

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

In the case of

Azamjon FORMONOV

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
8-14 avenue de la Paix
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September 3, 2014

CONTENTS

I.	THE AUTHOR	4
II.	THE VICTIM	4
III.	LEGAL REPRESENTATIVE OF THE AUTHOR	4
IV.	THE STATE PARTY	5
V.	SUMMARY OF THE CLAIM	5
	A. Summary of the Facts	5
	B. Summary of Domestic Remedies Exhausted	5
	C. Summary of Violations of the ICCPR	6
	1. The Right Not to be Tortured	6
	2. Failure to Safeguard Against Torture	6
	3. The Right to Freedom of Expression	6
	4. The Right to be Free from Arbitrary Detention	7
	5. The Right to a Fair Trial	7
	6. The Right Against Unlawful Interferences With Privacy, Family and Home	7
VI.	STATEMENT OF FACTS	7
	A. Azamjon Formonov’s Human Rights Work	7
	B. Arbitrary Arrest.	9
	C. Pre-Trial Detention and Torture	10
	D. Trial	10
	E. Post-Conviction Detention and Torture	12
	F. Political Repression for Human Rights Defenders in Uzbekistan	15
VII.	ADMISSIBILITY	19
	A. Jurisdiction	19
	B. Victim Status.	19
	C. No Other International Complaint Being Examined	20

D.	Exhaustion of Domestic Remedies.....	20
VIII.	VIOLATIONS OF THE ICCPR	23
A.	The Right Not to Be Tortured.....	23
1.	Legal Standard.....	24
2.	Violations of the Right Not to Be Tortured	24
B.	Failure to Safeguard Against Torture.....	27
1.	Legal Standard.....	27
2.	Failure to Safeguard against Torture	28
C.	The Right to Freedom of Expression	29
1.	Legal Standard.....	30
2.	Violation of the Right to Freedom of Expression.....	30
D.	The Right to be Free from Arbitrary Detention	31
1.	Legal Standards	32
2.	Violation of the Right to Be Free from Arbitrary Detention	32
E.	Violation of Fair Trial Rights.	33
1.	The Right Not to be Compelled to Confess Guilt.....	33
2.	The Right to Have Adequate Time and Facilities to Prepare a Defense and to Communicate with Counsel of One’s Own Choosing	34
3.	The Right to Cross-examine Witnesses.....	37
4.	The Right to a Fair and Public Hearing by an Impartial Tribunal	37
5.	The Right to be Presumed Innocent.....	39
F.	The Right to be Free of Unlawful Interference With Privacy, Family and Home.	40
1.	Legal Standards	40
2.	Violation of the Right Against Unlawful Interference With Privacy, Family and Home.....	41
IX.	REMEDIES	42

I. THE AUTHOR

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First Name: Ozoda
Nationality: Uzbekistan
Date of Birth: June 2, 1979
Place of Birth: Tashkent region, Uzbekistan
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II. THE VICTIM

Name: Formonov²
First Name(s): Azamjon Turgunovich
Nationality: Uzbekistan
Profession: Human Rights Activist
Date and Place of Birth: December 13, 1978
Place of Birth: The Besharik district of the Ferghana region
Present Whereabouts: Jaslyk Prison in Uzbekistan
Relationship to the Author: Husband

III. LEGAL REPRESENTATIVE OF THE AUTHOR

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¹ In some Uzbekistan government documents, the Author is referred to by her married name, Formonova.

² Due to clerical errors by the Uzbek authorities, in some documents the Victim's name is spelled Farmonov.

³ A letter of authority is attached to this communication as Exhibit 1.

IV. THE STATE PARTY

Freedom Now submits this communication to the United Nations Human Rights Committee (the “Committee”) against the Republic of Uzbekistan, which acceded to the International Covenant on Civil and Political Rights (“ICCPR”) and the first Optional Protocol on September 28, 1995.

V. SUMMARY OF THE CLAIM

A. Summary of the Facts

Azamjon Formonov is a well-known human rights activist whom the Government of Uzbekistan has imprisoned and subjected to torture and other ill-treatment in retaliation for his work. Prior to his arrest, detention and imprisonment in 2006, Mr. Formonov served as the Chairman of the Syrdarya regional branch of the Human Rights Society of Uzbekistan (“HRSU”), where he monitored trials and produced informational pamphlets on various human rights issues.

As a result of Mr. Formonov’s human rights work, on April 29, 2006, police arbitrarily arrested and charged Mr. Formonov with extortion under Article 165 of the Criminal Code of the Republic of Uzbekistan.

After his arrest, Uzbek authorities searched Mr. Formonov’s home without a warrant. During one search, the police knocked Mr. Formonov’s wife, the Author of this document, unconscious. The police also seized all human rights materials found in the apartment, as well as Mr. Formonov’s computer and copy machine. Mr. Formonov was held *incommunicado* for the first week after his arrest, during which he was tortured through various methods, including suffocation and beatings, by the Uzbek authorities to force him to make a false confession. Mr. Formonov was later permitted access to a lawyer, but the lawyer failed to act independently and effectively to defend his client’s interests.

On June 15, 2006, without presenting any evidence at trial or providing Mr. Formonov the opportunity to be represented by his choice of counsel or effectively to present a defense, Judge Khidirbaev found Mr. Formonov guilty and sentenced him to nine years in a “general-condition” prison colony. Contrary to this sentence, Uzbekistan has instead held Mr. Formonov for one-quarter of his life in Jaslyk—a strict-regime prison colony which is the worst prison in the country.

Many international human rights monitoring bodies and organizations, including the UN Committee against Torture (“CAT”), the UN Working Group on Arbitrary Detention, Human Rights Watch and Amnesty International, have expressed their concern over the behavior of Uzbek authorities and the treatment of Mr. Formonov.

B. Summary of Domestic Remedies Exhausted

Mr. Formonov and his representatives have exhausted all available effective domestic remedies, satisfying the requirement found in Article 5(2)(b) of the first Optional Protocol. Mr. Formonov, his father-in-law and lay defense counsel, his wife (the Author of this petition), and the HRSU have sought relief from different government bodies about the injustices suffered by Mr.

Formonov. These efforts included appeals to the regional prosecutor's office, regional criminal court, General Prosecutor's office, the Supreme Court, Office of the Ombudsman, Deputy Minister of Internal Affairs, and to Uzbek President Islam Karimov.

Mr. Formonov and his representatives have requested that the Uzbek government investigate the claims that Mr. Formonov was subjected to an unfair trial and torture. Each appeal has been summarily dismissed or ignored indicating that the Uzbek government is unwilling to investigate and remedy these human rights violations under the ICCPR.

C. Summary of Violations of the ICCPR

Uzbekistan violated the ICCPR in the following ways.

1. The Right Not to be Tortured

While being detained by the Uzbek Government, Mr. Formonov has been subjected to *incommunicado* detention for over one week after his arrest; suffocated by being forced to wear a gas-mask with closed air-vents; repeatedly and severely beaten; held in isolation; and stripped of his clothing, handcuffed and held in an unheated prison cell for 23 days despite temperatures below freezing. The Committee should hold Uzbekistan accountable for its violation of Article 7 of the ICCPR.

2. Failure to Safeguard Against Torture

Furthermore, as a member state of the ICCPR, Uzbekistan is required to have safeguards in place to protect people from torture, especially for persons deprived of liberty who are particularly vulnerable to torture. Uzbek authorities thus have a special responsibility to take adequate and appropriate measures to protect detainees and prisoners. In direct contravention of this responsibility, as recognized by the CAT,⁴ Uzbekistan has continuously failed to safeguard detainees against torture and Mr. Formonov is no exception.

3. The Right to Freedom of Expression

In connection with his work as a human rights defender, Mr. Formonov monitored and documented human rights violations perpetrated by the Uzbek authorities in informational pamphlets which were distributed to various human rights organizations and foreign embassies. These human rights pamphlets had no probative value to the unrelated and unfounded charge of extortion for which Mr. Formonov was charged. The true motive of the Uzbek government in arresting, detaining and incarcerating Mr. Formonov was to persecute him for his human rights work and to silence him. Therefore, Uzbekistan violated Articles 19(2) of the ICCPR.

⁴ UNCAT, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: *Concluding observations on the fourth periodic report of Uzbekistan*, 10 December 2013, UN Doc. CAT/C/UZB/CO/4, para. 7-8 – attached hereto as Exhibit 17.

4. The Right to be Free from Arbitrary Detention

The true motive of the Uzbek government in arresting, detaining and incarcerating Mr. Formonov is to persecute him for his human rights work and to silence him. As such, the arrest and detention of Mr. Formonov is an arbitrary restriction of his freedom of expression, and violates Article 9(1) of the ICCPR.

5. The Right to a Fair Trial

Mr. Formonov's pre-trial investigation and trial was conducted with egregious violations of ICCPR provisions. Namely, Mr. Formonov was denied the following rights:

- the right not to be compelled to confess guilt and not to have that false, coerced confession used against oneself during the trial;
- the right to communicate with counsel of one's own choosing;
- the right to have adequate time and facilities to prepare a defense and to communicate with counsel of one's own choosing;
- the right to be presumed innocent;
- the right to examine witnesses against him; and
- the right for a public hearing by an independent, impartial and competent court.

Therefore, Uzbekistan violated Article 14 of the ICCPR.

6. The Right Against Unlawful Interferences With Privacy, Family and Home

Uzbek authorities carried out multiple searches of Mr. Formonov's apartment without a properly issued warrant, during which authorities seized the property of Mr. Formonov. By doing so, Uzbekistan violated Article 17 of the ICCPR.

VI. STATEMENT OF FACTS

This Statement of Facts details what is known about the circumstances surrounding the arrest, detention, trial, torture, other ill-treatment and continued denial of liberty of Mr. Formonov. Background on the political climate of Uzbekistan is also included to provide context for this case.

A. Azamjon Formonov's Human Rights Work

Azamjon Formonov is a well-known human rights activist whom Uzbekistan has imprisoned, tortured and subjected to other ill-treatment in retaliation for his work. Prior to his arrest,

detention and imprisonment in 2006, Mr. Formonov served as the Chairman of the Syrdarya regional branch of the HRSU. In his capacity as Chairman, Mr. Formonov monitored trials and produced informational pamphlets, which were circulated among human rights organizations and distributed to various embassies. In a pamphlets titled “My police disgrace me” and “Where is my right going?”, Mr. Formonov published articles documenting instances of torture by Senior Investigator Kodirov as well as the flagrant disregard of those torture allegations during subsequent hearings by local Judge Khidirbaev.⁵

For example, in an article titled “A country with scientist deprived of human rights,” Mr. Formonov reported about Muhammad Rahmonkulov, a handicapped scientist who invented a cultivating aggregate. Because of the uniqueness of the invention, an unknown group of people wanted to usurp the patent rights. Mr. Rahmonkulov resisted and a fabricated criminal case followed. It was Investigator Kodirov who led the investigation. On March 12, 2006, Mr. Rahmonkulov was subjected to severe torture in the Syrdarya regional branch of the International Affairs Department. The torture was so severe that Mr. Rahmonkulov was treated for injuries at the hospital emergency room. The article alleged that Judge Khidirbaev came to the hospital and warned Mr. Rahmonkulov that the trial would take place after his release from hospital.⁶ In a different article entitled “About those who were charged of being members of the religious group ‘Akromiya’,” Mr. Formonov reported how Judge Khidirbaev convicted five members of a religious group⁷ as a result of flagrant violations of their fair trial rights, and then sentenced each of these individuals to varying terms of eight to nine years in prison.⁸ As will be discussed below, the two government officials named in all of these articles directly participated in the arrest and detention of Mr. Formonov.

Mr. Formonov also worked to defend the rights of farmers. When two farmers contacted Mr. Formonov in April 2006 alleging that a local fueling station owned by the Jizzakh Unitary Petrol Company, a state-owned company, was defrauding farmers and asking for help, Mr. Formonov wrote a letter together with the two farmers to the director of the petrol company, identifying an employee of the fueling station named U. Mamatkulov in connection with the alleged fraud.⁹ On April 17, 2006, the petrol company conducted an investigation at the fueling station.¹⁰ Mr. Formonov first met Mr. Mamatkulov during this investigation, and had no further contact with Mr. Mamatkulov after this meeting.¹¹ On April 26, 2006, Mr. Formonov received a letter dated

⁵ Communication with Talib Yakubov (on file with Freedom Now).

⁶ *Id.*

⁷ The members were Shuhrat Abdullaev, Alisher Kholikov, Anvarjon Abdukarimov, Sarvarjon Abdukarimov, Akmal Berdimurodov, Adham Berdimurodov, and Abdujabbor Abdullaev

⁸ Communication with Talib Yakubov (on file with Freedom Now).

⁹ Specifically, the two farmers alleged that the station agents at the fuel station were typically only providing half of the diesel fuel promised to farmers by contract, requiring the farmers to sign documentation that they had received the full amount promised by contract, and then selling the excess fuel through the black market.

¹⁰ Communication with Talib Yakubov (on file with Freedom Now).

¹¹ *Id.*

April 17, 2006 from the director of the petrol company indicating that the company did not discover any irregularities during the investigation.

B. Arbitrary Arrest

Mr. Formonov was arrested around 7:30 am on April 29, 2006 while he was riding in a taxi. Police cars blocked the taxi's way, forced Mr. Formonov out from the car and took him to Dzijjak region IAD.¹² There, the police applied a chemical powder used to mark money for extortions on Mr. Formonov's fingers, hair and eyebrows.¹³ Mr. Formonov was then charged with extortion under Article 165 of the Criminal Code of the Republic of Uzbekistan for allegedly threatening to publish the farmers' complaints on the internet unless a money payment was made.

