

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chairperson-Rapporteur: Mr. Malick Sow (Senegal)
Vice-Chairperson: Ms. Shaheen Sardar Ali (Pakistan)
Mr. Vladimir Tochilovsky (Ukraine)
Mr. Roberto Garretón (Chile)
Mr. Mads Andenas (Norway)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
Gulgeldy Annaniyazov,
Citizens of Turkmenistan

v.

Government of Turkmenistan

URGENT ACTION REQUESTED

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4 and 15/18¹

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¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. Resolutions 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 UN 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, para. 6 (Mar. 15, 2006).

BASIS FOR “URGENT ACTION” REQUEST

As set forth in the attached Petition, the Turkmen government is arbitrarily depriving Gulgeldy Annaniyazov of his liberty. The Turkmen government refuses to disclose any information about the arrest, conviction and current whereabouts of Mr. Annaniyazov. Given well-documented and widespread use of torture and cruel, inhuman or degrading treatment in Turkmenistan,² there are grounds to believe that the Turkmen government may be subjecting Mr. Annaniyazov to torture and/or ill-treatment in detention. Therefore, Mr. Annaniyazov’s physical health, psychological wellbeing, and life may be in grave danger.

It is requested that Mr. Annaniyazov be considered under the Working Group’s “Urgent Action” procedure.³ We ask that a communication be made immediately to the Turkmen government to ensure that Mr. Annaniyazov receives adequate food, clean water, and medical treatment and to protect them from any possible maltreatment and that his family receive information regarding his whereabouts and wellbeing. 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 Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/18.

QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

I. IDENTITIES OF THE VICTIMS

1. *Family Name:* Annaniyazov
2. *First Name:* Gulgeldy
3. *Sex:* Male
4. *Birth Date:* August 22, 1960
5. *Nationality:* Turkmenistan
6. (a) *Identity document (if any):* N/A

(b) *Issued by:* N/A

(c) *On (date):* N/A

(d) *No.:* N/A

² *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Concluding Observations of the Committee against Torture*, U.N. Committee Against Torture, CAT/C/TKM/CO/1 (June 15, 2011), available at <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.TKM.CO.1.pdf>.

³ *Report of the Working Group on Arbitrary Detention (“Revised Methods of Work of the Working Group”)*, E/CN.4/1998/44 (Dec. 19, 1997), Annex IV, paras. 22-24, available at http://www.ohchr.org/Documents/Issues/Detention/WGAD_RevisedMethodsofWork.pdf.

7. *Professional and/or activity (if believed to be relevant to the arrest/detention):* Political activist and opposition member.
8. *Address of usual resident:* Not known

II. ARREST

1. *Date of arrest:* June 24, 2008
2. *Place of arrest (as detailed as possible):* Parents' house in Ashgabat
3. *Forces who carried out the arrest or are believed to have carried it out:* Not known.
4. *Did they show a warrant or other decision by a public authority?* No.
5. *Authority who issued the warrant or decision:* Not known.
6. *Relevant legislation applied (if known):* Not known.

III. DETENTION

1. *Date of detention:* June 24, 2008
2. *Duration of detention (if not known, probable duration):* Since June 24, 2008 (four years and five months)
3. *Forces holding the detainee under custody:* Not known
4. *Places of detention (indicate any transfer and present place of detention):* Not known
5. *Authorities that ordered the detention:* Not known
6. *Reasons for the detention imputed by the authorities:* Reportedly charges of plotting to commit murder, assault, incitement to hooliganism, illegal currency dealings, and illegal possession of a weapon and drugs
7. *Relevant legislation applied (if known):* Not known

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

A. Statement of Facts

Part 1 of this section discusses Turkmenistan and its documented history of arbitrary detention and political suppression. Part 2 presents the case of Gulgeldy Annaniyazov, who has been arbitrarily detained by Turkmen authorities for more than four years.

1. Turkmenistan's History of Political Suppression

Turkmenistan declared independence from the Soviet Union in 1991. It is formally a secular democracy and a presidential republic.⁴ However, Turkmenistan is one of the world's most repressive countries. President Gurbanguly Berdimukhamedov has controlled the country since winning the 2007 presidential elections with 84% of the vote. The election failed to meet international standards.⁵ President Berdimukhamedov's first presidential term ended in 2012. He ran for a second term and won with 97% of vote in February 2012.⁶ This election also failed to meet the basic requirements of a fair election.⁷

President Berdimukhamedov leads the Democratic Party of Turkmenistan, the only political party allowed to operate in Turkmenistan until August 2012. In August 2012, President Berdimukhamedov announced the newly formed Party of Industrialists and Entrepreneur. But the party has so far shown no signs of independence.⁸ He enjoys unlimited power and total control over all aspects of public life in Turkmenistan.⁹ Turkmen law provides for an independent judiciary; however, in practice the judiciary is subordinate to the president.¹⁰ The judiciary is widely reputed to be both corrupt and inefficient.¹¹ There have been credible reports that judges and prosecutors often predetermine trial outcomes and sentences.¹² The Turkmen judiciary is notorious for its lack of transparency, particularly in politically sensitive cases.¹³

In March 2012, the UN Human Rights Committee examined Turkmenistan's first ever report on compliance with the International Covenant for Civil and Political Rights. In its Concluding Observations, the Human Rights Committee stressed that there was a broad gap between the legislative framework and its practical implementation in Turkmenistan, especially

⁴ 2011 Human Rights Report: Turkmenistan, U.S. Department of State [hereinafter 2011 State Dept. Report] available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

⁵ *Id.*

⁶ THE GUARDIAN, *Turkmenistan's President Wins Re-Election With 97% of Vote*, February 13, 2012.

