

**PETITION TO:**

**UNITED NATIONS**

**WORKING GROUP ON ARBITRARY DETENTION**

Chairman/Rapporteur: Mr. Malick El Hadji Sow (Senegal)

Vice-Chairperson: Ms. Shaheen Sardar Ali (Pakistan)

Mr. Roberto Garretón (Chile)

Mr. Mads Andenas (Norway)

Mr. Vladimir Tochilovsky (Ukraine)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

**Hilal Mammadov,**

Citizen of the Republic of Azerbaijan

v.

Government of the Republic of Azerbaijan

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**URGENT ACTION REQUESTED**

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, and 15/18<sup>1</sup>

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December 12, 2013

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<sup>1</sup> Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the U.N. Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. Resolution 6/4 and 15/18, also extending the mandate of the Working Group on Arbitrary Detention, were adopted by the Human Rights Council which, in accordance with U.N. General Assembly Resolution 60/251, has “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” G.A. Res. 60 /251, ¶ 6 (Mar. 15, 2006).

## **BASIS FOR “URGENT ACTION” REQUEST**

As established in the below petition, the Government of Azerbaijan continues to subject Mr. Mammadov to arbitrary imprisonment and there are substantial grounds to believe that his health is at severe risk as a result of his continued confinement.

As outlined in this petition, when police arrested Mr. Mammadov on June 22, 2012, they beat him in the legs, which caused bleeding and bruising. Authorities also punched him in the head, face, and neck; threatened and mocked him; and beat him in the chest until he lost consciousness. This mistreatment reportedly went uninvestigated by the court despite repeated complaints by the defense. Further, On November 29, 2013, Mr. Mammadov was physically attacked by his cellmate. In the weeks prior to the attack, Mr. Mammadov’s lawyer had asked to have the inmate moved to another cell because of his aggression toward Mr. Mammadov, but the authorities took no action.<sup>2</sup> Unfortunately, this mistreatment and failure to protect is consistent with a pattern of physical and mental abuse aimed at political prisoners in Azerbaijan, especially journalists and rights activists.

In addition to the mistreatment that Mr. Mammadov has faced during his detention, his health has also deteriorated. Mr. Mammadov suffers from asthma, which has been exacerbated by conditions in the detention center.<sup>3</sup>

In light of the Azerbaijani authorities’ widely reported practice of mistreating political detainees, and Mr. Mammadov’s mistreatment in particular, its continued imprisonment of Mr. Mammadov poses a substantial threat to his health. Accordingly, it is hereby requested that the Working Group consider this petition pursuant to the “Urgent Action” procedure.<sup>4</sup> In addition, it is requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights as reconfirmed by Resolution 2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/18.<sup>5</sup>

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<sup>2</sup> *Azerbaijan: Update – Physical Attack on Human Rights Defender Mr. Hilal Mamedov While in Custody*, Front Line Defenders, Dec. 4, 2012, available at: <http://www.frontlinedefenders.org/node/21000>.

<sup>3</sup> *In Baku, Court of Appeals Leaves Editor-In-Chief of Newspaper Tolyshi Sado in Custody*, CAUCASIAN KNOT, Aug. 14, 2012, available at: <http://eng.kavkaz-uzel.ru/articles/21890/>.

<sup>4</sup> *Report of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/16/47, Annex ¶7(b) (“Revised Methods of Work”) (Jan. 19, 2011), at ¶¶ 22-24 [*hereinafter* Revised Methods of Work].

<sup>5</sup> *Id.* at ¶¶ 22-24.

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

***I. IDENTITY***

1. **Family name:** Mammadov (alt. Mamedov)
2. **First name:** Hilal
3. **Sex:** Male
4. **Birth date:** August 28, 1958
5. **Nationality:** Republic of Azerbaijan
6. (a) **Identity document (if any):** Unknown  
(b) **Issued by:**  
(c) **On (date):**  
(d) **No.:**
7. **Profession and/or activity (if believed to be relevant to the arrest/ detention):**  
Minority rights activist and independent editor
8. **Address of usual residence:** Nasimi District, Baku, Azerbaijan

***II. ARREST***

1. **Date of arrest:** June 21, 2012
2. **Place of arrest (as detailed as possible):** Baku, Azerbaijan
3. **Forces who carried out the arrest or are believed to have carried it out:** Unknown
4. **Did they show a warrant or other decision by a public authority?** No
5. **Authority who issued the warrant or decision:** N/A
6. **Relevant legislation applied (if known):** N/A

***III. DETENTION***

1. **Date of detention:** Arrested June 21, 2012; Sentenced September 27, 2013
2. **Duration of detention (if not known, probable duration):** One year and six months

3. **Forces holding the detainee under custody:** Government of Azerbaijan
4. **Places of detention (indicate any transfer and present place of detention):** Baki Istintaq Tecridxanasi N1 (Baku Pre-trial Isolator No 1)
5. **Authorities that ordered the detention:** Baku Court of Grave Crimes
6. **Reasons for the detention imputed by the authorities:** The government sentenced Mr. Mammadov to five years in prison on fabricated charges of drug possession, treason, and inciting hatred. See “Statement of Facts,” below.
7. **Relevant legislation applied (if known):** Articles 234.4.3, 274, and 283.2.2 of the Criminal Code of the Republic Azerbaijan.

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

**I. Statement of Facts**

Part A of this section briefly describes the widespread use of arbitrary detention by means of fabricated charges that is employed by the Government of the Republic of Azerbaijan, especially against independent political activists and journalists. Part B presents the case of Hilal Mammadov, an Azerbaijani human rights defender and publisher who was sentenced to five years in prison on September 27, 2013.

**A. Interference with Fundamental Freedoms and the Use of Arbitrary Detention in the Republic of Azerbaijan (Azerbaijan)**

Freedom House classifies Azerbaijan as “not free” due to the ruling elite’s near monopoly on political power and control over the state’s media and judiciary.<sup>6</sup> In recent years, the Azerbaijani government has grown increasingly authoritarian and the right to freedom of expression, assembly, and association in the country has drastically deteriorated.<sup>7</sup> The government’s current wave of crackdown on dissent began in earnest in response to the 2011 Arab Spring movement. In the spring of 2011, Azerbaijani youth activists, inspired by the popular protests in the Middle East and North Africa, used social media to call for mass demonstrations to protest the country’s poor human rights record and rampant public corruption.<sup>8</sup> The Azerbaijani government responded by forcefully dispersing peaceful protests and arresting participants, as well as youth activists, bloggers, and members of the opposition.<sup>9</sup>

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<sup>6</sup> *Freedom in the World 2013 (Azerbaijan)*, Freedom House, available at: <http://www.freedomhouse.org/report/freedom-world/2013/azerbaijan>.