On the day Mr. Formonov was arrested, authorities performed warrantless searches in Mr. Formonov's apartment on two separate occasions. The first warrantless search took place at around 10:00 am on April 29, 2006. Two dozen plain-clothed officers entered Mr. Formonov's house without presenting any warrant, started the search and seized his passport. The officers left the apartment after Mrs. Yakubova (Mr. Formonov's wife and the Author of this petition) started calling her father who was serving at that time as HRSU's Chairman, Mr. Talib Yakubov.¹⁴

The second attempt to enter the apartment without a warrant took place at around 2:30 pm. By this time, Mr. Talib Yakubov, Bakhtiyor Hamroev (Chairman of HRSU's Djizzak region branch) and Mamatkul Muhtarov (Chairman of HRSU's Samarkand region branch) were present in the apartment. Mr. Yakubov demanded that the plain-clothed officers present a search warrant in order to enter the apartment. The officers presented no warrant and left without entering the apartment.

The plain-clothed officers returned around 4:00 pm on the same day. This time, the officers presented a paper with the text authorizing the search, but there was no signature of the authorizing official or seal of the Prosecutor's Office. Despite Mr. Yakubov's objections as to the legality of the search warrant, the officers entered the apartment. During this warrantless search, investigators struck Mr. Formonov's pregnant wife (the Author of this petition), knocking her unconscious and leaving her in need of overnight hospitalization.¹⁵ The Government then seized a computer and copy machine used by Mr. Formonov to produce human rights pamphlets. Officers also seized all of the human rights literature present in the apartment,

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

including all copies of any human rights pamphlets. After these warrantless searches, the Uzbek authorities failed to produce a seizure list for the items taken from the apartment.¹⁶

C. Pre-Trial Detention and Torture

After arresting Mr. Formonov, Uzbek authorities held him *incommunicado* for over one week without access to legal counsel.¹⁷ Although Mr. Formonov was given access to legal counsel provided by the Uzbek authorities after this period, Mr. Formonov was still denied access to his family for another month.¹⁸ The Government appointed lawyer, A. Kholikberdiev, refused to provide any help to Mr. Formonov. Mr. Kholikberdiev was present during the Government's torture of Mr. Formonov, refused to submit complaints regarding Mr. Formonov's torture and appeared drunk during certain parts of the investigation.¹⁹ As a result, Mr. Formonov's family terminated Mr. Kholikberdiev's services.

On June 7, 2006, Mr. Yakubov was allowed to participate as a lay defense counsel and met with Mr. Formonov in investigation cell 64/ СИ-13. Mr. Yakubov spoke to Mr. Formonov for about an hour. Mr. Formonov recounted that he was subjected to beatings, forced to wear a gas-mask with closed air-vents, beaten on the soles of the feet with truncheons and burned on various parts of his body with cigarettes butts.²⁰ He indicated that Muso Rajabov, head of the counter-terrorism unit at the Syrdarya region IAD, was responsible for the torture and that Mr. Rajabov stated he would be imprisoned in Jaslyk for the rest of his life.²¹ As a result of this torture, Mr. Formonov signed a false confession.²²

D. Trial

The Judge presiding over Mr. Formonov's case was the same judge that Mr. Formonov identified in human rights pamphlets seized by the Government for committing human rights abuses — Judge Khidirbaev.²³ The chief investigator responsible for gathering material to support the

¹⁶ *Id.*

¹⁷ Amnesty International, *Azamjon Formonov and Alisher Karamatov: human rights defenders continue to serve long prison sentences amid claims that they are being tortured*, AI Index EUR 62/003/2008, 24 April 2008, available at <http://www.amnesty.org/en/library/info/eur62/003/2008/en> – attached hereto as Exhibit 18.

¹⁸ The International Foundation for the Protection of Human Rights Defenders (Front Line), *Uzbekistan: Reported torture in detention of human rights defender Mr. Azamjon Formonov* (November 29, 2011) available at <http://www.frontlinedefenders.org/node/16700> – attached hereto as Exhibit 19.

¹⁹ Communication with Talib Yakubov (on file with Freedom Now).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

Government's case against Mr. Formonov was lead by the same investigator that Mr. Formonov identified in human rights pamphlets seized by the Government as committing human rights abuses – Senior Investigator Kodirov.²⁴

As a result of the family's inability to find competent, independent counsel, Mr. Formonov relied upon his father-in-law, Talib Yakubov, to serve as his lay defense counsel. On June 7, 2006, Mr. Yakubov was approved by the Judge as Mr. Formonov's defense counsel.²⁵ However, even after the court approved Mr. Yakubov's representation of Mr. Farmomov, the Uzbek authorities still impeded the ability of Mr. Yakubov to defend Mr. Formonov. The Government never provided Mr. Yakubov with access to the final charging document or to certain other prosecutorial materials.²⁶ Judge Khidirbaev also limited Mr. Yakubov's access to other prosecutorial documents on multiple occasions. When Mr. Yakubov first received access to the documents on June 8, 2006, Judge Khidirbaev provided that Mr. Yakubov's access to the documents would be limited to only two hours.²⁷ On June 12, 2006, with no prior notice, Judge Khidirbaev took the files away from Mr. Yakubov before Mr. Yakubov had finished reading the documents and attempted to start the trial at that time.²⁸ Three days later, on June 15, 2006, and without any prior notice to Mr. Yakubov or Mr. Formonov's family, authorities led Mr. Formonov into an iron cage inside of an empty court room and started the trial.²⁹

At that time, Senior Investigator Kodirov asked the court to ban Mr. Formonov's chosen defense counsel—Mr. Yakubov—from participating in the proceedings.³⁰ Judge Khidirbaev granted Senior Investigator Kodirov's request and claimed the reason Mr. Yakubov could not participate as Mr. Formonov's defense counsel was that Mr. Yakubov was the Chairman of the human rights organization where Mr. Formonov worked and could be called to testify about the content of a transcript of a tape recording between Mr. Formonov and Mr. Mamatukov.³¹ However, in the trial that took place moments later, the original tape recording was never produced, and Mr. Yakubov was not called to testify. Therefore, at the start of his trial, Mr. Formonov was left without counsel of his own choosing.

To serve as Mr. Formonov's legal counsel during trial, Judge Khidirbaev called upon two lawyers known to be under the influence of the Uzbek governmental authorities – Sh.

²⁴ *Id.*

²⁵ *See* Decision on the admission of the defense counsel, dated June 7, 2006 (translated) – attached hereto as Exhibit 2.

²⁶ Communication with Talib Yakubov (on file with Freedom Now).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Decision on the non-admission of the defense counsel, dated June 15, 2006 (translated) – attached hereto as Exhibit 3.

³¹ Verdict of Yangiyer City Criminal Court, dated June 15, 2006 (translated) – attached hereto as Exhibit 4.

Mamdalieva and A. Kholikberdiev.³² Not only were these lawyers not independent and not of Mr. Formonov's choosing, but Mr. Kholikberdiev was the government-appointed lawyer whose services had already been terminated by Mr. Formonov's family because Mr. Kholikberdiev was present during the Government's torture of Mr. Formonov, refused to submit complaints regarding Mr. Formonov's torture and appeared drunk during the investigation.

The trial of Mr. Formonov was closed - neither Mr. Formonov's family nor the public were permitted to attend the trial. The entire proceeding lasted less than thirty minutes and a written decision was issued the same day.³³ The trial took place only seven days after Judge Khidirbaev initially allowed Mr. Yakubov to be Mr. Formonov's counsel. It would have only been three days if the Uzbek authorities had started the trial during their earlier attempt. Ultimately, on June 15, 2006, Judge Khidirbaev walked into the courtroom, read his verdict that Mr. Formonov was guilty of extortion and sentenced Mr. Formonov to nine years in a "general-condition" prison colony. The verdict included contradictory statements regarding the evidence against Mr. Formonov. For example, the decision of the court states that the Uzbek authorities caught Mr. Formonov "in flagrante delicto" as he received the "bribe money." However, the same document also states that the "bribe money" was recovered from inside Mr. Formonov's computer that was taken during a subsequent search of his home.³⁴ Despite the fact that the content of the seized pamphlets was wholly unrelated to the charge of extortion, the verdict also states that the Government permanently retained these seized pamphlets and kept them with the records of the criminal case.³⁵

E. Post-Conviction Detention and Torture

Authorities continued to torture Mr. Formonov and subject him to other forms of ill-treatment even after his conviction. Contrary to Mr. Formonov's sentence calling for incarceration in a general-condition prison colony, and consistent with the threats made by Mr. Rajabov (head of the counter-terrorism unit at the Syrdarya region IAD), Uzbekistan has instead held Mr. Formonov in the worst prison in the country, Jaslyk, which is a strict-regime prison colony.³⁶

³² Decision on the non-admission of the defense counsel, dated June 15, 2006 (translated) – attached hereto as Exhibit 3.

³³ Verdict of Yangiyer City Criminal Court, dated June 15, 2006 (translated) – attached hereto as Exhibit 4; Decision on the non-admission of the defense counsel, dated June 15, 2006 (translated) – attached hereto as Exhibit 3; Amnesty International, *Azamjon Formonov and Alisher Karamatov: human rights defenders continue to serve long prison sentences amid claims that they are being tortured*, AI Index EUR 62/003/2008, 24 April 2008, available at <http://www.amnesty.org/en/library/info/eur62/003/2008/en> – attached hereto as Exhibit 18.

³⁴ Verdict of Yangiyer City Criminal Court, dated June 15, 2006 (translated) – attached hereto as Exhibit 4. The verdict also gives two different locations for the arrest of Mr. Formonov's co-defendant, first stating that Mr. Formonov and his co-defendant were arrested together, and later stating that Mr. Formonov's co-defendant (Mr. Karamatov) was arrested in a bakery. *Id.*

³⁵ *Id.*

³⁶ See Answer of the First Assistant to the Deputy Chief of the Central Administrative Board (Execution of Punishments), Ministry of Internal Affairs, V.A. Karimov, dated February 22, 2008, to the Complaint of Ozoda Formonova, dated November 7, 2007 (translated) – attached hereto as Exhibit 5; Answer of General

(cont'd)

Mr. Formonov is the first human rights activist sent to Jaslyk.³⁷ Mrs. Yakubova was first allowed to visit Mr. Formonov on January 25, 2007, nine months after his conviction.³⁸ During this meeting, Mr. Formonov revealed that prison authorities denied prior prison visits to conceal torture marks. Mr. Formonov also stated that prison authorities had placed him in isolation cells for the majority of his time in prison.³⁹

From May 23 to June 19, 2007, Mr. Formonov was incarcerated in an isolation cell and his legs and feet were beaten so severely that he was unable to walk for ten days.⁴⁰ From October 10 to October 20, 2007, Mr. Formonov was accused of “failing to walk straight in line,” placed in an unheated isolation cell for ten days, where he was handcuffed and beaten by prison officials.⁴¹ Because the isolation cell was not heated and the temperature was below freezing, Mr. Formonov fell ill with symptoms that included pus-filled ears that lasted for many months.⁴²

Authorities repeatedly beat Mr. Formonov to coerce him into signing various statements. In 2008, Mr. Formonov was beaten until he agreed to sign a statement admitting to breaking prison rules. In 2011, to force Mr. Formonov to sign a document stating that he was not being tortured in prison, he was in perfect health, he was being detained under good conditions and he had access to medical care, prison authorities beat Mr. Formonov severely on his head, back and stomach for an hour. While strangling Mr. Formonov, Officer S. Vaysnizov threatened that he

(cont'd from previous page)

Prosecutor's Office, dated October 13, 2008, to the Complaint of Ozoda Formonova, dated November 7, 2007 (translated) – attached hereto as Exhibit 6; Answer of the First Deputy Prosecutor of Syrdarya Region, B.A. Abduvaliev, dated July 16, 2009, to the Complaint of Ozoda Formonova, dated November 7, 2007 (translated) – attached hereto as Exhibit 7; and Answer of the Deputy Chief of the Central Administrative Board (Execution of Punishments), Ministry of Internal Affairs, B.B. Akramov, dated December 24, 2009, to the Complaint of Ozoda Formonova, dated November 7, 2007 (translated) – attached hereto as Exhibit 8.

³⁷ United States Department of State, *2007 Country Reports on Human Rights Practices - Uzbekistan*, 11 March 2008, available at <http://www.state.gov/j/drl/rls/hrrpt/2007/100623.htm> – attached hereto as Exhibit 20.

³⁸ Ozoda Yakubova, Letter to the President of the Republic of Uzbekistan and other, July 11, 2007 – attached hereto as Exhibit 15.

³⁹ *Id.*

⁴⁰ Amnesty International, *Azamjon Formonov and Alisher Karamatov: human rights defenders continue to serve long prison sentences amid claims that they are being tortured*, AI Index EUR 62/003/2008, 24 April 2008, available at <http://www.amnesty.org/en/library/info/eur62/003/2008/en> – attached hereto as Exhibit 18.

⁴¹ Human Rights Watch, *Human Rights Watch Submission to the United Nations Committee Against Torture on Uzbekistan* (October 28, 2013) available at <http://hrw.org/print/news/2013/10/28/human-rights-watch-submission-united-nations-committee-against-torture-uzbekistan> – attached hereto as Exhibit 21. *See also*, Ozoda Yakubova, Letter to the President of the Republic of Uzbekistan and other, July 11, 2007 – attached hereto as Exhibit 15.

