* Allaberdyev was first detained on September 5, 2020.
2. *Duration of detention (if not known, probable duration):* Allaberdyev's pretrial detention lasted from September 5, 2020, to September 29, 2020. Allaberdyev's prison sentence has lasted from September 29, 2020, to present, and his sentence is for six years total.
3. *Forces holding the detainee under custody:* Allaberdyev's pretrial and trial detention was carried out by the Balkanabat Police Department. Allaberdyev's prison sentence is being carried out by the Akdash Prison officials.
4. *Places of detention (indicate any transfer and present place of detention):* From September 5, 2020 to, approximately September 29, 2020, Allaberdyev was detained at the Balkanabat Police Department. From approximately September 29, 2020, to present, Allaberdyev has been detained at the Akdash Prison.

5. *Authorities that ordered the detention:* The Balkanabat Investigator investigating Allaberdyev’s case (pre-trial detention); The Balkanabat District Court of the Balkan Velayat (conviction).
6. *Reasons for the detention imputed by the authorities:* Authorities allege that Allaberdyev engaged in hooliganism and intentional harm to health of moderate severity in breach of Article 108, paragraph 2(a) and Article 279, paragraph 3 of the Criminal Code of Turkmenistan.
7. *Legal basis for the detention including relevant legislation applied (if known):* Article 108, paragraph 2(a) and Article 279, paragraph 3 of the Criminal Code of Turkmenistan.

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

A. Statement of Facts

Pygamberdy Allaberdyev has been falsely accused and convicted of hooliganism and intentional harm to health of moderate severity because of his alleged connections to the Turkmen protest movement abroad. Part 1 of the Statement of Facts provides background information on the current human rights context in Turkmenistan, which shows the Turkmen Government’s pattern of violating the rights of perceived critics, through the use of *incommunicado* detention and a captive judiciary. Part 2 of the Statement of Facts details the circumstances surrounding the arrest and continuing detention of Allaberdyev.

1. Turkmenistan’s Pattern of Human Rights Abuses.

The government of Turkmenistan is authoritarian and international human rights monitors document many instances of dissidents in Turkmenistan facing harassment, criminal penalties, and imprisonment for publicly challenging government policies and practices.² Indeed, “accurate information about the human rights situation in Turkmenistan . . . is scarce and difficult to verify, in view of the exceptionally restrictive nature of the prevailing political regime, described as ‘one of the world’s most repressive and closed countries.’”³ In its most recent review of Turkmenistan, the UN Human Rights Committee expressed concern with the Government’s continuous use of harassment, intimidation, torture and arbitrary arrests, detention and convictions on reportedly politically motivated charges as a retaliatory tool against dissidents.⁴ The Human Rights Committee further emphasized the need for Turkmenistan to “refrain[] from using administrative and criminal provisions and other regulations as tools to curtail freedom of expression and other protected conduct.”⁵

² WORLD REPORT 2020: TURKMENISTAN: EVENTS OF 2019, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2020/country-chapters/turkmenistan#>; *Freedom in the World 2021: Turkmenistan*, FREEDOM HOUSE (“Freedom House”), <https://freedomhouse.org/country/turkmenistan/freedom-world/2021>.

³ *Ryabikin v. Russia*, App. No. 8320/04, Eur. Ct. H.R. 116 (2008).

⁴ United Nations Human Rights Committee (“UNHRC”), *Concluding Observations on the Second Periodic Report of Turkmenistan*, U.N. Doc. CCPR/C/TKM/CO/2, para. 30 (Apr. 20, 2017).

⁵ *Id.* at para. 43.

The Turkmen Government regularly attempts to repress peaceful expression of dissent and criticism, both at home and abroad, by putting pressure on demonstrators and their relatives in Turkmenistan.⁶ This pressure is aided in large part by a judicial system that is wholly subservient to the president of Turkmenistan, who appoints and dismisses judges unilaterally.⁷ The lack of an independent judiciary creates an environment where arbitrary arrests and detention are rampant, and defendants are routinely denied their basic rights of due process, including public trials and access to defense attorneys.⁸ This environment also facilitates the Turkmen Government's frequent utilization of *incommunicado* detention.⁹

2. The Situation of Pygamberdy Allaberdyev

a. Events Leading Up To Allaberdyev's Arrest

Before his arrest, Allaberdyev, age 48, worked as a lawyer for the Nebitdagneft department of the Ministry of Oil and Gas of Turkmenistan. Allaberdyev had increasingly become a vocal critic of the Turkmen Government.¹⁰ His increased public involvement coincided with increased public opposition abroad to a plan by Turkmen President, Gurbanguly Berdymukhammedov, to introduce various amendments to the country's constitution.¹¹

Shortly after Allaberdyev started communicating with dissidents abroad, Allaberdyev was put under surveillance,¹² a practice regularly employed by the Turkmen Government against perceived critics.¹³ A few days before his arrest, Allaberdyev posted a video where he called for people to join him in a peaceful protest on September 14, 2020.¹⁴ Unfortunately, Allaberdyev would never make it to the protest.

⁶ AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 2020/21: THE STATE OF THE WORLD'S HUMAN RIGHTS, *Turkmenistan*, 368, available at <https://www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF>. See Freedom House, *supra* note 2.

⁷ See Freedom House, *supra* note 2.

⁸ See Freedom House, *supra* note 2. See also UNHRC, *Concluding Observations on the Second Periodic Report of Turkmenistan*, *supra* note 4, para. 30 ("The Committee remains concerned . . . about alleged corruption in the judiciary and about the independence of judges.").

⁹ See United Nations Committee Against Torture, *Concluding Observations on the Second Periodic Report of Turkmenistan*, U.N. Doc. CAT/C/TKM/CO/2, para. 9 (Jan. 23, 2017) ("The Committee remains concerned at continued reports that an estimated 90 persons are being held by the State party in long-term incommunicado detention.").

¹⁰ Notes from Telephone Interview with Tadzhigul Begmedova, Director, Turkmenistan Helsinki Foundation for Human Rights (Feb. 9, 2021).

¹¹ RFE/RL, *Turkmen Lawyer Arrested After Protests Abroad, Rights Groups Say*, RADIOFREEEUROPE/RADIOLIBERTY (Sept. 08, 2020), <https://www.rferl.org/a/turkmen-lawyer-arrested-after-protests-abroad-rights-groups-say/30827104.html>.