<sup>7</sup> *Tightening the Screws: Azerbaijan’s Crackdown on Civil Society and Dissent*, Human Rights Watch, Sep. 2013, available at: [http://www.hrw.org/sites/default/files/reports/azerbaijan0913\\_ForUpload\\_0.pdf](http://www.hrw.org/sites/default/files/reports/azerbaijan0913_ForUpload_0.pdf)

<sup>8</sup> *Id* at pg. 11.

<sup>9</sup> *Id*.

The Azerbaijani government's crackdown on dissent and restrictions on freedom of assembly escalated in May 2012 when Baku hosted the Eurovision song competition.<sup>10</sup> Hosting Eurovision put Azerbaijan in the international spotlight and many activists used media and social media to call attention to abuses and to call for democratic reforms. In the weeks leading up to the singing competition, government authorities again violently dispersed peaceful protests<sup>11</sup> and arrested and detained more than 70 demonstrators and journalists.<sup>12</sup> Furthermore, as President Ilham Aliyev sought his third consecutive term in October 2013, his government limited opposition participation in the election by arresting political activists and denying five would-be candidates registration.<sup>13</sup>

Since the crackdown, press freedom and media independence have declined as authorities routinely use threats to intimidate independent journalists and media organizations.<sup>14</sup> The government uses state media to harass and discredit those with opposing views, targeting critical journalists with smear campaigns and denouncing opposition media outlets.<sup>15</sup> Violence has also been employed to intimidate journalists. In 2012, more than 70 cases of physical or verbal assaults on journalists were reported but few were investigated or prosecuted.<sup>16</sup>

Another tactic that the Azerbaijani government employs to silence journalists and other dissidents—including human rights advocates, youth activists, and members of the political opposition—is arbitrary arrest. Today, according to the Baku-based Human Rights Club, there are 142 political prisoners documented in Azerbaijan, including 10 journalists.<sup>17</sup> In 2012 alone, 11 journalists were sentenced to imprisonment.<sup>18</sup> From January to September 2013 six more were imprisoned for their work.<sup>19</sup> The government has long attempted to quell criticism from independent journalists and media outlets by charging them under the country's criminal defamation laws.<sup>20</sup> Earlier this year, the government expanded the definition of criminal libel to include views expressed on the internet; an effort to crackdown on those criticizing the

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<sup>10</sup> *Tightening the Screws: Azerbaijan's Crackdown on Civil Society and Dissent*, *supra* note 7, at pg. 11.

<sup>11</sup> *Country Reports of Human Rights Practices for 2012: Azerbaijan*, U.S. Dept. of State, at § 1(d), available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>12</sup> *Freedom in the World 2013 (Azerbaijan)*, *supra* note 6.

<sup>13</sup> *Ten Candidates Registered For Azerbaijani Presidential Election*, RADIO FREE EUROPE – RADIO LIBERTY, Sep. 17, 2013, available at: <http://www.rferl.org/content/azerbaijan-presidential-election-candidates/25109034.html>

<sup>14</sup> *Tightening the Screws: Azerbaijan's Crackdown on Civil Society and Dissent*, *supra* note 7, at pg. 42.

<sup>15</sup> *Id.*

<sup>16</sup> *Country Reports of Human Rights Practices for 2012: Azerbaijan*, *supra* note 11, at § 2(a).

<sup>17</sup> *List of Cases of Political Prisoners in Azerbaijan*, Helsinki Foundation for Human Rights, Oct. 1, 2013, available at: <http://www.europapraw.org/files/2013/10/HRC-list-of-political-prisoners-in-Azerbaijan-1-Oct-2013.pdf>.

<sup>18</sup> *Freedom of the Press 2013 (Azerbaijan)*, Freedom House, available at: <http://www.freedomhouse.org/report/freedom-press/2013/azerbaijan>.

<sup>19</sup> *Tightening the Screws: Azerbaijan's Crackdown on Civil Society and Dissent*, *supra* note 7, at pg 34.

<sup>20</sup> *Freedom of the Press 2013 (Azerbaijan)*, *supra* note 18.

government on social media and blogs.<sup>21</sup>

While the government has long-since brought defamation suits against journalists and imposed heavy fines on publishers and journalists, it is increasingly adopting a strategy—observed throughout former USSR countries, especially in Central Asia—of arresting journalists and other dissidents on fabricated criminal charges.<sup>22</sup> Authorities are now charging critics with crimes such as drug and arms possession, hooliganism, extortion, inciting hatred, and treason.<sup>23</sup> Defendants are subjected to politicized prosecutions in which reports of torture and abuse are ignored and procedural violations are common. Furthermore, these charges often carry long prison terms,<sup>24</sup> and early appeals are almost always denied whereas they are often granted to non-political criminal convicts.

One case in which the government prosecuted an independent journalist on fabricated criminal charges is that of Araz Guliyev. Mr. Guliyev was arrested and charged with "illegal possession, storage, and transportation of firearms," "participation in activities that disrupt public order," and "inciting ethnic and religious hatred."<sup>25</sup> Prior to his arrest, Mr. Guliyev was the editor of the religious news website *xeber44*. Mr. Guliyev's family believes that he was targeted by the government for his coverage of local protests over public school bans on headscarves.<sup>26</sup> Like other such politicized cases, Mr. Guliyev and his attorneys believe that police planted illegal arms during their search of his home. Despite the severity of the charges, at trial, the prosecution failed to substantiate the charges against him and witness testimonies conflicted with one another.<sup>27</sup> In April 2013, he was convicted and sentenced to eight years in prison.

Drug and weapon possession are common charges that the government levels against regime critics. Human Rights Watch found that between May 2012 and May 2013, six dissidents were arrested on narcotics charges.<sup>28</sup> In these cases, drugs were found in searches conducted without the defendant's attorney present and during interrogations authorities questioned the defendants about their political activities rather than the alleged drug possession.<sup>29</sup> One such case is that of Anar Bayramli, a correspondent for the Iranian broadcaster *Sahar TV*, who was charged with drug possession and sentenced to two years in prison in June 2012.<sup>30</sup> Prior to his arrest, police

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<sup>21</sup> *Tightening the Screws: Azerbaijan's Crackdown on Civil Society and Dissent*, *supra* note 7, at pg 35.

<sup>22</sup> See e.g. *Akzam Turgunov v. Uzbekistan*, UN Working Group on Arbitrary Detention, Opinion No. 53/2011 (adopted Nov. 17, 2011).

<sup>23</sup> *Tightening the Screws: Azerbaijan's Crackdown on Civil Society and Dissent*, *supra* note 7, at pg 2.

<sup>24</sup> *See Id.*

<sup>25</sup> *Azerbaijani Court Sentences Editor to Eight Years in Prison*, Committee to Protect Journalists, Apr. 5, 2013, available at: <http://www.cpj.org/2013/04/azerbaijani-court-sentences-editor-to-eight-years.php>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Tightening the Screws: Azerbaijan's Crackdown on Civil Society and Dissent*, *supra* note 7, at pg 26.