⁴² Ozoda Yakubova, Letter to the President of the Republic of Uzbekistan and other, July 11, 2007 – attached hereto as Exhibit 15.

would kill Mr. Formonov and whoever visits Mr. Formonov, and would imprison Mr. Formonov's children unless he signed the statement.⁴³

In February 2012, Mr. Formonov conducted a hunger strike to protest his lack of access to the head of the prison colony to discuss his torture and the lack of visitation rights with his family. After the hunger strike, Mr. Formonov was granted a meeting with the head of the prison colony, but no investigation of Mr. Formonov's complaint occurred.⁴⁴

On December 10 2012, Mrs. Yakubova sent a letter to Mr. Abdukarim Shodiev, head of the Central Corrections Department, asking for the release of Mr. Formonov based on the Amnesty Decree of December 5, 2012. The Central Corrections Department sent a reply to Mrs. Yakubova informing her that the Amnesty Decree of December 5, 2012 cannot be applied to Mr. Formonov because he is a "violation" of internal prison regulations. The letter did not specify what prison regulations Mr. Formonov violated.⁴⁵ A year later, Mrs. Yakubova hired a law firm who sent another letter⁴⁶ to the Central Corrections Department asking them to explain why the Amnesty Decree of December 5, 2012, was not applied with regard to Mr. Formonov and to specify what prison regulations Mr. Formonov allegedly violated. On March 15, 2013, the law firm received a reply from Jaslyk's prison administration that Mr. Formonov has several times violated internal prison regulations, but again failed to specify what prison regulations Mr. Formonov violated.⁴⁷

In addition, the Uzbekistan government has actively tried to hide its mistreatment of Mr. Farmonov from international organizations. Between 2009 and 2011, Mr. Formonov was transferred from Jaslyk prison to Nukus prison on multiple occasions when the representatives of the Red Cross were visiting Jaslyk prison.⁴⁸ This was done to prevent Red Cross representatives from meeting Mr. Formonov.

⁴³ Actions by Christians Against Torture (ACAT) – France, *Letter from Azamjon Formonov to U.N. Secretary General Ban Ki Moon*, dated November 2010 – attached hereto as Exhibit 22; Human Rights Society of Uzbekistan, *Letter from HRSU Chairman Talib Yakubov to OHCHR*, dated December 7, 2007 – attached hereto as Exhibit 23; The International Foundation for the Protection of Human Rights Defenders (Front Line), "Uzbekistan: Reported torture in detention of human rights defender Mr. Azam Farmonov" (November 29, 2011) available at <http://www.frontlinedefenders.org/node/16700>.

⁴⁴ The International Foundation for the Protection of Human Rights Defenders (Front Line), "Uzbekistan: Reported torture in detention of human rights defender Mr. Azam Farmonov" (November 29, 2011) available at <http://www.frontlinedefenders.org/node/16700>.

⁴⁵ Letter from December 25, 2012, Central Corrections Department of the Ministry of Internal Affairs of the Republic of Uzbekistan – attached hereto as Exhibit 9.

⁴⁶ See The reference Lawyer A.A. Yusupov to Chief of the Central Corrections Department of the Ministry of Internal Affairs Republic of Uzbekistan (translated) – attached hereto as Exhibit 10.

⁴⁷ Letter from March 15, 2013, Prison 64/71, Ministry of Internal Affairs of the Republic of Karakalpakstan – attached hereto as Exhibit 11.

⁴⁸ Communication with Talib Yakubov, on file with Freedom Now; International Committee of the Red Cross, "Uzbekistan: ICRC decides to terminate visits to detainees", News Release 13/64 (April 12, 2013), available at <http://www.icrc.org/eng/resources/documents/news-release/2013/04-12-uzbekistan-detainees.htm> – attached

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F. Political Repression for Human Rights Defenders in Uzbekistan

The arbitrary detention of Mr. Formonov is consistent with the longstanding political climate in Uzbekistan – where individuals expressing views critical of the government are silenced through fabricated criminal prosecutions. Uzbekistan obtained its independence from the Soviet Union in 1991. Since 1991, 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.⁴⁹ Under President Karimov’s rule, the people of Uzbekistan do not have a meaningful opportunity to change the composition of their government through elections.⁵⁰

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.⁵¹ The judiciary is not independent and often takes directions from the executive branch.⁵²

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.⁵³ Defendants in Uzbekistan are entitled to counsel beginning at the time they are detained;⁵⁴ however, the government often violates the right to counsel during pre-trial detention and either denies or delays such access.⁵⁵ Sometimes government officials force defendants to sign written

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hereto as Exhibit 24; Human Rights Watch, *Human Rights Watch Submission to the United Nations Committee Against Torture on Uzbekistan* (October 28, 2013), at FN 31, available at <http://www.hrw.org/print/news/2013/10/28/human-rights-watch-submission-united-nations-committee-against-torture-uzbekistan> – attached hereto as Exhibit 21.

⁴⁹ United States Department of State, *Background Note: Uzbekistan*, 31 January 2012, available at <http://m.state.gov/md196027.htm> – attached hereto as Exhibit 25.

⁵⁰ Organization for Cooperation and Security in Europe, *Republic of Uzbekistan Parliamentary Elections: December 26, 2004*, Final Report, OSCE/ODIHR Limited Election Observation Mission, 7 March 2005, available at <http://www.osce.org/odihr/elections/uzbekistan/41950> – attached hereto as Exhibit 26.

⁵¹ United States Department of State, *Uzbekistan 2012 Human Rights Report*, 19 April 2013, available at <http://www.state.gov/documents/organization/204629.pdf> – attached hereto as Exhibit 27; UNCAT, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Concluding observations on the fourth periodic report of Uzbekistan*, 10 December 2013, UN Doc. CAT/C/UZB/CO/4, para. 21 – attached hereto as Exhibit 45.

⁵² *Id.*

⁵³ *Id.* Authorities typically only provide notice of trial dates one or two days before the trial and often reschedule after providing notice, and have been known to limit access.

⁵⁴ Articles 48 and 49 of the Uzbek Criminal Procedure Code.

⁵⁵ United States Department of State, *Uzbekistan 2013 Human Rights Report*, available at <http://www.state.gov/documents/organization/220622.pdf> – attached hereto as Exhibit 28.

statements declining the right to counsel.⁵⁶ In many cases, defendants are held *incommunicado*.⁵⁷ Almost all criminal cases brought by prosecutors result in guilty verdicts.⁵⁸ The CAT has expressed their belief that wide-spread and ungrounded torture is implemented in Uzbekistan's criminal justice system, despite claims to the contrary by Uzbekistan.⁵⁹

Human rights defenders are one of the most harshly persecuted groups of people in Uzbekistan. The CAT recently reported that it was deeply concerned by numerous and consistent reports of Uzbekistan's arbitrary imprisonment of human rights defenders in retaliation for their work.⁶⁰ It was particularly concerned that Mr. Formonov and at least nine other human rights defenders have allegedly been deprived of their liberty and subjected to torture and other ill-treatment in Uzbekistan.⁶¹ The CAT noted its regret that Uzbekistan insists that these allegations are "unfounded," despite the existing corroboration.⁶² The CAT noted its concern that full, independent and effective investigations of the allegations and prosecution of the perpetrators have not taken place.⁶³

The CAT also expressed its serious concern at Uzbekistan's failure "in practice to afford all persons deprived of their liberty with all fundamental legal safeguards from the very outset of detention. The [c]ommittee is concerned at reports that detainees are frequently denied access to a lawyer of their choice independent of State authority and that police officers forcibly extract confessions in the period immediately following deprivation of liberty."⁶⁴ The CAT noted its regret that Uzbekistan asserts that it had not detected any case in which officials failed to provide safeguards for persons deprived of their liberty.⁶⁵

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Uznews.Net News Service, "UN Committee Against Torture does not believe Uzbekistan" (December 19, 2013), available at http://www.uznews.net/news_single.php?lng=en&sub=top&cid=31&nid=24711 – attached hereto as Exhibit 29.

⁶⁰ UNCAT, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: *Concluding observations on the fourth periodic report of Uzbekistan*, 10 December 2013, UN Doc. CAT/C/UZB/CO/4, para. 8 – attached hereto as Exhibit 45.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

Prison conditions are harsh and, in some cases, life threatening.⁶⁶ Prisoners face severe abuse, overcrowding, shortages of medicine and poor quality food.⁶⁷

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” in 2011.⁶⁸ In May 2012, the Committee to Protect Journalists named Uzbekistan the 6th most censored country in the world,⁶⁹ up two places from its ranking of 8th in 2006, the year Mr. Formonov was imprisoned for his human rights work.⁷⁰ Human Rights Watch reported that there are over a dozen human rights defenders in prison in Uzbekistan.⁷¹ The U.S. Department of State’s 2013 Human Rights Report reported that in 2013 harassment of journalists and human rights activists continued.⁷² Police and security services subjected journalists and human rights activists to arrests, harassment, intimidation and violence.⁷³ 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.⁷⁴ In its 2013 World Press Freedom

⁶⁶ United States Department of State, *Uzbekistan 2013 Human Rights Report*, available at <http://www.state.gov/documents/organization/220622.pdf> – attached hereto as Exhibit 28; UNCAT, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: *Concluding observations on the fourth periodic report of Uzbekistan*, 10 December 2013, UN Doc. CAT/C/UZB/CO/4, para. 18 – attached hereto as Exhibit 45.

⁶⁷ United States Department of State, *Uzbekistan 2013 Human Rights Report*, available at <http://www.state.gov/documents/organization/220622.pdf> – attached hereto as Exhibit 28.

⁶⁸ 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> – attached hereto as Exhibit 30.

⁶⁹ Committee to Protect Journalists, *10 Most Censored Countries 2012*, available at <http://cpj.org/reports/2012/05/10-most-censored-countries.php#6> – attached hereto as Exhibit 31.

⁷⁰ Committee to Protect Journalists, *10 Most Censored Countries 2006*, available at <http://cpj.org/reports/2006/05/10-most-censored-countries.php> – attached hereto as Exhibit 32.

⁷¹ Human Rights Watch, “Human Rights Watch Submission to the United Nations Committee Against Torture on Uzbekistan” (October 28, 2013), available at <http://www.hrw.org/print/news/2013/10/28/human-rights-watch-submission-united-nations-committee-against-torture-uzbekistan> – attached hereto as Exhibit 21; *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*, 28 April 2009, available at <http://www.amnesty.org/en/library/asset/EUR62/002/2009/en/6bde1bfe-be09-47b0-bced-3f234ae8960b/eur620022009en.html> – attached hereto as Exhibit 33 (—At least ten human rights defenders remain in prison in cruel, inhuman, and degrading conditions, having been sentenced to long prison terms after convictions in unfair trials.).

⁷² United States Department of State, *Uzbekistan 2013 Human Rights Report*, available at <http://www.state.gov/documents/organization/220622.pdf> – attached hereto as Exhibit 28.

⁷³ *Id.*

⁷⁴ *Id.*

Index, Reporters Without Borders ranked Uzbekistan as the 164th least respectful country of media freedom of the 179 countries included.⁷⁵

The Uzbek police are notorious for charging human rights defenders with extortion charges in order to prevent them from continuing to work to expose government corruption and human rights violations.⁷⁶ Reflecting on the persecution against human rights defenders in 2006, the year when Mr. Formonov was arrested and convicted on extortion charges, Holly Cartner, then Europe and Central Asia director at Human Rights Watch, stated that “[t]he 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.”⁷⁷

For example, on March 8, 2006, Mutabar Tadjibaeva, a well-known human rights defender, was sentenced to eight years in prison for extortion.⁷⁸ Similarly, Dilmurad Saidov, a journalist and human rights activist who defended the rights of farmers, is serving 12 ½ years in prison also on extortion charges.⁷⁹ The UN Working Group on Arbitrary Detention (“WGAD”) determined that Mr. Saidov’s arrest and detention was arbitrary.⁸⁰ Agzam Turgunov, head of a human rights organization was convicted on charges of extortion in 2008 and sentenced to 10 years.⁸¹ The WGAD has determined Mr. Turgunov’s arrest and trial was arbitrary.⁸²

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

⁷⁵ Reporters Without Borders, “2013 World Press Freedom Index: Dashed Hopes After Spring”(2013) *available at* <http://en.rsf.org/press-freedom-index-2013.1054.html#> – attached hereto as Exhibit 34.

⁷⁶ United States Department of State, *Uzbekistan 2012 Human Rights Report*, 27 February 2013, *available at* <http://www.state.gov/documents/organization/204629.pdf> – attached hereto as Exhibit 27.

⁷⁷ 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> – attached hereto as Exhibit 35; for a more recent report, *see* Human Rights Watch, “Uzbekistan’s Imprisoned Human Rights Defenders” (May 12, 2011), *available at* <http://www.hrw.org/news/2011/05/12/uzbekistans-imprisoned-human-rights-defenders> – attached hereto as Exhibit 36.

⁷⁸ The International Foundation for the Protection of Human Rights Defenders (Front Line), “Uzbek Court Sentences Human Rights Defender to Eight Years” (March 8, 2006) *available at* <http://www.frontlinedefenders.org/es/node/99> – attached hereto as Exhibit 37.

⁷⁹ For the detailed documentation about Dilmurod Saidov’s arrest and detention, visit Freedom Now’s website at <http://www.freedom-now.org/campaign/dilmurod-saidov/>.