¹² Notes from Telephone Interview with Tadzhigul Begmedova, *supra* note 10.

¹³ See Freedom House, *supra* note 2.

¹⁴ Notes from Telephone Interview with Tadzhigul Begmedova, *supra* note 10.

On the evening of September 5, 2020, while exiting a local grocery store with a friend, an unidentified young man approached Allaberdyev.¹⁵ Unprovoked, the young man began to verbally harass Allaberdyev before ultimately grabbing him by the collar.¹⁶ Almost immediately after the young man grabbed Allaberdyev's collar, police officers arrived.¹⁷ The young man then falsely accused Allaberdyev of instigating the conflict and left the scene.¹⁸ The police took Allaberdyev to the Balkanabat police station.¹⁹

Within twenty minutes of arriving at the police station, the young man reappeared with a bandaged hand and fabricated evidence—a cane that the young man asserted Allaberdyev had used to beat him.²⁰ When Allaberdyev requested to see medical documents that showed that the young man was in fact injured, he was denied.²¹ The true reason for Allaberdyev's arrest became known later that night after two officers from Turkmenistan's Ministry for National Security ("MNS") arrived at the police station to interrogate him.²² Rather than ask Allaberdyev about the incident that ostensibly prompted his arrest, the MNS officers questioned Allaberdyev about his alleged connections to activists associated with the protest movement abroad²³ and whether he knew anything about the burning of a portrait of the Turkmen president.²⁴ Allaberdyev denied having any such contacts²⁵ or knowledge about the alleged arson.²⁶ In addition to interrogating Allaberdyev without a lawyer present, Turkmen officials also searched his home, which they likely

¹⁵ Memorial, *New Arrest in Turkmenistan – Authorities Fear Street Protests* (Sep. 07, 2020), https://memohrc-org.translate.google.ru/news_old/novyy-arest-v-turkmenistane-vlasti-opasayutsya-ulichnyh-akciy-protesta?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui,elem (in Russian).

¹⁶ *Id.*

¹⁷ *Id.* See also Notes from Telephone Interview with Tadzhiagul Begmedova, *supra* note 10 (stating that it normally takes the police twenty minutes to arrive at the scene).

¹⁸ Memorial, *New Arrest in Turkmenistan – Authorities Fear Street Protests* (Sep. 07, 2020), https://memohrc-org.translate.google.ru/news_old/novyy-arest-v-turkmenistane-vlasti-opasayutsya-ulichnyh-akciy-protesta?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui,elem (in Russian).

¹⁹ *Id.*

²⁰ *Pravozashchitniki soobshchayut yeshche ob odnom areste v Turkmenistane za podozreniye v svyazyakh s protestuyushchimi za rubezhom [Human rights activists report another arrest in Turkmenistan for suspected links with protesters abroad]*, RADIO AZATLIK (Sept 8, 2020), <https://rus.azathabar.com/a/30827439.html>.

²¹ *Id.*

²² *Id.*

²³ Memorial, *New Arrest in Turkmenistan – Authorities Fear Street Protests* (Sep. 07, 2020), https://memohrc-org.translate.google.ru/news_old/novyy-arest-v-turkmenistane-vlasti-opasayutsya-ulichnyh-akciy-protesta?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui,elem (in Russian).

²⁴ Tadzhiagul Begmedova and Vitaly Ponomarev, *Turkmenistan: naznachena data suda nad yuristom v Balkanabade, podozrevayemym v svyazyakh s protestnym dvizheniyem [Turkmenistan: date set for trial of lawyer in Balkanabat suspected of links to protest movement]*, MEMORIAL HUMAN RIGHTS CENTRE (Sept 28, 2020), https://memohrc.org/ru/news_old/turkmenistan-naznachena-data-suda-nad-yuristom-v-balkanabade-podozrevaemym-v-svyazyah-s.

²⁵ Press Release, Human Rights Watch, *Acts: Turkmenistan: Drop Charges, Free Wrongfully Imprisoned Lawyer* (Oct. 22, 2020), <http://www.tnhelsinki.org/en/modules/news/article.php?storyid=3522>.

²⁶ *Zakrytyy sud v Balkanabade prigovoril Allaberdyeva k 6 godam lisheniya svobody [A closed court in Balkanabat sentenced Allaberdyev to 6 years in prison]*, RADIO AZATLIK (Sept. 30, 2020), <https://rus.azathabar.com/a/30866544.html>.

did without a warrant as they searched his home within hours of detaining him.²⁷ Notably, the young man who actually started the fight was never investigated or charged.²⁸

b. Allaberdyev's Pretrial Detention.

On September 8, 2020, the prosecutor's office issued an arrest warrant, and he was charged with crimes under Article 108 (intentional harm to health of moderate severity) and 279 (hooliganism) of the Criminal Code of Turkmenistan.²⁹ Notably, the Turkmen Government regularly employs fabricated hooliganism charges against perceived critics of the Government.³⁰ Allaberdyev was placed in pretrial detention solely at the request of the investigator.³¹ He did not go before a judge prior to being placed in pre-trial detention and he was not placed there by court order.³² Allaberdyev's pretrial detention lasted longer than the legally permitted time³³ and his pretrial detention was incommunicado.³⁴

On September 14, 2020, Allaberdyev's wife, Satlykgul Allaberdiyeva, filed a complaint with the Balkan region prosecutor's office.³⁵ The complaint stated that she and her family were forced to hire a lawyer, Shikhmurad Muratjanov,³⁶ in order to locate Allaberdyev after his arrest.³⁷ In the complaint, she also asked the prosecutor's office to produce written documentation stating the reasons for Allaberdyev's arrest.³⁸ The prosecutor's office did not provide access to any procedural documents, but they did allow Allaberdyev to meet with Muratjanov three days later.³⁹

On September 24, 2020, a relative of Allaberdyev met with the investigator in hopes of learning more about Allaberdyev's arrest.⁴⁰ The investigator, however, refused to answer the relative's questions, stating that the information could only be given to a lawyer.⁴¹ The relative immediately contacted Muratjanov, who, after a telephone conversation with the investigator,

²⁷ Int'l Comm'n of Jurists, *Turkmenistan: Authorities must respect the rights of detained lawyer Pyagemberdy Allaberdyev* (Sept. 14, 2020), <https://www.icj.org/turkmenistan-authorities-must-respect-the-rights-of-detained-lawyer-pyagemberdy-alaberdyev/>. See also RFE/RL, *supra* note 11.