<sup>29</sup> *Id.*

<sup>30</sup> *In Azerbaijan, Reporter Convicted on Drug Charges*, Committee to Protect Journalists, June 2, 2012, available at: <http://cpj.org/2012/06/in-azerbaijan-reporter-convicted-on-drug-charges.php>.

interrogated him on several occasions about his journalistic activities and political views.<sup>31</sup> He was charged with drug possession after police claimed to have found heroin in his coat pocket which had been left unattended in the police station.<sup>32</sup> Another case is that of Parviz Hasmili, an editor for the independent news website *Moderator* and a journalist for the independent newspaper *Bizim Yol*,<sup>33</sup> who was arrested in September 2013 and charged with illegal weapons and drug possession.<sup>34</sup> Police raided Mr. Hasmili's home and conducted a search without presenting his wife with a search warrant and without his attorney present. Later, police claimed to have discovered illegal arms in his home.<sup>35</sup> Mr. Hasmili believes that police planted the weapons to keep him from covering the October elections.<sup>36</sup>

## **B. The Arbitrary Detention of Hilal Mammadov**

### **1. Background Information on Hilal Mammadov<sup>37</sup>**

Hilal Mammadov is a journalist and minority rights activist who was sentenced to five years in prison on September 27, 2013 as the result of fabricated charges brought against him for possessing narcotics, treason, and inciting hatred. International rights groups have widely dismissed the charges against him and called for his release: Article 19, Human Rights Watch, Amnesty International, Front Line Defenders, the Committee to Protect Journalists, and Reporters Without Borders have all criticized the charges as being politically motivated and called for Mr. Mammadov's release.<sup>38</sup>

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<sup>31</sup> *Azerbaijan: Authorities Determined to Silence Dissent to Ensure Successful Eurovision*, Amnesty International, May 1, 2012, available at: <http://www.amnesty.org/en/library/asset/EUR55/008/2012/en/65ec8ab0-6448-4add-8863-4b44c368e07e/eur550082012en.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> *In Azerbaijan, Journalist Arrested, Newsroom Raided*, Committee to Protect Journalists, Sept. 19, 2013, available at: <http://cpj.org/2013/09/in-azerbaijan-journalist-arrested-newsroom-raided.php>.

<sup>34</sup> *Azeri Journalist Charged With Drugs, Weapon Possession*, RADIO FREE EUROPE – RADIO LIBERTY, Sep. 18, 2013, available at: <http://www.rferl.org/content/azerbaijan-journalist-arrest/25109723.html>

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Some of the information contained in this section is based on private communications with individual sources. Their identities have been redacted due to concerns for their security or at their own request.

<sup>38</sup> International Partnership Group for Azerbaijan, a coalition of international organizations that is lead by Article 19 and includes Freedom Now, has adopted Mr. Mammadov's case as one of its campaigns. The IPGA campaign website for Mr. Mammadov can be found at: <http://azerbaijanfreeexpression.org/campaigns/imprisonment/arrested-hilal-mammadov/>; *Azerbaijan: Concerns Regarding Freedom of the Media and Freedom of Expression*, Human Rights Watch, Nov. 2, 2012, available at: <http://www.hrw.org/news/2012/11/02/azerbaijan-concerns-regarding-freedom-media-and-freedom-expression>; *Azerbaijan Crackdown on Free Speech Continues Amid Activists' Release*, Amnesty International, June 26, 2012, available at: <http://www.amnesty.org/en/news/release-prisoners-conscience-azerbaijan-cannot-mask-ongoing-crackdown-freedom-speech-2012-06-26>; *Azerbaijan: Mr. Hilal Mamedov, Editor in Chief of Tolishi Sado Arrested and Charged with Possession and Distribution of Heroin*, Front Line Defenders, June 25, 2012, available at: <http://www.frontlinedefenders.org/node/18725>; *Editor of Talysh Paper Further Targeted in Azerbaijan*, Committee to Protect Journalists, July 5, 2012, available at: <https://cpj.org/2012/07/editor-of-talysh-paper-further-targeted-in-azerbai.php#more>; *Azerbaijan's Detained Journalists Must be Released*, Reporters Without Borders, March 12, 2013, available at: <http://en.rsf.org/azerbaijan-azerbaijan-s-detained-journalists-10-01-2013,43893.html>.

Born in the Astara region of Azerbaijan on August 28, 1958, Mr. Mammadov earned a doctorate in Physics and Mathematical Science in 1986.<sup>39</sup> In the late 1980s, Mr. Mammadov took advantage of increasing openness in the Azerbaijan Soviet Socialist Republic to publish an unofficial journal chronicling the problems faced by the Talysh minority—an ethnically Iranian group of Azerbaijani citizens located primarily in southeastern Azerbaijan, of which he is a member.<sup>40</sup> He also co-founded the unofficial Talysh People’s Party, later renamed the Party of Equality of the Peoples of Azerbaijan, but was forced to seek exile in Russia after the party was banned in 1993.<sup>41</sup>

In 2005, Mr. Mammdov returned to Baku and continued his activism. In 2007, he formed the Committee for the Defense of Novruzali Mammadov (no relation), a Talysh scholar and editor of the *Talyshi Sado* (Voice of the Talysh) who was arrested on charges of spying for Iran and sentenced to 10 years in prison.<sup>42</sup> In August 2009, Novruzali Mammadov died under suspicious circumstances at a prison hospital after reportedly being ill-treated and denied adequate medical care.<sup>43</sup> In response to his work on behalf of the Committee, Mr. Mammadov was warned that he would be arrested “sooner or later.”<sup>44</sup>

On June 9, 2012, Hilal Mammadov was himself elected editor-in-chief of the *Talyshi Sado*.<sup>45</sup> While an editor of the country’s only Talysh-language newspaper,<sup>46</sup> Mr. Mammadov regularly received threats to stop his work.<sup>47</sup> Additionally, Mr. Mammadov served as Chairman of the Committee for Rehabilitation of the Rights of Political Prisoners<sup>48</sup> and consulted for the Institute for Democracy and Peace.<sup>49</sup>

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<sup>39</sup> *Why did Azerbaijani Authorities Arrest Talysh Activist?* RADIO FREE EUROPE – RADIO LIBERTY, July 2, 2012, available at: <http://www.rferl.org/content/azerbaijan-authorities-arrest-talysh-/24632376.html>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Azerbaijan: Death in Detention of Human Rights Defender, Mr. Novruzali Mamedov*, Front Line Defenders, Aug. 18, 2008, available at: <https://www.frontlinedefenders.org/node/2129>.

<sup>44</sup> Redacted.