⁸⁰ *Id.*

⁸¹ For the detailed documentation about Akzam Turgunov’s arrest and detention, visit Freedom Now’s website at <http://www.freedom-now.org/campaign/akzam-turgunov/>.

⁸² Uznews.Net News Service, “UN: the Detention of Human Rights Activist Agzam Turgunov is ‘arbitrary’” (February 2, 2012), *available at* http://www.uznews.net/news_single.php?lng=en&sub=&cid=3&nid=18955 – attached hereto as Exhibit 38.

re-apply for their licenses to practice law and to re-take a bar examination every three years.⁸³ 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.⁸⁴ As a result, human rights defenders face difficulties in finding attorneys to represent them.⁸⁵

VII. ADMISSIBILITY

A. Jurisdiction

Uzbekistan acceded to the ICCPR and the first Optional Protocol to the ICCPR on September 28, 1995. The violations of Mr. Formonov's rights under the ICCPR, including those still ongoing, commenced in April 2006. Therefore, this communication meets the requirements for the Committee's jurisdiction found in Article 1 of the first Optional Protocol to the ICCPR.

B. Victim Status

The Author brings this claim on behalf of her imprisoned husband, Mr. Formonov. As this Committee has previously accepted communications from close family members of victims,⁸⁶ it is appropriate for the Author to bring this claim about the violation of Mr. Formonov's human rights. Whenever the Author is permitted to visit Mr. Formonov in prison, she is thoroughly searched when entering and leaving the prison. The Author is required to remove all clothes and any letters or written documents are seized. The Author is thus unable to provide Mr. Formonov's written consent.

⁸³ 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> – attached hereto as Exhibit 39.

⁸⁴ United States Department of State, *Uzbekistan 2013 Human Rights Report*, available at <http://www.state.gov/documents/organization/220622.pdf> – attached hereto as Exhibit 28.

⁸⁵ *Id.*

⁸⁶ *Touren v. Uruguay*, UNHRC, Views of 31 March 1981, UN. Doc. CCPR/C/OP/1 at 61 (1984), par. 1; *See also* UNHRC, Procedure for complaints by individuals under the human rights treaties, available at <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#whocan> – attached hereto as Exhibit 40 (stating that “Anyone can lodge a complaint with a Committee against a State that satisfies these two conditions (being a party to the treaty and having accepted the Committee’s competence to examine individual complaints), claiming that his or her rights under the relevant treaty have been violated. It is not necessary to have a lawyer prepare the complaint, though legal advice may improve the quality of the submissions. Be aware, however, that legal aid is not provided under the procedures. **One may also bring a claim on behalf of another person on condition that his/her written consent is obtained (without requirement as to its specific form). In certain cases, one may bring a case without such consent, for example, where a person is in prison without access to the outside world or is a victim of an enforced disappearance. In these cases, the author of the complaint should state clearly why such consent cannot be provided.**”(emphasis added).

C. No Other International Complaint Being Examined

While Mr. Formonov's case is not currently being examined by another international body, there have been two previous efforts to bring Mr. Formonov's case to international bodies for review. First, the HRSU submitted a petition to the WGAD in 2012. In November 2012, the WGAD issued its opinion finding the Uzbek Government's prosecution and imprisonment of Formonov was a violation of his right to free expression under Article 19 of the ICCPR was a Category II violation. In order to remedy the violation, WGAD directed the Uzbek Government to provide Mr. Formonov with a new trial. However, the Uzbek Government has neither provided Mr. Formonov with a new trial nor acknowledged this opinion in any way.⁸⁷

Second, Mr. Formonov's father-in-law, Mr. Yakubov, submitted a petition on Mr. Formonov's behalf to this Committee on February 1, 2012. However, as a result of Mr. Yakubov not being a lawyer and not receiving professional legal assistance in preparing the petition, the Committee rejected Mr. Yakubov's communication in April 2013 for failure to satisfy certain preliminary conditions.

Therefore, Mr. Formonov's case is not being examined under another procedure of international investigation or settlement at this time. As such, this communication satisfies the admissibility requirement found in Article 5(2)(a) of the first Optional Protocol to the ICCPR.

D. Exhaustion of Domestic Remedies

Mr. Formonov and his representatives have exhausted all available effective domestic remedies for the violations of Mr. Formonov's rights under the ICCPR, satisfying the requirement found in Article 5(2)(b) of the first Optional Protocol. Before the trial, Mr. Formonov and his representative, Mr. Yakubov, made repeated attempts to raise the issue that his various rights to a fair trial and his right to be free from torture were violated. These attempts were either ignored or actively undermined by the Uzbek authorities. Subsequently, numerous requests for review of the violations of Mr. Formonov's rights under the ICCPR dealing with his prosecution, conviction and treatment during detention have been made to various government agencies and courts. All of the issues raised in these requests were summarily dismissed by the governmental authorities, if they were considered at all.

Summary of the Domestic Remedies Exhausted and the Claims Raised:

- 1) Mr. Formonov filed several appellate complaints over the judgment of the first instance court from June 15, 2006.⁸⁸ According to the Prosecutor's Office of Syrdarya, the Syrdarya Regional Court on Criminal Cases considered the appeal

⁸⁷ United Nations Human Rights Council Working Group on Arbitrary Detention, *Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14-23 November 2012*, 22 November 2012.

⁸⁸ Communication with Talib Yakubov (on file with Freedom Now).

by Mr. Formonov, but left the sentence unchanged.⁸⁹ This document acknowledged the appellate decision but does not give an exact date of the decision. In addition, while the rejection of the appeal is discussed in this document, and despite numerous attempts to obtain a copy, the Syrdarya Regional Court on Criminal Cases has not issued the family with a copy of the appellate court's decision.

- 2) Mr. Yakubov submitted complaints to the Syrdarya region criminal court, to the Syrdarya state prosecutor's office, and to Uzbekistan's Supreme Court, all regarding the violations of Mr. Formonov's rights to a fair trial and torture. Mr. Yakubov did not receive a response to any of these complaints.⁹⁰
- 3) Mr. Formonov's wife (the Author of this petition), submitted a complaint to Uzbekistan's Ombudsman. Mrs. Yakubova received a one-page letter in response to this complaint from the Syrdarya state prosecutor's office. It was devoid of any substance and made the conclusory statement that there were no legal grounds to bring an appeal under the supervisory procedure.⁹¹
- 4) Mrs. Yakubova sent a complaint to the Uzbek Prosecutor General's office. However, this office merely forwarded the complaint to the Syrdarya region prosecutor's office, the office responsible for the criminal prosecution that violated Mr. Formonov's rights to a fair trial under the ICCPR for review and response.⁹² The response mirrored previous decisions not to investigate or address Mr. Formonov's case, holding that "ground[s] for lodging an application concerning the conviction of the court are not found," even though no reasoning to support such a statement was given. The response also stated that any additional applications or complaints on the same subject matter would be "left without consideration."⁹³ This response was dated September 4, 2009, less than five years prior to the date of this petition.
- 5) The Author submitted a complaint to the Deputy Minister of Internal Affairs of the Republic of Uzbekistan, as well as a letter seeking assistance from Uzbek President Karimov. This attempt went outside of the judicial system, as the

⁸⁹ Answer of the First Deputy Prosecutor of Syrdarya region, B. A. Abduvaliev, dated July 16, 2009, to the Complaint of Ozodo Formonova, dated November 7, 2007 (translated) – attached hereto as Exhibit 7.

⁹⁰ Communication with Talib Yakubov (on file with Freedom Now).

⁹¹ Answer of the First Deputy Prosecutor of Syrdarya Region, B.A. Abduvaliev, dated July 16, 2009, to the Complaint of Ozoda Formonova, dated November 7, 2007 (translated) – attached hereto as Exhibit 7.

⁹² See Letter from the General Prosecutor's Office to the Prosecutor of the Syrdarya Region, dated August 24, 2009 (translated) – attached hereto as Exhibit 13.

⁹³ See Answer of the chief of the department on ensuring the powers of the prosecutor during consideration by the courts of criminal cases of the prosecutor's office of Syrdarya region, V.K.Eraliev, dated as of September 4, 2009, to the complaint Ozoda Yakubova, dated November 7, 2007 (translated) – attached hereto as Exhibit 14.

Author was well aware that State prosecutor's office and the Uzbek penal system would not address the violations of her husband's human rights, as evidenced by previous responses by the Uzbek authorities.⁹⁴ She asked the President to review her husband's case, to rehabilitate him, to release him, and to investigate those who were complicit in the violation of Mr. Formonov's rights. The Author received no response to her plea from President Karimov, but the Deputy Minister responded to her complaint by saying that the Ministry of Internal Affairs could not assist her as it lacked jurisdiction.⁹⁵

- 6) Finally, on April 26, 2014, Mr. Formonov's family filed a complaint under the supervisory procedure to the Supreme Court of Uzbekistan.⁹⁶ The complaint argued that the criminal case against Mr. Formonov was fabricated, detailed instances of torture, and described violations of procedural rights during the arrest and trial. As of June 29, 2014, there was no reply from the Supreme Court.

While a supervisory review procedure does exist and could possibly review Mr. Formonov's case, the Committee has repeatedly determined that the Uzbek "supervisory review is a discretionary review process, which does not constitute an effective remedy for the purposes of exhaustion of domestic remedies" and cannot provide "a remedy for the alleged violations."⁹⁷ Therefore, Mr. Formonov and his representatives have exhausted all potentially effective domestic remedies available to them.

Furthermore, the Committee has determined that petitioners have fulfilled the requirements of exhaustion of local remedies when pursuing a claim at the domestic level "would be manifestly futile."⁹⁸ Comparable to other convictions of human rights defenders, the treatment of Mr. Formonov and his representatives plainly shows that the Uzbek government is unwilling to acknowledge and investigate the violations of Mr. Formonov's rights under the ICCPR. This

⁹⁴ See Complaint of Ozoda Formonova to the President of the Republic of Uzbekistan, I. Karimov, dated November 7, 2007 (translated) – attached hereto as Exhibit 15.

⁹⁵ See Answer of the Deputy Chief of the Central Administrative Board (Execution of Punishments), Ministry of Internal Affairs, E.B. Bobokulov to the complaint of Ozoda Yakubova – attached hereto as Exhibit 16.

⁹⁶ Complaint under supervisory procedure to the Chairman of the Supreme Court of the Republic of Uzbekistan, filed by A. Tashanov, April 26, 2014 – attached hereto as Exhibit 12.

⁹⁷ See *Indira Umarova v. Uzbekistan*, UNHRC, Communication No 1449/2006, 19 October 2010, at 7.3, available at: <http://www1.umn.edu/humanrts/undocs/1449-2006.html>; *Sanobar Gapirajanova v. Uzbekistan*, UNHRC, Communication No 1589/2007, 18 March 2010, at 5.1 and 5.2, available at: <http://www1.umn.edu/humanrts/undocs/1589-2007.html> ("In the Committee's view, this showed that the remedies concerned [regarding the supervisory review procedure] are not generally applicable but remain discretionary and exceptional. Accordingly, the Committee considered that it was not barred from examining the present communication by article 5, paragraph 2(b), of the Optional Protocol."). See also *Iskiyaev v. Uzbekistan*, UNHRC, Communication No 1418/2005, 6 July 2006, para 6.1; *Lyashkevich v. Uzbekistan*, UNHRC, Communication No. 1552/2007, 23 March 2010, paras 5.1 – 5.2.

⁹⁸ *Brough v. Australia*, UNHRC, 2006, Communication No 1184/2003, UN Doc. CCPR/C/86/D/1184/2003.

also reflects CAT's findings that full, independent and effective investigations of the allegations and prosecution of the perpetrators have not taken place in Uzbekistan.⁹⁹

In fact, not only has the Uzbek government refused to acknowledge or consider the violations of Mr. Formonov's rights,¹⁰⁰ it has, and continues to, restrict Mr. Formonov's ability to seek relief on the violations of his rights under the ICCPR through torture. During his pretrial detention, Mr. Formonov was tortured to not only elicit a confession, but also to make him sign various declarations stating he was not a victim of torture.¹⁰¹

All of the above demonstrates that the Uzbek government, and its judicial organs in particular, are either unwilling or unable to rectify these violations of the ICCPR.¹⁰² Therefore, even if the Committee believes that a local remedy is still available due to the lack of a copy of the decision of the Syrdarya Regional Court on Criminal Cases, which has never been provided by the Uzbek authorities, it is clear that it would be futile for Mr. Formonov, his family, or his representatives, to seek any further remedy at the local level.

This communication thus satisfies the admissibility requirement in Article 5(2)(b) of the first Optional Protocol to the ICCPR as there are no effective domestic remedies available to Mr. Formonov.

VIII. VIOLATIONS OF THE ICCPR

A. The Right Not to Be Tortured

The physical and mental mistreatment of Mr. Formonov after his arrest by Uzbek authorities on April 29, 2006 constitutes torture in violation of Article 7 of the ICCPR.

⁹⁹ *Id.*

¹⁰⁰ As noted above, WGAD issued an opinion on 22 November 2012, in which WGAD found a Category II violation for the failure of the Government to show that Mr. Formonov's conviction for extortion was a permissible restriction on his freedom of expression under Article 19 of the ICCPR. WGAD directed the Government to provide Mr. Formonov with a new trial, but the Government has neither provided Mr. Formonov with a new trial nor acknowledged this opinion in any way.