⁷ The Organization for the Security and Cooperation in Europe (OSCE) did not consider that deployment of an election observation mission, even of a limited nature, would add value to the election process because of continued restriction of fundamental freedoms and limited choice between competing political alternatives in the country. See, *Needs Assessment Mission Report, Republic of Turkmenistan: Presidential Election 12 February 2012*, Organization for Security and Co-operation in Europe (December 7-9, 2011) at p. 9.

⁸ See, Jennifer Collins & Naz Nazar, *Turkmenistan's New Party Same As Old Party, Foes Say*, WASHINGTON TIMES, September 2, 2012.

⁹ *Turkmenistan: Country Summary*, Human Rights Watch (January 2012).

¹⁰ *Supra* note 4, 2011 State Dept. Report.

¹¹ *Id.*

¹² *Id.*

¹³ *World Report 2012: Turkmenistan*, Human Rights Watch (January 2012) [hereinafter 2012 World Report on Turkmenistan] available at <http://www.hrw.org/world-report-2012/world-report-2012-turkmenistan>.

in the prohibition of torture, independence of judiciary, freedom of assembly and freedom of association.¹⁴

Turkmenistan continues to lag far behind most of the world in the protection of civil liberties and human rights.¹⁵ The government retaliates against opposition leaders, human rights activists and independent journalists. On September 30, 2010, President Berdimukhmedov, referring to exiled Turkmen human rights defender Farid Tukhbatullin's work, instructed the Ministry of National Security to lead an "uncompromising fight against those who slander [Turkmenistan]."¹⁶ As a result of such threats, human rights activists and independent journalists in Turkmenistan work under constant threat of government prosecution on fabricated charges.¹⁷ Indeed, on June 19, 2006, the Turkmen Minister of National Security accused Annakurban Amanklychev and Sapardurdy Khadzhev, independent journalists and members of the Turkmenistan Helsinki Foundations, of "trying to collect defamatory information about Turkmenistan and cause discontent among people on instructions of [...] traitors of the motherland and foreign-based centers of destabilization" on national television.¹⁸

The use of fabricated charges to prosecute members of the political opposition, human rights activists, and independent journalists is widespread.¹⁹ In addition to fabricated charges, the Turkmen government has historically persecuted dissidents under treason charges. Turkmen Criminal Law defines "treason" in such a way that any opposition to the government can lead to charges of treason.²⁰ Further, any criticism of the current president's policies can be labeled "betraying the Motherland."²¹ For example, in 2003, the People's Council on Treason in the Fatherland issued a regulation that prohibited "attempts to sow doubts about the domestic and international policies of the president of Turkmenistan," and punished these acts with life

¹⁴ *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations: Turkmenistan*, UN Human Rights Committee, CCPR/C/TKM/CO/1, April 19, 2012, available at http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.TKM.CO.1_en.pdf.

¹⁵ According to the U.S. Department of State, the Turkmen government violates its citizens' civil liberties and human rights. See *Supra* note 4, 2011 State Dept. Report.

¹⁶ *Concluding Observations of the Committee against Torture: Turkmenistan*, UN Committee against Torture, CAT/C/TKM/CO/1 (June 15, 2011) at para. 13.

¹⁷ *Supra* note 13, 2012 World Report on Turkmenistan.

¹⁸ Amnesty International, Information on UA 172/06 (June 19, 2006), EUR 61/005/2006 (July 04, 2006), available at <http://www.amnesty.org/es/library/asset/EUR61/005/2006/es/8a4905b7-fa03-11dd-b1b0-c961f7df9c35/eur610052006en.pdf>; For more details about Annakurban Amanklychev and Sapardurdy Khadzhev's cases, including the UN Working Group on Arbitrary Detention's opinion, visit Freedom Now's website at <http://www.freedom-now.org/campaign/annakurban-amanklychev-and-sapardurdy-khadzhev/>.

¹⁹ For example, Messrs. Amanklychev and Khadzhev were accused of possessing illegal munitions. The U.N. Working Group on Arbitrary Detention issued an opinion stating that the detention of Messrs. Amanklychev and Khadzhev is arbitrary because it violates their rights to freedom of expression and freedom of association, as well as their right to be free from torture and cruel treatment and right to fair trial. See, United Nations Working Group on Arbitrary Detention, Opinion No. 15/2010 (Turkmenistan) (August 31, 2010), paras. 26-28; Radio Free Europe/Radio Liberty (RFE/RL) correspondent Dovlet Yazkuliev was sentenced to five years in October 2011 for allegedly urging a relative to commit suicide. Human Rights Watch reports that "[u]known numbers of individuals continue to languish in Turkmen prisons on [...] politically motivated charges." See, *Supra* note 13, 2012 World Report on Turkmenistan.