<sup>45</sup> *What is Behind the Arrest of the Author of the Video "Who are you? Come on, Goodbye."*, CONTACT.AZ, June 22, 2012, available at: <http://contact.az/docs/2012/Analytics/062200003330en.htm#.UfgGVdLOvnm>.

<sup>46</sup> *Frontline Defenders Demand Release of Halil Mamedov*, CONTACT.AZ, June 23, 2012, available at: <http://www.contact.az/docs/2012/Politics/062300003624en.htm#.UD4uGcFISZl>.

<sup>47</sup> Redacted.

<sup>48</sup> Redacted.

<sup>49</sup> *Azerbaijan: Mr. Hilal Mamedov, Editor In Chief of Tolishi Sado Arrested and Charged with Possession and Distribution of Heroin*, Front Line Defenders, June 25, 2012, available at: <http://www.frontlinedefenders.org/node/18725>. In March 2013, Mr. Mammadov was awarded the Azerbaijan Institute of Peace and Democracy’s Isakhan Ashurov prize for his human rights work. *Embattled Talysh Editor Awarded Human Rights Prize*, RADIO FREE EUROPE – RADIO LIBERTY, Mar. 31, 2013, available at: <http://www.rferl.org/content/talysh-editor-azerbaijan/24943695.html>.



Before his arrest, Mr. Mammadov spoke out on behalf of Talysh rights and in support of preserving their national identity, but did not advocate for a separate Talysh state.<sup>50</sup> Before his politically motivated arrest in 2012, Mr. Mammadov had never been convicted of a crime.<sup>51</sup>

## 2. Arbitrary Arrest of Hilal Mammadov

In May 2012, Mr. Mammadov joined the internet meme “Who are you? Come on, Goodbye,” a song of dissidence then being used to protest Russian President Vladimir Putin.<sup>52</sup> Mr. Mammadov uploaded an Azerbaijani rap (meykhana) version of the song performed at a wedding party in the town of his birth<sup>53</sup> and posted it on YouTube.<sup>54</sup> The video drew widespread attention on the internet and on television channels in Azerbaijan and Russia.<sup>55</sup> The Russian television station NTV interviewed Mr. Mammadov about the history of the phrase “who are you,” during which he took the film crew to a monument of the late poet Aliaga Vahid, known for his meykhana, and linked the phrase to a historical argument between a poet and a government representative.<sup>56</sup>

Mr. Mammadov also invited the television crew to attend a Talysh folklore party on June 13, 2012—which Azerbaijani authorities had warned him to cancel. During the event Mr. Mammadov criticized the government’s handling of the Eurovision contest and the marginalization of the Talysh people.<sup>57</sup> He reportedly said that “while the government spent up to \$1 billion, allegedly wanting to show Azerbaijan around the world, we did not expend a single penny and presented Azerbaijan and its integral [sic] part Talysh to the world.”<sup>58</sup> Following these events, supporters reported that Mr. Mammadov “faced various prosecutions, often persecuted and his mobile and home numbers were tapped.”<sup>59</sup>

Eight days later, on June 21, 2012, Mr. Mammadov left his home to visit a relative in the

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<sup>50</sup> *Why did Azerbaijani Authorities Arrest Talysh Activist?*, *supra* note 39.

<sup>51</sup> Redacted.

<sup>52</sup> *What is Behind the Arrest of the Author of the Video, “Who are you? Come on. Goodbye*, *supra* note 45.

<sup>53</sup> Redacted. The *meykhana* is described as a “popular form of entertainment involving two or more people creating dueling rhymes in two-line or four-line folk verse with humorous overtone.”

<sup>54</sup> *Union for Democracy in Azerbaijan and Amnesty International Demanded Freedom for Hilal Mamedov*, PANORAMA, Sept. 6, 2012, available at: <http://panorama.am/en/society/2012/09/06/hilal-mamedov/?sw>. Although Mr. Mammadov uploaded the video, he did not film or appear in it. Redacted.

<sup>55</sup> The video reportedly amassed millions of views from around the world.

<sup>56</sup> Redacted.

<sup>57</sup> *Search of Hilal Mamedov’s Home Results in Blatant Violations*, CONTACT.AZ, July 3, 2012, available at: [http://www.contact.az/docs/2012/Social/070300004425en.htm#\\_UD5T28FISZk](http://www.contact.az/docs/2012/Social/070300004425en.htm#_UD5T28FISZk). It appears that a non-official request to hold the event in a “wedding” format was relayed to Azerbaijani authorities; however, Mr. Mammadov was warned not to hold the event. Redacted.

<sup>58</sup> *Id.* The video interview is available at: <http://www.ntv.ru/novosti/310104/>. While the NTV crew filmed at least some of the Talysh event, it does not appear that it broadcast the event or Mr. Mammadov’s speech.

<sup>59</sup> *Search of Hilal Mamedov’s Home Results in Blatant Violations*, *supra* note 57.

hospital. At 11:00 am, he called home and said that he would be home 30 minutes later.<sup>60</sup> However, Mr. Mammadov did not return home. His family called his cell phone number and were told by an unknown man who answered the phone that Mr. Mammadov was under medical observation and would return after a doctor's examination.<sup>61</sup> Later claiming to have acted on a tip from a "secret source," the government arrested Mr. Mammadov that afternoon.<sup>62</sup>

In a letter to the Parliamentary Assembly of the Council of Europe (PACE) Mr. Mammadov described his arrest. He said that at noon on June 21, 2012, he was returning home from the hospital when 6-7 plain-clothed men attacked him and forced him into an unmarked car.<sup>63</sup> The men did not identify themselves during the arrest. However, his assailants placed Mr. Mammadov in the car and restrained him by striking him in the shin, which caused bleeding and bruising, and then punched him in the chest until he lost consciousness. Thereafter, they held him without access to food or water for two days; repeatedly threatened him; punched him in the head, face, and chest; and insulted him regarding his political views and ethnic identity. Despite his injuries, authorities did not provide him with any medical attention.<sup>64</sup> After his arrest, Mr. Mammadov was brought to a drug enforcement facility, where officers claimed to have found drugs in his pocket, which he believes must have been planted by the police.<sup>65</sup>

That evening, approximately 20 police officers searched Mr. Mammadov's home "without [a] court decision" and without his consent.<sup>66</sup> Mr. Mammadov's wife, Bahar Mammadova, was stunned by the search of her home. At a press conference, she said that during the search authorities forced the entire family into one room and ransacked the apartment.<sup>67</sup> While conducting the search, one of the police officers reportedly asked Mr. Mammadov's father, "[w]hy was your son defending Talysh people? Did he not know how it can end up?"<sup>68</sup>

Mr. Mammadov's lawyer, Anar Gasimli, attempted to see his client the evening of the arrest at the Nizami Police Department in Baku; however, he was denied access and was not provided with the case file related to his client's arrest.<sup>69</sup> The attorney first saw Mr. Mammadov the

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<sup>60</sup> *Azerbaijan: Mr. Hilal Mamedov, Editor in Chief of Tolishi Sado Arrested and Charged with Possession and Distribution of Heroin*, *supra* note 49.