¹⁰¹ Authorities have repeatedly beat Mr. Formonov to coerce him into signing various statements. In 2008, Mr. Formonov was beaten until he agreed to sign one statement admitting to breaking prison rules and a second statement disqualifying him from a presidential amnesty. In 2011, to force Mr. Formonov to sign a document stating that he was not being tortured in prison, he was in perfect health, he was being detained under good conditions and he had access to medical care, prison authorities beat Mr. Formonov severely on his head, back and stomach for an hour. The International Foundation for the Protection of Human Rights Defenders (Front Line), "Uzbekistan: Reported torture in detention of human rights defender Mr. Azam Farmonov" (November 29, 2011) available at <http://www.frontlinedefenders.org/node/16700>.

¹⁰² See Henry G. Schermers and Niels M. Blokker, *International Institutional Law* (2011) at § 1433 ("Whenever petitions are permitted, they should be preceded by the exhaustion of local remedies as exist. States may be blamed only when their own judicial organs are unable or unwilling to rectify the situation.")

1. Legal Standard

Article 7 of the ICCPR provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The Committee has professed that no limitation exists to this prohibition and that no extenuating circumstance justifies or excuses the use of torture – *i.e.*, the prohibition on torture is absolute.¹⁰³ Rather than defining torture by enumerating particular behavior or acts, the Committee has stated that the distinctions “depend on the nature, purpose and severity of the treatment applied.”¹⁰⁴ These include acts that cause physical pain as well as acts that cause mental suffering to the victim, such as prolonged solitary confinement of a detained or imprisoned person.¹⁰⁵ Indeed, repeated beatings during custody or detention by state authorities have been previously found by the Committee to constitute torture under Article 7.¹⁰⁶

2. Violations of the Right Not to Be Tortured

The Uzbek government’s treatment of Mr. Formonov during pre-trial investigation and prison constitutes torture or cruel, inhuman or degrading treatment and thus violates Article 7 of the ICCPR.¹⁰⁷

The evidence of the conditions of Mr. Formonov’s detention, where he was often held *incommunicado*, demonstrates that he was, and continues to be, subject to torture by the Uzbek authorities.¹⁰⁸ During his pre-trial detention, Uzbek authorities suffocated Mr. Formonov by forcing him to wear a gas-mask with closed air-vents, repeatedly threw him in the air to force

¹⁰³ UNHRC, General Comment 20: Article 7 concerning prohibition of torture and cruel treatment or punishment, 1992, paras. 3, 5.

¹⁰⁴ *Id.* at para. 4.

¹⁰⁵ *Id.* at para. 5.

¹⁰⁶ *Bailey v. Jamaica*, UNHRC, Views of 31 March 1993, UN Doc. CCPR/C/47/D/334/1988, paras. 92.-9.3.

¹⁰⁷ In prior jurisprudence, the Committee has established that the burden of proof “cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4(2) of the [first] Optional Protocol that the State party has a duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, especially when such allegations are corroborated by evidence submitted by the author of the communication, and to furnish to the Committee the information available to it.”

The testimony of witnesses has been considered sufficient evidence on the part of the author to shift the burden of proof to the State. In the absence of satisfactory evidence or explanations to the contrary by the State, the Committee has considered past allegations substantiated. *See also*, Amnesty International, *Azamjon Formonov and Alisher Karamatov: human rights defenders continue to serve long prison sentences amid claims that they are being tortured*, AI Index EUR 62/003/2008, 24 April 2008, available at <http://www.amnesty.org/en/library/info/eur62/003/2008/en> – attached hereto as Exhibit 18.

¹⁰⁸ Amnesty International, *Azamjon Formonov and Alisher Karamatov: human rights defenders continue to serve long prison sentences amid claims that they are being tortured*, AI Index EUR 62/003/2008, 24 April 2008, available at <http://www.amnesty.org/en/library/info/eur62/003/2008/en> – attached hereto as Exhibit 18.

him to come crashing down flat on his back upon a concrete floor, and beat his feet and heels with truncheons, all in an attempt to force Mr. Formonov to sign a false confession.¹⁰⁹

Mr. Formonov was sent to Jaslyk prison, a strict-regime prison colony contrary to the lesser regime prison ordered in his conviction, yet consistent with the threats made by Mr. Rajabov, the head of the counter-terrorism unit at the Syrdarya region IAD.¹¹⁰ Mr. Formonov is the first human rights activist sent to the Jaslyk prison colony.¹¹¹ Prison conditions in Jaslyk are harsh and, in some cases, life threatening.¹¹² According to a report by the U.S. Department of State, 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.¹¹³ Human Rights Watch states that “Jaslyk prison has long been notorious in the international human rights community for the many reports of heinous torture of its internees and the prominent case of a prisoner dying after being immersed in boiling water.”¹¹⁴ In 2003, the UN recommended that Uzbekistan urgently consider closing Jaslyk and, in the face of Uzbekistan’s refusal, has continued to recommend that the conditions there be improved.¹¹⁵ In a July 2013 report, the CAT specifically asked whether Uzbekistan would close Jaslyk prison, which the UN Special Rapporteur on Torture had found to be a cruel, inhuman, and torturous detention

¹⁰⁹ Human Rights Watch, “Imprisoned Human Rights Defenders in Uzbekistan” (Feb. 5, 2010) *available at* <http://www.hrw.org/node/87341> – attached hereto as Exhibit 41; The International Foundation for the Protection of Human Rights Defenders (Front Line), *Complaint to the Special Representative of the Secretary General on Human Rights Defenders, Ms. Hina Jilani*, 16 February 2007, *available at* http://www.frontlinedefenders.org/files/en/1599_complaint%20to%20the%20un%20special%20representative%20for%20human%20rights%20defenders-1.pdf.

¹¹⁰ Verdict of Yangiyer City Criminal Court, dated June 15, 2006 (translated) – attached hereto as Exhibit 4.

¹¹¹ United States Department of State, *2007 Country Reports on Human Rights Practices - Uzbekistan*, 11 March 2008, *available at* <http://www.state.gov/j/drl/rls/hrrpt/2007/100623.htm> – attached hereto as Exhibit 20.

¹¹² United States Department of State, *Uzbekistan 2012 Human Rights Report*, 19 April 2013, *available at* <http://www.state.gov/documents/organization/204629.pdf> – attached hereto as Exhibit 27; UNCAT, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – Concluding observations on the fourth periodic report of Uzbekistan*, 10 December 2013, UN Doc CAT/C/UZB/CO/4, para. 18 – attached hereto as Exhibit 17.

¹¹³ United States Department of State, *2009 Human Rights Report: Uzbekistan*, 11 March 2010, *available at* <http://www.state.gov/j/drl/rls/hrrpt/2009/sca/136096.htm> – attached hereto as Exhibit 42.

¹¹⁴ Human Rights Watch, “Human Rights Watch Submission to the United Nations Committee Against Torture on Uzbekistan” (October 28, 2013) *available at* <http://hrw.org/print/news/2013/10/28/human-rights-watch-submission-united-nations-committee-against-torture-uzbekistan> – attached hereto as Exhibit 21.

¹¹⁵ Economic and Social Council, Civil and Political Rights, Including the Questions of Torture and Detention: *Report of the Special Rapporteur on the Question of Torture, Theo van Boven, Submitted in Accordance with Commission Resolution 2002/38 Addendum Mission to Uzbekistan*, 2 February 2003, UN Doc. E/CN.4/2003/68/Add.2. – attached hereto as Exhibit 43 -- p. 24. *See also* UNCAT, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Concluding observations on the fourth periodic report of Uzbekistan*, 10 December 2013, UN Doc. CAT/C/UZB/CO/4, para. 19 – attached hereto as Exhibit 17.

facility.¹¹⁶ The act of being imprisoned in Jaslyk itself constitutes torture or cruel, inhuman or degrading treatment.

Mr. Formonov has been tortured repeatedly while being imprisoned in Jaslyk. From May 23 to June 19, 2007, Mr. Formonov was incarcerated in an isolation cell and where his legs and feet were beaten so severely that he was unable to walk for ten days.¹¹⁷ From October 10 to October 20, 2007, Mr. Formonov was accused of “failing to walk straight in line,” placed in an unheated isolation cell for ten days, where he was handcuffed and beaten by prison officials.¹¹⁸ Because the isolation cell was not heated and the temperature was below freezing, Mr. Formonov fell ill with symptoms that included pus-filled ears that lasted for many months.¹¹⁹

Authorities repeatedly beat Mr. Formonov to coerce him into signing various statements. In 2008, Mr. Formonov was beaten until he agreed to sign one statement admitting to breaking prison rules and a second statement disqualifying him from a presidential amnesty. In 2011, to force Mr. Formonov to sign a document stating that he was not being tortured in prison, he was in perfect health, he was being detained under good conditions and he had access to medical care, prison authorities beat Mr. Formonov severely on his head, back and stomach for an hour. While being strangled, Mr. Formonov states that Officer S. Vaysniezov threatened to kill him, kill whomever visited him, kill Mrs. Yakubova, and would imprison his children unless he signed the statement.¹²⁰

Representatives of the Red Cross have been precluded from speaking with Mr. Formonov on multiple visits to Jaslyk during which the Red Cross was investigating the conditions under which Mr. Formonov and others were being held. Prior to, and for the duration of, each of these visits, Mr. Formonov was transferred to and held at another prison in Nukus.¹²¹

¹¹⁶ UNCAT, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: *List of issues in relation to the fourth periodic report of Uzbekistan (CAT/C/UZB/4)*, adopted by the Committee at its fiftieth session (6-31 May 2013), 3 July 2013, UN Doc. CAT/C/UZB/Q/4/Add.1, para. 34 .

¹¹⁷ Amnesty International, *Azamjon Formonov and Alisher Karamatov: human rights defenders continue to serve long prison sentences amid claims that they are being tortured*, AI Index EUR 62/003/2008, 24 April 2008, available at <http://www.amnesty.org/en/library/info/eur62/003/2008/en> – attached hereto as Exhibit 18.

¹¹⁸ Human Rights Watch, *Human Rights Watch Submission to the United Nations Committee Against Torture on Uzbekistan* (October 28, 2013) available at <http://hrw.org/print/news/2013/10/28/human-rights-watch-submission-united-nations-committee-against-torture-uzbekistan> – attached hereto as Exhibit 21. See also, Ozoda Yakubova, Letter to the President of the Republic of Uzbekistan and other , July 11, 2007 – attached hereto as Exhibit 15.

¹¹⁹ Human Rights Society of Uzbekistan, *Letter from HRSU Chairman Talib Yakubov to OHCHR*, December 7, 2007, at 2 – attached hereto as Exhibit 23. See also, Ozoda Yakubova, Letter to the President of the Republic of Uzbekistan and other , July 11, 2007 – attached hereto as Exhibit 15.

¹²⁰ The International Foundation for the Protection of Human Rights Defenders (Front Line), *Uzbekistan: Reported torture in detention of human rights defender Mr. Azamjon Formonov* (November 29, 2011) available at <http://www.frontlinedefenders.org/node/16700>.

¹²¹ International Committee of the Red Cross, “Uzbekistan: ICRC decides to terminate visits to detainees”, News Release 13/64 (April 12, 2013), available at <http://www.icrc.org/eng/resources/documents/news->

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On numerous occasions, the CAT expressed particular concern that Mr. Formonov and at least nine other human rights defenders have allegedly been subjected to torture and other ill-treatment while being arbitrarily detained or imprisoned in Uzbekistan.¹²² Further, the CAT noted its concern that full, independent and effective investigations of these allegations and prosecution of the perpetrators have not taken place.¹²³

Physical and mental abuse of the kind suffered by Mr. Formonov has been determined to constitute torture by this Committee. As the prohibition against torture is absolute, the Committee should hold Uzbekistan accountable for the violation of Article 7 of the ICCPR.

B. Failure to Safeguard Against Torture

1. Legal Standard

Furthermore, as a member state of the ICCPR, Uzbekistan is required to have safeguards in place to protect people from torture, including persons deprived of liberty who are “particularly vulnerable” to torture.¹²⁴ Article 2(2) of the ICCPR requires every State Party “to take the necessary steps . . . to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant,” including the prohibition on torture found in Article 7.¹²⁵ The Committee has established that the prevention of torture in criminal justice systems is a positive obligation of the State, especially for persons deprived of liberty, as those persons are “particularly vulnerable.”¹²⁶ As such, this Committee imposes a special responsibility on member states of the ICCPR to take adequate and appropriate measures to protect prisoners and those in detention.¹²⁷ The Committee recognized that:

State parties should ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment. The protection

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[release/2013/04-12-uzbekistan-detainees.htm](#) – attached hereto as Exhibit 24; Human Rights Watch, “Human Rights Watch Submission to the United Nations Committee Against Torture on Uzbekistan” (October 28, 2013), at FN 31, *available at* <http://www.hrw.org/print/news/2013/10/28/human-rights-watch-submission-against-torture-uzbekistan> – attached hereto as Exhibit 21.

¹²² Human Rights Watch, “Imprisoned Human Rights Defenders in Uzbekistan” (Feb. 5, 2010) *available at* <http://www.hrw.org/node/87341> – attached hereto as Exhibit 41; The International Foundation for the Protection of Human Rights Defenders (Front Line), *Complaint to the Special Representative of the Secretary General on Human Rights Defenders, Ms. Hina Jilani*, 16 February 2007, *available at* http://www.frontlinedefenders.org/files/en/1599_complaint%20to%20the%20un%20special%20representative%20for%20human%20rights%20defenders-1.pdf 19.

