

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

In the case of

Salijon ABDURAKHMANOV

against

Republic of Uzbekistan

*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
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Switzerland

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CONTENTS

I.	THE AUTHOR.....	3
II.	THE VICTIM	3
III.	LEGAL REPRESENTATIVE OF THE AUTHOR	3
IV.	THE STATE PARTY	4
V.	SUMMARY OF THE CLAIM	4
VI.	STATEMENT OF FACTS	5
	Political Climate and Criminal Justice in Uzbekistan	5
	Political Repression in Uzbekistan	6
	Salijon Abdurakhmanov’s Human Rights Work	8
	Arrest	8
	Pre-Trial Investigation	9
	Trial and Sentencing	12
	Appeals	12
	International Reaction to Mr. Abdurakhmanov’s Arrest and Trial	14
VII.	ADMISSIBILITY	14
	Representation	15
	Jurisdiction	15
	No Other Procedure of International Investigation or Settlement	15
	Exhaustion of Domestic Remedies	15
VIII.	VIOLATIONS OF THE ICCPR	17
	A. Violation of the Right to be Tried by an Independent and Impartial Court ...	17
	<i>The Court Was Not Impartial</i>	18
	<i>The Court Was Not Independent</i>	19
	B. Violation of the Right to Have Duly Reasoned Judgment	20
	C. Violation of the Right to Have the Conviction Reviewed by a Higher Tribunal	22
	D. Violation of the Right to Be Presumed Innocent	24
	E. Violation of the Right to Freedom of Expression	25
	F. Violation of the Right to Be Free From Arbitrary Arrest or Detention	27
IX.	REMEDIES	29
X.	LIST OF SUPPORTING DOCUMENTS	29

I. THE AUTHOR

Name:

First Name(s):

Nationality:

Profession:

Date and Place of Birth:

II. THE VICTIM

Name: Abdurakhmanov

First Name(s): Salijon

Nationality: Uzbekistan

Profession: Independent journalist / Chairman for Karakalpakstan,
Committee for the Defense of the Rights of the Individual
(*Комитет по защите прав личности*)

Date and Place of Birth: May 28, 1950

Present Whereabouts: Prison colony 64/61 in Karshi city, Uzbekistan

Relationship to the Author

III. LEGAL REPRESENTATIVE OF THE AUTHOR

1. This communication is submitted by Freedom Now, who is Mr. Salijon Abdurahmanov's *pro bono* international legal counsel.

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IV. THE STATE PARTY

Freedom Now submits this communication against the Republic of Uzbekistan, which acceded to the International Covenant on Civil and Political Rights and its First Optional Protocol on September 28, 1995.

V. SUMMARY OF THE CLAIM

Salijon Abdurakhmanov is an outspoken journalist and human rights activist best known for his reporting on government corruption and human rights abuses in Karakalpakstan, an autonomous republic in Uzbekistan. Uzbek authorities arrested and arbitrary detained Mr. Abdurakhmanov to silence him because of his independent reporting and criticism of the government.

On June 7, 2008, at around 5:00 pm, the traffic police stopped Mr. Abdurakhmanov in his vehicle allegedly to check his identity documents. After examining Mr. Abdurakhmanov's documents, a drug enforcement officer claimed that his drug-sniffing dogs had picked up the scent of illegal drugs and that he would have to search Mr. Abdurakhmanov's vehicle. In his search of the vehicle, the drug enforcement officer found a bag of marijuana and a bag of opium in the trunk of Mr. Abdurakhmanov's car. Mr. Abdurakhmanov was subsequently arrested.

Mr. Abdurakhmanov was initially charged under Article 276(2)(a) of the Uzbek Criminal Code which criminalizes illegal production, purchase, storage, carriage or transmission of narcotic and psychotropic substances without a purpose of sale in large amounts. On June 9, 2008, Mr. Abdurakhmanov tested negative for narcotics in a blood test. On August 2, 2008, prosecutors amended the charges against him and charged him under Article 273(5) of the Uzbek Criminal Code that criminalizes illegal possession of narcotic substances with the purpose of sale.

Mr. Abdurakhmanov's trial began on September 12, 2008 at the Tahtakupir district court in Karakalpakstan. At a hearing on October 9, 2008, the prosecution played a substantially edited version of a videotape taken at the alleged crime scene. During the trial, Mr. Abdurakhmanov's lawyer made repeated requests for the full version of the video to be played. The defense also requested a forensic examination of fingerprints on Mr. Abdurakhmanov's car and the bags of marijuana and opium discovered inside of it. The defense's requests were denied.

On October 10, 2008, the Tahtakupir District Court of Karakalpakstan convicted Mr. Abdurakhmanov and sentenced him to 10 years in prison. On October 21, 2008, the defense submitted an appeal to the Karakalpak Supreme Court's Appeals Board. On November 19, 2008, the Karakalpak Supreme Court's Appeals Board upheld the lower court's decision but failed to provide any reasons for its decision. On May 17, 2011, the defense sent a complaint to the Supreme Court of the Republic of Uzbekistan under the supervisory review procedure (*nadzor*). On June 1, 2011, the Supreme Court of the Republic of Uzbekistan upheld Mr. Abdurakhmanov's conviction but failed to provide any substantive reasons for its decision. On July 29, 2011, the defense filed another complaint to the Supreme Court of the Republic of Uzbekistan. On August 17, 2011, the Supreme Court, in a one-page letter, upheld the lower instance court's decision again.

The legal proceedings against Mr. Abdurakhmanov were fundamentally flawed and unfair. The Uzbek government violated its obligations under the International Covenant on Civil and Political Rights (ICCPR) by denying Mr. Abdurakhmanov:

- A. *The right to be tried by an independent and impartial court.* The Uzbek courts failed to act as independent and impartial bodies because they admitted incriminating evidence without examining its relevance and reliability and excluded all exculpatory evidence.
- B. *The right to have duly reasoned judgment.* The Uzbek courts failed to provide duly reasoned judgments and address the substance of the case.
- C. *The right to have the conviction reviewed by a higher tribunal.* Given the fact that the appeal courts failed to provide duly reasoned judgments, Mr. Abdurakhmanov was deprived of his right to have his conviction reviewed by a higher tribunal.
- D. *The right to be presumed innocent.* The Uzbek courts failed to prove Mr. Abdurakhmanov's guilt beyond reasonable doubt and thus presumed him guilty.
- E. *The right to freedom of expression.* The Uzbek government fabricated charges against Mr. Abdurakhmanov to punish him for exposing government corruption and human rights violations through his journalistic activities.
- F. *The right to be free from arbitrary arrest and detention.* Flagrant violations of Mr. Abdurakhmanov's right to freedom of expression and fair trial were of such gravity as to give the deprivation of liberty an arbitrary character.

VI. STATEMENT OF FACTS

Statement of Facts details what is known about the circumstances surrounding the arrest and continuing detention of Mr. Abdurakhmanov. Background on the current political climate and criminal justice in Uzbekistan, as well as the information about Mr. Abdurakhmanov's human rights work are also included as they provide context that is relevant to this case.

Political Climate and Criminal Justice in Uzbekistan

Uzbekistan obtained its independence from the Soviet Union in 1991 through a referendum, and since that time the country has been controlled by President Islam Karimov. Mr. Karimov formerly served as chairman of the People's Democratic Party and the former Communist Party leader of Uzbekistan.¹ Under President Karimov's rule, the people of Uzbekistan do not have a meaningful opportunity to change the composition of their government through elections.² Only parties loyal to President Karimov are allowed to register and participate in elections. The genuine opposition groups—*Birlik* ("Unity") Popular Movement, *Erk* ("Freedom") Democratic Movement, *Ozod Dehqonlar* ("Free Peasants") Party and *Birdamlik* ("Solidarity") Movement — are excluded from the electoral process and are forced to operate as unregistered parties.³ As a result, the international non-governmental organization (NGO) Freedom House has given

¹ United States Department of State, *Background Note: Uzbekistan* (January 31, 2012), available at <http://www.state.gov/r/pa/ei/bgn/2924.htm> (hereinafter 2012 Background Note).

² Organization for Cooperation and Security in Europe, *Republic of Uzbekistan Parliamentary Elections: December 26, 2004*, Final Report, OSCE/ODIHR Limited Election Observation Mission (March 7, 2005), available at <http://www.osce.org/odihr/elections/uzbekistan/41950> (hereinafter 2004 OSCE Final Report).

³ *Id.*, 2004 OSCE Final Report, p. 4.

Uzbekistan the worst possible score in its most recent assessment of the country's democratic development.⁴

The Uzbek Constitution provides for separation between the executive, legislative, and judicial branches of the national government. However, in practice, the control exercised by the executive over the other branches is nearly absolute.⁵ The judiciary is not independent and often takes directions from the executive.⁶

Uzbekistan's laws set forth important protections for citizens accused of criminal offenses, but these protections are frequently ignored by the General Prosecutor's Office. Though trials are generally open to the public, it is difficult for international observers to obtain access.⁷ Defendants in Uzbekistan are entitled to an attorney from the time they are detained;⁸ however, the government often violates the right to an attorney during pre-trial detention and either denies or delays such access.⁹ In many cases, defendants are held *incommunicado*.¹⁰ Almost all criminal cases brought by prosecutors result in guilty verdicts.¹¹

Prison conditions are poor and in some cases life threatening.¹² According to reports by international NGOs, Uzbek prisoners face "severe abuse, overcrowding, and shortages of food and medicine" in addition to harsh working conditions for those prisoners regularly assigned to manual labor details.¹³

Political Repression in Uzbekistan

According to international human rights groups, the Uzbek government frequently arbitrarily arrests and detains individuals for expressing views critical of the government. The Committee to Protect Journalists described Uzbekistan as "the region's worst jailer of the press."¹⁴ Human Rights Watch reported that today there are at least 10 human rights defenders in prison in Uzbekistan.¹⁵ The U.S. Department of State's 2011 Human Rights Report reported that in 2011

⁴ Freedom House, *Nations in Transit Country Report 2011*, available at http://www.freedomhouse.org/sites/default/files/inline_images/NIT-2011-Uzbekistan.pdf.

⁵ United States Department of State, *2011 Human Rights Report: Uzbekistan*, May 2012, available at <http://www.state.gov/documents/organization/186693.pdf> (hereinafter 2011 Human Rights Report).

⁶ *Id.*

⁷ *Id.*

⁸ Articles 48 and 49 of the Uzbek Criminal Procedure Code.