<sup>61</sup> *Id.*

<sup>62</sup> *Come On, Behind Bars!*, LOOK, 22 June 2012, available at: <http://vz.ru/politics/2012/6/22/585044.html>

<sup>63</sup> *Political Prisoner Hilal Mamedov's Appeal to Parliamentary Assembly of Council of Europe*, THE VOICE OF MIRZA XAZAR, July 16, 2012, available at: <http://en.mirzexezerinsesi.net/articles/2012/07/16/political-prisoner-hilal-mamedovs-appeal-to-parliamentary-assembly-of-council-of-europe>

<sup>64</sup> Redacted.

<sup>65</sup> *Political prisoner Hilal Mamedov's Appeal to Parliamentary Assembly of Council of Europe*, *supra* note 63.

<sup>66</sup> Redacted.

<sup>67</sup> *Search of Hilal Mamedov's Home Results in Blatant Violations*, *supra* note 57.

<sup>68</sup> *Front Line Defenders Demand Release of Hilal Mammadov*, *supra* note 46.

<sup>69</sup> *Id.* Although the government did formally appoint a lawyer for Mr. Mammadov after his arrest, that lawyer did not participate in the investigation process and Mr. Mammadov was not permitted to meet with him. Redacted. *See also Azerbaijan: Mr. Hilal Mamedov, Editor in Chief of Tolishi Sado Arrested and Charged with Possession and Distribution of Heroin*, *supra* note 49.

following day, when he photographed Mr. Mammadov's injuries.<sup>70</sup>

The above mistreatment is the subject of an appeal filed on February 5, 2013 by Mr. Mammadov to the European Court of Human Rights. As such, the description of his mistreatment in this petition is included only insofar as it is relevant to the Urgent Action request and to the extent that it provides insight into the government's underlying motivation for imprisoning Mr. Mammadov. This petition does not seek an opinion from the Working Group regarding the mistreatment itself or whether that mistreatment renders his imprisonment arbitrary.

### 3. Fabricated Charges against Hilal Mammadov

On June 22, 2012, the Nizami District Court authorized the pretrial detention of Mr. Mammadov on charges of possessing and distributing drugs under Article 234.4.3 of the Criminal Code, which carries a sentence of between five and 12 years in prison.<sup>71</sup> The decision to hold Mr. Mammadov in pretrial detention was the subject of a separate appeal process, which was conclusively rejected by the Baku Court of Appeal and was submitted on November 19, 2013 to the European Court of Human Rights—as such, the legality of the government's decision to hold Mr. Mammadov in pretrial detention is expressly excluded from the case presented to the UN Working Group on Arbitrary Detention and forms no part of this petition.

On June 25, 2012, the government conducted a second search of Mr. Mammadov's home, this time with court authorization, for the purported purpose of discovering evidence of drug trafficking.<sup>72</sup> During this search, police confiscated a laptop, DVDs, CDs, and tapes. Mr. Mammadov's lawyers were not permitted to observe the search or take inventory of the items seized.<sup>73</sup> After the second search, the government also charged Mr. Mammadov on July 3, 2012 with “incitement of national, racial, or religious hatred,” which carries a penalty of three to five years in prison under Article 283.2.2 of the Criminal Code, and treason, which is punishable by “by imprisonment for the term of from ten up to fifteen years or life imprisonment,” under Article 274 of the Criminal Code.<sup>74</sup>

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<sup>70</sup> Redacted.

<sup>71</sup> *Front Line Defenders Demand Release of Hilal Mammadov*, supra note 46. The court reportedly “accepted” the complaint of ill-treatment during the pre-trial hearing on June 22, 2012 after Mr. Mammadov's legal team presented the court with photographs of his injuries as a result of the beating he sustained during the arrest. *Id.* However, on July 31, 2012, the court declined to accept the complaint of mistreatment, claiming that the complaint did not meet the requirements of Article 449 of the Criminal Procedure Code. *Protest Action in Support of Hilal Mamedov Held at Azerbaijani Embassy in Moscow*, CAUCASIAN KNOT, Aug. 2, 2012, available at: <http://www.eng.kavkaz-uzel.ru/articles/21764/>. Further, during a closed-door hearing at the Nazami District Court on August 29, 2012, the Deputy General Prosecutor denied a motion by the defense to file a complaint against the authorities for inhumane treatment suffered during the arrest. Redacted.

<sup>72</sup> Redacted. The government also attempted to conduct a drug test of Mr. Mammadov on July 12, 2012, a full 20 days after his arrest. However, Mr. Mammadov refused the medical examination and was quoted by activists as saying, “I reject the medical examination because I perceive this procedure as a criminal act aimed at the destruction of my personality, weakening my health, and an attempt on my life. *Hilal Mamedov Refuses a Medical Examination*, ETIRAZ.COM, July 22, 2012, available at: <http://etiraz.com/2012/07/hilal-mamedov-refuses-a-medical-examination/>.

<sup>73</sup> Redacted.

<sup>74</sup> *Azerbaijani Newspaper Editor Charged with Treason*, RADIO FREE EUROPE – RADIO LIBERTY, July 4, 2012, available at: <http://www.rferl.org/content/azerbaijani-talysh-newspaper-editor-charged-with-treason/24634998.html>;

#### 4. Arbitrary Imprisonment of Hilal Mammadov

Although the trial against Mr. Mammadov involved a number of proceedings that occurred over more than eight months,<sup>75</sup> the evidence presented by the government and the conduct of the proceedings demonstrate that the ultimate goal of the fabricated charges was to punish Mr. Mammadov for his writings and activism.

First, the only evidence presented against Mr. Mammadov regarding the drug charges was limited to the physical narcotics allegedly obtained during the search of Mr. Mammadov's person and home.<sup>76</sup> As noted above, this evidence was used by the government at trial even though it was seized without a warrant and was obtained after the arresting authorities reportedly beat Mr. Mammadov until he was unconscious.<sup>77</sup>

As to the security related charges, it appears that the government's accusations "overlap and are copied from" its prosecution of Novruzali Mammadov—Hilal Mammedov's predecessor at the *Talyshi Sado*.<sup>78</sup> Indeed, the government's primary witness during the prosecution of Hilal Mammadov was Elman Guliyev, an individual who was arrested and sentenced along with Novruzali Mammadov years earlier. Apparently, the thrust of Mr. Guliyev's testimony was that Hilal Mammadov had admitted to him in 2006 that he had worked as an Iranian agent in exchange for drugs and money.<sup>79</sup> Aside from this testimony—which was directly contradicted by earlier testimony from Mr. Guliyev and written statements by other witnesses<sup>80</sup>—the government relied on Mr. Mammadov's work as a publisher and activist to prosecute him.