¹²³ *Id.*

¹²⁴ UNHRC, General Comment 21: Article 10, 1992, paras. 3, 4.

¹²⁵ ICCPR, Article 2(2)

¹²⁶ UNHRC, General Comment 21: Article 10, 1992, paras. 3, 4.

¹²⁷ *Dermit Barbato v. Uruguay*, UNHRC, Views of 21 October 1982, UN Doc CCPR/C/17/D/84/1981, para. 9.2.

of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.¹²⁸

2. Failure to Safeguard against Torture

Uzbekistan failed to protect Mr. Formonov from being tortured while in the custody of the Uzbek authorities. After his politically-driven arrest, and in violation of the ICCPR, the police held Mr. Formonov *incommunicado* for over one week.¹²⁹ Mr. Formonov was not provided with any access to a lawyer during this period, let alone prompt and regular access. Eventually, when Mr. Formonov was given access to an attorney, the attorney was appointed by the Uzbek government. This attorney, Mr. Kholikberdiev, was not of Mr. Formonov's choosing and willfully ignored the torture and other mistreatment of Mr. Formonov by Uzbek government officials that occurred in Mr. Kholikberdiev's presence.¹³⁰

Similarly, Mr. Formonov was not permitted to see his wife or family during for the first month of his pre-trial detention. During this period, Uzbek authorities tortured Mr. Formonov by forcing him to wear a gas-mask with closed air-vents, causing him to suffocate. The mere presence of the gas-mask in the detention area violates Uzbekistan's obligation under Articles 2.2 and 7 to "ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment."¹³¹

In addition to Uzbek authorities precluding Mr. Formonov from contact with a lawyer (let alone a lawyer of his choice) or with his family members during his pre-trial detention, Uzbek authorities also actively hid Mr. Formonov from independent observers from the Red Cross in order to prevent discovery of the conditions under which Mr. Formonov, and others, were being held. While at Jaslyk prison, Mr. Formonov has been repeatedly transferred to another prison, in Nukus, when representatives of the Red Cross visited in order to investigate the conditions under which Mr. Formonov and others are being held.¹³² The efforts of the Uzbek authorities to thwart access by international observers and their refusal to abide by international standards led the Red Cross to halt all prison visits to Uzbekistan in 2013.¹³³

¹²⁸ UNHRC, General Comment 20, para. 11.

¹²⁹ Amnesty International, *Azam Farmonov and Alisher Karamatov: human rights defenders continue to serve long prison sentences amid claims that they are being tortured*, AI Index EUR 62/003/2008, 24 April 2008, available at <http://www.amnesty.org/en/library/info/eur62/003/2008/en> – attached hereto as Exhibit 18.

¹³⁰ Communication with Talib Yakubov (on file with Freedom Now).

¹³¹ UNHRC, General Comment 20, para. 11.

¹³² Human Rights Watch, "Human Rights Watch Submission to the United Nations Committee Against Torture on Uzbekistan" (October 28, 2013), at FN 31, available at <http://www.hrw.org/print/news/2013/10/28/human-rights-watch-submission-united-nations-committee-against-torture-uzbekistan> – attached hereto as Exhibit 21.

¹³³ International Committee of the Red Cross, "Uzbekistan: ICRC decides to terminate visits to detainees", News Release 13/64 (April 12, 2013), available at <http://www.icrc.org/eng/resources/documents/news-release/2013/04-12-uzbekistan-detainees.htm> – attached hereto as Exhibit 24; Stephanie Nebehay, "Red Cross Halts Prison Visits in Uzbekistan", Reuters, (April 12, 2013) available at

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Uzbekistan's failure to safeguard against torture has been recognized by the CAT. Several times since Uzbekistan's ratification of the ICCPR and again in a recent report, the CAT raised concerns about Uzbekistan's lack of safeguards against torture, particularly in order to obtain confessions.¹³⁴ Specifically, the CAT stated that Uzbekistan's officials have not condemned "torture or directed condemnation to police and prison officials."¹³⁵ In prior reports, the CAT expressed concerns regarding Uzbekistan's limited definition of torture and the "numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials."¹³⁶ The CAT has consistently raised these concerns in each report published regarding Uzbekistan since 1999.

As a member state of the ICCPR, Uzbekistan is required to have safeguards in place to protect people from torture, including persons deprived of liberty who are "particularly vulnerable" to torture.¹³⁷ Despite this obligation, Uzbekistan failed to provide adequate safeguards to protect Mr. Formonov from torture by failing to provide him with "competent" counsel or access to his family, failing to keep detention areas free from objects that could be used for torture, as well as by placing him in a prison facility free from oversight to prevent torture and human rights abuses. Mr. Formonov was thus held in a manner that failed to protect him against the risk of torture in violation of Article 2(2) of the ICCPR.

C. The Right to Freedom of Expression

The persecution of Mr. Formonov by Uzbek authorities for his work as a human rights defender, including his arbitrary arrest and detention for publishing human rights pamphlets that exposed wrongdoings by Uzbek Government officials, violates Mr. Formonov's right to freedom of expression under Article 19(2) of the ICCPR.

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<http://uk.reuters.com/article/2013/04/12/uk-uzbekistan-redcross-idUKBRE93B0M020130412> – attached hereto as Exhibit 43.

¹³⁴ UNCAT, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: *Concluding observations on the fourth periodic report of Uzbekistan*, 10 December 2013, UN Doc. CAT/C/UZB/CO/4 – attached hereto as Exhibit 17.

¹³⁵ *Id.*

¹³⁶ UNCAT, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: *Concluding observations on the third periodic report of Uzbekistan*, 28 February 2008, UN Doc. CAT/C/UZB/CO/3 – attached hereto as Exhibit 44.

¹³⁷ UNHRC, General Comment 21: Article 10, 1992, paras. 3, 4.

1. Legal Standard

Article 19(2) of the ICCPR provides that “[e]veryone shall have the right to freedom of expression.”¹³⁸ The United Nations’ Special Rapporteur on the situation of human rights defenders has reported that “[t]he right to freedom of opinion and expression is of crucial importance to the work of human rights defenders. Without this right defenders would not be able to perform their monitoring and advocacy work to promote and protect human rights.”¹³⁹ This protection covers the “right of individuals to criticize or openly and publically evaluate their Governments without fear of interference or reprisals.”¹⁴⁰ The Committee has recognized that any attack on a person because of the exercise of his freedom of expression, including such forms as arbitrary arrest, torture and threats to life, constitutes a violation of Article 19.¹⁴¹

2. Violation of the Right to Freedom of Expression

Prior to his arbitrary arrest and detention, Mr. Formonov worked as a human rights defender in Uzbekistan. Mr. Formonov monitored human rights violations perpetrated by the Uzbek authorities, and published details of these violations in informational pamphlets which were circulated among various human rights organizations and distributed to foreign embassies. In two of these pamphlets, Mr. Formonov documented episodes of torture by Uzbek governmental authorities and other wrongdoings by certain government officials, including Senior Investigator Kodirov and Judge Khidirbaev.

As a result of this human rights work, in particular the authoring of pamphlets naming specific governmental agents, the Uzbek authorities arbitrarily arrested and charged Mr. Formonov with extortion on April 29, 2006. During Mr. Formonov’s arrest, the Uzbek police seized all copies of the two pamphlets that alleged wrongdoings by Senior Investigator Kodirov and Judge Khidirbaev and the computer which Mr. Formonov used to produce these and other informational pamphlets from Mr. Formonov’s home. These two government officials named in these pamphlets had central roles in the investigation, arrest, and trial of Mr. Formonov. Senior Investigator Kodirov was the chief investigator of the Government’s extortion case and Judge Khidirbaev presided over the case and trial.

The judicial decision itself suggests that the arbitrary arrest and conviction was politically motivated to silence Mr. Formonov. Specifically, Judge Khidirbaev directed that the Government will retain the seized pamphlets and keep them with the records of the criminal

¹³⁸ In addition, the “freedom of thought, speech, and convictions” is also guaranteed by the Uzbek Constitution. Article 29 of the Constitution of Uzbekistan.

¹³⁹ UN General Assembly Report re Human rights defenders U.N. Doc. A/66/203, para. 43.

¹⁴⁰ *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, UN Doc. CCPR/C/83?D/1128/2002

¹⁴¹ Comment 34, par. 23. *See also Njaru v. Cameroon*, UNHRC, Views of 3 April 2007, UN Doc. CCPR/C/89/D/1353/2005, para. 6.4 (finding that while Article 19, paragraph 3 provides for certain permissible restrictions on the freedom of expression, “there can be no legitimate restriction under Article 19, paragraph 3, which would justify the arbitrary arrest, torture, and threats to life of [a human rights defender] and thus, the question of deciding which measures might meet the “necessity” test in such situations does not arise.”).

case.¹⁴² The contents of the seized pamphlets regarding human rights violations by the police and judiciary (which specifically name wrongdoings by Senior Investigator Kodirov and Judge Khirbaev) had no probative value to the charge of extortion. The extortion claim related to Mr. Formonov's wholly unrelated efforts to assist local farmers who accused a petrol company of fraud. Rather, the seizure of the pamphlets by Senior Investigator Kodirov's team and the decision by Judge Khirbaev to retain these pamphlets, were intended to remove these pamphlets from circulation and to silence Mr. Formonov under the pretext of the unrelated and unfounded extortion charge.

As noted above, the WGAD issued an opinion on November 22, 2012, which found a Category II violation for the failure of the Uzbek government to show that Mr. Formonov's conviction for extortion was a permissible restriction on his freedom of expression under Article 19 of the ICCPR. The WGAD held that the Uzbek government failed to show that the sentence was not discriminatory and also felt that a nine year sentence for extortion seemed disproportionately severe, lending further evidence to support the contention that the conviction was motivated on political grounds as opposed to criminal grounds.¹⁴³ In order to remedy the violation, the WGAD directed the Uzbek Government to provide Mr. Formonov with a new trial. However, the Uzbek Government has neither provided Mr. Formonov with a new trial nor acknowledged this opinion in any way.¹⁴⁴

While there are exclusions available to member states that permit the restriction of the right to freedom of expression under Article 19(3), none of these are applicable to Mr. Formonov's case. As the Committee has recognized in prior jurisprudence, because there is no legitimate restriction under Article 19(3) which would justify the arbitrary arrest, torture, and threats to life of a human rights defender, "the question of deciding which measures might meet the 'necessity' test in such situations does not arise."¹⁴⁵

Uzbekistan thus violated 19(2) by arbitrarily arresting, detaining and persecuting Mr. Formonov for the exercise of his right of expression in the form of his work as a human rights defender. As Mr. Formonov is still detained in Jaslyk prison, these violations are ongoing.

D. The Right to be Free from Arbitrary Detention

Mr. Formonov's arrest and detention constitute violations of Article 9(1) of the ICCPR.

¹⁴² Verdict of Yangiyer City Criminal Court, dated June 15, 2006 (translated) – attached hereto as Exhibit 4.

¹⁴³ United Nations Human Rights Council Working Group on Arbitrary Detention, *Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14-28 November 2012*, 22 November 2012, para. 40.

¹⁴⁴ *Id.*

¹⁴⁵ *Njaru v. Cameroon*, UNHRC, Views of 3 April 2007, UN Doc. CCPR/C/89/D/1353/2005, para. 6.4.

1. Legal Standard

Article 9(1) states that “[n]o one shall be subjected to arbitrary arrest or detention.” The detention is arbitrary when it results from the exercise of human rights – such as the right of freedom of expression or the right to participate in government – or from total or partial non-observance of the international norms relating to the right to a fair trial.¹⁴⁶ This Committee has repeatedly found a violation of Article 9(1) where a member state has arrested and detained advocates for democracy and human rights, or those who merely hold different political views.¹⁴⁷

2. Violation of the Right to Be Free from Arbitrary Detention

As described in Section VIII.C.2 of this petition, it is clear that Mr. Formonov was arrested and detained by the Uzbek government as a response to his human rights work. Furthermore, statements made by various Uzbek authorities reveal that the Uzbek government arbitrarily detained Mr. Formonov in order to persecute and silence him for his human rights work. Muso Rajabov, head of the Anti-Terrorism and Corruption Unit of the Internal Affairs Department, would often come to the investigation cell number CN-13 and on numerous occasions threatened to silence both Mr. Formonov and his co-defendant Mr. Karamatov by making sure they were sent to Jaslyk prison.¹⁴⁸ On June 16, 2006, Mr. Rajabov met with Mr. Formonov’s sister’s husband and told him that despite Talib Yakubov’s efforts to write letters to foreign embassies, no embassy can help human rights defenders such as Mr. Formonov now. Mr. Rajabov also stated that Mr. Formonov would be imprisoned in Jaslyk very soon.¹⁴⁹

A recent report by the CAT highlighted the concern over numerous and consistent reports of Uzbekistan’s arbitrary imprisonment of human rights defenders in retaliation for their work.¹⁵⁰ The CAT was particularly concerned that Mr. Formonov and at least nine other human rights defenders have allegedly been deprived of their liberty and subjected to torture and other ill-treatment in Uzbekistan.¹⁵¹ The CAT noted its regret that Uzbekistan insists that these allegations are “unfounded,” despite existing corroboration.¹⁵² The CAT noted that full,

¹⁴⁶ *Revised Methods of World, WGAD*, para. 8(c).

¹⁴⁷ *Womah Mukong v. Cameroon*, Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991, paras 9.6-9.8; *Olo Bahamonde v. Equatorial Guinea*, Communication No. 468/1991, UN Doc. CCPR/C/49?D468/1991, paras 9.1-9.5.