⁹ *Supra* note 5, 2011 Human Rights Report.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ United States Department of State, *2009 Human Rights Report: Uzbekistan*, March 11, 2010, available at <http://www.state.gov/j/drl/rls/hrrpt/2009/sca/136096.htm> (hereinafter 2009 Human Rights Report).

¹⁴ Committee to Protect Journalists, *Attacks on the Press in 2011*, available at <http://www.cpj.org/2012/02/attacks-on-the-press-in-2011-uzbekistan.php#more> (Committee to Protect Journalists, *Attacks on the Press in 2011*)

¹⁵ Human Rights Watch, *Uzbekistan: Country Summary* (January 2011), available at <http://www.hrw.org/sites/default/files/Uzbekistan.pdf> (hereinafter, Human Rights Watch, 2011 Country Summary); see also, Amnesty International, *Uzbekistan: Submission to the Human Rights Committee, 16-31 July 2009: Pre-Sessional Meeting of the Country Report Task Force on Uzbekistan* (April 28, 2009), available at <http://www.amnesty.org/en/library/asset/EUR62/002/2009/en/6bde1bfe-be09-47b0-bced-3f234ae8960b/eur620022009en.html> ("At least ten human rights defenders remain in prison in cruel, inhuman, and

harassment of journalists and human rights activists continued.¹⁶ Police and security services subjected them to arrests, harassment, intimidation and violence.¹⁷ Journalists and human rights activists were ordered to cease their contacts with foreign diplomats or international human rights organizations and are retaliated against for continuing these contacts.¹⁸ In its 2011-2012 World Press Freedom Index, Reporters Without Borders ranked Uzbekistan 157th among 179 countries.¹⁹

The Uzbek police are notorious for charging dissidents with drug possession, extortion, and tax evasion in order to prevent them from continuing their work exposing government corruption and human rights violations.²⁰ Human Rights Watch has documented this pattern in recent years. Holly Cartner, the Europe and Central Asia director at Human Rights Watch, stated in 2006 that “the Uzbek government often charges journalists and activists with extortion or hooliganism to punish or silence them. We have witnessed this pattern of harassment and persecution for many months now.”²¹ According to a former Uzbek police officer, Uzbek police routinely target human rights defenders and activists and plant drugs on them or their property as a pretext to arrest them.²² For example, in 2010 alone, three members of the political opposition and human rights defenders were charged with drug related offenses and given lengthy prison terms.²³

The Uzbek government has retaliated against attorneys who have represented independent journalists and human rights defenders using the new relicensing process established by the Cabinet of Ministers Decree to strip attorneys of their licenses. The Decree required all lawyers re-apply for their licenses to practice law and to re-take a bar examination every three years.²⁴

degrading conditions, having been sentenced to long prison terms after convictions in unfair trials.”) (hereinafter Amnesty International Submission to the Human Rights Committee).

¹⁶ United States Department of State, *2011 Human Rights Report: Uzbekistan*, May 2012, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (hereinafter 2011 Human Rights Report).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Reporters Without Borders, *World Press Freedom Index 2011-2012*, January 25, 2012, available at http://en.rsf.org/spip.php?page=classement&id_rubrique=1043.

²⁰ *Supra* note 5, 2011 Human Rights Report.

²¹ Human Rights Watch, *Uzbekistan: Journalist Imprisoned in Widening Crackdown* (October 5, 2006), available at <http://www.hrw.org/news/2006/10/05/uzbekistan-journalist-imprisoned-widening-crackdown>; for a more recent report, see Human Rights Watch, *Uzbekistan’s Imprisoned Human Rights Defenders*, May 13, 2011, available at <http://www.hrw.org/news/2011/05/12/uzbekistans-imprisoned-human-rights-defenders>.

²² Uznews.Net News Service, *Ex-officer Says Uzbek Police Routinely Plant Drugs*, June 21, 2008, available at http://www.uznews.net/news_single.php?lng=en&sub=&cid=3&nid=5850.

²³ On July 28, 2010, Azamat Azimov, a member of the opposition Birdamlik movement, was convicted on drug possession with the intent to sell to 7 years in prison. On September 6, 2010, Matlyuba Kamilova, a human rights activist and school principal, was arrested for drug possession. On December 20, 2010, Habibulla Ilmuradov, a human rights activist, was convicted on drug possession charges and fraud to fourteen years in prison. See, *supra* note 18, 2010 Human Rights Report; see also, Human Rights Watch, *Human Rights Watch’s Memorandum on Uzbekistan’s Record in Meeting the EU Human Rights Criteria*, September 28, 2010, available at <http://www.hrw.org/news/2010/09/28/human-rights-watch-memorandum-uzbekistan-s-record-meeting-eu-human-rights-criteria>; *Supra* note 5, 2011 Human Rights Report.

²⁴ Human Rights Watch, *No One Left to Witness: Torture, the Failure of Habeas Corpus, and the Silencing of Lawyers in Uzbekistan*, December 2011, p. 81, available at <http://www.hrw.org/sites/default/files/reports/uzbekistan1211webwcover.pdf>.

Since the process was enacted in March 2009, several well-known attorneys who defended human rights defenders and journalists have lost their licenses and are unable to practice law.²⁵

Because of the government's persecution of independent journalists, there is almost no investigative reporting in Uzbekistan and thus "the number of critical newspaper articles remain[s] low and narrow in their scope."²⁶ Independent and critical news websites are blocked by the Uzbek government. For example, *EurasiaNet*, *Voice of Freedom*, *Ferghana*, *BBC Uzbek Service* and *Radio Free Europe/Radio Liberty* are not accessible in Uzbekistan.²⁷

Salijon Abdurakhmanov's Human Rights Work

Prior to his arrest, Mr. Abdurakhmanov was an outspoken journalist and human rights activist. Mr. Abdurakhmanov was the representative from Karakalpakstan for the human rights organization, the Committee for the Defense of the Rights of the Individual (*Komitet po Zashchite Prav Lichnosti*).²⁸

Mr. Abdurakhmanov is a member of the Real Union of Journalists of Uzbekistan.²⁹ He has contributed to international publications, such as the *New York Times* and *Radio Free Europe/Radio Liberty*.³⁰ As a journalist, he has written extensively on issues related to government corruption, human rights in Uzbekistan, and the legal status of the Karakalpakstan autonomous region of Uzbekistan.³¹

Arrest

On May 27, 2008, Mr. Abdurakhmanov took his car³² to a mechanic at "AvtoVAZ." The mechanic told him that he was busy and would be unable to work on his vehicle. Mr. Abdurakhmanov then left his car in the garage of a nearby local utility administration building ("Issiqlik Markazi").³³ On June 6, 2008, an officer from the utility administration contacted Mr. Abdurakhmanov and asked him to remove the car from the garage. When Mr. Abdurakhmanov came to move his vehicle, the staff at the garage told him that police had visited the garage and expressed interest in his car.³⁴ Mr. Abdurakhmanov was unable to start his car and with the help of people around pushed his car out of the garage and called a friend to help tow the car to his home.

²⁵ *Supra* note 5, 2011 Human Rights Report.

²⁶ *Id.*

²⁷ *Supra* note 14, Committee to Protect Journalists, *Attacks on the Press in 2011*.

²⁸ Amnesty International, *Uzbekistan: Salidjon Abdurakhmanov – Activist Punished for Human Rights Activities: Appeal Case*, EUR 62/005/2008, July 31, 2008 (hereinafter *Activist Punished for Human Rights Activities*).

²⁹ Front Line Defenders, *Uzbekistan: Trial of Journalist and Human Rights Defender Salijon Abdurakhmanov*, September 17, 2008, available at <http://www.frontlinedefenders.org/node/1568>.

³⁰ Sabrina Tavernise, *Uzbek Activists Sentences to 10 Years in Drug Case*, *The New York Times*, October 12, 2008.

³¹ Human Rights Watch, *Uzbekistan: Release Independent Journalist*, September 12, 2008, available at <http://www.hrw.org/news/2008/09/11/uzbekistan-release-independent-journalist> (hereinafter *Uzbek Activist Sentenced to 10 Years in Drug Case*). See Supporting Documents for the copies of his articles in Russian.

³² Model name: VAZ-2106; plate number: 30Y 33 46.

³³ The local utility administration building is generally referred to as "Issiqlik Markazi" in Uzbek or "Teplocentr" ("Теплоцентр") in Russian.

³⁴ *Supra* note 28, *Activist Punished for Human Rights Activities*.

On June 7, 2008, at around 10:00am, Mr. Abdurakhmanov took the car to a mechanic by the name Valentin. He left the car keys with the mechanic and came back at around 4:00 pm with his friend. When he returned, his car was not repaired and he decided to take his car to another mechanic. After his car was repaired at a different mechanic shop, Mr. Abdurakhmanov and his friend decided to go to dinner.

On their way to a restaurant, the traffic police stopped Mr. Abdurakhmanov's vehicle for identity check.³⁵ In addition to the traffic policeman, there was also a drug enforcement officer at the scene with two drug-sniffing dogs.³⁶ After checking Mr. Abdurakhmanov's identification documents, the drug enforcement officer said that his dogs smelled something in the front section of the car and that he had to search the vehicle.³⁷ Mr. Abdurakhmanov told the officer that he did not see the dogs barking or showing any reaction to his car whatsoever.³⁸ When the drug officer invited identifying witnesses Janas Telepov and Ruslan Kidirbaev, Mr. Abdurakhmanov asked them to note that the drug enforcement officer was suspecting drugs to be in the front section of the car.³⁹ Although the officer alleged that the sniffing dogs smelled something in the front section of the car, he found a bag of marijuana and a bag of opium in the trunk.⁴⁰ Mr. Abdurakhmanov was arrested and ordered to drive his car to the Nukus police station.⁴¹

On the same day, June 7, 2008, the police ordered a forensic examination of the bags found. The forensic medical examination concluded that one of the bags contained 114.18 g. of marijuana and the other one 5.89 g. of opium.⁴²

Pre-Trial Investigation

Mr. Abdurakhmanov was initially charged under Article 276(2)(a)⁴³ of the Uzbek Criminal Code which criminalizes illegal production, purchase, storage, carriage or transmission of narcotic and psychotropic substances without a purpose to sell in large amounts.⁴⁴

³⁵ *Id.*

³⁶ *Id.*

³⁷ Uznews.net News Service, *Journalist and Human Rights Activist Arrested in Karakalpakstan*, June 12, 2008, available at http://www.uznews.net/news_single.php?lng=en&sub=&cid=3&nid=5660.