²⁸ Notes from Telephone Interview with Tadzhi gul Begmedova, *supra* note 10.

²⁹ Int'l Comm'n of Jurists, *supra* note 27.

³⁰ Press Release, Human Rights Watch, *supra* note 25.

³¹ Notes from Telephone Interview with Tadzhi gul Begmedova, *supra* note 10.

³² Although it is standard practice for Turkmenistan's prosecutor's office to issue arrest warrants, the practice is contrary to Article 9(3) of the International Covenant on Civil and Political Rights ("ICCPR"), to which Turkmenistan is party. See Int'l Comm'n of Jurists, *supra* note 27.

³³ Notes from Telephone Interview with Tadzhi gul Begmedova, *supra* note 10.

³⁴ *Id.*

³⁵ Tadzhi gul Begmedova and Vitaly Ponomarev, *Novyy arest v Turkmenistane — vlasti opasayutsya ulichnykh aktsiy protesta [New arrest in Turkmenistan - authorities fear street protests]*. MEMORIAL HUMAN RIGHTS CENTRE (Sept. 7, 2020), https://memohrc.org/ru/news_old/novyy-arest-v-turkmenistane-vlasti-opasayutsya-ulichnyh-akciy-protesta.

³⁶ Ajigul Begmedova and Vitaly Ponomarev, *Turkmenistan: zaderzhanny po sfabrikovannomu obvineniyu yurist pereveden v SIZO [Turkmenistan: lawyer detained on trumped-up charges transferred to JAIL]*, MEMORIAL HUMAN RIGHTS CENTRE (Oct. 9, 2020), https://memohrc.org/ru/news_old/turkmenistan-zaderzhanny-po-sfabrikovannomu-obvineniyu-yurist-pereveden-v-sizo.

³⁷ Tadzhi gul Begmedova and Vitaly Ponomarev, *supra* note 35.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

withdrew from the case for “health reasons.”⁴² Muratjanov’s abrupt withdrawal from the case was likely the result of political pressure—not for valid health reasons.

Despite their best efforts, the family was unable to obtain the services of another lawyer.⁴³ One of the lawyers the family reached out to informed the family that it was well known in the region that Allaberdyev’s arrest was politically motivated and under the capital’s control, and that any lawyer who accepted Allaberdyev’s case would likely experience problems.⁴⁴ Indeed, Memorial Human Rights Centre, a Russia-based human rights organization, published a report on September 7, 2020 that stated a local law enforcement source confirmed that Allaberdyev’s arrest was made on instructions from the MNS headquarters in the Turkmen capital, and that the hooliganism case was transformed into a terrorism case.⁴⁵

c. Allaberdyev’s Trial

On September 29, 2020, Allaberdyev’s trial began.⁴⁶ After Allaberdyev’s friends and family arrived at the Balkanabat City Court for the morning trial, court officials announced that the trial would instead take place later that day at the pre-trial detention center where Allaberdyev was being held.⁴⁷ Over 30 of Allaberdyev’s friends and family went to the pre-trial detention center, and while only Allaberdyev’s sister and daughter were allowed through the gate,⁴⁸ they were excluded from the trial being told that it was closed.⁴⁹

The trial lasted only two hours and was not open to the public, although the trial judgement was later disclosed.⁵⁰ At trial, Allaberdyev was shaved bald.⁵¹ He did not have a lawyer representing him.⁵² Given the political nature of his arrest, Allaberdyev’s family was unable to find an independent lawyer to represent him.⁵³ The Source is unaware whether the government offered to appoint Allaberdyev a lawyer for the trial. Allaberdyev was also denied access to supporting witnesses.⁵⁴ Although two witnesses were summoned to testify, a shop assistant and Allaberdyev’s friend who was with him at the time of the alleged incident, they were never called to testify, even though one of those witnesses later confirmed that he was willing to testify to

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Tadzhi gul Begmedova and Vitaly Ponomarev, *Turkmenistan: zakrytyy sud v Balkanabade prigovoril Allaberdyeva k shesti godam lisheniya svobody 30.09.2020 [Turkmenistan: closed court in Balkanabat sentenced Allaberdyev to six years in prison 09/30/2020]*, MEMORIAL HUMAN RIGHTS CENTRE (Sept. 30, 2020), https://memohrc.org/ru/news_old/turkmenistan-zakrytyy-sud-v-balkanabade-prigovoril-allaberdyeva-k-shesti-godam-lisheniya.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*; See also, *State v. Allaberdyev*, Balkanabat District Court of the Balkan Velayat,, Turkmenistan, Case # 1-61 (Sep. 29, 2020), on file with author.

⁵¹ *Id.*

⁵² Notes from Telephone Interview with Tadzhi gul Begmedova, *supra* note 10.

⁵³ Tadzhi gul Begmedova and Vitaly Ponomarev, *supra* note 46.

⁵⁴ *Id.*

Allaberdyev's innocence.⁵⁵ Instead, the only witnesses who were allowed to testify were witnesses who were not even at the scene; their testimony was premised solely on hearsay.⁵⁶

Not only were Allaberdyev's friends and family denied access to his trial, they were initially denied access to the verdict.⁵⁷ In order to avoid Allaberdyev's friends and family, who were forced to wait outside the pre-trial detention center, the lead investigator in Allaberdyev's case left through an alternative exit under armed guard. When Allaberdyev's friends and family asked the head of the detention facility for the verdict, he responded that he did not know what the court had decided.⁵⁸ Allaberdyev's friends and family would not learn of his fate until the following morning, when court officials unofficially reported that Allaberdyev was found guilty of hooliganism and intentional harm to health of moderate severity and sentenced to six years in prison.⁵⁹

d. Allaberdyev's Post Trial Detention

As was the case with his pre-trial detention, Allaberdyev's post-trial detention has been *incommunicado*.⁶⁰ After the trial, Allaberdyev was transported to Akdash Prison, where the Source believes that he is still being detained.⁶¹ Prison officials have consistently denied Allaberdyev's family visitation.⁶² At first, the prison denied visitation under the auspices of ongoing construction at the prison.⁶³ However, prison officials have since changed their story and cite to the prison's COVID-19 quarantine protocols as a reason to deny visitation.⁶⁴ Prison officials have also refused to make Allaberdyev available for telephone calls.⁶⁵ Since being detained over eleven months ago, Allaberdyev has not been able to see⁶⁶ or speak with his family.⁶⁷

Allaberdyev's health is also in jeopardy as prison officials refuse to provide Allaberdyev with the medication that his family sends him.⁶⁸

B. Legal Analysis

1. Deprivation of Liberty Under Category I

A detention violates Category I when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. The Working Group has found detentions arbitrary under

⁵⁵ *Id.*

⁵⁶ Notes from Telephone Interview with Tadzhigul Begmedova, *supra* note 10.