¹⁴⁸ Communication with Talib Yakubov (on file with Freedom Now).

¹⁴⁹ *Id.*

¹⁵⁰ UNCAT, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Concluding observations on the fourth periodic report of Uzbekistan*, 10 December 2013, UN Doc. CAT/C/UZB/CO/4, para. 8 – attached hereto as Exhibit 17.

¹⁵¹ *Id.*

¹⁵² *Id.*

independent and effective investigations of the allegations and prosecution of the perpetrators have not taken place.¹⁵³

Uzbekistan's flagrant and politically motivated detention of Mr. Formonov based on the exercise of his Article 19 freedom of expression rights under the ICCPR, constitute a violation of the Article 9(1) prohibition on arbitrary detention.

E. Violation of Fair Trial Rights

Uzbekistan perpetrated numerous violations of Mr. Formonov's right to a fair trial under Article 14 of the ICCPR. The amalgamation of violations of Mr. Formonov's trial rights amounted to a manifestly arbitrary process and a denial of justice. Specifically, Uzbekistan denied Mr. Formonov's rights: (1) not to be compelled to confess guilt; (2) to have adequate time and facilities to prepare a defense and to communicate with counsel of one's own choosing; (3) to cross-examine witnesses; (4) to a fair and public hearing by an impartial tribunal; and (5) to be presumed innocent. Each of these violations is discussed below.

1. The Right Not to be Compelled to Confess Guilt

Uzbekistan violated Article 13(3)(g) of the ICCPR by torturing Mr. Formonov to force him to make a false confession to the charge of extortion.

a) Legal Standard

Article 14(3)(g) of the ICCPR enumerates the right to "not be compelled to testify against himself or to confess guilt."¹⁵⁴ The Committee has recognized that Article 14(3)(g) prohibits treating "an accused person in a manner contrary to Article 7 of the Covenant [the prohibition on torture] in order to extract a confession."¹⁵⁵ The Committee has also commented that "[i]t is important for the discouragement of violations under Article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment."¹⁵⁶

The Committee has determined that "no statements or confessions or, in principle, other evidence obtained in violation of this provision [Article 7] may be invoked as evidence in any proceedings covered by article 14, including during a state of emergency, except if a statement or confession obtained in violation of article 7 is used as evidence that torture or other treatment prohibited by this provision occurred."¹⁵⁷

¹⁵³ *Id.*

¹⁵⁴ ICCPR, Article 14(3)(g).

¹⁵⁵ UNHRC, General Comment 32, Communications No. 1044/2002, *Shakurova v. Tajikistan*, para. 8.2; No. 915/2000, *Ruzmetov v. Uzbekistan*, paras. 7.2 and 7.3; No. 1042/2001, *Boimurodov v. Tajikistan*, para. 7.2.

¹⁵⁶ UNHRC, General Comment 20, para. 12. See also, Article 15 of the Convention against Torture.

¹⁵⁷ UNHRC, General Comment 32.

b) Violation of the Right to Not be Compelled to Confess Guilt

After arresting and charging Mr. Formonov with extortion, Uzbek authorities tortured Mr. Formonov until he agreed to sign a false confession to the charge of extortion. Uzbek authorities suffocated Mr. Formonov by forcing him to wear a gas-mask with closed air-vents, repeatedly threw him up in order to cause him to come crashing down flat on his back upon a concrete floor and beat his feet and heels with truncheons – all to force Mr. Formonov to sign a false confession.¹⁵⁸ The torture of Mr. Formonov forcing him to sign a false confession that would be used against him violated Article 14(3)(g) of the ICCPR.

2. The Right to Have Adequate Time and Facilities to Prepare a Defense and to Communicate with Counsel of One’s Own Choosing

The Uzbek authorities’ interference with Mr. Formonov’s ability and right to communicate with counsel of his own choosing, as well as his ability and right to have adequate time and facilities to prepare a defense, violated Article 14(3)(b) of the ICCPR.

a) Legal Standard

Article 14(3) of the ICCPR provides that anyone with a criminal charge against him shall be entitled “to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing” in criminal trials.¹⁵⁹ These rights are an “important element of the guarantee of a fair trial and an application of the principle of equality of arms.”¹⁶⁰

The Committee has recognized that “[t]he right to communicate with counsel requires that the accused is granted prompt access to counsel.”¹⁶¹ The Committee has held State parties to the standard that *access* to counsel is not enough. Rather, the Committee has stated that it must be ensured that “counsel, once assigned, provides *effective* representation in the interest of justice.”¹⁶² The Committee has also noted that “lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized

¹⁵⁸ The International Foundation for the Protection of Human Rights Defenders (Front Line), *Complaint to the Special Representative of the Secretary General on Human Rights Defenders, Ms. Hina Jilani*, 16 February 2007, available at http://www.frontlinedefenders.org/files/en/1599_complaint%20to%20the%20un%20special%20representative%20for%20human%20rights%20defenders-1.pdf – attached hereto as Exhibit 19.

¹⁵⁹ ICCPR, Article 14(3)(b).

¹⁶⁰ UNHRC, General Comment 32, para. 32.

¹⁶¹ UNHRC, General Comment 32, para. 34.

¹⁶² *Saidova v. Tajikistan*, UNHRC, Views of 8 July 2004, UN Doc. CCPR/C/81/D/964/2001, para. 6.8 (emphasis added).

professional ethics without restrictions, influence, pressure or undue interference from any quarter.”¹⁶³

The Committee has, in previous jurisprudence, determined that legal assistance should be available at all stages of criminal proceedings.¹⁶⁴ The Committee has recognized that “[t]he availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.”¹⁶⁵

The Committee has recognized that the right to adequate facilities includes the right to access documents and other evidence, including all materials that the prosecution plans to offer in court against the accused or that are exculpatory.¹⁶⁶ “Exculpatory material” includes not only material establishing innocence, but also “other evidence that could assist the defense (e.g. indications that a confession was not voluntary). In cases of a claim that evidence was obtained in violation of Article 7 of the Covenant, information about the circumstances in which such evidence was obtained must be made available to allow an assessment of such a claim.”¹⁶⁷ The Committee has noted that, pursuant to Article 14, State parties must “ensure that individuals cannot be condemned on the basis of evidence to which they, or those representing them, do not have full access.”¹⁶⁸

b) Violations of the Right to Have Adequate Time and Facilities to Prepare a Defense and to Communicate with Counsel of One’s Own Choosing

Uzbekistan denied Mr. Formonov the right to prompt access to counsel and to counsel of his own choosing. For more than one week after Mr. Formonov was arrested, Mr. Formonov was held *incommunicado* and was denied the right to communicate with any counsel at all,¹⁶⁹ in violation of Article 14(3)(b) of the ICCPR.

Eventually, the Uzbek Government permitted Mr. Formonov to communicate with a lawyer named A. Kholikberdiev. However, the lawyer was appointed by, and acted under the influence and pressure of, the Uzbek government and was complicit in the torture and mistreatment of Mr. Formonov. Mr. Kholikberdiev was present when Uzbek authorities interrogated and tortured

¹⁶³ UNHRC, General Comment 32, para. 34.

¹⁶⁴ *Borisenco v. Hungary*, UNHRC, Views of 14 October 2002, UN Doc. CCPR/C/76/D/852/1999, para. 7.5.

¹⁶⁵ UNHRC, General Comment 32, para. 10.

¹⁶⁶ UNHRC, General Comment 32, para. 33.

¹⁶⁷ UNHRC, General Comment 32, para. 33.

¹⁶⁸ *See* concluding observations, Canada, CCPR/C/CAN/CO/5 (2005), para. 13.

¹⁶⁹ Amnesty International, *Azamjon Formonov and Alisher Karamatov: human rights defenders continue to serve long prison sentences amid claims that they are being tortured*, AI Index EUR 62/003/2008, 24 April 2008, available at <http://www.amnesty.org/en/library/info/eur62/003/2008/en> – attached hereto as Exhibit 18.

Mr. Formonov in order to force Mr. Formonov to sign a false statement confessing guilt to the extortion charge. Mr. Kholikberdiev also refused to submit complaints regarding violations of Mr. Formonov's rights, and at one point appeared drunk while providing legal assistance. As a result, Mr. Kholikberdiev's services as the defense counsel for Mr. Formonov were declined. Mr. Formonov was forced to rely on his father-in-law, Talib Yakubov, who has no legal training, to handle his legal defense. However, the court first impeded Mr. Yakubov's ability to prepare a defense, and then removed him as defense counsel completely without notice moments before the trial began.

Judge Khidirbaev attempted several times to limit access by Mr. Yakubov to prosecutorial documents. When Mr. Yakubov first received access to the documents on June 8, 2006, Judge Khidirbaev attempted to limit Mr. Yakubov to a two-hour period to review the documents. On June 12, 2006, with no prior notice, Judge Khidirbaev took the files away from Mr. Yakubov before Mr. Yakubov had finished reading the documents and attempted to start the trial at that time. Furthermore, Mr. Yakubov and Mr. Formonov were never granted access to certain other court documents, including the later decision of the appellate court.¹⁷⁰

On June 15, 2006, without providing prior notice to Mr. Formonov or Mr. Yakubov, Judge Khidirbaev commenced a closed trial and precluded Mr. Yakubov from participating in the trial and defending Mr. Formonov. Despite objections from Mr. Formonov and his family, the Judge appointed Mr. Kholikberdiev and Mr. Mamdaliyeva to represent Mr. Formonov at trial that same day. Both of these attorneys are known to be under the influence of Uzbek government authorities.¹⁷¹ The Judge was also aware that Mr. Kholikberdiev is the same attorney whose services had already been declined due to his refusal to submit a complaint regarding the violations of Mr. Formonov's right to be free from torture that occurred during the investigation as well as Mr. Kholikberdiev's general ineffectiveness as counsel. By reappointing a lawyer who not only provided unprofessional and unethical legal counsel, but also turned a blind eye to the torture his client endured from government officials to ensure his self-incrimination, the Uzbek authorities continued to deny Mr. Formonov's rights to communicate with counsel that provides *effective* representation in the interest of justice and to communicate with counsel of his choosing after his arrest and during his trial, all in violation of Article 14(3)(b) of the ICCPR.¹⁷²

¹⁷⁰ The last time Mr. Formonov's family attempted to obtain a copy of the appellate court's decision was on February 12, 2014. No response followed from the Syrdarya regional criminal court.

¹⁷¹ Communication with Talib Yakubov (on file with Freedom Now).

¹⁷² While Mr. Formonov's family have attempted to hire or have briefly hired, then fired, other attorneys (for reasons such as improper government interference and control), this is not relevant to the violation at issue here – that Mr. Formonov's right to an attorney of his own choosing during trial was violated when Judge Khidirbaev improperly removed Mr. Yakubov immediately before the trial began.

3. The Right to Cross-examine Witnesses

a) Legal Standard

With regards to a criminal charge, Article 14(3)(e) of the ICCPR provides that “everyone shall be entitled to . . . in full equality. . . [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.” The Committee has recognized that Article 14(3)(e) of the ICCPR provides criminal defendants with a right “to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.”¹⁷³

b) Violation of the Right to Cross-examine Witnesses

The Judgment entered by the Court references testimony of seven witnesses that were allegedly given at the court hearing against Mr. Formonov and Mr. Karamatov. However, no witnesses were questioned in the presence of Mr. Formonov or his representative. The only hearing before convicting Mr. Formonov to nine years in prison took place on June 15, 2006. It lasted less than 30 minutes and was composed solely of Judge Khidirbaev reading the judgment and sentence.¹⁷⁴

The absence of any opportunity to have witnesses against Mr. Formonov questioned and challenged at any stage of the proceedings violates Article 14(3)(e) of the ICCPR.

4. The Right to a Fair and Public Hearing by an Impartial Tribunal

Uzbekistan denied Mr. Formonov the right to a fair and public hearing by a competent, independent and impartial tribunal established by law in violation of Article 14 of the ICCPR.

a) Legal Standard

Article 14(1) of the ICCPR provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” With respect to the public hearing element of Article 14(1) of the ICCPR, the Committee has stated that “[a]ll trials in criminal matters . . . must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing.”¹⁷⁵ Only exceptional circumstances can justify excluding the public from a trial.¹⁷⁶

¹⁷³ UNHRC, General Comment 32, para. 39.

¹⁷⁴ Communication with Talib Yakubov (on file with Freedom Now).

¹⁷⁵ Comment 32, para. 28; *Van Meurs v. the Netherlands*, UNHRC, Views of 13 July 1990, UN Doc. CCPR/C/39/D/215/1986, para. 6.2

¹⁷⁶ UNHRC, General Comment 32, para. 29.

The Committee has recognized that “[t]he impartiality of the court and the publicity of proceedings are important aspects of the right to a fair trial within the meaning of article 14, paragraph 1.”¹⁷⁷ Pursuant to the requirement of impartiality, a judge must not allow his judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before him, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other.¹⁷⁸ The tribunal must also appear to a reasonable observer to be impartial.