²⁰ *Supra* note 4, 2011 State Dept. Report; see also, Article 171, Turkmen Criminal Code.

²¹ *Alternative NGO Report to the UN Committee against Torture: Turkmenistan*, Turkmen Initiative for Human Rights & Turkmenistan's Independent Lawyers' Association, available at http://www2.ohchr.org/english/bodies/cat/docs/ngos/TIHR_ILA_FIDH_Turkmenistan_CAT46.pdf.

imprisonment.²² Those convicted on treason charges face life imprisonment, are ineligible for amnesty or reduction of their sentence, and may be unable to receive visitors or food from outside sources.²³ Approximately 50 to 60 persons were arrested or convicted on treason charges in 2003 alone.²⁴

Arbitrary arrests, *incommunicado* detentions, and enforced disappearances are widespread in Turkmenistan.²⁵ A number of detainees have died under suspicious circumstances while in detention.²⁶ In 2011, the UN Committee against Torture expressed its concerns about *incommunicado* detentions and enforced disappearances in Turkmenistan.²⁷ One example of *incommunicado* detention is the case of Annakurban Amanklychev and Sapardurdy Khadzhev who were convicted on fabricated charges of possessing illegal munitions and sentenced to seven years in prison. They were held *incommunicado* for over two months during the pre-trial investigation.²⁸ The whereabouts of approximately 60 prisoners convicted in relation to the alleged November 2002 assassination attempt against President Niyazov also remain unknown.²⁹ At least eight of prisoners from this group have died in custody and attempts by family members to obtain information regarding their whereabouts—including efforts by the family of Boris Shikmuradov, a former Minister of Foreign Affairs—have been unsuccessful.³⁰ Bazargeldy and Aydjemal Berdyev are victims of enforced disappearance too. They had been seeking compensation for torture and confiscation of their property since the 1990s. They were arrested on April 19, 2012;³¹ however, no information about their whereabouts or condition has been released since their arrest.³²

2. Gulgeldy Annaniyazov

Gulgeldy Annaniyazov is a political activist who lived in exile in Norway between 2002 and 2008, when he returned to Turkmenistan hoping to establish a non-governmental organization that would work on Turkmen-related projects in Norway.³³

²² *Human Rights Reform in Turkmenistan: Rhetoric or Reality?*, Human Rights Watch (November 2007) available at http://www.hrw.org/sites/default/files/related_material/turkmenistan1107web.pdf.

²³ *2003 Human Rights Report: Turkmenistan*, U.S. Department of State (February 25, 2004) available at <http://www.state.gov/j/drl/rls/hrrpt/2003/27870.htm>.

²⁴ *Id.*

²⁵ *Supra* note 4, 2011 State Dept. Report; see also, *Advancing Freedom & Democracy Reports: Turkmenistan*, U.S. State Department (May 2009) available at <http://www.state.gov/g/drl/rls/afdr/2009/sca/122968.htm>.

²⁶ *Id.*

²⁷ *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Concluding Observations: Turkmenistan*, UN Committee against Torture, CCPR/C/TKM/CO/1 (June 15, 2011) available at <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.TKM.CO.1.pdf>

²⁸ United Nations Working Group on Arbitrary Detention, Opinion No. 15/2010 (Turkmenistan) (August 31, 2010), paras. 11 and 24.

²⁹ *Turkmenistan: Individuals Continue To Be At Risk of Violations In Turkmenistan*, Amnesty International (February 12, 2009) available at <http://www.amnesty.org/en/library/asset/EUR61/001/2009/en/d006ee43-f8ef-11dd-92e7-c59f81373cf2/eur610012009en.html#0.2.Enforced%20disappearances%20outline>.

³⁰ *Id.*

³¹ *Human Rights Watch Submission to the United Nations Committee against Torture on Turkmenistan*, Human Rights Watch (April 2011) at pp. 7-8, available at http://www2.ohchr.org/english/bodies/cat/docs/ngos/HRW_TurkmenistanCAT46.pdf.

³² *Supra* note 4, 2011 State Dept. Report.

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Mr. Annaniyazov had become well-known in Turkmenistan after organizing the country's first anti-government demonstration supporting democratic reforms.³⁴ As one of eight men who organized the demonstration on July 12, 1995, later known as the "Ashgabat Eight,"³⁵ Mr. Annaniyazov was arrested and sentenced to 15 years in prison in January 1996. It was reported that he was repeatedly tortured while in prison.³⁶ He was released under a presidential amnesty in January 1999. Following his release, he reestablished his connections with Turkmen dissidents in Russia and later fled to Kazakhstan, applying for refugee status through the United Nations High Commissioner for Refugees and eventually resettling in Norway in 2002.³⁷

After the death of then Turkmen President Niyazov in December 2006, Mr. Annaniyazov began seriously considering a return to Turkmenistan in the hopes of helping with the country's legal reforms and transition to democracy.³⁸

Arbitrary Arrest, Conviction, and Imprisonment

On June 24, 2008, Mr. Annaniyazov returned to Turkmenistan. That evening, while visiting with friends and family at his parents' home, plain-clothed officers entered the home without presenting any identification or warrant and arrested Mr. Annaniyazov. The officers did not disclose to the family where they were taking him Mr. Annaniyazov.