⁵⁷ Tadzhigul Begmedova and Vitaly Ponomarev, *supra* note 46.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Notes from Telephone Interview with Tadzhigul Begmedova, *supra* note 10.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ There is a report that Allaberdyev's sister was able to see him from a distance for brief period of time immediately after the trial. See Tadzhigul Begmedova and Vitaly Ponomarev, *supra* note 46.

⁶⁷ Notes from Telephone Interview with Tadzhigul Begmedova *supra* note 10.

⁶⁸ *Id.*

Category I when the government has held an individual *incommunicado* for a period of time.⁶⁹ Here, there is evidence that that Allaberdyev was and continues to be held *incommunicado*.

a. Allaberdyev Was Held And Continues To Be Held *Incommunicado*

Incommunicado detention occurs whenever an individual is “deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including *habeas corpus*.”⁷⁰ The Human Rights Committee has stated that *incommunicado* detention that prevents prompt presentation before a judge inherently violates article 9(3) of the ICCPR⁷¹ and this Body has “consistently argued that holding persons *incommunicado* breaches the right to challenge the lawfulness of detention before a judge.”⁷² Articles 10 and 11 UDHR confirm the impermissibility of *incommunicado* detention.⁷³ Similarly, principle 19 of the Body of Principles, states that a “detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world.”⁷⁴ The Committee Against Torture has made it clear that *incommunicado* detention creates conditions that lead to violations of the Convention against Torture,⁷⁵ and the Special Rapporteur on torture has also consistently argued that the use of *incommunicado* detention is unlawful.⁷⁶

Despite the numerous international laws prohibiting *incommunicado* detention, Allaberdyev was held *incommunicado* prior to his trial and continues to be held *incommunicado* to this day. Allaberdyev was arrested, interrogated, and charged, all without being able to communicate with an attorney or his family. His family was forced to file a formal complaint with

⁶⁹ See, e.g., Human Rights Committee, United Nations Working Group on Arbitrary Detention, Opinion No. 3/2013, paras. 30-31 (Morocco) U.N. Doc. A/HRC/WGAD/2013/3 (30 April 2013); Human Rights Committee Working Group on Arbitrary Detention, Opinion No. 60/2013, para. 22 (United Arab Emirates) U.N. Doc. A/HRC/WGAD/2013/60 (22 Nov. 2013).

⁷⁰ Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism*, U.N. Doc. A/HRC/13/42, p. 2 (May 20, 2010), <https://undocs.org/A/HRC/13/42>. The Special Rapporteur’s report has been recognized by the Working Group as identifying the extent of human rights violations associated with *incommunicado* detention. See UN Working Group on Arbitrary Detention, Report of the Working Group, UN Doc. A/HRC/22/44, fn. 27 (Dec. 24, 2012).

⁷¹ UNHRC, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 38 (hereinafter “HRC, General Comment No. 35”). Turkmenistan acceded to the International Covenant on Civil and Political Rights (“ICCPR”). *International Covenant on Civil and Political Rights*, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 UNTS 171, entered into force on Mar. 23, 1976 (hereinafter “ICCPR”); UN Human Rights, Office of the High Commissioner, Ratification Status for Turkmenistan, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=180&Lang=EN. See also UN Status of Treaties, International Covenant on Civil and Political Rights (confirming that Turkmenistan has acceded, and has no reservations to the ICCPR), available at https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND#EndDec.

⁷² United Nations Working Group on Arbitrary Detention, para. 64, Opinion No. 4/2018 (Turkmenistan) U.N. Doc. A/HRC/WGAD/2018/4 (23 May 2018).

⁷³ *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 (hereinafter “UDHR”).

⁷⁴ *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, prin. 19, U.N. Doc. A/43/49 (hereinafter “Body of Principles”).

⁷⁵ United Nations Working Group on Arbitrary Detention, para. 64, Opinion No. 4/2018 (Turkmenistan) U.N. Doc. A/HRC/WGAD/2018/4 (23 May 2018). See also Committee Against Torture, *supra* note 9, at para. 9.

⁷⁶ Human Rights Committee, United Nations Working Group on Arbitrary Detention, para. 64, Opinion No. 4/2018 (Turkmenistan) U.N. Doc. A/HRC/WGAD/2018/4 (23 May 2018).

the prosecutor's office and enlist the services of an attorney before they were finally able to locate Allaberdyev following his arrest. Allaberdyev was only allowed to meet his with his lawyer three days after his arrest. Subsequently, he was only permitted limited access to his attorney, who ultimately resigned, leaving Allaberdyev without counsel and without any contact to the outside world. During pre-trial detention, he was never given the opportunity to go before a judge and challenge his pre-trial detention.

Following his trial on September 29, 2020, the Government continues to hold Allaberdyev *incommunicado*. The Akdash Prison officials refuse to allow Allaberdyev's family to visit him or provide him with food and clothing.⁷⁷ The above facts support a determination that Allaberdyev was held and continues to be held *incommunicado* in violation of Articles 10 and 11 of the UDHR, principle 19 of the Body of Principles, and Article 9(3) of the ICCPR.