³⁸ Petition to the Supreme Court requesting to protest decisions of the lower courts under supervisory review procedure, May 17, 2011, para. 15 (hereinafter Petition to the Supreme Court).

³⁹ *Id.*, para. 6.

⁴⁰ *Id.*, para. 1.

⁴¹ *Id.*, para. 23.

⁴² Decision on Placing Into Detention Pending Trial, Nukus city criminal court, June 10, 2008.

⁴³ Article 276 of the Uzbek Criminal Code reads:

Illegal production, purchase, storage, carriage or transmission of narcotic and psychotropic substances without a purpose to sell – shall be punished with a fine up to fifty minimum monthly wages, or correctional labor up to three years, or arrest up to six months, or imprisonment up to three years.

The same acts that have been committed:

- a. in large amounts;
- b. by a person, who had previously committed a crime that constitutes illegal turnover of narcotic of psychotropic substances -

shall be punished with imprisonment from three to five years.

On June 9, 2008, blood test ordered by the police investigating the case confirmed that Mr. Abdurakhmanov did not use narcotics.⁴⁵

On June 10, 2008, the Nukus City criminal court placed Mr. Abdurakhmanov into detention pending trial.⁴⁶

On June 17, 2008, police conducted a forensic chemical examination on Mr. Abdurakhmanov's nails, fingers, and mouth. Police found traces of marijuana on his fingers. Mr. Abdurakhmanov admitted to the police that the traces on his fingers were left after he touched the bag of marijuana twice on the day of his arrest. First, he touched the bags after they were found in his trunk. Mr. Fayzulla Abdullaev, Mr. Abdurakhmanov's friend who was with him during the arrest, also touched the bags to smell their content.⁴⁷ Second, Mr. Abdurakhmanov touched the marijuana bag when he was in the office of the expert who conducted forensic chemical examination. To make him admit that the substance in the bag was marijuana, the expert then opened the bag and asked Mr. Abdurakhmanov to take a pinch and smell it. Mr. Abdurakhmanov did so and admitted that the substance indeed smelled.⁴⁸

Later Mr. Abdurakhmanov requested additional forensic examination to verify the traces of marijuana on his fingers found after the examination on June 17, 2008. The test results were released on June 26, 2008 and indicated that Mr. Abdurakhmanov has not used marijuana and the traces found on his fingers were the result of his contact with the substance on the day of his arrest.⁴⁹

Police confiscated materials related to Mr. Abdurakhmanov's journalistic and human rights activities during the search of his home. Police seized a biography in English of the leader of the banned *Erk* opposition party which they later questioned Mr. Abdurakhmanov about.⁵⁰ Nina Ognianova, Europe and Central Asia Program Coordinator at the Committee to Protect Journalists, called on Uzbek authorities to explain the reason for confiscating Mr. Abdurakhmanov's journalistic materials.⁵¹ Mr. Abdurakhmanov's lawyer said that the investigation was more interested in his journalistic and human rights activities than investigating charges related to either consuming or selling drugs.⁵²

A person, who has committed acts punishable under Paragraph 1 of this Article, shall be relieved from penalty if he voluntarily surrendered to authorities and delivered the narcotic or psychotropic substances

⁴⁴ *Supra* note 42, Decision on Placing Into Detention Pending Trial.

⁴⁵ *Supra* note 28, Activist Punished for Human Rights Activities.

⁴⁶ *Supra* note 42, Decision on Placing Into Detention Pending Trial.

⁴⁷ *Supra* note 38, Petition to the Supreme Court, para. 24.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Supra* note 28, Activist Punished for Human Rights Activities.

⁵¹ Committee to Protect Journalists, *Independent Journalist Arrested on Allegations of Drug Possession*, June 13, 2008, available at <http://cpj.org/2008/06/independent-journalist-arrested-on-allegations-of-1.php>.

⁵² *Supra* note 30, Uzbek Activist Sentenced to 10 Years in Drug Case.

On July 12, 2008, Mr. Abdurakhmanov's lawyer filed a written request to the investigation asking to conduct a forensic examination on Mr. Abdurakhmanov's car and bags of drugs.⁵³ On August 4, 2008, investigator E. Nurmashev declined the request.⁵⁴ The investigator justified his decision by stating that the bags with marijuana and opium were too dusty to collect fingerprints.⁵⁵ He did not give any explanation as to why he declined the request to collect fingerprints on the car.⁵⁶

Because Mr. Abdurakhmanov tested negative for drug use, investigators changed the charges against him from drug possession to drug possession with the intent to sell. On August 2, 2008, authorities charged him under Article 273(5) of the Uzbek Criminal Code, which criminalizes "illegal production, purchase, and storage, and other activities related to narcotic and psychotropic substances with the purpose of sale."⁵⁷ The new charges are more serious and punishable by up to 20 years of in prison.

⁵³ Under Article 180 of the Uzbek Criminal Procedure Code, it is only an inquiry officer, investigator or court who can request an expert examination. Article 180 reads, in part: "An inquiry officer, investigator shall issue a resolution and court shall adopt a ruling on assigning an expert examination, that states: motives to assign the expert examination; exhibits and other objects sent to the examination, with indication of where, when and under what circumstances detected and seized, and while performing an expert examination on materials of the case – information underlying the expert's opinion; questions put to the expert; name of the expert institution and the last name of person, assigned the expert examination." See also, Article 179 of the Uzbek Criminal Procedure Code that provides that suspect, accused or defendant can request additional expert examination.

⁵⁴ Decision to Decline Lawyer's Request, Investigator Nurmashev, August 4, 2008.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Article 273 of the Uzbek Criminal Code reads:

Illegal production, purchase, storage, carriage or transmission of narcotic and psychotropic substances in small amounts with the purpose to sell, as well as sale thereof – shall be punished with arrest up to six months or imprisonment from three to five years.

The acts foreseen in Paragraph 1 of this Article, committed in amounts larger than small – shall be punished with imprisonment from five to seven years.

The acts foreseen in Paragraphs 1 or 2 of this Article that have been committed:

- a. by a person, who had previously committed a crime that constitutes illegal turnover of narcotic of psychotropic substances;
- b. by previous concert by a group of individuals;
- c. in places of serving the sentence in the form of imprisonment;
- d. in educational establishments or other places that are used by schoolchildren or students for educational, sports or public events – shall be punished with imprisonment from seven to ten years.

Illegal production or processing of narcotic or psychotropic substances in laboratories or with use of funds and equipment that are in another's ownership or with use of precursors, as well as organization or keeping disorderly houses for consumption or distribution of these substances, as well as the acts foreseen in paragraphs two or three of this Article that have been committed:

- a. by a dangerous recidivist;
- b. by an organized group or in its interests – shall be punished with imprisonment from ten to fifteen years.

Illegal sale of narcotic or psychotropic substances in large amounts – shall be punished with imprisonment from ten to twenty years.

Persons, who have committed the acts punishable under Paragraph 1 of this Article, shall be relieved from penalty if they voluntarily surrendered to authorities and delivered the narcotic or psychotropic substances.

Trial and Sentencing

The trial against Mr. Abdurakhmanov started on September 12, 2008 at the Tahtakupir district court in Karakalpakstan.⁵⁸ Mr. Abdurakhmanov was charged with drug possession in large quantities with the purpose of selling punishable under Art. 273(5) of the Uzbek Criminal Code. Mr. Abdurakhmanov's trial was conducted in a small room believed to prevent public from attending it.⁵⁹ Only his relatives were allowed to attend the trial.⁶⁰

During the trial, Mr. Abdurakhmanov denied using drugs⁶¹ and stated that he thought that the drugs were planted in his car while it was parked in the local utilities administration's parking garage or when his car was left at one of the mechanic shops.⁶²

During the trial, Aybek Matniyazov, the police officer who stopped Mr. Abdurakhmanov's car contradicted his earlier statements.⁶³ In his statement following Mr. Abdurakhmanov's arrest, he said that his drug sniffing dogs entered Mr. Abdurakhmanov's car trunk. However, in his testimony before the court, he was unable to recall if the dogs had been inside the trunk or not.

On October 9, 2008, the prosecution played a videotape from the alleged crime scene that had been substantially edited. Although Mr. Abdurakhmanov was stopped at around 5:00 pm on June 7, 2008, the videotape shown by the prosecution did not begin until 7:48pm, according to the time code on the video.⁶⁴ During the trial, Mr. Abdurakhmanov's lawyer made repeated requests to view the full version of the videotape. The lawyer also requested the court to clarify relevant laws that regulate videotaping of the arrest and search, as well as the procedure of editing the original video footage.⁶⁵ The court satisfied none of these requests. In the judgment, the court stated that the videotape was among the evidence that proved Mr. Abdurakhmanov's guilt. However, the court did not elaborate on how it proves Mr. Abdurakhmanov's guilt.⁶⁶

On October 10, 2008, the Tahtakupir District Court of Karakalpakstan convicted Mr. Abdurakhmanov of drug possession with the intent to sell and sentenced him to 10 years in prison.⁶⁷ The court stated that Mr. Abdurakhmanov alleged intoxication was used as an aggravating circumstance in the determination of the charge.⁶⁸

Appeals

⁵⁸ Judgment, First Instance Court, October 10, 2008, p. 1 (hereinafter First Instance Court judgment).

⁵⁹ Uznews.net News Service, *Trial of Salijon Abdurahmanov Starts*, September 14, 2008, available at http://www.uznews.net/news_single.php?lng=en&cid=3&sub=&nid=7166.

⁶⁰ *Id.*

⁶¹ *Supra* note 58, First Instance Court judgment, p. 2.

⁶² *Id.*, p. 2.

⁶³ *Id.*, para. 15.

⁶⁴ *Supra* note 38, Petition to the Supreme Court, para. 17.

⁶⁵ *Id.*, para. 33.

⁶⁶ *Supra* note 58, First Instance Court judgment, p. 8.

⁶⁷ *Id.*, p. 10.

⁶⁸ *Id.*, p. 9.