Initially, Mr. Annaniyazov's family believed that he was charged with illegal border crossing.³⁹ However, when the trial started in July 2008, the government reportedly brought additional charges of plotting to commit murder, assault, incitement to hooliganism, illegal currency dealings, and illegal possession of a weapon and drugs. Family suspects that these charges were brought in connection with the anti-government demonstration he organized on July 12, 1995.⁴⁰ Mr. Annaniyazov was sentenced to 11 years in prison on October 7, 2008.⁴¹ The trial was closed and the court's verdict was not made available to Mr. Annaniyazov's family.⁴²

The family has not been provided with any information about Mr. Annaniyazov's whereabouts and wellbeing.⁴³ A former prisoner visited Mr. Annaniyazov's sister in Turkmenistan and told her that Mr. Annaniyazov was serving his sentence at the prison in Turkmenbashi (formerly known as *Krasnovodsk* and *Kyzyl-Su*). This is the same prison where Mr. Annaniyazov served his first prison term from 1995-1998 and contracted tuberculosis.⁴⁴

³⁴ *События в Ашгабаде 10-13 сентября 2008* ("Ashgabat Events of September 10-13, 2008"), Memorial, available at <http://www.memo.ru/2008/11/11/1111081.htm> (hereinafter, Ashgabat Events).

³⁵ *Turkmenistan: Time to Tell the Truth - What Happened to the "Ashgabat Eight"?*, Amnesty International, AI INDEX: EUR 61/08/97 (July 11, 1997) available at <http://www.amnesty.org/fr/library/asset/EUR61/008/1997/en/386217ef-5c7b-4b8b-9892-f81961f39b0f/eur610081997en.pdf>

³⁶ *Supra* note 34, Ashgabat Events of September 10-13, 2008.

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⁴⁰ *Supra* note 34, Ashgabat Events of September 10-13, 2008.

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Another source reported that he was transferred to a prison called “Gorbatiy” (“Hunchback”).⁴⁵ In 2009, Mr. Annaniyazov managed to smuggle out a written note indicating he did not think he would ever see his family again.⁴⁶ Attempts by international organizations to communicate with the government about Mr. Annaniyazov’s whereabouts and wellbeing received no replies.⁴⁷

IV. LEGAL ANALYSIS

The detention of Mr. Annaniyazov constitutes an arbitrary deprivation of his liberty⁴⁸ falling within Category II and Category III as established by the UN Working Group on Arbitrary Detention (Working Group).⁴⁹ A detention is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of Universal Declaration of Human Rights (UDHR) and Articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR).⁵⁰ A detention is arbitrary under Category III, “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial [...] is of such gravity as to give the deprivation of liberty an arbitrary character.”⁵¹ International norms of fair trial guarantees are provided in Articles 5, 7, 8, 9, 10, and 11 of the UDHR and Articles 7, 9 and 14 of the ICCPR. In addition to the due process requirements established by the ICCPR and UDHR, the Working Group may also look to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) in making a determination as to the arbitrary nature of a detention.⁵² The Body of Principles provides for the basic guarantees of a fair trial in Principles 2, 4, 7, 11, 17, 18 and 36.

A. Deprivation of Liberty under Category II: Violation of Articles 19 and 21 of the ICCPR

Violation of Article 19 of the ICCPR (Right to Freedom of Expression)

⁴⁵ The prison reportedly was given the name “Hunchback” because of the facility’s low ceilings.

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⁴⁷ The Norwegian Helsinki Committee inquired about Mr. Annaniyazov’s whereabouts and well-being by sending requests to the Presidential Administration, the Ministry of Justice and the Ministry of Internal Affairs in Turkmenistan but received no replies. See, *Supra* note 37, Letter to U.S. Ambassador; Freedom Now sent two letters to the Turkmen Ambassador in Washington, District of Columbia requesting for a meeting to discuss, among others, possible disappearance of Mr. Annaniyazov. Freedom Now did not receive any replies from the Turkmen Embassy.

⁴⁸ 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 Universal Declaration]. “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].

⁴⁹ Office of the High Commissioner for Human Rights, *Revised Methods of Work of the Working Group*, paras. 8(b) & (c) (hereinafter Revised Methods).

⁵⁰ *Id.*, para. 8(b).

⁵¹ 8(c), Revised Methods.

⁵² 7(a), Revised Methods.

The detention of Mr. Annaniyazov is arbitrary under Category II because the government of Turkmenistan imprisoned Mr. Annaniyazov for exercising his right to freedom of expression provided in Article 19 of the ICCPR.