“Where the grounds for disqualification of a judge are laid down by law, it is incumbent upon the court to consider *ex officio* these grounds and to replace members of the court falling under the disqualification criteria. A trial flawed by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be fair or impartial within the meaning of article 14.”¹⁷⁹ The right to a competent, independent and impartial tribunal at a hearing for a criminal charge is “an absolute right that is not subject to any exception.”¹⁸⁰

Article 76 of Uzbekistan’s Criminal Code provides that a judge may not participate in a criminal proceeding if circumstances raise doubts about his objectivity and impartiality. Article 80 of Uzbekistan’s Criminal Code places the burden of announcing disqualification called for by Article 76 of the Criminal Code upon the judge.

b) Violation of the Right to a Fair and Public Hearing by an Impartial Tribunal

Uzbekistan had a duty to make the time and date of the trial public knowledge, and it failed to do so. Conducting the trial without informing the public, the defendant’s counsel and the defendant’s family violates the right to a public hearing under Article 14(1) of the ICCPR.

The hearing in Mr. Formonov’s case was not impartial. Judge Khidirbaev presided over Mr. Formonov’s case despite the fact that Judge Khidirbaev was the same judge that Mr. Formonov criticized in his human rights pamphlets.¹⁸¹ Therefore his objectivity and impartiality were compromised, and pursuant to Articles 76 and 80 of the Uzbek Criminal Code, he had an obligation to disqualify himself from judging Mr. Formonov’s case. Yet, Judge Khidirbaev still presided over Mr. Formonov’s case. Ultimately, Judge Khidirbaev’s participation in this case violated Mr. Formonov’s right to be heard by an impartial tribunal under Article 14(1) of the ICCPR.

¹⁷⁷ Communication No. 387/1989, *Karttunen v. Finland*, para. 7.2.

¹⁷⁸ UNHRC, Comment 32 (citing *Karttunen v. Finland*, Communication No. 387/1989, para. 7.2.

¹⁷⁹ *Karttunen v. Finland*, Communication No. 387/1989, para. 7.2.

¹⁸⁰ UNHRC, Comment 32 text associated with FN 29.

¹⁸¹ See discussion in Section VI.A of this petition.

5. The Right to be Presumed Innocent

Uzbek authorities deprived Mr. Formonov of his right to be presumed innocent until proven guilty by holding him in an iron cage during the trial.

a) Legal Standard

Article 14(2) of the ICCPR provides that “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.” 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 [...]”¹⁸² In order to protect this presumption of innocence, the Committee has recognized that “[d]efendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.”¹⁸³

b) Violation of the Right to be Presumed Innocent

Contrary to Article 14(2), Mr. Formonov was kept in an iron cage during the trial in violation of Article 14(2) of the ICCPR. Keeping defendants in iron cages during trial is a common practice in Uzbekistan.¹⁸⁴ Amnesty International and Human Rights Watch have noted and condemned Uzbekistan’s practice of caging defendants in court.¹⁸⁵ The practice of caging defendants

¹⁸² *Supra* note 141, General Comment No. 32, para. 30.

¹⁸³ UNHRC, General Comment 32, para. 30.

¹⁸⁴ Igor Rotar, “Uzbekistan: No proof, but imam sentenced”, Forum 18 News Service (Jul. 12, 2004), available at http://www.forum18.org/archive.php?article_id=361 – attached hereto as Exhibit 45; Amnesty International, *Uzbekistan, Government crackdown on human rights defenders: Secret trials and torture in the ‘information war’*, March 2007, available at <http://www.amnestyusa.org/research/reports/uzbekistan-government-crackdown-on-human-rights-defenders> – attached hereto as Exhibit 46; Office for Democratic Institutions and Human Rights, *Report from the OSCE/ODIHR Trial Monitoring in Uzbekistan – September/October 2005*, 21 April 2006, available at <http://www.osce.org/odihr/18840?download=true> – attached hereto as Exhibit 47; United Nations, Econ. & Soc. Council, Comm. On Human Rights, *Civil and Political Rights, Including the Questions of Torture and Detention*, 3 February 2003, available at <http://www.refworld.org/pdfid/4090ffc80.pdf> – attached hereto as Exhibit 48; Human Rights Watch, *Nowhere to Turn, Torture and Ill-treatment in Uzbekistan*, Vol. 19, No. 6 (D), available at <http://www.hrw.org/reports/2007/11/05/nowhere-turn> – attached hereto as Exhibit 49; Jeffrey Donovan, “World: Uzbek case highlights ongoing use of ‘forced confessions’” (May 9, 2007), available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=469f5caa1e> – attached hereto as Exhibit 50; Human Rights Watch, *Creating Enemies of the State: Religious Persecution in Uzbekistan*, 2004, available at <http://www.hrw.org/reports/2004/uzbekistan0304/uzbekistan0304.pdf> – attached hereto as Exhibit 51; Scott Neuman, “Behind Bars: A Brief History of the Defendant’s Cage,” NPR (August 4, 2011), <http://www.npr.org/2011/08/05/138993974/behind-bars-a-brief-history-of-the-defendant-s-cage> – attached hereto as Exhibit 52; Matthew Brzezinski, “In Uzbekistan, Whatever It Takes,” N.Y. Times, (December 16, 2001), available at <http://www.nytimes.com/2001/12/16/magazine/16UZBEK.html> – attached hereto as Exhibit 53.

¹⁸⁵ Amnesty International, *Fair Trial Manual, Second Edition*, Index POL 30/002/2014, 9 April 2014, available at <http://www.amnesty.org.uk/sites/default/files/pol300022014en.pdf> – attached hereto as Exhibit 54; Amnesty

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extends all the way up to the Supreme Court of Uzbekistan, despite the fact that it violates Article 14(2) of the ICCPR, is degrading, undercuts the presumption of innocence, and disallows communication between a defendant and the defendant's counsel.¹⁸⁶

By holding Mr. Formonov in an iron cage during his trial, Uzbek authorities violated Article 14(2) of the ICCPR.

F. The Right to be Free of Unlawful Interference With Privacy, Family and Home.

The search of Mr. Formonov's home, seizure of his property, and abuse of his wife by Uzbek authorities after his arrest violated Mr. Formonov's rights under Article 17 of the ICCPR.

1. Legal Standards

Article 17(1) of the ICCPR provides that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation."¹⁸⁷ In addition, the Committee has commented that "interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims, and objectives of the Covenant."¹⁸⁸ The Committee has held that a warrantless raid on a person's home constitutes an "unlawful interference in the homes of the victims and their families" and violates Article 17(1).¹⁸⁹ In addition to being lawful, interferences must also not be arbitrary.¹⁹⁰ The Committee has held that the concept of arbitrariness is intended to "guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances."¹⁹¹ The Committee's jurisprudence asserts that reasonableness implies

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International, *Uzbekistan, Government crackdown on human rights defenders: Secret trials and torture in the 'information war'*, AI Index EUR 62/002/2007, 22 March 2007, available at <http://www.amnestyusa.org/research/reports/uzbekistan-government-crackdown-on-human-rights-defenders>; Human Rights Watch, *Nowhere to Turn, Torture and Ill-treatment in Uzbekistan*, Vol. 19, No. 6 (D), 5 November 2007, available at <http://www.hrw.org/reports/2007/11/05/nowhere-turn> – attached hereto as Exhibit 50.

¹⁸⁶ *Id.*; Office for Democratic Institutions and Human Rights, *Report from the OSCE/ODIHR Trial Monitoring in Uzbekistan – September/October 2005*, 21 April 2006, available at <http://www.osce.org/odihr/18840?download=true> – attached hereto as Exhibit 48.

¹⁸⁷ ICCPR, Article 17(1).

¹⁸⁸ UNHRC, General Comment 16, para. 3.

¹⁸⁹ *José Antonio Coronel et al. v. Columbia*, Communication No. 778/1997, U.N. Doc CCPR/C/76/D/778/1997, para 9.7.

¹⁹⁰ ICCPR, Article 17(1).

¹⁹¹ UNHRC, General Comment 16, para. 4; *Garcia v. Columbia*, Communication No. 687/1996, U.N. Doc. CCPR/C/71/D/687/1996, para. 10.3; *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992, para.8.3

that "any interference with privacy must be proportionate to the end sought, and must be necessary in the circumstances of any given case."¹⁹² As such, the Committee has commented that searches of a person's home should be "restricted to a search for necessary evidence and should not be allowed to amount to harassment."¹⁹³ Harassment that restricts a person's right to live a peaceful family life is considered an arbitrary interference and a violation of Article 17(1).¹⁹⁴

2. Violation of the Right Against Unlawful Interference With Privacy, Family and Home

Following Mr. Formonov's arbitrary arrest and detention, Uzbek authorities unlawfully raided Mr. Formonov's apartment on two separate occasions, and attempted a third, in direct violation of Article 17(1).¹⁹⁵ During the first warrantless search, the Government seized all of the human rights literature present in Mr. Formonov's apartment, including all copies of the two human rights pamphlets documenting torture and human rights abuses by Uzbek authorities.¹⁹⁶ The Government also seized a computer and copy machine used by Mr. Formonov to produce human rights pamphlets. Given that the computer, copy machine, and contents of the seized pamphlets were obtained without a warrant and were wholly unrelated to the extortion charge, the Government's search and seizure of Mr. Formonov's belongings did not meet the standard of necessity and were arbitrary in violation Article 17 of the ICCPR.

During the second warrantless search, investigators struck Mr. Formonov's pregnant wife, knocking her unconscious and leaving her in need of overnight hospitalization.¹⁹⁷ In their physical mistreatment of Mr. Formonov's wife, authorities not only harassed her but interfered with Mr. Formonov's right to live a peaceful family life, in further violation of Article 17. The Uzbek authorities' actions were not in accordance with the provisions, aims, and objectives of the Covenant, therefore for this and the aforementioned violations of the ICCPR, the Committee should hold Uzbekistan accountable.

¹⁹² *Id.*; *Van Hulst v. Netherlands*, Communication No. 903/1999, U.N. Doc. CCPR/C/82/D/903/1999, para.7.6.

¹⁹³ UNHRC, General Comment 16, para. 8.

¹⁹⁴ *Annakkarage Suranjini Sadamali Pathmini Peiris v. Sri Lanka*, Communication No. 1862/2009, U.N. Doc. CCPR/C/103/D/1862/2009, para. 7.6.

¹⁹⁵ The Uzbek authorities attempted a third search, but did not enter Mr. Formonov's apartment or seize his property during that attempt. For a broader discussion of the searches, see Section IV.B.

¹⁹⁶ Communication with Talib Yakubov (on file with Freedom Now).

¹⁹⁷ *Id.*

IX. REMEDIES

In light of the facts and submissions above, the Author respectfully requests that the Committee:

- a) declare that Uzbekistan violated Article 7 of the ICCPR by torturing Mr. Formonov, and also as a result of its failures to establish safeguards against torture as required under Article 2(2) of the ICCPR – including failure to prevent Mr. Formonov from being held *incommunicado*, failure to provide Mr. Formonov access to an independent lawyer and to his family, failure to ensure places of detention are free from any equipment that could be used to inflict torture, failure to allow independent monitoring of detention facilities, and failure to properly investigate instances of torture and to provide an effective remedy;
- b) declare that Uzbekistan violated Articles 9 and 19 of the ICCPR by arbitrarily arresting and detaining Mr. Formonov in an attempt to silence his dissenting voice and prevent the continuation of his work as a human rights defender;
- c) declare that Uzbekistan violated numerous rights under Article 14 of the ICCPR by forcing Mr. Formonov to falsely confess guilt through torture, by not permitting Mr. Formonov adequate time to prepare a defense and to communicate with counsel of Mr. Formonov's own choosing, by not allowing Mr. Formonov to cross-examine witnesses, by failing to provide a fair and public hearing by an independent tribunal, and by presenting Mr. Formonov to the court in a manner suggesting guilt – *i.e.* confining him to an iron cage during the duration of his trial; and
- d) declare that Uzbekistan violated Article 17 of the ICCPR by unlawfully raiding Mr. Formonov's home, by seizing human rights literature which was wholly unrelated to the extortion charge as well as the equipment used to produce human rights literature, and by striking Mr. Formonov's pregnant wife, knocking her unconscious and leaving her in need of overnight hospitalization.

The Author further respectfully requests that the Committee:

- a) urge Uzbekistan to acknowledge the arbitrary arrest and detention of Mr. Formonov, as well as the role of the state in his torture, to release Mr. Formonov from detention, and to provide compensation to Mr. Formonov for the violations of his rights under the ICCPR;
- b) urge Uzbekistan to publish the decision of the Committee;
- c) urge Uzbekistan to establish an independent commission of inquiry, including the participation of international experts, to investigate the circumstances of the arbitrary arrest and detention, trial, and torture of Mr. Formonov, with the power to initiate criminal prosecution of those found to be responsible for these acts against Mr. Formonov;

- d) urge Uzbekistan to introduce safeguards to prevent similar violations from continuing or happening in the future, including opening Uzbekistan to domestic and international human rights monitoring without restrictions or undue interference; to allow international human rights NGOs and UN Special Procedures, such as the UN Special Rapporteur on Torture, to conduct investigations in Uzbekistan; to allow domestic and international monitoring of detention facilities, including by the Red Cross, without undue restriction; and to fulfill its duties to protect human rights defenders; and

- e) urge Uzbekistan to reform its legislation and practice to ensure that detainees will not be kept *incommunicado*; to guarantee the right of anyone in detention to contact a lawyer of their own choosing; to provide an independent and secure complaint mechanism for allegations of torture and custodial deaths that would not be overseen by the executive branch of the Uzbek government; to ensure prompt and regular medical examinations in detention; to ensure prompt, regular, and unimpeded private visits by family members and lawyers to those in detention; to ensure the independence and impartiality of the judiciary; and to prevent misuse of police or judicial powers to silence independent voices.