On October 21, 2008, the Mr. Abdurakhmanov's lawyers submitted an appeal to the Karakalpak Supreme Court's Appeals Board. On November 19, 2008, the Karakalpak Supreme Court's Appeals Board upheld the lower court's decision.⁶⁹ Though the Appeals Board stated that the decision was reached after "thorough, full and impartial examination,"⁷⁰ it contained absolutely no discussion of how the Appeals Board reached its decision. In its 4-page decision, the Appeals Board spent two-and-a-half pages restating the facts of the case and summarizing the first instance court's decision. In its short decision, and reasoning without a substantive discussion of either the lower court's decision or Mr. Abdurakhmanov's appeal. Furthermore, the Appeals Board came to the unsubstantiated conclusion. Mr. Abdurakhmanov tested negative for drug use he must have had the alleged illegal substances with the aim of selling them.

On May 2009, Mr. Abdurakhmanov's both defense lawyers were deprived of their bar licenses as a result of the new reexamination process.⁷¹ Bakhrom Abdurakhmanov tried to find a new lawyer for Mr. Abdurakhmanov. However, many lawyers were afraid to take the case because it "smell[ed] politics."⁷²

On May 17, 2011, Mr. Abdurakhmanov's new lawyer sent a complaint to the Supreme Court of the Republic of Uzbekistan under the supervisory review procedure (*nadzor*).⁷³ On June 1, 2011, the Supreme Court of the Republic of Uzbekistan upheld Mr. Abdurakhmanov's conviction⁷⁴ without providing any substantive reasons for its decision. In its two-page decision, the Supreme Court just stated that Mr. Abdurakhmanov's alleged guilt was proven by witness statements, photo and video recordings and forensic examination results.

On July 29, 2011, Mr. Abdurakhmanov's lawyer filed another complaint to the Supreme Court of the Republic of Uzbekistan because the Supreme Court failed to address substantive and procedural mistakes raised in the complaint. On August 17, 2011, the Supreme Court, in a one-page letter, upheld the lower instance court's decision again.⁷⁵ In its one-page reply, the Supreme Court yet again restated, with absolutely no substantive discussion, that Mr. Abdurakhmanov's alleged guilt was proven by witness statements, photo and video recordings, and forensic examination results.

As of August 2011, Mr. Abdurakhmanov was found to be in violation of prison rules twice.⁷⁶ Accusing prisoners of violating prison rules is done to prevent them from being eligible for an amnesty.⁷⁷

⁶⁹ Decision, the Karakalpak Supreme Court Appeal Commission, November 19, 2008 (hereinafter Appeals Commission Decision).

⁷⁰ *Id.*, p. 3.

⁷¹ Uznews.net News Service, *Jailed Karakalpak Journalist Deprived of Lawyers*, July 23, 2009, available at http://www.uznews.net/news_single.php?lng=en&cid=3&nid=10765; see also, Ferghana News Information Agency, *Most Prominent Lawyers in Uzbekistan To Lose Their Licenses for Unprofessional Performance*, May 18, 2009, available at <http://enews.ferghananews.com/article.php?id=2534>.

⁷² Uznews.net News Service, *Jailed Uzbek Journalist's Health Deteriorates*, August 21, 2009, available at http://www.uznews.net/news_single.php?lng=en&cid=0&nid=11138.

⁷³ *Supra* note 38, Petition to the Supreme Court.

⁷⁴ Decision, the Supreme Court of the Republic of Uzbekistan, June 1, 2011.

⁷⁵ Decision, the Supreme Court of the Republic of Uzbekistan, August 17, 2011.

⁷⁶ Mr. Abdurakhmanov's family do not know what prison rules he violated.

International Reaction to Mr. Abdurakhmanov's Arrest and Trial

On July 31, 2008, Amnesty International declared Mr. Abdurakhmanov a prisoner of conscience, stating that he was detained “solely for carrying out his human rights activities and exercising his right to freedom of expression.”⁷⁸

International observers have frequently expressed their concerns about the lack of judicial independence in Uzbekistan and the Uzbek government's intimidation and harassment of the members of political opposition, independent journalists and human rights activists. On June 17, 2008, after the arrest of Mr. Abdurakhmanov, Miklos Haraszti, the OSCE representative on freedom of the media, expressed concern about the cases of intimidation and harassment of independent journalists in Uzbekistan.⁷⁹ According to Igor Vorontsov, former Uzbekistan researcher for human rights, Mr. Abdurakhmanov's arrest “[was] yet another example of the Uzbek government's policy of silencing critics.”⁸⁰ Mr. Vorontsov further stated that Mr. Abdurakhmanov's arrest was a clear indication that “anyone who dares to speak out remains vulnerable to be locked up at any time.”⁸¹ Similarly, an official from the German Foreign Ministry said that Mr. Abdurakhmanov was targeted by the Uzbek government to silence him.⁸² Reporters Without Borders was shocked by Mr. Abdurakhmanov's heavy sentence and stated that his conviction is another indication of the Uzbek government's “deliberate move to silence independent journalists and human rights activists in the country.”⁸³

VI. ADMISSIBILITY

This communication meets admissibility requirement under Article 5⁸⁴ of the first Optional Protocol. Mr. Abdurakhmanov's family authorized Freedom Now to act as a legal representative for Mr. Abdurakhmanov. The Uzbek government is a party to ICCPR. Mr. Abdurakhmanov has

⁷⁷ Uznews.Net News Service, *Amnesty in Doubt for Imprisoned Uzbek Journalist*, August 11, 2011, available at http://www.uznews.net/news_single.php?lng=en&sub=&cid=3&nid=17643.

⁷⁸ *Supra* note 28, *Activist Punished for Human Rights Activities*.

⁷⁹ *Пресс-Релиз, Представитель ОБСЕ по Свободе СМИ Обеспокоен Преследованием Журналистов в Узбекистане* (Press-Release, the OSCE Representative on Freedom of the Media is Concerned about the Persecution of Journalists in Uzbekistan), February 2, 2010.

⁸⁰ *Supra* note 31, Human Rights Watch, *Release Independent Journalist*

⁸¹ *Id.*

⁸² Uznews.Net News Service, *Jailed Karakalpak Journalist Salijon Abdurahmanov turns 60*, May 28, 2010, available at http://www.uznews.net/news_single.php?lng=en&cid=3&sub=&nid=13947.

⁸³ Uznews.net News Service, *Reporters Without Borders Shocked at Salijon Abdurakhmanov's Long Prison Term*, October 11, 2008, available at http://www.uznews.net/news_single.php?lng=en&sub=&cid=3&nid=7608.

⁸⁴ Article 5 of the First Optional Protocol to the ICCPR reads: “1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.”

exhausted all domestic remedies and has not submitted a complaint to another international or regional mechanism.

Representation

Freedom Now is authorized to act as Mr. Abdurakhmanov's international legal counsel. Therefore, this communication meets the requirement of obtaining sufficient authorization provided in Fact Sheet No. 7.

Jurisdiction

The Uzbek government acceded to the ICCPR and the first Option Protocol to the ICCPR on September 28, 1995. The violations of Mr. Abdurakhmanov's rights under the ICCPR cover the time period from June 2008 to August 2011. Therefore, this communication meets the admissibility requirement in Article 1 of the first Optional Protocol to the ICCPR.

No other procedure of international investigation or settlement

Neither Mr. Abdurakhmanov's family, nor Freedom Now have submitted a complaint to another treaty body and/or a regional mechanism regarding Mr. Abdurakhmanov's unlawful arrest and conviction. Therefore, this communication meets the admissibility requirement in Article 5(2)(a) of the first Optional Protocol to the ICCPR.

Exhaustion of domestic remedies

Mr. Abdurakhmanov has exhausted all available remedies. He filed numerous appeals to higher courts, including the Supreme Court of the Republic of Uzbekistan, requesting a review of his conviction. In his appeals, Mr. Abdurakhmanov has repeatedly claimed that his fundamental rights for fair trial were violated both during the pre-trial investigation and during his trials.⁸⁵ None of the courts substantively addressed claims raised by the defense. All courts upheld the lower instance court's decision of October 10, 2008, convicting the victim to 10 years in prison.

Summary of the Domestic Remedies Exhausted and the Fair Trial Claims Raised:

- A. On October 10, 2008, the Tahtakupir District Court of Karakalpakstan convicted Mr. Abdurakhmanov of drug possession with intent to distribute and sentenced him to 10 years in prison.
- B. On October 21, 2008, Mr. Abdurakhmanov's defense lawyer submitted an appeal to the Karakalpak Supreme Court's Appeals Board. The lawyer argued that the district court failed to establish that Mr. Abdurakhmanov possessed the bags of marijuana and opium

⁸⁵ According to the Human Rights Committee jurisprudence, in order to meet the requirement of exhausting domestic remedies, an applicant has to raise his/her particular allegations before the national courts. Appealing to the Supreme Court, without raising particular allegations, is not sufficient. See, Pavel Levinov v. Belarus, Commutation No. 1812/2008, July 26, 2011, para. 7.7.

with the purpose of selling them.⁸⁶ He further argued that Mr. Abdurakhmanov's procedural rights were violated because the investigation and court did not satisfy the defense's requests to conduct additional forensic examinations. Finally, the lawyer challenged the legality of using Mr. Abdurakhmanov's alleged intoxication as an aggravating circumstance without establishing the level of his intoxication.

- C. On November 19, 2008, the Karakalpak Supreme Court's Appeals Board upheld the lower court's decision but failed to evaluate any of the claims raised in the defense's appeal or provide a reasoned judgment.
- D. On May 17, 2011, Mr. Abdurakhmanov's new lawyer sent a complaint to the Supreme Court of the Republic of Uzbekistan under the supervisory procedure (*nadzor*).⁸⁷ The complaint argued that the lower court and appeal courts violated Mr. Abdurakhmanov's right to fair trial.
- E. On June 1, 2011, the Supreme Court of the Republic of Uzbekistan concluded that there were no grounds to bring a supervisory motion (protest) over the lower courts' decisions. The Supreme Court of the Republic of Uzbekistan failed to consider the claims raised by the defense or provide a reasoned judgment.
- F. On July 29, 2011, Mr. Abdurakhmanov's lawyer filed another complaint under the supervisory procedure (*nadzor*) to the Supreme Court of the Republic of Uzbekistan drawing the Supreme Court's attention to the substantive and procedural mistakes the lower courts failed to consider, especially with regard to fair trial rights.
- G. On August 17, 2011, the Supreme Court of the Republic of Uzbekistan again refused to initiate supervisory proceedings. The Supreme Court's decision contains no discussion of the claims raised by the defense or reasoning behind its judgment.