Article 19(2) of the ICCPR provides that “[e]veryone shall have the right of freedom of expression.” Freedom of expression includes freedom to seek, receive and impart information of all kinds, either orally or in writing.⁵³ Manfred Nowak, former U.N. Special Rapporteur on Torture and author of the commentary on the ICCPR, noted that every communicable type of subjective opinion, even if it is politically critical, is protected by Article 19(2).⁵⁴ The scope of the Article 19 protection also encompasses expression in the context of peaceful assembly; for example, during peaceful demonstrations and protests.⁵⁵ Freedom of expression is essential for the full development of the person.⁵⁶ It is “the vehicle for the exchange and development of opinions” and thus constitutes an indispensable element of democratic society.⁵⁷

Article 19 of the ICCPR is of special importance for the members of political opposition groups and human rights activist. The UN Human Rights Committee (Committee) has recognized that the protection of free expression is broad enough to “[include] the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.”⁵⁸ Without such protection, members of political opposition and human rights activists will not be able criticize, investigate, or expose corrupt and illegal practices by government officials. Neither will they be able to peacefully assemble and participate in demonstrations against the government.

Mr. Annaniyazov’s detention is arbitrary because government’s prosecution of Mr. Annaniyazov was based on his public activism. Mr. Annaniyazov’s history of political opposition to the Turkmen government made him a target for the government. As one of the “Ashgabat Eight,” he organized the country’s first anti-government demonstration in 1995. In response to this political activism, the government arrested and imprisoned him. After his release under a presidential amnesty, Mr. Annaniyazov left the country and obtained refugee status in Norway in 2002, where he lived for about 6 years. In December 2006, President Niyazov died and there was a general belief that under the newly-elected President Berdimukhamedov, Turkmenistan would start democratic reforms and uphold the rule of law. Mr. Annaniyazov saw this as an opportunity to work in Turkmenistan building democracy. In 2008, Mr. Annaniyazov decided to return to Turkmenistan. On June 24, 2008, the day he

⁵³ Article 19(2) of the ICCPR reads: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

⁵⁴ M. NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 443-444 (2nd ed., Kehl am Rhein: Engel, 2005).

⁵⁵ *Id.*, CCPR Commentary, pp. 445, 449 (“In addition to purely verbal communication (freedom of speech, writing, telecommunications and the press), assemblies and demonstrations, all media of acoustic, visual, electronic and other communication are therefore protected [...].”).

⁵⁶ *Benhadj v. Algeria*, U.N. Human Rights Committee, Communication No. 1173/2003 (July 20, 2007), para. 5.4.

⁵⁷ *General Comment No. 34, Article 19: Freedom of Expression*, U.N. Human Rights Committee (September 12, 2011), para. 2.

⁵⁸ *Rafael Marques de Morais v. Angola*, U.N. Human Rights Committee, Communication No. 1128/2002 (March 29, 2005), para. 6.7.

arrived in Turkmenistan, plain-clothed officers arrested him at his parents' house. Although he was reportedly charged with illegal border crossing, the government later brought additional charges and convicted him of plotting to commit murder, assault, incitement to hooliganism, illegal possession of a weapon, drugs and illegal currency dealings. The Turkmen government sentenced him to 11 years in prison. It was reported that these charges were brought in connection with the anti-government demonstration he organized on July 12, 1995.⁵⁹

Mr. Annaniyazov's arrest, trial and conviction are consistent with the government's widespread practice of persecuting anyone who is engaged in political or public activism.⁶⁰ For example, Annakurban Amanklychev and Sapardurdy Khadziyev, independent journalists and members of Turkmenistan Helsinki foundation, were arrested by the officials from the Turkmen Ministry of National Security on June 16 and 18, 2006 respectively and accused of possession of illegal munitions.⁶¹ They were held in *incommunicado* detention and subjected to torture and other physical abuse. Their trials went with flagrant violations of fundamental procedural rights. On August 31, 2010, the UN Working Group on Arbitrary Detention (WGAD) held that the detention of Messrs. Amanklychev and Khadziyev resulted from their exercise of freedom of expression and association, as well as their legitimate activities for the promotion and protection of human rights in Turkmenistan.⁶² WGAD further held that Messrs. Amanklychev and Khadziyev were denied of their fair trial rights.⁶³ Similar to Messrs. Amanklychev and Khadziyev, Mr. Annaniyazov was involved in public activism and called for democratic reforms. Because of his legitimate work, he was detained, held in *incommunicado* detention and his trial went with flagrant violations of his rights to fair trial.