2. Deprivation of Liberty Under Category II

Turkmenistan's detention of Allaberdyev amounts to an arbitrary deprivation of liberty under Category II of the Working Group's Revised Methods of Work.⁷⁸ A detention is arbitrary under Category II when it results from the exercise of certain fundamental rights or freedoms protected under international law, including the right to freedom of expression and the right to assembly.⁷⁹ In the present case, Allaberdyev was targeted due to his exercise of his right to freedom of expression and assembly.

a. Turkmenistan Targeted and Detained Allaberdyev Due to His Exercise of His Rights to Freedom of Expression and Assembly

The right to freedom of expression is protected under Article 19(2) of the ICCPR, which provides, "Everyone 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."⁸⁰ The same right is protected under Article 19 of the UDHR. Freedom of expression is also guaranteed in the Turkmenistan Constitution under Article 28.⁸¹ The right to freedom of expression as provided in Article 19(2) of the Covenant is not limited by form or subject matter. As General Comment No. 34 explains, the right protected by Article 19(2) "includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others. . . . It includes

⁷⁷ WORLD REPORT 2021: TURKMENISTAN - EVENTS OF 2020, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2021/country-chapters/turkmenistan>.

⁷⁸ Working Group on Arbitrary Detention, *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/36/38, para. 8 (July 13, 2017), available at <https://undocs.org/A/HRC/36/38> ["Revised Methods of Work"]

⁷⁹ *Id.*

⁸⁰ ICCPR, art. 19(2).

⁸¹ Constitution of Turkmenistan, art. 28, available at https://www.legislationline.org/download/id/6502/file/Turkmenistan_Constitution_am2016_eng.pdf..

. . .cultural and artistic expression, teaching, and religious discourse.”⁸² Moreover, all forms of expression are covered, including electronic and internet-based modes of expression.⁸³

The right to freedom of assembly is protected under Article 21 of the ICCPR, which provides “[t]he right to peaceful assembly shall be recognized.” The same right is protected under Article 20 of the UDHR and Article 29 of the Constitution of Turkmenistan.⁸⁴ The Human Rights Committee has explained that the right to peaceful assembly protects non-violent gatherings wherever they take place, whether that be outdoors, indoors, or online.⁸⁵ Furthermore, the right requires Parties “to allow such assemblies to take place without unwarranted interference. . . .”⁸⁶

In the present case, Allaberdyev was targeted by authorities for his public criticism, his alleged connection to foreign activists, and his attempt to organize a peaceful public protest. Allaberdyev drew government attention only after he made his views public and before the events that took place on September 5, 2020. Moreover, the timing of Allaberdyev’s arrest suggests he was arrested in an attempt to prevent him from attending the protest that he organized and in retaliation for his connection to dissidents abroad. The government’s interrogation of Allaberdyev confirms that his arrest related to his expression and his attempts to assemble. Instead of interrogating Allaberdyev about the events leading surrounding his conviction, officers focused their interrogation on his links to dissidents abroad. Furthermore, the length of Allaberdyev’s sentence, six years, is grossly disproportionate to the charges brought against him, suggesting that the government’s primary motivation for arresting and convicting Allaberdyev was to silence him. The government’s actions indicate that Allaberdyev’s imprisonment is a result of and in retaliation for his expression and attempt to assemble. Targeting and detaining Allaberdyev on the basis of these actions amounts to a restriction on both his right to freedom of expression and his right to freedom of association, as protected under articles 19 and 21 of the ICCPR and articles 19 and 20 of the UDHR.

b. None of the Permissible Limitations on the Rights to Freedom of Expression and Assembly Apply in This Case

Although the rights to freedom of expression and assembly are not absolute, none of the exceptions to these rights apply to Turkmenistan’s detention of Allaberdyev. Under international law, the rights to freedom of expression⁸⁷ and assembly⁸⁸ may only be restricted in limited

⁸² UN Human Rights Committee, General Comment No. 34, Article 19 (Freedom of Opinion and Expression). para. 11 (July 29, 2011) [hereinafter General Comment No. 34].

⁸³ *Id.*, at para. 12.

⁸⁴ Constitution of Turkmenistan, art. 29, available at https://www.legislationline.org/download/id/6502/file/Turkmenistan_Constitution_am2016_eng.pdf.

⁸⁵ UNHRC, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, Sep 17, 2014, paras. 4-5.

⁸⁶ *Id.* at para. 8.

⁸⁷ Article 19(3) of the ICCPR provides that “The exercise of the [right to freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health and morals.” *See* ICCPR, *supra* note 73, art. 19(3).

⁸⁸ Article 21 of the ICCPR provides that “No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” *See* ICCPR, *supra* note 71, art. 21.

circumstances, and the Human Rights Committee has established a three-part “strict test of justification” in analyzing limitations on such fundamental rights.⁸⁹ For a given limitation to be permissible, the limitation must (1) be provided for by law, (2) serve an enumerated purpose, and (3) be necessary to achieve that purpose.⁹⁰ The enumerated purposes for which a Government may restrict these fundamental rights are to protect national security, public safety and public order, public health, and the fundamental rights and freedoms of others.

The Human Rights Committee has emphasized that such restrictions must not “put in jeopardy the right itself.”⁹¹ It is not sufficient for a government to merely invoke one of the enumerated exceptions, but must “specify the precise nature of the threat” posed by the protected activity,⁹² establish a “direct and immediate connection between the expression and the threat,” and demonstrate why the limitation was necessary.⁹³

The arrest and detention of Allaberdyev falls well outside any possible legitimate restriction on the right to freedom of expression. As discussed above, the Government targeted Allaberdyev on the basis of his public criticism, contact with foreign activists, and his attempt to organize a protest. However, the government used a pre-textual allegation of hooliganism to justify its detention of Allaberdyev. A pre-textual allegation cannot be considered “provided for by law” as required by any restriction on fundamental freedoms. Accordingly, the detention of Allaberdyev for exercising his right to freedom of expression and assembly does not meet an essential qualification for any legitimate exception to these fundamental rights.

Additionally, none of the Article 19(3) and Article 21 exceptions would justify the Government’s arrest or detention of Allaberdyev because there is no evidence that his organizing or his public statements or contacts had any impact on national security, public order, or public health, nor did those actions violate the rights or reputations of others. As noted above, the Human Rights Committee has emphasized that the restrictions on the right to freedom of expression must not “put in jeopardy the right itself.”⁹⁴ Here, peaceful assemblies and public criticism fall well within the scope of articles 19 and 20 and to hold otherwise would “put in jeopardy the right itself.” As a result, Allaberdyev’s involvement in the protests cannot fall within any of the exceptions to articles 19 and 21.