By persecuting Mr. Abdurakhmanov for his human rights activities and journalism, the Uzbek government has also violated his right to freedom of expression. Mr. Abdurakhmanov's lawyers did not raise this claim during his trial or appeals. The Human Rights Committee has deemed applicants to have fulfilled the requirements of exhaustion on a particular claim if pursuing that claim in the domestic context "would be manifestly futile."⁸⁸ As it was outlined above, there are substantial reasons to believe that Mr. Abdurakhmanov's targeted persecution was because of his

⁸⁶ Mr. Abdurakhmanov was convicted under Article 273(5) of the Uzbek Criminal Code that criminalizes "illegal production, purchase, and storage, and other activities related to narcotic and psychotropic substances with the purpose of sale." Hence, it was imperative for the court to establish that Mr. Abdurakhmanov had a purpose to sell the marijuana and opium bags.

⁸⁷ Appeals over judgments and resolutions considered under appeals and cassation procedure can be reviewed under supervisory review procedure (*nadzor*). See Article 511 of the Uzbek Criminal Procedure Code. The Human Rights Committee considers supervisory review procedure in the former Soviet Republics not to constitute an effective remedy for the purpose of exhaustion of domestic remedies. See, *Gelazauskas v. Lithuania*, Communication No. 836/1998, March 17, 2003, para. 7.2; *Yuri Iskiyaev v. Uzbekistan*, Communication No. 1418/2005, July 6, 2006, para. 6.1; *Tatiana Lyashkevich v. Uzbekistan*, Communication No. 1552/2007, March 23, 2010, paras. 5.1-5.2.

⁸⁸ *Brough v. Australia*, UNHRC, Decision of 17 March 2006, Communication No. 1184/2003, at para. 8.6 and 8.12; see also *Faure v. Australia*, UNHRC, Decision of 31 October 2005, Communication No. 1036/2001, at para. 6.1; *Escolar v. Spain*, UNHRC, Decision of 28 March 2006, Communication No. 1156/2003, at para. 5.2 and 6

independent journalism and human rights work. Although he was initially charged with illegal possession of narcotic and psychotropic substances without a purpose to sell, the Nukus police department seized printed, audio and video materials from his house. Furthermore, Mr. Abdurakhmanov was questioned about the political opposition books seized from his house. Both of Mr. Abdurakhmanov's lawyers were deprived of their bar licenses because they defended a human rights activist and an independent journalist. Finally, other lawyers were not willing to take Mr. Abdurakhmanov's case because they "smell[ed] politics."

Given the failure of the Appeals commission and Supreme Court to provide a reasoned decision addressing Mr. Abdurakhmanov's allegations of the violation of his fair trial rights, it would be futile for the defense to argue that Mr. Abdurakhmanov's arrest was a violation of his right to freedom of expression.

Therefore, this communication meets the admissibility requirement in Article 5(2)(b) of the first Optional Protocol to the ICCPR.

VIII. VIOLATIONS OF THE ICCPR

The legal proceedings against Mr. Abdurakhmanov were fundamentally flawed and unfair. The Uzbek government violated its obligations under the ICCPR by denying Mr. Abdurakhmanov:

- A. The right to be tried by an independent and impartial court;
- B. The right to have duly reasoned judgment;
- C. The right to have the conviction reviewed by a higher tribunal;
- D. The right to be presumed innocent;
- E. The right to be free from arbitrary arrest and detention;
- F. The right to freedom of expression.

A. Violation of the Right to be Tried by an Independent and Impartial Court

Article 14(1) of the ICCPR provides that "everyone shall be entitled to a [...] hearing by a competent, independent and impartial tribunal." The right to be tried by a competent, independent and impartial court is an essential requirement for a fair trial. The Human Rights Committee held that the fair trial guarantees provided in Article 14 of the ICCPR constitute an absolute right that is not subject to any exceptions.⁸⁹

The requirement of independence refers, *inter alia*, to the "independence of the judiciary from political interference by the executive branch and legislature."⁹⁰ The requirement of impartiality shall be analyzed through the reasonableness test. The court must appear to a reasonable observer to be impartial.⁹¹ Because the principle of the equality of arms is inherent in fair trial,⁹²

⁸⁹ Human Rights Committee, General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and To a Fair Trial, U.N. Doc. CCPR/C/GC/32 (2007), para. 19. See also, Gonzalez del Rio v. Peru, Communication No. 263/1987, U.N. Doc. CCPR/C/46/D/263/1987 (1992), para. 5.2. ("The Committee recalls that the right to be tried by an independent and impartial tribunal is absolute right that may suffer no exception.")

⁹⁰ *Id.*, General Comment No. 32, para. 19.

⁹¹ *Id.*, General Comment No. 32, para. 21.

⁹² Dominique Guesdon v. France, Human Rights Committee, Communication No. 219/1986, U.N. Doc. CCPR/C/39/D/219/1986 (July 25, 1989), para. 10.2.

court's impartiality shall be analyzed in line with its ability to ensure equality of arms. The Human Rights Committee held that equality of arms "means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant."⁹³ In *Dieter Wolf v. Panama*, the Human Rights Committee held that "the concept of a "fair trial" within the meaning of [Article 14(1)] must be interpreted as requiring a number of conditions, such as equality of arms and respect for the principle of adversary proceedings."⁹⁴ Manfred Nowak, former U.N. Special Rapporteur on Torture and author of the commentary on the ICCPR, commented that "the most important criterion of a fair trial is the principle of "equality of arms" between the plaintiff and respondent or the prosecutor and defendant."⁹⁵

The court was not impartial

In Mr. Abdurakhmanov's case, the trial, appeal and supervisory review courts failure to prevent serious procedural and substantive mistakes should be seen as an obvious indication of their bias. On October 9, 2008, the prosecution played a videotape taken at the alleged crime scene. The video footage was substantially edited and did not contain approximately three hours of video footage.⁹⁶ Mr. Abdurakhmanov's lawyers submitted several requests to the trial court judge to order the prosecution to play the full version of the videotape. The demonstration of the full version of the video was of relevance because it would have shown how the police conducted the search and seizure.

During the trial, the prosecution justified the search of Mr. Abdurakhmanov's car by stating that the drug-sniffing dogs smelled an illegal substance in his car. The defense argued that the drug-sniffing dogs did not react in any way and that the videotape would have demonstrated it if played in full. The defense submitted several requests to the trial court to order the prosecution to play the full version of the videotape. The defense also requested the trial court to clarify relevant laws that regulate videotaping of the arrest and search and editing the original videotaping.⁹⁷ The trial court satisfied none of these requests.⁹⁸

In its judgment, the trial court stated that the videotape proved Mr. Abdurakhmanov's guilt. It did not discuss how the videotape proved Mr. Abdurakhmanov's guilt.

The trial court's bias is also evident from how it dealt with the forensic examination results. On June 17, 2008, a forensic chemical examination was conducted on Mr. Abdurakhmanov's nails, fingers, and mouth with the purpose of detecting if he used drugs. The examination found that there were components of marijuana on his fingers. Mr. Abdurakhmanov did not challenge the findings of the forensic chemical examination because he believes the drug traces found on his

⁹³ *Dudko v. Australia*, Human Rights Committee, Communication No. 1347/ 2005, U.N.Doc. CCPR/C/90/D/1347/2005 (July 23, 2007), para. 7.4.

⁹⁴ *Dieter Wolf v. Panama*, Human Rights Committee, Communication No. 289/1988, U.N.Doc. CCPR/C/44/D/289/1988 (1992), para. 6.6.

⁹⁵ M. Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary 443-444 (2nd ed., Kehl am Rhein: Engel, 2005).

⁹⁶ *Supra* note 38, Petition to the Supreme Court, para. 17

⁹⁷ *Id.*, para. 33.

⁹⁸ *Id.*, para. 17.

hands were the result of his contact with the marijuana bag twice after his arrest.⁹⁹ Later Mr. Abdurakhmanov requested an additional forensic examination to establish the source of the marijuana components in his fingers. On June 26, 2008, the examination concluded that the trace amounts of marijuana found on Mr. Abdurakhmanov's fingers were a result of his contact with the substance on the day of his arrest.¹⁰⁰ Despite its exculpatory importance, the trial court did not give any consideration to the forensic examination results.

Furthermore, the trial court failed to satisfy the defense's numerous requests to conduct additional forensic examinations. For example, the court did not satisfy the defense's requests to collect fingerprints on Mr. Abdurakhmanov's car.¹⁰¹ It further failed to satisfy the defense's requests to conduct forensic examination of fingerprints on the marijuana and opium bags found in his car.¹⁰²

Finally, the court convicted Mr. Abdurakhmanov on charges of possessing marijuana and opium with the intent to sell. This charge requires the court to establish that Mr. Abdurakhmanov had an intention to sell the prohibited items. From the text of the judgment, it is unknown how the court concluded that Mr. Abdurakhmanov had the intent to sell the drugs. The court did not even mention, let alone prove to whom Mr. Abdurakhmanov was planning to sell and/or give the marijuana and opium bags to.¹⁰³

Violations of Mr. Abdurakhmanov's procedural rights were raised in the petitions to both appeal and supervisory review courts. These courts did not take any action to reinstate Mr. Abdurakhmanov's procedural rights.

The court was not independent

The court's failure to act as an impartial arbiter should be seen in connection with the fact that the Uzbek judiciary exercises little independence from the executive, and the vast majority of cases brought by prosecutors result in convictions.¹⁰⁴ This is especially the case in political persecutions. There are no known instances when a case brought by the prosecution against a member of political opposition, independent journalist or human rights defender ended with acquittal.¹⁰⁵ Because of the political nature of the case brought against Mr. Abdurakhmanov, none of the domestic courts gave due consideration of the flagrant violations of Mr. Abdurakhmanov's procedural rights. In addition to overlooking the prosecution's unlawful denial of all procedural requests by the defense during the pre-trial investigation, the court also failed to fulfill the defense's requests during the trial. By doing so, it allowed the prosecution to present evidence that was obviously geared towards supporting the prosecution's position.

⁹⁹ *Id.*, para. 24.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*, para. 9.

¹⁰² *Id.*

¹⁰³ *Id.*, para. 1.

¹⁰⁴ *Supra* note 13, 2009 Human Rights Report.

¹⁰⁵ All of the recent trials against political opposition activists, human rights defenders and journalists ended with convictions. See, for examples, cases of Sanjar Umarov, Nodira Khidoyatova, Akzam Turgunov, Salijon Abdurahmanov, Umida Niazova and Abdumalik Boboev.