The right to freedom of expression is not absolute. Article 19(3) of the ICCPR provides that freedom of expression may be restricted when provided by law and necessary for the respect of the rights of others, protection of national security, public order, public health or morals. The UN Human Rights Committee has interpreted this limitation narrowly, noting that such restrictions must not "put in jeopardy the right itself."⁶⁴ Furthermore, in *Park v. Republic of Korea*, the Human Rights Committee held that government limitations must be for one of the enumerated purposes and "meet a strict test of justification."⁶⁵

In this case, there were no legitimate grounds for restricting Mr. Annaniyazov's right to freedom of expression. Mr. Annaniyazov is a public activist and was one of the organizers of the first anti-government demonstration in Turkmenistan. His purpose behind organizing the demonstration was to demand democratic reforms from the government, which constitutes

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⁶⁰ For instance, Radio Free Europe/Radio Liberty (RFE/RL) correspondent Dovlet Yazkuliev was sentenced to five years in prison in October 2011 for urging a relative to commit suicide. The Turkmen government used similar charges against Ovezgeldy Atayev, Turkmenistan's former parliamentary speaker who was expected to take over as acting president after President Niyazov's death. See, Human Rights Watch, *World Report 2012: Turkmenistan* (January 2012), p. 513, available at <http://www.hrw.org/world-report-2012/world-report-2012-turkmenistan>; Radio Free Europe/Radio Liberty, *Former Turkmen Parliament Speaker Reportedly Released from Prison* (March 21, 2012), available at http://www.rferl.org/content/turkmenistan_parliament_speaker_released_from_prison/24522801.html.

⁶¹ Working Group on Arbitrary Detention, Opinion No. 15, 2002 (Turkmenistan) (August 31, 2010), para. 13.

⁶² *Id.*, para. 26.

⁶³ *Id.*, para. 27.

⁶⁴ *Supra* note 57, General Comment No. 34, para. 21.

⁶⁵ *Park v. Korea*, Communication No. 628/1995, para. 10.3.

legitimate activity of public importance and falls under the protection of Article 19(2).⁶⁶ Demonstration participants neither advocated for violence, nor engaged in violence. Hence, the demonstration did not put national security, public order, public health and/or morals under jeopardy. In these circumstances, restrictions provided in Article 19(3) of the ICCPR do not apply and restricting Mr. Annaniyazov's right to free expression in this case would put the right itself in jeopardy.⁶⁷

Even if the Turkmen government were to establish the existence of legitimate grounds for limiting Mr. Annaniyazov's right to freedom of expression, it would also have to demonstrate that the limitations were "necessary."⁶⁸ According to the Human Rights Committee's jurisprudence, "the State party must demonstrate in specific fashion the precise nature of the threat to any of the enumerated purposes."⁶⁹ Assuming there were grounds for lawful restriction of the right to freedom of expression in Mr. Annaniyazov's case, the government must have specifically indicated why those restrictions were necessary. The Turkmen government has failed to demonstrate necessity of restrictions.

Violation of Article 21 of the ICCPR (Right to Freedom of Assembly)

Article 21 of the ICCPR guarantees everyone the right of peaceful assembly.⁷⁰ The right to freedom of expression and freedom of assembly are closely interrelated. The right of peaceful assembly has a function of forming, expressing and implementing political opinions.⁷¹ That is why commentators state that this imposes stronger obligations on the government to ensure that the right to freedom of assembly is exercised freely and with no fear of persecution.⁷²

The Turkmen government violated Mr. Annaniyazov's right to freedom of assembly. On July 12, 1995, Mr. Annaniyazov organized first anti-government demonstration calling upon the government to start democratic reforms.⁷³ As it was mentioned above, the main purpose of the first anti-government demonstration was to express the frustration about the lack of democratic reforms in Turkmenistan.⁷⁴ The expression of political opinions through demonstrations is a protected act and falls under the purview of Article 21 of the ICCPR.

Similar to freedom of expression, the right to freedom of assembly is not absolute. Article 21 states that the government may place restrictions on this right when it is necessary to protect national security, public safety, public order, public health and morals, as well as protection of the rights and freedoms of others. As it was discussed with regard to restricting freedom of expression, there were no legitimate grounds for restricting Mr. Annaniyazov's right

⁶⁶ *Supra* note 34, Ashgabat Events of September 10-13, 2008.

⁶⁷ *Supra* note 57, General Comment No. 34.

⁶⁸ *Shin v. Republic of Korea*, Communication No. 926/2000, para. 7.3.

⁶⁹ *Id.*, para. 7. 3.

⁷⁰ Article 21 of the ICCPR reads: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."

⁷¹ *Supra* note 58, CCPR Commentary, p. 481.

⁷² *Id.*, CCPR Commentary, p. 482.

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to freedom of assembly. Even when one of the restrictions might have applied, the Turkmen government would have demonstrated that such restrictions meet the requirement of necessity.

B. Deprivation of Liberty under Category III: The Non-Observance of the International Norms Relating to the Right to a Fair Trial in Gulgeldy Annaniyazov's Case is of Such Gravity that His Detention is Rendered Arbitrary

The detention of Mr. Annaniyazov constitutes an arbitrary deprivation of liberty falling within Category III because Turkmenistan failed to observe the minimum international standards of due process. The Turkmen government denied Mr. Annaniyazov the right to effective legal representation, a public hearing by an independent and impartial court, and humane treatment in violation of Articles 7 and 14 of the ICCPR and Articles 5, 8, 9, 10 of the UDHR.