Accordingly, Allaberdyev’s detention is not premised on any recognized exceptions to the rights to freedom of expression and assembly, and the Government has acted in violation of articles 19 and 20 of the ICCPR as well as articles 19 and 20 of the UDHR, making his detention arbitrary as defined under Category II.

3. Deprivation of Liberty Under Category III

⁸⁹ *Park v. Republic of Korea*, UN Human Rights Committee, Communication No. 628/1995, UN Doc. CCPR/C/64/D/628/1995, para. 10.3, (3 Nov. 1998).

⁹⁰ *Shin v. Republic of Korea*, UN Human Rights Committee, Communication No. 926/2000, UN Doc. CCPR/C/80/D/926/2000, para 7.2 (16 March 2004).

⁹¹ General Comment No. 34, para. 21.

⁹² *Sohn v. Republic of Korea*, UN Human Rights Committee, Communication No. 518/1992, UN Doc. CCPR/C/54/518/1992, para. 10.4 (July 19, 1992).

⁹³ General Comment No. 34, para. 35.

⁹⁴ *Id.*, at para. 21.

Turkmenistan’s detention of Allaberdyev amounts to an arbitrary deprivation of liberty under Category III of the Working Group’s Revised Methods of Work.⁹⁵ Due process is one of the key tenets of the right to a fair trial. The minimum international standards of due process are established in the ICCPR,⁹⁶ the UDHR,⁹⁷ the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the “Body of Principles”),⁹⁸ and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”). The Constitution of Turkmenistan likewise ensures the rights of criminal defendants.⁹⁹

a. Turkmenistan Violated Allaberdyev’s Right to Release Pending Trial

Article 9(3) of the ICCPR guarantees an individual’s right to release pending trial, establishing that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody.”¹⁰⁰ The Human Rights Committee has clarified 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 recurrence of crime.”¹⁰¹ In the event an individual is deprived of liberty by arrest or detention, Article 9(4) of the ICCPR guarantees that such individual “shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”¹⁰² As interpreted by the Human Rights Committee, except in extreme circumstances, the term “promptly” means within approximately 48 hours.¹⁰³ The requirement that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other judicial officer applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.¹⁰⁴ In order to ensure “the effective exercise of this right, the detained persons should have access, from the moment of arrest, to the legal assistance of their own choosing.”¹⁰⁵ Additionally, the judicial power that is exercised must “be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with.”¹⁰⁶

In the present case, Allaberdyev was arbitrarily denied his right to release pending trial. Allaberdyev was detained for over three weeks while he awaited trial on trumped-up charges of hooliganism and assault. Even if Allaberdyev committed the alleged acts, something he vehemently denies, such blasé charges are not of the caliber the drafters of the Body of Principles

⁹⁵ According to Category III, a deprivation of liberty is arbitrary “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”

⁹⁶ ICCPR, *supra* note 71, arts. 9, 14..

⁹⁷ *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810.

⁹⁸ Body of Principles, *supra* note 74, prin. 19.

⁹⁹ Constitution of Turkmenistan, art. 34, 60, 63, 107, available at https://www.legislationline.org/download/id/6502/file/Turkmenistan_Constitution_am2016_eng.pdf.

¹⁰⁰ ICCPR, *supra* note 71, art. 9(3).

¹⁰¹ HRC, General Comment No. 35, *supra* note 71, at para. 38.

¹⁰² ICCPR, *supra* note 80, art. 9(4).

¹⁰³ HRC, General Comment No. 35, *supra* note 71, at para 33.

¹⁰⁴ *Id.* at para 32.

¹⁰⁵ Human Rights Council, United Nations Working Group on Arbitrary Detention, Opinion No. 4/2018, para 54 (Turkmenistan) U.N. Doc. A/HRC/WGAD/2018/4 (May 23, 2018) (citing to the Body of Principles).

¹⁰⁶ HRC, General Comment No. 35, *supra* note 71, at para 32.

envisioned when they carved out pre-trial detention for “special cases.” Moreover, even assuming that Allaberdyev’s pre-trial detention was justified, he was never given the opportunity to contest it. The pre-trial detention was not court ordered, rather, it came at the request of the very investigator in charge of Allaberdyev’s case. More still, Allaberdyev was not afforded counsel to contest his pre-trial detention and he was held *incommunicado* for over two weeks, before his family finally learned of his whereabouts after filing a formal complaint with the prosecutor’s office. Accordingly, Allaberdyev’s pretrial detention was in violation of Articles 9(3) and (4) of the ICCPR, Articles 10 and 11 of the UDHR and principles 19, 38, and 39 of the Body of Principles.

b. The Government Violated Allaberdyev’s Right to a Public Hearing.

Article 14(1) of the ICCPR guarantees the right “to a fair and public hearing by a competent, independent and impartial tribunal.”¹⁰⁷ The right to a public hearing means that the accused has the right to an open hearing attended by the public. The Human Rights Committee has made clear that absent exceptional circumstances hearings must be held open to the public.¹⁰⁸ Such exceptional circumstances are narrowly construed and are limited to certain instances, such as where publicity would threaten public order or national security.¹⁰⁹ This Body too has stressed the importance of public hearings, noting that public hearings protect the accused by placing the “administration of justice under public scrutiny.”¹¹⁰ Implicitly included in this right, is that Courts must make information about the time and venue of the hearing available and provide adequate time and facilities for attendance by interested members of the public.¹¹¹ Indeed, even article 27 of the Turkmen Criminal Procedure Code stipulates that “criminal hearings shall be open in all courts.”¹¹²

Here, Allaberdyev was denied his right to a fair public hearing in contravention of international norms and Turkmen law. Allaberdyev’s trial was closed to the public and his family.¹¹³ Additionally, on the day of Allaberdyev’s trial, Turkmen officials changed the trial’s location.¹¹⁴ The Government has not and cannot advance a justification for why Allaberdyev’s trial was closed. Accordingly, the closed trial violated Allaberdyev’s rights under Article 14(1) of the ICCPR, Article 27 of the Turkmen Criminal Procedure Code, and Article 103 of the Turkmen constitution.

¹⁰⁷ ICCPR, *supra* note 71, art. 14(1).