Before his arrest, Mr. Abdurakhmanov was an outspoken journalist and human rights activist. In addition to serving as the chairperson from Karakalpakstan in the human rights organization, the Committee for the Defense of the Rights of the Individual (*Komitet po Zashchite Prav Lichnosti*),¹⁰⁶ he also wrote articles about government corruption and human rights in Uzbekistan.¹⁰⁷ Mr. Abdurakhmanov's articles appeared in independent online news agencies such as UzNews, Radio Free Europe/Radio Liberty, Voice of America and the Institute for War and Peace Reporting.

The political character of the case is also evident from the charges brought against Mr. Abdurakhmanov. As it was demonstrated in sub-section "Political Repression in Uzbekistan,"¹⁰⁸ drug-planting and convictions based on drug possession charges against human rights activists and members of political opposition are routine in Uzbekistan. Similar to the charges brought against Azamat Azimov, Matlyuba Kamilova and Habibulla Ilmuradov,¹⁰⁹ Mr. Abdurakhmanov was convicted on the charge of drug possession in large quantities with the intent to sell. The court failed to establish that the drugs indeed belonged to Mr. Abdurakhmanov, as well as demonstrate his intent to sell them.

The Uzbek government also uses prison rule violation charges against members of political opposition, independent journalists and human rights activists. This is done to prevent prisoners of conscience from being eligible for amnesties.¹¹⁰ Mr. Abdurakhmanov is a victim of this state policy too. As of August 2011, he was found to be in violation of prison rules twice. Other prominent human rights activists and opposition members have also been victims of prison rule violation charges. For example, prison officials repeatedly accused Alisher Karamatov of violating internal prison rules to keep him from being eligible for amnesty.¹¹¹ Another example is Muhammad Bekjon, former editor of the political opposition newspaper *Erk*. The court gave him an additional five-year sentence for alleged violation of internal prison rules four times in the course of four months.¹¹² He was sentenced to an additional five years in prison a few days before his 13-year prison term was set to expire.

B. Violation of the Right to Have Duly Reasoned Judgment

Article 14(5) provides that "[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." The fair trial requirements of Article 14 of the ICCPR require courts to provide reasoned analyses for their judgments. A person's right to a duly reasoned judgment is directly linked to his right of appeal. Further, the court's obligation to provide a duly reasoned judgment has a direct impact on the equality of arms principle. In *Dieter Wolf v. Panama*, the Human Rights Committee held that "the principle

¹⁰⁶ *Supra* note 28, Amnesty International, Activist Punished for Human Rights Activities.

¹⁰⁷ Human Rights Watch, *Uzbekistan: Release Independent Journalist*, September 12, 2008, available at <http://www.hrw.org/en/news/2008/09/11/uzbekistan-release-independent-journalist>.

¹⁰⁸ See "Political Repression in Uzbekistan" of the petition.

¹⁰⁹ *Id.*

¹¹⁰ *Supra* note 77, Amnesty in Doubt for Imprisoned Uzbek Journalist.

¹¹¹ Human Rights Watch, *Uzbekistan: Activist Free but Crackdown Widening*, April 13, 2012, available at <http://www.hrw.org/news/2012/04/13/uzbekistan-activist-free-crackdown-widening>

¹¹² United States Mission to the Organization for the Security and Cooperation in Europe, *Statement on the Rule of Law in Uzbekistan*, February 9, 2012, available at http://osce.usmission.gov/feb_9_12_uzbekistan.html.

of equality of arms is not respected where the accused is not served a properly motivated indictment.”¹¹³ The right to have one’s conviction reviewed by a higher court imposes on the State a duty to review the case substantively, both on the basis of sufficiency of the evidence and of the law.¹¹⁴ In addition to the obligation to review the case substantively, a higher court is under obligation to provide substantive reasons for its own decision.¹¹⁵

The Uzbek law also provides that “[a]n accusatorial sentence may not be based on assumptions and shall be rendered only when the guilt of a person under trial was substantiated during the trial.”¹¹⁶ The law further requires that “a sentence shall be based on the reliable evidence, obtained after verifying all possible circumstances of committing an offence, meeting all the lacks in the materials of the case, removing all doubts and contradictions.”¹¹⁷ It further provides that “[a] sentence shall contain the evidence that gave occasion to the conclusion of a court in respect of each of the persons under trial and motives that entailed rejection of other evidence.”¹¹⁸

In Mr. Abdurahmanov’s case, the appeals courts failed to provide duly reasoned judgments and address the substance of the appeals. On October 21, 2008, the defense submitted an appeal to the Karakalpak Supreme Court’s Appeals Board (hereinafter Appeals Board). On November 19, 2008, the Appeals Board upheld the lower court’s decision.¹¹⁹ In its decision, the Appeals Board stated that it reached its decision after “thorough, full and impartial examination”¹²⁰ of the case. The decision of the Appeals Board is only four pages long. Of these four pages, the Appeals Board spent two-and-a-half pages restating the facts of the case and summarizing the first instance court’s decision. The court’s reasons for upholding the trial court’s decision were composed of four short paragraphs and comprised roughly one page of the decision. In those four paragraphs, the Appeals Board just restated the lower court’s reasoning without inquiring into substantive discussion of the trial court’s decision and the claims raised by the defense. Namely, the Appeals Board restated that Mr. Abdurakhmanov’s guilt was proven by (a) the protocol of search and seizure of suspicious items in the bag from Mr. Abdurakhmanov’s car; (b) the forensic examination of June 7, 2008 (No. 366/7) showing that the seized items were 114.18 g. of marijuana and the other was 5.98 g. of opium; (c) the forensic examination of June 7, 2008 (No. 63-T) showing that Mr. Abdurakhmanov’s hand and fingernails contained components of marijuana; and (d) blood test of June 26, 2008 showing that Mr. Abdurakhmanov did not consume drugs, which indicated that he had an intention to sell the drugs. It should be noted that in addition to just repeating the alleged exculpatory evidence against Mr. Abdurakhmanov relied on by the lower court, the Appeals Board came to an unsubstantiated conclusion in flagrant violation of presumption of innocence stating that because the blood test on June 26, 2008

¹¹³ *Supra* note 94, Dieter Wolf v. Panama, para. 6.6.

¹¹⁴ *Supra* note 89, General Comment No. 32, para. 48. See also, Aliboeva v. Tajikistan, Human Rights Committee, U.N. Doc. CCPR/C/85/D/985/2001 (Oct. 18, 2005), para. 6.5; Khalilova v. Tajikistan, Human Rights Committee, U.N. Doc. CCPR/C/83/D/973/2001 (March 30, 2005), para. 7.5.

¹¹⁵ Abdeel Keerem Hassan Aboushanif v. Norway, Human Rights Committee, U.N. Doc. CCPR/C/93/D/1542/2007, Communication No. 1542/2007, 17 July 2008, para. 7.2.

¹¹⁶ Article 463 of the Uzbek Criminal Procedure Code.

¹¹⁷ Article 463 of the Uzbek Criminal Procedure Code.

¹¹⁸ Article 467 of the Uzbek Criminal Procedure Code.

¹¹⁹ Decision, the Karakalpak Supreme Court Appeal Commission, November 19, 2008.

¹²⁰ *Id.*, p. 3.

showed that he did not consume drugs at all, Mr. Abdurakhmanov must have had the alleged illegal substances with the aim of selling them.

On May 17, 2011, Mr. Abdurahmanov's new lawyer sent a ten-page complaint to the Supreme Court of the Republic of Uzbekistan under supervisory review procedure (*nadzor*).¹²¹ The defense indicated, among others, the following procedural violations:

- A. The court's failure to prove that Mr. Abdurakhmanov possessed the bags of marijuana and opium with the purpose of selling them. The court did not demonstrate any proof that Mr. Abdurakhmanov was planning to sell and/or hand over the bags with marijuana and opium;¹²²
- B. The court failed to satisfy defense's repeated requests to conduct forensic examination of fingerprints on Mr. Abdurakhmanov's car with the purpose of establishing existence of suspicious fingerprints;¹²³
- C. The court failed to satisfy defense's repeated requests to conduct forensic examination of fingerprints on the bags with marijuana and opium found in the trunk of his car;¹²⁴
- D. The court used Mr. Abdurakhmanov's alleged intoxication as an aggravating circumstance but failed to indicate the level of his intoxication;¹²⁵
- E. The court referred to the forensic examination result of June 17, 2008 showing that some marijuana components were found in Mr. Abdurakhmanov's fingers. But it failed to mention at all the forensic examination result of June 26, 2008 showing that the marijuana components were left after Mr. Abdurakhmanov touched marijuana leaves in the presence of the police to check whether the bag indeed contained marijuana;¹²⁶

On June 1, 2011, the Supreme Court of the Republic of Uzbekistan upheld Mr. Abdurahmanov's conviction¹²⁷ without providing any substantive reasons for its decision. In its two-page decision, the Supreme Court just stated that Mr. Abdurakhmanov's alleged guilt was proven by witness statements and forensic examination results.

On July 29, 2011, Mr. Abdurahmanov's lawyer filed another complaint to the Supreme Court of the Republic of Uzbekistan requesting that it address the substantive and procedural mistakes raised in the complaint dated May 17, 2011. On August 17, 2011, the Supreme Court upheld the lower instance court's decision.¹²⁸ In its one-page reply, the Supreme Court again restated, with absolutely no substantive discussion, that Mr. Abdurakhmanov's alleged guilt was proven by witness statements and forensic examination results.

C. Violation of the Right to Have the Conviction Reviewed by a Higher Tribunal

¹²¹ *Supra* note 38, Petition to the Supreme Court.

¹²² *Id.*, para. 1.

¹²³ *Id.*, para. 9.

¹²⁴ *Id.*

¹²⁵ *Id.*, para. 23.

¹²⁶ *Id.*, para. 24.

¹²⁷ Decision, the Supreme Court of the Republic of Uzbekistan, June 1, 2011.

¹²⁸ *Id.*, p. 2.