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See also Ministry of Internal Affairs, Republic of Azerbaijan, Press Releases, 4 July 2012, available at: <http://www.mia.gov.az/?/ru/news/view/262/>. See also Criminal Code of the Republic of Azerbaijan, available at, <http://legislationline.org/documents/section/criminal-codes>.

<sup>75</sup> The hearing on January 10, 2013 was the first proceeding to occur after authorities completed their investigation and referred the case to the Baku Court of Grave Crimes. On January 29, 2012, the prosecution began and after a series of proceedings, many of which were postponed, the court completed sentencing on September 27, 2013.

<sup>76</sup> Redacted. According to his supporters, the searches violated Article 8 of the European Convention on Human Rights and Articles 153, 177, and 242-247, of the Criminal Code of Azerbaijan.

<sup>77</sup> Although the defense team objected to this evidence and asked that it be excluded from the trial because of the obvious procedural violations involved, the judge rejected the request. *Witness Testimonies Reveal New Facts in Journalist's Case*, Institute for Reporters' Freedom and Safety, June 14, 2013, available at: <http://www.irfs.org/news-feed/witness-testimonies-reveal-new-facts-in-journalists-case/>. Similar motions, such as a request that Mr. Mammadov be allowed to sit with the defense team, that the statements by public officials confirming his guilt violated the right to presumption of innocence, and that the trial be recorded were also denied.

<sup>78</sup> Redacted.

<sup>79</sup> *Embattled Talysh Editor Awarded Human Rights Prize*, RADIO FREE EUROPE – RADIO LIBERTY, Mar. 31, 2013, available at: <http://www.rferl.org/content/talysh-editor-azerbaijan/24943695.html>. See also Redacted.

<sup>80</sup> At his own trial in 2007, Mr. Guliyev denied knowing Hilal Mammadov. *Id.* Further, although Mr. Guliyev claimed that two other men witnessed the conversation in 2006, both Ali Nasser and Atakhan Abilov, now living outside Azerbaijan, submitted written depositions denying that they had been present during the alleged conversation. *Id.* When questioned regarding the clear discrepancy in his testimony, Mr. Guliyev merely responded: "I understood that I can't deceive the government." Redacted.

The government's indictment regarding the treason and incitement charges included disseminating information, writing articles as a journalist, conducting interviews, and translating unspecified books.<sup>81</sup> The offending articles reportedly included two pieces written for *Talyshi Sado*<sup>82</sup> and unpublished articles discovered during the investigation. These writings included a folklore event speech, an appeal to his students regarding his dismissal from a teaching post, and a third piece that he denied writing.<sup>83</sup> The government also accused him of speaking at a conference in Iran, though it did not disclose the content of his statement.<sup>84</sup>

Much of the trial was conducted behind closed doors. The court ruled that due to the presence of "state secrets," only the proceedings related to the drug charges would be open to the public.<sup>85</sup> Despite the court's concern regarding the supposed "state secrets" involved in the case, officials had already publicly disclosed the nature of the allegations against Mr. Mammadov. On July 4, 2012, the Ministry of Internal Affairs and General Prosecution Office issued a public statement accusing Mr. Mammadov of cooperating with the Iranian special services since 1992.<sup>86</sup> Further, when Mr. Mammadov's lawyer objected to the exclusion of journalists during the government's closing arguments, he too was prohibited from viewing the proceedings.<sup>87</sup>

It also appears that at least some of the evidence adduced at trial resulted from statements that were not subject to cross examination by the defense. For example, a statement from employees of the DHS Counterterrorism Center concluding that Mr. Mammadov was engaged in separatist and nationalist activities may have been introduced, but its authors were not made available for questioning. Further, while the court allowed the defense to examine the lead investigator, Mr. Jeyhun Kermiov, the statements of two other witnesses who were not available for trial (either because of death or residence abroad) were only read in court.<sup>88</sup>

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<sup>81</sup> Redacted.

<sup>82</sup> During the proceedings, two "experts" reportedly concluded that the two articles written by Mr. Mammadov and addressed to the Talysh people made statements against authorities and incited ethnic hatred. Mr. Mammadov's lawyer maintained that the witness failed to identify who the relevant authorities were and against whom ethnic hatred was incited. *Experts Give Testimonies at the Trial of Hilal Mammadov*, CONTACT.AZ, Apr. 13, 2013, available at: <http://www.contact.az/docs/2013/Politics/041700035028en.htm#.UXAJWqKc-Hg>.

<sup>83</sup> Redacted. According to his supporters, the third article may have been created by the authorities after Mr. Mammadov's arrest by combining parts of his articles and then adding some new sentences.

<sup>84</sup> Redacted. Mr. Mammadov denies having participated in the conference in Iran, instead indicating that it was an "exhibition dedicated to Talysh culture."

<sup>85</sup> It appears that in addition to the proceedings related to the drug charges, some of the preliminary proceedings were also open to the public—albeit after the defense objected to excluding them from the courtroom in some instances. Front Line Defenders, *Azerbaijan: Closed Trial of Human Rights Defender Mr. Hilal Mamedov*, Feb. 4, 2013, available at: <http://www.frontlinedefenders.org/node/21529>.

<sup>86</sup> *Front Line Defenders Demand Release of Hilal Mammadov*, supra note 46. See also *Interior Ministry and Prosecutor's Office: Hilal Mamedov is Iranian Spy*, CONTACT.AZ, July 4, 2012, available at: <http://contact.az/docs/2012/Social/070400004565en.htm#.Ua9-7tI-Y3I>.

<sup>87</sup> *Media Rights Institute Draws Conclusion of Hilal Mamedov Case*, CONTACT.AZ, Apr. 10, 2013, available at: <http://www.contact.az/docs/2013/Politics/041000034163en.htm#.UWWEdaKc-Hg>.

<sup>88</sup> *Investigator Will Still Have to Answer the Questions of Hilal Mamedov's Lawyers*, CONTACT.AZ, Aug. 7, 2013, available at: <http://www.contact.az/docs/2013/Politics/080700045199en.htm#.UnFZvXCc9Vg>. See also *Court of*

Echoing his client's testimony,<sup>89</sup> Mr. Mammadov's lawyer presented his closing arguments on September 25, 2013. During his presentation, the defense indicated that the government violated Mr. Mammadov's procedural rights by, among other things, denying him access to trusted legal counsel after his arrest, searching his apartment without a warrant, and failing to inform him of his rights. Further, the lawyer asserted that the prosecution's primary witness was unreliable and the government's true motivation was Mr. Mammadov's exercise of the right to free expression.<sup>90</sup>

On September 27, 2013, the Court found Mr. Mammadov guilty on all charges.<sup>91</sup> Although he faced a possible sentence of life in prison as a result of the judgment, the court ultimately imposed a prison term of five years.<sup>92</sup>

## II. Legal Analysis

The continued imprisonment of Mr. Mammadov in response to his work as an activist and publisher is arbitrary<sup>93</sup> under Categories II, III, and V as established by the UN Working Group on Arbitrary Detention (Working Group).

Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR), to which

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*Justice Cannot Ensure the Attendance of Witness in Hilal Mamedov Trial*, CONTACT.AZ, July 31, 2013, available at: <http://www.contact.az/docs/2013/Politics/073100044381en.htm#.UnFbx3Cc9Vg>.

<sup>89</sup> At a hearing on May 29, 2013, Mr. Mammadov's lawyer "spoke about the violation of his rights to legal protection." Reportedly, Mr. Mammadov had earlier attempted to give the same speech, but was interrupted by the judge. The judge rejected Mr. Mammadov's complaint (after roughly 30 minutes) and the proceedings continued. Mr. Mammadov then testified that he was arrested for posting the video online about Talysh culture and beaten en-route to the police station. He also indicated that during the search of his home, at which he was present, a police officer pointed at a copy of an Arab-Farsi dictionary and "History of Lankaran khante" and said "You have been arrested for this." *Hilal Mammadov: "I Was Arrested for the Clip "Who Are You, Let's Goodbye,"* CONTACT.AZ, May 29, 2013, available at: <http://www.contact.az/docs/2013/Politics/052900037870en.htm#.Ua-kgNI-Y3K>.

<sup>90</sup> *Sentence in the Case of Hilal Mamedov Will Be Passed on September 27*, CONTACT.AZ, Sept. 25, 2013, available at: <http://www.contact.az/docs/2013/Politics/092500051077en.htm#.UnFWIXCc9Vg>.

<sup>91</sup> *Azeri Court Jails Ethnic Minority Newspaper Editor for Five Years*, RFE/RL, Sept. 27, 2013, available at: <http://www.rferl.org/content/azerbaijan-journalist-sentence-mamedov/25120028.html>.

<sup>92</sup> Interestingly, it appears that the government actually sentenced Mr. Mammadov to substantially less time in prison than authorized under the Criminal Code; treason charge under Article 274 imposes a sentence "from ten up to fifteen years or life imprisonment."

<sup>93</sup> An arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law." International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, at art. 9(1) [*hereinafter* ICCPR]. Such a deprivation of liberty is specifically prohibited by international law. *Id.* "No one shall be subjected to arbitrary arrest, detention or exile." Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at art 9 (1948) [*hereinafter* UDHR]. "Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law..." Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, at Principle 2, G.A. Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [*hereinafter* Body of Principles].

Azerbaijan is a party,<sup>94</sup> expressly prohibits arbitrary imprisonment by providing that “[n]o one shall be subject to arbitrary arrest or detention.”<sup>95</sup> Similarly, Article 9 of the Universal Declaration of Human Rights declares that “[n]o one shall be subjected to arbitrary arrest, detention, or exile.”<sup>96</sup> Arbitrary detention is a broader category than merely “unlawful;” a specific detention must be consistent with domestic law *and* not arbitrary (i.e. consistent with international standards).<sup>97</sup> In executing its mandate, the Working Group looks to the standards established by instruments of international law and supporting legal standards, including the ICCPR, the UDHR, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>98</sup> Additionally, the Working Group may also consider its past jurisprudence as persuasive authority regarding the law of arbitrary detention.<sup>99</sup>

While the mandate of the Working Group is limited to determining whether a particular detention is “arbitrary,” that finding and the subsequent categorization of the detention are informed by other areas of human rights law. Therefore, while the below analysis invokes a number of substantive international standards—such as the right to freedom of expression—it is not an exhaustive discussion of those substantive rights in this case. Instead, the below analysis is limited to those facts and standards that inform the *arbitrary* nature of Mr. Mammadov’s continued imprisonment on fabricated charges.

#### A. Category II

The detention of Mr. Mammadov on fabricated charges in response to his cultural activism and work as a publisher renders his continued imprisonment arbitrary under Category II. A detention is arbitrary under Category II when it results from the exercise of fundamental rights or freedoms protected under international law.<sup>100</sup>

The right to freedom of expression, association, and assembly are expressly protected under international law. Article 19(2) of the ICCPR provides that “[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of

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<sup>94</sup> Azerbaijan acceded to the ICCPR, without reservation, on August 13, 1992. Status of Ratification of the International Covenant on Civil and Political Rights, U.N.T.C. Chapter IV(4), available at: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en).

<sup>95</sup> ICCPR *supra* note 93, at art. 9(1).

<sup>96</sup> UDHR *supra* note 93, at art. 9.

<sup>97</sup> SARAH JOSEPH ET AL., THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES AND CONTROVERSIES (Oxford 2004 2nd ed.) at 308 – 309.

<sup>98</sup> Revised Methods of Work, *supra* note 4 at § III(7).

<sup>99</sup> Jared Genser & Margaret Winterkorn-Meikle, The Intersection of Politics and International Law: The United Nations Working Group on Arbitrary in Theory and Practice, 38 Colum. Hum. Rts. L. Rev. 691 (2008) at 118.

<sup>100</sup> According to the Working Group’s Revised Methods of Work, a detention is arbitrary under Category II “when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights.” Revised Methods of Work,” *supra* note 4 at ¶ 8(b).

art, or through any other media of his choice.”<sup>101</sup> Similarly, the ICCPR expressly protects the right to freedom of association<sup>102</sup> and freedom of assembly.<sup>103</sup> The UN Human Rights Committee (Committee), the body tasked with interpreting the ICCPR, has recognized that the right to freedom of expression specifically protects the work of journalists<sup>104</sup> and “includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.”<sup>105</sup> The Committee has also emphasized that freedom of expression and “a free and uncensored press” are of “paramount importance” in a democratic society.<sup>106</sup>

Despite these express protections, the Government of Azerbaijan has imprisoned Mr. Mammadov precisely because of his peaceful expression and association. Indeed, the facts of this case are strikingly similar to those of other activists and journalists in Azerbaijan who have faced long prison sentences on fabricated charges in recent years. The warrantless arrest, unauthorized search, subsequent mistreatment, and repeated due process violations in this case mirror closely the pattern of subjecting critical voices to arbitrary detention.

Further, statements made by government officials during the arrest and search point to the government’s true motive in this case. Mr. Mammadov reported that after his arrest, police subjected him to beatings and insulted his political views and ethnic identity. Further, at trial Mr. Mammadov testified that during the search of his home, a police officer pointed at a copy of an Arab-Farsi dictionary and the “History of Lankaran khante” and said “You have been arrested for this.”<sup>107</sup> Similarly, another officer asked Mr. Mammadov’s father, “[w]hy was your son defending Talysh people? Did he not know how it can end up?”