Denial of Public Hearing

Article 14(1) of the ICCPR provides that in the determination of any criminal charge, “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal.” Article 10 of the UDHR similarly provides that “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal.” Article 27 of the Turkmen Criminal Procedure Code requires that “criminal hearings shall be open in all courts.” The right to a public hearing is a necessary component of a fair trial.⁷⁵ The Committee has commented that, “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.”⁷⁶ The requirement of public hearings requires that courts must “provide for adequate facilities for the attendance of interested members of the public.”⁷⁷

The Government of Turkmenistan denied Mr. Annaniyazov his right to a public hearing. The trial was closed and Mr. Annaniyazov's relatives were denied access to the courtroom.⁷⁸ While Article 14(1) of the ICCPR provides that courts can exclude some or all of the public for reasons of morals, public order, national security, the interests of private lives and interests of justice,⁷⁹ none of these interests were implicated in Mr. Annaniyazov's case. The government reportedly charged Mr. Annaniyazov with plotting to commit murder, assault, incitement to hooliganism and illegal possession of a weapon. As a criminal defendant facing ordinary

⁷⁵ *General Comment No. 32, Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial*, U.N. Human Rights Committee, CCPR/C/GC/32 (Aug. 23, 2007), para. 28.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Supra* note 2, Concluding Observations of the Committee against Torture: Turkmenistan.

⁷⁹ Article 14(1) of the ICCPR reads: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”

criminal charges that do not involve any of the interests provided in article 14(1), Mr. Annaniyazov was entitled to the protection of fair and public hearing.

Denial of Independent and Impartial Trial

Article 14(1) of the ICCPR provides that “everyone shall be entitled to a [...] hearing by a competent, independent and impartial tribunal.” Article 10 of the UDHR provides that “[e]veryone is entitled in full equality to a [...] hearing by an independent and impartial tribunal.” There can be no fair trial without a competent, independent and impartial court. This absolute right is not subject to any exceptions.⁸⁰ One of the requirements of impartiality contained in Article 14(1) of the ICCPR is that of reasonableness. The court must appear to a reasonable observer to be impartial.⁸¹ The requirement of independence refers, *inter alia*, to the “independence of the judiciary from political interference by the executive branch and legislature.”⁸²

In this case, a reasonable observer should find that the way the court conducted Mr. Annaniyazov’s trial demonstrated bias and lack of independence. In Mr. Annaniyazov’s case, an independent and impartial court would have conducted a public hearing. If there were reasons to have a closed trial, the court must have clearly stated the reasons and duly informed the relatives. Furthermore, an independent and impartial court would have made sure to provide Mr. Annaniyazov and his family with a copy of the verdict. Furthermore, Mr. Annaniyazov’s family does not know about the exact charges against Mr. Annaniyazov. Neither does the family know about his current whereabouts.

Denial of Human Treatment

Article 7 of the ICCPR provides that “[n]o one shall be subjected to torture or to cruel, inhumane or degrading treatment.” Article 5 of the UDHR and Principle 6 of the Body of Principles include analogous provisions. The prohibition of torture and cruel, inhumane or degrading is absolute.⁸³ Any imposition of suffering that is not severe enough to be qualified as torture constitutes cruel, inhumane or degrading treatment.⁸⁴

Mr. Annaniyazov is a victim of *incommunicado* detention, enforced disappearance, and unannounced detention. An *Incommunicado* detention occurs where a “detainee cannot communicate with anyone other than his or her captors [...]”⁸⁵ *Incommunicado* detention constitutes inhumane treatment because it takes away the detainee’s ability to have contact with

⁸⁰ *Supra* note 75, General Comment No. 32, para. 19; See also, *Gonzalez del Rio v. Peru*, Communication No. 263/1987 (November 2, 1992), para. 5.2. (“The Committee recalls that the right to be tried by an independent and impartial tribunal is absolute right that may suffer no exception.”).

⁸¹ *Id.*, General Comment No. 32, para. 21.

⁸² *Id.*, para. 19.

⁸³ See, Article 4 of the ICCPR and Article 2 of the Convention against Torture.

⁸⁴ *Supra* note 54, M. Nowak, ICCPR Commentary, p. 163.

⁸⁵ *Incommunicado, Unacknowledged, and Secret Detention Under International Law*, Association for the Prevention of Torture (March 2, 2006).

the outside world, especially with close relatives and friends.⁸⁶ The Human Rights Committee held that *incommunicado* detention for extended periods amounts to the violation of Article 7 of the ICCPR.⁸⁷ The Committee also stated previously that *incommunicado* detention renders a *habeas corpus* action impossible and thus violates Article 9(4).⁸⁸

Continued *incommunicado* detention constitutes an enforced disappearance.⁸⁹ Enforced disappearance means “the arrest, detention or abduction of persons by [a State], followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”⁹⁰ The State is under obligation to provide family members and other interested persons with three main pieces of information about the detainee: (a) whether the person is in custody; (b) whether s/he is alive or dead; (c) location of imprisonment or detention.⁹¹ According to the Association for the Prevention of Torture, “[e]ven if the initial detention is acknowledged, subsequent concealment of the fate or current whereabouts of the individual can of itself give rise to an enforced disappearance.”⁹² The UN Human Rights Committee held that enforced disappearance, similar to *incommunicado* detention, violates many provisions of the ICCPR, including the right to liberty and security of person (Article 9), the right not to be subjected to torture or to cruel, inhumane or degrading treatment or punishment (Article 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (Article 10).⁹³

Despite the publicity around Mr. Annaniyazov’s arrest and detention, the Turkmen government has never given an official explanation of the charges against Mr. Annaniyazov or

⁸⁶ S. JOSEPH ET AL., *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY* 285 (2nd ed., Oxford University Press); *Sarma v. Sri Lanka*, Communication No. 950/2000 (July 16, 2003), para. 9.5.