Given the fact that the appeal courts failed to provide duly reasoned judgments, Mr. Abdurakhmanov had no effective right to have his conviction reviewed by a higher tribunal. Article 14(5) of the ICCPR provides that “[e]veryone 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 have duly reasoned judgment discussed above is of particular importance for the person to exercise his/her right to the conviction reviewed by a higher tribunal. The Human Rights Committee held in numerous occasions that States parties to the ICCPR are obliged to provide “duly reasoned” judgments so that a convicted person can have the conviction reviewed by a higher court. For example, in *Little v. Jamaica*, the Human Rights Committee held that “[i]n order to enjoy the effective exercise of [the right to have conviction reviewed by a higher court], a convicted person is entitled to have, within a reasonable time, access to written judgment [that is] duly reasoned [...]”¹²⁹ Furthermore, a higher tribunal is under obligation to give full evaluation of the evidence. The Human Rights Committee held that to meet the review requirements provided in Article 14(5), States parties shall render “full evaluation of the evidence and the conduct of the trial.”¹³⁰ In *Cesario Gómez Vázquez v. Spain*, the Human Rights Committee held that the author was denied the right to a review of his conviction and sentence because “the review [was] limited to the formal or legal aspects of the conviction” only and failed to consider facts of the conviction.¹³¹

The Uzbek law provides that verdicts that have entered into legal force can be appealed under a supervisory review procedure.¹³² The court reviewing the case under the supervisory review procedure shall examine the lawfulness, reasonableness and fairness of the judgment.¹³³ The following procedural and substantive mistakes serve as a ground to repeal the judgment under supervisory review procedure: incompleteness or one-sidedness of judicial investigation; inconsistency of the court’s conclusions outlined in its judgment regarding the factual circumstances of the case; substantial violations of criminal procedure law; and, incorrect application of the criminal law and unfairness of punishment.¹³⁴

In Mr. Abdurakhmanov’s case, the appeal court failed to give a full evaluation of the evidence used at trial and the conduct of the lower court.¹³⁵ In upholding the lower court’s decision, the appeals court limited itself to restating the facts of the case and evidence presented by the

¹²⁹ *Little v. Jamaica*, Communication No. 283/1988, U.N. Doc. CCPR/C/43/D/283/1988 (1991), para. 8.5.; See also, *Curie v. Jamaica*, Communication No. CCPR/C/50/D/377/1989 (1994), para. 13.5; See also, *Higgins and others v. France*, European Court of Human Rights, Judgment of February 19, 1998, para. 42.

¹³⁰ *Victor P. Domukovsky, Zaza Tsiklauri, Petre Gelbakhiani and Irakli Dokvadze v. Georgia*, Human Rights Committee, U.N. Doc. CCPR/C/62/D/623/1995, CCPR/C/62/D/624/1995, CCPR/C/62/D/626/1995, CCPR/C/62/D/627/1995 (May 29, 1998), para. 18.11.

¹³¹ *Cesario Gómez Vázquez v. Spain*, Human Rights Committee, U.N. Doc. CCPR/C/69/D/701/1996 (Aug. 11, 2000), para. 11.1.

¹³² Article 510 of the Uzbek Criminal Procedure Code. Only certain groups of persons can request examination of a case under this procedure. Those are: the Chairman of the Supreme Court of the Republic of Uzbekistan and his deputy; General Prosecutor of the Republic of Uzbekistan and his deputies; Chairman of the Supreme Court of the Republic of Karakalpakstan; Chairman of the region courts, Chairman of the Tashkent City court; Prosecutor of the Republic of Karakalpakstan and others.

¹³³ Article 478 of the Uzbek Criminal Procedure Code.

¹³⁴ Article 484 of the Uzbek Procedure Code.

¹³⁵ See “B. Violation of the Right to Have Duly Reasoned Judgment.”

prosecution, and thus denied Mr. Abdurakhmanov his right to have his convicted reviewed by a higher tribunal.

D. Violation of the Right to be Presumed Innocent

Article 14 of the ICCPR provides that “[e]verone charged with a criminal offence shall have the right to be presumed innocent until proved guilty [...]” The presumption of innocence is fundamental to the protection of human rights. It “imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, [and] ensures that the accused has the benefit of doubt [...]”¹³⁶ Article 23 of the Uzbek Criminal Procedure Code provides that defendants “shall be considered innocent unless [their guilt] of committing a crime is proved in accordance with the procedure established by law [...]” It further provides that “[a]ny doubt about guilt, if the possibilities to eliminate them were exhausted, shall be counted in favor of the suspect, accused or defendant.” Article 462 of the Uzbek Criminal Procedure Code provides that a court “shall be guided by the principles of presumption of innocence” when selecting a verdict in respect of a person under trial.

In Mr. Abdurakhmanov’s case, the Uzbek government failed to prove Mr. Abdurakhmanov’s guilt beyond reasonable doubt and consequently presumed him guilty. As the discussions above demonstrated,¹³⁷ there were numerous violations of Mr. Abdurakhmanov’s rights to fair trial. For example, the court convicted Mr. Abdurakhmanov on charges of possessing marijuana and opium with the intent to sell without any discussion of how it was established that Mr. Abdurakhmanov was attempting to sell drugs. The trial court denied the defense’s requests to conduct forensic examinations to establish fingerprints on the car and bags or take into consideration forensic examination results that showed Mr. Abdurakhmanov’s innocence.¹³⁸ Furthermore, the appeal and supervisory review courts upheld the lower courts’ decision without any substantive discussion of the issues raised during the appeals. Failure to provide duly reasoned judgment and substantive review of the appeal by the higher courts is another indication that courts presumed Mr. Abdurakhmanov’s guilt.¹³⁹

Finally, the trial court presumed Mr. Abdurakhmanov’s intoxication. In addition to failing to establish whether, as the prosecution alleged, Mr. Abdurakhmanov was indeed intoxicated on the day of his arrest, the court used Mr. Abdurakhmanov’s alleged intoxication as an aggravating circumstance against him. Though the judgment stated that Mr. Abdurakhmanov’s intoxication was proven by medical tests, this was never established. Mr. Abdurakhmanov admitted that he only drank about 100 gr. (approximately one medium size glass) of beer.¹⁴⁰ Mr. Abdurakhmanov’s alleged intoxication was established by the method generally referred to as

¹³⁶ *Supra* note 89, General Comment No. 32, para. 30.

¹³⁷ See sub-sections A, B, and C of the petition.

¹³⁸ For example, the court did not give due consideration to the forensic examination result of June 26, 2008 indicating that Mr. Abdurakhmanov does not consume marijuana and that the leftovers in his fingers were as a result of his contact with the substance on the day of his arrest at the present of the police and the expert. See sub-section A.

¹³⁹ For detailed discussion of the violation of Mr. Abdurakhmanov’s right for duly reasoned judgment and his conviction to be reviewed by a higher tribunal, see sub-sections B and C.

¹⁴⁰ *Supra* note 38, Petition to the Supreme Court, para. 23.

“надуть в трубочку”¹⁴¹ (literal translation “blowing to the tube”), which is basically smelling driver’s breath by asking him to blow into handmade paper tube. This method only establishes whether the driver drank alcoholic drinks but does not measure the level of intoxication. When Mr. Abdurakhmanov was asked to blow into the paper tube, he objected and asked for a blood test in order to obtain more accurate results.¹⁴² Further, despite alleging that Mr. Abdurakhmanov was intoxicated, the police asked him to drive his car to the Nukus police station.¹⁴³

E. Violation of the Right to Freedom of Expression

Article 19(2) of the ICCPR provides that “[e]veryone shall have the right of freedom of expression.” Freedom of expression includes freedom to seek, receive and impart information of all kinds, either orally or in writing.¹⁴⁴ An analogous provision on the guarantee of freedom of opinion and expression is also provided in Article 19 of the UDHR.¹⁴⁵ Further, the Uzbek Constitution guarantees “freedom of thought, speech and convictions.”¹⁴⁶

Article 19 is of special importance for journalists. The Human Rights Committee (Committee) has recognized the “paramount importance” of a “free and uncensored press”¹⁴⁷ and the specific protection afforded to journalistic activities by Article 19(2).¹⁴⁸ Further, it has recognized that the protection of free expression is broad enough to “[include] the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.”¹⁴⁹ Manfred Nowak, former U.N. Special Rapporteur on Torture and author of the commentary on the ICCPR, commented that every communicable type of subjective opinion, even if it is politically critical, is protected by Article 19(2).¹⁵⁰ Without such protection, journalists will not be able investigate and expose corrupt and illegal practices by government officials. The Working Group has also emphasized the importance of the freedom of expression for the protection of the work of journalists and human rights defenders. In *Hai et. al. v. Vietnam*, the Working Group noted that when journalists report on government corruption, their activities “fall squarely within the scope of the right to freedom of opinion and

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Article 19(2) of the ICCPR. Paragraph two of Article 19 reads: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

¹⁴⁵ Article 19 of the UDHR reads: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

¹⁴⁶ Article 29 of the Constitution of the Republic of Uzbekistan.

¹⁴⁷ *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005), para. 6.8.

¹⁴⁸ *Supra* note 89, General Comment No. 34, para. 11. In discussing freedom of expression and the media, the Human Rights Committee noted that “[a] free, uncensored and unhindered press or media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society.” (para. 9) (hereinafter General Comment No. 34).

¹⁴⁹ *Supra* note 147, *Rafael Marques de Morais v. Angola*, para. 6.7.

¹⁵⁰ *Supra* note 95, CCPR Commentary, pp. 443-444.

expression.”¹⁵¹ Similarly, the Working Group has recognized the right of human rights defenders “to investigate, gather information regarding and report on human rights violations.”¹⁵²

There is an important correlation between Article 19 and 25¹⁵³ of the ICCPR. General Comment No. 25 provides that “the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential”¹⁵⁴ for the full exercise of the rights protected in Article 25. This implies a free press and other media shall be able to comment on public issues without censorship or restraint.¹⁵⁵ Similarly, in *Gauthier v. Canada*, the UN Human Rights Committee analyzed Article 19 of the ICCPR in conjunction with Article 25 and held that “citizens [...] should have wide access to information and the opportunity to disseminate information [...] about the activities of elected bodies and their members.”¹⁵⁶

The Uzbek government’s violation of Mr. Abdurakhmanov’s freedom of expression can be seen in the Nukus police department’s seizure of printed, audio and video materials during the a search of Mr. Abdurakhmanov’s house.¹⁵⁷ As a journalist, he has published many articles on human rights and rule of law issues, including government corruption, child labor, and the legal status of the Karakalpakstan autonomous region of Uzbekistan.¹⁵⁸

Among the items seized, was a biography of the leader of the banned *Erk* opposition party. Mr. Abdurakhmanov was questioned about the biography by authorities.¹⁵⁹ Mr. Abdurakhmanov’s lawyer also confirmed that the investigation was more interested in Mr. Abdurakhmanov’s journalistic and human rights activities rather than investigating charges related to either consuming or selling drugs.¹⁶⁰

¹⁵¹ Ngueyn Hoang Hai et al. v. Viet Nam, Working Group on Arbitrary Detention, Opinion No. 1/2009, U.N. Doc. A/HRC/13/30/Add.1 (2010), para. 34.