Perhaps most telling, however, is the fact that the government relied upon Mr. Mammadov’s articles and speeches during its prosecution, even though he never advocated the use of violence. While governments may limit free expression and association in limited circumstances,<sup>108</sup> such

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<sup>101</sup> ICCPR, *supra* note 93, at art. 19(2). *See also* UDHR, *supra* note 93, at art. 19 (“[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”).

<sup>102</sup> “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” ICCPR *supra* note 93, at art 22(1). *See also* UDHR *supra* note 93, at art. 20(1) (“Everyone has the right to freedom of peaceful assembly and association.”).

<sup>103</sup> “The right to peaceful assembly shall be recognized.” ICCPR *supra* note 93, at art 21. *See also* UDHR *supra* note 93 at art 20(1).

<sup>104</sup> *Movlonov et. al. v. Uzbekistan*, UN Human Rights Committee, Communication No. 1334/2004, U.N. Doc. CCPR/C/95/D/1334/2004 (*adopted* Mar. 19, 2009).

<sup>105</sup> *de Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (*adopted* Mar. 29, 2005) at ¶ 6.7.

<sup>106</sup> *Id.* *See also* General Comment No. 25, UN Human Rights Committee, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (July 12, 1996) at ¶ 12 (“Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected.”).

<sup>107</sup> “*I Was Arrested for the Clip “Who Are You, Let’s Goodbye,”* *supra* note 89.

<sup>108</sup> Article 19(3) of the ICCPR, *supra* note 93, provides that, “[t]he exercise of the [right to freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) [f]or the respect of the rights or reputations of others; [or] (b) [f]or the protection of national security or of public order (ordre public), or of public health and morals.”



narrow exceptions “must meet a strict test of justification.”<sup>109</sup> Where, as here, an individual peacefully exercises a fundamental liberty, such as the right to freedom of expression or association, the government may not imprison them merely because the government dislikes it or disagrees.

As such, the continued imprisonment of Mr. Mammadov is arbitrary under Category II.

### **B. Category III**

The continued detention of Mr. Mammadov is arbitrary under Category III. A deprivation of liberty is arbitrary under Category III where “the total or partial non-observance of the international norms relating to the right to a fair trial... is of such gravity as to give the deprivation of liberty an arbitrary character.”<sup>110</sup>

The facts of this case, outlined above, implicate a number of internationally recognized procedural requirements that the government failed to observe in this case. Among them are: the right to be informed of the reason for arrest;<sup>111</sup> the right to a fair and public hearing by a competent, independent, and impartial tribunal;<sup>112</sup> the right to the presumption of innocence;<sup>113</sup> the right to be tried with the assistance of legal counsel;<sup>114</sup> and the right to cross-examine witnesses.<sup>115</sup>

When taken together, the above violations render the continued imprisonment of Mr. Mammadov arbitrary under Category III.

### **C. Category V**

The targeting of Mr. Mammadov because of his activism on behalf of Azerbaijan’s Talysh minority is arbitrary under Category V.

A detention is arbitrary under Category V when, in violation of international law, the detention is discriminatory “based on birth; national, ethnic, or social origin; [or] language... and aims towards or can result in ignoring the equality of human rights.”<sup>116</sup> Although there is little

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<sup>109</sup> *Park v. Republic Korea*, UN Human Rights Committee, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995 (adopted Oct. 20, 1998) at ¶ 10.3.

<sup>110</sup> Revised Methods of Work, *supra* note 5, at ¶8(c).

<sup>111</sup> ICCPR, *supra* note 93, at art. 9(2).

<sup>112</sup> *Id.* at art. 14(1).

<sup>113</sup> *Id.* at art. 14(2).

<sup>114</sup> *Id.* at art. 14(3)(b&d).

<sup>115</sup> *Id.* at art. 14(3)(e).

<sup>116</sup> Revised Methods of Work, *supra* note 4, at § III(8)(e) (“When the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic, or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights.”).

jurisprudence from the Working Group regarding this new category, it is clear that the factual circumstances of an arrest or detention may indicate that government officials were racially or ethnically motivated.<sup>117</sup> For example, in *El Hadj v. Spain*, the source reported that the detainee, a Moroccan migrant detained in Spain, was subjected to mistreatment and racial insults before his deportation.<sup>118</sup> In finding a violation of Category V, the Working Group noted that at the holding center, the detainee “was harassed, ill-treated and tortured, as well as suffering insults that were highly racist – and therefore discriminatory.”<sup>119</sup>

In this case, it appears evident that the government was motivated by Mr. Mammadov’s activism and the fact that his activism was closely related to the promotion of Talysh minority rights. As in the case of *El Hadj v. Spain*, Mr. Mammadov was mistreated by guards who also ridiculed his political and ethnic identity. Similarly, the police who conducted the search of his home specifically cited an Arab-Farsi dictionary and a book on Talysh history in telling Mr. Mammadov the real reason for his arrest.

Such treatment demonstrates that the government was motivated by Mr. Mammdov’s ethnic identity and his public support of the Talysh culture. As such, his detention is arbitrary under Category V.

#### **D. Conclusion**

As established above, the detention of Mr. Mammadov is a direct result of his work as an editor and minority rights activist. In prosecuting Mr. Mammadov, the government failed to respect minimum international standards for due process. Finally, the government targeted Mr. Mammadov specifically because his activism was closely tied to his ethnic identity. As such, his continued imprisonment is arbitrary pursuant to Categories II, III, and V.

#### ***V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.***

Following his conviction and sentencing on September 27, 2013, Mr. Mammadov filed an appeal, which is currently pending.

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<sup>117</sup> In *Jayasundaram v. Sri Lanka* the Working Group relied upon Category V after noting that, “The Working Group is also mindful of the serious consequences for those who are ‘suspected of links to the [Liberation Tigers of Tamil Elam],’ simply because they are of Tamil origin. The manner in which Mr. Jayasundaram’s case has been handled, namely the unsubstantiated reasons for his arrest; his prolonged detention without charge or trial; and the non-observance of his fundamental human rights, such as the right to a fair trial, lends weight to the concerns that the reason for his arrest and detention is linked to his ethnicity as a Tamil.” *Jayasundaram v. Sri Lanka*, UN Working Group on Arbitrary Detention, Opinion No. 38/2012 (*adopted* Aug. 31, 2012) at ¶ 31.

<sup>118</sup> *Adnam El Hadj v. Spain*, UN Working Group on Arbitrary Detention, Opinion No. 37/2012 (*adopted* Aug. 30, 2012) at ¶ 4. While beating the detainee, the guards reportedly told him “You came to Spain to eat for nothing. You’re going to clear off and they’ll feed you in your own country you filthy Moor.” *Id.*

<sup>119</sup> *Id.* at ¶ 13.

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

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