¹⁰⁸ UNHRC, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 29 (hereinafter “HRC, General Comment No. 32”).

¹⁰⁹ *Id.*

¹¹⁰ Human Rights Council, United Nations Working Group on Arbitrary Detention, Opinion No. 43/2016, para. 24 (China) U.N. Doc. A/HRC/WGAD/2016/43 (12 October 2016); *See also* Human Rights Council, United Nations Working Group on Arbitrary Detention, Opinion No. 70/2017, para. 66 (Turkmenistan) U.N. Doc. A/HRC/WGAD/2017/70 (21 Dec. 2017) (“Apart from such exceptional circumstances, a hearing must be open to the general public.”).

¹¹¹ Human Rights in the Administration of Justice, Chapter 7, “The Right to a Public Hearing.”

¹¹² Human Rights Council, United Nations Working Group on Arbitrary Detention, Opinion No. 5/2013, para. 19 (Turkmenistan) U.N. Doc A/HRC/WGAD/2013/4 (source quoting Article 27 of the Turkmen Criminal Procedure Code). *See also* Constitution of Turkmenistan, *supra* note 81, art. 103.

¹¹³ Tadzhiagul Begmedova and Vitaly Ponomarev, *supra* note 46.

¹¹⁴ *Id.*

c. The Government Violated Allaberdyev’s Right to a Fair Hearing by an Impartial Judge.

Article 14(1) of the ICCPR provides that everyone is entitled to a fair hearing. A “fair hearing” means a trial conducted by a competent, independent, and impartial tribunal established by law.¹¹⁵ Furthermore, fairness requires the absence of any direct or indirect influence, pressure, intimidation, or intrusion from any side and for whatever motive.¹¹⁶ The requirement of independence refers to the “independence of the judiciary from political interference by the executive branch and legislature.”¹¹⁷ It requires “the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”¹¹⁸ Therefore, to meet the requirement of independence, the court must ensure observance of an individual’s substantive and procedural rights. With respect to impartiality, the Human Rights Committee has stated that the notion “implies that judges must not harbor preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties.”¹¹⁹ A “reasonableness standard” is applied to determine whether a court has met the obligation of impartiality—that is, the court must appear to a reasonable observer to be impartial.¹²⁰ If, for example, the court failed to prevent or remedy serious procedural and substantive mistakes—such as failing to consider or address witness testimony favorable to the defendant—that would indicate the court’s bias to a reasonable observer. Lastly, judges must provide a “duly reasoned, written judgment” so that defendants can effectively exercise their right to appeal which is guaranteed by Article 14(5) of the ICCPR.¹²¹

Allaberdyev’s trial was not conducted by an independent and impartial tribunal. As numerous human rights monitors have noted, the Turkmen judiciary suffers from an extreme lack of independence, as a result of the Turkmen President’s exclusive authority to appoint and dismiss judges.¹²² In fact, the situation in Turkmenistan is so dire, “that the right to fair trial and the principle of equality of arms are consistently disregarded, leading to a conviction rate of 100 percent.”¹²³ Allaberdyev’s trial proved to be no different. As a general matter, Allaberdyev’s trial lasted only two hours.¹²⁴ During the two hour trial, the court heard from four live witnesses and relied on testimony from four other individuals that was adduced during the preliminary investigation.¹²⁵ Notably, all of the witnesses testified against Allaberdyev, and the trial court

¹¹⁵ HRC, General Comment No. 32, *supra* note 108, at para. 3.

¹¹⁶ *Id.* at para. 25.

¹¹⁷ *Id.* at para. 19.

¹¹⁸ Basic Principles on the Independence of the Judiciary, Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders (Sept. 6, 1985) at para. 6.

¹¹⁹ *Karttunen v. Finland*, UN Human Rights Committee, Communication No. 387/1989 (Oct. 23, 1992) at para. 7.2 U.N. Doc. CCPR/C/46/D/387/1989 (1992).

¹²⁰ HRC, General Comment No. 32, *supra* note 108, at para. 21.

¹²¹ *Id.* at para. 49.

¹²² See Human Rights Watch, *supra* note 2; Freedom Now, *supra* note 2; UNHRC, *supra* note 4. See also Human Rights Council, Opinion No. 70/2017, *supra* note 110, at para. 68 (“The Working Group reiterates the concerns expressed in 2017 by the Committee against Torture and the Human Rights Committee about the independence of the Turkmen judiciary overall, which remains severely undermined by the President’s exclusive authority to appoint and dismiss judges and the lack of security of tenure of judges, who are appointed for renewable five-year terms.”).

¹²³ Int’l Comm’n of Jurists, *Independence of the Legal Profession in Central Asia: Republic of Turkmenistan*, 72 (Sept. 10, 2013).

¹²⁴ Tadzhi gul Begmedova and Vitaly Ponomarev, *supra* note 46.

¹²⁵ *Allaberdyev v. Turkmenistan*, Case #1-61, paras. 4-11, (Balkanabat District Court Sept. 29, 2020).

refused to hear testimony from available witnesses who would have attested to Allaberdyev's innocence.¹²⁶ Additionally, before the proceedings even began, Allaberdyev's head was shaved, something that does not happen unless the accused has been convicted.¹²⁷ The trial's short duration, coupled with the judge's refusal to hear exculpatory testimony, suggests that the judge had already determined Allaberdyev's guilt and essentially used the trial as a means to rubber stamp a predetermined result.¹²⁸ No reasonable observer could possibly believe that Allaberdyev's trial was before an impartial court.

The trial judgment issued by the court also reflects that Allaberdyev did not receive a fair hearing. The judgment is confusingly written, suffers from internal inconsistencies, and conflicts with reports from human rights organizations. Turkmen trial judgments routinely suffer from these deficiencies which indicate that the case was likely falsified.¹²⁹ Here, for example, the judgment reports that Allaberdyev initially approached Mamiev (the alleged victim). However, in the very next paragraph, the judgment reports that Mamiev approached Allaberdyev. The judgment also relies on a witness, I. Yusupov, who purportedly asked to participate as a witness to the preliminary investigation in order to confirm the testimonies of Allaberdyev and Mamiev, even though Yusupov was not present when the alleged altercation occurred. The trial judgment also conflicts with reports from various human rights organizations. Contrary to the judgment, the trial was not open to the public¹³⁰ and Mamiev was never investigated or charged.¹³¹

The Turkmen Government's failure to provide Allaberdyev with an impartial judge violated his rights under Article 14(1) of the ICCPR. And the judge's tortured judgment is not duly reasoned and thereby prohibits Allaberdyev from effectively pursuing his right to appeal under to Article 14(5) of the ICCPR.

d. The Government Violated Allaberdyev's Right to Effectively Participate in his Defense and Consult with His Lawyers.