¹⁵² Hassan Ahmed Hassan Al-Diqqi v. United Arab Emirates, Working Group on Arbitrary Detention, Opinion No. 8/2009, U.N. Doc. A/HRC/13/30/Add.1 (2010), para. 18. Although the Working Group came to this conclusion by referencing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, it noted that “in the Working Group’s view” the rights and principles of the Declaration “are based on human rights standards enshrined in the [UDHR] and in the Charter of the United Nations.”

¹⁵³ Article 25 of the ICCPR reads: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) 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; (c) To have access, on general terms of equality, to public service in his country.”

¹⁵⁴ General Comment No. 25: *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service* (Art. 25), CCPR/C/21/Rev.1/Add.7, Jul. 12, 1996, para. 25.

¹⁵⁵ *Id.*

¹⁵⁶ Robert W. Gauthier v. Canada, Communication No. 633/1995, U.N. Doc. CCPR/C/65/D/633/1995 (5 May 1999), paras. 13.3-13.4.

¹⁵⁷ Uznews.net News Service, *State of Journalist Salijon Abdurakhmanov’s Case*, July 16, 2008, available at http://www.uznews.net/news_single.php?lng=en&sub=&cid=3&nid=6056.

¹⁵⁸ See Supporting Documents for the copies of his articles in Russian.

¹⁵⁹ *Supra* note 28, Amnesty International, *Activist Punished for Human Rights Activities*.

¹⁶⁰ *Supra* note 30, *Uzbek Activist Sentenced to 10 Years in Drug Case*.

On May 2009, both of Mr. Abdurakhmanov's defense lawyers were deprived of their bar licenses because they failed the bar re-licensing exams.¹⁶¹ This exam was part of the new re-examination process of all lawyers conducted from April 21 to July 1, 2009.¹⁶² The re-licensing exam was an oral exam before a committee composed of 10 members.¹⁶³ Each candidate was given five legal scenarios and some time to prepare verbal arguments.¹⁶⁴ The legal scenarios came from different branches of law.¹⁶⁵ The committee members assessed each candidate on a pass or fail basis and did not provide any explanatory comments on how the decision was reached.¹⁶⁶ It was reported that the relicensing exam was specifically organized to strip human rights lawyers of their bar licenses.¹⁶⁷ After being stripped of his bar license, Mr. Abdurakhmanov's lawyer tried to find a new lawyer for his client. However, many lawyers did not take the case because it "smell[ed] politics."¹⁶⁸

Furthermore, given Mr. Abdurakhmanov's investigative journalism exposing corruption in the government and human rights violations, Mr. Abdurakhmanov's arrest and conviction is consistent with the Uzbek government's documented pattern and practice of retaliation against human rights activists, independent journalists and members of political opposition based on fabricated criminal cases.¹⁶⁹

By convicting Mr. Abdurakhmanov on fabricated charges and failing to guarantee him fair trial, the Uzbek government violated Mr. Abdurakhmanov's right to freedom of expression. As a result of the unlawful conviction, Mr. Abdurakhmanov was stripped of his right to seek, receive and impart information of all kinds.

F. Violation of the Right to be Free from Arbitrary Arrest or Detention

Article 9(1) of the ICCPR reads: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Further, Article 9(4) provides that "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

¹⁶¹ Uznews.net News Service, *Jailed Karakalpak Journalist Deprived of Lawyers*, July 23, 2009, available at http://www.uznews.net/news_single.php?lng=en&cid=3&nid=10765.

¹⁶² Ferghana News Information Agency, *Most Prominent Lawyers in Uzbekistan To Lose Their Licenses for Unprofessional Performance*, May 18, 2009, available at <http://enews.ferghananews.com/article.php?id=2534>.

¹⁶³ *Uzbekistan: New Attorney Licensing Examination Reduces Transparency and Independence for Barristers*, Reference ID: 09TASHKENT959 (June 11, 2009), available at <http://www.cablegatesearch.net/cable.php?id=09TASHKENT959>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See generally, Human Rights Watch, *No One Left to Witness: Torture, the Failure of Habeas Corpus, and the Silencing of Lawyers in Uzbekistan*, December 2011, available at <http://www.hrw.org/reports/2011/12/13/no-one-left-witness-0>; See also, Front Line Defenders, *Uzbekistan: Human Rights Lawyer Mr. Rukhiddin Kamilov Continues To Be Excluded From the Bar*, March 21, 2012, available at <http://www.frontlinedefenders.org/node/17820>.

¹⁶⁸ *Supra* note 72, *Jailed Uzbek Journalist's Health Deteriorates*.

¹⁶⁹ See "Political Repression in Uzbekistan" sub-section.

Under the rules of classification of cases of the United Nations Working Group on Arbitrary Detention,¹⁷⁰ a detention is arbitrary under fair trial grounds (Category III), “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial [...] is of such gravity as to give the deprivation of liberty an arbitrary character.”¹⁷¹ International norms of fair trial guarantees are provided in Articles 5, 7, 8, 9, 10, and 11 of the UDHR and Articles 9 and 14 of the ICCPR. In addition to the due process requirements established by the ICCPR and UDHR, the Working Group may also look to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereinafter the Body of Principles) in making a determination as to the arbitrary nature of a detention.¹⁷² These international documents are unanimous in proclaiming the following rights to constitute basic requirements of fair trial: The right to be tried by an independent and impartial tribunal, to be presumed innocent until proved guilty, to examine evidence and the witnesses against the accused, and to have his conviction and sentence reviewed by a higher tribunal. In addition to cases where a lack of due process renders a detention arbitrary, a detention may be arbitrary where the reason for the arrest is the exercise of a fundamental human right. This understanding is consistent with the definition of “Category II” deprivations of liberty adopted by the United Nations Working Group on Arbitrary Detention (UN Working Group). The UN Working Group has indicated that a detention is “arbitrary,”

[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles, 7, 13, 14, 19, 20, and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights.¹⁷³

In *Mukong v. Cameroon*, the Committee embraced this broad understanding of Article 9 noting That “[t]he drafting history of [A]rticle 9, paragraph 1, confirms that ‘arbitrariness’ is not to be equated with ‘against the law,’ but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.”¹⁷⁴ In finding that the detention in that case constituted a violation of Article 9(1), the Committee referenced its analysis in the case pursuant to Article 19. Having determined that the detention was “neither reasonable nor necessary under the circumstances” — and thus a violation of the author’s freedom of expression under Article 19 — the Committee concluded that his detention also constituted a violation of Article 9(1).¹⁷⁵

The flagrant violations of Mr. Abdurakhmanov’s fair trial rights discussed above are of such gravity as to give the deprivation of liberty an arbitrary character. The Uzbek government, along

¹⁷⁰ Office of the High Commissioner for Human Rights, *Revised Methods of Work of the Working Group*, paras. 8(b) & (c) (hereinafter Revised Methods).

¹⁷¹ *Id.*, para. 8(c).

¹⁷² Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, at Principle 2, G.A. Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) (hereinafter Body of Principles). The Body of Principles provides for the basic guarantees of a fair trial in the Principles 2, 4, 7, 11, 17, 18 and 36.

¹⁷³ Working Group on Arbitrary Detention, Fact Sheet No. 26, Annex IV, para. 8(b).

¹⁷⁴ *Mukong v. Cameroon*, Communication No. 458/91, para. 9.8.

¹⁷⁵ *Id.*

with denying Mr. Abdurakhmanov the right to freedom of expression, failed to guarantee him independent and impartial court.¹⁷⁶ The courts presumed him innocent,¹⁷⁷ failed to provide him with duly reasoned decisions¹⁷⁸ and to have the conviction reviewed by a higher court.¹⁷⁹

IX. REMEDIES

The author of the communication respectfully requests the Committee to:

- a. Make a finding that the Uzbek government violated its obligations under the International Convention on Civil and Political Rights to guarantee the right to be tried by an independent and impartial court, the right to have duly reasoned judgment, the right to have the conviction reviewed by a higher tribunal, the right to be presumed innocent, the right to be free from arbitrary arrest and detention, and the right to freedom of expression;
- b. Provide an effective remedy;
- c. Urge the Uzbek government to introduce safeguards to prevent similar violations from happening in the future.

X. LIST OF SUPPORTING DOCUMENTS

1. Engagement Letter
2. Judgment of the First Instance Court, October 10, 2008 (original);
3. Judgment of the First Instance Court, October 10, 2008 (translation);
4. Decision of the Judicial Board of the Supreme Court of the Republic of Karakalpakstan, November 19, 2008 (original);
5. Decision of the Judicial Board of the Supreme Court of the Republic of Karakalpakstan, November 19, 2008 (translation);
6. Petition to the Supreme Court of Uzbekistan under supervisory review procedure, May 17, 2011 (original);
7. Petition to the Supreme Court of Uzbekistan under supervisory review procedure, May 17, 2011 (translation);
8. Reply from the Supreme Court of Uzbekistan, June 1, 2011 (original);
9. Reply from the Supreme Court of Uzbekistan, June 1, 2011 (translation);
10. Complaint to the Supreme Court of Uzbekistan, July 29, 2011 (original);
11. Complaint to the Supreme Court of Uzbekistan, July 29, 2011 (translation);
12. Reply from the Supreme Court of Uzbekistan, August 17, 2011 (original);
13. Reply from the Supreme Court of Uzbekistan, August 17, 2011 (translation);
14. Nine copies of Mr. Abdurakhmanov's articles published on www.uznews.net

¹⁷⁶ See Sub-section "A. Violation of the Right to Be Tried by an Independent and Impartial Court."

¹⁷⁷ See Sub-section "D. Violation of the Right to Be Presumed Innocent."

¹⁷⁸ See Sub-section "B. Violation of the Right to Have Duly Reasoned Judgment."

¹⁷⁹ See Sub-section "C. Violation of the Right to Have the Conviction Reviewed by a Higher Tribunal."