⁸⁷ *El Megreisi v. Libyan Arab Jamahiriya*, U.N. Human Rights Committee, Communication No. 440/1990 (December 27, 1990), para. 5.4; *Penarrieta et al. v. Bolivia*, U.N. Human Rights Committee, Communication No. 176/1984 (November 2, 1987), para. 16; *Mirta Cubas Simones v. Uruguay*, U.N. Human Rights Committee, Communication No. R.17/70 (May 3, 1980), para. 12.

⁸⁸ *Hammel v. Madagascar*, U.N. Human Rights Committee, Communication No. 155/83, para. 20.

⁸⁹ *Supra* note 86, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, p. 255.

⁹⁰ Article 7(2)(i) of the Rome Statute of the International Criminal Court; see also, Article 2, International Convention for the Protection of All Persons from Enforced Disappearance. The UN Human Rights Committee used the definition of “enforced disappearances” found in the Rome Statute of the ICC. See, *Sarma v. Sri Lanka*, Communication No. 950/2000, para. 9.3.

⁹¹ *Supra* note 85, *Incommunicado, Unacknowledged, and Secret Detention under International Law*.

⁹² *Id.*

⁹³ *Sarma v. Sri Lanka*, U.N. Human Rights Committee, Communication No. 950/2000 (July 16, 2003), paras. 9.3-9.5; *Celis Laureano v. Peru*, U.N. Human Rights Committee, Communication No. 540/1993 (July 4, 1994), para. 8.5; *Laureano v. Peru*, U.N. Human Rights Committee, Communication No. 540/1993, paras. 29-34. It should also be stated that when a State fails to respond to inquiries from family, lawyers and others regarding the whereabouts of an imprisoned person, the detention is unannounced and falls within the scope of enforced disappearance. “Unannounced detention” means “that in addition to holding the individual *incommunicado* (thereby preventing him from notifying family, friends, or his ordinary legal counsel that he has been detained), the government does not itself proactively inform family, friends or the individual’s ordinary legal counsel of the detention.” Unannounced detention violates the right to liberty and security of the person. See, *supra* note 85, *Incommunicado, Unacknowledged, and Secret Detention under International Law*; see also, *Report to the Commission on Human Rights*, UN Working Group on Arbitrary Detention, UN Doc. E/CN.4/2006/7, paras. 53-59

his conviction.⁹⁴ The UN Committee Against Torture’s concerns that Mr. Annaniyazov was a victim of *incommunicado* detention and possibly an enforced disappearance went unaddressed.⁹⁵ Addressing the *incommunicado* detention and enforced disappearances of a number of detainees in Turkmenistan, including Mr. Annaniyazov, the UN Committee Against Torture stated that it was particularly concerned about the lack of: (a) effective, independent and transparent investigations into allegations of such practices, and prosecutions and convictions of perpetrators, where appropriate; and (b) due notification of the results of such investigations to the relatives of individuals who have disappeared, including confirmation of their place of detention and whether they are alive. It further stated that “[the] lack of investigation and follow-up raises serious questions with respect to the State party’s willingness to fulfill its obligations under [Convention against Torture] and constitutes a continuing violation of the [Convention against Torture] with respect to the relatives of the victims.”⁹⁶

There have been numerous attempts to establish Mr. Annaniyazov’s whereabouts. The Norwegian Helsinki Committee inquired about Mr. Annaniyazov’s whereabouts and well-being by sending requests to the Presidential Administration, the Ministry of Justice and the Ministry of Internal Affairs in Turkmenistan but received no replies. Similarly, Freedom Now’s numerous requests for information about his detention have been ignored by the Turkmen Embassy in Washington D.C. since June 2012.

VI. 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

There is no information available about what type of domestic remedies Mr. Annaniyazov and/or his family may have pursued. Freedom Now has been trying to obtain more information about Mr. Annaniyazov’s detention. Attempts to reach out to the Turkmen government for information about his whereabouts and well-being went unanswered.

⁹⁴ “In particular, the Committee is concerned about the lack of: (a) effective, independent and transparent investigations into allegations of such practices, and prosecutions and convictions of perpetrators, where appropriate; and (b) due notification of the results of such investigations to the relatives of individuals who have disappeared, including confirmation of their place of detention and whether they are alive. This lack of investigation and follow-up raises serious questions with respect to the State party’s willingness to fulfill its obligations under the Convention and constitutes a continuing violation of the Convention with respect to the relatives of the victims.” *See, Supra* note 2, Concluding Observations of the Committee against Torture: Turkmenistan, para. 15.

⁹⁵ *Id.*

⁹⁶ *Id.*