The ICCPR guarantees the right to counsel of one's own choosing.¹³² This right attaches at the "moment of arrest."¹³³ The right of access to counsel includes: the right to have prompt access to a qualified lawyer of one's own choosing; the right to have sufficient time and facilities to communicate with a lawyer in full confidentiality; the right to benefit from free qualified legal service provided by the government; the right to have access to all documents and evidence, including materials that the prosecution plans to offer in court against the accused; and the lawyer's right to be free from intimidation, hindrance, and harassment for representing his client.¹³⁴

¹²⁶ Freedom House, *Nations In Transit 2021: Turkmenistan*, https://freedomhouse.org/country/turkmenistan/nations-transit/2021#footnoteref2_w110ine.

¹²⁷ *Id.*

¹²⁸ See Human Rights Council, *supra* note 75, at para. 71 (finding that an individual's 10 minute trial amounted to "nothing more than a mere 'rubber stamping' of a predetermined decision").

¹²⁹ Notes from Telephone Interview with Tadzhiqul Begmedova, *supra* note 10.

¹³⁰ Tadzhiqul Begmedova and Vitaly Ponomarev, *Turkmenistan: supra* note 46.

¹³¹ Notes from Telephone Interview with Tadzhiqul Begmedova, *supra* note 10.

¹³² ICCPR, *supra* note 71, art. 14(3)(b).

¹³³ See Human Rights Council, Opinion No. 70/2017, *supra* note 110, at para. 54.

¹³⁴ See generally HRC, General Comment No. 32, *supra* note 108.

Here, Allaberdyev’s right to counsel was thwarted at every turn. Allaberdyev was arrested, charged, detained, and questioned all without access to his attorney. In fact, Allaberdyev was detained *incommunicado* for three days before he was allowed to speak with his attorney. More still, Allaberdyev’s lawyer was denied access to the case file and ultimately withdrew under questionable circumstances immediately after speaking with the lead investigator. Relatedly, because Allaberdyev’s lawyer withdrew before obtaining access to Allaberdyev’s file, Allaberdyev likely never saw the case file or the evidence the Government planned to use against him until the Government presented it at trial. Additionally, due to the well-known political nature of Allaberdyev’s case throughout the region, he was unable to procure the services of another independent attorney and was therefore unrepresented at trial and continues to be unrepresented throughout the pendency of his appeal. It is of no legal effect that Allaberdyev is a lawyer, as the right to representation is an unqualified right unrelated to the defendant’s profession and, practically, Allaberdyev is a regulatory lawyer, not a criminal defense lawyer. Accordingly, the Government violated Articles 9 and 14(3)(b) of the ICCPR and severely infringed Allaberdyev’s right to a fair trial.

e. The Government Violated Allaberdyev’s Right to Call Witnesses and Cross-examine Government Witnesses.

One of the key tenets of a fair hearing is the principle of equality of arms, which requires that both parties have the same procedural rights.¹³⁵ Under Article 14(3)(e) of the ICCPR, all persons accused of a crime are entitled “[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.”¹³⁶ According to the UN Human Rights Committee, this provision “is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.”¹³⁷ The Working Group has concluded that “the inability to examine witnesses in person impedes the ability to assess the credibility of the witnesses and severely and adversely affects the right to defend oneself, which is a serious violation of the rights to due process.”¹³⁸

Here, the Government denied Allaberdyev the opportunity to call witnesses whose testimony was relevant to his defense and it denied his right to cross-examine the prosecution’s witnesses. According to the trial judgment, the court heard testimony from four live witnesses in addition to considering the statements of four witnesses who provided statements during the preliminary investigation. All eight of these individuals provided testimony against Allaberdyev. Conspicuously absent from the trial judgment is any mention of witnesses offering testimony on Allaberdyev’s behalf, despite reports that witnesses were present and willing to do so.¹³⁹ Moreover, Allaberdyev was not afforded an opportunity to cross-examine the individual whom he purportedly assaulted or any of the other individuals who provided statements during the preliminary investigation. It is also unlikely, given the trial’s short duration and the trial

¹³⁵ HRC, General Comment No. 32, *supra* note 108, at para. 18.

¹³⁶ ICCPR, *supra* note 73, art. 14(3)(e).

¹³⁷ HRC, General Comment No. 32, *supra* note 108, at para. 39.

¹³⁸ Human Rights Committee, United Nations Working Group on Arbitrary Detention, Opinion No. 16/2017, para. 59 (Kazakhstan) U.N. Doc. A/HRC/WGAD/2017/16 (27 June 2017).

¹³⁹ Tadzhigul Begmedova and Vitaly Ponomarev, *supra* note 46.

judgment's silence with respect to testimony elicited on cross-examination, that Allaberdyev was given the opportunity to cross-examine the prosecution's witnesses. Accordingly, the Government violated Article 14(3)(e) of the ICCPR.

3. Conclusion

The Turkmen Government targeted, detained, and arrested Allaberdyev on fabricated charges due to his alleged connections to the protest movement abroad. After his arrest, the Government repeatedly violated Allaberdyev's right to a fair trial (including by detaining him *incommunicado* pending investigation and trial), his right to consult with counsel and to participate in his trial, and his presumption of innocence. For the forgoing reasons, the *incommunicado* detention of Allaberdyev and continuing restriction on his freedoms is a violation of international law and is therefore arbitrary and illegal.

V. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken.

Allaberdyev has appealed the trial judgment. However, due to the political nature of his case, Allaberdyev has been unable to obtain an attorney. Further information about the status of Allaberdyev's appeal is unknown, as the Turkmen Government continues to hold him *incommunicado*.

VI. Full name, postal and electronic addresses of the person(s) submitting the information (telephone and fax number, if possible).

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